UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:	)	
	)	
KIEL BROS. OIL COMPANY, INC.,	)	Chapter 11
KP Oil, INC.,	)	Case No: 04-11121-BHL-11
	)	Jointly Administered
Debtors.	)	

OBJECTION OF NATIONAL CITY BANK TO DISCLOSURE STATEMENT WITH RESPECT TO THE JOINT PLAN OF LIQUIDATION OF KIEL BROS. OIL COMPANY, INC., ET AL AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

National City Bank ("NCB") as successor by merger to National City Bank of Indiana, a secured creditor herein, by counsel, for its Objection to the Debtors' Disclosure Statement with Respect to the Joint Plan of Liquidation of Kiel Bros. Oil Company, Inc., et. al. and the Official Committee of Unsecured Creditors Under Chapter 11 of the Bankruptcy Code (the "Disclosure Statement"), respectfully represents to this Court as follows:

1. On June 15, 2004, Kiel Bros. Oil Company, Inc., and KP Oil, Inc. (collectively "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

2. On July 29, 2004, this Bankruptcy Court entered its Final Order Authorizing Debtors to Obtain Post-Petition Secured Financing and Super Priority Financing, Authorizing the Debtors to Use Cash Collateral and Providing Adequate Protection (the "Final Order") authorizing the Debtor to obtain post-petition secured credit from NCB in an amount up to $23,500,000.00.

3. On November 18, 2004, this Bankruptcy Court entered its Order Authorizing Debtors to Obtain Post-Petition Secured and Super Priority Financing, Authorizing the Debtors to Continue Use of Cash Collateral and Providing Adequate Protection Pending the Sale of

Substantially All of the Debtors' Assets (the "Sale Loan Order") authorizing the Debtors to obtain additional post-petition secured credit from NCB.

4. Both the Final Order and the Sale Loan Order provided for a late fee to be paid from the Debtors to the Bank for any portion not paid within ten (10) days after the date when first due at the rate of five percent (5%) of such overdue amount. Pursuant to the Sale Loan Order, all post-petition loans from NCB to Debtors were due on or before November 28, 2004. The Debtors failed to pay the post-petition loans when due.

5. Pursuant to the Stipulation to Pay Secured Claim of National City Bank of Indiana and Reservation of Rights ("First Joint Stipulation"), all principal and interest owed by the Debtors to NCB was paid in full on December 13, 2004. Pursuant to the First Joint Stipulation, NCB continued to assert, and reserved the right to assert, that it was owed a late fee of $717,651.00 (the "Late Fee") as an administrative expense claim.

6. In the First Joint Stipulation, all parties reserved certain rights, including, without limitation:

> any and all rights and remedies preserved pursuant to the Final Order and the Sale Loan Order, the allegations contained in the Committee's Complaint and all of National City's defenses thereto and counterclaims. The amounts paid to National City pursuant to this Stipulation shall, regardless of the actual source or current allocation or characterization by any Party hereto as proceeds from the sale of the Debtors' assets, cash collateral, or otherwise, be subject to reallocation or recharacterization as proceeds from the sale of the Debtors' assets, cash collateral, or otherwise by subsequent order of the Court.

7. In the First Joint Stipulation, NCB reserved:

> all of its rights and remedies pursuant to the Loan Documents, the Final Order, and the Sale Loan Order, including but not limited to, the right to recover its professional fees, expenses and costs of collection, including but not limited to those fees and expenses incurred by National City in these bankruptcy cases, including any adversary proceeding, prior to and following payment of the loan due National City as authorized herein.

8. On September 30, 2004, the Official Committee of Unsecured Creditors in this Bankruptcy Case (the "Committee") filed an adversary proceeding against NCB (the "Adversary Proceeding"). The Adversary Proceeding was settled on or about April 27, 2005 pursuant to a Settlement Agreement and General Release between NCB, the Debtors, and the Committee (the "Settlement Agreement").

9. The Settlement Agreement was approved by the Bankruptcy Court pursuant to the Parties' Stipulation (the "Second Joint Stipulation") on or about April 27, 2005. (The First Joint Stipulation and the Second Joint Stipulation are sometimes hereinafter collectively referred to as the "Joint Stipulations").

10. The Settlement Agreement provided for the mutual release of claims between the Parties, except that: (1) NCB reserved the right to assert its right to payment of the Late Fee, if any party in interest should subsequently assert claims against NCB concerning the bankruptcy case or the Debtors; and (2) NCB reserved the right to receive reimbursement from the Debtors of all attorneys fees and expenses incurred on NCB in the Bankruptcy case.

11. Accordingly, the Final Order, Sale Loan Order, the Joint Stipulations and the Settlement Agreement created post-petition contractual rights for NCB, the Debtors, and the Committee. *See*, In re Silverman, 13 B.R. 72 (D.Mass. 1981).

12. The Debtors and the Committee voluntarily entered these post-petition contractual arrangements with NCB. *See*, Silverman, 13 B.R. at 74.

13. On or about August 24, 2006, the Debtors filed the Disclosure Statement together with their proposed Joint Plan of Liquidation of Kiel Bros. Oil Company, et. al. and the Official Committee of Unsecured Creditors Under Chapter 11 of the Bankruptcy Code (the "Plan"). Section 5.2(d) of the Plan states in relevant part:

> All rights reserved by NCB [National City] in the NCB Stipulation, the NCB Cash Collateral Order or otherwise, shall be foreclosed effective as of the Confirmation Date and no further payments, from any source, shall be made to NCB on account of any secured claims or any Claims asserted by NCB.

14. The Plan also provides in Section 7.2(a) in relevant part:

> From and after the Confirmation Date, the Debtors shall continue in existence (and shall consult and/or confer with the Committee and the Plan Officer as specifically provided for in the Plan) for the purpose of . . . (iii) enforcing and prosecuting claims, interests, rights and privileges of the Debtors, including, without limitation, the prosecution of avoidance actions in conjunction with the marshalling of the Debtors assets as agreed upon by the Plan Proponents . . ..

15. If confirmed, Section 5.2(d) of the Plan purports to strip NCB of the post-petition contract rights as negotiated with the Debtors and the Committee and memorialized in the Final Order, Sale Loan Order, the Joint Stipulations and Settlement Agreement.

16. From the dates that the Final Order, Sale Loan Order, the Joint Stipulations and Settlement Agreement were respectively approved until the present, the Debtors and their bankruptcy estates have enjoyed the benefits conferred by each, which include but are not limited to the ability of the Debtors and the Committee to avoid ongoing administrative expenses of the bankruptcy estate from the untimely payment of the loans due to NCB pursuant to the Loan Documents and the previous orders of this Bankruptcy Court.

17. The Plan provides that the Debtors and other creditors will continue to enjoy the benefits conferred by the Joint Stipulations and Settlement Agreement, while at the same time foreclosing NCB's contractual rights under the same post-petition agreements.

18. The Plan cannot be confirmed as proposed because it seeks to impermissibly modify the rights of NCB pursuant to post-petition stipulations of the Parties, as approved and ordered by this Bankruptcy Court. As stated in Silverman, *supra*:

> The impairment of pre-petition contractual provisions that might be possible under a Chapter 11 plan does not apply to post-petition contracts such as this stipulation. The parties who negotiate such stipulations must be aware that they have altered their relationships, and will be bound by the terms of the new agreement.

Silverman, 13 B.R. at 75. (emphasis added).

19. The Debtors and the Committee may not unilaterally foreclose NCB's post-petition contract rights through confirmation of the Plan. *See*, Id.

20. The Disclosure Statement fails to disclose that to the extent that the Plan purports to foreclose the post-petition contractual rights of NCB which were authorized by orders of the Court, while permitting the Debtors, the Committee and other creditors to retain their respective reserved rights pursuant to the same post-petition Stipulations, the Plan cannot be confirmed.

21. The Disclosure Statement fails to disclose that the Plan incorrectly characterizes NCB's administrative claim as having been paid, when it has not, and otherwise fails to treat NCB's post-petition claim the same as other claims in the same class, all without NCB's consent and in violation of 11 U.S.C. §1123(a)(4). The Disclosure Statement fails to disclose that the Plan cannot be confirmed as proposed.

22. Based on the foregoing, National City Bank objects to the adequacy of the Debtors' Disclosure Statement because it does not inform creditors that the Plan, as proposed, cannot be confirmed.

WHEREFORE, National City Bank, by counsel, respectfully objects to the adequacy of the information contained in the Disclosure Statement and for all other and further relief just and proper in the premises.

Respectfully submitted,

HOPPER BLACKWELL, P.C.

BY: /s/ George W. Hopper
George W. Hopper
Attorney No. 8284-49

HOPPER BLACKWELL, P.C.
111 Monument Circle, Suite 452
Indianapolis, Indiana 46204-5170
(317) 635-5005
Attorneys for National City Bank

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 18th day of September, 2006, by electronic mail or first class United States mail, postage prepaid, on the Core Group and the 2002 List.

/s/ George W. Hopper
George W. Hopper