

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

<b>In re:</b>	)	
	)	
<b>MISSISSIPPI PHOSPHATES</b>	)	
<b>CORPORATION, <i>et al.</i><sup>1</sup></b>	)	<b>CASE NO. 14-51667-KMS</b>
	)	<b>Chapter 11</b>
	)	
<b>Debtors</b>	)	<b>Jointly Administered</b>
	)	

**APPLICATION OF THE DEBTORS FOR AUTHORITY TO RETAIN  
AND EMPLOY HORNE LLP AS ACCOUNTANTS AND AUDITORS  
TO THE DEBTORS PURSUANT TO SECTIONS 327(a) AND 328(a) OF THE  
BANKRUPTCY CODE, BANKRUPTCY RULES 2014 AND 2016, AND LOCAL  
BANKRUPTCY RULES 2014-1 AND 2016-1, NUNC PRO TUNC TO MARCH 23, 2015**

Mississippi Phosphates Corporation, *et al.*, the Debtors and debtors-in-possession (collectively, the “**Debtors**”) in these Bankruptcy Cases, by and through the undersigned attorneys, file this *Application of the Debtors for Authority to Retain and Employ Horne LLP as Accountants and Auditors to the Debtors Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Bankruptcy Rules 2014-1 and 2016-1, Nunc Pro Tunc to March 23, 2015* (the “**Application**”) for accounting services to be provided in connection with the audit of the Debtors’ 401(k) financial statements for the year and periods ending December 31, 2014 and March 31, 2015. In support of the Application, the Debtors submit the Statement of Horne, LLP (the “**Horne Statement**”), attached hereto as Exhibit A, and respectfully state as follows:

<sup>1</sup> 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**”, and, collectively with MPC and ATS, the “**Debtors**”), Case No. 14-51671. These chapter 11 cases are sometimes referred to herein as the “**Bankruptcy Cases**.”

**JURISDICTION, VENUE, AND STATUTORY PREDICATES**

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

2. The Court possesses the requisite authority to grant the relief requested herein pursuant to Sections 327(a), 328(a), and 330(a) of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Bankruptcy Rule 2014-1.

**BACKGROUND**

3. 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*”).

4. Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are operating their business and managing the properties as debtors-in-possession.

5. On November 12, 2014, the United States Trustee for the Southern District of Mississippi (the “*United States Trustee*”) appointed an Official Committee of Unsecured Creditors (the “*Committee*”).

6. The Debtors obtained a quotation from Horne on March 23, 2015, by which Horne would provide accounting services in connection with an audit of MPC’s 401(k) financial statements for the year and periods ending December 31, 2014 and March 31, 2015 for the fixed fee (prepaid) of \$15,300.00.

### RELIEF SOUGHT

7. The Debtors wish to retain Horne for the specified special purpose to serve as accountants and auditors for MPC's 401(k) financial statements for the year and periods ending December 31, 2014 and March 31, 2015 for the fixed fee (prepaid) of \$15,300.00.

8. Prior to the Petition Date, MPC maintained certain employee benefits, including a 401(k) retirement plan (the "**401(k) Plan**"). MPC matched certain employee contributions to the 401(k) Plan for employees.

9. As a necessary component of the 401(k) Plan, an audit of and testing for the 401(k) Plan must be performed. The Debtors have determined, in the exercise of their business judgment, that the size and complexity of the 401(k) Plan requires the retention of experienced professionals to render a financial audit and testing for the 401(k) Plan in connection with these Bankruptcy Cases.

10. As outlined in the Horne Statement, Horne is well qualified to provide these services in these Bankruptcy Cases. Accordingly, the Debtors submit that the retention of Horne should be approved.

11. Under Section 327(a) of the Bankruptcy Code, a debtor-in-possession is authorized to employ professionals:

that do not hold or represent an interest adverse to the estate, and that are disinterested persons,<sup>2</sup> to represent or assist the [debtor-in-possession] in carrying out [its] duties under this title.

11 U.S.C. § 327(a).

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<sup>2</sup> Section 101(14) of the Bankruptcy Code defines the term "disinterested person" as: a person that —

- (A) is not a creditor, an equity security holder, or an insider;
- (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
- (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

12. Section 327(c) provides that “a person is not disqualified for employment under this section solely because of such person’s employment by or representation of a creditor, unless there is objection by another creditor, unless there is objection by another creditor or the United States Trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.

13. Further, Section 1107(b) of the Bankruptcy Code modifies Section 327(a) of the Bankruptcy Code by providing that, in Chapter 11 cases, “a person is not disqualified for employment under section 327 of [the Bankruptcy Code] by a debtor-in-possession solely because of such person’s employment by or representation of the debtor before the commencement of the case.”

14. Under Section 328(a) of the Bankruptcy Code, a debtor-in-possession may employ professional persons under Section 327(a) of the Bankruptcy Code “on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.”

15. As required by Bankruptcy Rules 2014(a) and 2016 and Local Bankruptcy Rule 2014-1, this Application and the Horne Statement set forth: (a) the specific facts showing the necessity for Horne’s employment; (b) the reasons for the Debtors’ selection of Horne as accountant and auditor of the 401(k) Plan in connection with these Bankruptcy Cases; (c) the professional services to be provided by Horne; (d) the arrangement between the Debtors and Horne with respect to Horne’s compensation (as well as the reasonableness thereof); and (e) to the best of the Debtors’ knowledge, the extent of Horne’s connections, if any, to certain parties in interest in this matter.

### **SERVICES TO BE RENDERED**

16. Pursuant to the Invoice, Horne will provide the following services to the Debtors:

- (a) Accounting services to be provided in connection with the audit of the 401(k) financial statements for the year and period ending December 31, 2014, and March 31, 2015; and
- (b) Out-of-pocket expenses.

17. It is essential that the Debtors employ an accountant and auditor to render the foregoing professional services in order to assist the Debtors with duties as a debtors and debtors-in-possession and to handle the audit issues that typically arise in 401(k) plans. The Debtors believe that Horne is eminently qualified to serve it in these Bankruptcy Cases and that the retention of Horne is in the best interests of these Bankruptcy Cases and creditors.

18. Subject to this Court's approval of the Application, Horne is willing to serve as the Debtors' accountant and auditor to perform the services described above.

### **QUALIFICATIONS OF PROFESSIONALS**

19. The Debtors have selected Horne because of the firm's experience with 401(k) auditing in general and the Debtors' 401(k) plan in particular.

20. The Debtors need assistance of an independent party to audit and test the Debtors' 401(k) Plan. Horne has considerable experience with rendering such services Horne is qualified to perform the work required, the fixed-rate amount is reasonable, the Debtors have budgeted the pre-paid amount of \$15,300.00 in their cash flow budget, and Horne can perform the work in a timely manner these Bankruptcy Cases.

### **DISINTERESTEDNESS OF PROFESSIONALS**

21. To the best of the Debtors' knowledge and based upon the Horne Statement, (a) no employees, members, or independent contractors of Horne have any financial interest or business with the Debtors; and (b) the Horne professionals working on this matter are not

relatives of the United States Trustee of the District of Mississippi or of any known employee in the office thereof, or of any United States Bankruptcy Judge of the Southern District of Mississippi.

22. Horne has previously provided certain audit and accounting work for the Debtors and for Phosphate Holdings, Inc., the parent of Mississippi Phosphates Corporation.

23. Horne is not a creditor of the Debtors or Phosphate Holdings, Inc. To the best of the Debtors' knowledge, information, and belief, Horne neither holds nor represents any interest adverse to the Debtors.

24. To the best of the Debtors' knowledge, and except as disclosed in the Horne Statement, Horne has not provided services to the Debtors' creditors, equity security holders, or any other parties-in-interest in any matter relating to the engagement for which Horne is sought to be retained.

25. The Horne Statement discloses, among other things, any relationship that Horne or any of its members, employees, or independent contractors has with the Debtors, the creditors, or other parties-in-interest.

26. Based upon the Horne Statement, the Debtors submit that Horne is a "disinterested person," as that term is defined in Section 101(14) of the Bankruptcy Code. In addition, as set forth in the Horne Statement, Horne will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new material facts or relationships are discovered or arise, Horne will provide the Court with a supplemental affidavit containing appropriate further disclosure.

#### **PROFESSIONAL COMPENSATION**

27. Horne's requested compensation for professional services rendered to the Debtors is based upon the estimated hours expended by each assigned staff member at each staff

member's hourly billing rate, and is estimated to be \$15,000.00. Horne has agreed to charge the Debtors a fixed rate of \$15,000.00 for the required work, and the Debtors have agreed to compensate Horne for professional services rendered in the pre-paid, fixed-rate amount of \$15,000.00.

28. Horne will also be reimbursed for necessary out-of-pocket expenses incurred, which Horne estimates to be \$300.00. Horne has agreed to be paid \$300.00 as a prepaid, fixed-rate amount for expenses to be incurred.

29. Because Horne's engagement is a fixed fee engagement that requires prepayment of the fees and expenses, this Application is deemed to be Horne's application to the Court for the final allowance of compensation for professional services rendered and reimbursement of expenses incurred in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

30. The Debtors respectfully request that Horne be retained *nunc pro tunc* to March 23, 2015.

**WHEREFORE**, the Debtors respectfully request that the Court enter an Order, (i) granting and approving the Horne Agreement and this Application; (ii) authorizing the Debtors to retain Horne effective as of March 23, 2015 to perform the services set forth herein; (iii) approving and allowing the fixed fee of \$15,000.00 for services rendered and \$300.00 for expenses incurred, and (iv) granting such other and further relief as is just and proper.

*[Remainder of Page Left Blank Intentionally]*

Dated: June 5, 2015.

Respectfully submitted,

MISSISSIPPI PHOSPHATES CORPORATION, *ET AL.*

By: /s/ Stephen W. Rosenblatt

Stephen W. Rosenblatt (Miss. Bar No. 5676)  
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ATTORNEYS FOR THE DEBTORS

**CERTIFICATE OF SERVICE**

I certify that the foregoing pleading was filed electronically through the Court's CM/ECF system and served electronically on all parties enlisted to receive service electronically.

Dated: June 5, 2015.

/s/ Stephen W. Rosenblatt  
STEPHEN W. ROSENBLATT



**EXHIBIT "A"**  
***Horne Statement***

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**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, <i>et al.</i><sup>1</sup></b></p> <p><b>Debtors</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>CASE NO. 14-51667-KMS Chapter 11</b></p> <p><b>Jointly Administered</b></p>
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**AFFIDAVIT OF WENDY F. EVERSOLE IN CONNECTION WITH THE  
APPLICATION OF THE DEBTORS FOR AUTHORITY TO RETAIN  
AND EMPLOY HORNE LLP AS ACCOUNTANTS AND AUDITORS TO THE  
DEBTORS PURSUANT TO SECTIONS 327(a) AND 328(a) OF THE  
BANKRUPTCY CODE, BANKRUPTCY RULES 2014 AND 2016, AND LOCAL  
BANKRUPTCY RULES 2014-1 AND 2016-1, NUNC PRO TUNC TO MARCH 23, 2015**

Before me, the undersigned authority, personally appeared Wendy F. Eversole, who  
being by me duly sworn, deposed as follows:

1. My name is Wendy F. Eversole. I am an individual more than 21 years of age, of sound mind, and competent to give this affidavit.
2. I am Chief Operating Officer of the accounting firm of Horne, LLP (the "***Firm***"); which Mississippi Phosphates Corporation, *et al.*, the Debtors and debtors-in-possession (collectively, the "***Debtors***") in these Bankruptcy Cases seek to retain pursuant to the *Application of the Debtors for Authority to Retain and Employ Horne LLP as Accountants and Auditors to the Debtors Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules*

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<sup>1</sup> 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***."

2014 and 2016, and Local Bankruptcy Rules 2014-1 and 2016-1, *Nunc Pro Tunc* to March 23, 2015 (the “*Application*”),<sup>2</sup> which retention is to be *nunc pro tunc* to March 23, 2015.

3. The nature and scope of the services to be provided to the Debtors by the Firm are to perform accounting services related to audit of and testing for the Debtors’ 401(k) Plan. The Firm’s retention for this work is necessary for the operation of the Debtors’ business affairs.

4. As permitted by Section 327(a), the Firm had previously performed certain work for and on behalf of the Debtors for prepetition services, as well certain work for Phosphate Holdings, Inc. (the parent of Mississippi Phosphates Corporation). The Firm was compensated for any such work by Phosphate Holdings, Inc. The Firm is not a creditor of either the Debtors or Phosphate Holdings, Inc. at this time.

5. Pursuant to Rule 2014(a) of the Federal Rules of Bankruptcy Procedure, the Firm hereby confirms that, to the best of its knowledge and belief, and except as described herein, it does not have any connection with the Debtors, their creditors, the United States Trustee, any person employed by the United States Trustee, or any other party with an actual or potential adverse interest in the Bankruptcy Cases or their respective attorneys or accountants.

6. The Firm hereby confirms that it does not represent any interest adverse to the Debtors or the Debtors’ estates in the matters upon which it is engaged.

7. The Firm may have performed services for persons that are creditors or parties in interest in the Debtors’ chapter 11 case in the past and may perform services in the future for such parties in matters unrelated to these Bankruptcy Cases. As part of its customary practice, the Firm is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent the Debtors, claimants, and parties in interest in these Bankruptcy Cases. The Firm does not perform services for any such person in connection with the Bankruptcy

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<sup>2</sup> All otherwise undefined terms have the meanings ascribed in the Application.

Cases, nor does it have a relationship with any such person or its attorneys or accountants that would be adverse to the Debtors or the Debtors' estates.

8. Neither I nor any principal of or professional employed by the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principals and regular employees of the Firm.


9. Neither I nor any principal of or professional employed by the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or the Debtors' estates with respect to the matters on which the Firm is to be employed.

10. If during the period of its employment, the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Statement.

11. The Firm's requested compensation for professional services rendered to the Debtors is based upon the estimated hours expended by each assigned staff member at each staff member's hourly billing rate, and is estimated to be \$15,000.00. Horne has agreed to charge the Debtors a fixed rate of \$15,000.00 for the required work, and the Debtors have agreed to compensate Horne for professional services rendered in the pre-paid, fixed-rate amount of \$15,000.00. Horne will also be reimbursed for necessary out-of-pocket expenses incurred, which Horne estimates to be \$300.00. Horne has agreed to be paid \$300.00 as a prepaid, fixed-rate amount for expenses to be incurred. The engagement letter of Horne with the Debtors is attached as Exhibit A to this Affidavit.

12. The sole source of compensation to be paid to the Firm in these Bankruptcy Cases is to be property of the Debtors now owned or hereafter acquired.

13. In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury the foregoing is true and correct.

  
WENDY F. EVERSOLE  
ITS CHIEF OPERATING OFFICER

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