

4. On June 15, 2015, in accordance with the Court’s instructions from the Hearing, the Debtors filed the following insurance policies relative to the Motion and Response:

- (a) *2014-2015 AIG Property Insurance Policy No. 65305525* [Dkt. # 803] (the “**AIG Property Policy**”);
- (b) *2014-2015 Lloyd’s Property Insurance Policy No. PG1420899* [Dkt. # 804] (the “**Lloyd’s Property Policy**”);
- (c) *2013-2014 AIG General Liability Policy No. GL 457-19-36* [Dkt. # 805] (the “**General Liability Policy**”);
- (d) *2014-2015 AIG Commercial Umbrella Liability Policy No. BE 84160074* [Dkt. # 806] (the “**Umbrella Liability Policy**”); and
- (e) *2014-2015 AIG Pollution Legal Liability Policy No. PLS 23062202* [Dkt. # 807] (the “**Pollution Liability Policy**”).

(collectively, the “**Insurance Policies**”)

5. This Supplement provides the Debtors’ position regarding the Insurance Policies, the Motion, the Response, as well as some statements made by the Court at the Hearing.

Background

6. The Debtors filed the Motion seeking an Order waiving OGRR-11, Sec. II., D2(a) (the “**Insurance Guideline**”), which provides:

2. Unless the [United States Trustee] directs otherwise, the debtor shall maintain at least the following insurance coverage:

- (a) If the debtor has a tangible asset susceptible to casualty loss (fire, weather, theft, vandalism, etc.), casualty insurance must be maintained at an amount at least equal to the replacement value of the property.

7. The Debtors’ present casualty policies provide \$100 million in coverage on a replacement value basis with an annual premium of \$1,783,031, and a deductible of \$1 million per casualty incident for the subject property. The Debtors do not seek to cancel their liability

insurance policies or any insurance policies other than their property and casualty insurance. All other insurance policies will be maintained.

8. In the Response to the Motion, the United States Trustee requested an evidentiary hearing to determine the merits of the Debtors' request to waive the Insurance Guideline, and further sought evidentiary support of the Lenders' waiver of default on the subject loan if the Debtors ceased providing insurance on the subject assets.

9. On June 4, 2015, the Court conducted the Hearing on the Motion where the Debtors set forth the unique facts of this matter:

- (a) the assets are less valuable than the insurance coverage currently carried for these assets;
- (b) the Debtors are dependent on the DIP Budget for their continued funding, of which property insurance is a very large item in the DIP Budget;
- (c) the Debtors could not obtain a reduction in coverage amount under the policy that would equate to a substantial reduction in premiums;
- (d) the Debtors explored other ways to reduce the insurance carried/paid for, but to no avail;
- (e) cancelling property insurance would result in no adverse consequences to a forthcoming sale;
- (f) although the requested relief is unusual (having never been requested in any prior case in which the CRO or the Debtors' attorney at the hearing had ever been involved), under the unique facts of this case, the relief requested was in the best interest of the estate and the creditors; and

(g) all interested parties, except the United States Trustee, either expressly consented to the relief sought by the Debtors or did not oppose it.

10. At the hearing, the Lenders stated on the record their affirmative consent to the relief requested and to the termination of the property insurance policies. The Committee did not object to the Motion and acknowledged the benefit in the relief requested. The Mississippi Department of Environmental Quality (“*MDEQ*”) advised that it neither objected nor consented to the relief sought. The Environmental Protection Agency (“*EPA*”) took no position on the Motion.

11. With respect to Section 1112(b)(4)(c),³ because all parties with a financial interest in the insured property either agreed to the relief sought in the Motion or did not object to the Motion, the issue effectively is whether the requirement of Section 1112(b)(4)(c) “to maintain appropriate insurance” to protect the public requires the Debtors to continue to maintain property insurance, *i.e.*, whether under property insurance is necessary to protect against a risk to the public and non-creditor third parties.

I. Cancellation of the Debtors’ Property Insurance Does Not Pose a Risk to the General Public

12. The property insurance policies that the Debtors seek to terminate involve two policies: the AIG Property Policy and the Lloyd’s Property Policy. These policies limit

³ 11 U.S.C. §1112(b)(4)(c) provides: (b)(1) Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

...

(4) For purposes of this subsection, the term “cause” includes—

...

(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

11 U.S.C. §1112(b)(4)(c).

coverage for physical loss or damage to the real and personal property that the Debtors own or the real and personal property in which the Debtors have an insurable interest.

13. The Debtors do not seek to cancel their liability insurance or any other policies other than their property and casualty insurance. It is critical to understand the differences between property and casualty insurance and liability insurance as each has a completely different function and focus. As stated in *Appleman on Insurance* :

Liability insurance should be distinguished from . . . casualty insurance, although each is a type of coverage that is purchased to protect one's financial well being. . . . [C]asualty insurance protects the insured's property. This can include property insurance, fire insurance, or other coverage which protects the policyholder from damage, loss or theft. Liability insurance, also known as "third-party" insurance, protects the insured from liability to third parties. Covered risks typically include bodily injury to someone other than the insured or damage to another's property. Liability coverage is available for claims that are not precluded because of the acts being willful in nature. Insurable acts or events must be fortuitous in nature.

3-16 *Appleman on Insurance* § 16.02, *Types of Liability Coverage*.

14. This difference between property and casualty insurance and liability insurance was also stated in *Ryan v. Royal Ins. Co.*, 916 F.2d 731, 740 (1st Cir. 1990):

[T]he principle of indemnity in the liability insurance context demands that the relevant focus be on avoidance of liability rather than conservation of assets. First, the extent of the insurer's exposure is a function of the liability claim against the insured, not of any decrease in the value of the insured's property. Whereas in property insurance models the underlying asset limits and defines the insurer's obligation and serves to prevent the insured from claiming more than was lost, the underlying asset affords no such similar check in the liability insurance context. Second, in contrast to property insurance – where the existence of a claim against an insurer depends on actual destruction of, or harm to, the insured's assets – liability insurance permits claims to be mounted against an insurer without such antecedent loss or harm.

(a) Coverage Under the AIG Property Policy

15. The AIG Property Policy provides coverage, *inter alia*, as follows:

2. LIMITS OF LIABILITY

Except as otherwise specified herein or by endorsement hereto, this policy provides coverage, up to USD50,000,000 each and every occurrence and in the aggregate annually separately in respect of Flood and Earthquake Shock, which is in turn excess of deductibles.

The annual aggregate limits herein in respect of Flood and Earthquake Shock shall apply in full for the period 22nd December 2014 to 22nd December 2015, all dates at 12.01 a.m. Standard Time at the location of the Property Insured.

The term "Occurrence" is defined as a loss or series of losses arising out of one event.

...

6. PROPERTY DAMAGE COVERAGE:

Except as hereinafter excluded, this policy covers:

a) The interest of the Insured in real and personal property, including improvements and betterments, owned or used by the Insured, or hereafter constructed, erected, installed, or acquired including while in incidental course of construction, renovation, erection, installation during testing and operations and assembly and including Temporary Structures. In the event of insured physical loss or damage, Insurer(s) agree to accept and consider the Insured as sole and unconditional owner of improvements and betterments, notwithstanding any contract or leases to the contrary.

Coverage in respect of performance testing shall apply whilst conforming to 100% Contract Design Criteria.

b) The interest of the Insured in the real and personal property of others care, custody or control of the Insured for which the Insured is legally liable to insure.

c) At the option of the Insured, personal property of the Insured's officials and employees while on premises of the Insured.

d) Contractors' interest in property covered to the extent of the Insured's liability imposed by law or assumed by contract whether written or oral.

e) Valuable papers and records, defined as written, printed or otherwise inscribed documents and records, including but not limited to accounts receivable, books, maps, films, drawings, abstracts, deeds, mortgages, micro inscribed documents, manuscripts and media.

f) Property in transit, by any means of conveyance, from the time the property is moved for purpose of loading and continuously thereafter while

awaiting and during loading and unloading in temporary storage, including temporary storage on any conveyance intended for use for any outbound or used for inbound shipment including during deviation and delay until safely delivered into place of final destination. This coverage does not apply to any shipment while covered by an ocean cargo bill of lading.

g) Expediting Expense. The reasonable extra cost of temporary repair and of expediting the repair of damaged property insured hereunder, including but not limited to overtime and express freight or other rapid means of transportation.

B. Coverage Under the Lloyd's Property Policy.

16. Similarly, the Lloyd's Property Policy provides, *inter alia*, as follows:

2. LIMITS OF LIABILITY

Except as otherwise specified herein or by endorsement hereto, this policy provides coverage, up to USD50,000,000 each and every occurrence and in the aggregate annually separately in respect of Flood and Earthquake Shock, which is in turn excess of deductibles.

The annual aggregate limits herein in respect of Flood and Earthquake Shock shall apply in full for the period 22nd December 2014 to 22nd December 2015, all dates at 12.01 a.m. Standard Time at the location of the Property Insured.

The term "Occurrence" is defined as a loss or series of losses arising out of one event.

...

6. PROPERTY DAMAGE COVERAGE:

Except as hereinafter excluded, this policy covers:

- a) The interest of the Insured in real and personal property, including improvements and betterments, owned or used by the Insured, or hereafter constructed, erected, installed, or acquired including while in incidental course of construction, renovation, erection, installation during testing and operations and assembly and including Temporary Structures. In the event of insured physical loss or damage, Insurer(s) agree to accept and consider the Insured as sole and unconditional owner of improvements and betterments, notwithstanding any contract or leases to the contrary. Coverage in respect of performance testing shall apply whilst conforming to 100% Contract Design Criteria.
- b) The interest of the Insured in the real and personal property of others care, custody or control of the Insured for which the Insured is legally liable to insure.

- c) At the option of the Insured, personal property of the Insured's officials and employees while on premises of the Insured.
- d) Contractors' interest in property covered to the extent of the Insured's liability imposed by law or assumed by contract whether written or oral.
- e) Valuable papers and records, defined as written, printed or otherwise inscribed documents and records, including but not limited to accounts receivable, books, maps, films, drawings, abstracts, deeds, mortgages, micro inscribed documents, manuscripts and media.
- f) Property in transit, by any means of conveyance, from the time the property is moved for purpose of loading and continuously thereafter while awaiting and during loading and unloading in temporary storage, including temporary storage on any conveyance intended for use for any outbound or used for inbound shipment including during deviation and delay until safely delivered into place of final destination. This coverage does not apply to any shipment while covered by an ocean cargo bill of lading.
- g) Expediting Expense. The reasonable extra cost of temporary repair and of expediting the repair of damaged property insured hereunder, including but not limited to overtime and express freight or other rapid means of transportation.

C. Summary of Coverage under the AIG Property Policy and the Lloyd's Property Policy.

17. By the express terms set forth therein, the AIG Property Policy and the Lloyd's Property Policy provide coverage for physical loss or damage, such as may be caused by fire, theft or flood, to the real and personal property owned by the Debtors, and to the real and personal property in which the Debtors maintain an insurable interest. The terms and conditions of these two policies do not provide coverage for third-party claims for bodily injury, property damage, or personal injury made against the Debtors. Consequently, cancellation of the AIG Property Policy and the Lloyd's Property Policy does not pose a risk to third parties or the public in general.

18. Conversely, and as will be seen in Section II below, the Debtors currently maintain, and will continue to maintain, appropriate liability insurance for the protection of itself and the general public.

II. The Debtors Maintain Appropriate Liability Insurance to Protect the Estates and the General Public.

19. The Debtors currently have in place, and will continue to maintain, three liability insurance policies: the General Liability Policy, the Umbrella Liability Policy, and the Pollution Liability Policy. The General Liability Policy and the Umbrella Liability Policy provide coverage to the insured for claims of bodily injury, property damage or personal injury, and advertising injury caused by an occurrence that arises out of the Debtors' business and takes place anytime during the policy period. In addition, the Debtors' Pollution Liability Policy currently provides coverage to the insured for, *inter alia*, third-party claims for on-site and off-site cleanup resulting from a Pollution Condition,⁴ third-party claims for bodily injury and property damage resulting from a Pollution Condition on, under, or migrating from the insured property, and third-party claims for bodily injury and property damages resulting from a Pollution Condition on, under, or migrating from a non-owned location. Collectively, this liability insurance provides appropriate protection for the Debtors against third-party claims that fall within the coverage of the policies.

20. Specifically, the General Liability Policy provides, *inter alia*, as follows:

⁴ *Pollution Condition* as defined in **Exhibit A** attached hereto.

POLICY PERIOD From 12/22/2014 to 12/22/2015 at 12:01 A.M. Standard Time at your mailing address shown above.

LIMITS OF INSURANCE

EACH OCCURRENCE LIMIT	\$1,000,000
DAMAGE TO PREMISES RENTED TO YOU LIMIT	\$1,000,000 Any one premise
MEDICAL EXPENSE	NOT COVERED Any one person
PERSONAL & ADVERTISING INJURY LIMIT	\$1,000,000 Any one person or organization
GENERAL AGGREGATE LIMIT	\$2,000,000
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	\$2,000,000

SECTION 1 – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:
 - (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
 - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to “bodily injury” and “property damage” only if:
 - (1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;
 - (2) The “bodily injury” or “property damage” occurs during the policy period; and
 - (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation,

change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

- c. “Bodily injury” or “property damage” which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim, includes any continuation, change or resumption of that “bodily injury” or “property damage” after the end of the policy period.
- d. “Bodily injury” or “property damage” will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim:
 - (1) Reports all, or any part, of the “bodily injury” or “property damage” to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for damages because of the “bodily injury” or “property damage”; or
 - (3) Becomes aware by any other means that “bodily injury” or “property damage” has occurred or has begun to occur.
- e. Damages because of “bodily injury” include damages claimed by any person or organization for care, loss of services or death resulting at any time from the “bodily injury”.

21. Moreover, the Umbrella Liability Policy provides, *inter alia*, as follows:

ITEM 2. POLICY PERIOD: FROM: December 22, 2014 TO: December 22, 2015

(At 12:01 A.M., standard time, at the address of the Named Insured stated above.)

ITEM 3. LIMITS OF INSURANCE

The Limits of Insurance, subject to the terms of this policy, are:

- A. \$25,000,000 Each Occurrence
- B. \$25,000,000 General Aggregate (in accordance with Section IV. Limits of Insurance)
- C. \$25,000,000 Products-Completed Operations Aggregate (in accordance with Section IV. Limits of Insurance)
- D. \$250,000 Crisis Response Sublimit of Insurance
- E. \$50,000 Excess Casualty Crisis Fund Limit of Insurance

In consideration of the payment of the premium and in reliance upon the statements in the Declarations, we agree to provide coverage as follows:

1. INSURING AGREEMENT - COMMERCIAL UMBRELLA LIABILITY

- A. We will pay on behalf of the Insured those sums in excess of the Retained Limit that the Insured becomes legally obligated to pay as damages by reason of liability imposed by

law because of Bodily Injury, Property Damage or Personal Injury and Advertising Injury to which this insurance applies or because of Bodily Injury or Property Damage to which this insurance applies assumed by the Insured under an Insured Contract.

The amount we will pay for damages is limited as described in Section IV. Limits of Insurance.

B. This policy applies, only if:

1. the Bodily Injury or Property Damage is caused by an Occurrence that takes place anywhere, and the Bodily Injury or Property Damage occurs during the Policy Period; and
2. the Personal Injury and Advertising Injury is caused by an Occurrence that takes place anywhere arising out of your business, but only if the Occurrence was committed during the Policy Period.

C. 1. This policy applies to Bodily Injury or Property Damage, only if prior to the Policy Period, no Insured listed under subparagraphs 2a., 2b., 2c. or 2e. of Paragraph M. of Section VII., no executive officer or director listed under subparagraph 2d. of Paragraph M. of Section VII. and no employee authorized by you to give or receive notice of an Occurrence, claim or Suit, knew that the Bodily Injury or Property Damage had occurred, in whole or in part. If such an Insured or authorized employee knew, prior to the Policy Period, that the Bodily Injury or Property Damage had occurred, then any continuation, change or resumption of such Bodily Injury or Property Damage during or after the Policy Period will be deemed to have been known prior to the Policy Period.

2. Bodily Injury or Property Damage which occurs during the Policy Period and was not, prior to the Policy Period, known to have occurred by any Insured listed under subparagraphs 2a., 2b., 2c. or 2e. of Paragraph M. of Section VII., any executive officer or director listed under subparagraph 2d. of Paragraph M. of Section VII. or any employee authorized by you to give or receive notice of an Occurrence or claim, includes any continuation, change or resumption of that Bodily Injury or Property Damage after the end of the Policy Period.

D. Bodily Injury or Property Damage will be deemed to have been known to have occurred at the earliest time when any Insured listed under subparagraphs 2a., 2b., 2c. or 2e. of Paragraph M. of Section VII, any executive officer or director listed under subparagraph 2d. of Paragraph M. of Section VII. or any employee who was authorized by you to give or receive notice of an Occurrence, claim or Suit:

1. reports all, or any part, of the Bodily Injury or Property Damage to us or any other insurer;

2. receives a written or verbal demand or claim for damages because of the Bodily Injury or Property Damage; or
 3. becomes aware by any other means that Bodily Injury or Property Damage has occurred or has begun to occur.
- E. Damages because of Bodily Injury include damages claimed by any person or organization for care, loss of services or death resulting at any time from the Bodily Injury.
- F. If we are prevented by law or statute from paying damages covered by this policy on behalf of the Insured, then we will indemnify the Insured for those sums in excess of the Retained Limit.

22. In addition, the Pollution Liability Policy⁵ provides, *inter alia*, as follows:

ITEM 2. POLICY PERIOD: FROM: December 22, 2014 **TO:** December 22, 2015
12:01 A.M. standard time at the address of the Named Insured shown above.

I. INSURING AGREEMENTS

1. COVERAGES:

THE FOLLOWING COVERAGES ARE IN EFFECT ONLY IF SCHEDULED IN THE DECLARATIONS.

COVERAGE A - ON-SITE CLEAN-UP OF PRE-EXISTING CONDITIONS

1. To pay on behalf of the Insured, Clean-Up Costs resulting from a Pollution Condition on or under the Insured Property that first commenced prior to the Continuity Date provided:
 - (a) A Responsible Insured first becomes aware of such Pollution Condition during the Policy Period and such Pollution Condition is reported to the Company in writing as soon as possible after such discovery and in any event during the Policy Period in accordance with Section III. of the Policy.
 - (b) Where required, such Pollution Condition has been reported to the appropriate governmental agency in substantial compliance with applicable Environmental Laws in effect as of the date of discovery.
2. To pay on behalf of the Insured, Loss that the Insured is legally obligated to pay as a result of a Claim for Clean-Up Costs resulting from a Pollution Condition on or under the Insured Property, which Pollution Condition first commenced prior to the Continuity Date, provided such Claim is first made against the Insured and reported to the Company in writing during the Policy Period in accordance with Section III. of the Policy, or during the Extended Reporting Period if applicable.

⁵ The Declarations page for the Pollution Liability Policy is attached hereto as **Exhibit B**.

COVERAGE B - ON-SITE CLEAN-UP OF NEW CONDITIONS

1. To pay on behalf of the Insured, Clean-Up Costs resulting from a Pollution Condition on or under the Insured Property that first commenced on or after the Continuity Date, provided:
 - (a) A Responsible Insured first becomes aware of such Pollution Condition during the Policy Period and such Pollution Condition is reported to the Company in writing as soon as possible after such discovery and in any event during the Policy Period in accordance with Section III. of the Policy.
 - (b) Where required, such Pollution Condition has been reported to the appropriate governmental agency in substantial compliance with applicable Environmental Laws in effect as of the date of discovery.
2. To pay on behalf of the Insured, Loss that the Insured is legally obligated to pay as a result of a Claim for Clean-Up Costs resulting from a Pollution Condition on or under the Insured Property, which Pollution Condition first commenced on or after the Continuity Date, provided such Claim is first made against the Insured and reported to the Company in writing during the Policy Period in accordance with Section III. of the Policy, or during the Extended Reporting Period if applicable.

COVERAGE C - THIRD-PARTY CLAIMS FOR OFF-SITE CLEAN-UP RESULTING FROM PRE-EXISTING CONDITIONS

To pay on behalf of the Insured, Loss that the Insured becomes legally obligated to pay as a result of a Claim for Clean-Up Costs resulting from a Pollution Condition, beyond the boundaries of the Insured Property, that first commenced prior to the Continuity Date, and migrated from or through the Insured Property, provided such Claim is first made against the Insured and reported to the Company in writing during the Policy Period in accordance with Section III. of the Policy, or during the Extended Reporting Period if applicable.

COVERAGE D - THIRD-PARTY CLAIMS FOR OFF-SITE CLEAN-UP RESULTING FROM NEW CONDITIONS

To pay on behalf of the Insured, Loss that the Insured becomes legally obligated to pay as a result of a Claim for Clean-Up Costs resulting from a Pollution Condition, beyond the boundaries of the Insured Property, that first commenced on or after the Continuity Date, and migrated from or through the Insured Property, provided such Claim is first made against the Insured and reported to the Company in writing during the Policy Period in accordance with Section III. of the Policy, or during the Extended Reporting Period if applicable.

COVERAGE E - THIRD-PARTY CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE

To pay on behalf of the Insured, Loss that the Insured becomes legally obligated to pay as a result of a Claim for Bodily Injury or Property Damage resulting from a Pollution Condition on, under or migrating from or through the Insured Property, provided such Claim is first made against the Insured and reported to the Company in writing during the Policy Period in accordance with Section III. of the Policy, or during the Extended Reporting Period if applicable.

COVERAGE F - EMERGENCY RESPONSE COSTS

1. The Company will pay Emergency Response Costs resulting from a Pollution Condition on, under or migrating from the Insured Property. Emergency Response Costs must be first incurred by the Insured and reported to the Company during the Policy Period.

For this Coverage to apply, all of the following conditions must be satisfied:

- (a) The Insured must report the Emergency Response Costs to the Company in accordance with Section III. of the Policy.
- (b) **COVERAGE B - ON-SITE CLEAN UP OF NEW CONDITIONS** is purchased.

2. The Company will pay Emergency Response Costs resulting from a Pollution Condition caused by Transportation or Covered Operations. Emergency Response Costs must be first incurred by the Insured and reported to the Company during the Policy Period.

For this Coverage to apply, all of the following conditions must be satisfied:

- (a) The Insured must report the Emergency Response Costs to the Company in accordance with Section III. of the Policy.
- (b) With respect to Covered Operations, **COVERAGE H - THIRD-PARTY CLAIMS FOR COVERED OPERATIONS** is purchased and with respect to Transportation, **COVERAGE I - THIRD-PARTY CLAIMS RESULTING FROM THE TRANSPORTATION OF CARGO** is purchased.

COVERAGE G - THIRD-PARTY CLAIMS FOR NON-OWNED LOCATIONS

To pay on behalf of the Insured, Loss that the Insured becomes legally obligated to pay as a result of a Claim for Bodily Injury or Property Damage of parties other than the owners, operators or contractors of the Non-Owned Location, or their employees, or Clean-Up Costs resulting from a Pollution Condition on, under or migrating from the Non-Owned Location, provided such Claim is first made against the Insured and reported to the Company in writing during the Policy Period in accordance with Section III. of the Policy, or during the Extended Reporting Period if applicable.

COVERAGE I - THIRD-PARTY CLAIMS RESULTING FROM THE TRANSPORTATION OF CARGO

To pay on behalf of the Insured, Loss that the Insured becomes legally obligated to pay as a result of a Claim for Bodily Injury, Property Damage or Clean-Up Costs resulting from a

Pollution Condition caused by Transportation of Cargo, provided such Claim is first made against the Insured and reported to the Company in writing during the Policy Period in accordance with Section III. of the Policy, or during the Extended Reporting Period if applicable. Provided, however, this Coverage shall not be utilized to evidence financial responsibility of any Insured under any federal, state, provincial or local law.

COVERAGE J - BUSINESS INTERRUPTION EXPENSES

To pay the Named Insured's Interruption Expenses, resulting from an Interruption caused directly by a Pollution Condition on or under the Insured Property that results in on-site Clean-Up Costs covered by this Policy. If the Interruption is caused by such Pollution Condition and any other cause, the Company shall pay only for that portion of Interruption Expenses caused solely and directly by such Pollution Condition. An Interruption must be reported to the Company in accordance with Section III. of the Policy and the Named Insured shall resume normal operation of the business and disperse with Extra Expense as soon as practicable.

23. Unlike the AIG Property Policy and the Lloyd's Property Policy that the Debtors seek to cancel, the Debtors' liability insurance policies provide indemnity protection for the Debtors on third-party claims that fall within the coverage scope of the policies. The General Liability Policy and the Umbrella Liability Policy provide coverage to the insured against claims of bodily injury, property damage or personal injury, and advertising injury caused by an occurrence that arises out of the Debtors' business regardless of where such bodily injury, property damage or personal injury, and advertising injury takes place during the policy period. In addition, the Debtors' Pollution Liability Policy provides coverage to the insured for, *inter alia*, third-party claims for on-site and off-site cleanup resulting from a Pollution Condition, third-party claims for bodily injury and property damage resulting from a Pollution Condition on, under, or migrating from the insured property, and third-party claims for bodily injury and property damages resulting from a Pollution Condition on, under, or migrating from a non-owned location.

24. Collectively, the General Liability Policy, the Umbrella Liability Policy, and the Pollution Liability Policy satisfy the "appropriate insurance" requirement of

11 U.S.C. § 1112(b)(4)(c). As a result, third parties who have suffered a covered loss have legitimate recourse on their claims.

25. Under liability policies such as the General Liability Policy, the Umbrella Liability Policy, and the Pollution Liability Policy, the obligation of the insurer to defend and indemnify its insured is determined by analyzing the allegations of the particular complaint or declaration against the language of the relevant policy. The Court of Appeals for the Fifth Circuit, the United States District Court for the Southern District of Mississippi, and the Mississippi Supreme Court each have examined similar liability policies with language substantially similar to the Debtors' liability policies. The aforementioned courts have upheld the validity of the liability policy language, either confirming or denying an insurer's duty to defend and/or indemnify the insured against third party claims, based upon whether the claims asserted against the insured fell within or outside of the coverage of the liability policy. *See generally, Mulberry Square Prods. v. State Farm Fire & Cas. Co.*, 101 F.3d 414, 422 (5th Cir. 1996); *Foreman v. Continental Cas. Co.*, 770 F.2d 487 (5th Cir. 1985); *Leaf River Cellulose, LLC v. Mid-Continent Cas. Co.*, 2012 U.S. Dist. Lexis 73103, at 13-16 (S.D. Miss. May 25, 2012); *Nationwide Mut. Fire Ins. Co. v. Hayes*, 2010 U.S. Dist. Lexis 92988 (S.D. Miss. Sept. 7, 2010); *Essex Ins. Co. v. Massey Land & Timber, LLC*, 2006 U.S. Dist. Lexis 36748 (S.D. Miss. May 22, 2006); *Meng v. Bituminous Cas. Corp.*, 626 F. Supp. 1237 (S.D. Miss. 1986); *Jones v. Hartford Acci. & Indem. Co.*, 714 F. Supp. 808 (S.D. Miss. 1989); *Farmland Mut. Ins. Co. v. Scruggs*, 886 So.2d 714 (Miss. 2004); *Brickell v. United States Fire Ins. Co.*, 436 So.2d 797 (Miss. 1983).

26. The Debtors request to cancel only the AIG Property Policy and the Lloyd's Property Policy, which provide coverage for physical loss or damage to the real and personal

property owned by the Debtors, and to the real and personal property in which the Debtors maintain an insurable interest, where such loss or damage is caused by events such as fire, theft, or flood. The terms and conditions of these two policies do not provide coverage for third-party claims for bodily injury, property damage, or personal injury made against the Debtors. Consequently, cancellation of the AIG Property Policy and the Lloyd's Property Policy does not pose a risk to third parties or the public in general.

27. As represented on the record at the Hearing, the parties with a financial interest in the real and personal property of the Debtors (the Debtors, the Lenders, the Committee, the EPA, and the MDEQ) either have affirmatively consented or not objected to the Debtors' proposed cancellation of the property and casualty insurance policies.

28. Additionally, because the Debtors currently maintain, and will continue to maintain, appropriate liability insurance in the form of the General Liability Policy, the Umbrella Liability Policy, and the Pollution Liability Policy for the protection of themselves and the general public for covered claims under such liability policies, the Debtors will have complied with the requirements of 11 U.S.C. § 1112(b)(4)(c) by continuing "to maintain **appropriate** insurance" that protects against risks to the public and non-creditor third parties.

29. Although the Court gave the parties until June 26, 2015 to file supplemental papers in connection with the Motion, because notice of cancellation of the property and casualty insurance policies must be given prior to June 22, 2015 in order for the Debtors to obtain the benefit of premium savings of approximately \$160,000.00 for the monthly premium.

WHEREFORE, the Debtors respectfully request that the Court grant the Motion, and in granting the Motion, enter an order waiving the requirement of the Insurance Guideline and

permitting the Debtors to not maintain a property and casualty insurance policy, and granting such other relief as may be necessary and appropriate.

Dated: June 18, 2015.

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

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 persons who are registered users of the CM/ECF System for the Bankruptcy Cases, as well as all persons and entities listed on the Shortened Service List approved by the Court in the Bankruptcy Cases.⁶

SO CERTIFIED, this the 18th day of June 2015.

/s/ Stephen W. Rosenblatt

STEPHEN W. ROSENBLATT

⁶ On January 26, 2015, the Court entered its *Order Approving Motion of the Debtors to Establish Limited Service List* [Dkt. # 425]. The “***Shortened Service List***” is those parties specified in that Order, as the Shortened Service List may be updated and amended from month to month.

Exhibit A

Pollution Condition Definition

Pollution Condition means:

1. The discharge, dispersal, release or escape; or
2. The illicit abandonment on or after the Inception Date by a third party without the Insured's consent, of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, low-level radioactive material, electromagnetic fields, medical waste including infectious and pathological waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the amounts or concentrations discovered. Pollution Condition also means *Legionella pneumophila* or Microbial Matter in any structure on land and the atmosphere contained within that structure, provided that such Pollution Condition commences on or after the Indoor Air Quality Retroactive Date shown in Item 7. of the Declarations Page.

Microbial Matter means fungi, mold or mildew.

Exhibit B

Declarations Page for the Pollution Liability Policy

26509700

AIG SPECIALTY INSURANCE COMPANY
 (A Capital Stock Company, herein called the Company)
 175 WATER STREET
 NEW YORK, NY 10038

POLLUTION LEGAL LIABILITY SELECT® POLICY

THIS IS A CLAIMS-MADE AND REPORTED POLICY. PLEASE READ CAREFULLY.

DECLARATIONS

POLICY NUMBER: PLS 23062202

Item 1. NAMED INSURED: PHOSPHATE HOLDINGS, INC.

ADDRESS: 601 INDUSTRIAL ROAD
 PO BOX 848
 PASCAGOULA, MS 39568

Item 2. POLICY PERIOD: FROM December 22, 2014 TO December 22, 2015
 12:01 AM STANDARD TIME AT THE ADDRESS OF THE NAMED INSURED SHOWN ABOVE

Item 3. COVERAGES AND COVERAGE SECTION LIMITS AND DEDUCTIBLES:

This Policy includes only those Coverages as stated in Section I of the Policy for which deductibles and limits of liability appear below. If no deductible or limits of liability appears for a Coverage, that Coverage has not been purchased.

Coverage	Deductible-Each Incident	Each Incident Limit	Coverage Section Aggregate Limit
A	\$200,000	\$10,000,000	\$10,000,000
B	\$200,000	\$10,000,000	\$10,000,000
C	\$200,000	\$10,000,000	\$10,000,000
D	\$200,000	\$10,000,000	\$10,000,000
E	\$200,000	\$10,000,000	\$10,000,000
F	\$200,000	\$250,000	\$1,000,000
G	\$200,000	\$10,000,000	\$10,000,000
H			
I	\$200,000	\$10,000,000	\$10,000,000

Coverage	Business Interruption (\$) Limit
J	\$10,000,000

Item 4. **POLICY AGGREGATE LIMIT:** \$10,000,000

Item 5. **INSURED PROPERTY(IES):** 601 INDUSTRIAL ROAD
PASCAGOULA, MS 39567

Item 6. **POLICY PREMIUM:** \$333,014.00

Premium for Certified Acts of Terrorism Coverage Under Terrorism Risk Insurance Act 2002:
Not Applicable

Item 7. **INDOOR AIR QUALITY RETROACTIVE DATE:** Pollution Condition(s) must commence on or after the date shown below.

Retroactive Date: February 5, 2012
(Enter date or "none" if no Retroactive Date Applies.)

Item 8. **CONTINUITY DATE:** December 22, 2014

Item 9. **BROKER:** ARTHUR J GALLAGHER RISK MNGT SERV INC
2 WESTCHESTER PARK DR, 3RD FLOOR
WHITE PLAINS, NY 10604

By

S. Smith

AUTHORIZED REPRESENTATIVE
or countersignature (in states where applicable)