

Denne meldingen til obligasjonseierne er kun utarbeidet på engelsk. For informasjon vennligst kontakt Nordic Trustee ASA.

To the bondholders of:

ISIN: NO0010691116, USD 160,000,000, OSA Goliath Pte, Ltd. 13/18 12.00% bond issue (the “OSA Bonds”)

And to the bondholders of:

ISIN: NO0010740459, USD 220,000,000 Goliath Offshore Holdings Pte. Ltd., 15/17 12.00% bond issue (the “Goliath Senior Secured Bonds”)

ISIN NO0010740467, USD 23,396,993 Goliath Offshore Holdings Pte. Ltd., 15/17 15.00% bond issue (the “Goliath Liquidity Bonds”)

Oslo, 14 February 2017

Notice to bondholders

1. Background

We refer to the current recovery process in respect of the above captioned bond issues as further described in previous summons and notices. This notice provides an update on the US litigation proceedings.

2. US litigation proceedings

2.1 Citigroup Litigation

On February 26, 2016, Quinn Emanuel (“QE”) filed an initial complaint in Florida federal court against Citigroup Inc. (“Citigroup”) on behalf of vendors, creditors and bondholders of Oceanografía S.A. de C.V. (“Oceanografía”) (the “Plaintiffs”). The initial complaint alleged that Citigroup violated the U.S. Racketeer Influenced and Corrupt Organization Act (“RICO”) by participating in the fraud that caused the collapse of Oceanografía and Plaintiffs’ losses. RICO is essentially a law that prohibits numerous types of criminal conduct, including fraud, and provides for treble damages.

Under the agreed-upon briefing schedule, Citigroup filed a motion to dismiss the complaint on May 9, 2016, arguing that (1) the case should be litigated in Mexico and not in the United States (i.e., “forum non conveniens”) because most of the conduct occurred in Mexico; and (2) the complaint did not sufficiently allege the elements of a RICO claim, including that Citigroup, as opposed to Oceanografía, caused Plaintiffs’ losses.

On June 7, 2016, the Plaintiffs filed a motion for jurisdictional discovery to obtain information regarding Citigroup’s actions in the United States to counter Citigroup’s forum non conveniens argument. On August 9, 2016, the Court denied the Plaintiffs’ motion, stating that jurisdictional discovery was unnecessary. The Court did not provide its reasoning.

On August 23, 2016, the Plaintiffs filed an amended complaint, which added a fraud claim alleging that Citigroup directly participated in the fraud and additional, recently-developed facts further establishing Citigroup's participation in the fraud. Under the new agreed-upon briefing schedule, (1) Citigroup filed its motion to dismiss the amended complaint on Friday, October 21, 2016; (2) the Plaintiffs filed their opposition to that motion on December 20, 2016; and (3) Citigroup filed its reply brief in support of its motion to dismiss on January 19, 2017.

Now, the Court may either (1) rule on the motion without holding a hearing (within about one to three months of Citigroup filing its reply brief on January 19); or (2) hold a hearing, and then rule on the motion to dismiss (within about one to three months of the hearing).

If the Court denies Citigroup's motion to dismiss, the parties will proceed to merits discovery (i.e., the litigation phase in which the parties obtain information, including documents from one another relating to the facts), which typically takes over a year.

After discovery, Citigroup will file a motion for summary judgment, asking the Court to rule in its favor based on its argument that the evidence establishes that Citigroup was not responsible for the fraud. If the Court denies Citigroup's motion for summary judgment, the parties will proceed to trial, unless there is a settlement.

2.2 KPMG Litigation

On February 26, 2016, QE filed a complaint in Delaware state court against KPMG International, KPMG, LLP and KPMG Cárdenas Dosal, S.C. (collectively, the "KPMG Defendants") on behalf of Oceanografía's vendors, creditors and bondholders (the "KPMG Plaintiffs"). The complaint alleges that the KPMG Defendants were negligent in failing to identify the fraud and prevent the collapse of Oceanografía.

On June 27, 2016, the KPMG Defendants filed motions to dismiss the complaint arguing, among other things, that (1) the Court lacked personal jurisdiction over the KPMG Defendants because none of the events took place in the United States; (2) Mexico was the most convenient forum to resolve the dispute, not Delaware, because the evidence is located in Mexico and Mexican law applies; and (3) the KPMG Plaintiffs failed to state a negligent misrepresentation claim against the KPMG Defendants because the Complaint fails to allege (a) specific misrepresentations in the audits; (b) a duty of care owed by the KPMG Defendants to Plaintiffs; and (c) Plaintiffs' reliance on the audits when purchasing or retaining their investment in or relationship with Oceanografía.

On July 13, 2016, the KPMG Plaintiffs requested jurisdictional discovery from the KPMG Defendants to obtain information regarding the KPMG Defendants' activities in the U.S. in order to oppose their motion to dismiss, and specifically, their personal jurisdiction and forum non conveniens arguments. On August 19, 2016, the KPMG Defendants filed a motion for a protective order seeking to bar the KPMG Plaintiffs from obtaining jurisdictional discovery (the "Protective Order Motions") on the basis that Plaintiffs cannot establish personal jurisdiction over KPMG International or KPMG Cárdenas Dosal, S.C. in Delaware because none of their conduct took place in Delaware. On September 26, 2016, the KPMG Plaintiffs filed an opposition to the KPMG Defendants' Protective Order Motions arguing that Plaintiffs can establish personal jurisdiction over KPMG International and KPMG Cárdenas Dosal because they are co-venturers with KPMG US, a Delaware LLP. On October 12, 2016, the KPMG Defendants filed a short reply brief.

On October 20, 2016, Judge Paul R. Wallace of the Delaware Superior Court in Wilmington, Delaware held a hearing on the Protective Order Motions. After hearing arguments from both the KPMG Defendants and KPMG Plaintiffs, Judge Wallace denied the Protective Order Motions, in part, and ordered the KPMG Defendants to respond to some of the jurisdictional discovery requests, including the most important requests relating to the relationship between and among the defendants. Judge Wallace ordered the parties to confer about (1) the scope of discovery; (2) the manner in which such discovery will proceed; and (3) the possibility of appointing a neutral, independent “discovery master” to manage the discovery process.

On November 9, 2016, Judge Wallace entered an order memorializing his rulings at the hearing (the “Order”). The KPMG Defendants served their responses to the KPMG Plaintiffs’ jurisdictional discovery requests on December 9, 2016. The KPMG Defendants refused to produce any information, including documents, based on a narrow reading of the Order concerning the scope of jurisdictional discovery. The KPMG Defendants and KPMG Plaintiffs anticipate engaging a “discovery master” to resolve this dispute. Judge Wallace has stayed the briefing schedule on the motions to dismiss pending resolution of the discovery issues.

Ultimately, like with the Citigroup litigation, after the jurisdictional discovery issues are resolved, if the Delaware Court denies the KPMG Defendants’ motions to dismiss, the case will proceed to merits discovery (which, as noted above, may take over a year). After merits discovery, the KPMG Defendants will file for summary judgment based on the evidence obtained during merits discovery. If the Court denies summary judgment, the case will proceed to trial, unless there is a settlement.

Yours sincerely

Nordic Trustee ASA


Fredrik Lundberg