

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

In re:	:	Case No. 14-51667-KMS
	:	
Mississippi Phosphates Corporation, <i>et al.</i> , ¹	:	Chapter 11
	:	
Debtors.	:	Jointly Administered
	:	
	:	Objection Deadline: March 16, 2015
	:	Hearing Date: March 20, 2015 at 9:30 a.m. CT
	:	Related to Docket No. 501, 502, 504
	:	

**LIMITED OBJECTION OF E. I. DU PONT DE NEMOURS AND COMPANY
TO MOTION OF DEBTORS PURSUANT TO §§ 105 AND 363 OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULE 9019 FOR AN ORDER
APPROVING SETTLEMENT AMONG THE DEBTORS, THE COMMITTEE,
THE LENDER PARTIES, AND PHI**

E. I. du Pont de Nemours and Company (“DuPont”), by and through its undersigned counsel, hereby files this limited objection to the *Motion of the Debtors pursuant to §§ 105 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019 for an Order Approving Settlement Among the Debtors, the Committee, the Lender Parties, and PHI* [Dkt. #501] (the “Motion”), and respectfully represents as follows:

RELEVANT BACKGROUND

A. The Debtors’ Bankruptcy Cases

1. On October 27, 2014 (the “Petition Date”), the Mississippi Phosphates Corporation (“MPC”) and its affiliated debtors (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Mississippi, Southern Division (the “Court”). Pursuant to sections 1107 and

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

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.

2. 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].

B. The DIP Financing

1. On the Petition Date, the Debtors also filed the *Emergency Motion for Interim and Final Order Pursuant to Sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002, 4001 and 9014 (I) Authorizing the Debtors to Incur Post-Petition Senior Secured Superpriority Indebtedness; (II) Authorizing Use of Cash Collateral; (III) Granting Post-Petition Priming and Senior Priority Security Interest and Superpriority Claims; (IV) Granting Adequate Protection; (V) Modifying the Automatic Stay; and (VI) Scheduling a Final Hearing on the Motion* [Dkt. No. 14] (the “DIP Financing Motion”).

2. On October 29, 2014, the Court entered an order granting the DIP Financing Motion on an interim basis (the “Interim DIP Order”) [Dkt. No. 66] and scheduled a final hearing for November 18, 2014 at 9:30 a.m., which hearing was continued to December 3, 2014 at 9:30 a.m. (the “Final Hearing”), and from time to time thereafter. The Interim Order authorized the Debtor to borrow \$5 million (the “Interim Amount”) under the DIP facility and to use cash collateral as set forth in the budget approved by the Lenders.² Pursuant to the Budget filed in the advance of the Final Hearing, the Interim Amount has been repaid in full.

3. Despite authorizing the payment of all other administrative creditors of the Debtors through the closing of a sale of the Debtors’ assets, the Budget makes no allowance

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

whatsoever for the payment of section 503(b)(9) claims or for the winding down of the Debtors' estates post-sale.

C. The Sale Motion

4. On November 12, 2014, the Debtors filed the *Motion of Debtors, pursuant to Bankruptcy Code Sections 105(a), 363, 365, 503, and 507, and Bankruptcy Rules 2002, 3007, 6004, 6006, 9007, and 9014 for Entry of: (I) Order (A) Approving Sales and Bidding Procedures in Connection with Sale of Assets of the Debtors, (B) Approving Form and Manner of Notice, (C) Scheduling Auction and Sale Hearing, (D) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (E) Granting Related Relief; and (II) Order (A) Approving Purchase Agreement, (B) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (C) Granting Related Relief* [Dkt. No. 155] (the "Sale Motion"), which seeks, *inter alia*, authorization to conduct an auction for the sale of substantially all of the Debtors' assets (the "Sale") under the terms of a recently filed form purchase agreement to an unknown Prevailing Purchaser. Upon information and belief, the proposed sale of substantially all of the Debtors' assets will likely result in net proceeds significantly less than the Pre-Petition Lenders' outstanding indebtedness. The Sale Motion also does not provide for any mechanism to pay section 503(b)(9) claims or any other administrative claims of the Debtors post-closing.

5. Moreover, pursuant to section 363(k) of the Bankruptcy Code and the express terms of the Interim DIP Order and the proposed final DIP order; (a) the Pre-Petition Lenders are permitted to credit bid up to the full amount of their claims of \$58,197,393 – representing the full amount of the Pre-Petition Indebtedness (as defined in the Interim DIP Order) – at any sale of assets under sections 363 or 1129 of the Bankruptcy Code; and (b) the

DIP Lenders are permitted to credit bid the full amount of any DIP Obligations (as defined in the Interim DIP Order) outstanding as of any auction sale of assets under sections 363 or 1129 of the Bankruptcy Code.

6. On December 15, 2014, DuPont filed an Objection to the Sale Motion [Dkt. # 320] (the “Sale Objection”), raising concerns that the Debtors’ chapter 11 proceedings were being run, solely to preserve and dispose of the prepetition collateral of the Lenders and at the expense of administrative, priority and unsecured creditors and that unless and until the administrative solvency of these bankruptcy estates were provided for as part of any order approving the Sale Motion, the sale should not be approved.

7. Pursuant to the Court’s order approving the sale and bidding procedures in connection with the sale of the Debtors’ assets, entered on February 20, 2015 [Dkt. 509] (the “Agreed Bid Procedures Order”), all issues raised in DuPont’s Sale Objection were expressly preserved until a hearing on the Sale, including any issues with respect to the rights to the proceeds of any Sale, to be addressed in the proposed Sale Order or such other order of the Court.

D. DuPont’s 503(b)(9) Claim

8. 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.

9. More specifically, in the twenty (20) days preceding the Petition Date (the “503(b)(9) Period”), MPC received from DuPont, in the ordinary course of MPC’s business, sulfuric acid with a total value of \$699,981.12 (the “503(b)(9) Goods”).

10. 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. 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.

11. On February 23, 2015, DuPont filed a proof of claim on account of the unpaid 503(b)(9) Goods, and simultaneously filed a motion [Dkt. # 522] for the allowance and payment of an administrative expense claim 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”).

E. The Settlement Motion

12. On February 18, 2015, the Debtors filed the Motion. The Motion seeks approval of a Settlement Agreement among the Debtors, the Committee, the Lenders and PHI that, among other things, provides for (a) the allowance of the Lender Parties’ claims in full, approved liens and the right to credit bid; (b) the DIP Obligations being secured by valid, properly perfected, enforceable, first-priority pre-petition and post-petition liens on and security interests in substantially all of the assets of the Debtors and the Guarantor, including, without limitation, the BP Claim; (c) after repayment of the DIP Obligations in full, an Estate Settlement Payment by the Lender Parties of thirty-three percent (33%) of any BP Proceeds actually received by the respective Lenders up to an aggregate amount of \$7,375,000 on account of the BP Claim to the Bankruptcy Estates for the benefit of holders of administrative, priority and general unsecured claims; (d) an agreement by the Lender Parties to the retention and the increased funding of professionals for the Committee; (e) the Parties consent to the terms of the proposed Agreed Final DIP Order attached as Exhibit A to the Settlement Agreement, under

which the DIP Lenders have agreed to fund \$6,000,000 of DIP Financing; (f) a waiver of any deficiency claim of the Pre-Petition Lenders; (g) the subordination of PHI's claims against the Bankruptcy Estates to general unsecured creditors; (h) the Parties to consent to a process to market and sell the assets of the Bankruptcy Estates in accordance with the applicable provisions of the Bankruptcy Code and Agreed Bid Procedures Order, and (i) mutual releases.

OBJECTION

13. DuPont takes no position on the appropriateness of the Settlement Agreement or whether the terms of the proposed compromise are fair and equitable. However, the settlement cannot be used as a shield to render DuPont's Sale Objection moot. Sale proceeds must still be retained sufficient to pay all administrative expense claims of these Bankruptcy Estates, not just those of certain professionals, and provide for the anticipated costs associated with an appropriate wind-down and chapter 11 exit strategy.

14. As verified through communications with Debtors' counsel, while the Estate Settlement Payment is expected to benefit holders of administrative, priority and general claims of these Bankruptcy Estates at some point in time, the Estate Settlement Payment is speculative at best, and is by no means "money in the bank." Indeed, although the BP Claim was filed over two years ago, it has not yet been processed for payment and the Debtors expect that it will be disputed by BP.

15. So while the Lender Parties' claims are to be allowed, and their liens and financing approved, there is still not one dime being included in the Budget to provide for the payment of 503(b)(9) claims, including DuPont's 503(b)(9) Claim, notwithstanding that without such 503(b)(9) Goods, the Debtors' would have been unable to continue their operations in the days following the Petition Date, all to the benefit of the Lenders. Section 503(b)(9) of the

Bankruptcy Code was implemented to protect against the risk of non-payment by a troubled debtor, and the Lenders cannot now utilize the chapter 11 process for their sole benefit to the exclusion of others.

16. Absent a requirement that all administrative expense priority claims be paid in full through the sale proceeds, these cases will have been operated for the sole benefit of the Lenders, and squarely on the backs of administrative expense creditors. Such a result would be counter to the spirit of chapter 11 and the Bankruptcy Code, and work an injustice to the section 503(b)(9) creditors of the Debtors, including DuPont, which section 503(b)(9) creditors are afforded the exact same treatment under the Bankruptcy Code as all of the post-petition administrative creditors of the Debtors that are enjoying ongoing payments in these cases.

17. Additionally, if the settlement is approved at this juncture, the Lenders will receive the benefit of a release which could be used to shield them from either (i) carving out sales proceeds sufficient to fund all administrative expenses and a wind down budget, or (ii) in the event the Lenders successfully utilize their credit bid, contributing any additional dollars to the Bankruptcy Estates beyond the speculative Estate Settlement Payment.

18. DuPont submits that the approval of this Motion is therefore premature until the outcome of the sales process is known. Continuance of this motion to the date of the hearing on the sale motion should not harm a debtor that is not operating. In the absence of a windfall from the sale (which seems doubtful), approval of the Motion now will predetermine the outcome of this case to the exclusion on the one class of creditors that made this outcome possible for the lenders: the 503(b)(9) creditors.

19. Accordingly, the Court should not allow the Lenders to game the system at the expense of other creditors and, therefore, should require that administrative solvency be

provided for from the proceeds of the Sale, notwithstanding the prospect of the Estate Settlement Payment.

WHEREFORE, DuPont respectfully requests that the Court deny the relief requested in the Motion to the extent such relief is an attempt to eviscerate DuPont's issues raised in its Sale Objection consistent with the objections raised herein, and grant DuPont such other and further relief as may be just and proper.

Dated: March 16, 2015

/s/ Leslie C. Heilman

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