

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

In re:

MISSISSIPPI PHOSPHATES CORPORATION, et al.

Case No. 14-51667-KMS
Chapter 11

Debtor.

MOTION OF BASTECH, LLC FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE CLAIM PURSUANT TO 11 U.S.C. § 503(b)(9)

Bastech, LLC (“Bastech”) files this motion (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 \$59,111.80. In support of the Motion, Bastech 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 Court for the Northern and Southern Districts of Mississippi (the “Local Rules”).

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 defoamer¹ in the ordinary course of business from Basteck, and Basteck regularly sold and delivered defoamer 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 Basteck, in the ordinary course of MPC’s business, defoamer from Basteck with a total value of \$59,111.80 (the “503(b)(9) Goods”)² as detailed in the two invoices attached hereto as Composite Exhibit “A”. Moreover, the invoices reflect delivery with the 503(b)(9) Period.

RELIEF REQUESTED

7. By this Motion, Basteck 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 \$59,111.80 with respect to the 503(b)(9) Goods, which are entitled to priority pursuant to Section 507(a)(2) of the Bankruptcy Code (the “503(b)(9) Claim”).

¹ A defoamer is a chemical additive designed to reduce the formation of foam in industrial process liquids.

² Basteck previously filed a Proof of Claim which included the amounts in the Motion.

BASIS FOR RELIEF REQUESTED

8. Pursuant to Section 503(b)(9), after notice and 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).
9. To qualify for an administrative expense claim under Section 503(b)(9), the movant must demonstrate “(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 PMC Mktg. Corp., 517 B.R. 386, 391 (B.A.P. 1st Cir. 2014) (citing In re Goody’s Family Clothing, Inc., 401 B.R. 131, 133 (Bankr. D. Del. 2009)). Bastech satisfies each element of Section 503(b)(9).
10. First, as evidenced by the invoices attached hereto as Composite Exhibit “A”, Bastech sold “goods” to MPC for purposes of Section 503(b)(9). Under Uniform Commercial Code § 9-105(1). “[g]oods means all things (including specially manufactured goods) which are movable 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). The defoamer sold in this case is a chemical compound which is produced by Bastech and shipped directly to its customers.
11. 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). The defoamer was delivered, and MPC took physical possession of the defoamer within the twenty-day window.

12. Third, the 503(b)(9) Goods were sold to MPC in the ordinary course of its business. Bastech, 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 Bastech. The value of the 503(b)(9) Goods is established by the invoice amount, as set forth in Composite Exhibit "A". As of the date of this filing, Debtors have not paid Bastech for the 503(b)(9) Goods.

13. 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 Bastech to MPC in the ordinary course of MPC's business, Bastech is entitled to an allowed administrative priority expense claim for the full value of the 503(b)(9) Goods delivered by Bastech to MPC during the 503(b)(9) Period in the amount of \$59,111.80.

WHEREFORE, Bastech, LLC 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: March 13, 2015

BASTECH, LLC

By: William P. Wessler
William P. Wessler

Attorneys for Bastech, LLC

Michael T. Fackler
Milam, Howard, Nicandri,
Dees & Gillam, P.A.
Florida Bar # 612421
E-mail: mfackler@milamhoward.com
14 East Bay Street
Jacksonville, FL 32202
Tel: (904) 357-3660
Fax: (904) 357-3662

William P. Wessler
Attorney at Law
Mississippi Bar # 7110
1624 24th Avenue
P.O. Box 175
Gulfport, MS 39502
228.863.3686 Office
228.863.7877 Fax
228.313.3686 Mobile
wwessler@cableone.net
www.wesslerbankruptcy.com

W. Gerry Wessler
Attorney at Law
Mississippi Bar # 104492
1624 24th Avenue
P.O. Box 175
Gulfport, MS 39502
228.863.3686 Office
228.863.7877 Fax
228.313.3686 Mobile
wgwessler@gmail.com
www.wesslerbankruptcy.com

CERTIFICATE OF SERVICE

I, certify that the foregoing pleading was filed electronically through the Court's ECF system and served electronically on all parties enlisted to receive service electronically, including the following:

1. United States Trustee
Christopher.J.Steiskal@usdoj.us
2. Stephen W. Rosenblatt, Esq.
Steve.Rosenblatt@butlersnow.com
3. Paul Murphy, Esq.
Paul.Murphy@butlersnow.com
4. Robert Alan Byrd, Esq.
rab@byrdwiser.com

SO CERTIFIED, this the 13th day of March, 2015.

/S/ WILLIAM P. WESSLER

WILLIAM P. WESSLER MSB # 7110
W. GERRY WESSLER, MSB # 104492
ATTORNEYS AT LAW
1624 24th AVENUE
GULFPORT, MS 39501
TELEPHONE (228) 863-3686
FACSIMILE (228) 863-7877
wwessler@cableone.net

Invoice



E-MAILED
10/5/14

Date	Invoice #
10/13/2014	22519

Bill To
MISSISSIPPI PHOSPHATES ATTN: ACCOUNTS PAYABLE (00127132) P.O. BOX 848 PASCAGOULA, MS 39568-0848

Ship To
MISSISSIPPI PHOSPHATES 601 INDUSTRIAL ROAD PASCAGOULA, MS 39568

SHIPPED BY: DAVISON

F.O.B. POINT: PLANT, JACKSONVILLE, FL

DATE OF ORDER	CUSTOMER ORDER NUMBER		TERMS	BATCH NUMBER	SHIPPED FROM	DATE SHIPPED
10/10/2014	14000039 REL. # 27		Net 30		VICKSBURG	10/13/2014
QUANTITY	U/M	SIZE	COMMODITY		PRICE	AMOUNT
45,760	lb	T/T	BASCOTE 20		0.73	33,404.80
Thank you for your business.					Total	USD 33,404.80

Composite Exhibit A

All orders are subject to Bastech's standard terms and conditions, a copy of which is printed on the reverse side.

CONFIDENTIAL

STRAIGHT BILL OF LADING - SHORT FORM - ORIGINAL

DAVISON

Shipper's No. 22519
Carrier's No. 5650357

RECEIVED: DAVISON

At 3211 Powers Avenue, Jacksonville, FL 32207
From BASTECH, LLC

DATE: 10/13/2014

Consigned to MISSISSIPPI PHOSPHATES
Destination PASCAGOULA State MS Zip Code 77505 Address 601 INC INDUSTRIAL ROAD
Route
Delivery Carrier 10/13/14 8:00 PICKUP # L155199

No. Packages	Markings	Kind of Package, Description of Articles, Special Marks, and Exceptions	WEIGHT (LBS)	CLASS OR RATE	CHECK COLUMNS
		CONSIGNEE P.O.#14000039 REL# 27			
1	X	BASCOTE 20			
T/T					
		WEIGH IN.....WEIGH OUT.....			
		GROSS WT.....	79800		
		TARE WT.....	33950		
		NET WT.....	45840		
		PUMP AND HOSES REQUIRED FOR DELIVERY			
		**NOTE: LOAD TO LEGAL MAX WGT. CARRIER IS HM-232 COMPLIANT.			

SHIPPER'S AND CARRIER'S USE ONLY: This is a non-negotiable receipt for goods shipped by rail, and it is not valid for other modes of transport.

It is the responsibility of the shipper to provide accurate information regarding the weight and condition of the goods at the time of shipment.

Signed by: *Debra Jones* Traffic Clerk

If the shipment is made by water, the law requires that the bill of lading shall state a weight of "gross or shipper's weight."



Picked up by: *Daughn P. Jones*

WEIGHED ON A FAIRBANKS SCALE

CUSTOMER'S NAME MFC
ADDRESS _____
COMMODITY Pasta D.I.
CARRIER Bastock

INBOUND 79060 LB
LOOP ID 427

INBOUND DATE 10-13-14 TIME 13:42
OUTBOUND DATE 10-13-14 TIME 14:40

79060 LB GROSS
33300 LB TARE
45760 LB NET

LOOP ID 427
DRIVER ON _____ OFF

22 880

SHIPPER _____

WEIGHER Shil, etc.

FAIRBANKS SCALE CAT. 99756

Invoice



E-MAILED
10/21/14

Date	Invoice #
10/19/2014	22501

Bill To
MISSISSIPPI PHOSPHATES ATTN: ACCOUNTS PAYABLE (00127132) P.O. BOX 848 PASCAGOULA, MS 39568-0848

Ship To
MISSISSIPPI PHOSPHATES 601 INDUSTRIAL ROAD PASCAGOULA, MS 39568

SHIPPED BY: OUR TRUCK

F.O.B. POINT: PLANT, JACKSONVILLE, FL

DATE OF ORDER	CUSTOMER ORDER NUMBER		TERMS	BATCH NUMBER	SHIPPED FROM	DATE SHIPPED
9/30/2014	14000049 REL. # 16		Net 30	01950610401	JACKSONVILLE	10/19/2014
QUANTITY	U/M	SIZE	COMMODITY		PRICE	AMOUNT
45.100	lb	T/T	BASTECH 195		0.57	25,707.00
Thank you for your business.					Total	USD 25,707.00

All orders are subject to Bastechn's standard terms and conditions, a copy of which is printed on the reverse side.

CLAIM 3 

STRAIGHT BILL OF LADING -- SHORT FORM -- ORIGINAL

Shipper's No. **22501**
Carrier's No. _____

BASTECH TRUCK # 742 **TANKER # 115**
(Name of Carrier)

RECEIVED, subject to the classification and the tariff in effect on the date of issue of this Original Bill of Lading.

Ship From **3211 Powers Avenue, Jacksonville, FL 32207**
BASTECH, LLC

DATE **OCTOBER 19, 2014**

Consigned to **MISSISSIPPI PHOSPHATES** **PHOS ACID PLANT**
Destination **PASCAGOULA** State **MS** Zip Code **39568** Address **601 INDUSTRIAL ROAD**

Route _____
Delivering Carrier _____

No. Packages	Hazardous Materials	Kind of Package, Description of Articles, Special Marks, and Exceptions	*WEIGHT (SUBJECT TO CARE)	CLASS OR RATE	CHECK COLUMN
		P. O. # 14000049 REL # 16 SEAL # 3828225/3828226			
		DELIVER TO PHOS ACID PLANT			
1		BASTECH 195	46,000 LBS.	55	
T/T		BATCH # 01950610401			
		WEIGH IN...WEIGH OUT....			
		GROSS WT..... LBS.			
		TARE WT..... LBS.			
		NET WT..... LBS.			
		NOT REGULATED			

ORIGINAL

SHIPPER'S CERTIFICATION: This is to certify that the above named materials are properly classified, described, packed, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.

*** For Help in chemical emergency handling call, 24, fire or exposure call 1-800-424-9300 day or night. Emergency Response Phone Number (904) 737-1722 day or night.

SIGNATURE: *[Signature]* TITLE: _____

If the shipment moves henceforth by water, the law requires that the bill of lading shall state whether it is "consignee's receipt."



Picked up by: _____

3635 Powers Avenue Suite # 3 Jacksonville, FL, 32207 (904) 737-1722 Fax (904) 737-1702

03/13/15 16:50:17
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WEIGHED ON A FAIRBANKS SCALE

CUSTOMER'S NAME APC
ADDRESS PA
COMMODITY De laanor
CARRIER Bastech

INBOUND 78100 lb
LOOP ID 558

INBOUND DATE 10-19-14 TIME 16:58
OUTBOUND DATE 10-19-14 TIME 18:02

78100 lb GROSS
33000 lb TARE
45100 lb NET

DRIVER ON LOOP ID 558 OFF

22.550

SHIPPER J. July
WEIGHER J. July

