U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FILED
MAY 16 2003
CHARLENE J. KENNEDY, CLERK
BY_____DEPUTY

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

In re:	)	
	)	
MISSISSIPPI CHEMICAL	)	
CORPORATION, *et al.* [1]	)	CASE NO. 03-_____
	)	Chapter 11
Debtors.	)	**Jointly Administered**
	)	

MOTION TO ESTABLISH PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR PROFESSIONALS AND OFFICIAL COMMITTEE MEMBERS

COME NOW Mississippi Chemical Corporation, *et al.*, Debtors and debtors-in-possession ("Debtors"), and hereby move the Court (the "Motion") for entry of an administrative order establishing procedures for interim compensation and reimbursement of expenses for professionals retained and employed in these cases together with committee members of an official committee appointed in accordance with § 1102 of the Bankruptcy Code, if any, pursuant to §§ 105(a) and 331 of the Bankruptcy Code; and in support of such Motion, the Debtors respectfully state as follows:

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and 331 of the Bankruptcy Code.

[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 PhosphatesCorporation; Mississippi Potash, Inc.; Eddy Potash, Inc.; Triad Nitrogen, L.L.C.; and Melamine Chemicals, Inc.

3. The Debtors have each filed their respective voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors are presently operating their businesses and managing their properties and assets as debtors-in-possession pursuant to §§ 1107(a) and 1108. No request has been made for the appointment of a trustee or examiner, and no Committee has been appointed as of the filing of this Motion.

Relief Requested

4. The Debtors request that this Court enter an order establishing certain interim compensation and expense reimbursement procedures for the professionals and Committee Members as described herein.

5. To date, the Debtors have filed applications to retain (1) Phelps Dunbar LLP as their bankruptcy counsel; (2) Vinson & Elkins L.L.P. as special corporate counsel; (3) KPMG LLP as accountants, auditors and tax consultants; (4) Gordian Group, L.L.C. as financial advisors; (5) Ordinary Course Professionals; and (6) Bankruptcy Management Corporation as claims, noticing and balloting agent (collectively, the "Estate Professionals"). The Debtors anticipate that they may also seek to retain other professionals in the Chapter 11 Cases as the need arises, such as special litigation counsel. Further, other constituencies and interested parties involved in these cases may employ professionals that will or may be compensated by the estates (the "Other Professionals," and together with the Estate Professionals, the "Professionals"). The Debtors seek in this Motion to require that all Professionals who are to be compensated out of these estates subject to the procedures set forth herein.

6. The Debtors request that procedures be established for compensating and reimbursing the Professionals (excluding any Professional whose order approving retention and employment specifically provides for payment and reimbursement under terms that would not be applicable hereunder) on a monthly basis which are comparable to the procedures established in

other recent large chapter 11 cases and which are designed to i) substantially reduce the burden imposed on courts created by other procedures, ii) enable the parties in interest to monitor more closely fees and expenses generated by Professionals in these cases, and iii) diminish undue financial burdens on Professionals. See, e.g. In re Mariner Post-Acute Network, Inc., et al., 257 B.R. 723 (Bankr. D. Del. 2000); see also In re United Artists Theatre Company, et al., Case No.00-3514 (SLR) (Bankr. D. Del. Sept. 7, 2000) (Administrative Order dated Oct.5, 2000, as amended Jan.22, 2001) In re Plainwell, Inc. and Plainwell Holding Company, Case No.00-4350 (SLR) (Administrative Order dated Jan.8, 2001); In re Loewen Group International, Inc., Case No.99-1244 (PJW) (Bankr. D. Del. June1, 1999) (Administrative Order dated Aug.24, 1999). Such an order will permit the Court and all other parties to monitor more effectively the professional fees incurred in these Chapter 11 Cases.

7. Specifically, the Debtors propose that the procedures in these cases for interim payment of compensation and reimbursement of expenses of the Professionals be structured as follows (the "Compensation Procedures"):

A. On or before the 15th day of each month (the "Fee Filing Date") following the month for which compensation is sought (the "Compensation Period"), each Professional seeking interim compensation shall serve a monthly application (each a "Monthly Fee Application") pursuant to § 331 of the Bankruptcy Code for interim approval and allowance of compensation for services rendered and reimbursement of expenses incurred during the Compensation Period. A copy of the Monthly Fee Application shall be served upon the following persons (collectively, the "Notice Parties"):

1. Debtors: Mississippi Chemical Corporation
P.O. Box 388
Yazoo City, MS 39194-0388
ATTN: John M. Flynt

2. Debtors' Counsel: James W. O'Mara
Douglas C. Noble
Phelps Dunbar LLP
P.O. Box 23066
Jackson, MS 39225-3066

3. United States Trustee: Ronald H. McAlpin, Assistant U.S. Trustee
Suite 706, A.H. McCoy Federal Building
100 W. Capitol Street
Jackson, MS 39269

4. Counsel for Harris Bank: James E. Spiotto
Chapman & Cutler
111 West Monroe
Chicago, IL 60603

5. Counsel for Ad Hoc Committee of Noteholders: Anthony Princi
Thomas L. Kent
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103

6. Counsel to any Official Committee (when and if appointed)

B. All Monthly Fee Applications shall comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, applicable law and the Local Bankruptcy Rules.

C. Each Notice Party will have fifteen (15) days after service of a Monthly Fee Application to review the Monthly Fee Application and object thereto (the "Objection Deadline") in accordance with Paragraph D, below. Upon the expiration of the Objection Deadline, if no objections have been filed, the Debtors are authorized to pay, without further notice or order of the Court, each Professional an amount (the "Actual Interim Payment") equal to the lesser of:

1. eighty percent (80%) of the fees and one hundred percent (100%) of the expenses requested in the Monthly Fee Application (the "Maximum Interim Payment"); or

2. eighty percent (80%) of the fees and one hundred percent (100%) of the expenses not subject to an objection pursuant to subparagraph (D) below.

D. If any Notice Party objects to any portion of the Monthly Fee Application of a Professional (the "Affected Professional"), the Notice Party must serve on or before the Objection Deadline a written statement of its objection setting forth the precise nature of the objection and the amount of objectionable fees and expenses at issue (collectively, the "Objection") on the Affected Professional and each of the Notice Parties. If, after the service of an Objection, the objecting party and the Affected Professional resolve the Objection on a consensual basis, the Debtor is authorized to pay the amount agreed upon by such parties after receipt by the Debtor of a statement from both such parties acknowledging that the Objection has been resolved and upon what terms. If the parties are unable to resolve an Objection within 10 days after the service of the Objection, the Affected Professional may either:

1. file with the Court a request for a hearing on the payment of the difference, if any, between the Maximum Interim Payment and the Actual Interim Payment made to the Affected Professional (the "Incremental Amount"); or

2. forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Court will consider and dispose of the Objection if so requested by the Affected Professional.

E. Beginning with the period ending on September 30, 2003, and at three-month intervals or at such other intervals that may be convenient to the Court (each, a "Quarterly Fee Period"), each Professional shall file with the Court and serve on the Notice Parties within thirty (30) days of the end of such Quarterly Fee Period a request ("Quarterly Fee Application Request") for interim Court approval and allowance, pursuant to § 331 of the Bankruptcy Code, of the compensation and reimbursement of expenses sought in the Monthly Fee Applications filed pertaining to such Quarterly Fee Period. The Quarterly Fee Application Request must include a summary of the Monthly Fee Applications that are the subject of the request plus any other information requested by the Court or required by the local rules.

Any Professional that fails to file a Quarterly Fee Application Request when due will be ineligible to receive further interim payments of fees or expenses under the Compensation Procedures until such time as the Professional submits a further Quarterly Fee Application Request.

F. The Debtors shall request that the Court schedule a hearing on the pending Quarterly Fee Application Requests at least once every six months. The Debtors, however, may request a hearing be held every three months or at such other intervals as the Court deems appropriate.

G. The pendency of an Objection to a Monthly Fee Application will not disqualify a Professional from receiving future payment of compensation or reimbursement of expenses under the Compensation Procedures.

8. Further, the Debtors propose that neither (i) the payment of or the failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses under the Compensation Procedures, nor (ii) the filing of or the failure to file an Objection will bind any party-in-interest or bind the Court with respect to the allowance of interim or final applications for compensation and reimbursement of expenses of Professionals. All fees and expenses paid to Professionals under the Compensation Procedures shall remain subject to disgorgement until final allowance by the Court.

9. The Debtors further request that each member of any Committee (when and if appointed) be permitted to submit statements of expenses (excluding expenses of counsel to individual Committee members) and supporting vouchers to counsel to any such Committee, who shall collect and submit the Committee Members' requests for reimbursement in accordance with the Compensation Procedures.

10. The Debtors request that the Court limit the notice of Quarterly Fee Application Requests and all final fee applications (collectively, the "Applications") to the Notice Parties. Further, the Debtors request that notice of the hearings thereon (the "Hearing Notices") be limited to (a) the Notice Parties and (b) all other parties that have filed a notice of appearance with the Clerk of this Court and requested notice of pleadings in these Chapter 11 cases. Providing notice of the Applications and the Hearing Notices in this manner will permit the parties most active in the Chapter 11 cases to review and object to the Professional fees and will save unnecessary duplication and mailing expenses.

11. The Debtors will include in their monthly operating reports all payments made to the Professionals in accordance with the Compensation Procedures, detailed so as to state the amount paid to each of the Professionals.

12. With respect to the Debtors' employment of Gordian Group, L.L.C. as restructuring advisors, such employment was approved with compensation to be made pursuant to § 328(a). Accordingly, they will not be filing fee applications in the form and manner as the remaining Professionals as set forth herein but will be governed by the terms of their respective Orders authorizing their employment and retention. Therefore, the Debtors do not seek to include Gordian Group, L.L.C. in this Motion or any other Professionals that may be employed pursuant to § 328 hereafter.

Arguments and Authorities

13. Section 331 of the Bankruptcy Code provides, in relevant part, as follows:

> A trustee, an examiner, a Debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the Court not more than once every 120 days after an order for relief in a case under this title, **or more often if the court permits**, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement. (Emphasis added).

Absent an order of this Court, section 331 of the Bankruptcy Code limits Professionals rendering services in these Chapter 11 Cases to payment of fees and expenses only three times per year.

14. Section 105(a) of the Bankruptcy Code provides, in relevant part, as follows:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.

15. As already noted, substantially similar procedures for compensating and reimbursing court-approved Professionals have been established in other large chapter 11 cases. See, e.g., In re United Artists Theatre Company, et al., Case No. 00-3514 (SLR), (Bankr. D. Del.

Sept. 7, 2000) (Administrative Order dated Oct. 5, 2000, as amended Jan. 22, 2001). Interim compensation procedures are needed to avoid having Professionals fund the reorganization case. See In re Mariner Post-Acute Network, Inc., et al., 257 B.R. at 728 (court approved monthly interim compensation procedures for professionals, quoting "[i]n a large case, it is likely that the professionals appointed under Section 327 are investing huge quantities of time, and therefore receiving payment only once every four months may impose an intolerable burden on them and may place them at a significant economic disadvantage to the professionals retained by the creditors." (quoting S. Elizabeth Gibson, A Guide to the Judicial Management of Bankruptcy Mega-Cases, (1992)); see also In re Knudsen Corp., 84 B.R. 668, 672 (B.A.P. 9th Cir. 1988). Appropriate factors to consider in establishing such procedures include "the size of [the] reorganization cases, the complexity of the issues involved, and the time required on the part of the attorneys for the Debtors in providing services necessary to achieve a successful reorganization of the Debtors." In re International Horizons, Inc., 10 B.R. 895, 897-98 (Bankr. N.D. Ga. 1981); see also In re Mariner Post-Acute Network, Inc., et al., 257 B.R. 723.

16. In In re Mariner, the court also cited two other important factors for courts to consider in establishing appropriate interim compensation procedures: permitting the Court to adequately review fee applications of professionals and permitting Debtors to effectively monitor and control their administrative costs. 257 B.R. at 728. The Mariner court, in adopting procedures substantially similar to the Compensation Procedures, acknowledged that the different monthly fee application procedure that had previously been followed in that case and in certain other large chapter 11 cases in the District of Delaware had made it difficult for the Court to adequately review fee applications of professionals and for the Debtors in those cases to monitor and control their respective administrative expenses. Id. The Debtors submit that the

Compensation Procedures are appropriately based on application of the above factors to the circumstances of these Chapter 11 cases.

17. The Debtors submit that the efficient administration of these Chapter 11 cases will be significantly aided by establishing the foregoing interim compensation and expense reimbursement procedures. Accordingly, the relief requested is in the best interests of the Debtors, their estates and creditors.

Notice

18. Notice and Service of this Motion were provided to all parties listed on Schedule 1 attached hereto in the form and manner set forth therein, and the Debtors submit that such notice and service are sufficient under the circumstances.

WHEREFORE, the Debtors respectfully request entry of an Order establishing the procedures set forth herein for interim compensation and reimbursement of expenses of Professionals and granting such other further relief as is just and proper.

[Signatures On Following Page]

Respectfully submitted,

MISSISSIPPI CHEMICAL CORPORATION, *et al.*

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a true and correct copy of the foregoing pleading to all parties listed on Schedule 1 attached hereto in the form and manner set forth therein.

SO CERTIFIED this the 15 day of May, 2003.

JAMES W. O'MARA