



(“SATS,” and together with MPC and ATS, hereinafter collectively referred to as the “Debtors”) filed their voluntary petitions for relief (the “Petitions”) under Chapter 11 of 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”) with the Clerk of this Court. On October 29, 2014, the Court granted the Debtors’ motion for joint administration of the Debtors’ cases.

2. Pursuant to the Debtors’ *First Amended Joint Chapter 11 Plan of Debtors and the Official Committee of Unsecured Creditors* [Doc. No. 1168] (the “Plan”), the Trust “shall be vested with full legal power, capacity and authority, and shall be directed to administer, collect and liquidate the Debtors’ remaining Assets and to administer and implement the Plan.” Edwin N. Ordway, Jr., Managing Director, Berkeley Research Group, LLC (the “Trustee”) was designated as the Trustee of the Trust, which was created by the Liquidating Trust Agreement between the Debtors and the Trustee dated as of October 25, 2016. The Trustee serves as the current trustee of the Trust.

3. The Defendant Midwesco was at all times relevant hereto a creditor of the Debtors, within the meaning of 11 U.S.C. § 101(10)(A).

4. The Defendant Wells Fargo was at all times relevant hereto a creditor of the Debtors, within the meaning of 11 U.S.C. § 101(10)(A).

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 362, 542, 547 and 550.

6. Venue of the Debtors’ chapter 11 cases and of this matter is proper in this district pursuant to 28 U.S.C. § 1409.

7. This a core proceeding pursuant to 28 U.S.C. § 157(b).

**COUNT I**  
**AVOIDANCE AND RECOVERY OF PREFERENTIAL**  
**TRANSFER PURSUANT TO 11 U.S.C. §§ 547 AND 550**

8. The Trust adopts and incorporates by reference the allegations in the paragraphs above as if fully set forth herein.

9. On the Petition Date, Wells Fargo debited from the Debtor's MPC account \*\*\*\*\*7367 (MS) ("Account") the amount of \$16,682.60 ("Garnished Funds") pursuant to a Writ of Garnishment<sup>1</sup> issued by Midwesco<sup>2</sup> ("Writ of Garnishment"), even though Robert Kerley, the CFO of the Debtors, promptly advised Wells Fargo of the Petitions on the date of their filing and, moreover, instructed Wells Fargo not to honor any checks or ACH transactions because of the attendant automatic stays provided Debtors by the Petitions.

10. Since the Garnished Funds were debited by check, wire transfer or otherwise from the Debtors' Account and received by Midwesco within ninety (90) days preceding the filing of the Petitions (the "Preference Period"), they constitute a preferential transfer totaling \$16,682.60 (the "Preferential Transfer").

11. The source of funds for the Preferential Transfers was clearly property of the Debtors or property in which the Debtors had an interest.

12. The Preferential Transfers were to or for the benefit of Midwesco.

13. The Preferential Transfers were made for or on account of an antecedent debt owed by the Debtors to Midwesco before such Preferential Transfer was made.

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<sup>1</sup> Though subject to discovery, it is unclear whether the debit actually occurred prior to or after the filing of the Petition.

<sup>2</sup> Midwesco is, as of June 22, 2016, now known as National Filter Media Corporation.

14. At the time the Preferential Transfer was made, the Debtors were, in accordance with applicable law, insolvent as contemplated by §§ 101(32) and 547 of the Bankruptcy Code.

15. The Preferential Transfers enabled Midwesco to receive more than it would have received if: (i) the Debtors had filed Chapter 7 cases under Bankruptcy Code, (ii) the Preferential Transfer had not been made, and (iii) Midwesco received payment of the antecedent debts to the extent provided by the Bankruptcy Code.

16. The Preferential Transfer is avoidable pursuant to § 547 of the Bankruptcy Code, and as a result, the Preferential Transfer is recoverable by the Trust pursuant to § 550 of the Bankruptcy Code.

**COUNT II**  
**WILLFUL VIOLATION OF AUTOMATIC STAY**  
**AS CONTEMPLATED BY 1 U.S.C. §362**

17. The Trust adopts and incorporates by reference the allegations in the paragraphs above as if fully set forth herein.

18. By and through notice provided by the Debtors' CFO on the Petition Date, Wells Fargo knew that the Petitions had been, or were to be shortly, filed. At a minimum, Wells Fargo had constructive knowledge that the Petitions were imminent. Nevertheless, Wells Fargo debited the Debtors' account pursuant to the Writ of Garnishment notwithstanding the existence of any automatic stays that then may have been afforded the Debtors. Subject to discovery, if the Debit occurred after the stamp-filed Petitions, Wells Fargo, at a minimum, willfully violated the automatic stays afforded the Debtors because of the actual and/or constructive notice previously provided to Wells Fargo. Because of this automatic stay violation prohibited by 11 U.S.C. §362, the Trust is entitled damages arising from same and, moreover, is entitled to a judgment against Wells Fargo for damages in an amount to be determined by this Court at trial.

19. Subject to discovery, if Midwesco had actual or constructive knowledge of the Petitions and nevertheless issued, served or otherwise advanced the Writ of Garnishments, then the Trust is also entitled to a judgment against Midwesco for those damages sustained by the Debtor due to Midwesco's willful violation of the automatic stay in an amount of damages to be determined by this Court at trial.

**COUNT III**  
**TURNOVER OF PROPERTY OF ESTATE**

20. The Trust adopts and incorporates by reference the allegations in the paragraphs above as if fully set forth herein.

21. Subject to further discovery, the monies received by Midwesco pursuant to the Writ of Garnishment following the Petition Date, are property of the Debtors' Estates as contemplated by 11 U.S.C. §541. As such, they must be returned to the Trust for the benefit of same pursuant to the mandates codified by 11 U.S.C. §542. As such, the Trust is entitled to a judgment against Midwesco directing it to return any and all of the Debtors' monies it received following the filing of the Petitions.

**WHEREFORE**, for the foregoing reasons, the Trust respectfully requests that:

1. The Preferential Transfer be avoided pursuant to § 547 of the Bankruptcy Code;
2. Judgment be entered in favor of the Trust, and against the Defendant Midwesco, in the amount of \$16,682.60, plus interest at the legal rate from the date of the Preferential Transfer, together with any costs of this action;
3. The Defendant Midwesco be directed to pay to the Trust the sum of \$16,682.60 plus interest at the legal rate from the date of the Preferential Transfer, together with any costs of this action;
4. The Defendant Midwesco's claims against the Debtors be disallowed as contemplated by 11 U.S.C. § 502; and

5. That the Liquidating Trustee be permitted to setoff any judgment obtained hereunder against any payment or distribution to be made on account of the Claims pursuant to the Plan; and

6. The Trust be granted such other and further relief as is just and equitable, or

**ALTERNATIVELY**, for the foregoing reasons, the Trust respectfully requests that:

1. The Preferential Transfer be avoided pursuant to § 547 of the Bankruptcy Code;

2. Judgment be entered in favor of the Trust, and against the Defendant Midwesco, in the amount of \$16,682.60, plus interest at the legal rate from the date of the Preferential Transfer, together with any costs of this action;

3. The Defendant Midwesco be directed to pay to the Trust the sum of \$16,682.60 plus interest at the legal rate from the date of the Preferential Transfer, together with any costs of this action;

4. The Defendant Midwesco's claims against the Debtors be disallowed as contemplated by 11 U.S.C. § 502; and

5. That the Liquidating Trustee be permitted to setoff any judgment obtained hereunder against any payment or distribution to be made on account of the Claims pursuant to the Plan; and

6. Additionally, that a judgment be entered against Midwesco for damages sustained by the Debtors due to Midwesco's willful violation of the automatic stay, together with any costs and attorneys' fees as allowed by law. Moreover, that Midwesco be ordered to turn over the Garnished Funds in like amount pursuant to 11 U.S.C. §542, together with any costs and attorneys' fees as allowed by law; and

7. The Trust be granted such other and further relief as is just and equitable, or

**ALTERNATIVELY**, for the foregoing reasons, the Trust respectfully requests that:

1. Judgment be entered against Wells Fargo for damages sustained by the Debtors due to Wells Fargo's post-petition debit of the Debtors' account in willful violation of the automatic stay as contemplated by 11 U.S.C. § 362 together with any costs and attorneys' fees; and

2. The Trust be granted such other and further relief as is just and equitable.

Respectfully submitted this the 26th day of October, 2016.

MISSISSIPPI PHOSPHATES CORPORATION  
LIQUIDATING TRUST (MPCLT),  
EDWIN N. ORDWAY, JR., Managing Director,  
BERKELEY RESEARCH GROUP, LLC in his  
capacity as MPCLT Trustee of the MPCLT

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