

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

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| In re:   | : | Case No. 14-51667-KMS |
|  | : |                       |
| Mississippi Phosphates Corporation, <i>et al.</i> , <sup>1</sup> | : | Chapter 11            |
|  | : |                       |
| Debtors.   | : | Jointly Administered  |
|  | : |                       |

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**MOTION OF E. I. DU PONT DE NEMOURS AND COMPANY FOR  
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM  
PURSUANT TO 11 U.S.C. § 503(b)(9)**

E. I. du Pont de Nemours and Company (“**DuPont**”), by and through its undersigned counsel, hereby files this motion and request (the “**Motion**”), pursuant to section 503(b)(9) of title 11 of chapter 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “**Bankruptcy Code**”), for the allowance and payment of an administrative expense claim in the amount of \$699,981.12. In support of the Motion, DuPont respectfully states as follows:

**JURISDICTION**

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

2. The statutory bases for the relief requested herein are sections 105(a), 503(b)(9) and 507(a) of the Bankruptcy Code, Rule 9014 of the Federal Rules of Bankruptcy Procedures (the “**Bankruptcy Rules**”), and Local Rule 9014-1 of the Uniform Local Rules for the United States Bankruptcy Courts for the Northern and Southern Districts of Mississippi (the “**Local Rules**”).

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<sup>1</sup> Debtors are the following: Mississippi Phosphates Corporation, Ammonia Tank Subsidiary, Inc. and Sulfuric Acid Tanks Subsidiary, Inc.

### **BACKGROUND**

3. On October 27, 2014 (the “**Petition Date**”), the Mississippi Phosphates Corporation (“**MPC**”) and its affiliated debtors (collectively, the “**Debtors**”) filed voluntary petitions for chapter 11 relief in the United States Bankruptcy Court for the Southern District of Mississippi, Southern Division (the “**Court**”). Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and manage their properties as debtors-in-possession. No trustee or examiner has been appointed in these cases.

4. On November 12, 2014, the Office of the United States Trustee for Region 5 (the “**U.S. Trustee**”) appointed an Official Committee of Unsecured Creditors (the “**Committee**”) in this case under section 1102 [Dkt. No. 161].

5. Prior to the Petition Date, MPC routinely ordered and purchased sulfuric acid in the ordinary course of business from DuPont, and DuPont regularly sold and delivered sulfuric acid to MPC.

6. In the twenty (20) days preceding the Petition Date (between October 7, 2014, and October 27, 2014, the “**503(b)(9) Period**”), MPC received from DuPont, in the ordinary course of MPC’s business, sulfuric acid from DuPont with a total value of \$699,981.12 (the “**503(b)(9) Goods**”), as reflected in the invoices attached hereto as **Exhibit A**, together with copies of the boat logs reflecting the delivery dates of the 503(b)(9) Goods during the 503(b)(9) Period, which are attached hereto as **Exhibit B**.<sup>2</sup>

7. On November 13, 2014, DuPont served a written demand for reclamation upon the Debtors, their counsel in these chapter 11 cases, and the Office of the United States Trustee (the “**Reclamation Demand**”) for reclamation and payment of the 503(b)(9) Goods.

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<sup>2</sup> The signed bills of lading are in the possession of Debtors.

DuPont has not received a formal response to its Reclamation Demand, nor have the Debtors tendered any payment to DuPont on account of any of the 503(b)(9) Goods.<sup>3</sup>

**RELIEF REQUESTED**

8. By this Motion, DuPont seeks entry of an order, pursuant to section 503(b)(9) of the Bankruptcy Code, for the allowance and payment of an administrative expense claim in the aggregate amount of \$699,981.12 with respect to the 503(b)(9) Goods, entitled to priority pursuant to section 507(a)(2) of the Bankruptcy Code (the “**503(b)(9) Claim**”).

**BASIS FOR RELIEF REQUESTED**

9. Pursuant to section 503(b)(9), after notice and a hearing, there shall be allowed an administrative expense claim for “the value of any goods received by the debtor within 20 days before the date of commencement of a case under [the Bankruptcy Code] in which the goods have been sold to the debtor in the ordinary course of the debtor’s business.” 11 U.S.C. § 503(b)(9). As an administrative expense claim, a section 503(b)(9) claim is entitled to priority under Section 507(a)(2).

10. To qualify for an administrative expense claim under section 503(b)(9), the claimant must show “(1) [it] sold ‘goods’ to the debtor; (2) the goods were received by debtor within twenty days prior to filing; and (3) the goods were sold to the debtor in the ordinary course of business.” *In re Goody’s Family Clothing, Inc.*, 401 B.R. 133, (Bankr. D. Del. 2009). Here, DuPont satisfies each element of section 503(b)(9).

11. *First*, as evidenced by the invoices attached hereto as Exhibit A, DuPont sold “goods” to MPC for purposes of Section 503(b)(9). Under Uniform Commercial Code<sup>4</sup> § 9-105(1), “[g]oods means all things (including specially manufactured goods) which are movable

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<sup>3</sup> DuPont has simultaneously filed a Proof of Claim for the amounts asserted herein.

<sup>4</sup> References to “U.C.C.” refer to the Uniform Commercial Code.

at the time of identification to the contract for sale other than the money in which the price is to be paid, investments securities (Article 8) and things in action” U.C.C. § 2-105(1).

12. Receipt of goods means taking physical possession of the goods by the buyer. U.C.C. § 2-103(1). *See also In re Trico Steel Co., LLC*, 282 B.R. 318, 323-24 (Bankr. D. Del. 2002). It is undisputed that MPC took physical possession of the 503(b)(9) Goods delivered by DuPont consistent with U.C.C. § 2-103(1).

13. *Second*, as reflected by the boat logs attached hereto as Exhibit B, the 503(b)(9) Goods were delivered and received by MPC within the twenty (20) days preceding the Petition Date.

14. *Third*, the 503(b)(9) Goods were sold to MPC in the ordinary course of its business. DuPont, among other things, is in the business of selling chemicals to third parties such as MPC. MPC was in the business of producing and marketing phosphate fertilizer and, in this capacity, ordered and purchased the 503(b)(9) Goods from DuPont. The value of the 503(b)(9) Goods is established by the invoice amount, as set forth in Exhibit A. As of the date of this filing, Debtors have not paid DuPont for the 503(b)(9) Goods.

15. Accordingly, because the 503(b)(9) Goods (i) constituted “goods” under the U.C.C.; (ii) were received by MPC within 503(b)(9) Period; and (iii) were sold by DuPont to MPC in the ordinary course of MPC’s business, DuPont is entitled to an allowed administrative priority expense claim for the full value of the 503(b)(9) Goods delivered by DuPont to MPC during the 503(b)(9) Period in the amount of \$699,981.12.

#### **RESERVATION OF RIGHTS**

16. DuPont reserves and preserves the right (i) to assert additional claims DuPont may have against the Debtors, whether relating to or incidental to the 503(b)(9) Goods,

or any other deliveries, products, or transactions; (ii) to amend, modify and/or further supplement this Motion as appropriate under the circumstances; and (iii) to assert any and all defenses, including rights to setoff and/or recoupment, against the Debtors.

WHEREFORE, E. I. du Pont de Nemours and Company respectfully requests the Court enter an Order, substantially in the form attached hereto, granting the relief requested in the Motion, and for such other and further relief as may be just and proper under the circumstances.

Dated: February 23, 2015

/s/ Leslie C. Heilman

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