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

In re:	:	Case No. 14-51667-KMS
Mississippi Phosphates Corporation, *et al.*,[1]	:	Chapter 11
Debtors.	:	Jointly Administered
	:	**Objection Deadline: July 14, 2015**
	:	**Hearing Date: July 21, 2015 at 10:00 a.m. CT**
	:	**Related to Docket Nos. 818, 819**

OBJECTION AND RESERVATION OF RIGHTS OF THE CHEMOURS COMPANY, LLC TO (1) MOTION OF 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; AND (2) 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 FOR ENTRY OF: (I) AMENDED ORDER (A) APPROVING THE AMENDED SALES AND BIDDING PROCEDURES IN CONNECTION WITH SALE OF ASSETS OF THE DEBTORS, (B) APPROVING FORM AND MANNER OF NOTICE, (C) SCHEDULING AUCTION AND SALE HEARING, (D) AUTHORIZING PROCEDURES GOVERNING ASSUMPTION AND ASSIGNMENT OF CERTAINEXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (E) GRANTING RELATED RELIEF; AND (II) ORDER (A) APPROVING PURCHASE AGREEMENT, (B) AUTHORIZING SALE FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND (C) GRANTING RELATED RELIEF

The Chemours Company, LLC, successor-in-interest to E. I. du Pont de Nemours and Company ("Chemours"), by and through its undersigned counsel, hereby files this objection and reservation of rights (the "Objection") to the (1) *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* [Dkt. # 818] (the "Gov't Motion"); and (2) *Motion of Debtors, pursuant*

[1] Debtors are the following: Mississippi Phosphates Corporation, Ammonia Tank Subsidiary, Inc. and Sulfuric Acid Tanks Subsidiary, Inc.

to Bankruptcy Code Sections 105(a), 363, 365, 503, and 507, and Bankruptcy Rules 2002, 3007, 6004, 6006, 9007, and 9014 for Entry of: (I) Amended Order (A) Approving the Amended Sales and Bidding Procedures in Connection with Sale of Assets of the Debtors, (B) Approving Form and Manner of Notice, (C) Scheduling Auction and Sale Hearing, (D) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (E) Granting Related Relief; and (II) Order (A) Approving Purchase Agreement, (B) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (C) Granting Related Relief [Dkt. No. 819] (the "Amended Sale Motion"), and in support thereof, respectfully represents as follows:

PRELIMINARY STATEMENT

This bankruptcy case is nothing more than an elaborate scheme to implement a structure that will allow the Lenders to insulate themselves from environmental and other liabilities and to pay claims of certain creditors (and avoid the payment of others) in contradiction of the Bankruptcy Code. Unfortunately, the complicated and convoluted series of motions that make up this elaborate scheme (the Sale Motion, the Committee Settlement Motion and the Gov't Motion, all as defined below) together constitute a *sub rosa* plan that fails to comply with section 1129 of the Bankruptcy Code and violates the absolute priority rule that is at the core of chapter 11. Moreover, by pursuing this scheme through motions practice,[2] and not by a properly noticed plan and disclosure statement, the creditors are deprived of due process and the fundamental right to vote on acceptance or rejection of a plan.

While the Gov't Settlement Agreement (defined below) may be necessary to maximize the value of the Debtors' assets by ensuring that the environmental issues are properly

[2] On information an belief, notice of the Committee Settlement Motion and Gov't Motion may have been served solely on the limited service list and not on all creditors as is required by Bankruptcy Rule 2002(a)(3).

addressed through a flexible sale process, and resolve a number of the claims of the Gov't Agencies (defined below) that have been asserted against these bankruptcy estates and the Lender Parties (defined below) with respect to the facility, Chemours submits this Objection because the best interests of these estates are not well served through a chapter 11 sales process designed exclusively for the benefit of a select group of creditors or parties-in-interest to the exclusion of others in violation of policies at the heart of the Bankruptcy Code. Just like a plan, the Gov't Settlement Agreement and proposed amended sales process take the Debtors' assets and seek to direct the payment of the sales proceeds and establish a scheme of distribution, via the establishment of Trusts or otherwise, to certain creditor classes in a manner that would not be permitted under the Bankruptcy Code pursuant to a plan of reorganization or liquidation, and is likewise, not permitted in the context of a Section 363 sale.

RELEVANT BACKGROUND

A. Debtors' Bankruptcy Cases

1. On October 27, 2014 (the "Petition Date"), the Mississippi Phosphates Corporation ("MPC") and it affiliated debtors (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Mississippi, Southern Division (the "Court"). Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and manage their properties as debtors-in-possession. No trustee or examiner has been appointed in these cases.

2. On November 12, 2014, the Office of the United States Trustee for Region 5 (the "U.S. Trustee") appointed an Official Committee of Unsecured Creditors (the "Committee") in this case under section 1102 [Dkt. No. 161].

B. Interim DIP Financing

3. On October 29, 2014, the Court entered its Interim Order Under Sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002, 4001 and 9014 (I) Authorizing the Debtors to Incur Post-Petition Senior Secured Superpriority Indebtedness; (II) Authorizing Use of Cash Collateral; (III) Granting Post-Petition Priming and Senior Priority Security Interest and Superpriority Claims; (IV) Granting Adequate Protection; (V) Modifying the Automatic Stay; and (VI) Scheduling a Final Hearing on the Motion (the "Interim DIP Order") [Dkt. # 66].

4. The Interim DIP Order has been renewed and extended on several occasions [Dkt. ##575, 717, 802], and is now in effect through July 31, 2015. In addition, currently pending before the Court is the *Motion of the Debtors for Approval of Fourth Amended Proposed Budget for Proposed Financing and Use of Cash Collateral* [Dkt. # 826], which seeks to approve a Fourth Amended Proposed Budget (the "Budget") for interim financing and use of cash collateral through July 31, 2015.

5. Despite authorizing payments to all other administrative creditors of the Debtors through the closing of a sale of the Debtors' assets, the Budget makes no allowance whatsoever for the payment of section 503(b)(9) claims or for the winding down of the Debtors' estates post-sale.

C. The Sale Process

6. On November 12, 2014, the Debtors filed the *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 for Entry of: (I) Order (A) Approving Sales and Bidding Procedures in Connection with Sale of Assets of the Debtors, (B) Approving Form and Manner of Notice, (C)*

Scheduling Auction and Sale Hearing, (D) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (E) Granting Related Relief; and (II) Order (A) Approving Purchase Agreement, (B) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (C) Granting Related Relief [Dkt. No. 155] (the "Sale Motion"), which seeks, *inter alia*, authorization to conduct an auction for the sale of substantially all of the Debtors' assets (the "Sale") under the terms of a recently filed form of purchase agreement to an unknown Prevailing Purchaser. Upon information and belief, the proposed sale of substantially all of the Debtors' assets will likely result in net proceeds significantly less than the pre-petition lenders' (the "Pre-Petition Lenders") outstanding indebtedness. The Sale Motion also does not provide for any mechanism to pay section 503(b)(9) claims or any other administrative claims of the Debtors post-closing.

7. Moreover, pursuant to section 363(k) of the Bankruptcy Code and the express terms of the Interim DIP Order and the proposed final DIP order; (a) the Pre-Petition Lenders are permitted to credit bid up to the full amount of their claims of $58,197,393 – representing the full amount of the Pre-Petition Indebtedness (as defined in the Interim DIP Order) – at any sale of assets under sections 363 or 1129 of the Bankruptcy Code; and (b) the post-petition lenders (the "DIP Lenders" and together with the Pre-Petition Lenders, the "Lenders") are permitted to credit bid the full amount of any DIP Obligations (as defined in the Interim DIP Order) outstanding as of any auction sale of assets under sections 363 or 1129 of the Bankruptcy Code.

8. On December 15, 2014, Chemours filed an Objection to the Sale Motion [Dkt. # 320] (the "Sale Objection"), raising concerns that the Debtors' chapter 11 proceedings were being run, solely to preserve and dispose of the prepetition collateral of the Lenders and at

the expense of administrative, priority and unsecured creditors and that unless and until the administrative solvency of these bankruptcy estates were provided for as part of any order approving the Sale Motion, the sale should not be approved.

9. Pursuant to the Court's order approving the sale and bidding procedures in connection with the sale of the Debtors' assets (the "Bid Procedures"), entered on February 20, 2015 [Dkt. 509] and amended on March 16, 2015 (the "Bid Procedures Order"), all issues raised in Chemours' Sale Objection were expressly preserved until a hearing on the Sale, including any issues with respect to the rights to the proceeds of any Sale, to be addressed in the proposed Sale Order or such other order of the Court.

10. On June 22, 2015, the Debtors' filed the Amended Sale Motion, seeking amended sales and bidding procedures and a revised timeline for the Sale.

E. The Settlement Motions

11. On February 18, 2015, the Debtors filed the *Motion of the Debtors pursuant to §§ 105 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019 for an Order Approving Settlement Among the Debtors, the Committee, the Lender Parties, and PHI* [Dkt. #501] (the "Committee Settlement Motion"), seeking approval of a settlement agreement (the "Committee Settlement Agreement ") among the Debtors, the Committee, the Lenders and the non-debtor parent, Phosphate Holdings, Inc. ("PHI") that, among other things, provides for (a) the allowance of the Lenders and STUW LLC, as administrative agent (the "Agent") to the Lenders (collectively, the "Lender Parties") claims in full, approved liens and the right to credit bid; (b) the DIP Obligations being secured by valid, properly perfected, enforceable, first-priority pre-petition and post-petition liens on and security interests in substantially all of the assets of the Debtors and the Guarantor, including, without limitation, the BP Claim (as such term is

defined in the Committee Settlement Motion); (c) after repayment of the DIP Obligations in full, an Estate Settlement Payment (as defined in the Committee Settlement Motion) by the Lender Parties of thirty-three percent (33%) of any BP Proceeds (as defined in the Committee Settlement Motion) actually received by the respective Lenders up to an aggregate amount of $7,375,000 on account of the BP Claim to the bankruptcy estates for the benefit of holders of administrative, priority and general unsecured claims; (d) an agreement by the Lender Parties to the retention and the increased funding of professionals for the Committee; (e) the parties consent to the terms of a proposed Agreed Final DIP Order attached as Exhibit A to the Committee Settlement Agreement, under which the DIP Lenders have agreed to fund $6,000,000 of DIP Financing; (f) a waiver of any deficiency claim of the Pre-Petition Lenders; (g) the subordination of PHI's claims against the bankruptcy estates to general unsecured creditors; (h) the parties to consent to a process for the Sale in accordance with the applicable provisions of the Bankruptcy Code and Bid Procedures Order, and (i) mutual releases.

12. On March 16, 2015, Chemours filed a limited objection (the "Committee Settlement Objection") to the Committee Settlement Motion, raising concerns about the speculative nature of the Estate Settlement Payment and the risk of administrative insolvency should the Court approve the Committee Settlement Motion before the outcome of the sales process is known, absent of a carve-out from the sale proceeds sufficient to provide for the full payment of all administrative expenses of the bankruptcy estates [Dkt. #596]. Presently, the Committee Settlement Motion is scheduled to be heard by the Court on the same date as the Amended Sale and Gov't Motions.

13. In addition to the Amended Sale Motion, also on June 22, 2015, the Debtors filed the Gov't Motion, seeking, *inter alia*, approval of that certain stipulation and

settlement agreement (the "Gov't Settlement Agreement") by and among the Debtors, PHI, STUW LLC, as administrative agent (the "Agent") for the Pre-Petition Lenders and the Post-Petition Lenders of the Debtors (collectively, the "Lenders", and together with the Agent, the "Lender Parties"), the United States of America, on behalf of the Environmental Protection Agency (the "EPA"), and the Mississippi Department of Environmental Quality (the "MDEQ" and together with the EPA, collectively, the "Gov't Agencies").

14. The Gov't Settlement Agreement provides, in general terms, for (a) a transaction detailed as either (i) the continuance of the sales process on a revised timeline for the Sale of all or substantially all of the Debtors' assets, including but not limited to the Gyp Stacks (as defined in the Gov't Motion) (the "Assets"), but which now requires that the Bid Procedures set a floor bid of $15,000,000 cash consideration to be paid to the Lender Parties, as well as for the assumption of environmental liabilities and satisfaction of the financial assurance requirements of the Gov't Agencies, or, (ii) in the alternative (the "Alternative Transaction"), the transfer of the assets of the bankruptcy estates to two trusts (the "Liquidation Trust" and "Environmental Trust" respectively), by which the Liquidation Trust will receive the assets of the bankruptcy estates, other than the Gyp Stacks, through the use of a credit bid of $15,000,000 of the Agent's secured claim so that the Liquidation Trust can market and sell such assets for the exclusive benefit of the Lender Parties by the Agent, and by which the Environmental Trust will receive the Gyp Stacks and be responsible for performing the environmental clean-up or other actions funded through distributions from the Liquidation Trust for the exclusive benefit of the Gov't Agencies; (b) up to $6,000,000 in DIP/Exit Obligations by the Post-Petition Lenders for the Debtors' operations and waste water processing through the sale deadline or closing date, as applicable; (c) a distribution structure for the proceeds of the BP Claim or Protective Claim (as

defined in the Gov't Settlement Agreement), and (d) for covenants not to sue or assert any claims against the Lender Parties, PHI and certain officers, directors and employees of the Debtors.[3]

F. 503(b)(9) Claims

15. Prior to the Petition Date, MPC routinely ordered and purchased sulfuric acid in the ordinary course of business from Chemours, and Chemours regularly sold and delivered sulfuric acid to MPC.

16. More specifically, in the twenty (20) days preceding the Petition Date (the "503(b)(9) Period"), MPC received from Chemours, in the ordinary course of MPC's business, sulfuric acid with a total value of $699,981.12 (the "503(b)(9) Goods").

17. On November 13, 2014, Chemours served a written demand for reclamation upon the Debtors, their counsel in these chapter 11 cases, and the Office of the United States Trustee (the "Reclamation Demand") for reclamation and payment of the 503(b)(9) Goods. Chemours has not received a formal response to its Reclamation Demand, nor have the Debtors tendered any payment to Chemours on account of any of the 503(b)(9) Goods.

18. On February 23, 2015, Chemours filed a proof of claim on account of the unpaid 503(b)(9) Goods, and simultaneously filed a motion [Dkt. # 522] for the allowance and payment of an administrative expense claim with respect to the 503(b)(9) Goods, entitled to priority pursuant to section 507(a)(2) of the Bankruptcy Code (the "503(b)(9) Claim").

19. On July 13, 2015, the Court entered an order allowing the 503(b)(9) Claim in full. *See* Dkt. # 867.

20. In addition, pursuant to the recent Register of All Proofs of Claims, filed by the claims agent, BMC Group, Inc., on July 9, 2015 [Dkt. # 858], administrative claims in the

[3] The Alternative Transaction appears to be a re-trade of the terms of the Committee Settlement Agreement, including the Estate Settlement Payment, so it remains to be seen if the Committee Settlement Motion is now moot.

approximate aggregate amount of $2.9 million have been asserted against these bankruptcy estates. Of that amount, orders have entered allowing in the aggregate $2,465,771.99 in administrative claims on account of 503(b)(9) claims asserted, including the 503(b)(6) Claim of Chemours (collectively, the "Allowed 503(b)(9) Claims"). *See* Dkt. ## 703, 715, 716, 751 & 867. Notwithstanding, none of these administrative claims are provided for in the Budget, nor is it clear whether they are expected to be paid from sales proceeds from either the Sale or the Alternative Transaction. Accordingly, for all purposes herein, it would appear that these estates are administratively insolvent.

OBJECTION

21. The amended structure for the Sale proposed by the Debtors in the Amended Sale Motion, as required by the Gov't Settlement Agreement, or, in the alternative, the Alternative Transaction, is nothing more than an impermissible *sub rosa* plan, which violates the priority scheme of the Bankruptcy Code and seeks to circumvent creditor protections by bypassing the plan process.

22. A *sub rosa* plan, or *de facto* plan, arises when a trustee or debtor seeks to enter a transaction outside of a plan of reorganization that could have a significant effect upon the bankruptcy case and its estate. *See* Craig A. Sloane, *The Sub Rosa Plan of Reorganization: Side-Stepping Creditor Protections in Chapter 11*, 16 Bankr. Dev. J. 37 (1999). Traditionally, objections on these grounds are raised to three categories of transactions: Section 363(b) sales of property of the estate outside the ordinary course of business, leases, and settlement agreements which are subject to the court approval pursuant to Rule 9019. *Id.*

23. The Fifth Circuit articulated the standard for denying such a transaction where it would have "the practical effect of dictating some of the terms of any future reorganization plan" and thus would allow the debtor to "short circuit the requirements of

chapter 11 for confirmation of a reorganization plan." *Pension Benefit Guar. Corp. v. Braniff Airways, Inc. (In re Braniff),* 700 F.2d 935, 940 (5th Cir. 1983). While the factors articulated in *Braniff* apply primarily in the context of a 363 sale, the factors provide helpful guidance in cases involving settlements as well:

> - The debtor in possession or trustee in a chapter 11 case must consider its fiduciary duties to all creditors and interest holders before seeking approval of a transaction under § 363(b).
>
> - The movant must establish a *business justification* for the transaction and the bankruptcy court must conclude, from the evidence, that the movant satisfied its fiduciary obligations and established a valid business justification
>
> - A sale, use, or lease of property under § 363(b) is not *per se* prohibited even though it purports to sell all, or virtually all, of the property of the estate, but such sales (or proposed sales of the crown jewel assets of the estate) are subject to special scrutiny.
>
> - Parties that oppose § 363(b) transactions on the basis that they constitute a *sub rosa* chapter 11 plan *must articulate the specific rights that they contend are denied by the transaction.*
>
> - Although the bankruptcy court need not turn every § 363(b) hearing into a mini-confirmation hearing, the bankruptcy court must not authorize a § 363(b) transaction if the transaction would effectively evade the "carefully crafted scheme" of the chapter 11 plan confirmation process, such as by denying §§ 1125, 1126, 1129(a)(7), and 1129(b)(2) rights.
>
> - If the bankruptcy court concludes that such rights are denied, then the bankruptcy court can only approve the transaction if it fashions an appropriate protective measure modeled on those which would attend a reorganization plan.
>
> - Transactions that explicitly release all (or virtually all) claims against the estate, predetermine the structure of a plan of reorganization, and explicitly obligate parties to vote for or against a plan are not authorized under § 363(b).

In re Gulf Coast Oil Corp., 404 B.R. 407, 422 (Bankr. S.D. Tex. 2009)

24. An objection that a settlement is a *sub rosa* plan because it dictates the terms of a plan of reorganization must establish that the settlement would either "(i) dispose of all claims against the estate or (ii) restrict creditors' rights to vote." *In re Capmark Fin. Grp. Inc.*, 438 B.R. 471, 513-14 (Bankr. D. Del. 2010) (citations omitted). A court will set aside an

otherwise valid settlement or sale if the settlement or sale would dictate the terms of a plan of reorganization or infringe on the chapter 11 protections afforded to creditors. *In re Crowthers McCall Pattern, Inc.*, 114 B.R. 877, 885 (Bankr. S.D.N.Y. 1990) (even if the applicable statutory and judicial standards for approval of a transaction are met, a transaction will not be approved if it is a *de facto* plan that "encroaches on a right afforded creditors or equity holders in the Chapter 11 plan process . . . [a] transaction which would effect a lock-up of the terms of a plan will not be permitted.").

25. In these cases, the amended sale process and the Gov't Settlement Agreement dispose of all of the Debtors' assets and, thus, are more appropriately included within a plan of liquidation. In addition, the complicated interplay between the Amended Sale Motion, the Committee Settlement Motion (if still in play) and the Gov't Motion is more appropriately detailed in a disclosure statement that will allow all creditors the opportunity to make an informed decision about the liquidation and distribution of estate assets. A plan would also provide for administrative creditors to be paid in full, while the Sale and the Gov't Settlement Agreement provide for no such thing.

26. An impermissible *sub rosa* plan in violation of § 1129 is a "transaction that dictates a distribution scheme and other terms that predetermine any subsequent chapter 11 plan." *Parker v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 430 B.R. 65, 84 (S.D.N.Y. 2010). It is well established that a debtor "should not be able to short circuit the requirements of Chapter 11 for confirmation of a reorganization plan by establishing the terms of the plan *sub rosa* in connection with a sale of assets." *In re Dow Corning Corp.*, 192 B.R. 415, 427 (Bankr. E.D. Mich. 1996) (quoting *In re Braniff Airways, Inc.*, 700 F.2d 935, 940 (5th Cir. 1983)); *see also State of Ohio Dep't of Taxation v. Swallen's Inc. (In re Swallen's, Inc.)*, 269 B.R. 634, 638 (BAP 6th Cir. 2001) ("At least when a party in interest objects, a bankruptcy court cannot issue orders that bypass the

requirements of Chapter 11, such as disclosure statements, voting, and a confirmed plan, and proceed to a direct reorganization on the terms the court thinks best, no matter how expedient that might be."). A transaction is an impermissible *sub rosa* plan if it disposes of all or substantially all of the debtor's assets without following the Bankruptcy Code's procedural protections in connection with the development and approval of a plan of reorganization, such that the sale, or settlement, itself is a *de facto* plan.

27. As a matter of law, a purchaser of a debtor's assets may not simply pick and choose certain creditors (among similarly situated creditors) to receive additional payments. *In re Dewey Ranch Hockey, LLC*, 414 B.R. 577, 593 (Bankr. D. Ariz. 2009). A sale of all of a bankruptcy estate's assets has the practical effect of deciding issues that would normally arise and be resolved in connection with the confirmation of a plan of reorganization. *Id.* The *Dewey* court noted that if a proposed plan is contested, it may only be confirmed if it does not discriminate unfairly with respect to each claim of creditors that is impaired by the plan. *Id.* (citing 11 U.S.C. § 1129(b)(1)). The *Dewey* court found that where a buyer claims the right to materially control how some or all of the sale proceeds are distributed, such assertion must be supported by compelling evidence. This is particularly true where the proposed distribution is inconsistent with the requirements of the Bankruptcy Code. *Id.* In other words, a debtor may not accomplish something through a § 363 sale that would be expressly prohibited by the Bankruptcy Code under a plan. And, "[o]ne of the prime policies of bankruptcy is equality of distribution amongst the creditors." *Id.* (citing *Union Bank v. Wolas*, 502 U.S. 151 (1991)).

28. Just like a plan, in its current form, the Gov't Settlement Agreement and proposed amended sales process take the Debtors' assets and seeks to direct the payment of the sales proceeds and establish a scheme of distribution, via the establishment of Trusts or otherwise, to certain creditor classes in a manner that would not be permitted under the

Bankruptcy Code through a plan of reorganization or liquidation. Indeed, the only beneficiaries of the sale process and the Gov't Settlement Agreement are the Lender Parties and the Gov't Agencies. Neither transaction proposes any additional funding in the Budget for the payment in full of the administrative creditors of these bankruptcy estates, including the 503(b)(9) Allowed Claims, or to adequately wind-down these chapter 11 estates post- the sale deadline or closing date, whichever is applicable. Accordingly, the Amended Sale and Gov't Motions cannot be approved in their current form unless modified so as to treat all creditors of these estates fairly, including funding sufficient to pay all administrative expenses and a wind down budget from the sales proceeds.

29. Absent a requirement that all administrative expense priority claims be paid in full through the sale proceeds, these cases will have been operated for the sole benefit of the Lenders, and squarely on the backs of administrative expense creditors. Indeed, the wind down of the Debtors' operations would not have been possible without the goods delivered by Chemours and others during the twenty days preceding the Petition Date. Such a result would be counter to the spirit of chapter 11 and the Bankruptcy Code, and work an injustice to the section 503(b)(9) creditors of the Debtors, including Chemours, which section 503(b)(9) creditors are afforded the exact same treatment under the Bankruptcy Code as all of the post-petition administrative creditors of the Debtors that are enjoying ongoing payments in these cases.

30. Chemours submits, therefore, that the Court should deny approval of the Gov't and Amended Sale Motions, which terms are no more than a *sub rosa* plan concocted by the Lenders to avoid the funding these bankruptcy estates through conclusion. The Lenders should not be permitted to take advantage of the chapter 11 protections by picking and choosing which expenses of the theses estates should be paid, over and against paying the Allowed

503(b)(9) Claims and wind-down expenses. As previously noted by this Court, chapter 11 proceedings are not for the sole benefit of the debtor and secured creditors. The 503(b)(9) Goods served an integral part in these chapter 11 cases, without such, the Debtors' would have been unable to continue their operations in the days following the Petition Date, all to the benefit of the Lenders. Thus, when the Lenders submitted the Debtors to this process, they should have been prepared to incur the costs of the process, including the Allowed 503(b)(9) Claims. If the Debtors and the Lenders don't want to finance the costs of these cases, they are under no obligation to do so, but to the extent they want to continue to obtain the benefits of chapter 11, these costs must be provided for.

31. Through the Amended Sale and Gov't Motions, the Debtors and the Lenders seek the benefits of a confirmed chapter 11 plan without affording creditors any of the protections of the plan confirmation process. In fact, because the Alternative Transaction proposes to take all of the Debtors' assets and place them in Trust, the filing of a plan will be moot because there will be nothing left to distribute: it will all have been done through the Sale. Indeed, the Gov't Settlement Agreement expressly states that it is not conditioned on confirmation of any particular plan. This attempt to short-circuit the plan confirmation process and violate the Bankruptcy Code is sufficient reason to deny the Sale and, therefore, avoid a predetermined outcome of these cases to the exclusion of the one class of creditors that made this outcome possible for the Lenders: the 503(b)(9) creditors.

32. Accordingly, the Court should not allow the Lenders to game the system at the expense of other creditors and, therefore, should deny the Sale Motion and the Gov't Settlement Motion. Alternately, should this Court approve the Gov't Settlement Agreement and proposed amended sale process, sale proceeds must be retained sufficient to pay all administrative expense claims of these bankruptcy estates, not just those of certain creditors and

professionals, and provide for the anticipated costs associated with an appropriate wind-down and chapter 11 exit strategy post-sale deadline or closing date, as applicable, *i.e.*, a liquidation plan.

INCORPORATION OF PRIOR OBJECTIONS

33. Chemours hereby incorporates the averments made in both its Sale Objection and Committee Settlement Objection as though same were fully set forth in this Objection at length.

RESERVATION OF RIGHTS

34. Chemours hereby reserves all of its rights to make other and further objections to the sale of the Debtors' assets once a proposed purchaser becomes known, including, without limitation its rights to amend, modify or supplement this Objection on any available grounds.

WHEREFORE, Chemours respectfully requests that the Court deny the relief requested in the Amended Sales and Gov't Motions as an impermissible, unconfirmable *sub rosa* plan, and grant Chemours such other and further relief as may be just and proper.

Dated: July 14, 2015

/s/ Leslie C. Heilman

Tobey M. Daluz, Esquire (admitted *pro hac vice*)
Leslie C. Heilman, Esquire (admitted *pro hac vice*)
BALLARD SPAHR LLP
919 N. Market Street, 11th Floor
Wilmington, DE 19801
Telephone: (302) 252-4465
Facsimile: (302) 252-4466
Email: daluzt@ballardspahr.com
heilmanl@ballardspahr.com

and

J. Lawson Hester, Esquire (MS Bar No. 2394)
WYATT, TARRANT & COMBS, LLP
4450 Old Canton Road, Suite 210
Jackson, MS 39211
Telephone: (601) 987-5305
Facsimile: (601) 997-5353
E-mail: lhester@wyattfirm.com

Attorneys for The Chemours Company, LLC, successor-in-interest to E. I. du Pont de Nemours and Company)