



SO ORDERED,

Katharine M. Samson

Judge Katharine M. Samson
United States Bankruptcy Judge
Date Signed: January 6, 2015

The Order of the Court is set forth below. The docket reflects the date entered.

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

In re:)	
)	
MISSISSIPPI PHOSPHATES)	
CORPORATION, <i>et al.</i> ¹)	CASE NO. 14-51667-KMS
)	Chapter 11
)	
Debtors)	Jointly Administered
)	

**AMENDED ORDER AUTHORIZING THE DEBTORS TO EMPLOY AND RETAIN
SANDLER O'NEILL & PARTNERS, L.P. AS INVESTMENT BANKER**

[Dkt. # 232; 326]

This matter came before the Court on the *Application of Debtors for Authority to Employ Sandler O'Neill & Partners, L.P. as Investment Banker* (the "**Application**")² [Dkt. # 232] filed herein by Mississippi Phosphates Corporation, *et al.*, the Debtors and debtors-in-possession

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**"), Case No. 14-51671. These chapter 11 cases are sometimes referred to herein as the "**Bankruptcy Cases**."

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Application.

herein (collectively, the “*Debtors*”). The Court considered the Application and the premises, and finds that notice was appropriate under the circumstances, that no objection or no other response was filed to the Application, and that the Application is well-taken and should be granted. On December 19, 2014, the Court entered its *Order Authorizing the Debtors to Employ and Retain Sandler O’Neill & Partners, L.P. as Investment Banker* [Dkt. # 326], but the United States Trustee had reserved certain objections to the Application. This Amended Order addresses and resolves those issues raised by the United States Trustee.

IT IS, THEREFORE, ORDERED, that the Application is granted.

IT IS FURTHER ORDERED that the retention and employment of Sandler O’Neill & Partners, L.P. as investment banker for the Debtors is hereby approved, *nunc pro tunc* as of the Petition Date.

IT IS FURTHER ORDERED that, Sandler O’Neill will be paid a fee for its services as more fully set forth in the Agreement as follows:

(1) Sandler O’Neill will be paid a non-refundable monthly fee in an amount equal to \$30,000, due and payable in immediately available funds upon the entry of an order by the Bankruptcy Court approving the retention of Sandler O’Neill by the Debtors and on the first day of each monthly period thereafter (collectively, the “*Monthly Fees*”);

(2) Additionally, Sandler O’Neill will be paid a fee in cash at settlement on any investment and/or sale of assets closed and funded, or upon confirmation of a reorganization plan, for any offers received under the terms of the Agreement, and Sandler O’Neill’s fee shall be as follows:

(a) If, during the term of Sandler O’Neill’s engagement hereunder or within eighteen (18) months thereafter, the Debtors consummates a Restructuring, the Debtors agree to pay Sandler O’Neill a Restructuring fee (the “*Restructuring Fee*”) in an amount equal to the greater of (a) \$150,000, or (b) 2.0% of aggregate proceeds from sale of the

Debtors or any of the Debtors' assets to any third party other than any of the Debtors' pre-petition lenders or DIP lenders, with such sale proceeds to include cash, reorganized equity or any other form of consideration. The Restructuring Fee shall be due and payable in immediately available funds on the day of closing of the Restructuring. For the avoidance of doubt, no Restructuring Fee will be owing or payable to Sandler O'Neill with respect to PHI, or any of PHI's assets.

(b) In the event of a sale of the Debtors or any of their assets resulting, in whole or in part, from a credit bid made by the pre-petition lenders or DIP lenders of the Debtors, Sandler O'Neill's Restructuring Fee shall be the greater of (i) \$150,000 or (ii) 2.0% of the value of a competing bid submitted by a party other than the pre-petition lenders or the DIP lenders that is topped by the credit bid.

(3) Additionally, the Debtors will reimburse Sandler O'Neill, upon request made from time to time, for its reasonable out-of-pocket expenses incurred in connection with Sandler O'Neill's activities under the Agreement, including the reasonable fees and disbursements of its legal counsel; and

(4) The Debtors will bear all other expenses incurred in connection with the Restructuring and the services to be provided by Sandler O'Neill under the Agreement, including, without limitation, the cost of any third party service providers (including the cost of any electronic data room), and in the event that Sandler O'Neill incurs any such expenses on behalf of the Debtors, the Debtors will promptly reimburse Sandler O'Neill for such expenses.

IT IS FURTHER ORDERED that the terms of the Engagement Letter, including without limitation, the fee provisions, and the indemnification provisions, are reasonable terms and conditions of employment and are approved; provided, however, that during the pendency of these chapter 11 cases, all requests of Sandler O'Neill for payment of indemnity, contribution or otherwise pursuant to the Engagement Letter shall be made by means of an interim or final fee application and shall be subject to the approval of, and review by, the Court to ensure that such payment conforms to the terms of the Engagement Letter and amounts asserted for indemnification thereunder are reasonable based upon the circumstances of the litigation or

settlement in respect of which indemnity is sought, and further provided, notwithstanding the terms of the Engagement Letter, the Debtors and Sandler O'Neill have agreed that in no event shall an Indemnified Party be indemnified or receive contribution thereunder if the Debtors, their estates or any statutory committee of unsecured creditors appointed in these Cases (i) assert a claim against an Indemnified Party and (ii) to the extent the Court determines by final order that such claim resulted from the bad-faith, self-dealing, breach of fiduciary duty (if any and only to the extent such breach does not constitute ordinary negligence), gross negligence or willful misconduct on the part of that Indemnified Party.

IT IS FURTHER ORDERED that Sandler O'Neill will file with the Court and serve on the counsel for the Debtors, the Agent for the Pre-petition Lenders and the DIP Lenders, the Official Committee of Unsecured Creditors, and the United States Trustee for the Southern District of Mississippi (each, a "*Notice Party*") monthly statements in accordance with the interim compensation procedures provided by sections 330 and 331 of the Bankruptcy Code, including a report of compensation earned and expenses incurred on a monthly basis (the "*Compensation Reports*"), which Compensation Reports will summarize the services provided on a daily basis, identify the compensation earned and the itemize expenses incurred on a monthly basis, and provide for a 21-day objection period, provided that any such request for payment for such fees and expenses will be subject to review by this Court under a reasonableness standard if any objection to the Compensation Report is timely filed by a Notice Party, and further provided that any request for final payment for fees and expenses will be subject to review by this Court under a reasonableness standard.

IT IS FURTHER ORDERED that for any charges for "reasonable fees and disbursements of its legal counsel" for which Sandler O'Neill requests payment under the terms of its

Engagement Letter, shall be pursuant to an application filed by Sandler O'Neill and notice and a hearing as contemplated by 11 U.S.C. § 330 and Rule 2016 of the Federal Rules of Bankruptcy Procedure, and any other applicable or related statutes and rules.

###END OF ORDER###

ORDER PREPARED AND SUBMITTED BY:

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ONE OF THE ATTORNEYS FOR THE DEBTORS

APPROVED AS TO FORM FOR ENTRY:

/s/Christopher J. Steiskal, Sr.

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