UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DIVISION

In re:	*	**CASE NO. 14-51667-KMS**
	*	**Chapter 11**
MISSISSIPPI PHOSPHATES CORPORATION, *et al.*	*	
	*	**Jointly Administered with**
	*	**Chapter 11 Case No. 11-51668-KMS**
	*	**Chapter 11 Case No. 11-51671-KMS**
	*	

SHRIEVE CHEMICAL COMPANY'S OBJECTION TO MOTION FOR FINAL ORDER APPROVING PROPOSED DIP FACILITY

NOW INTO COURT, through undersigned counsel, comes Shrieve Chemical Company ("Shrieve"), creditor of the debtors in the above-captioned jointly administered bankruptcy cases, to object to the Debtors' *Motion for Final Orders Pursuant to Sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code an Federal Rules of Bankruptcy Procedure 2002, 4001, and 9014 (I) Authorizing the Debtors to Incur Post-Petition Senior Secured Superpriority Indebtedness; II) Authorizing the Debtors in Incur Post-Petition Senior Secured Superpriority Indebtedness; (III) Granting Post-Petition Priming and Senior Priority Security Interests and Superpriority Claims; (IV) Granting Adequate Protection; (V) Modifying the Automatic Stay; and (VI) Scheduling a Final Hearing on the Motion* [Rec. Doc. 14] (hereinafter, the "DIP Motion"). In support of its Objection, Shrieve respectfully states as follows:

PRELIMINARY STATEMENT

1. Shrieve is a creditor in the above-captioned cases and holds the fifth largest general unsecured claim on the Debtors' Amended List of Creditors Holding 20 Largest Unsecured Claims. *See* Rec. Doc. 46. Shrieve has been appointed as a member of the committee of

unsecured creditors (the "Committee") in this case, the notice of appointment of which occurred today. *See* Rec. Doc. 161.

2. The Debtors' request for a final order on the proposed DIP Facility is premature because the Committee has only been formed today, the deadline for filing an objection to the DIP Motion, and has not had an opportunity to retain counsel and be heard on this matter. The entire purpose of the Committee is to ensure that the Court has the full benefits of an adversarial system; Shrieve respectfully submits that the Committee should be heard on this important motion before any final order is entered. To enter a final order on the DIP Facility before hearing from the Committee would be prejudicial to Shrieve and the rest of the unsecured creditor class and violate their due process rights, particularly because the proposed final order is overreaching in a number of respects, discussed below.

3. Shrieve does not object to DIP financing that is necessary, reasonable and adequate. However, the DIP Facility proposed by the Debtors in this case is an aggressive vehicle with extremely favorable terms to the DIP Lenders that seeks to give the DIP Lenders unfettered control over this bankruptcy case and protections beyond those already provided by the Bankruptcy Code. Not only is the proposed order unduly prejudicial, it is, as discussed below, at best premature and likely unnecessary. The proposed final order is prejudicial to general unsecured creditors, like Shrieve, because it seeks to strip them of various rights granted by the Bankruptcy Code. The DIP Agent and Lenders have not offered any explanation of why they need entry of a final order so quickly – other than to secure numerous unfair advantages while denying the Committee an opportunity to be heard on these issues. If the Court enters the proposed final Order as drafted, it will preordain the failure of this reorganization and the case will be run solely for the benefit of the secured lenders.

4. While Shrieve is at a disadvantage because it does not have the benefit of a financial advisor to evaluate the proposed DIP Facility, it appears the proposed DIP Facility contains a host of overreaching and objectionable provisions, including but not limited to a waiver of sections 506(c) and 552 rights without any exit strategy or assurance that these cases are administratively solvent. Under these circumstances, Shrieve and other general unsecured creditors would fare better in a chapter 7 liquidation or state court foreclosure action than they will under this proposed DIP Facility.

5. In short, post-petition financing must be necessary, reasonable and adequate. The DIP Facility fails this test on all counts. Unless the terms of the DIP Facility are substantially revised, the Court should deny the DIP Motion, or alternatively, defer hearing on the DIP Motion until the Committee has retained counsel and can be heard.

I. BACKGROUND

6. On October 27, 2014 (the "Petition Date"), each of the Debtors filed with this Court voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have remained in possession of their assets and have continued to operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. On October 29, 2014, this Court entered an Order granting the DIP Motion to Approve DIP Facility on an interim basis (the "Interim Order"), and scheduled a final hearing for November 18, 2014 at 9:30 a.m. *See* Rec. Docs. 66 and 79.

II. ARGUMENT

A. The Hearing on the Final Order Should Be Deferred Until a Committee Retains Counsel and Has an Opportunity to be Heard

8. The U.S. Trustee's Office filed a notice of appointment of the Committee today, November 12, 2014. Shrieve is a member of the Committee. The Committee has not yet had its first meeting and has not had the opportunity to retain counsel or a financial advisor.

9. As noted above, because the proposed final order on the DIP Facility has a number of objectionable provisions, some of which are discussed in the next sections, the Court should defer entry of any final order until a Committee has had the opportunity to retain counsel and financial advisor, and has had an opportunity to be heard on the DIP Motion.

10. Neither the Debtors nor the DIP Lenders can show any prejudice by delaying resolution of a hearing until after the Committee can be heard. The DIP Lenders have already advanced the full $5 million contemplated by the facility, in reliance on the Interim Order already in place. *See* DIP Budget, Doc. 13, at p. 25 ($5 million advanced on November 2 and 9, 2014). The Debtors' proposed budget contemplates repaying the $5 million advanced by the DIP lenders at the end of this month. *See id.* ($5 million advanced will be repaid on November 30, 2014). Thereafter, the Debtors do not anticipate requiring any additional financing from the DIP Lenders until January 25, 2015. *See id*. at p. 26. The import of this uncontested fact cannot be overstated. The Debtors have no need whatsoever for DIP financing at this moment.

11. The Debtors and DIP Lenders will likely point to Paragraph 1 of the Interim Order, which provides that the Interim Order and DIP Loan Documents will expire unless a final DIP Order is entered within thirty (30) days from the date of the Interim Order (i.e., on or before November 28, 2014). However, neither the Debtors nor the DIP Lenders can identify any urgency as to why the final DIP order must be entered without affording the Committee an opportunity to be

heard, particularly when the entire outstanding indebtedness under the DIP Facility is to be repaid by November 30, 2014, and additional draws are not anticipated until the end of January 2015. There is no reason why a hearing on the final order could not be delayed until sometime in January 2015, after a Committee has retained counsel and a financial advisor, and has had the opportunity to fully evaluate the DIP Facility. Simply extending the expiration date for the Interim Order will be more than sufficient to protect the interests of the DIP Lenders and DIP Agent.

12. Moreover, because the Debtors do not need additional financing until the end of January 2015, there is no reason why the Debtors should not be bringing an *entirely new* motion to approve DIP financing at that time. The Debtors and/or the Committee could seek other options for DIP financing between now and that time, and hopefully obtain more favorable terms than what the DIP Agent and DIP Lenders are currently offering.

B. The Phelps Declaration is Insufficient to Establish that the Proposed Financing is Fair and Reasonable

13. In support of the DIP Motion, the Debtors submit the declaration of David Phelps (the "Phelps Declaration"). *See* Rec. Doc. 13 and 60. However, the Phelps Declaration is insufficient to establish that the terms of the DIP Facility are fair and reasonable, or are the best terms the Debtors could obtain in the market. The Phelps Declaration avers that the "Debtors are unable to obtain unsecured credit allowable … as an administrative expense" and that the "DIP Facility represents the Debtors' only opportunity under the circumstances to obtain emergency post-petition financing to fund the Debtors' operations in Chapter 11," *see id.* at ¶¶ 38-39, but the Phelps Declaration does not identify any lenders contacted by the Debtors who declined to provide post-petition financing or who offered terms more onerous than the DIP Agent and DIP Lenders.

14. In fact, it appears that the Debtors have not made any effort whatsoever to go to the market to see if any other financing options are available. Later in the declaration, Mr. Phelps states that "I also believe that finding new financing from other sources, *even if possible*, would likely be markedly more expensive and potentially disruptive to the Debtors' estates and businesses." *See id.* at ¶ 40(a). The Debtors obviously have not fulfilled their fiduciary duties to the estate to determine whether any other options are available in the market. The DIP Motion should be denied because there has been no showing that the Debtors are unable to obtain unsecured credit allowable as an administrative expense as section 364(c) requires, and the Committee should be afforded an opportunity to seek other available financing.

C. The Carve Out Restrictions Preclude the Committee from Fulfilling its Fiduciary Duties and Statutory Objectives

15. Paragraph 17(a) of the proposed final order purports to limit the Committee to only those fees and expenses as set forth in the Approved Budget. However, the Committee has not yet had its first meeting, retained any professionals, and or estimated any fees and expenses for this case. It is premature to limit the Committee to the recovery of fees and expenses as mandated by the DIP Lenders without, at minimum, the Committee being heard on this matter.

16. Paragraph 17(a) prohibits the Committee from recovering any fees to the extent the Committee seeks to challenge the debt or collateral position of the DIP Lenders, DIP Agent, or to challenge the validity of any pre-petition liens or claims of the pre-petition Lenders and Agent. Similarly, Paragraph 18 prohibits a Committee from recovering fees from Cash Collateral for instituting any claim or cause of action against the DIP Agent, DIP Lenders, the Pre-Petition Agent, or Pre-Petition Lenders. Such restrictions preclude the Committee from fulfilling its fiduciary duty to the unsecured creditor class, and similar attempts have been rejected by other courts. *See, e.g., In re Tenney Village Co.*,104 B.R. 562, 568,1989 Bankr. LEXIS 1336, *21

(Bankr. D.N.H. 1989) ("Equally shocking is the [Lender's] attempt to disarm the representative of the bankruptcy estate. Its existing liens would become unassailable even before appointment of counsel to the creditors' committee, and it is given iron-clad defenses to all claims that might be asserted on the estate's behalf, whether they pertain to preference, fraudulent transfer, lender liability, subordination or any other matter. Surely no such right could be 'burdensome' so as to qualify for abandonment under § 554. Nor has there been any attempt to demonstrate that these rights are of 'inconsequential value,' another ground for abandonment. If they have such little value, the [Lender] does not need the protection.") (bracketed text and emphasis supplied).

D. The Proposed Final Order Contains an Impermissible Anti-Surcharge Provision

17. Paragraph 10(a) of the proposed final order is also objectionable and impermissible because the Debtors give up their rights under sections 506(c) and 552(b) of the Bankruptcy Code. Section 506(c) of the Bankruptcy Code allows a debtor to charge the costs of preserving or disposing of a secured lender's collateral to the collateral itself. 11 U.S.C. § 506(c). This provision ensures that the cost of liquidating a secured lender's collateral is not paid from unsecured recoveries. *See, e.g., Precision Steel Shearing v. Fremont Fin. Corp. (In re Visual Indus., Inc.)*, 57 F.3d 321, 325 (3d Cir. 1995) (stating, "section 506(c) is designed to prevent a windfall to the secured creditor"); *Kivitz v. CIT Group/Sales Fin., Inc.*, 272 B.R. 332, 334 (D. Md. 2000) (stating, "the reason for [section 506(c)] is that unsecured creditors should not be required to bear the cost of protecting property that is not theirs"). Similarly, the "equities of the case" exception in section 552(b) of the Bankruptcy Code allows a debtor, committee or other party-in-interest to exclude post-petition proceeds from pre-petition collateral on equitable grounds, including to avoid having unencumbered assets fund the cost of a secured lender's foreclosure. 11 U.S.C. § 552(b).

18. There is no assurance in the DIP Motion, the Budget or the Interim Order that the estates will have enough money to pay all administrative claims and conduct an orderly wind down of these cases. Absent sufficient funding in a consensual Budget that ensures administrative solvency and a controlled exit from these chapter 11 cases, the Debtors should not be allowed to waive their statutory ability to compel the DIP Lenders to pay their own way. *See, e.g.*, *In re Mortgage Lenders Network USA, Inc.*, Hearing Transcript (Docket No. 346) at 20-21, Case No. 07-10146 (PJW) (Bankr. D. Del. Mar. 20, 2007) (recognizing that 506(c) waivers require committee consent and stating, "if the Committee doesn't agree [to a waiver], it doesn't happen"); *see also In re Townsends, Inc*., Case No. 10-14092 (CSS) Hearing Transcript (Docket No. 338) at 23-25 (Bankr. D. Del. Jan. 21, 2011) (refusing to approve financing for a sale process that would leave the estate administratively insolvent); *In re NEC Holdings Corp*., Case No. 10-11890 (PJW) Hearing Transcript (Docket No. 224) at 100 (Bankr. D. Del. July 13, 2010) (requiring that secured creditors pay the "freight" of the bankruptcy by ensuring an administratively solvent estate).

E. Inadequate Investigation and Challenge Rights

19. Paragraph 21 starts a 60-day clock ticking for the Committee to challenge any pre-petition indebtedness or liens at the time the final order is entered or the Committee is formed. Since the Committee has only been appointed today and has not yet retained any professionals, the Committee would be prejudiced by entry of any final order.

20. At a minimum, the final order should (a) provide that any period for investigation will not commence until the Committee has been formed and has had the opportunity to engage professionals and (b) give the Committee an opportunity to extend the deadline, should the Committee need additional time to investigate and commence any such challenge.

F. The Lenders' Consent to a Sale of the Debtors' Assets is Not Required

21. Paragraph 34(a) of the proposed final order prohibits the Debtors from seeking to sell the assets of the Debtors pursuant to section 363 of the Bankruptcy Code without the express consent of the DIP Agent, DIP Lenders, Agent and Pre-Petition Lenders. This provision will give the DIP Agent, DIP Lenders, Agent and Pre-Petition Lenders unfettered control over the direction of this bankruptcy case, because only buyers approved by them can be considered. This provision should be stricken because it grants the Lenders rights to which they are not entitled, and runs contrary to the goal of any proposed sale, which is to maximize the proceeds received by the estate. *See e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997). All buyers and offers to purchase the Debtors' assets should be considered. The Lenders are fully protected by their right to credit bid at any sale, and can offer no justification for any further protections. This provision is indicative of the Lenders' intent to gain a stranglehold over this reorganization *ab initio*.

G. Default Procedures for Lifting the Automatic Stay Provisions are Unenforceable

22. Paragraph 26 of the proposed final order impermissibly seeks to vacate and modify the automatic stay provisions to grant the DIP Agent and DIP Lenders the right to "immediately" exercise its rights upon an event of default. Such overreaching provisions should be stricken from the proposed final order. *See In re Colad Group, Inc.,* 324 B.R. 208, 224 (Bankr. W.D.N.Y. 2005) (striking portion of post petition financing order that created a default procedure, whereby the stay would automatically lift upon a failure by any interested party to demand a hearing within five business days following notice of an event of default; but noting that it would uphold such a provision if the debtor and creditors' committee consent).

H. The Default Provisions Are Extremely Onerous and Give the DIP Agent and DIP Lenders Unfettered Control Over the Debtors and this Bankruptcy Case

23. Under the proposed final order, Events of Default include any "Termination Event," which are defined in the Credit Agreement as follows:

> "***Termination Event***" means the occurrence of any of the following:
>
> (a) appointment or election of a trustee in the Chapter 11 Case under *Section 1104* of the Bankruptcy Code, or appointment of an examiner in the Chapter 11 Case (with powers beyond those set forth in *Section 1106(a)(3)* and *(4)* of the Bankruptcy Code) under *Section 1106(b)* of the Bankruptcy Code;
>
> (b) entry of an order dismissing the Chapter 11 Case or converting it into a proceeding under Chapter 7 of the Bankruptcy Code;
>
> (c) entry of an order reversing, staying, vacating, or otherwise modifying in any material respect the terms of the Orders;
>
> (d) application by any Borrower for an order that (i) permits any Borrower to incur Debt (other than the DIP Loans) secured by any claim under Bankruptcy Code *Section 364(c)(1)* or by a Lien pari passu with or superior to the Lien granted to DIP Agent, for the benefit of DIP Lenders, hereunder or the Liens securing the Pre-Petition Obligations, unless (A) there are no Obligations or Pre-Petition Obligations outstanding at the time of the entry of such an order and there is no requirement that DIP Agent or DIP Lenders extend any additional Obligations, (B) such Debt is used immediately to indefeasibly and finally pay the Obligations and Pre-Petition Obligations in cash in full, or (C) such Debt constitutes Debt permitted under Section 5.01, or (ii) permits any Borrower the right to use Collateral other than in accordance with the terms of the Orders, unless (A) there are no Obligations or Pre-Petition Obligations outstanding at the time of the entry of such an order and there is no requirement that DIP Agent or DIP Lenders extend any additional Obligations or (B) such Collateral is used immediately to indefeasibly and finally pay the Obligations and Pre-Petition Obligations in cash in full;
>
> (e) any violation of the terms of the DIP Orders;
>
> (f) filing of a proposed Chapter 11 plan of reorganization or a motion to sell all or any portion of the Collateral pursuant to *Section 363* of the Bankruptcy Code, or confirmation of a Chapter

11 plan of reorganization or sale of all or any portion of the Collateral pursuant to *Section 363* of the Bankruptcy Code, for Borrowers that do not provide for payment in full in cash of all Obligations and all the Adequate Protection Claims and the secured claims of the Agent and Pre-Petition Lenders, and termination of the DIP Commitment on or before the effective date of, or substantial consummation of, such plan of reorganization or sale, or (ii) filing by the Borrowers of a Chapter 11 plan in the Chapter 11 Case that does not provide for the full, final and indefeasible payment of all Obligations and all the Adequate Protection Claims and the secured claims of the Agent and Pre-Petition Lenders in immediately available funds and the termination of the DIP Commitment, or is otherwise in form and substance not acceptable to DIP Lenders and Pre-Petition Lenders;

(g) termination or expiration of the Borrowers' exclusivity periods provided in section 1121(c) and (d) of the Bankruptcy Code;

(h) assertion by any Borrower of a claim arising under *Section 506(c)* of the Bankruptcy Code against DIP Agent, DIP Lenders, the Pre-Petition Lenders, or the Collateral, other than with respect to the Carve Out; or assertion by any Person other than Borrowers of a claim arising under *Section 506(c)* of the Bankruptcy Code against DIP Agent, DIP Lenders or the Collateral; or commencement by any Borrower of an action in the Chapter 11 Case adverse to DIP Agent, DIP Lenders or their rights and remedies under the DIP Loan Documents or Pre- Petition Lenders or their rights and remedies under the Pre-Petition Loan Documents, the Orders or any other order of the Bankruptcy Court in the Chapter 11 Case;

(i) commencement by the Committee or another party in interest of a contested matter, adversary proceeding, cause of action or objection to claim seeking to subordinate the claims arising from the DIP Loans or Pre-Petition Obligations under *Section 510* of the Bankruptcy Code, or any other challenge to the perfection of liens securing the Pre-Petition Obligations or the DIP Loans, or the allowance, enforceability, or validity of the claims arising from the DIP Loans or the Pre-Petition Obligations, or otherwise against the Pre-Petition Lenders, DIP Agent, DIP Lenders, any of their respective officers, directors, agents, attorneys, employees, predecessors in interest, and successors in interest in connection with the Pre-Petition Obligations, the Pre-Petition Loan Documents, this DIP Credit Agreement, the Obligations or the DIP Loan Documents;

> (j) commencement by any federal or state governmental or regulatory agency or authority of an action (including, without limitation, any regulatory or other enforcement action) that has a material adverse effect on the Borrowers' operations in DIP Agent's and DIP Lenders' sole discretion;
>
> (k) any payment on, or application made with the Bankruptcy Court for authority to pay, any pre-petition claim owing to terminated employees, bond claims, principal on any Debt of any Borrower incurred prior to the Petition Date, and lease rejection damages, other than those permitted to be paid in accordance with the DIP Loan Documents, without the prior written consent of DIP Lenders;
>
> (1) application by any Borrower for an order substituting any assets for all or any portion of the Collateral, except as provided in the Pre-Petition Loan Documents or the DIP Loan Documents;
>
> (m) failure by the Borrowers or the Bankruptcy Court, as applicable, to timely comply with or otherwise satisfy the Sale Milestones; or
>
> (n) any variance (negative to the Approved Budget) of more than ten percent (10%) in any line item of the Approved Budget; *provided*, however, that the Borrowers shall be permitted to cany forward any unused portion of DIP Loans attributable to a particular line item (including amounts previously carried forward) in any week to pay the same line item during the next succeeding three weeks.

24. Further, the Sale Milestones referenced in paragraph (m) of the Termination Events is defined in the Credit Agreement as follows:

> ***''Sale Milestones***" shall mean each of the following
>
> (a) on or before December 6, 2014, the Bankruptcy Court shall have entered an order approving procedures for the sale of substantially all of the Borrowers' assets, which shall permit (i) the Pre-Petition Lenders to credit bid the full amount of their aggregate allowed claims, and (ii) DIP Lenders to credit bid the full amount of the aggregate Obligations;
>
> (b) on or before March 6, 2015, the Borrowers shall have held the auction;

> (c) on or before March 20, 2015, the Bankruptcy Court shall have entered an order approving the sale of assets, the results of the auction and the winning bid received at the auction;
>
> and
>
> (d) on or before March 25, 2015, if a waiver of the stay set forth in Bankruptcy Rule 6004 is obtained, or (y) not later April 4, 2015, if such a waiver is not obtained, the Borrowers shall have closed and consummated the sale.
>
> Notwithstanding anything to the contrary in this definition of ***"Sale Milestones***", DIP Lenders may extend any of the foregoing deadlines, and the Bankruptcy Court may set dates with respect to the Sale Milestones beyond the outer dates specified above to accommodate its schedule. To the extent the Bankruptcy Court makes such an extension, the Sale Milestones shall be automatically extended to reflect the Bankruptcy Court's extension.

25. These default provisions are extremely onerous and go far beyond the types of terms contained in an arm's length credit agreement. These provisions essentially allow the DIP Lenders to terminate its funding obligations and abandon the Debtor for nearly any reason, which will give the DIP Lenders unfettered control over this bankruptcy case. It will nearly guarantee that this case heads toward a Chapter 7 liquidation unless the Debtor complies with each and every demand of the DIP Lenders. The Court should reject these overreaching provisions and allow the Committee time to seek an alternative funding source.

I. The ATP Bankruptcy Case is an Example of Why a DIP Order that Provides Unfair Advantages to DIP Lenders Should Not Be Entered

26. While Shrieve has not had an opportunity to review each and every final DIP financing order submitted by the Debtors, *see* Rec. Doc. 142, its counsel has familiarity with the ATP Order (Rec. Doc. 142-6). Shrieve's counsel respectfully submits that the ATP Order is a prime example of why a DIP order that provides unfair advantages to secured lenders should not be entered by this Court.

27. Due in part to the onerous restrictions in the DIP order and the very late bankruptcy filing by the debtor in the ATP case, the ATP case has been converted to a Chapter 7 and is now administratively insolvent. At a hearing held in the case in June 2013, Judge Isgur acknowledged that the DIP order granting administrative priority to the DIP Lenders granted the lenders many favorable protections that later tied his hands, stating:

> So what I did, I did. And you know, I have to eat what I did. And what I did is I gave them those protections, and I'm not going to take them away.

See Transcript [Case. No. 12-36187 (Bankr. S.D. Tex.), Rec. Doc. 2126] from hearing held June 21, 2013 on Motion to Approve Sale, at p. 392.

28. Shrieve respectfully submits that the Court should not approve the final order on the DIP Motion with unnecessary protections to the DIP Agent and DIP Lenders. Not only does ATP provide a prime example of the dangers of granting DIP lenders overly broad relief, but even that case did not contain some of the more objectionable provisions sought in this case – e.g., barring a sale without the consent of the Pre-Petition Lenders and putting overly restrictive time limitations on the Committee.

J. Other Objectionable Provisions

29. Paragraph 13 of the proposed final order contains impermissible third party releases. The provision should be modified to exclude all third party releases.

30. The proposed final Order fails to disclose the fees and expenses to be charged by the DIP Agent, all of which are to be paid by the DIP Lenders and must increase the DIP Obligations. Therefore, the proposed final order fails to provide any basis to evaluate whether such fees and expenses are fair and reasonable for what the DIP Lenders are providing.

III. CONCLUSION

For all of these reasons, the Court should defer ruling on the final order on the DIP Motion until the Committee has had an opportunity to be heard. Alternatively, the Court should grant Shrieve's objections and strike the offensive provisions from any final order to be entered.

Date: November 12, 2014.

Respectfully submitted,

/s/ G. Clark Monroe II

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I filed a copy of the above and foregoing pleading on November 12, 2014 using CM/ECF, which will cause a notice of electronic service to be sent to all counsel of record. I further certify that I served a copy of the above and foregoing pleading on November 12, 2014 on the following at the e-mail addresses listed below to the following:

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5. The Committee

As set forth on the Notice of Appointment filed in the record of the captioned case at Doc. 161.

/s/ G. Clark Monroe II