

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

<p><b>IN RE:</b></p> <p><b>MISSISSIPPI PHOSPHATES CORPORATION, et al.<sup>1</sup></b></p> <p><b>DEBTORS.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Bankruptcy Case No.: 14-51667-KMS</b></p> <p><b>Jointly Administered</b></p>
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**LIMITED OBJECTION TO DISCLOSURE STATEMENT AND PLAN**

COME NOW, National Union Fire Insurance Co. of Pittsburgh, Pa., American Home Assurance Company, The Insurance Company of the State of Pennsylvania, Commerce and Industry Insurance Company, AIG Property Casualty Company, Illinois National Insurance Co., Granite State Insurance Company, AIU Insurance Company, AIG Assurance Company, New Hampshire Insurance Company, Lexington Insurance Company and their affiliates (collectively, the “**AIG Insurers**”), creditors and parties-in-interest, by and through undersigned counsel, and hereby file this limited objection (this “**Limited Objection**”) to the *Disclosure Statement to Accompany the Joint Chapter 11 Plan of the Debtors and the Official Committee of Unsecured Creditors* [Doc. No. 1130] (the “**Disclosure Statement**”) and accompanying *Joint Chapter 11 Plan of Debtors and the Official Committee of Unsecured Creditors* (the “**Proposed Plan**”), pursuant to 11 U.S.C. § 1125 and Rule 3017 of the Federal Rules of Bankruptcy Procedure. As grounds for their Objection, the AIG Insurers state the following:

<sup>1</sup> The chapter 11 cases of the following affiliated debtors (the “**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 [Doc. No. 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.

## **PROCEDURAL BACKGROUND**

### ***Bankruptcy Filings/Assumption of AIG Insurance Policies***

1. On October 27, 2014 (the “**Petition Date**”), the Debtors filed their respective voluntary petitions for bankruptcy relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Mississippi (the “**Court**”).

2. On the same day, the Debtors filed their *Motion of the Debtors for Authority to Pay Post-Petition Installments on Insurance Policies Necessary to Maintain Insurance Coverage* [Doc. No. 18] (the “**Motion to Pay**”), whereby the Debtors requested authority to make certain post-petition insurance premium payments in order to prevent certain insurance policies, including but not limited to insurance policies issued by certain AIG Insurers from lapsing due to payment default. On November 24, 2014, the Court entered that certain *Final Order Approving Motion of the Debtors for Authority to Pay Post-Petition Installments on Insurance Policies Necessary to Maintain Coverage* [Doc. No. 259] (the “**Insurance Order**”), granting the relief requested by the Debtors in the Motion to Pay. Subsequently, on December 21, 2014, the Debtors filed that certain *Motion of the Debtors Pursuant to Sections 105(a), 363(b), and 365(a) of the Bankruptcy Code to Authorize and Approve (I) the Debtors’ Assumption of Existing Insurance Program, and (II) the Debtors’ Entry Into an Insurance Program With National Union Fire Insurance Company of Pittsburgh, Pennsylvania* [Doc. No. 327] (the “**Motion to Assume**”).

3. By filing the Motion to Assume, the Debtors sought to assume the insurance program and insurance policies issued by certain AIG Insurers, including but not limited to “property, automobile, commercial general liability, umbrella, director and officer, and workers compensation” insurance policies,” (collectively, the “**Assumed Program and Policies**”). The Debtor’s payment obligations under the Assumed Program and Policies were (and remain) secured by certain collateral pledged by the Debtors. The Debtors also sought authorization to enter into a “renewal insurance program,” whereby the Debtors would be authorized to renew all

insurance policies “essential to the preservation of the value of the bankruptcy estates, business, and properties,” effectively continuing the Assumed Program and Policies postpetition. *See* Motion to Assume, ¶¶ 8-10.

4. On January 23, 2015, the Bankruptcy Court entered that certain *Order Approving Motion of the Debtors Pursuant to Sections 105(a), 363(b) and 365(a) of the Bankruptcy Code to Authorize and Approve (I) the Debtors’ Assumption of Existing Insurance Program, and (II) the Debtors’ Entry Into an Insurance Program With National Union Fire Insurance Company of Pittsburgh, Pennsylvania* [Doc. No. 417] (the “**Assumption Order**”), granting the relief requested by the Debtors in the Motion to Assume.

5. As set forth in the Assumption Order, the Debtor’s payment obligations under the Policies are “administrative obligations entitled to priority under Section 503(b) of the Bankruptcy Code....[therefore,] no additional proof of claim or request for payment of administrative expenses need be filed by [the AIG Insurers].” *See* Assumption Order, ¶8. The Assumption Order further provides, among other things, that the AIG Insurers:

- May exercise all contractual rights in accordance with the terms of the Insurance Program without further order of this Court, including, without limitation, its rights to (i) cancel the Insurance Program, (ii) foreclose on any collateral, in part or in full, in which it has a security interest and which may be subject to the automatic stay, and (iii) receive and apply the unearned or returned premiums to the Debtors’ outstanding obligations to the [AIG Insurers]. The automatic stay shall be deemed lifted without further order of this Court.
- The reimbursement obligations and any other obligations under the Insurance Program (regardless of whether all or any party of such obligations are liquidated before or after confirmation of a plan of conversion . . . to chapter 7[]) shall be administrative obligations entitled to priority under Section 503(b) of the Bankruptcy Code. Because the Debtors are authorized and directed to meet their obligations under the Insurance Program without further order of the Court, no additional proof of claim or request for payment of administrative expenses need be filed by the Insurer.
- are exempt from any bar date that may be issued for the filing of any proof of claim relating to administrative expenses, and that [a]ll collateral or security held...by [the AIG Insurers] and all prior payments to [the AIG Insurers] under

the [Policies] are approved and unavoidable transfers under the Bankruptcy Code and applicable state law; and

- is authorized to retain and use such collateral or security, any additional or replacement collateral or security, and any prior or future payment that may be provided to [the AIG Insurers] in accordance with the [Policies'] terms.

See Assumption Order, ¶¶ 7-11.

6. Additionally, the Assumption Order expressly provides that the AIG Insurers' rights under the insurance program and policies shall in no way be abridged by any Chapter 11 Plan proposed by the Debtors. Specifically, the Assumption Order states as follows:

The Insurance Program may not be altered by any plan of reorganization filed or confirmation order entered in these Bankruptcy Cases and shall survive any plan of reorganization filed by the Debtors.

Nothing in any plan of reorganization confirmed in these Bankruptcy Cases shall impair the interests of the [AIG Insurers] in the collateral that [they] hold[] or in the collateral that [the AIG Insurers are] receiving in accordance with this Order.

See Assumption Order, ¶¶ 13-14.

### ***The Settlement Agreement and Sale Motion***

7. On June 22, 2015, the Debtors, the United States of America, on behalf of the Environmental Protection Agency, the Mississippi Department of Environmental Equity, and STUW LLC, as administrative agent for certain of the Debtors' pre-petition lenders, among others, filed that certain *Motion of the Debtors Pursuant to §§ 105 and 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019 for an Order Approving Settlement Among the Debtors, Phosphate Holdings, Inc., the Lender Parties and the Environmental Agencies* [Doc. No. 818] (the "**Settlement Motion**"), requesting entry of an Order approving that certain *Stipulation and Settlement Agreement* attached thereto as Exhibit A (the "**Settlement Agreement**").

8. The Settlement Agreement provides in pertinent part that the Debtors would market the sale of their real and tangible personal property in accordance with the terms of the

Bid Procedures Order (as defined in the Settlement Agreement). In the event the Debtors were unable to procure a Debtor All-Asset Sale (as defined in the Settlement Agreement), substantially all of the Debtors' assets would be transferred to the Liquidation Trust (as defined in the Settlement Agreement) and the Environmental Trust (as defined in the Settlement Agreement) through an Alternative Transaction (as defined in the Settlement Agreement). Pursuant to the Alternative Transaction, the Debtors would transfer to the *Liquidating Trust*,

*inter alia*:

all rights to insurance policies [the "**Liquidation Trust Policies**"], coverage, refunds and rights under such policies held by the Debtors prior to the Closing Date, except for the insurance policies covering officers and directors...and rights to recover under insurance policies for environmental liabilities and/or any related proceeds from such insurance.

See Settlement Agreement, ¶4. The Debtors would also transfer to the *Environmental Trust*,

*inter alia*:

the Debtors' (including predecessors) right to recover under insurance policies for environmental liabilities [the "**Environmental Trust Policies**"] and/or any proceeds from such insurance to the fullest extent permitted by law[.]

See Settlement Agreement, ¶6. The remaining policies (the "**D&O Policies**")<sup>2</sup> would remain property of the Debtors' bankruptcy estate.

9. The Settlement Motion and Settlement Agreement were subsequently approved by Orders of the Court [Doc. Nos. 937, 950], dated July 23, 2015, and July 30, 2015, respectively.

10. Having failed to timely consummate a Debtor All-Asset Sale, on August 18, 2015, the Debtors filed that certain *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*,

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<sup>2</sup> The Proposed Plan defines D&O Insurance Policies as "any insurance policies providing any director and officer coverage commonly referred to as 'D&O' or 'Executive Liability and Entity Securities Liability' under any insurance and excess insurance policies." See Proposed Plan, p. 9, ¶1.1.41.

for Entry of an Order (A) Approving the Liquidation Trust Asset Purchase Agreement, (B) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (C) Granting Related Relief [Doc. No. 979] (the “**Sale Motion**”), requesting that the Court enter an Order approving the Alternative Transaction contemplated by the Settlement Agreement, whereby substantially all of the Debtors’ assets would be sold and transferred to the Liquidation Trust and the Environmental Trust pursuant to the terms and provisions of the Settlement Agreement.

11. On October 14, 2015, the Court entered an Order [Doc. No. 1050] (the “**Sale Order**”) approving the Sale Motion and granting the relief requested therein.<sup>3</sup> On November 3, 2015, the Debtors filed their *Notice of Closing of Sale of Assets to Environmental Trustee and Liquidation Trustee under Alternative Transaction* [Doc. No. 1070], notifying the Court of the closing (the “**Closing**”) of the Alternative Transaction.

12. As a result of the Closing, substantially all of the Debtors’ assets were transferred to the Liquidation Trust (including, but not limited to, the Liquidation Trust Policies) and the Environmental Trust (including, but not limited to, the Environmental Trust Policies) pursuant to the terms and provisions of the Settlement Agreement. The insurance policies transferred to the Liquidation Trust are itemized on Schedule 2.1(f) of the Liquidation Trust Asset Purchase Agreement attached as Exhibit A to the Sale Order. The AIG Insurers are unaware of similar schedules which identify the insurance policies transferred to the Environmental Trust or the D&O Policies retained by the Debtor.

13. Despite the Sale Order’s authorization to transfer all relevant insurance policies to the Liquidation Trust and the Environmental Trust, the Sale Order includes the following

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<sup>3</sup> The Sale Order specifically provides that among the assets transferred to the Liquidation Trust were the Debtors’ “rights to a return of cash collateral (presently in the approximate amount of \$1,900,000.00) held by the National Union Fire Insurance Company of Pittsburgh, P.A., which is payable two (2) years after Worker’s Compensation coverage under Policy No. WC 025-05-2330 issued by New Hampshire Insurance is terminated.” See Sale Order, ¶ 21.

reservation of rights relating to insurance policies issued by the AIG Insurers (the “**Reservation of Rights**”):

Notwithstanding anything to the contrary in the Sale Motion, this Order or the APA (except with respect to any Environmental Policies for which both the Liquidation Trust and the Environmental Trust may be added as “Named Insureds”), the Liquidation Trust shall not be designated as a “Named Insured” under any of the AIG Insurance Policies or any program of insurance (collectively, the “***AIG Policies***”) that are sold, transferred, conveyed or assigned to the Liquidation Trust pursuant to this Order, and the Liquidation Trust shall not have, obtain, or acquire any rights, claims and/or benefits as a “Named Insured” by virtue of the APA or this Order. Further, nothing in the Sale Motion, this Order, the APA, or the sale, transfer, conveyance, or assignment of the AIG Policies shall be construed as a waiver or release of the rights and defenses of the respective insurers or any present “Named Insured” under any of the AIG Policies, including, but not limited to, the insurers’ right to compel arbitration and the Named Insureds’ right to oppose arbitration, as well as the insurers’ right to exercise any rights or privileges granted to them under this Court’s order dated January 23, 2015, and the parties expressly reserve all rights and defenses with respect to all such matters.

See Sale Order, ¶10.

***The Disclosure Statement and Accompanying Proposed Plan***

14. On April 29, 2016, the Debtors filed the Disclosure Statement and accompanying Proposed Plan. As set forth in the Disclosure Statement and Proposed Plan, all of the Debtors’ assets that were not previously transferred (including, but not limited to, D&O Policies, the “**Remaining Assets**”) to either the Liquidation Trust or the Environmental Trust as part of the Alternative Transaction will vest in the MPC Plan Trust (which is separate and distinct from the Liquidation Trust and the Environmental Trust) on the Effective Date of the Plan. According to the Disclosure Statement and Proposed Plan, the MPC Plan Trustee, with the aid of the MPC Oversight Committee, will exercise control over the Remaining Assets and the proceeds derived therefrom. To the extent the Debtors’ assets were transferred to either the Liquidation Trust or

the Environmental Trust, the Disclosure Statement and accompanying Proposed Plan indicate that these assets will be liquidated pursuant to the terms and provisions of the trust agreements creating the Liquidating Trust and the Environmental Trust

15. In addition to the foregoing, the following provisions of the Disclosure Statement and Proposed Plan are of particular relevance to the AIG Insurers:

- Disclosure Statement, p. 49, ¶M – “The Debtors specifically and unequivocally reserve, for the Governments all rights to insurance coverage for environmental liabilities for amounts spent by the Governments, the Environmental Trust, the Debtors, and the Debtors’ predecessors, all of which are preserved to the fullest extent permitted by law, and [were previously] assigned to the Environmental Trust[.]”
- Disclosure Statement, pp. 50-51 – “The Debtors specifically and unequivocally reserve, for themselves or for the MPC Plan Trustee (as successor in interest to the Debtors), the right to assert, after the confirmation of the Plan herein, any and all Claims, rights, and Causes of Action, and all proceeds of the foregoing, including, but not limited to, those listed below, which is a non-exclusive list of Potential Parties against whom the MPC Plan Trustee may assert Claims and Causes of Action....The MPC Plan Trustee shall retain all Claims and Causes of Action of any kind whatsoever against all such persons or entities, including without limitation the following categories of Claims and Causes of Action:

...

(iv) Claims and causes of action against insurance carriers or reinsurance carriers relating to coverage, indemnity, contribution, reimbursement or other matters (for the rights under those policies not covered to the MPC Environmental Trust or the MPC Liquidation Trust[.]

...

The Committee has required the Debtors to expressly reserve and preserve for the benefit of the MPC Plan Trust and to disclose to all parties in interest the following Causes of Action for prosecution by the MPC Plan Trustee (as successor in interest to the Debtors), including, but not limited to, the following:

...



ii. Potential D&O Claims,<sup>4</sup> including Claims covered by D&O Policies, more particularly described as follows:

Claims against any current or former director, officer or employee of any of the Debtors (including, but not limited to, Stephen Russo, Robert Kerley, Ajay Kumar, J. Kim Colvin, James L. Sherbert, Jr., Timothy R. Cantrell, C.E. McGraw, David Phelps, James G. Perkins, Jesse R. Alford, Richard L. Johnson and Robert Jones) for any tort including, but not limited to, claims for fraud, negligence breach of fiduciary duty and/or breach of the duty of loyalty including, and further not limited to, (1) claims related to the failure to file timely insurance claims and/or (2) claims that related to or resulted in the deepening insolvency of the Debtors.

### **LIMITED OBJECTION**

16. The Debtors' Disclosure Statement must disclose adequate information on which creditors may make informed decisions. Short of the disclosure of accurate and adequate information, the Disclosure Statement cannot be approved by this Court.

17. Section 1125(b) of the Bankruptcy Code provides that:

An acceptance or rejection of a plan may not be solicited after the commencement of a case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information. The court may approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor's assets.

11 U.S.C. § 1125(b). "Adequate information" is defined in 11 U.S.C. 1125(a)(1) to mean:

. . . information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor of holders of claims or interests of the relevant class to make an informed judgment about the plan, but adequate information need not

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<sup>4</sup> The Proposed Plan defines "D&O Claims" as follows: Claims and Causes of Action of every kind, nature, character, or description whatsoever...known or unknown, anticipated or unanticipated, suspected or unsuspected, fixed, contingent, or conditional, at law or in equity, by reason of any matter, event, act, omission, cause, or thing, against any current or former director, officer or employee of the Debtors, or any insurer of the Debtors and/or any insurer of their officers, directors or employees." See Proposed Plan, p. 9, ¶1.1.40.

include such information about any other possible or proposed plan.

11 U.S.C. § 1125(a)(1); *see also Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) (“From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case.”); *First Am. Bank of New York v. Century Glove, Inc.*, 81 B.R. 274, 279 (D. Del. 1988) (noting that adequacy of disclosure for a particular debtor will be determined based on how much information is available from outside sources); S. Rep. No. 95-989, at 121 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5907 (“[T]he information required will necessarily be governed by the circumstances of the case.”).

18. The Disclosure Statement and Proposed Plan provide that the D&O Policies and all D&O Claims will remain a part of the Debtors’ bankruptcy estates until the Effective Date of the Proposed Plan, at which time the D&O Policies and D&O Claims will vest in the MPC Plan Trust controlled by the MPC Plan Trustee. Upon information and belief, no D&O Policies are policies covered under the AIG Insurers’ program and policies. However, given the uncertainty regarding the identity of the D&O Policies being transferred to the MPC Plan Trust, the AIG Insurers object to the Disclosure Statement and Proposed Plan to the extent that the MPC Plan Trustee seeks to assert claims or rights under excess or umbrella policies previously assigned in full to the Liquidation Trust.

19. The AIG Insurers do not object to the Disclosure Statement and Proposed Plan to the extent that the proposed vesting of policies and claims, including the D&O Policies and D&O Claims, in the MPC Plan Trust does not result in the transfer to the MPC Plan Trust of any of the AIG Insurers’ insurance program and policies, or potential claims thereunder, that were previously transferred to either the Liquidation Trust or the Environmental Trust.

20. The Sale Order is clear that all rights with respect to the Liquidation Trust Policies (including Debtor’s right to a return of cash collateral as identified *supra*, n. 3) and the

Environmental Trust Policies were transferred to the Liquidation Trust and the Environmental Trust, respectively. Accordingly, the Debtors no longer have any interest in these insurance policies and the insurance program, meaning that the AIG Insurers should be able to deal exclusively with the Liquidation Trustee or the Environmental Trustee, where applicable, when administering claims under these various policies and the insurance program. However, due to the expansive and unclear definitions of the policies, claims and rights being reserved in the Disclosure Statement and Proposed Plan, as highlighted above, as well as the general confusion after the Closing regarding which party – the Debtor, the Liquidating Trustee or the Environmental Trustee – is the appropriate party to exercise the rights under the AIG Insurers’ program and policies, the AIG Insurers are currently unable to confirm whether or not the Debtors are attempting to transfer to the MPC Plan Trust insurance policies (including insurance policies issued by the AIG Insurers), as well as all rights and claims thereunder, that were previously transferred to the Liquidation Trust, subject to the Reservation of Rights, or the Environmental Trust as part of the Alternative Transaction. In short, there has been a lack of clarity regarding whom the AIG Insurers are to deal with after the Closing, resulting in additional expense and uncertainty for AIG, and the introduction of the MPC Plan Trust as a new trust potentially asserting rights under the AIG Insurers’ program and policies, without further clarification, only adds an additional layer of confusion for the AIG Insurers, who have attempted to work with the Debtor throughout its restructuring process.

21. To the extent the Debtors are attempting to transfer to the MPC Plan Trust rights and claims under the insurance program and policies issued by the AIG Insurers that were previously transferred to the Liquidation Trust, subject to the Reservation of Rights, or the Environmental Trust as part of the Alternative Transaction, or further, attempting to impair the rights of the AIG Insurers under the Insurance Order, the Assumption Order or the Sale Order, including without limitation provisions regarding relief from stay and administrative expense claims, granted to the AIG Insurers under the Assumption Order, the AIG Insurers hereby object to the Disclosure Statement and Proposed Plan.

22. Furthermore, the AIG Insurers specifically object to the Disclosure Statement and accompanying Proposed Plan to the extent they in any way attempt to abridge the AIG Insurers' rights under the insurance program and insurance policies identified in the Assumption Order, which expressly provides that no plan of reorganization, nor any order confirming any plan of reorganization, shall in any way alter the AIG Insurers' rights under said insurance program and insurance policies or impair the AIG Insurers' interest in the collateral securing the Debtors' obligations of payment and performance thereunder.

23. Lastly, to the extent inconsistent with one another, the Disclosure Statement and Plan should be revised so as to be consistent with one another.

**WHEREFORE**, the AIG Insurers respectfully requests that this Court deny approval of the Debtor's Disclosure Statement, and for such other and further relief as this Court deems proper.

This the 6th day of June, 2016.

/s/ Thomas J. Butler  
Thomas J. Butler  
J. Leland Murphree

Attorneys for the AIG Insurers

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Request was filed electronically through the Court's ECF system and served electronically on all parties enlisted to receive service electronically, including, but not limited to, the following parties on the 6<sup>th</sup> day of June, 2016:

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Official Committee of Unsecured Creditors  
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/s/ Thomas J. Butler  
Of Counsel