

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

|   |   |                        |
|---|---|------------------------|
| In re:                                  | ) |                        |
|   | ) |                        |
| MISSISSIPPI PHOSPHATES                  | ) |                        |
| CORPORATION, <i>et al.</i> <sup>1</sup> | ) | CASE NO. 14-51667-KMS  |
|   | ) | Chapter 11             |
|   | ) |                        |
|   | ) | (Joint Administration) |
| Debtors                                 | ) |                        |
|   | ) |                        |

**OBJECTION OF TRAMMO, INC. TO PROPOSED FINAL ORDER FOR  
DEBTOR-IN-POSSESSION SECURED FINANCING** [Dkt.Nos.14, 66, 143]

COMES NOW, Trammo, Inc., formerly known as Transammonia, Inc. (“Trammo”), and files this Objection (the “Objection”) to the entry of the proposed Final Order attached as Exhibit A to the Notice [Dkt.#143] filed by the Debtors on November 10, 2014 (“Debtors’ Proposed Order”) which the Debtors and the DIP Lenders intend to propose for entry by the Court at the Final Hearing set for November 18, 2014 on the Debtors’ Motion [Dkt. #14] (the “Motion”) seeking approval of Debtor-in-Possession (“DIP”) secured financing.<sup>2</sup>

Trammo attaches to this Objection as Exhibit 1 a new original version of a Final Order which Trammo recommends the Court enter at the Final Hearing on the Motion (the “Trammo Proposed Order”). To illustrate Trammo’s objections to the Debtors’ Proposed Order, there is attached hereto as Exhibit 2 a comparison version of the Debtors’ Proposed Order showing in “redline” format the modifications which Trammo proposes in the Trammo Proposed Order. For the ease of the Court’s reference, this Objection will use the same headings and numerical

<sup>1</sup> Pursuant to the Order entered herein as document #62, the cases of Mississippi Phosphates Corporation, Ammonia Tank Subsidiary, Inc. and Sulfuric Acid Tanks, Inc. (collectively, the “Debtors”) are jointly administered herein.

<sup>2</sup> Unless otherwise expressly provided herein, all capitalized terms in this Objection shall have the meaning defined in the Interim Order [Dkt.#66].

designations used by the Debtors and DIP Lenders in the Debtors' Proposed Order, recognizing that these section numbers may change in the Final Order, as modified, because of the deletion of several numbered sections from the Debtors' and DIP Lenders' version.

OBJECTION

Trammo respectfully submits that certain provisions of the Debtors' Proposed Order should be modified or deleted for, among other reasons:

(a) That certain provisions of the Debtors' Proposed Order are neither necessary nor appropriate in a Final Order on DIP Financing;

(b) That certain provisions of the Debtors' Proposed Order are inapplicable to the Debtors in this case;

(c) That a number of the provisions in the Debtors' and DIP Lenders' version do not provide for adequate notice to key or all parties-in-interest.

(d) That certain provisions of the Debtors' Proposed Order are premature at this stage of the case; and/or

(e) That a number of provisions are inequitable to the Debtors, the Debtors' estates and/or to creditors, and inequitably favor the DIP Lenders and the Pre-Petition Lenders.

An outline of the basis for Trammo's objections and proposed modifications of the Debtors' Proposed Order are as follows:

(1) Section 3, "Notice," of Debtors' Proposed Order states that no notice, other than the notice of the final hearing, is necessary or required other than to (a) Counsel for the Committee, (b) the United States Trustee, (c) parties who have requested notice under Bankruptcy Rule 2002, (d) holders of the 20 largest claims, (e) the Agent for DIP Lenders and their counsel, (f) the Agent for Pre-Petition Lenders and (g) all parties who have asserted liens on

assets of the Debtors, and further that such notice is deemed due and sufficient notice. Trammo proposes that, as stated by the Court at the conference on November 4, 2014, this Section 3 include a provision that states “except, however, that the provisions of this Order shall not prejudice the rights of parties-in-interest to whom such notice has not been given.”

(2) Section 10, “Superpriority Claim and DIP Liens.” Trammo objects to the final sentence of Section 10(a) which provides that, except as set forth in this Order, “no other superpriority claim should be granted or allowed in these Chapter 11 cases.” Trammo proposes that this sentence be deleted in its entirety. At this point in the proceedings in this case, it is premature to determine whether or not any other superpriority claims may be granted or allowed. A decision on whether other superpriority financing should be recognized should be reserved to the sound discretion of the Court. Under Section 364(b) of the Bankruptcy Code, the Court may, after notice and hearing, authorize a trustee to obtain unsecured credit or to incur unsecured debt under terms deemed acceptable by the Court. The Court should not preclude itself from considering motions to obtain debt as a superpriority claim if deemed suitable by the Court after notice to all parties in interest and a hearing thereon.

(3) In Section 10(b), “Superpriority Claim and DIP Liens,” the Debtors’ Proposed Order states that DIP Liens shall have priority over pre- and post-petition liens and security interests with the exceptions that DIP Liens shall not have priority over rights of setoff or recoupment of Interoceanic Corporation, or of rights of holders of purchase money security interests, or the Carve Out. Section 10(b) should also provide that DIP Liens do not have priority over rights of parties to reclamation of goods under Section 546(c) of the Bankruptcy Code. These are rights which generally cannot be superseded in favor of DIP Financing.

Additionally, Section 10(b)(ii) of the Debtors' Proposed Order should exclude from the scope of Collateral any property to which title "is vested in" or is passed to a party other than the Debtors, including, without limitation, such property that has vested in another party pursuant to the Marketing Agreement, dated March 27, 2014.

Furthermore, Section 10(c) of the Debtors' Proposed Order includes in the first sentence the prohibition of the Court's right under Bankruptcy Code section 364 to authorize liens on the same Collateral as the DIP Lenders. Trammo submits that such provision should be deleted, as reflected in the Trammo Proposed Order, or, alternatively made "subject to entry of an order to the contrary".

(4) Section 11, "Acknowledgements," contains a lengthy list of acknowledgements, representations, stipulations and agreements by the Debtors concerning matters such as authorizations, consents, approvals and other representations and warranties. These provisions are not necessary or appropriate in this Order in that they are not matters for which Court approval is mandatory or necessary. The appropriate place for such representations and warranties should be the loan documents executed among the Debtors and DIP Lenders. This section also includes commitments that the Debtors will not seek other financing through the granting of liens on DIP Collateral unless all DIP Financing has been paid before such new financing is sought. Debtors should be allowed to seek alternative financing on such terms as may be appropriate subject to Court approval after notice and hearing.

(5) Section 12, "Fees and Expenses." The Debtors' Proposed Order addresses the submission by the DIP Agent and DIP Lenders of invoices for their fees and expenses. The Debtors' Proposed Order requires these to be submitted only to the United States Trustee, counsel for the Debtor and counsel for the Committee. In addition, Trammo submits that any

creditor in this case should have the right to object to such invoices within such objection period, even if notice of the invoices is not required to be submitted to creditors.

(6) Section 13, "Indemnity," proposes to require that the Debtors indemnify and hold harmless the DIP Agent and each DIP Lender and their affiliated parties against any fees and expenses incurred by such entity in connection with DIP Financing. This provision is a blanket indemnity without regard to whether the actions involved were in fact authorized by the Debtors or approved by the Court or applicable law. Trammo submits that this is an overreach of the Debtors' estate and other creditors, particularly where the indemnity may be called upon whether or not the DIP financing transaction is ever consummated. There are no exceptions from such indemnification except for willful misconduct by the DIP Agent or DIP Lenders. Trammo proposes the deletion of Section 13 in its entirety or, at least, limiting the indemnity rights of the DIP Agent and DIP Lenders to actions by the Debtors which have been approved by the Court and/or which have been incorporated into a confirmed Plan of Reorganization or Liquidation.

(7) Section 16, "Amendments," addresses the subject of future modifications of the DIP Facility and the other DIP Loan Documents, and establishes the notice procedures for Non-Material Modifications and Material Modifications. Section 16 provides the right for the Committee, EPA, MDEQ and the United States Trustee to file an objection to the modifications, but Trammo submits that any interested party should have the same right, and that point is included in the Trammo Proposed Order.

(8) Section 19, "Limitation on Surcharges," The Debtors' Proposed Order would bar any use of Collateral or Pre-Petition Collateral to pay costs or expenses of administration of the Debtors' estate or to make claims for reimbursement against any of the Pre-Petition Lenders, the Agent, the DIP Lenders or DIP Agent (with the exception of the limited carve out of \$200,000

for payment of certain administrative fees). This provision attempts to prohibit, through the control of uses of the funds and assets of the Debtors' estate, the possibility of the Debtors taking actions which may be in the financial best interest of the Debtors' estate and its other creditors. In addition, the next to the last sentence in Section 19 would eliminate any right of the Debtors' estates to assert the equitable doctrine of "marshalling", even though it is premature and without foundation for such determination to be made. Accordingly, Trammo respectfully requests the deletion of Section 19 of the Debtors' Proposed Order.

(9) Section 21, "Challenge to Pre-Petition Indebtedness and Liens." The Debtors' Proposed Order addresses the issue of what parties and at what times challenges or objections can be made regarding the Pre-Petition Lenders' indebtedness or liens. Trammo proposes several specific changes in this Section, including preserving in Section 21(a) the right of the Court to establish the Challenge Period.

Additionally, Section 21(b) would grant the Agent and Pre-Petition Lenders the right to credit bid the "full amount" of their aggregate Pre-Petition Indebtedness in any sale of assets in these cases. The provision does not limit such credit bids to claims which have been verified as valid claims. Trammo requests that the right to credit bid be "subject to entry of an order to the contrary", or, alternatively, that the Court strike from this Section 21(b) the provision that parties can credit bid the full amount of their Pre-Petition Indebtedness.

Also, Trammo requests that the entire portion of Section 21(b)(ii)(B) of the Debtors' Proposed Order be deleted, as an ancillary result of deleting Section 11 as requested above.

(10) Section 25, "Automatic Stay Modified." The Debtors' and DIP Lenders' version of the Debtors' Proposed Order would grant relief from the automatic stay to the DIP Agent and DIP Lenders, but such present grant should be subject to the authority of the Court to modify the

terms of the relief as future circumstances justify, which can be done by adding the clause to the end of the introductory sentence of Section 25, as proposed by Trammo.

Section 25(c) of the Debtors' Proposed Order provides for a Notice Period of "five (5) calendar days" which, with weekends and holidays, could effectively be as few as two (2) days. Thus, Trammo requests that the Notice Period be changed to five (5) "business" days.

Additionally, Section 25(c) purports to limit the issues which may be considered by the Court at any hearing regarding the DIP Agent or the DIP Lenders' exercise of rights and remedies solely to the issue of whether an Event of Default has occurred and is continuing and that the Debtors and other parties-in-interest shall be barred from raising or seeking any other relief. This limitation on the rights of the Debtors and other parties from raising legitimate claims and defenses overreaches the Debtors and other creditors and should be deleted from the Debtors' Proposed Order.

(11) Section 27, "No Third Party Rights." The first sentence of Section 27 of the Debtors' Proposed Order duplicates the provisions of Section 29, and should be deleted. The remaining portions of Section 27 purport to exonerate the DIP Lenders from any fiduciary duty owed to the Debtors, their creditors, shareholders or estates and to provide that DIP Agent and DIP Lender shall never be considered as exercising control of any operations of the Debtors or be considered as a responsible person, owner or operator under any applicable law. These provisions for exoneration are premature and vastly overbroad. For example, Debtors' and DIP Lenders' version proposes for the Court to determine at this time that, if the DIP Agent hereafter orders actions to be taken which are in violation of law, the DIP Agent could never be considered as exercising control of the operations of the Debtors, even with respect to actions done at DIP Agent's or DIP Lenders' instruction or request. This could occur if, for example, DIP Agent

should take actions that interfere with the continuous operation of environmental remediation activities. This exoneration provision is likely not to be enforceable under the federal and state laws, which hold parties who cause environmental contamination to be responsible for their actions.

Additionally, Section 27 would purport to create a bar against the DIP Agent, DIP Lenders, Agent or Pre-Petition Lenders being held liable or accountable for any actions relating to the Debtors. It may be the case that these parties would not have legal liability for claims for which they were not responsible, but barring any party-in-interest from seeking to require these parties to show why they do not have liability is inequitable and would bind persons who may have had no notice of this Order to an advance release of liability. Trammo respectfully submits that Section 27, including all of its exculpatory wording, be deleted from the Debtors' Proposed Order.

(12) Section 30, "Binding Nature or Agreement." The Debtors' Proposed Order provides that all of the DIP Loan Documents to which the Debtors are or will become a party will be valid and binding obligations of the Debtors. This is a provision which would be best reserved for inclusion in the DIP Loan Documents themselves, but, in any event, trying to provide, in advance, that all DIP Loan Documents, some of which may be negotiated and executed in the future, will be binding obligations of Debtors is not reasonable or appropriate. Furthermore, the prohibition that DIP Loan Documents shall not be modified, altered or impaired in any manner by any subsequent order of this Court (including a confirmation order) or any plan of reorganization or liquidation, unless and until all DIP obligations have been paid in full, prematurely limits the Court's authority to approve a reorganization plan which may be drafted and approved in the future. This provision, as proposed, is a premature restriction on this



Court's inherit authority to approve bankruptcy plans which comply with the Code, are proposed by parties in interest, and are confirmed by this Court.

(13) Sections 33, 34 and 35. Each of these Sections of the Debtors' Proposed Order contains provisions which unreasonably and unnecessarily limit and restrict the authority of this Court. The Trammo Proposed Order corrects such provisions, such as by adding the clause "unless otherwise provided by order of this Court."

In addition, these Sections also provide in several places a requirement for the payment in full of the Pre-Petition Indebtedness, which the Trammo Proposed Order corrects by changing that requirement to payment in full of the Adequate Protection Claim.

WHEREFORE, Trammo respectfully requests that each of the modifications suggested in this Objection, and any supplement which Trammo may file, be approved by the Court and that the Debtors, the DIP Lenders and other proponents of this DIP Financing be required to adhere to a Final Order containing the requested modifications to the Debtors' Proposed Order.

THIS the 12th day of November, 2014.

Respectfully submitted,

**PHELPS DUNBAR LLP**

By: /s/ James W. O'Mara

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**CERTIFICATE OF SERVICE**

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

SO CERTIFIED, this the 12th day of November, 2014.

/s/ James W. O'Mara