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

In re:	)	
	)	
MISSISSIPPI PHOSPHATES	)	
CORPORATION, *et al.*[1]	)	**CASE NO. 14-51667-KMS**
	)	**Chapter 11**
	)	
Debtors	)	**Jointly Administered**
	)	

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' ENTRYINTO AN INSURANCE PROGRAM WITH NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA

Mississippi Phosphates Corporation, *et al.*, the Debtors and debtors-in-possession herein (the "***Debtors***"), by and through their attorneys, respectfully file this *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* (the "***Motion***"). In support thereof, the Debtors state as follows:

Introduction

1. On October 27, 2014 (the "***Petition Date***"), the Debtors filed their voluntary petitions for relief and thereby commenced these bankruptcy cases under chapter 11, title 11 of the United States Code (the "***Bankruptcy Code***"), in the United States Bankruptcy Court for the Southern District of Mississippi, Southern Division (the "***Court***"). Pursuant to Sections 1107(a)

[1] The chapter 11 cases of the following affiliated 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 [Dkt. # 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. These chapter 11 cases are sometimes referred to herein as the "***Bankruptcy Cases***."

and 1108 of the Bankruptcy Code, the Debtors are operating their business and managing the properties as debtors-in-possession. No trustee or examiner has been appointed in any of these Bankruptcy Cases.

2. An Official Committee of Unsecured Creditors (the "***Committee***") was appointed by the United States Trustee in these Bankruptcy Cases on November 12, 2014 [Dkt. # 161], and the Committee has retained Burr & Forman LLP as its counsel.

3. MPC is a Delaware corporation with its principal place of business located at 601 Industrial Road, Pascagoula, Mississippi. MPC is a major United States producer and marketer of one of the most common types of phosphate fertilizer, diammonium phosphate ("***DAP***"). MPC's production facilities are located on a deep-water channel in Pascagoula, Mississippi. As of the Petition Date, MPC employed 224 employees and 26 "nested" third-party contract employees.

4. Additional information about the Debtors' businesses and the events leading up to the Petition Date can be found in that certain *Declaration of David N. Phelps in Support of the Debtor's Chapter 11 Petitions and First Day Motions* (the "***Phelps Declaration***") [Dkt. # 13], which is incorporated herein by reference.

5. On November 24, 2014, this Court entered that certain *Final Order Approving Motion of the Debtors for Authority to Pay Post-Petition Installments on Insurance Policies Necessary to Maintain Insurance Coverage* (the "***Insurance Order***") [Dkt. # 259].

Jurisdiction

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O). Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

Relief Requested

7. Even though the Insurance Order was granted by this Court, the Debtors request, out of an abundance of caution, that the following relief also be approved by this Court.

8. The Debtors maintain various types of insurance in the ordinary course of their businesses. The types of insurance policies held by the Debtors (each, a "***Policy***" and collectively, the "***Policies***"), include, but are not limited to, coverage for property, automobile, commercial general liability, umbrella, director and officer, and workers compensation. The Debtors need all of these essential Policies to preserve the bankruptcy estates, their businesses, and properties. By this Motion, the Debtors seek the authority to assume certain existing insurance agreements (the "***Existing Insurance Program***") with National Union Fire Insurance Company of Pittsburgh, Pennsylvania, and certain of its affiliates (collectively, the "***Insurer***") pursuant to Section 365 of the Bankruptcy Code.

9. The Debtors request the Court's permission to honor their obligations under the Policies with the Insurer, including the authority to pay, as the Debtors deem necessary, any and all insurance premiums, payments with respect to premiums that are or will become due under the Policies with the Insurer. Further, as normal procedure for some Policies, the Insurer may conduct an audit of the Policy to determine actual premiums due under the Policy. The Debtors request the authority to continue to pay the additional premiums that may become due under the Policies as a result of future audits. The Debtors seek this authority in order to prevent cancellation, default, lapse, assignment, or any form of impairment of the coverage presently provided under the Policies and to ensure uninterrupted insurance coverage of their businesses, assets, and employees.

10. Further, the Debtors seek authorization to enter into a renewal insurance program with the Insurer (the "***Renewal Insurance Program***" together with the Existing Insurance

Program, the "***Insurance Program***"). This Insurance Program is essential to the preservation of the value of the bankruptcy estates, businesses, and properties.

11. The Debtors seek authorization to agree and to execute all documentation necessary to assume the Existing Insurance Program and to enter into the Renewal Insurance Program under the terms and conditions required by the Insurer, as more particularly set forth herein.

12. The Debtors seek authorization to enter into further renewals of the Insurance Program without further order of the Court.

13. The Debtors seek authorization to cure all defaults upon entry of the proposed order and authorization to pay their obligations under the Insurance Program, including, without limitation, premium and losses, in the ordinary course of business, in accordance with the relevant terms of the Insurance Program, without further order of the Court.

14. In the event of a default by the Debtors under the Insurance Program, the Debtors request authorization for the Insurer to exercise all contractual rights in accordance with the terms of the Insurance Program without further order of this Court, including, without limitation, the Insurer's 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 Insurer.

15. The Debtors seek authorization for reimbursement obligations and any other obligations under the Insurance Program (regardless of whether all or any part of such obligations are liquidated before or after confirmation of a plan or conversion of one or more of the Bankruptcy Cases to chapter 7) shall be administrative obligations entitled to priority under

Section 503(b) of the Bankruptcy Code. The Insurer shall be exempt from any bar date that may be issued for the filing of any proof of claim relating to administrative expenses and any bar date or response date relating to cure amounts under a plan or otherwise.

16. The Debtors seek authorization so that all collateral or security held at this time by the Insurer and all prior payments to the Insurer under the Insurance Program are approved and are unavoidable transfers under the Bankruptcy Code and applicable state law. The Debtors further request that the Insurer be 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 Insurer in accordance with the Insurance Program's terms. Additionally, the Insurer shall not be obligated to evaluate, adjust, or return collateral until two years after the actual expiration of the Insurance Program. Further, the Debtors and their successors in interest, shall not make such a request in the Bankruptcy Court or otherwise.

17. The Debtors seek approval that the Insurer be authorized to adjust, settle and pay insured claims, utilize funds provided for that purpose, and otherwise carry out the terms and conditions of the Insurance Program, without further order of the Court; provided, however, nothing herein shall be deemed to grant relief from the stay to a non-workers compensation claimant to pursue any claim in a non-bankruptcy court.

18. The Debtors seek approval that 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 Insurer in the collateral that it holds or in the collateral that it is receiving in accordance with this Order. Any entity assuming the administrative obligations of the Debtors, generally, shall assume all obligations of

the Debtors under the Insurance Program and this Order, unless adequate protection is otherwise provided to the Insurer with the consent of the Insurer.

19. The Debtors seek approval that the Debtors' rights against all collateral held by the Insurer, in whatever form, be governed by the terms of the Insurance Program and the related security documentation, and the Debtors shall not take any action against the Insurer in the Bankruptcy Court that is inconsistent with the terms of such documentation, including, without limitation, actions for turnover or estimation. In addition, any plan shall provide adequate protection for the obligations arising under the Insurance Program. Estimation of the Insurer's claim under Section 502(c) of the Bankruptcy Code shall not be authorized as a basis to require the Insurer to return any part of the security it now holds for the Insurance Program, and during the pendency of these Bankruptcy Cases, the Insurer shall not be required, except as otherwise provided in the underlying contracts, to return any part of the security it now holds for the Insurance Program without adequate protection for its interest in such security to be returned pursuant to Section 361(1) of the Bankruptcy Code. Notwithstanding the foregoing, the Insurer may seek to estimate its unsecured administrative claim in the event the estates of the Debtors is to be (or has been) liquidated and/or dispersed.

20. Further, the Debtors seek authorization to reimburse the Insurer for its reasonable and necessary legal fees and expenses incurred in connection with obtaining the approval or enforcement of this Order.

21. Due to the importance of maintaining continued insurance coverage with respect to all of their business activities and preservation of the Debtors' assets and the bankruptcy estates, the Debtors believe that the authority to honor their obligations under the Insurance

Program with the Insurer is in the best interest of the bankruptcy estates and all interested parties herein.

22. The Debtors believe there are no voidable transactions under chapter 5 of the Bankruptcy Code or any applicable state law against the Insurer relating to the collateral provided for the Insurance Program or to any payment made to the Insurer in connection with the Insurance Program. Accordingly, the Debtors agree not to bring any actions under such laws against the Insurer.

23. The Debtors request that any Order entered granting this Motion shall be immediately effective and enforceable upon its entry, notwithstanding Rules 7062 or 9024 of the Federal Rules of Bankruptcy Procedure or any other Bankruptcy Rule or Local Rule or Rule 62(a) of the Federal Rules of Civil Procedure.

24. By separate Motion, the Debtors intend to seek approval of financing for the payment of the premiums required under the Renewal Insurance Program.

WHEREFORE, the Debtors request that the Court would enter an Order granting the following relief:

(1) that the Debtors be authorized to assume certain the Existing Insurance Program in its entirety with the Insurer in accordance with Section 365 of the Bankruptcy Code;

(2) that the Debtors be authorized to enter into the Renewal Insurance Program;

(3) that the Debtors be authorized to agree and to execute all documentation necessary to assume the Existing Insurance Program and to enter into the Renewal Insurance Program;

(4) that the Debtors be authorized to enter into further renewals of the Insurance Program without further order of the Court and this Order shall govern such renewals;

(5) that the Debtors be authorized to cure all defaults upon entry of this Order and be authorized and directed to pay their obligations under the Insurance Program, including, without limitation, premium and losses, in the ordinary course of business, in accordance with the relevant terms of the Insurance Program, without further order of the Court;

(6) in the event of a default by the Debtors under the Insurance Program, the Insurer 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 Insurer. The automatic stay shall be deemed lifted without further order of this Court;

(7) the reimbursement obligations and any other obligations under the Insurance Program (regardless of whether all or any part of such obligations are liquidated before or after confirmation of a plan or conversion of one or more of the Bankruptcy Cases 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;

(8) that the Insurer be exempt from any bar date that may be issued for the filing of any proof of claim relating to administrative expenses and any bar date or response date relating to cure amounts under a plan or otherwise;

(9) that all collateral or security held at this time by the Insurer and all prior payments to the Insurer under the Insurance Program are approved and are unavoidable transfers under the Bankruptcy Code and applicable state law;

(10) that the Insurer be 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 Insurer in accordance with the Insurance Program's terms;

(11) that the Insurer be authorized to adjust, settle and pay insured claims, utilize funds provided for that purpose, and otherwise carry out the terms and conditions of the Insurance Program, without further order of the Court; provided, however, nothing herein shall be deemed to grant relief from the stay to a non-workers compensation claimant to pursue any claim in a non-bankruptcy court;

(12) that 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;

(13) that nothing in any plan of reorganization confirmed in these Bankruptcy Cases shall impair the interests of the Insurer in the collateral that it holds or in the collateral that it is receiving in accordance with this Order;

(14) that any entity assuming the administrative obligations of the Debtors, generally, shall assume all obligations of the Debtors under the Insurance Program and this Order, unless adequate protection is otherwise provided to the Insurer with the consent of the Insurer;

(15) that the Debtors' rights against all collateral held by the Insurer, in whatever form, be governed by the terms of the Insurance Program and the related security documentation, and the Debtors shall not take any action against the Insurer in the Bankruptcy Court that is

inconsistent with the terms of such documentation, including, without limitation, actions for turnover or estimation;

(16) that, in addition, any plan shall provide adequate protection for the obligations arising under the Insurance Program;

(17) that estimation of the Insurer's claim under Section 502(c) of the Bankruptcy Code shall not be authorized as a basis to require the Insurer to return any part of the security it now holds for the Insurance Program, and during the pendency of these Bankruptcy Cases, the Insurer shall not be required, except as otherwise provided in the underlying contracts, to return any part of the security it now holds for the Insurance Program without adequate protection for its interest in such security to be returned pursuant to Section 361(1) of the Bankruptcy Code;

(18) that, notwithstanding the foregoing, the Insurer may seek to estimate its unsecured administrative claim in the event the estates of the Debtors is to be (or has been) liquidated and/or dispersed;

(19) that the Debtors be authorized to reimburse the Insurer for its reasonable and necessary legal fees and expenses incurred in connection with obtaining the approval or enforcement of this Order; and

(20) for such other and further relief as this Court seems just and proper.

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THIS, the 21st day of December 2014.

Respectfully submitted,

MISSISSIPPI PHOSPHATES CORPORATION, *et al.*

By: *s/ Stephen W. Rosenblatt*

Stephen W. Rosenblatt (Miss. Bar No. 5676)
Christopher R. Maddux (Miss. Bar No. 100501)
Paul S. Murphy (Miss. Bar No. 101396)
J. Mitchell Carrington (Miss. Bar No. 104228)
Thomas M. Hewitt (Miss. Bar No. 104589)
BUTLER SNOW LLP
1020 Highland Colony Parkway, Suite 1400
Ridgeland, MS 39157
Telephone: (601) 985-4504
Fax: (601) 985-4500
Steve.Rosenblatt@butlersnow.com
Chris.Maddux@butlersnow.com
Paul.Murphy@butlersnow.com
Mitch.Carrington@butlersnow.com
Thomas.Hewitt@butlersnow.com

ATTORNEYS FOR THE DEBTORS

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 and was separately served by e-mail on the following persons:

Office of the United States Trustee
501 East Court Street
Suite 6-430
Jackson, MS 39201
USTPRegion05.AB.ECF@usdoj.gov

David N. Usry, Esq.
Assistant United States Attorney
501 East Court Street, Suite 4-430
Jackson, MS 39201
David.Usry@usdoj.gov

Christopher J. Steiskal, Sr., Esq.
Office of the United States Trustee
501 East Court Street
Suite 6-430
Jackson, MS 39201
Christopher.J.Steiskal@usdoj.gov

Dianne Coffino, Esq.
Covington & Burling, LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018
dcoffino@cov.com
Attorney for OCP S.A.

James W. O'Mara, Esq.
Phelps Dunbar
4270 I-55 North
Jackson, MS 39211
jim.omara@phelps.com
Attorney for Trammo, Inc.

Premier Chemicals & Services, LLC
Francis Mayer
4856 Revere Ave., Suite A
Baton Rouge, LA 70808
francis@premierchemicals.net

Carey L. Menasco, Esq.
Liskow & Lewis
One Shell Square
701 Poydras Street, Suite 5000
New Orleans, LA 70139
clmenasco@liskow.com
Attorney for Shrieve Chemical

Hugo S. "Brad" deBeaubien, Esq.
Shumaker, Loop & Kendrick, LLP
Bank of America Plaza
101 East Kennedy Blvd., Suite 2800
Tampa, FL 33602
bdebeaubien@slk-law.com
Attorney for Central Maint. &
Welding, Inc.

Paul J. Delcambre, Jr., Esq.
Balch & Bingham, LLP
1310 Twenty Fifth Avenue
Gulfport, MS 39501-1931
pdelcambre@balch.com
Attorney for Mississippi Power Company

James A. McCullough, II, Esq.
Brunini, Grantham, Grower & Hewes, PLLC
P. O. Drawer 119
Jackson, MS 39205
jmccullough@brunini.com
Attorney Hydrovac Industrial Services, Inc.

Derek F. Meek, Esq.
Marc P. Solomon, Esq.
Bess M. Parrish Creswell, Esq.
Burr & Forman LLP
420 North 20th Street, Suite 3400
Birmingham, AL 35203
dmeek@burr.com
msolomon@burr.com
bcreswell@burr.com
Attorneys for Official Committee of
Unsecured Creditors

SO CERTIFIED, this the 21st day of December 2014.

/s/Stephen W. Rosenblatt
STEPHEN W. ROSENBLATT

ButlerSnow 23900682v2