

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

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In re:)	Chapter 11
)	
MISSISSIPPI CHEMICAL CORPORATION, <i>et al.</i>)	Case Nos. 03-02984-WEE
)	(Jointly Administered)
)	
Debtors.)	Hon. Edward Ellington
)	

**RESPONSE OF HARRIS TRUST AND SAVINGS BANK, AS ADMINISTRATIVE AGENT, TO
OBJECTIONS OF BANK OF NEW YORK TRUST COMPANY OF FLORIDA, N.A, AS TRUSTEE, TO
FINAL FINANCING ORDER**

This Response is filed by Harris Trust and Savings Bank, as Administrative Agent (the "Agent") for both the Debtors' Amended and Restated Credit Agreement dated as of November 15, 2002 (the "*Pre-Petition Credit Agreement*") and the Post-Petition Credit Agreement (the "*DIP Credit Agreement*") approved on an interim basis by this Court on May 16, 2003, on behalf of the lenders under both the Pre-Petition Credit Agreement (the "*Pre-Petition Lenders*") and the DIP Credit Agreement (the "*DIP Lenders*" and, together with the Pre-Petition Lenders, the "*Lenders*"). This Response is made to the objections filed by Bank of New York Trust Company of Florida, N.A., as Trustee (the "*IRB Trustee*") for the holders of the Mississippi Business Finance Corporation Solid Waste Disposal Revenue Refunding Bonds (Mississippi Phosphates Corporation Project) Series 1998 issued in the aggregate principal amount of \$14,500,000 (the "*IRB Bonds*"), to entry of a Final Financing Order Authorizing (1) Borrowing with Priority over Administrative Expenses and Secured by Liens on Property of the Estates pursuant to Section 364(c) and (d) of the Bankruptcy Code, (2) the Debtors' Use of Cash Collateral and Granting

Adequate Protection Therefor Pursuant to Sections 361 and 363 of the Bankruptcy Code, and (3) Modifying the Automatic Stay (the "*Final Financing Order*").

Background

1. Prior to filing their Chapter 11 petitions, the Debtors were obligated to the Pre-Petition Lenders pursuant to the Pre-Petition Credit Agreement in the approximate amount of \$160,000,000. The Pre-Petition Credit Agreement amended and restated a Credit Agreement dated as of November 25, 1997 (the "*Original Agreement*"). Both the Original Agreement and the Pre-Petition Credit Agreement served as the primary working capital source for Mississippi Chemical Corporation (the "*Parent*") and its domestic subsidiaries (the "*Subsidiaries*"), including Mississippi Phosphates Corporation ("*Phosphates*"). In consideration for the availability of working capital financing through the Parent, each of the Subsidiaries guaranteed (each, a "*Guaranty*") the Parent's obligations under the Original Agreement and, subsequently, the Pre-Petition Credit Agreement.

2. Also in 1997, Phosphates accepted the proceeds of the IRB Bonds as a loan to refinance a solid waste disposal facility. As a result, the IRB Trustee became an unsecured creditor of Phosphates. The Parent guarantees Phosphate's repayment of the loan (the proceeds of which are used to meet the debt service on the IRB Bonds).

3. On February 24, 2000, the Original Agreement and each Guaranty was secured, respectively, with valid, first priority, non-avoidable liens and security interests in essentially all domestic¹ assets of the respective Debtors. Later, the Guarantees and liens carried forward to the

1. Mississippi Chemical Corporation has foreign subsidiaries which hold a joint venture interest in an ammonia plant in the Republic of Trinidad and Tobago (collectively, the "*Trinidad Interest*"). These subsidiaries, which are not Debtors in these cases, are prohibited by local law from pledging their assets to foreign entities. Consequently, the Pre-Petition Lenders accepted the Guaranty Agreement (the "*MCHI Guaranty*") of the top-tier foreign subsidiary, Mississippi Chemical Holdings, Inc., a British Virgin Islands

obligations under the Pre-Petition Credit Agreement. The Pre-Petition Credit Agreement also contained modified covenants following upon a deteriorating operating performance as the result of a squeeze between unprecedented increases in raw material costs and oversupplies of end product, including from foreign competition. That both of these pincers are largely out of the control of the Debtors only heightens the risk that a lender to the Debtors must reconcile.

4. Despite the recent restatement, the Pre-Petition Credit Agreement was amended only a month before the May 15, 2003 Petition Date to permit the acquisition of Melamine Chemicals, Inc. The Pre-Petition Lenders loaned the Debtors \$1,000,000 to finance the acquisition and, consistent with the terms of the established lending arrangements, the Debtors granted the Pre-Petition Lenders liens on all the assets acquired. Nonetheless, as of the Petition Date, the financial terms and conditions of the Pre-Petition Credit Agreement had been breached as a consequence of fluctuating operating profits resulting from volatile gas prices and significant reductions in demand for fertilizer.

A. The Agent's Response to the Objections of the Committee Are Incorporated Herein.

5. The IRB Trustee joins in the objections to the Final Financing Order filed by the Official Committee of Unsecured Creditors. In response to those objections, the Agent incorporates by reference, as if fully set forth herein, the Response of Harris Trust and Savings Bank, as Administrative Agent, to Objections of the Official Committee of Unsecured Creditors to Final Financing Order.

corporation, in lieu of security interests in the foreign subsidiaries, subject to restrictions on cash being transferred out of the Trinidad Interest without payment on the MCHI Guaranty. The Pre-Petition Lenders and the Debtors entered a Standstill Agreement dated as of May 16, 2003, pursuant to which the Pre-Petition Lenders agreed not to enforce the MCHI Guaranty provided the Debtors agree to apply the proceeds of any event generating cash from the Trinidad Interest to the Pre-Petition Debt.

B. The DIP Credit Agreement Benefits Phosphates as the Source of Its Working Capital.

6. The IRB Trustee's objection to the DIP Credit Agreement alleges that Phosphates, as a particular Subsidiary, guarantees the obligations of the Parent, as the borrower under the DIP Credit Agreement, without receiving any benefit in return. This is not the case. In fact, all borrowings under the DIP Credit Agreement are made by the Parent for the express purpose of downstreaming the proceeds to the Subsidiaries in need of working capital financing. This direct consideration is evidenced by intercompany loans which provide clear financial benefits which may not be otherwise available to the Subsidiaries, or available only at substantially higher cost.

7. That an upstream subsidiary guarantee is valid and supported by both direct and indirect consideration has been affirmatively addressed by courts and commentators. There is general agreement that the validity of an upstream guaranty:

essentially rests on the interdependence of the components of the corporate group. In the upstream guaranty, the subsidiary's interests are enhanced when the parent's credit is strengthened. The parent is normally the most likely source of financing for the subsidiary, and the ability of the subsidiary to assist the parent thus strengthens its own access to financial assistance. Where the upstream guaranty relates to on-going financing by the parent, its usefulness to the subsidiary is plain, and its validity as a matter of corporation law should no longer be debated.

Blumberg, P., *The Law of Corporate Groups – Bankruptcy Law*, § 6.07.1, pp. 261-62. *See also*, *In re Marquis Prod. Inc.*, 150 B.R. 487 (Bankr. D. Me. 1993)(“a subsidiary receives an indirect benefit where its upstream guaranty enables its parent to procure a loan and thus to provide funds to the subsidiary”). As suggested, even indirect benefits alone suffice as fair consideration. *Telefast, Inc. v. Vu-TV, Inc.*, 591 F.Supp. 1368, 1379 (D. N.J. 1984)(citation omitted). Such benefit “operates as a partial offset to the impairment in the prospects of the guarantor's creditors

resulting from the debtor's assuming a contingent liability." *In re Xonics Photochemical, Inc.*, 841 F.2d 198, 201 (7th Cir. 1988). Clearly, each of the Subsidiaries which guarantee the Parent's direct obligations under the DIP Credit Agreement, including Phosphates, benefit both directly and indirectly from the assurance of financing during the reorganization period provided by the DIP Credit Agreement

C. Phosphate's Asset Pledge in Support of Its Guaranty Did Not Result in a Fraudulent Transfer.

8. Section 548(a)(1)(B) of the Bankruptcy Code provides that the trustee may avoid any "transfer of an interest of the debtor in property" for which the debtor received less than a reasonably equivalent value in exchange for the transfer *and* was then insolvent, undercapitalized or unable to pay its maturing debts.

9. As discussed above, Phosphates received equivalent value in financing availability and indirect benefits at the time it pledged its assets in support of its Guaranty in early 2000. Also at that time, Phosphates obviously did not satisfy the material adverse financial condition prong of the fraudulent conveyance test, as it was over three (3) years since that time that the Debtors operated before filing for Chapter 11. The Debtors admit to this in the Final Financing Order by waiving their right to bring an avoidance action, including one based on fraudulent conveyance theories.

10. Yet this does not forestall the IRB Trustee, or any other party in interest, from confirming the absence of any cause of avoidance action against the Agent, including any with respect to the Pre-Petition Credit Agreement². The Final Financing Order provides a period of

² It should be re-emphasized that Phosphates (as well as the other Subsidiaries) gave its Guaranty and granted the related security interests under the Original Agreement, which predated the Pre-Petition Credit Agreement by over two and one-half years.

almost four months after the Petition Date in which any party in interest may challenge the Lien Finding provisions of Paragraph 9 of the Order. This should be more than adequate time for all parties in interest to complete their due diligence. The Debtors themselves have had ample time (well over three years) to determine whether any transaction with the Agent in connection with the grant of collateral is subject to question. They have determined that there is no such cause of action against the Pre-Petition Lenders. The Debtors will not be prejudiced by waiving and releasing their rights to any such claim after such an extended period of consideration.

Conclusion

11. The objections of the IRB Trustee have no substance in fact or law and should be overruled. The provisions of the Final Financing Order are fair and reasonable under the circumstances and should be approved by this Court as submitted.

Respectfully submitted,

HARRIS TRUST AND SAVINGS BANK, not
individually but solely as Administrative
Agent for the Lenders

By: 

One of Its Attorneys

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CERTIFICATE OF SERVICE

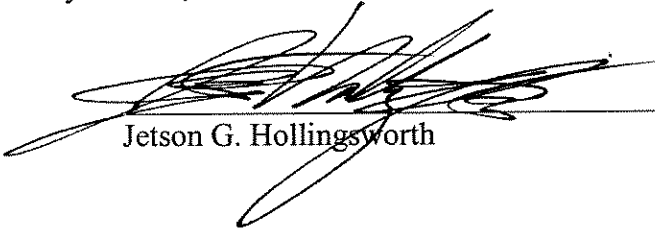
I do hereby certify that I have this date sent a true and correct copy of the above and foregoing pleading to all parties listed below as well as to all parties on the Fourth amended Shortened Service List, a copy of which is attached hereto:

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SO CERTIFIED, this, the 27th day of June, 2003.



Jetson G. Hollingsworth

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

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In re:)
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MISSISSIPPI CHEMICAL)
CORPORATION, *et al.*¹)
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Debtors.)
)
)

CASE NO. 03-02984-BWEE DEPUTY
Chapter 11
Jointly Administered

FOURTH AMENDED SHORTENED SERVICE LIST FILED JUNE 18, 2003

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¹ The Debtors are the following entities: Mississippi Chemical Corporation; Mississippi Nitrogen, Inc.; MissChem Nitrogen, L.L.C.; Mississippi Chemical Company, L.P.; Mississippi Chemical Management Company; Mississippi Phosphates Corporation; Mississippi Potash, Inc.; Eddy Potash, Inc.; Triad Nitrogen, L.L.C.; and Melamine Chemicals, Inc.

Respectfully submitted,

MISSISSIPPI CHEMICAL CORPORATION, *et al*

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