Noble Corp's Fraudulent Conveyance with the Spinoff of Paragon Offshore

Noble committed $1.36 Billion in fraudulent conveyance of equity value with the spinoff of Paragon Offshore.

Here is the evidence:

1. On the balance sheet of the Paragon Offshore Amended S/1, Noble advertised a total equity value of $2 Billion for the Paragon Offshore spinoff. [1]

2. Noble advertised the $2B equity cushion to investors, unsecured bondholders and secured creditors from March 2014 until the August 4, 2014 spinoff of Paragon Offshore.

3. Noble was able to place $1.73B in debt ($1.08B of the debt was unsecured) on the Paragon Offshore spinoff using the debt markets, by presenting the $2B equity cushion balance sheet to creditors. [2]

4. It appears that Noble tried to place even more debt onto the Paragon Offshore spinoff: $2.27B of debt, but were unable to do so via the debt markets. [3]

5. The $2B advertised equity cushion translates to $23.66 per share. [4]

6. When the spinoff completed on August 4, 2014, PGN traded at $10.71 per share on the NYSE. The public market was valuing Paragon Offshore equity at only $907M. [5]

7. The difference between the Noble advertised equity value and the market's valuation of equity was $1,097 Million. [6]

---

[1] Paragon Offshore Amended S/1 Balance Sheet: https://www.sec.gov/Archives/edgar/data/1594590/000119312514089393/d635036ds1a.htm#fin635036_2

[2] See https://www.sec.gov/Archives/edgar/data/1594590/000119312514275181/d761533d8k.htm for details on the $1.08B in unsecured debt, and the $650M term loan.

[3] See the June 30, 2014 balance sheet that was released after spinoff on August 29, 2014, where the balance sheet carried a long term debt figure of $2.27 Billion: https://www.sec.gov/Archives/edgar/data/1594590/000119312514326877/d776671d10q.htm#tx776671_7

[4] The number of shares outstanding at the time of spinoff was 84,753,393, and the balance sheet equity value was $2,005,333,000. Therefore, Noble's assigned per-share value for the Paragon spinoff was $2,005,333,000 / 84,753,393 = $23.66 per share.

[5] The PGN share closing price on the NYSE was $10.7111 per Bloomberg. $10.7111 X 84,753,393 shares = $907.8M for equity value.

[6] $2,005M advertised value - $908M actual market value = $1,097M.

8. Per the Third Circuit's decision in *In re VFB v. Campbell Soup*, the court noted that "absent some reason to distrust it, the market price is 'a more reliable measure of the stock's value than the subjective estimates of one or two expert witnesses.' " [7]

9. A second relevant valuation event occurred soon after spinoff. The $929 Million impairment charge by PricewaterhouseCoopers (PwC) for September 30, 2014 accounting confirms the public market's equity value assertion on the August 4, 2014 spinoff date: that the 35 year old oil rig assets spun off to Paragon Offshore did not have the advertised asset value of $3.46B. [8]

10. Between August 4, 2014 until November 10, 2014 when the September 2014 balance sheet was released for Paragon Offshore, the Paragon stock (NYSE:PGN) attracted value investors, due to the stock having a favorable Price/Book ratio using the advertised asset value of $3.46B.

11. When PwC did their work for September 30, 2014 accounting during the October 2014 timeframe, the major banks were not forecasting an oil market collapse in 2015: Barclays was forecasting $93/barrel and Goldman Sachs was forecasting $85/barrel oil for 2015. [9]

---

[7] From the Latham and Watkins whitepaper on fraudulent spinoffs, Page 3:
https://www.lw.com/thoughtLeadership/LW-Backspin-Challenging-Spin-Offs-as-Fraudulent-Transfers
In the public SpinCo context, the strongest endorsement for the market price approach to valuation is the Third Circuit's decision in In re VFB v. Campbell Soup. The court noted that "absent some reason to distrust it, the market price is 'a more reliable measure of the stock's value than the subjective estimates of one or two expert witnesses. ' " Additionally, the public market test is strongest when the SpinCo consists entirely of the transferred assets, which was the case for the Paragon Offshore spinoff.

[8] See https://www.sec.gov/Archives/edgar/data/1594590/000119312514406535/d819132dex991.htm for the details on the $929M impairment charge by PwC for September 30, 2014 accounting, one month after spinoff, this information was released to investors on November 10, 2014. CEO Randall Stilley: "We concluded that the current values of our drillships in Brazil and our FPSO are higher than the current market values for similar units. " See https://www.sec.gov/Archives/edgar/data/1594590/000156459014005619/pgn-10q_20140930.htm#N_Balance_Sheets for the September 30, 2014 balance sheet audited by PwC. Note the drastic difference in equity value for September 30, 2014: $475M versus the advertised $2B. Note too the differences in asset value: $2.03B versus the advertised $3.46B.
The PwC audit team should be interviewed to determine why they did the $929M impairment charge. One of the drillships, the FPSO, was cold-stacked for 4 years before being transferred to Paragon Offshore, and should not have been transferred in with any value. The FPSO value assigned by Noble before the spinoff should be investigated.

[9] See this October 29, 2014 article from Bloomberg on the oil markets:
https://www.bloomberg.com/news/articles/2014-10-29/why-oil-prices-went-down-so-far-so-fast

12. A third relevant valuation event which indicated asset overvaluation, and is a market related test, happened before the spinoff in the April 2014 timeframe. Noble abandoned the intended IPO of Paragon Offshore, leaving $395 Million in tax free cash on the table [10], potentially due to the lack of interest by institutional investors who would be subscribers to the IPO who did not believe in the balance sheet with $2B equity cushion that was presented to them. [11]

13. A fourth relevant valuation event occurred in 2012 and is a market related test, indicates Paragon's asset value should be in the $1.8 Billion range. In 2012, Transocean sold 38 comparable standard specification jackup rigs with a comparable average oil rig age of 35 years, all associated drilling contracts, and 3,500 employees for a total of $1.05B [12]. The prorated value for the 34 jackups transferred from Noble to Paragon Offshore would therefore have a fair market value of $939M. [13] The 34 jackup rigs ostensibly had a higher value than the other 6 employable floaters transferred from Noble to Paragon Offshore, due to Revenue and Backlog. [14]

---

[10] In December 2013, Noble gets a Private Letter Ruling (PLR) from the IRS, approving the tax free sale of 19.7% of shares via an IPO. The IPO filing at https://www.sec.gov/Archives/edgar/data/1594590/000119312513481086/d635036ds1.htm#fin635036_16 indicates that 19.7% of shares would be sold. Selling 19.7% of shares of equity that Noble valued at $2B on the balance sheet = $2B x 19.7% = $395M in tax free cash for Noble Corp.

[11] See https://www.sec.gov/Archives/edgar/data/1458891/000119312514169903/d720359dex991.htm . On April 30, 2014, Paragon Offshore abandoned the IPO of Paragon Offshore. David Williams, Noble CEO: "In light of financial market conditions, both generally and with respect to the equity markets for offshore drilling companies, we decided to eliminate the initial public offering and accelerate the completion of the separation transaction." This appears to indicate the lack of institutional subscribers to the IPO, who did not believe in the presented $3.46B asset valuation for the 35 year old oil rigs. Noble however, did not take this market feedback to adjust their balance sheet accordingly to values that were more attractive to institutional subscribers, and instead kept presenting the same balance sheet to potential creditors and investors. The reason for IPO abandonment, and the lack of balance sheet adjustments, needs to be investigated.

[12] See http://investor.deepwater.com/phoenix.zhtml?c=113031&p=irol-newsArticle&ID=1763442

[13] For the fair market value comparison, in 2012 Transocean sold 38 standard spec jackup rigs on the open market with average age of 35 years for $1.05B. The estimated comparable market value for each jackup is therefore $27.63M ($1.05B / 38). The 34 transferred jackups should have a fair market value of $939M ($27.63M x 34).

[14] In 2013, the jackups transferred from Noble to Paragon had 72% of total revenue and 54% of total backlog. Conversely, the transferred floaters (9 total, however 3 floaters were cold stacked for years, so only 6 floaters were employable) accounted for 28% of total revenue and 46% of total backlog. Therefore, the 9 floaters transferred from Noble could be considered worth less than the open market jackup value of $939M per the Transocean sale. So the jackups value of $939M + floater market value of less than $939M = less than $1,878M for the market value of transferred assets. See page 4 of the Amended S/1 for the pie chart showing revenue and backlog by rig type: https://www.sec.gov/Archives/edgar/data/1594590/000119312514089393/d635036ds1a.htm

14. There is potentially a fifth relevant valuation event, which is also a market related test. In 2011/2012, Noble tried to sell the some of the rigs that were eventually transferred to Paragon Offshore, but could not sell the rigs. [15] The details of this failed sale need to be investigated: did Noble agree upon a sales price? If so, that agreed upon sales price for the rigs should be compared with the asset value conveyed by Noble via the Amended S/1 balance sheet.

15. Along with the $1,097 Million in asset overvaluation per the public market test on August 4, 2014, and the multiple supportive market related tests, Noble also did not disclose all of the liabilities transferred to Paragon Offshore.

16. Noble incurred $266 Million in unpaid Mexico taxes for drilling in Mexico between 2005 to 2010, transferred these tax liabilities to Paragon Offshore, and did not disclose these liabilities to investors and creditors before the spinoff. [16]

17. Adding the difference in asset overvaluation ($1,097 Million) and the undisclosed liabilities ($266 Million) gives a total misrepresented equity value by Noble of **$1.36 Billion** for the Paragon Offshore spinoff. [17]

18. The Paragon Offshore equity value at the time of spinoff was therefore $641M. [18]

19. The percentage difference between the advertised $2B equity cushion and the $641M actual equity cushion is **103%**. [19]

20. Noble could be forgiven for a 10% or 20% difference in value, since no valuations are perfect, however a 103% difference between the advertised equity cushion and the actual equity cushion should cross the threshold of fraudulent conveyance.

---

[15] Todd Strickler's testimony, Court Doc #716 (http://www.kccllc.net/paragon/document/1610386160912000000000001) , page 5: "Prior to the Spin-off, Noble considered marketing and selling off what are now many of Paragon's assets and made significant progress on one such transaction in late 2011 and early 2012. That potential asset sale fell through in early 2012, however, and the Spin-off process subsequently began."

[16] See page 7 of Todd Strickler's testimony: http://www.kccllc.net/paragon/document/1610386160912000000000001

[17] $1,097M + $266M = $1,363M.

[18] $907M market value of equity minus $266M undisclosed liabilities = $641M for the true equity value at the time of spinoff.

[19] See the percentage difference formula at http://www.calculatorsoup.com/calculators/algebra/percent-difference-calculator.php , and enter values of $2,005M and $641M. There is a 103% difference between the two numbers.

21. If Noble appropriately valued assets and disclosed all liabilities on the balance sheet before spinoff, the equity cushion presented to investors and creditors would have been much less, and Paragon Offshore most likely would have been spun off with much less debt, which may have prevented Paragon Offshore from entering Chapter 11 so quickly during an oil market downturn.

22. If Paragon Offshore had a true $2 Billion equity cushion as advertised, instead of an actual $641 Million equity cushion at spinoff, Paragon Offshore would have been balance sheet solvent for much longer, which may have helped to prevent Paragon Offshore from entering Chapter 11 as quickly as it did, which was 17 months after the spinoff from Noble.