

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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	:	
In re:	:	Chapter 11
	:	Jointly Administered
PES HOLDINGS, LLC <i>et al.</i> ,	:	Case No.: 19-11626 (KG)
	:	
Debtors.	:	Obj. Deadline: Oct. 11, 2019 @ 4:00 p.m.
	:	Hearing Date: Oct. 18, 2019 @ 10:00 a.m.
	:	
	:	Ref. D.I. No. 439
	X	

**OBJECTION AND RESPONSE OF THE
UNITED STEELWORKERS TO DEBTORS' MOTION FOR ENTRY OF AN ORDER (I)
APPROVING THE DEBTORS' NON-INSIDER KEY EMPLOYEE RETENTION
PROGRAM AND (II) GRANTING RELATED RELIEF [DOCKET NO. 439]**

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union (“United Steelworkers” or “USW”), a creditor and collective bargaining representative of employees of the Debtors, by and through its undersigned counsel, hereby submits this objection and response to the *Debtors’ Motion for Entry of an Order (I) Approving the Debtors’ Non-Insider Key Employee Retention Program and (II) Granting Related Relief* (Docket No. 439 (the “KERP Motion”)):

INTRODUCTION

1. The USW is the collective bargaining representative of approximately 640 bargaining unit employees of debtor Philadelphia Energy Solutions Refining and Marketing, LLC (the “Debtor”) at its facility in Philadelphia, PA. The Debtor and the USW are parties to a collective bargaining agreement as modified by a Memorandum of Understanding (“MOU”) approved by this Court. *See* Docket Nos. 286 (August 29, 2019 Motion) and 384 (September 17, 2019 Order). Approximately 80 bargaining unit employees remain actively employed,

performing caretaker functions and all employees, whether currently at work or laid off, face economic hardship and an uncertain future.

2. This seemingly-limited KERP Motion must be considered in the context of the Debtors' record in providing extraordinarily high compensation to management employees shortly before the bankruptcy filing -- and not publicly disclosing such payments until required to do so in their schedules -- and shortly before the above mentioned layoffs of bargaining unit employees.

3. The Debtors first publicly disclosed, in bankruptcy schedules filed on September 6, 2019, that they had paid directors and officers nearly \$6.5 million following the explosion and shortly before the bankruptcy was filed, including approximately \$4.5 million in retention bonuses. Global Notes and Statement of Limitations, Methodology, and Disclaimers Regarding the Debtors' Schedules of Assets and Liabilities and Statements of Financial Affairs, pp.159-63, 165-66, 169-70 (Docket No. 323). For example, Debtor paid \$125,000 in spot bonuses on the day of the explosion. *Id.*, pp. 160, 165, and Debtor paid its CEO a bonus greater than \$1.5 million and paid a director \$772,500 prior to filing for bankruptcy. *Id.*, pp. 161, 169.

4. At the time that the USW entered into the MOU, the Debtors had not disclosed to the USW either the nearly \$6.5 million that it had already paid to its directors and officers or its plans to seek authorization to make the payments sought to be provided under the instant program.

5. The payments disclosed in the Schedules and SOFA, followed closely by the filing of the instant motion, have understandably produced considerable employee and community uproar. *See, e.g.*, <https://stateimpact.npr.org/pennsylvania/2019/09/10/bonuses-paid-to-pes-refinery-executives-infuriate-ex-workers-and-environmentalists>;

<https://www.reuters.com/article/us-pes-bankruptcy-bonuses-idUSKCN1VU23Y>. It is important that case fiduciaries carefully analyze and investigate these payments and pursue appropriate action.

6. In these circumstances, the USW must object to this KERP Motion. The USW also notes that: (a) the KERP Motion fails to identify the intended recipients of these payments or even their job titles and gives no substantiation as to the alleged “meaningful employee attrition” and whether such alleged attrition has involved employees in the categories covered by the KERP Motion, (b) no actual KERP program governing document has been produced, and perhaps does not exist, (c) there is no disclosure as to whether compensation experts were consulted, and (d) there is no disclosure as to whether employees receiving these KERP payments would otherwise be entitled to other benefits, such as severance or retention payments, and if so whether such payments will be waived if monies are received under the instant program. Without any such detail, it is impossible for this Court, and for case stakeholders, to assess the necessity for implementing this program at this time.

CONCLUSION

The KERP Motion should be denied.

Dated: October 11, 2019

Respectfully submitted,

/s/ Susan E. Kaufman

Susan E. Kaufman (DSB#3381)

LAW OFFICE OF SUSAN E. KAUFMAN, LLC

919 N. Market Street, Suite 460

Wilmington, DE 19801

302-472-7420 (phone)

302-792-7420 (fax)

skaufman@skaufmanlaw.com

Richard Seltzer
Melissa S. Woods
COHEN, WEISS AND SIMON LLP
900 Third Avenue
New York, NY 10022-4859
(212) 563-4100 (phone)
(646) 473-8219 (fax)
rseltzer@cwsny.com
mwoods@cwsny.com

David R. Jury
General Counsel
Anthony Resnick
Assistant General Counsel
UNITED STEELWORKERS
Five Gateway Center, Room 807
Pittsburgh, PA 15222
(412) 562-2545 (phone)
djury@usw.org
aresnick@usw.org

Counsel for United Steel, Paper and Forestry,
Rubber, Manufacturing, Energy, Allied Industrial
and Service Workers International Union

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
PES HOLDINGS, LLC, <i>et al.</i> ,)	Case No. 18-11626 (KG)
)	(Joint Administration Pending)
Debtor.)	

CERTIFICATE OF SERVICE

I, Susan E. Kaufman, Esquire certify that I caused one true and correct copy of the within
*OBJECTION AND RESPONSE OF THE UNITED STEELWORKERS TO DEBTORS' MOTION
FOR ENTRY OF AN ORDER (I) APPROVING THE DEBTORS' NON-INSIDER KEY
EMPLOYEE RETENTION PROGRAM AND (II) GRANTING RELATED RELIEF [DOCKET
NO. 439]* to be sent on October 11, 2019 in the manner indicated to the following:

VIA HAND DELIVERY

Laura Davis Jones, Esquire
Pachulski Stang Ziehl & Jones LLP
919 N. Market Street, 17th Floor
Wilmington, DE 19801

David L. Buchbinder, Esquire
Office of the United States Trustee
J. Caleb Boggs Federal Building
844 King Street, Suite 2207
Lockbox 35
Wilmington, DE 19801

Robert J. Dehney, Esquire
Andrew R. Remming, Esquire
Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street, 16th Floor
Wilmington, Delaware 19801

Kurt F. Gwynne, Esquire
Reed Smith LLP
1201 N. Market Street, Suite 1500
Wilmington, Delaware 19801

Rafael Zahralddin-Aravena, Esquire
Elliott Greenleaf, PC
1105 Market Street, Suite 1700
Wilmington, Delaware 19801

VIA E-MAIL

Edward O. Sassower, Esquire
Steven N. Serajeddini, Esquire
Matthew C. Fagen, Esquire
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
edward.sassower@kirkland.com
steven.serajeddini@kirkland.com
matthew.fagen@kirkland.com

Damian S. Schaible, Esquire
Aryeh E. Falk, Esquire
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
damian.schaible@davispolk.com
aryeh.falk@davispolk.com

J. Frasher Murphy, Esquire
Charles M. Jones II, Esquire
Hayes and Boone LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
frasher.murphy@haynesboone.com
charlie.jones@haynesboone.com

Robert Stark, Esquire
Brown Rudnick LLP
7 Times Square
New York, New York 10036
rstark@brownrudnick.com

LAW OFFICE OF SUSAN E. KAUFMAN, LLC

/s/ Susan E. Kaufman

Susan E. Kaufman, (DSB# 3381)
919 North Market Street, Suite 460
Wilmington, DE 19801
(302) 472-7420
(302) 792-7420 Fax
skaufman@skaufmanlaw.com

Counsel for United Steelworkers

Date: October 11, 2019