

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

In re:

**MISSISSIPPI PHOSPHATES
CORPORATION, *et al.*¹**

Debtors

**CASE NO. 14-51667-KMS
Chapter 11**

Jointly Administered

**DEBTORS' APPLICATION TO RETAIN AND EMPLOY HORNE LLP
AS CERTIFIED PUBLIC ACCOUNTANT AND TAX CONSULTANTS
NUNC PRO TUNC TO JULY 1, 2016**

Mississippi Phosphates Corporation, *et al.*, the Debtors and debtors-in-possession (collectively, the “**Debtors**”) in these Bankruptcy Cases, by and through the undersigned attorneys, file this *Debtors' Application to Retain and Employ Horne LLP as Certified Public Accountant and Tax Consultants Nunc Pro Tunc to July 1, 2016* (the “**Application**”). In the Application, the Debtors seek authority to retain and employ Horne LLP (“**Horne**”) pursuant to Section 327 of the Bankruptcy Code and Bankruptcy Rule 2014 for preparation of state and federal tax returns and related matters for 2015. In support of the Application, the Debtors submit the Affidavit of Wendy F. Eversole of Horne (the “**Horne Statement**”), attached hereto as **Exhibit A**, and further present to the Court the following:

¹ 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, Ammonia Tank Subsidiary, Inc. (“**ATS**”), Case No. 14-51668 and Sulfuric Acid Tanks Subsidiary, Inc. (“**SATS**”, and, collectively with MPC and ATS, the “**Debtors**”), Case No. 14-51671. These chapter 11 cases are sometimes referred to herein as the “**Bankruptcy Cases**.”

BACKGROUND

1. On October 27, 2014 (the “*Petition Date*”), each of the Debtors filed a voluntary petition in this Court for reorganization relief under Chapter 11 of the United States Bankruptcy Code.

2. The Debtors continue to remain in possession of their property as debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108. No trustee or examiner has been appointed in any of these Bankruptcy Cases.

3. The Debtors retained Deloitte Transactions and Business Analytics LLP to provide the Debtors with a Chief Restructuring Officer, and designated Jonathan J. Nash as the Chief Restructuring Officer for the Debtors [Dkt. # 367].

4. An Official Committee of Unsecured Creditors was appointed by the United States Trustee in the MPC Bankruptcy Case on November 12, 2014 [Dkt. # 161] and has been active in the Bankruptcy Cases since that time. The Committee retained Burr & Forman LLP as its counsel [Dkt. # 473] and Capstone Advisory Group LLC as its Financial Advisor [Dkt. # 528] in these Bankruptcy Cases.

5. On August 15, 2016, the Court entered its *Order Authorizing the Debtors, Pursuant to 11 U.S.C. §§ 105(a) and 363(b), to (I) Retain Meadowlark Advisors, LLC to Provide the Debtors with a Chief Restructuring Officer, and (II) Designate Jonathan J. Nash as Chief Restructuring Officer for the Debtors, Nunc Pro Tunc to May 29, 2016* [Dkt. # 1617].

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O).

7. Venue of this proceeding and this Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are Section 327(a) and 330 of the Bankruptcy Code, and this matter is governed procedurally by Bankruptcy Rule 2014.

RELIEF SOUGHT

8. By this Application, the Debtors seek the entry of an order to employ Horne in connection with the preparation of state and federal tax returns and related matters for the year and periods ending December 31, 2015 for a fixed fee charged to the Debtors of \$12,000.00, of which Phosphate Holdings, Inc. (“*PHI*”), the parent of Mississippi Phosphates Corporation, will be responsible for \$1,000.00.

9. The Debtors seek to employ Horne because of Horne’s familiarity with the Debtors’ books and records. As set forth in the Horne Statement, Horne has previously provided federal and state income tax preparation services for and on behalf of the Debtors and for PHI. Prior to the Petition Date, those services were billed to and paid by PHI pursuant to a Management Services Agreement between the MPC and PHI, dated September 15, 2013, under PHI was obligated to provide MPC with the “PHI Services” which included, among other things, “accounting and tax compliance and planning services.” Because the Management Services Agreement was not assumed by the Debtors, the Debtors must pay for their portion of the costs associated with the preparation of the 2015 state and federal tax returns.

10. Horne’s requested compensation for professional services rendered to the Debtors and PHI for the preparation of state and federal tax returns and related matters for the year and periods ending December 31, 2015 is based upon the estimated hours expended by each assigned staff member of Horne at each staff member’s hourly billing rate, and is estimated to be a total of \$12,000.00, and Horne estimates that the Debtors’ portion is approximately \$1,000.

11. Horne has agreed to charge the Debtors a fixed rate of \$12,000.00 for the required work for the preparation and filing of state and federal tax returns and related matters for the year and periods ending December 31, 2015, and the Debtors have agreed to compensate Horne for these professional services in the pre-paid, fixed-rate amount of \$12,000.00. PHI has agreed to pay \$1,000 to Horne for PHI's portion of the total pre-paid, fixed-rate amount. Excluded from the scope of work covered by this engagement is any work for PHI in connection with Horne's work with respect to documentation to permit PHI to assert a worthless stock deduction.

12. The Debtors' 2015 taxes are due to be filed on September 15, 2016 (the "*Tax Filing Date*"), however, the state and federal tax returns will not be timely filed by the September 15, 2016 Tax Filing Date.

13. As required by Bankruptcy Rules 2014(a) and 2016 and Local Bankruptcy Rule 2014-1, this Application and the Horne Statement set forth: (a) the specific facts showing the necessity for Horne's employment; (b) the reasons for the Debtors' selection of Horne as accountants and tax consultants in connection with these Bankruptcy Cases; (c) the professional services to be provided by Horne; (d) the arrangement between the Debtors and Horne with respect to Horne's compensation (as well as the reasonableness thereof); and (e) to the best of the Debtors' knowledge, the extent of Horne's connections, if any, to certain parties in interest in this matter.

14. Pursuant to Rule 2014(a) of the Federal Rules of Bankruptcy Procedure, to the best of the Debtors' knowledge, as verified by the Horne Statement, Horne has confirmed that, to the best of its knowledge and belief, and except as described therein:

- (a) it does not have any connection with the Debtors, their creditors, the United States Trustee, any person employed by the United States Trustee, or any other

party with an actual or potential adverse interest in the Bankruptcy Cases or their respective attorneys or accountants;

(b) it does not represent any interest adverse to the Debtors or the Debtors' estates in the matters upon which it is engaged;

(c) it does not perform services for any such person in connection with the Bankruptcy Cases, nor does it have a relationship with any such person or its attorneys or accountants that would be adverse to the Debtors or the Debtors' estates; and

(d) no principal of or professional employed by the Firm holds or represents any interest adverse to the Debtors or the Debtors' estates with respect to the matters on which Horne is to be employed.

15. Based upon the Horne Statement, the Debtors submit that Horne is a "disinterested person," as that term is defined in Section 101(14) of the Bankruptcy Code.

16. Under Section 327(a) of the Bankruptcy Code, a debtor-in-possession is authorized to employ professionals:

that do not hold or represent an interest adverse to the estate, and that are disinterested persons,² to represent or assist the [debtor-in-possession] in carrying out [its] duties under this title.

11 U.S.C. § 327(a).

17. Section 327(c) provides that "a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor,

² Section 101(14) of the Bankruptcy Code defines the term "disinterested person" as:

a person that —

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

unless there is objection by another creditor, unless there is objection by another creditor or the United States Trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.

18. Further, Section 1107(b) of the Bankruptcy Code modifies Section 327(a) of the Bankruptcy Code by providing that, in Chapter 11 cases, “a person is not disqualified for employment under section 327 of [the Bankruptcy Code] by a debtor-in-possession solely because of such person’s employment by or representation of the debtor before the commencement of the case.”

19. Under Section 328(a) of the Bankruptcy Code, a debtor-in-possession may employ professional persons under Section 327(a) of the Bankruptcy Code “on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.”

20. The Debtors propose that Horne be retained as its tax and financial consultants in connection with the Bankruptcy Cases on the terms set forth herein.

21. Because Horne’s engagement is a fixed fee engagement that requires prepayment of the fees, this Application is deemed to be Horne’s application to the Court for the final allowance of compensation for professional services rendered and reimbursement of expenses incurred in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

22. The Debtor respectfully request that they be authorized to employ Horne as its accountants in order to have its portion of the consolidated state and federal tax returns prepared and filed, with such retention effective *nunc pro tunc* to July 1, 2016.

WHEREFORE, PREMISES CONSIDERED, the Debtors respectfully request that the Court enter an Order, (i) granting and approving the Horne Agreement and this Application; (ii) authorizing the Debtors to retain Horne effective as of July 1, 2016, to perform the services set forth herein; (iii) approving and allowing the payment of the fixed fee of \$12,000.00 (\$11,000.00 of which will be paid by the Debtors) for services rendered in connection with the preparation and filing of state and federal tax returns for the year and periods ending December 31, 2015, and (iv) granting such other and further relief as is just and proper.

Dated: September 16, 2016.

Respectfully submitted,

MISSISSIPPI PHOSPHATES CORPORATION, *ET AL.*

By: /s/ Stephen W. Rosenblatt

Stephen W. Rosenblatt (Miss. Bar No. 5676)
Christopher R. Maddux (Miss. Bar No. 100501)
Paul S. Murphy (Miss. Bar No. 101396)
J. Mitchell Carrington (Miss. Bar No. 104228)
Thomas M. Hewitt (Miss. Bar No. 104589)
BUTLER SNOW LLP
1020 Highland Colony Parkway, Suite 1400
Ridgeland, MS 39157
Telephone: (601) 985-4504
Steve.Rosenblatt@butlersnow.com
Chris.Maddux@butlersnow.com
Paul.Murphy@butlersnow.com
Mitch.Carrington@butlersnow.com
Thomas.Hewitt@butlersnow.com

ATTORNEYS FOR THE DEBTORS

CERTIFICATE OF SERVICE

I certify that the foregoing pleading was filed electronically through the Court's CM/ECF system and served electronically on all parties enlisted to receive service electronically.

Dated: September 16, 2016.

/s/ Stephen W. Rosenblatt

STEPHEN W. ROSENBLATT

EXHIBIT A

Horne Statement

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3. The nature and scope of the services to be provided to the Debtors by the Firm are to perform accounting and tax consulting services related to the preparation of Debtors' 2015 tax returns and related matters. It is necessary for the Debtors' business affairs to retain Horne to prepare the Debtors' portion of the 2015 state and federal tax return.

4. Pursuant to the *Order Granting Application of the Debtors for Authority to Retain and Employ Horne LLP as Accountants and Auditors to the Debtors Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Bankruptcy Rules 2014-1 and 2016-1, Nunc Pro Tunc to March 23, 2015* [Dkt. # 851], Horne was previously approved by the Bankruptcy Court for accounting services to be provided in connection with the audit of the Debtors' 401(k) financial statements for the year and periods ending December 31, 2014 and March 31, 2015. That project was completed, and that work has been concluded.

5. Horne has previously provided federal and state income tax preparation services for and on behalf of the Debtors and for Phosphate Holdings, Inc. ("*PHI*"), the parent of Mississippi Phosphates Corporation. Prior to the Petition Date, those services were billed to and paid by PHI pursuant to a Management Services Agreement between the MPC and its parent, PHI, dated September 15, 2013, PHI was obligated to provide MPC with the "PHI Services" which included, among other things, "accounting and tax compliance and planning services." That Management Services Agreement was not assumed by the Debtors. At this time, Horne is not a creditor of either the Debtors or PHI.

6. Horne has agreed to charge the Debtors a fixed rate of \$12,000.00 for the required work for the Debtors' portion of the preparation and filing of state and federal tax returns and related matters for the year and periods ending December 31, 2015, and the Debtors have agreed to compensate Horne for these professional services in the pre-paid, fixed-rate amount of

\$11,000.00, and PHI has agreed to pay \$1,000.00 for the estimated cost of preparing the PHI portion of the 2015 state and federal tax returns. Excluded from the scope of work covered by this engagement is any work to be performed for PHI in connection with its work with respect to documentation to permit PHI to assert a worthless stock deduction.

7. The Debtors' 2015 taxes are due to be filed on September 15, 2016, but the state and federal tax returns will not be timely filed by the September 15, 2016 tax filing date, and the Debtors have been so advised.

8. Pursuant to Rule 2014(a) of the Federal Rules of Bankruptcy Procedure, the Firm hereby confirms that, to the best of its knowledge and belief, and except as described herein, it does not have any connection with the Debtors, their creditors, the United States Trustee, any person employed by the United States Trustee, or any other party with an actual or potential adverse interest in the Bankruptcy Cases or their respective attorneys or accountants.

9. The Firm hereby confirms that it does not represent any interest adverse to the Debtors or the Debtors' estates in the matters upon which it is engaged.

10. The Firm may have performed services for persons that are creditors or parties in interest in the Debtors' chapter 11 case in the past and may perform services in the future for such parties in matters unrelated to these Bankruptcy Cases. As part of its customary practice, the Firm is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent the Debtors, claimants, and parties in interest in these Bankruptcy Cases. The Firm does not perform services for any such person in connection with the Bankruptcy Cases, nor does it have a relationship with any such person or its attorneys or accountants that would be adverse to the Debtors or the Debtors' estates.

11. Neither I nor any principal of or professional employed by the Firm has agreed to

share or will share any portion of the compensation to be received from the Debtors with any other person other than the principals and regular employees of the Firm.

12. Neither I nor any principal of or professional employed by the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or the Debtors' estates with respect to the matters on which the Firm is to be employed.

13. If, during the period of its employment, the Firm discovers any facts bearing on the matters described herein, the Firm will supplement the information contained in this Affidavit.

14. The Firm's requested compensation for professional services rendered to the Debtors is based upon the estimated hours to be expended by each assigned staff member at each staff member's hourly billing rate, and is estimated to be \$11,000.00 and \$1,000.00 for the PHI portion. Horne has agreed to charge the Debtors a fixed rate of \$11,000.00 and PHI a fixed rate of \$1,000.00 for the required work, and the Debtors have agreed to compensate Horne for professional services rendered on behalf of the Debtors in the pre-paid, fixed-rate amount of \$11,000.00.

15. The sole source of compensation to be paid to the Firm for the work for the Debtors in these Bankruptcy Cases is to be property of the Debtors.

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16. In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury the foregoing is true and correct.

Wendy F. Eversole
WENDY F. EVERSOLE
ITS CHIEF OPERATING OFFICER

SWORN TO BEFORE ME, this the 16th day of September 2016.

Nancy B. Cunningham
Notary Public

My Commission Expires

March 31, 2020

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