

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

IN RE:	§	CHAPTER 11
	§	
MISSISSIPPI PHOSPHATES	§	CASE NO. 14-51667-KMS
CORPORATION, et al,	§	
	§	Jointly Administered
	§	
Debtors.	§	

**LIMITED OBJECTION OF BROCK SERVICES, LLC TO
THE MOTION OF DEBTORS TO DETERMINE CURE AMOUNTS FOR
EXECUTORY CONTRACTS AND UNEXPIRED LEASES THAT MAY BE
ASSUMED AND ASSIGNED AS PART OF THE SALES MOTION
[RELATES TO D.I. 512]**

BROCK SERVICES LLC (“Brock”) files this *Limited Objection* (the “Objection”) to the *Motion of Debtors to Determine Cure Amounts for Executory Contracts and Unexpired Leases That May Be Assumed and Assigned as Part of the Sales Motion* [D.I. 512] (“Cure Motion”) and would show the Court the following:

I. BACKGROUND FACTS

1. On October 27, 2014 (the “Petition Date”), Mississippi Phosphates Corporation (“MPC”), Ammonia Tank Subsidiary, Inc. (“ATS”), and Sulfuric Acid Tanks Subsidiary, Inc. (“SATS”, and together with MPC and ATS, the “Debtors”) commenced the above-styled, jointly administered Bankruptcy Cases in this Court under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors remain debtors-in-possession.

2. Brock, a Houston-based, industrial-services firm, serves a wide variety of industrial customers, including in the construction, chemical, and oil-and-gas industries. On or about June 8, 2010, Brock entered into the MISSISSIPPI PHOSPHATES CORPORATION MASTER SERVICES

AGREEMENT, dated June 8, 2010 (the “Master Agreement”) with MPC. Under the Master Agreement, Brock would provide MPC with scaffolding-construction and demolition services at MPC’s plant located at 601 Industrial Road, Pascagoula, Mississippi 39568 (the “MPC Plant”). From time to time, Brock and its personnel would build scaffolds at the MPC Plant to enable MPC’s employees to, *inter alia*, access various parts of the plant’s buildings and other structures. Once MPC no longer needed certain scaffolds, Brock’s employees would break them down and return the individual scaffolding components to Brock’s inventory. At all times, the scaffolding components themselves remained Brock’s property. Brock would invoice MPC for the labor that Brock’s employees expended building and breaking down the scaffolds. The Master Agreement constitutes an executory contract under Bankruptcy Code § 365.

3. Brock performed these scaffolding-construction and demolition services at the MPC Plant from mid-2010 through the end of October 2014. Under § 85-7-403(1)(a) of the Mississippi Code, Brock holds a special lien (the “Lien”) against the MPC Plant (including both the underlying real estate and any buildings or improvements on it) (collectively, the “Collateral”) to secure payment of all amounts due to Brock (including allowable, unpaid pre-petition interest) as of the Petition Date. *See* MISS. CODE ANN. § 85-7-403(1)(a) (2014). On October 31, 2014, Brock filed its *Notice of Claim of Special Lien* with the Chancery Clerk of Jackson County, Mississippi under Records No. 201416321 asserting its special Lien as required by Mississippi law. On January 7, 2015, Brock filed its *Notice of Perfection, Continuation and Enforcement of Lien of Brock Services, LLC Under 11 U.S.C. § 546(b)* [D.I. 366] (the “Lien Notice”) in these Bankruptcy Cases evidencing the continuation and perfection of its Lien.

4. On February 24, 2015, Brock filed *Proof of Claim No. 175-1* (the “Proof of Claim”) in the Bankruptcy Cases. The Proof of Claim asserted a prepetition claim in the amount of

\$275,592.32 against MPC for various unpaid services rendered, damages incurred, and other amounts owed to Brock in connection with the Master Agreement. On March 10, 2015, Brock amended the Proof of Claim by filing *Amended Proof of Claim No. 175-2* (the “Amended Proof of Claim”) in the amount of \$298,874.20.¹ The Amended Proof of Claim constitutes the total pre-petition amount due to Brock by the Debtors in connection with the Master Agreement and the services provided by Brock at the MPC Plant. In addition, MPC also owes \$3089.73 to Brock for two currently unpaid post-petition invoices, which are set forth in the attached list (the “Post-Petition List”).² The total cure amount due is therefore **\$301,963.93** (the “Brock Cure Amount”).

5. The Debtors filed the Motion on February 20, 2015. The Motion seeks to determine the cure amounts owed under the Debtors’ various executory contracts as part of the Debtors’ pending sales process, which was approved by this Court on February 20, 2015 in its *Order Granting Motion of the 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* [D.I. 509] (the “Sales Order”). The Motion lists the cure amount under the Master Agreement as \$269,470.69 (the “Debtors’ Cure Amount”). March 16, 2015 is the deadline to object to the cure amounts set forth in the Motion.

6. Although Brock does not object in principle to the Debtors’ assuming and assigning

¹ A copy of the Amended Proof of Claim is attached as Exhibit “1”.

² A chart listing the two post-petition invoices is attached as Exhibit “2”.

the Master Agreement, Brock does note that the Debtors' Cure Amount is somewhat lower than the amount Brock believes it is owed based on its own books and records. Brock therefore objects to the Motion and to the Master Agreement's proposed assumption on this limited basis.

II. OBJECTION TO CURE NOTICE AND PROPOSED CURE AMOUNT

7. Bankruptcy Code § 365 provides that a trustee or a debtor in possession may, subject to the Court's approval, assume or reject any executory contract or unexpired lease. 11 U.S.C. § 365(a). To assume an executory contract under § 365, the trustee or debtor in possession must, at the time of assumption, 1) "cure[] or provide[] adequate assurance that the trustee will promptly cure" any default under the contract, 2) compensate the counterparty (or provide adequate assurance of prompt compensation) for any "actual pecuniary loss" resulting from the debtor's default, and 3) provide "adequate assurance of future performance" under the contract. 11 U.S.C. § 365(b)(1); *see also Century Indem. Co. v. National Gypsum Co. Settlement Trust (In re National Gypsum Co.)*, 208 F.3d 498, 506 (5th Cir. 2000); *In re Texas Health Enters., Inc.*, 246 B.R. 832, 835 (Bankr. E.D. Tex. 2000). In other words, a debtor must make the other party to the executory contract whole by curing any and all defaults in past performance and by providing assurance that it can continue to perform following assumption. *Lifemark Hosp., Inc. v. Liljeberg Enters., Inc. (In re Liljeberg Enters., Inc.)*, 304 F.3d 410, 438-39 (5th Cir. 2002).

8. In this case, the Debtors' Cure Amount is \$269,470.69. However, according to Brock's books and records, Brock is actually owed \$301,963.93. Brock's Amended Proof of Claim lists all the pre-petition invoices and interest due that support this higher amount, and the Post-Petition List identifies the two (2) post-petition invoices still due. This higher total figure represents the amount that any proposed assignee of the Master Agreement would have to pay Brock were the Debtors to assume and assign the Master Agreement in connection with the

pending sales process approved under the Sales Order. Brock requests that the Debtors correct their records in this regard.

9. In conclusion, Brock does not oppose in principle the assumption and assignment of the Master Agreement. Brock objects to the proposed assumption only in so far as it seeks to assume and assign the Master Agreement for less than the Brock Cure Amount.

III. RESERVATION OF RIGHTS

10. Brock reserves the right to further amend, modify, or supplement this Objection at any time, including, without limitation, for lack of adequate assurance of future performance under Bankruptcy Code § 365. Brock reserves all its rights in connection with this Objection, the Master Agreement, the Motion, the Sales Order, and the Debtors' sales process in general.

WHEREFORE BROCK SERVICES LLC requests the following: 1) that this Objection be considered, 2) that the proposed assumption of the Master Agreement be denied unless the Debtors correct the proposed cure amount set forth in the Motion, and 3) that Brock be granted all other relief to which they may be entitled under law or at equity.

Date: March 16, 2015

Respectfully Submitted,

LOCKE LORD LLP

By: /s/ C. Davin Boldissar

C. Davin Boldissar (La. #29094)

(admitted pro hac vice)

601 Poydras Street, Suite 2660

New Orleans, Louisiana 70130-6036

Telephone: (504) 558-5100

Fax: (504) 558-5200

COUNSEL FOR BROCK SERVICES, LLC