

AMENDED EXHIBIT A

Docket No. 2373

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:)	CASE NO: 16-32488
)	
)	Houston, Texas
SANDRIDGE ENERGY, INC.,)	
ET AL.,)	Thursday, June 30, 2016
)	
)	(3:11 p.m. to 3:33 p.m.)
<u>Debtors.</u>)	(4:00 p.m. to 5:15 p.m.)

HEARING

BEFORE THE HONORABLE DAVID R. JONES,
CHIEF UNITED STATES BANKRUPTCY JUDGE

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--	--

1 the first lienholders.

2 Now, they're going to say, well, the second
3 lienholders waived that marshaling right under the
4 Intercreditor Agreement. Fine, let them raise that defense at
5 the time. But it shouldn't be waived as a potential equitable
6 argument at some later point in the case with everybody having
7 the opportunity to preserve their rights to object to the even
8 assertion of the right of equitable -- of marshaling.

9 We've proposed that. We've proposed it to the Court
10 as a solution to this, that no -- that the waiver stays in
11 place, provided that the Committee preserves the ability to
12 argue for marshaling at some later time and to argue for the
13 right to seek standing to bring actions in which they could
14 assert the argument for marshaling with all parties having the
15 ability to object to standing and all parties having the
16 ability to object to the propriety of the imposition of
17 marshaling. We think that's the fairest way to deal with it,
18 not to take a potentially valuable weapon out of the hands of
19 the Unsecured Creditors Committee at the beginning of the case.

20 Your Honor, the last point is on the fees. I pointed
21 out to your Honor that the Debtor happily, maybe not happily,
22 but willingly paid over \$14 million in the 90 days before
23 bankruptcy to professionals involved in the case, all of whom
24 are supporting the Restructuring Support Agreement, and we
25 think it's inappropriate to ask us to limit and -- to limit the

1 ability to look to the cash collateral of the lenders while we
2 perform our duties. Your Honor asked me earlier whether -- if
3 there's anything in 330 that says I can assert my claim against
4 their collateral and I said no, there's not. But also, if we
5 convince the Court that what we spent in this case is
6 reasonable and with the ability of every party to object to
7 those fees as being unreasonable, duplicative, unnecessary,
8 didn't yield results, whatever arguments they have, and I
9 convince your Honor that I have an allowed claim and a
10 component of that allowed claim at the end of the case contains
11 more than \$250,000 spent on investigating and prosecuting or
12 attempting to prosecute avoidance actions and your Honor
13 nevertheless, says that's an allowable administrative claim,
14 they'd have to pay it in order to confirm the Plan. They have
15 to figure out how to pay it. That I think is the appropriate
16 solution.

17 We can live with a \$250,000 cap provided we have the
18 ability to convince your Honor at the end of the case that we
19 have an allowed claim, even if a component of that allowed
20 claim exceeds 250 for the work that we have described as being
21 investigating or prosecuting potential avoidance actions. They
22 have all rights they want to object to it.

23 **THE COURT:** Is there a dispute about this? I don't
24 think they're arguing that you don't have --

25 **MR. GIBBS:** Oh, I think they were --

1 **THE COURT:** -- and administrative claim.

2 **MR. GIBBS:** -- call it a -- they've been talking
3 about it as a hard cap and a soft cap and they said, well,
4 anything over whatever the cap is you can only look to
5 unencumbered assets.

6 What I'm saying is if I have an allowed claim --

7 **THE COURT:** Right.

8 **MR. GIBBS:** -- it has to be paid in order for a Plan
9 to be confirmed, unless I consent to less favorable treatment.
10 And they have to figure out where it comes from, and it may
11 come from what's their collateral.

12 **THE COURT:** Guys, is there -- I don't -- is there a
13 dispute about this?

14 **MR. SCHAIBLE:** Definitely.

15 **THE COURT:** Tell me, I don't -- if Mr. Gibbs is
16 telling me how he believes things are, what's the dispute?
17 He's saying that -- I mean of course --

18 **MR. SCHAIBLE:** So, your Honor --

19 **THE COURT:** -- of course admins have to be paid if
20 you confirm a Plan. I mean that's just a basic requirement,
21 right?

22 **MR. SCHAIBLE:** Yes, your Honor, but admin claims
23 being paid out of our collateral --

24 **THE COURT:** He's not saying that. He's actually
25 saying --

1 **MR. SCHAIBLE:** I know, but you can't -- so what he's
2 saying is that, okay, you don't have to use your collateral if
3 you don't want to, you just can't ever confirm a Plan, you
4 can't come out of bankruptcy --

5 **THE COURT:** Right.

6 **MR. SCHAIBLE:** -- you can't do the entire
7 restructuring that you're seeking to do if you don't pay us.
8 That's effectively no cap at all, then we have to use our --

9 **THE COURT:** Well, no. Well, let's take a step back.
10 Let's assume that your -- let's assume that he said or I said
11 the number's not 250, it's zero. He can go forward with the
12 Committee and he can spend whatever it is he wants to spend and
13 he can file whatever fee applications it is he wants to file
14 and I'll approve whatever it is I think is appropriate. And so
15 at that point there's an allowed administrative claim, right?

16 **MR. SCHAIBLE:** Right, but, your Honor, I think --

17 **THE COURT:** Wait, I'm talking.

18 **MR. SCHAIBLE:** Oh, I'm sorry.

19 **THE COURT:** So there's an allowed administrative
20 claim, correct?

21 **MR. SCHAIBLE:** Yes.

22 **THE COURT:** A requirement of 1129 is that all admin
23 claims have to be paid on the effective date of the Plan,
24 unless the parties agree otherwise, right?

25 **MR. SCHAIBLE:** Correct.

1 **THE COURT:** So what am I missing?

2 **MR. SCHAIBLE:** Because, your Honor, at the outset of
3 the case we are saying if it were to work that way, then a cap
4 would be, as you said, completely irrelevant, because we would
5 have to pay it -- if there's no unencumbered assets, we would
6 have to pay it out of our collateral.

7 **THE COURT:** You don't have to.

8 **MR. SCHAIBLE:** Well, the we just have to not confirm
9 a Plan.

10 **THE COURT:** Right. I mean but tell me -- I mean I
11 don't understand what you're asking me, because as I understood
12 what was going on is that you guys had agreed to pay 250 out of
13 your collateral --

14 **MR. SCHAIBLE:** Correct.

15 **THE COURT:** -- and you weren't agreeing to pay any
16 more. Whatever else --

17 **MR. SCHAIBLE:** Correct.

18 **THE COURT:** -- the Committee runs up, whether it's
19 investigation or pursuing its own Plan or filing avoidance
20 actions or whatever it might be, whatever it is I allow is an
21 admin claim, correct?

22 **MR. SCHAIBLE:** Correct.

23 **THE COURT:** And that admin claim has to be paid on
24 the effective date of the Plan in order to confirm a Plan,
25 correct?

1 **MR. SCHAIBLE:** Correct.

2 **THE COURT:** So then what -- I don't understand why
3 we're having a disconnect.

4 **MR. SCHAIBLE:** Because again, your Honor, at the
5 outset of the case we are saying -- the purpose of the carve-
6 out for the secured creditors perspective is we are saying that
7 we are allowing certain amount of our collateral to be used --

8 **THE COURT:** Correct.

9 **MR. SCHAIBLE:** -- but not more than that.

10 **THE COURT:** Correct.

11 **MR. SCHAIBLE:** Including whether it's an admin claim.
12 So that means we're giving the Committee advance notice you
13 have \$250,000 that you can spend to investigate our liens.

14 **THE COURT:** Right.

15 **MR. SCHAIBLE:** If you want to spend more than that,
16 you are taking a risk and the --

17 **THE COURT:** Absolutely.

18 **MR. SCHAIBLE:** -- risk is that you -- and the risk is
19 is that there may be not be unencumbered assets sufficient to
20 pay your claims. If there are, no harm no foul.

21 **THE COURT:** Right.

22 **MR. SCHAIBLE:** And again, if there aren't, they can
23 come back and explain why the need to use more of our
24 collateral.

25 But if we did it in the construct where at the outset

1 of the case they get to just run up any administrative claim
2 they want and at the end of the case we are in the Hobson's
3 choice of deciding whether we want to confirm a Plan or not, we
4 have to pay whatever their claim is, notwithstanding the fact
5 that it's coming out of our collateral. The point is at the
6 outset of the case we are putting down an indication that says
7 don't spend more than this if you think you're going to get it
8 out of our collateral, whether it's as an admin claim or just
9 as using our collateral. If you want to spend more than that,
10 come back to the Court and talk about it or use unsecured
11 assets. And here is a situation where the Committee has spent
12 a lot of ink talking about how they believe there's going to be
13 significant unencumbered assets.

14 **THE COURT:** Right.

15 **MR. SCHAIBLE:** If they're willing to put their sort
16 of money where their mouth is, then they should feel perfectly
17 comfortable looking to those unencumbered assets. And we, of
18 course, have nothing to say about them using those unencumbered
19 assets.

20 **THE COURT:** Well, they are looking to those
21 unencumbered assets.

22 **MR. SCHAIBLE:** And if they're there, then we -- then
23 there is no issue, your Honor.

24 **THE COURT:** And then if there's not, then the Debtor
25 can't confirm a Plan.

1 **MR. SCHAIBLE:** Correct. And that --

2 **THE COURT:** And isn't that the way that Chapter 9 --
3 I'm sorry -- Chapter 11 is designed to work?

4 **MR. SCHAIBLE:** I don't believe so, your Honor. In
5 connection --

6 **THE COURT:** Show me where?

7 **MR. SCHAIBLE:** No, no, sorry, your Honor. What I
8 meant was -- of course, you're correct. What I meant was that
9 a carve-out --

10 **THE COURT:** Well, no, I'm not always right. I'm not.

11 **(Laughter)**

12 But I've done this once or twice.

13 **MR. SCHAIBLE:** What I meant, your Honor, was that the
14 carve-out, the concept of the cash collateral is an override
15 for what the otherwise baseline rule would be. And if you look
16 at the Cash Collateral Order, we've made it clearer what we
17 believed was already clear, which is that effectively the
18 administrative claim meter is being overridden here with
19 respect to the limited amounts of investigation that are going
20 to be against us to the extent that whether as an admin claim
21 or not as an admin, understanding as an admin claim it's going
22 to look to our collateral.

23 So it's not a situation where an admin claim exists,
24 it's here already, and now we have to deal with it to come out
25 of bankruptcy right at the beginning of the case.

1 **THE COURT:** But you don't have to deal with it and
2 you have all sorts of other options. You have an option, and
3 I'm -- I probably shouldn't say this. You have an option that
4 you can just flat out burn the Committee. You haven't either
5 discovered it -- I was talking to my law clerk about it the
6 other day --

7 **MR. SCHAIBLE:** Big question as to whether you can do
8 that and get away with it.

9 **THE COURT:** Who knows. But you have tons of options.
10 But I don't understand how you think -- I mean what you're
11 talking about is changing the entire way that Chapter 11 works.
12 And to be clear, the Committee doesn't have an admin claim
13 until they say I have an admin claim. If they go run up a
14 million dollars and you come in here and show me that they
15 should have only spent 250, my guess is they're probably only
16 going to get an admin claim for 250.

17 But I don't -- I really don't understand this
18 argument. Do the Debtors --

19 **MR. GIBBS:** Can I respond to the Court?

20 **THE COURT:** -- disagree?

21 Not yet. I want to hear from everybody else.

22 **MR. GIBBS:** Okay.

23 **MR. SERAJEDDINI:** Your Honor, I'd submit that on a
24 prepetition basis I don't think the Cash Collateral Order read
25 that way. I do think that that provision is there right now.

1 **THE COURT:** It says what?

2 **MR. SERAJEDDINI:** I'm sorry?

3 **THE COURT:** It says what?

4 **MR. SERAJEDDINI:** It says that those claims are
5 disallowed to the extent they're unable to be satisfied from
6 unencumbered assets. But if --

7 **THE COURT:** It says that they're disallowed? I did
8 not see that. Where is that?

9 **MR. SERAJEDDINI:** It's the last sentence, your Honor,
10 of Paragraph 26.

11 **(Pause)**

12 **THE COURT:** I don't see a Paragraph 26. Somebody
13 want to help me?

14 **MR. SERAJEDDINI:** Sure, your Honor. If I may
15 approach, I can point it out for your Honor.

16 **THE COURT:** All right.

17 **(Pause)**

18 Oh, so this is different than the Order, there's been
19 an additional paragraph.

20 **(Pause)**

21 **MR. GIBBS:** Hence our concern, Judge.

22 **THE COURT:** All right, now I understand.

23 **MR. GIBBS:** What they want is a determination today
24 that I can't have an allowed claim under 330 --

25 **THE COURT:** Yeah, I get it.

1 **MR. GIBBS:** -- for anything over whatever the number
2 is you pick or whatever the number is they agree to.

3 **THE COURT:** Yeah.

4 **MR. GIBBS:** And we can't live with that. We put
5 language in our objection that we think tracks the Code and we
6 think is appropriate, which is that to the extent we exceed the
7 budget and it turns out to be fees for which we have an allowed
8 claim, it will be an allowed administrative claim. That's the
9 way the Code works, as your Honor pointed out to counsel for
10 Second Lien Ad Hoc.

11 **THE COURT:** All right. Mr. Monsour?

12 **MR. MONSOUR:** Thank you, your Honor. I think we're
13 looking at the carve-out wrong, because the carve-out is in the
14 event -- if you confirm a Plan and you pay the administrative
15 expenses to confirm a Plan, the carve-out never kicks in. What
16 happens is, if you look on Page 29 of the Order, if there's a
17 termination event, which means you're not going to confirm a
18 Plan, cash collateral is going to be cut off, that's when the
19 carve-out kicks in and there's a guaranteed minimum for the
20 Committee of \$250,000 out of the collateral, where they may not
21 have it otherwise.

22 **THE COURT:** Did you read this provision? It actually
23 says --

24 **MR. MONSOUR:** It says on a termination event.

25 **THE COURT:** -- that anything over 250 shall not be

1 considered for determining compliance with 1129(a)(9)(A).

2 That's not --

3 **UNIDENTIFIED SPEAKER:** This has nothing to do with
4 the carve-out.

5 **THE COURT:** -- that's confirmation.

6 **MR. MONSOUR:** Okay.

7 **THE COURT:** Yeah. Let me tell you all that I did not
8 understand that. It would have been a much shorter hearing had
9 I understood this. I am not today under any circumstances
10 going to determine what the Committee can and can't spend and
11 what they're entitled to. I don't have a fee application
12 before me. I would be abrogating --

13 **MR. GIBBS:** You have a retention application.

14 **THE COURT:** I have a retention application. I would
15 be abrogating the Bankruptcy Code if I were to approve such a
16 provision and I just won't. If that's problematic for the
17 Debtors and their reorganization, that's problematic for the
18 Debtors and their reorganization.

19 I don't have any issue with the 507(b) provision. I
20 don't have any issue with the marshaling provision. And I'll
21 just say that flat out. Those two don't bother me at all. But
22 in no way am I going to through a cash collateral order start
23 defining what the administrative claims in the case are and
24 aren't. I'm not about to do that.

25 You know, I'll rule on applications, subject to all

1 objections, whenever they're filed. But that's just -- that's
2 gone -- that's just one step too far and I'm not about to
3 entertain that.

4 Where does that leave us?

5 **MR. SERAJEDDINI:** Your Honor, I'd request that we
6 have a minute to talk to our lenders about that.

7 **THE COURT:** Absolutely. Let me tell you --
8 Ms. Staples?

9 **(Court confers with clerk)**

10 All right, I'm going to lose my staff at 5:30. You
11 have me until then. So I'll step down. Once you canvass --
12 I'll also tell you with respect to the number, I'm happy for
13 you all to negotiate a number. I'm also happy to pick the
14 number. And it won't bother me either way. All right? All
15 right.

16 **MR. SERAJEDDINI:** Okay, thank you.

17 **MR. MARCUS:** Your Honor, can I just share with the
18 Court --

19 **THE COURT:** Yes, sir, of course.

20 **MR. MARCUS:** -- one brief comment? I just wanted to
21 make it clear that when your Honor had asked is there a
22 disagreement, I'm not -- you were looking at me and I was
23 shaking my head. I wasn't trying to mislead your Honor, I read
24 it the way your Honor had read it.

25 **THE COURT:** Right.

1 **MR. MARCUS:** And that's completely my fault. So I
2 also was --

3 **THE COURT:** All fine.

4 **MR. MARCUS:** -- not aware that this was an issue. I
5 apologize.

6 **THE COURT:** I'll let you guys work on this.
7 That's --

8 **MR. TENZER:** Your Honor, both in the interest of
9 resolving the matter and making sure your staff can get home at
10 5:30, and the reason that I had come to the podium is I just
11 wanted to clarify that what was troubling the Court was the
12 language that was in there regarding the non-allowance of the
13 administrative claim, but not, as you say, as a number.
14 Certainly I, and I believe Mr. Schaible, are willing to live
15 with the 250 without that language in there. If that satisfies
16 the Committee, we're done.

17 **THE COURT:** Well, maybe more importantly, if it
18 satisfies the Court.

19 **MR. TENZER:** Your Honor, yes.

20 **THE COURT:** And I will just tell you, I mean I'm
21 perfectly happy to give you all a couple minutes if you want to
22 talk.

23 **MR. SCHAIBLE:** We're fine to concede, your Honor --

24 **THE COURT:** All right.

25 **MR. SCHAIBLE:** -- concede that.

1 **THE COURT:** All right. And so you offered earlier --
2 I just want to make sure Mr. Gibbs knows what his options are.
3 Both of you echoed earlier that you had no objection to the
4 Committee coming back if they thought that they needed more.
5 Is that offer still available?

6 **MR. SCHAIBLE:** Yes, your Honor.

7 **MR. TENZER:** Yes, your Honor.

8 **THE COURT:** All right. With that caveat, and I'll
9 certainly listen to arguments to the contrary, with the
10 understanding that the language that we talked about regarding
11 the 1129 issue is coming out, so it's a what I'm going to call
12 a conventional carve-out of 250, subject to 330 limitations and
13 wherever the Plan confirmation process goes, it goes.

14 You know, without -- Mr. Gibbs, I'll hear any
15 argument you want make. But to me that sounds like an entirely
16 appropriate place to go and I'll -- if you think that it's not,
17 I'll -- I now understand the argument you were making about 330
18 and no cap. I read the provision all wrong and I didn't
19 understand your argument and I apologize for not understanding
20 your argument, because now I do. So I get it.

21 **MR. GIBBS:** To the extent a paid litigant comes here
22 and makes an argument that the Court doesn't understand, I
23 think I should be the one making the apology, your Honor.

24 **THE COURT:** Not at all, because I read the Order
25 wrong. I was operating off a fact that you and I were looking

1 at entire different and -- I mean I hope you would agree that
2 looking at it my way, the argument was hard to understand.
3 Given what you had read and you were in fact right, and I'll
4 put that on the record, you were right --

5 **MR. GIBBS:** I'd prefer --

6 **THE COURT:** -- it may --

7 **MR. GIBBS:** I prefer Mr. Laurinaitis's adjectives.

8 **(Laughter)**

9 **THE COURT:** Fair enough.

10 **MR. GIBBS:** I'll settle for that.

11 **THE COURT:** It makes perfect sense. So if we can
12 modify the Order in that regard, get it done, get it uploaded,
13 let Mr. Alonzo know, and I will sign it as soon as you tell me
14 that it's there. All right? And make sure to run it by
15 Mr. Gibbs to include the language regarding the ability to come
16 back and to strike the language on -- that deals with the 1129
17 issue. I'll leave it there.

18 **MR. GIBBS:** Do I understand that the Court is also
19 inclined to grant the 507(b) super priority admin claim for the
20 lenders, to the extent they have one proved up in the case --

21 **THE COURT:** I don't think --

22 **MR. GIBBS:** -- on proceeds?

23 **THE COURT:** I think the Code simply envisions it and
24 so I don't think it's inappropriate. I think it is within the
25 range of reasonable business judgment. I am approving that.

1 And I am allowing the no marshaling provision.

2 **MR. SERAJEDDINI:** Thank you, your Honor.

3 **THE COURT:** We didn't deal with the hedging issue. I
4 didn't know if --

5 **MR. SERAJEDDINI:** Yeah.

6 **THE COURT:** -- that had fallen off the table or not.

7 **MR. SERAJEDDINI:** Well, I think that the language
8 that resolves it is in the redline I handed up to your Honor.

9 **THE COURT:** In this?

10 **MR. SERAJEDDINI:** Yes, with the yellow tabs. It's
11 the language in Paragraph 11, the second yellow tab, and it's
12 effectively a reservation of rights that to the extent
13 Fort Stockton is able to demonstrate that it has a secured
14 claim, I assume the basis would be a taxing, and there's a
15 diminution in the value of that claim, that Fort Stockton
16 basically has whatever -- or, sorry, let me clarify, to the
17 extent they have a secured claim, they have the same priority
18 they had in advance of the petition date. They're not being
19 primed. And to the extent there's a diminution in value, then
20 they receive adequate protection liens similar to the lenders
21 in terms of that diminution in value.

22 **THE COURT:** All right. Are you all back on track and
23 working to agree to disagree or whatever it might be?

24 **MR. SERAJEDDINI:** We're doing our best, your Honor.

25 **THE COURT:** All right. Fair enough. All right.

1 All right, so with the addition of Paragraph 11, what
2 does that do -- didn't we -- didn't you upload a revised
3 Hedging Order?

4 **MR. SERAJEDDINI:** In the revised Hedging Order, which
5 I believe is Docket Number 203, there are two changes and these
6 don't relate to the Fort Stockton objection, there are -- the
7 first is a clarification to make clear that the Debtors can
8 settle hedging arrangements as well. Basically the same as
9 satisfy it, but that they can -- these documents provide for
10 settlement mechanisms and so the Debtors are authorized to
11 settle in accordance with the documents. And then the last
12 sentence was a request from one of our potential hedge
13 counterparties who's a bank in the lender group that the
14 ability to hedge isn't limited strictly to lenders, but also
15 includes their affiliates, which to my knowledge no party is
16 objecting to.

17 **THE COURT:** All right.

18 **(Pause)**

19 Let me make sure we're on the same -- I thought --
20 the original hedging motion was 203. I thought the revised
21 Order was 395.

22 **MR. SERAJEDDINI:** That's right, your Honor. Yes.
23 Apologies.

24 **THE COURT:** Well, we've seen today that you all can
25 confuse me. I just want to make sure that I have it right.

1 **MR. SERAJEDDINI:** I apologize. Hopefully it's the
2 last time we do that, your Honor.

3 **THE COURT:** You're just reminding me that I'm old.

4 **(Pause)**

5 Mr. Gibbs, have you had an opportunity to look at the
6 revised Hedging Order that was submitted at Docket 395?

7 **MR. GIBBS:** We have and we're okay with it,
8 your Honor.

9 **THE COURT:** All right. Thank you.

10 All right, I've reviewed the Amended Order at 395. I
11 have signed it. It's on its way to docketing.

12 **MR. SERAJEDDINI:** Great.

13 **THE COURT:** All right.

14 **MR. SERAJEDDINI:** Thank you very much, your Honor.
15 So we will upload a revised Cash Collateral Order in accordance
16 with your ruling.

17 **THE COURT:** All right. And you'll let Mr. Alonzo
18 know. Make sure you circulate it. Just let me know that
19 everybody's looked at it and approved it, either a approve this
20 form at the bottom of it or something separate that tells me
21 that, you know, you've uploaded it and everybody's agreed to
22 it. Okay?

23 **MR. SERAJEDDINI:** We will do so, your Honor.

24 **THE COURT:** All right. Thank you.

25 Anything else?

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MR. SERAJEDDINI: Thank you very much.

THE COURT: All right, thank you, everybody. We'll
be adjourned.

(Counsel thank the Court)

THE MARSHAL: All rise.

(This proceeding was adjourned at 5:15 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



July 3, 2016

TONI HUDSON, TRANSCRIBER