UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	Chapter 11
MOLYCORP, INC., *et al.*,[1]	:	Case No. 15-11357 (CSS)
Debtors.	:	(Joint Administration Pending)
	:	**Re: D.I. 18**

OCM MLY CO CTB LTD'S (I) OBJECTION TO DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (A) AUTHORIZING DEBTORS TO OBTAIN SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION FINANCING, (B) AUTHORIZING DEBTORS TO USE CASH COLLATERAL, (C) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES, (D) SCHEDULING A FINAL HEARING, AND (E) GRANTING RELATED RELIEF, (II) OBJECTION TO OTHER FIRST DAY RELIEF AND (III) REQUEST FOR ADEQUATE PROTECTION

OCM MLYCo CTB Ltd. ("OCM MLY") in its capacities as (i) the administrative agent, collateral agent (in such capacities, the "Agent"), and lender under the OCM MLY Loan Facilities (as defined below) and (ii) the lessor under the Equipment Lease Agreement (as defined below) hereby (I) objects (the "Objection") (A) to the Debtors' *Motion for Interim and Final Orders Pursuant to Sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code (A) Authorizing Debtors to Obtain Superpriority Secured Debtor-in-Possession Financing, (B) Authorizing Debtors to Use Cash Collateral, (C) Granting Adequate Protection to the Prepetition Secured Parties, (D) Scheduling A Final Hearing, and (E) Granting Related Relief*

[1] The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Molycorp, Inc. (1797); Industrial Minerals, LLC; Magnequench, Inc. (1833); Magnequench International, Inc. (7801); Magnequench Limited; Molycorp Advanced Water Technologies, LLC (1628); MCP Callco ULC; MCP Canada Holdings ULC; MCP Canada Limited Partnership; MCP Exchangeco Inc.; Molycorp Chemicals & Oxides, Inc. (8647); Molycorp Luxembourg Holdings S.à r.l.; Molycorp Metals & Alloys, Inc. (9242); Molycorp Minerals Canada ULC; Molycorp Minerals, LLC (4170); Molycorp Rare Metals Holdings, Inc. (4615); Molycorp Rare Metals (Utah), Inc. (7445); Neo International Corp.; PP IV Mountain Pass, Inc. (1205); PP IV Mountain Pass II, Inc. (5361); RCF IV Speedwagon Inc. (0845). Molycorp's United States headquarters is located at 5619 DTC Parkway, Suite 1100; Greenwood Village, Colorado; 80111.

[Docket No. 18] (the "DIP Motion")[2] and (B) the *Motion of the Debtors for an Order (A) Approving the Continued Use of the Debtors' Cash Management System, Bank Account and Business Forms; (B) Permitting Certain Inter-Debtor Transactions, Intercompany Transactions and Setoffs and (C) Granting Related Relief* [Docket No. 14] (the "Cash Management Motion"); and (II) requests adequate protection (the "Request") as set forth herein. In support of its Objection and Request, OCM MLY respectfully states as follows:

PRELIMINARY STATEMENT

1. The Debtors characterize the Proposed DIP Financing as a "junior" DIP that will neither prime nor diminish the value of any secured creditor's collateral, and one that will provide a benefit to their estates. These statements are, at best, misleading, because they ignore the corporate separateness of the various Debtor entities and mask the economic realities of these Cases.

2. The Debtors are essentially comprised of two separate and distinct business silos, each with different operations, assets, and creditors. See DIP Motion at ¶ 13. One business, which consists primarily of foreign entities (the "Neo Debtors,"),[3] is profitable. The other, which consists of certain domestic entities (the "Mountain Pass Debtors"),[4] is not. The Mountain Pass Debtors have been hemorrhaging cash for years,[5] requiring them to obtain additional financing to facilitate this restructuring. The Neo Debtors, on the other hand, are cash-flow positive and constitute the vast majority of the Debtors' most profitable business

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2 Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the DIP Motion.

3 The Neo Debtors refers to all Debtors other than the Mountain Pass Debtors, Industrial Minerals, LLC, and Molycorp Advanced Water Technologies, LLC.

4 The "Mountain Pass Debtors" refers to the Parent, Minerals, PP IV Mountain Pass II, Inc., PP IV Mountain Pass, Inc., RCF IV Speedwagon Inc., and Molycorp Metals & Alloys, Inc.

5 See DIP Motion at ¶ 14.

segments, including the enterprise's crown jewel— the assets that produce Neo Powders™.[6] The Neo Debtors have no need for, and derive no benefit from, the Proposed DIP Financing.

3. Despite this reality, the Debtors seek to pile up to $225 million of new cross-collateralized "superpriority" liabilities, guaranties, and liens not just on the Mountain Pass Debtors, but also on the Neo Debtors and, upon approval of a final order, many of the Neo Debtors' most valuable non-Debtor subsidiaries. In addition to that, the DIP Forecast produced by the Debtors contemplates the transfer of $50 million in cash from the Neo Debtors (or non-Debtor subsidiaries of the Neo Debtors) to the Mountain pass Debtors over the next 11 months.[7] The Proposed DIP Financing and cash "repatriation" is in effect a transfer of value from the profitable Neo Debtors to the Mountain Pass Debtors with no corresponding benefit to the Neo Debtors' estates or their largest secured creditor in these cases, OCM MLY.[8] The exploitation of the Neo Debtors for the benefit the Mountain Pass Debtors and their creditors is nothing more than a disguised demand upon the Neo Debtors to fund the operations and chapter 11 cases of the Mountain Pass Debtors, which does not satisfy the most fundamental requirements of the Bankruptcy Code.

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[6] As stated by Chief Executive Geoff Bedford, "[o]ur operations in Europe and Asia are not part of today's filings, and these business are cash-flow positive and play a vital role in many key industries world-wide." John W. Miller, Molycorp Files for Bankruptcy Protection, Wall ST. J. (Jun. 25, 2015, 1:07 PM), http://www.wsj.com/articles/SB10907564710791284872504581069270334872848.

[7] The $50 million in proposed transfers can be calculated by comparing the Consolidated Entities DIP Forecast contained in the Molycorp: Confidential Information Memorandum (May 2015), at 27 (June 25, 2015), available at http://www.molycorp.com/investors (follow "Molycorp Overview: June 2015 hyperlink) (hereinafter "Molycorp CIM") (showing a cumulative $10,782,000 decrease in Working Capital worldwide) with the North American Debtor Entities Only DIP Forecast at Slide 25 (showing a cumulative **$39,218,000** increase in Working Capital/Repatriation at the Mountain Pass Debtors).

[8] Notably, the Debtors proposed Cash Management Order also fails to grant intercompany transfers from the Neo Debtors to the Mountain Pass Debtors with superpriority administrative expense claims or priming liens, which impairs the ability of the Neo Debtors to recover on any such postpetition transfer. Such protections are critical given the precarious economic situation afflicting the Mountain Pass Debtors. Accordingly, OCM MLY also objects to the relief requested in the Cash Management Order to the extent it fails to provide intercompany transfers out of the Neo Debtors or any of their non-Debtor subsidiaries with superprority claims and liens.

4. The Debtors will almost certainly argue that the Court need not address these issues today because the DIP Obligations will be subordinate to the OCM MLY Obligations at the Neo Debtors until entry of the Final Order, and because the guarantees granted by the Neo Debtors' non-Debtor subsidiaries will only be granted upon entry of the Final Order. However, the Neo Debtors are harmed immediately by the Proposed DIP Financing because the Interim Order gives the 10% Notes 507(b) Claims at the Neo Debtors as well as adequate protection liens on all of the Debtors' unencumbered assets, including the unpledged equity of the Neo Debtors' subsidiaries.[9] A key component of OCM MLY's collateral package is liens on the stock of the Neo Debtors upper tier subsidiaries. As a result, these adequate protection liens will be structurally senior to, and in effect "prime", OCM MLY's position.

5. The imposition of the 507(b) Claims and liens against the Neo Debtors and their assets shifts the risk of every dollar of diminution the 10% Notes suffer in connection with their liens on the Mountain Pass Collateral onto the Neo Debtors. Upon entry of the proposed Final Order, this priming will become a tidal wave as every dollar of diminution suffered as a result of the priming of the 10% Notes' liens on the Mountain Pass Collateral by their own DIP Liens will augment their 507(b) Claims and Liens on these structurally senior assets. These claims would come ahead of the OCM MLY Claims at the Neo Debtors and must be satisfied in cash before the Neo Debtors could confirm any plan of reorganization. Accordingly, the relief requested by the Debtors harms OCM MLY today.

6. The Debtors have attempted to justify the Proposed DIP Financing as "a critical first step in their reorganization . . . and mandatory aspect of the RSA, . . . which

[9] The Debtors intend to grant adequate protection liens on 35% of the interests in Xin Bao Investment Limited and Magnequench (Korat) Co. Ltd., the value of which currently flows directly to the Neo Debtors that guaranty the OCM MLY Agreements.

provides the framework for a confirmable plan of reorganization…" DIP Motion at 2. Notably, the RSA is predicated upon a full reinstatement of the entirety of the OCM MLY indebtedness at both the Neo Debtors and the Mountain Pass Debtors. See DIP Motion, Exhibit B. Given the Debtors' apparent belief that such a plan of reorganization would in fact be feasible, the Supporting 10% Noteholders/DIP Lenders should be more than willing to accept liens and claims that are junior in priority to those of OCM MLY. But as the DIP Motion makes abundantly clear, they will not do so. Nor are they willing to provide the Debtors with a more traditional 12-18 month DIP maturity. Instead, they have required a maturity date of November 30, 2015, a mere 5 months from the commencement of these cases, which speaks volumes concerning their view of how quickly the Mountain Pass Assets can deteriorate in chapter 11. In fact, the Proposed DIP Financing and the RSA work together to effectuate a transfer of ownership of the entire value of the Debtors and their estate to the 10% Noteholders, who today have nothing more than liens and claims against a small and unprofitable subset of the Debtors' enterprise. Should the Debtors fail to achieve confirmation of the plan described in the RSA in the truncated time-frame allotted them by the DIP Lenders, it will be the Neo Debtors' estates—who today are unburdened by the operational and economic issues plaguing Mountain Pass—that will bear the brunt of the attendant harm.

7. The looting of the Neo Debtors' value is exacerbated by RSA's requirement that the Parent employ a Chief Restructuring Officer ("CRO") as an officer of the Parent and who reports only to the Parent's Board of Directors, and not the Board of Directors of any of the NEO Debtors. Pursuant to the Proposed DIP Financing and the RSA, a CRO selected by the 10% Noteholders will be given "authority and control" with respect to all of the Debtors' and the non-Debtor Neo subsidiaries' foreign cash. See DIP Motion, Exhibit A, DIP

Credit Agreement §1.1. Further, these documents require the repatriation (to the fullest extent permitted by law and authorized by the CRO) of all cash at any foreign subsidiary. Thus, the CRO will effectively usurp the business judgment of the Neo Debtors (and their non-Debtor subsidiaries) in favor of that of the Parent, and more specifically, the 10% Noteholders.

8. Nevertheless, the Debtors seek to convince the Court that the Proposed DIP Financing is in the best interest of ***all of the Debtors***—it clearly is not.

9. The Debtors are required to establish that the Proposed DIP Financing and use of cash collateral satisfy requirements of sections 363 or 364 of the Bankruptcy Code as to ***each of the Debtors and its individual estate***. They cannot. Further, the Proposed DIP Financing seems incompatible with the fiduciary duties each of the Neo Debtors owes to its respective estate and creditors.

10. Even if the Debtors were able to make such showings, the Debtors must also establish that they have provided adequate protection to OCM MLY, whose collateral – the equity interests in the Neo Debtors (including certain of their non-Debtor subsidiaries) – is in immediate jeopardy of being stripped of its value. This, the Debtors have not done and clearly cannot do. If OCM MLY's interests are not adequately protected, OCM MLY must be authorized to lift the automatic stay to protect the value of its security interests.

JURISDICTION

11. This Court has jurisdiction to consider the Objection and Request pursuant to 28 U.S.C. §§ 157 and 1334. These matters are core proceedings pursuant to 28 U.S.C. § 157. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein are sections 361, 362, 363 and 364 of the Bankruptcy Code, Bankruptcy Rule 4001, and Local Rule 4001-1.

FACTUAL BACKGROUND

12. On June 25, 2015 (the "Petition Date"), Molycorp, Inc. ("Molycorp," or the "Parent"), Magnequench, Inc. ("Magnequench"), Molycorp Minerals LLC ("Minerals") and their affiliated Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

A. Prepetition Secured Obligations

(i) *The OCM MLY Agreements*

13. As of the Petition Date, the Debtors and OCM MLY were parties to the following agreements:

a. The Parent Facility Agreement,[10] pursuant to which OCM MLY made loans and advances, and/or other financial accommodations in an aggregate principal amount of up to $185 million, of which approximately $52 million of principal is currently outstanding.

b. The Magnequench Facility Agreement,[11], pursuant to which OCM MLY made loans and advances, and/or other financial accommodations in an aggregate principal amount of up to $75 million, of which approximately $62 million of principal is currently outstanding.

c. The Equipment Lease Agreement,[12] for the lease of certain equipment located in the Debtors' mining and manufacturing facility in Mountain Pass, California pursuant to which OCM MLY leased such equipment to Minerals.

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[10] The Credit Agreement, dated as of September 11, 2014, by and among Molycorp, the Agent, and the lenders parties thereto from time to time (as the same may be amended, restated, supplemented or other otherwise modified from time to time, the "Parent Facility Agreement).

[11] The Credit Agreement, dated as of September 11, 2014, by and among Magnequench, the Agent, and the lenders parties thereto from time to time (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Magnequench Facility Agreement" and, together with the Parent Facility Agreement, the "OCM MLY Facility Agreements").

[12] The Equipment Lease Agreement, dated September 11, 2014, by and between OCM MLY as lessor and Minerals as lessee (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Equipment Lease Agreement").

14. The obligations under the OCM MLY Agreements have been guaranteed (the "Guaranties") by substantially all of the Debtors and their material foreign subsidiaries.[13] As of the Petition Date, the aggregate principal amount of obligations outstanding under the OCM MLY Agreements[14] (the "OCM MLY Obligations") are approximately $260 million.

15. In addition, the OCM MLY Obligations are secured by substantially all of the value of the Debtors' business operations including (a) the Debtors' Mountain Pass operations (through liens (which are *pari passu* with those of the 10% Notes) on substantially all the assets of Parent and the Mountain Pass Debtors (the "Mountain Pass Assets") up to a cap of $300 million (the "Mountain Pass Lien Cap")), (b) ownership of the primary equipment at the Mountain Pass facility, and (c) the Debtors' foreign operations (through an OCM MLY-only all asset first priority lien at Magnequench and OCM MLY-only pledges of the equity interests in the Neo Debtors[15] and certain of their non-debtor subsidiaries (the "Neo Assets" and together with the Mountain Pass Assets, the "OCM MLY Collateral").[16]

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[13] Debtor Guarantors: Molycorp Luxembourg Holdings S.a.r.l., Molycorp Rare Metals Holdings, Inc., Magnequench, Inc., Molycorp Chemicals & Oxides, Inc., Molycorp Rare Metals (Utah), Inc., Magnequench International, Inc., NEO International Corp., MCP Exchangeco Inc., MCP Canada Limited Partnership, Molycorp Minerals Canada ULC, MCP Canada Holdings ULC, MCP Callco ULC, PP IV Mountain Pass II, Inc., PP IV Mountain Pass Inc., RCF IV Speedwagon Inc., Molycorp Minerals, LLC, Molycorp Metals & Alloys, Inc., and Magnequench Limited.

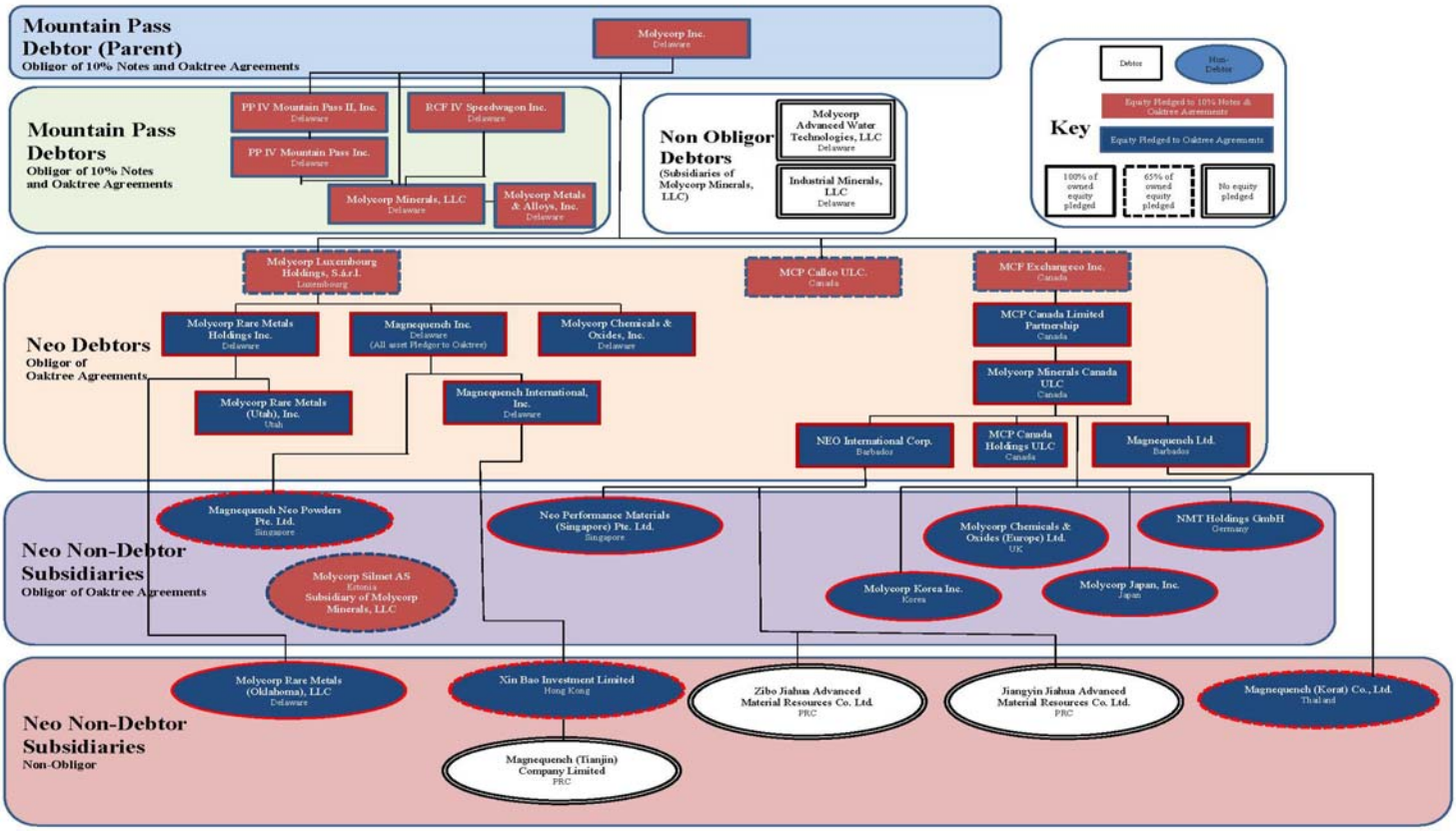
Non-Debtor Guarantors: Magnequench Neo Powders Pte. Ltd., Molycorp Korea, Inc., Molycorp Chemicals & Oxides (Europe) Ltd, Neo Performance Materials (Singapore) Pte. Ltd., Molycorp Japan, Inc., Molycorp Silmet AS, and NMT Holdings GmbH.

[14] The OCM MLY Facilities and the Equipment Lease Agreement (together with all related documents), collectively the "OCM MLY Agreements."

[15] The equity interests in the Neo Debtors that are directly owned by Mountain Pass Debtors constitute Mountain Pass assets and as such are subject to the *pari passu* liens described above.

[16] Molycorp Luxembourg Holdings S.a.r.l., MCP Exchangeco Inc., MCP Canada Limited Partnership, Molycorp Minerals Canada ULC, MCP Canada Holdings ULC, Molycorp Rare Metals Holdings, Inc., Magnequench, Inc., Molycorp Chemicals & Oxides, Inc., Molycorp Rare Metals (Oklahoma), LLC, Molycorp Rare Metals (Utah), Inc., Magnequench Neo Powders Pte. Ltd, Magnequench International, Inc., Xin Bao Investment Limited, NEO International Corp., Molycorp Chemicals & Oxides (Europe) Ltd., Magnequench Limited, Molycorp Korea, Neo Performance Materials (Singapore) Pte. Ltd., Molycorp Japan, Inc., NMT Holdings GmbH, and Magnequench (Korat) Co., Ltd.

16. Below is a simplified corporate chart for the Debtors, based on publicly available information.



17. The OCM MLY Agreements also provide OCM MLY with various property interests, rights and protections. These include, among others, certain restrictions on the Debtors' (or their subsidiaries') ability to incur indebtedness, including through guaranties.[17] Significantly, such protections also include equity pledges that, upon the occurrence of an Event of Default (as defined in the applicable OCM MLY Agreement), permit OCM MLY to exercise remedies against the equity pledged as part of the Neo Assets. Such rights confer upon OCM MLY the right to obtain ownership of the pledged shares, the right to

[17] See Sections 6.1(a) of the OCM MLY Facilities Agreement.

replace the boards of directors of the Neo Debtors and their pledged subsidiaries, the right to apply all dividends towards satisfaction of the OCM MLY Obligations, and otherwise exercising the voting rights inherent in the pledged shares.[18] These rights and limitations were put in place to protect, among other things, the economic value of the pledged direct and indirect operating subsidiaries of the Debtors securing the OCM MLY Obligations.

(ii) *10 % Senior Secured Notes*

18. Prior to the Petition Date, Molycorp issued $650 million of 10.0% Senior Secured Notes due 2020 (the "10% Notes") pursuant to the 10% Indenture.[19] The 10% Notes are guaranteed by the Mountain Pass Debtors and are secured by liens on the Mountain Pass Assets. The 10% Notes are not guaranteed by the Neo Debtors, not guaranteed by the non-Debtor subsidiaries of the Neo Debtors, and are not secured by liens on any Neo Asset. As such, the 10% Notes are structurally subordinated to the OCM MLY Agreements on all of the value of the Neo Debtors.

B. Proposed DIP Financing & Use of Cash Collateral

19. On the Petition Date, the Debtors filed the DIP Motion seeking authorization to (a) use Cash Collateral and (b) enter into a postpetition superpriority, secured debtor in possession facility for an aggregate principal amount of up to $225 million, pursuant to that certain Superpriority Secured Term Loan Debtor-in-Possession Credit Agreement (the "DIP Credit Agreement") by and among, Molycorp as the borrower, certain lenders parties

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[18] See e.g., Section 8 of Hong Kong Share Mortgage relating to Shares in Xin Bao Investment Limited between Magnequench International, Inc. and OCM MLY, dated 11 September, 2014 (the "Xin Bao Pledge").

[19] That certain Indenture (the "10% Indenture"), dated as of May 25, 2012, by and among Parent as issuer, certain other Debtors as guarantors, and Wells Fargo Bank, National Association as trustee for the holders of the 10% Notes (the "10% Noteholders")

thereto (the "DIP Lenders"), and Wilmington Trust, N.A. as agent (in such capacity, the "DIP Agent").

20. In connection with the Proposed DIP Financing, the Debtors are proposing to grant to the DIP Agent, for the benefit of the DIP Lenders, (a) superpriority claims against each Debtor (including the Neo Debtors), (b) first priority liens on the Debtors' unencumbered assets (provided that until entry of the Final Order they shall only have such liens on (i) the unencumbered 35% of the equity owned directly by the Parent in the first-tier Neo Debtors and (ii) cash in the DIP loan disbursement account, (c) subject to entry of a Final Order, junior liens on the Neo Assets that secure the OCM MLY Agreements, and (d) liens on the Mountain Pass Assets *pari passu* to the liens securing the OCM MLY Obligations (up to the Mountain Pass Lien Cap), which liens will be junior to the liens securing the 10% Notes until entry of the Final Order, ***at which time they will prime the 10% Notes' lien***. In addition, subject to approval of the Final Order, ***the Debtors intend to cause certain of the Neo Debtors' non-debtor foreign subsidiaries to guaranty the Debtors' obligations under the Proposed DIP Facility***.

21. The Debtors have also proposed to provide both the 10% Noteholders and OCM MLY with various forms of adequate protection. The Debtors have proposed (a) granting to the 10% Noteholders, as adequate protection for the diminution in the value of the 10% Noteholders' interests in the Mountain Pass Collateral, allowed administrative expense claims under section 507(b) of the Bankruptcy Code against each of the Debtors, including the Neo Debtors, having priority over the OCM MLY Obligations (the "507(b) Claims") and (b) paying certain professional fees and expenses of the 10% Noteholders.

22. In connection with any diminution in value resulting from the Debtors' proposed use of the OCM MLY Collateral, including, Cash Collateral, the Debtors have proposed to provide OCM MLY with "adequate protection" that consists of: (a) a replacement lien on the Mountain Pass Assets in an amount in excess of the Mountain Pass Lien Cap, junior to the liens securing the 10% Notes and the Proposed DIP Financing; (b) superpriority claims under section 507(b) of the Bankruptcy Code, subject and subordinate to the carve out and otherwise junior to the DIP Superpriority Claims, equal to the 507(b) Claims of the 10% Noteholders at the Mountain Pass Debtors and senior to the 507(b) Claims of the 10% Noteholders at the Neo Debtors; (c) payment of reasonable and documented fees and expenses of one legal counsel and one local counsel retained by OCM MLY; and (d) payment of current cash interest at the non-default contract rate and accrual of in-kind interest at the non-default contract rate under the applicable OCM MLY Facility Agreement.

OBJECTIONS AND RELIEF REQUESTED

23. OCM MLY (i) objects to the relief sought by the Debtors to the extent that such relief involves authorization to (a) provide 507(b) Claims and liens for the benefit of the 10% Noteholders; (b) grant to the DIP Lenders guaranties from any Neo Debtor (or any non-Debtor subsidiary of a Neo Debtor), or superpriority claims against any Neo Debtor, or (c) use Cash Collateral; in each case, without providing adequate protection to OCM MLY's security interests in the relevant collateral [20] and (ii) requests adequate protection with respect to the OCM MLY's security interest in the Collateral.

[20] For the avoidance of doubt, this Objection and Cross-Motion shall also be deemed a request for adequate protection to the extent such request is required pursuant to applicable law.

BASIS FOR OBJECTIONS AND RELIEF REQUESTED

I. Proposed DIP Financing is Not In the Best Interest of Neo Debtors' Estates

24. While the Proposed DIP Financing may provide benefits to the Mountain Pass Debtors and the creditors whose claims (such as the 10% Noteholders) exist solely against those debtors, it is clearly detrimental to the Neo Debtors and their creditors. In essence, the Proposed DIP Financing is robbing Peter (the cash and asset rich Neo Debtors) to pay Paul (the cash and asset poor, and money losing, Mountain Pass Debtors).[21] The potential harm is even more troublesome in respect of the Debtors' proposed adequate protection package for the 10% Noteholders. Granting superpriority claims and adequate protection liens at the Neo Debtors to protect against the decline in value of the assets of the Mountain Pass Debtors flies in the face of the protections afforded debtors and creditors in chapter 11, absent substantive consolidation. See In re Owens Corning, 419 F.3d 195, 216 (3d Cir. 2005) ("'Communizing' assets of affiliated companies to one survivor to feed all creditors of all companies may to some be equal (and hence equitable). But it is hardly so for those creditors

[21] The DIP Motion and proposed Interim DIP Order repeatedly conflate the overall enterprise with individual Debtors. For example the DIP Motion states that "the Debtors and Alix Partners have prepared a budget outlining the Debtors' postpetition cash needs" however that Budget is presented only two ways: (i) on a consolidated basis for all Debtors and (ii) on a consolidated basis for the Debtors and their non-Debtor subsidiaries. (See DIP Motion at ¶ 39 Exhibit E). Similarly, paragraph 77 of the DIP Motion reveals that it was the Parent's board of directors, and not the directors of each Debtor and non-Debtor guarantor subsidiaries, who concluded that the DIP Credit Agreement provides "the Debtors with the best financing and restructuring alternative and that the Debtors' entry into the DIP Credit Agreement is in the best interests of the Debtors and their estates. However, paragraph 95 of DIP Motion states that this conclusion and determination was instead reached by the "Debtors' management and that such decision considered the "Debtors' overall circumstances." Once again there is silence on whether the fiduciaries for each Debtor considered the costs and benefits of entering into the Proposed DIP Financing to that Debtor or whether that Debtor could obtain financing on better terms for its own liquidity needs. Similarly, the proposed Interim DIP Order contains proposed findings that "[t]he Debtors have an immediate and critical need to borrow $44.44 million . . . .to satisfy their liquidity requirements to preserve and operate their businesses" when in reality many of the Neo Debtors have no such need. (See proposed Interim DIP Order at ¶ I). This theme is repeated once more when the proposed Interim DIP Order finds that "absent access to the DIP Facility . . . the going concern value of the Prepetition Collateral [] would be severely and irreparably impaired. (See proposed Interim DIP Order at ¶ J). While this may be true for some of the Mountain Pass Assets, it is not true for most (if not all) of the Neo Assets.

who have lawfully bargained prepetition for unequal treatment by obtaining guarantees of separate entities.").

25. Because the Proposed DIP Financing would burden ***every Debtor*** with superpriority claims and junior liens, the Debtors must satisfy the requirements of section 364(c) of the Bankruptcy Code ***as to each Debtor and its estate***. This burden cannot be met with respect to the Neo Debtors.[22]

26. A debtor seeking approval of DIP financing on a superpriority basis must show: (a) they are unable to obtain unsecured credit; (b) the credit is necessary to preserve the assets of the estate; and (c) that the terms are fair, reasonable and adequate. See 457 B.R. 308, 312 (Bankr. D. Del. 2011). Here, there is no evidence that any of the Neo Debtors requires credit or liquidity to preserve the value of its estate (as opposed to the value of the Mountain Pass Debtors' estates) or that, even if such financing were necessary, any of the Neo Debtors would be unable to obtain it on an unsecured basis under section 364(b) of the Bankruptcy Code for whatever liquidity needs it may have.[23]

27. The need to establish the requirements of section 364 on a Debtor-by-Debtor basis is clear. It is axiomatic that, absent substantive consolidation, a separate bankruptcy estate is created for each debtor and the assets of one debtor cannot be used to satisfy the liabilities of another. See, e.g., In re Tribune Co., 464 B.R. 126, 139 (Bankr. D. Del. 2011) ("In the absence of substantive consolidation, entity separation is fundamental.")

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[22] Additionally, the Proposed DIP Facility seeks to burden the Neo Debtors with superpriority adequate protection claims for diminution of the Mountain Pass Assets. This in essence is the incurrence of 364(b) debt by the Neo Debtors in favor of the Mountain Pass Debtors, and is also prohibited.

[23] As one commentator noted with respect to funding of debtor affiliates, "creditors of the debtor entity providing the funding will want to make sure that funding of any debtor affiliates does not result in a permanent depletion of the assets available to satisfy their claims. In some cases, this may raise an issue of whether the business of an affiliate should be shut down." Daniel P. Winikka & John H. Chase, When Business Efficiency and Bankruptcy Collide: Resolving Intercompany Claims, 21 J. Bankr. L. & Prac. 4 Art. 1 at 6.

(citations omitted); In re Xonics Photochemical, Inc., 841 F.2d 198, 201 (7th Cir. 1988) ("there is no automatic piercing of the corporate veil in affiliation settings. The assets of affiliated corporations are not treated as a common pool available to the creditors of each affiliate") (citations omitted). However, the Proposed DIP Financing and the proposed adequate protection for the 10% Noteholders would lock into place just such an impermissible transfer of value and assets from the Neo Debtors to the Mountain Pass Debtors as the Neo Debtors become indebted with superpriority claims – that must be paid in cash in order for the Neo Debtors to be able to reorganize – to support the continuing losses at the Mountain Pass Debtors.

28. This improper result will be exacerbated further by the grant of non-Debtor guaranties by the Neo Debtors' most valuable subsidiaries upon entry of the Final Oder. Prior to entering into the Proposed DIP Financing, the Neo Debtors have the benefit of their assets, including the value of their equity interests in their subsidiaries (which include the most valuable entities in the entire corporate family). By permitting these non-Debtor subsidiaries to guaranty the Proposed DIP Financing (and grant liens on the equity of these subsidiaries), value that is currently available to the Neo Debtors will be transferred to the Mountain Pass Debtors and the DIP Lenders.

29. It is well settled bankruptcy law "that a debtor and its board of directors owe fiduciary duties to the debtor's creditors to maximize the value of the estate, and each of the estates in a multi-debtor case." In re Innkeepers USA Trust, 442 B.R. 227, 235 (Bankr. S.D.N.Y. 2010). See also Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343, 355 (1985) ("if a debtor remains in possession–that is, if a trustee is not appointed–the debtor's directors bear essentially the same fiduciary obligation to creditors and shareholders as would

the trustee for a debtor out of possession"); La. World Exposition v. Fed. Ins. Co., 858 F.2d 233, 245-46 (5th Cir. 1988) (In a reorganization case under chapter 11, the debtor in possession "performs the same functions as a trustee," and, in that capacity, "*has the duty to maximize the value of the estate*." (quoting Weintraub, 471 U.S. at 352)).

30. Even if the Proposed DIP Financing were to be judged under the business judgment rule, it would necessarily fail. See In re L.A. Dodgers LLC, 457 B.R. at 313 (Bankr. D. Del. 2011) (reciting the business judgment rule in the context of a proposed dip financing). Simply put, it is inconceivable that an independent fiduciary acting for the Neo Debtors (and not the Mountain Pass Debtors) would conclude that the Proposed DIP Financing was in the best interests of its estate and creditors.[24] Therefore, it becomes clear that the Debtors are conflicted on this issue and that the Proposed DIP Financing is structured to benefit insiders of the Neo Debtors, i.e. the Parent and the other Mountain Pass Debtors.[25]

31. Here, it is clear that the conflicted fiduciaries that purport to represent both the Neo Debtors and the Mountain Pass Debtors have negotiated a proposed financing that enriches some Debtors to the detriment of others.[26] As such, the Proposed DIP Financing must be rejected in its current form.

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[24] In this way, the fiduciary duties of a subsidiary corporation that is insolvent or in bankruptcy differs from those of a solvent, non-bankruptcy subsidiary. See, e.g. In re Direct Response Media Inc., 466 B.R. 626, 649 (Bankr. D. Del. 2012) ("The directors of a wholly-owned subsidiary cannot allow the subsidiary to be plundered for the parent company's benefit").

[25] Due to these conflicts, the Proposed DIP Financing may be subject to the heightened "entire fairness" standard of review.

[26] It is notable that the boards of directors for several of the Neo Debtors (as indicated in the board resolutions and/or consents attached to such Debtors' chapter 11 petitions) are completely composed of officers of the Parent. See e.g., In re Magnequench International, Inc., Case No. 15-11360 Voluntary Petition (June 25, 2015).

II. OCM MLY's Security Interests in the Neo Debtors are Not Adequately Protected

32. Even if the Court were to determine that the Neo Debtors could properly enter into the Proposed DIP Financing under section 364 of the Bankruptcy Code, the proposed interim order does not adequately protect OCM MLY's interests in the Neo Debtors, and the Debtors have offered no evidence that they are capable of providing such protection in any event.

33. A secured creditor is entitled to adequate protection of its interest in collateral when (1) it is prevented from exercising its rights and remedies against its collateral by the automatic stay, (2) a debtor in possession proposes to use its collateral without such creditor's consent, or (3) the debtor is seeking to incur additional financing that would prime or otherwise erode the secured creditor's priority position. See 11 U.S.C. §§ 361, 362(d), 363(e), 364(d); In re Continental Airlines, 154 B.R. 176, 180 (Bankr. D. Del. 1993); see also Resolution Trust Corp. v. Swedeland Dev. Group Inc. (In re Swedeland Dev. Group, Inc.) 16 F.3d 552, 564 (3d Cir. 1994); In re Jer/Jameson Mezz Borrower II, LLC, 461 B.R. 293, 307 (Bankr. D. Del. 2011) (finding secured lender was not adequately protected when it was not compensated for being prevented from exercising its foreclosure rights).[27]

[27] Indeed, when the value of a secured creditor's security interest in its prepetition collateral is being diminished or eroded post-petition, such security interest is entitled to adequate protection as a matter of right, not merely as a matter of discretion. See In re Frank, 103 B.R. 771, 774 (W.D. Va. 1989); In re Continental Airlines, Inc., 146 B.R. 536, 539 (Bankr. D. Del. 1992) (noting that a debtor's right to use property of the estate in the ordinary course of business is limited by Section 363(e) of the Bankruptcy Code which provides "the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest"), aff'd, In re Continental Airlines, Inc., 91 F.3d 553 (3d Cir. 1996). This protection is provided both as a matter of policy and as a matter of constitutional law. See In re Timbers of Inwood Forest Associates, Ltd., 793 F.2d 1380, 1396 (5th Cir. 1986), aff'd, United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 376 (1988) ("The concept [of adequate protection] is derived from the fifth amendment protection of property interests. It is not intended to be confined strictly to the constitutional protection required, however. The . . . concept of adequate protection is based as much on policy grounds as on constitutional grounds. Secured creditors should not be deprived of the benefit of their bargain . . . ." (internal quotations and citations omitted)).

34. The purpose of adequate protection is to ensure that the secured party receives the value for which it bargained prepetition. In re Swedeland Dev. Group, Inc., 16 F.3d at 564; see also Martin v. United States (In re Martin), 761 F.2d 472, 476 (8th Cir. 1985) (proposal of adequate protection "should as nearly as possible . . . provide the creditor with the value of his bargained for rights."). In that respect, a pledge of stock is no different from any other collateral. As with any other asset, the concept of adequate protection applies to protect a secured creditor's value in pledged stock. See, e.g., In re Domestic Fuel Corp., 70 B.R. 455 (Bankr. S.D.N.Y. 1987) (lifting the stay when it was established that the value of pledged stock declined precipitously post-petition); In re Munoz, 83 B.R. 334 (Bankr. E.D. Pa. 1988) (same); In re Whitney, No. 4-88-3885 1988 WL 141523 (Bankr. D. Minn. Dec. 20, 1988) (same); In re Gilece, 7 B.R. 469, 473 (Bankr. E.D. Pa. 1980) (lifting the automatic stay for cause where debtor failed to provide, and was incapable of providing, adequate protection to preserve the value of its collateral, pledged stock); In re Ayscue, 123 B.R. 28 (Bankr. E.D. Va. 1990) (stock pledgee that turned over ownership of stock certificates for sale by trustee, was entitled to adequate protection under section 363(e) of the Bankruptcy Code).

A. The Proposed DIP Financing Impairs the Neo Assets And Fails to Adequately Protect OCM MLY's Interests Therein

35. As noted above, while the Mountain Pass Assets were historically burdened with liens for the benefit of the 10% Notes, the Neo Assets were unencumbered at the subsidiary level, and the Neo Debtors were not liable on the Mountain Pass Debtors' funded debt. In connection with the OCM MLY Agreements, guaranties were executed by each Neo Debtor (and seven of their non-Debtor subsidiaries) and OCM MLY received a pledge of equity interests in each Neo Debtor[28] (and several of their non-Debtor subsidiaries).

[28] Other than those whose equity already formed part of the Mountain Pass Assets

Further, OCM MLY bargained for provisions in the OCM MLY Facility Agreements that expressly prohibit the incurrence of excessive indebtedness by any of the Debtors' subsidiaries, including the Neo Debtors and their subsidiaries.[29] When the Neo Debtors' liabilities increase, as they will if the Proposed DIP Financing is allowed, the value of the Neo Debtors (and OCM MLY's interests therein) necessarily diminishes. OCM MLY must be compensated for such diminution.

36. There is no doubt that the Proposed DIP Financing, which among other things, seeks to impose up to $225 million of additional superpriority claims and 507(b) Claims and liens ahead of the OCM MLY Obligations at the Neo Debtors deprives OCM MLY of the benefit of the bargain it struck when it obtained its liens on the Neo Assets. Every dollar of this added liability, which comes without any increase in assets, acts to diminish the value of the Neo Assets and of the estates of the Neo Debtors.

37. The diminution that OCM MLY would suffer under the Proposed DIP Financing will occur due to the effects of each of sections 362, 363 and 364 of the Bankruptcy Code. Accordingly, the relevant aspects of the Proposed DIP Financing cannot be approved without OCM MLY's consent (which OCM MLY is not willing to grant) or OCM MLY's security interests being adequately protected—something the Debtors have failed to do in connection with the Proposed DIP Financing.

(i) *OCM MLY is Entitled to Adequate Protection as a Result of Imposition of the Automatic Stay*

38. First, section 362(a)(3) of the Bankruptcy Code "operates as a stay, applicable to all entities of . . . any act to . . . exercise control over property of the estate." 11 U.S.C. § 362(a)(3). Each Debtor's ownership interests in a pledged subsidiary is property of

[29] See Sections 6.1 OCM MLY Facilities Agreements.

such Debtor's estate. The automatic stay prevents OCM MLY from exercising its rights and remedies to control the stock pledged to OCM MLY as part of the Neo Assets. See In re Cash Currency Exchange, Inc., 52 B.R. 577 (Bankr. N.D. Ill. 1985) (stock pledgee found to possess bargained-for property interest entitled to protection, such as the right to sell the pledged stock and apply proceeds to its claim, the right to vote the stock to take control of the debtor's affairs and assets); In re Robson, 10 B.R. 362, 365 (Bankr. N.D. Ala. 1981) (noting that a creditor's right to sell pledged shares was an interest in property protected by section 362(d)(1) of the Bankruptcy Code). Absent the stay, based on the existing defaults under the OCM MLY Agreements, OCM MLY, in its capacity as the Agent, would have been able to exercise control over the stock pledged by the Neo Debtors "to the entire exclusion" of the relevant Debtor shareholder.[30]

39. These control rights are an important and integral part of OCM MLY's collateral package. But for the imposition of the automatic stay, OCM MLY would be entitled to exercise these rights and protect the value of its collateral by, among other things, precluding these Neo Debtors from incurring the new liabilities that would be imposed by the Proposed DIP Financing and the 507(b) Claims of the 10% Noteholders. OCM MLY must be compensated for the loss of such rights and the corresponding diminution of the value of its interests in the Neo Assets. See Bluebird Partners, L.P. v. First Fid. Bank, 896 F. Supp. 152, 154 (S.D.N.Y. 1995) ("Adequate protection compensates the secured creditor for the diminution in value of the collateral during the period in which the automatic stay prevents the creditor from repossessing the collateral") (aff'd 85 F.3d 970 (2d Cir 1996); Timbers, 793 F.2d at 1388 (noting section 361(1) of the Bankruptcy Code provides for adequate protection of

[30] See, e.g., Xin Bao Pledge at Section 8.

creditor's interest to the extent the stay results in decrease in the value of such interest); United States v. Whiting Pools, Inc., 462 U.S. 198, 207, 103 S. Ct. 2309, 2315, 76 L. Ed. 2d 515 (1983) ("The Bankruptcy Code provides secured creditors various rights, including the right to adequate protection, and these rights replace the protection afforded by possession.")

(ii) *OCM MLY is Entitled to Adequate Protection as a Result of the Use of its Collateral*

40. While OCM MLY is being prevented by the automatic stay from exercising the control rights it bargained for in connection with the OCM MLY Collateral, the Mountain Pass Debtors – despite the existing and continuing defaults – are exercising such rights instead. Thus, the Mountain Pass Debtors are using OCM MLY's collateral by directing the pledged Neo Debtors to guarantee, on a superpriority basis, the obligations under the Proposed DIP Financing in an amount up to $225 million without OCM MLY's consent.

41. In addition, the imposition of the 507(b) Claims and liens of the 10% Noteholders at the Neo Debtors further impairs the value of OCM MLY's liens on the Neo Debtors' equity interests. Notably, to the extent of any diminution of the value of their interests in the Mountain Pass Assets (which are troubled to begin with), the 10% Noteholders would have claims that would need to be paid in full in cash by the Neo Debtors in order to confirm a plan of reorganization, as well as liens upon equity that is structurally senior to the OCM MLY Obligations. As the value of the Neo Assets was expressly pledged to support the OCM MLY Obligations, this proposal robs OCM MLY of the value of its collateral and the benefit of its bargain.

42. This use is particularly egregious where, as here, there has been no demonstration that the Neo Debtors have ***any need*** for the Proposed DIP Financing and the

Debtors have not set forth one single benefit the Neo Debtors would incur from the imposition of these obligations.

43. By using their interests in the Neo Debtors to incur these additional obligations, the Mountain Pass Debtors are using OCM MLY's Collateral without its consent and OCM MLY is entitled to adequate protection against the diminution in the value of its collateral stemming from such use. See 11 U.S.C. § 363(c)(2) ("The trustee may not use, sell, or lease cash collateral…unless—(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section."); see also In re Consol. Auto Recyclers, Inc., 123 B.R. 130, 140 (Bankr. D. Me. 1991) (finding that the exercise of voting rights of pledged shares constituted "use" under section 363 of the Bankruptcy Code).

(iii) *OCM MLY is Entitled to Adequate Protection as a Result of the Priming of its Liens*

44. Finally, the Proposed DIP Financing also violates section 364(d) of the Bankruptcy Code. Section 364(d) provides that the Court "may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if . . . there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." See 11 U.S.C. § 364(d)(1).

45. The Debtors argue that the Proposed DIP Financing does not "prime" OCM MLY's security interests because, *technically*, they are not granting a senior lien on any stock pledged to OCM MLY. The OCM MLY Obligations, however, are clearly being structurally subordinated by the Debtors' proposed actions in support of their Proposed DIP Financing. The Mountain Pass Debtors are causing the Neo Debtors to guaranty (on a final

basis) the Proposed DIP Financing obligations and provide 507(b) Claims and liens (on an interim basis) for the benefit of the 10% Noteholders, thus causing the Proposed DIP Financing and the 507(b) Claims and liens to be senior to OCM MLY's liens on these entities' equity. The Debtors' technical argument as to priming simply ignores this reality.

46. The Third Circuit has recognized that "Congress did not contemplate that a creditor could find its priority eroded" without being provided with adequate protection "as compensation." Swedeland, 16 F.3d at 567. Put differently, the purpose of adequate protection is to provide prepetition secured creditors with "the same *level of protection* it would have had if there had not been postpetition superpriority financing." *Id*. at 564 (emphasis added). When prepetition liens are being structurally subordinated, the affected secured creditor clearly does not receive either the benefit of its prepetition bargain or the same level of protection it enjoyed prepetition. This court, as a court of equity, cannot just ignore this reality and elevate form over substance. Hechinger Liq. Trust v. BankBoston Retail Fin., 287 B.R. 145, 151 (D. Del. 2002) ("as a court in equity, this court is charged with ensuring that substance will not give way to form, that technical considerations will not prevent substantial justice from being done.") (citations omitted); In re NJ Affordable Home Corp., 2013 WL 6048836 *28 (Bankr. D.N.J. 2013) ("contrary holding would elevate form over substance, something courts of equity have historically resisted . . .").

47. Based on all of the foregoing, it is clear that the value of OCM MLY's security interests in the stock of the Neo Debtors (and their non-Debtor subsidiaries) is being eroded and will be diminished as the result of the proposed guarantees by, and superpriority claims, against the Neo Debtors and their subsidiaries. Accordingly, OCM MLY's security

interest in such stock is entitled to adequate protection, which the Debtors have failed to provide.

B. The Proposed DIP Financing Does Not Protect Against the Diminution of OCM MLY's Cash Collateral

48. OCM MLY has an interest in Cash Collateral at both the Mountain Pass Debtors (on a *pari passu* basis with the 10% Noteholders) and at the Neo Debtors. Because of the unique nature of cash (i.e., that the amount used by a debtor will always result in immediate diminution of such collateral), cash collateral receives special consideration under the Bankruptcy Code. Accordingly, sections 363(c)(2) and (4) of the Bankruptcy Code mandate, automatically and without the request of any party in interest, the provision of adequate protection with respect to "cash collateral," as defined in section 363(a) of the Bankruptcy Code. Specifically, section 363(c)(2) of the Bankruptcy Code provides that a debtor may only use cash collateral if the debtor first obtains consent of the secured creditor, or establishes to the court's satisfaction that the secured creditor is adequately protected. See 11 U.S.C. § 363(c)(2); In re Megan-Racine Associates, 202 Bankr. 660, 663 (Bankr. N.D.N.Y. 1996).

49. OCM MLY has not consented (and will not consent) to the use of the Cash Collateral. Thus, it is the Debtors' burden to establish that OCM MLY's interest in the Cash Collateral is adequately protected. This is particularly true when the value of the collateral is clearly declining. In re Kowalsky, 235 B.R. 590, 595 (Bankr. E.D. Tex. 1999) ("the burden shifts to the debtor-respondent to prove that the collateral is not declining in value or that the secured creditor is adequately protected"). If the cash making up the cash collateral is declining and the debtor cannot demonstrate that the secured lender's interest is adequately protected despite the debtor's continuing use of the cash, then the debtor must be barred from

further cash expenditures. See 3 Collier on Bankruptcy ¶ 363.05[2] ("If adequate protection cannot be offered, such use, sale or lease of the collateral must be prohibited.")

50. By the Debtors' own admission, the cash that serves as OCM MLY's Cash Collateral will diminish during the pendency of these chapter 11 proceedings. In the Confidential Information Memorandum posted to the Debtors' website on the Petition Date, the Parent disclosed that it projected an eleven month cash burn of more than $267 million, including $50 million (after adjustments) being used from the Neo Debtors and their non-Debtor subsidiaries (i.e., entities where OCM MLY is structurally senior).[31]

51. There is no denying that the Debtors commenced these cases on the heels of a cash liquidity crisis. DIP Motion ¶¶ 39-41. The Debtors' cash problems, however, are not new: In less than ten months, the Debtors have burned through the cash proceeds of the OCM MLY Agreements, which were obtained on the heels of their last liquidity crunch. The Debtors' problems will not and cannot be solved by the Proposed DIP Financing, the proposed use of Cash Collateral, or the terms of the proposed plan of reorganization. By their own admission, the Mountain Pass Debtors are and have been cash flow negative for years. See DIP Motion at ¶ 14. Indeed, it is no surprise that the Debtors' seek to use $50 million in cash from the Neo Debtors and that the DIP Lenders are seeking credit support from the Neo Assets to continue to support the cash burn at the Mountain Pass Debtors.

52. Indeed, the relief sought in the Cash Management Motion is equally troubling. The Debtors recognize that the Mountain Pass Debtors are cash flow negative. They also concede that they require the intercompany transfers out of the Neo Debtors for the benefit of the Mountain Pass Debtors in order to continue a smooth transition of the Debtors'

[31] See Molycorp CIM, Slides 25-28.

operations. However, the Debtors fail to establish how the Neo Debtors will be able to recover on those transfers. A mere administrative expense claim pursuant to section 503(b)(1) of the Bankruptcy Code is insufficient to protect the interests of the transferring debtor's creditors. This is especially true here, where the Debtors are loading up superpriority claims against the Debtors' estates that will inevitably need to be satisfied before any administrative expense claim is paid. In order to protect the creditors of the transferring Debtor, all intercompany transfers should be provided superpriority administrative expense status pursuant to section 503(b)(1) and 364(c) and (d) of the Bankruptcy Code secured by an intercompany lien with priority over the DIP Liens and the 507(b) Claims of the 10% Noteholders. This approach will ensure that ***each individual Debtor*** will not fund the operations of another Debtors at the expense of its own creditors.

III. The Debtors Have Failed to Provide Adequate Protection

53. The Debtors have the burden to establish that the secured creditors' interests are adequately protected whether the diminution of the value of such interests is due to the automatic stay, the use of the creditor's collateral (including cash collateral) or the priming of the creditor's liens. See, e.g., Swedeland, 16 F.3d at 564-567 ("A debtor has the burden to establish that the holder of the lien to be subordinated has adequate protection."); In re Monroe Park, 17 B.R. 934, 937 (D. Del. 1982) ("By statute, the task of justifying a continuation of the stay is primarily allocated to the debtor; it must shoulder the burden of proof on the question of adequate protection . . ."); see also Wilmington Trust Co. v. AMR Corp. (In re AMR Corp.), 490 B.R. 470, 477 (S.D.N.Y. 2013) (same); In re Grant Broadcasting, Inc., 75 B.R. 819, 822 (E.D. Pa. 1987) ("in a § 363(c)(2) hearing, the Debtor has the burden of proof on . . . all . . . component elements relevant to the 'issue of adequate protection.'").

54. The Debtors have failed to meet their burden to demonstrate that the adequate protection package they are offering to OCM MLY is adequate to protect OCM MLY from the immediate diminution in the value of its security interest or its Cash Collateral. Effectively, the Debtors are offering OCM MLY a subset of the rights that OCM MLY already has under the OCM MLY Agreements and the Bankruptcy Code: liens on the Mountain Pass Collateral, an allowed administrative expense claim pursuant to section 507(b) of the Bankruptcy Code, and payment of regularly scheduled interest at the non-default rate and the reasonable and documented fees and expenses incurred by one lead counsel and one local counsel.[32] See DIP Motion ¶¶ 28-29. As the Third Circuit has explained, offering the secured creditor the same collateral that its security interest already covers, cannot possibly constitute adequate protection or "offset the diminution" in the value of such creditor's security interest. Swedeland, 16 F.3d at 564-565.

55. The only potentially new value the Debtors have offered OCM MLY is a replacement lien on the Mountain Pass Assets in an amount in excess of the *Pari Passu* Lien Cap of $300 million. However, the Debtors must demonstrate that there is an equity cushion in these assets sufficient to adequately protect OCM MLY from the diminishing value of OCM MLY's interests in the Neo Assets and the Mountain Pass Assets resulting from both the incurrence of the Proposed DIP Financing and the use of Cash Collateral. The Debtors have not made such a showing. Indeed, OCM MLY already owns the most valuable assets used by the Mountain Pass Debtors – the Mountain Pass equipment. For all of the foregoing reasons, the relief currently sought in the DIP Motion must be denied.

[32] Any adequate protection package for OCM MLY should include, among other things, payment of fees and expenses of financial advisors and consultants. In particular, and as noted above it may be appropriate to have an independent officer appointed for the benefit of the Neo Debtors.

IV. Cause Exists to Lift the Automatic Stay

56. Section 362(d)(1) of the Bankruptcy Code provides, in relevant part, that, "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . such as by terminating, annulling, modifying, or conditioning such stay for cause, including lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1).[33]

57. Thus, "cause" is established when, among other things, the debtor fails to adequately protect a secured creditor's interest in property. See Rocco v. J.P. Morgan Chase Bank (In re Rocco), 255 Fed. Appx. 638 (3d. Cir. 2007) (confirming the bankruptcy court's finding that there was cause for lifting the stay where debtors had not offered adequate protection of the mortgagee's interest in the property); Price v. Del. State Police Fed. Credit Union (In re Price), 370 F.3d 362, 373 (3d. Cir. 2004) (a secured creditor "can obtain relief from the automatic stay and take back its collateral at any time if that interest is not adequately protected"). As demonstrated above, the Debtors have failed to provide adequate protection of OCM MLY's security interests in the OCM MLY Collateral, including the Cash Collateral. As such, OCM MLY intends to file a separate motion have the automatic stay lifted to allow OCM MLY to exercise any and all rights and remedies it has to enforce its rights under the OCM MLY Agreements.

58. In addition, "[c]ause is an intentionally broad and flexible concept, made so in order to permit the courts to respond in equity to inherently fact-sensitive situations." In re Sentry Park, Ltd., 87 B.R. 427, 430 (Bankr. W.D. Tex. 1988); see also In re SCO Group, Inc., 395 B.R. 852, 856 (Bankr. D. Del. 2007) ("Cause is a flexible concept and courts often

[33] The U.S. Supreme Court has recognized that relief from the automatic stay may be granted early in a bankruptcy case and prior to the end of the exclusivity period. See United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 376 (1988).

conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay."); In re Downey Fin. Corp., 428 B.R. 595, 608-609 (Bankr. D. Del. 2010) ("Courts conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay."); In re Peregrine Sys., 314 B.R. 31, 46 (Bankr. D. Del. 2004) ("there is no rigid test for determining whether cause exists to grant relief from stay . . . ."); In re Flintkote Co., No. 04-11300, 2015 WL 237015, at *5 (D. Del. Jan. 16, 2015) (citing In re Wilson, 116 F.3d 87, 90 (3rd Cir. 1997) ("[C]ourts have the discretion to consider what constitutes cause based on the totality of the circumstances.")); Matter of Spencer, 115 B.R. 471, 476 (D. Del. 1990) ("Cause" under § 362(d)(1) is not limited to those situations where the property of a party lacks adequate protection in the bankruptcy estate").

59. Based on this broad definition of "cause" for the purposes of section 362(d), courts have also found "cause" to exist where, as is the case here, the Debtors' seek to use the automatic stay as a "sword" to deprive a secured creditor of its rights. See In re Texaco, Inc., 81 B.R. 804 (Bankr. S.D.N.Y. 1988) (modifying the stay for cause to prevent the debtor from using the stay as a shield in order to unilaterally modify secured creditor's right). The Debtors are not merely seeking to use OCM MLY's Collateral in the ordinary course of business during these Cases. Rather, the Debtors and the proposed DIP Lenders (comprised of certain holders of the 10% Notes, whose own security package is, at a minimum, significantly underwater) have crafted a Proposed DIP Financing package that strips OCM MLY of the value of its interests in the Neo Assets, while using the automatic stay to deprive OCM MLY the ability to protect against the loss of that value.

60. Notably, the Debtors have ***not*** commenced chapter 11 cases with respect to each of their respective direct and indirect subsidiaries. Instead, the Debtors have cherry picked which assets to include in these Cases and which to exclude. The Debtors have caused chapter 11 cases to be commenced with respect to certain Neo Debtor holding companies whose sole assets appear to be the equity in a non-Debtor subsidiary whose equity is pledged to OCM MLY. The Debtors have presumably done so as a sword to keep OCM MLY from exercising remedies in respect of a subsidiary that is not subject to the jurisdiction of the Bankruptcy Court.

61. Based on all of the foregoing, the requisite "cause" clearly exists to lift the automatic stay to permit OCM MLY to exercise its rights and remedies in connection with the OCM MLY Agreements.

RESERVATION OF RIGHTS

62. OCM MLY expressly reserves its rights to raise any issue properly before the court at the interim hearing on the DIP Motion and the Cash Management Motion as well as any subsequent hearing thereon. OCM MLY expressly reserves its rights its right to amend or supplement this Objection and Request, to introduce evidence supporting this Objection and Request at any hearing on the subject matter of this Objection and Request, and to file additional and supplemental objections at the conclusion of discovery on such matters, if applicable. OCM MLY also notes that it has specific comments to the proposed form of Interim DIP Order, which it intends to raise with the Debtor but reserves the right to raise at the interim hearing.

NOTICE

63. Notice of this Objection and Request has been given to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtors; (c) counsel for the

proposed DIP Lenders, (d) the Debtors' thirty largest unsecured creditors, as set forth in the consolidated list filed with the Debtors' petitions; and (e) all parties who have timely filed requests for notice pursuant to Bankruptcy Rule 2002. OCM MLY submits that no other or further notice is necessary under the circumstances.

WHEREFORE, OCM MLY respectfully requests that the Court (a) deny the relief requested in the DIP Motion or condition such relief on the Debtors providing OCM MLY with adequate protection, and/or, in the alternative, (b) enter an order granting OCM MLY (i) relief from the automatic stay to allow OCM MLY to exercise any and all of its rights and remedies under the OCM MLY Agreements and applicable law and (ii) such other and further relief as is just and proper.

Dated: June 25, 2015
Wilmington, Delaware

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