

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**IN RE: MISSISSIPPI PHOSPHATES  
CORPORATION, *et al.***<sup>1</sup>

**CASE NO. 14-51667-KMS**

**DEBTOR(S)**

**CHAPTER 11  
(Jointly Administered)**

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**UNITED STATES TRUSTEE'S REPLY TO  
AMENDED DEBTORS' RESPONSE TO UNITED STATES TRUSTEE'S OBJECTION  
TO FIRST AMENDED JOINT CHAPTER 11 PLAN OF DEBTORS AND THE  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

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COMES NOW Henry G. Hobbs, Jr., Acting United States Trustee for Region 5 ("UST"), by and through undersigned counsel, and files this Reply to the Amended Debtors' Response to United States Trustee's Objection to First Amended Joint Chapter 11 Plan of Debtors and the Official Committee of Unsecured Creditors (the "Amended Debtors' Response," DKT. #1686), and in support thereof respectfully submits the following:

1. The UST reiterates and incorporates by reference his arguments made on this matter at the Court's confirmation hearing held on September 1, 2016.

2. In order to confirm the First Amended Joint Plan (DKT. #1168) (the "Plan"), the Court must find that the Exculpation language in Section 14.3 of the Plan complies with the Fifth Circuit's decision in *New York Trust Co., NA v. Official Uns. Cred. Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009).

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<sup>1</sup> The chapter 11 cases of the following affiliated Debtors have been administratively consolidated for joint administration pursuant to that certain "Order Granting Motion of the Debtor for Order Directing Joint Administration of Affiliated Cases Pursuant to Bankruptcy Rule 1015(b)," dated October 29, 2014 [DKT. #62]: Mississippi Phosphates Corporation ("MPC"), Case No. 14-51667-KMS, Ammonia Tank Subsidiary, Inc. ("ATS"), Case No. 14-51668-KMS, and Sulfuric Acid Tanks Subsidiary, Inc. ("SATS"), Case No. 14-51671-KMS. These chapter 11 cases are sometimes referred to herein as the "Bankruptcy Cases."

3. *Pacific Lumber* is binding Fifth Circuit precedent that has not been overruled. *Pacific Lumber* found that a plan's exculpation of non-debtor plan proponents amounted to an unlawful non-debtor third party release. *Pacific Lumber*, 584 F.3d at 253 (“[T]he non-debtor releases must be struck except with respect to the Creditors Committee and its members.”).

4. The *Pilgrim's Pride* court reiterated *Pacific Lumber's* binding precedent and held third-party protections other than for the Committee are not allowed:

Because *Pacific Lumber* is binding precedent, the court may not, over objection, approve through confirmation of the Plan third-party protections, other than those provided to the Committees, members of the Committees, and the Committees' Professionals.

*In re Pilgrim's Pride Corp.*, 2010 Bankr. LEXIS 72, \*16 (Bankr. S.D. Tex. 2010). See also *In re Bigler, LP*, 442 B.R. 537, 541 (Bankr. S.D. Tex. 2010) (“*Pilgrim's Pride* concludes that, under *Pacific Lumber*, committees, their members, and their representatives are allowed a qualified immunity for acts or omissions during a Chapter 11 case that are within the scope their duties. A debtor is also protected by an injunction under § 524(a)(2) from third parties pursuing claims that have been discharged under § 524. However, similar protection to non-committee third-parties, such as a debtor's directors and officers, is prohibited.”) (citations omitted).

5. The citations in the Amended Debtors' Response to bankruptcy cases in which exculpation provisions have been approved carry neither precedential no persuasive value.

6. To the extent that this Court finds that any of the “Covered Parties” under this Plan in Section 1.1.40(i) may not receive exculpation coverage in light of *Pacific Lumber*, the UST does not object to the retention of jurisdiction endorsed in *Pilgrim's Pride*. See *Pilgrim's Pride*, 2010 Bankr. LEXIS 72, at \*16-17 (“[A]lthough *Pacific Lumber* requires the court to disapprove the third-party protections in the Plan, it does not prevent the court from retaining

jurisdiction over at least some suits against third parties which would have been covered by the Plan's third party protections.”). Such relief may be appropriate for the “Covered Parties” under Section 1.1.40(i) of the Plan in this case because it appears that all of these parties acted in fiduciary roles as estate professionals.

WHEREFORE, PREMISES CONSIDERED, the United States Trustee prays that the Court deny the Exculpation language in the First Amended Joint Plan to the extent that it does not comply with controlling law. The United States Trustee also prays for all general relief to which entitled in these premises.

RESPECTFULLY SUBMITTED, this the 12th day of September, 2016.

HENRY G. HOBBS, JR.  
Acting United States Trustee  
Region 5, Districts of  
Louisiana and Mississippi

By: /s/Christopher J. Steiskal, Sr.  
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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing pleading has been served on the below-named individual(s) this day via first class U.S. Mail at the address listed below or electronically served via the electronic mail address on file with the Court's CM/ECF system:

Stephen W. Rosenblatt  
Christopher R. Maddux

Bess M. Parrish Creswell  
Derek M. Meek

DATED, this the 12th day of September, 2016.

*/s/Christopher J. Steiskal, Sr.*  
CHRISTOPHER J. STEISKAL, SR.