

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

ESSAR STEEL MINNESOTA LLC and
ESML HOLDINGS INC.,¹

Debtors.

Chapter 11

Case No. 16-11626 (BLS)

(Jointly Administered)

Objection Deadline: March 27 2017 at 4:00 PM EST

Hearing Date: April 26, 2017 at 9:30 AM EST

Re: Docket Nos. 703, 775, & 786

**DEBTORS' MOTION, PURSUANT TO BANKRUPTCY RULE 9019, FOR AN
ORDER ALLOWING GREAT LAKES GAS TRANSMISSION LIMITED
PARTNERSHIP'S PROOF OF CLAIM**

Mesabi Metallics Company LLC (f/k/a Essar Steel Minnesota LLC) ("**Mesabi**") and ESML Holdings Inc. ("**Holdings**," and, together with Mesabi, the "**Debtors**"), as debtors and debtors in possession in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"), hereby file this motion (the "**Motion**") for entry of an order, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), allowing Great Lakes Gas Transmission Limited Partnership's proof of claim as further explained below. In support of the Motion, the Debtors respectfully represent:

I. PRELIMINARY STATEMENT

Mesabi and Great Lakes Gas Transmission Limited Partnership ("**Great Lakes**") are no strangers to litigation. For years, Great Lakes and Mesabi were engaged in protracted litigation in the United States District Court for the District of Minnesota that resulted in a post-jury trial judgment in the approximate amount of \$33 million in favor of Great Lakes and against Mesabi.

¹ Essar Steel Minnesota LLC has changed its name to Mesabi Metallics Company LLC. The last four digits of its federal taxpayer identification number are 8770. The last four digits of ESML Holdings Inc.'s federal taxpayer identification number are 8071.

Even after the Eighth Circuit Court of Appeals reversed that judgment and remanded to the District Court for lack of subject matter jurisdiction, the Parties have continued their disputes in this Court, particularly with respect to the Great Lakes' *Motion to Designate Proof of Claim as Timely Filed* [D.I. 703] (the "**Proof of Claim Motion**").

After extensive, arms'-length negotiations, the Parties have reached a settlement resolving, among other things, the Proof of Claim Motion. As stated in the Certification of Counsel regarding an agreed order for the Proof of Claim Motion filed on March 11, 2017, the Debtors' hereby file this Motion, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure ("**Bankruptcy Rule 9019**"), seeking an order and judgment allowing Great Lakes' proof of claim in the total amount of \$32,902,183 to fully resolve Great Lakes' claim against Mesabi arising from the transportation services agreement.

For the reasons further stated below, the Debtors request that the Court grant this Motion.

II. BACKGROUND

A. General Background

1. On July 8, 2016 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 the Bankruptcy Code, thereby commencing these Chapter 11 Cases. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Court has entered an order for the joint administration of the Chapter 11 Cases [D.I. 32].

3. No trustee or examiner has been appointed in the Chapter 11 Cases. On July 19, 2016, an official committee of unsecured creditors (the “**Committee**”) was appointed in the Chapter 11 Cases.

4. Information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the commencement of the Chapter 11 Cases is set forth in the Declaration of Sanjay Bhartia in Support of First Day Motions and Applications (the “**First Day Declaration**”) [D.I. 14].

5. On February 2, 2017, the Debtors filed their Chapter 11 Plan of Reorganization of Mesabi Metallics Company LLC (f/k/a Essar Steel Minnesota LLC) and ESML Holdings Inc. (as amended and/or supplemented from time to time, the “**Plan**”) [D.I. 690] and their Proposed Disclosure Statement Relating to the Chapter 11 Plan of Reorganization of Mesabi Metallics Company LLC (f/k/a Essar Steel Minnesota LLC) and ESML Holdings Inc. (as amended and/or supplemented from time to time, the “**Disclosure Statement**”) [D.I. 691].

B. Background Specific to this Motion

6. Mesabi was a defendant in prepetition litigation commenced by Great Lakes in the United States District Court for the District of Minnesota (the “**District Court**”). After a jury-trial, a judgment was entered against Mesabi and other non-debtor affiliates in the amount of \$32,902,183 (the “**Judgment**”).

7. Mesabi timely appealed the Judgment to the Eighth Circuit Court of Appeals, which appeal was styled *Great Lakes Gas Transmission Limited Partnership v. Essar Steel Minnesota LLC, et al.*, Case No. 16-1101 (the “**Appeal**”). In connection with the Appeal, Mesabi secured and posted a bond issued by Atlantic Specialty Insurance Company (the

“**Surety**”) in the amount of \$37,837,510.45, which Mesabi collateralized with over \$23 million in cash.

8. The Eighth Circuit Court of Appeals reversed and vacated the District Court’s Judgment on December 5, 2016, for lack of subject matter jurisdiction. There was no decision on the merits. Great Lakes’ request for *en banc* rehearing was denied on January 30, 2017 and mandate issued on February 6, 2017.

9. On February 6, 2017, Great Lakes filed its Proof of Claim Motion [D.I. 703]. The Debtors filed its opposition to the Proof of Claim Motion on March 8, 2017 [D.I. 775], which was subsequently withdrawn pursuant to the Certification of Counsel filed on March 11, 2017 [D.I. 786].

10. In a concerted effort to consensually resolve the Proof of Claim Motion, counsel to the parties negotiated and reach a joint settlement. As part of the joint settlement, the Debtors filed Certifications of Counsel on March 11, 2017 [D.I. 785 and 786], which resolved the Debtors’ *Motion for Release of Supersedeas Bond* [D.I. 749] and the Proof of Claim Motion. As per the agreement of the parties, the Debtors now seek entry of an order and judgment allowing Great Lakes’ proof of claim in the amount of \$32,902,183 pursuant to Bankruptcy Rule 9019.

III. JURISDICTION AND VENUE

11. The court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* entered by the United States District Court for the District of Delaware on February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

IV. RELIEF REQUESTED

12. By this Motion, the Debtors respectfully request that the Court enter an order and judgment (the “**Proposed Order**”), substantially in the form attached hereto as **Exhibit A**, allowing Great Lakes’ proof of claim in the amount of \$32,902,183.

V. BASIS FOR RELIEF

13. The Debtors seek allowance of Great Lakes’ proof of claim in the amount of \$32,902,183 pursuant to Bankruptcy Rule 9019.

14. Bankruptcy Rule 9019(a) provides that “[o]n motion by the trustee and after notice and a hearing, a court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Compromises are favored in bankruptcy because they minimize the costs of litigation and further the parties’ interests in expediting administration of a bankruptcy estate. *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); 10 Collier on Bankruptcy, ¶ 9019.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed., 2013). In deciding whether to approve a compromise under Bankruptcy Rule 9019, a court must determine if the settlement is “fair, reasonable, and in the interest of the estate.” *In re TSIC, Inc.*, 393 B.R. 71, 78 (Bankr. D. Del. 2008); *In re Key3Media Group, Inc.*, 336 B.R. 87, 92 (Bankr. D. Del. 2005) (citing *In re Louise’s, Inc.*, 211 B.R. 798, 801 (D. Del. 1997)). This test is known as the “best interests” test.

15. Under the “best interests” test, a debtor must show that a compromise or settlement is “fair and equitable” to the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Nutraquest, Inc.*, 434 F.3d 639, 645 (3d Cir. 2006) (discussing application of fair and equitable standard); *Martin*, 91 F.3d at 393 (same); *In re Marvel Entm’t Group, Inc.*, 222 B.R. 243 (D. Del. 1998) (proposed settlement held to be in best interest of the estate). Under the “best interests” test and as further articulated by

courts within the Third Circuit, the reasonableness of a proposed compromise and settlement is determined by reference to the following four factors: (1) the probability of success in litigation concerning the subject matter of the settlement; (2) the projected difficulty in collecting after obtaining a judgment in such litigation; (3) the complexity of the issues involved, and the expense, inconvenience, and delay that would therefore attend such litigation; and (4) the paramount interest of holders of claims against and interests in the debtor, to which proper deference to their reasonable views of the settlement should be afforded. *Martin*, 91 F.3d at 393 (following *TMT* and clarifying four-factor test); *see also Nutraquest*, 434 F.3d at 644-45; *In re RNI Wind Down Corp.*, 348 B.R. 286, 297-99 (Bankr. D. Del. 2006); *In re Kaiser Aluminum Corp.*, 339 B.R. 91, 96-97 (D. Del. 2006).

16. In applying the *Martin/TMT* four-factor test, the reasonableness of a proposed compromise and settlement does not depend on a determination that the settlement reached is the best that could possibly be obtained, but rather, whether the settlement “fall[s] below the lowest point in the range of reasonableness.” *In re Pa. Truck Lines, Inc.*, 150 B.R. 595, 598 (E.D. Pa. 1992), *aff’d*, 8 F.3d 812 (3d Cir. 1993); *Key3Media*, 336 B.R. at 92-93 (court is not required to determine that settlement is best possible compromise).

17. The Debtors believe, in their best business judgment, that the allowance of Great Lakes’ claim is fair, equitable, and in the best interest of the estates. Great Lakes obtained a Judgment against the Debtors after years of litigation in District Court, including a jury trial. The Judgment was ultimately overturned on the ground that the District Court lacked jurisdiction to resolve the dispute, but repeating the underlying litigation would be extremely costly and time consuming. Allowing the claim in the Judgment amount obviates the need for protracted

litigation on the proper amount of the proof of claim and the related risks, delay, and expenses associated with continued litigation.

18. For these reasons, the Debtors submit that the consensual resolution with Great Lakes is well within the “range of reasonableness” required by Bankruptcy Rule 9019.

19. Finally, the parties have negotiated in good faith and at arm’s length. Accordingly, the Debtors believe that the allowance of Great Lakes’ proof of claim and entry of an order and judgment allowing the claim in the amount of \$32,902,183 is fair, equitable, and in the best interests of all parties in interest.

VI. NOTICE

20. Notice of this Motion has been provided to (i) the Office of the United States Trustee for the District of Delaware, (ii) counsel to the Committee, (iii) Great Lakes’ counsel, and (iv) those parties that have filed requests for notices in this case pursuant to Bankruptcy Rule 2002. The Debtors submit that in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

21. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

VII. CONCLUSION

WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief that is just and proper.

Dated: March 13, 2017

Respectfully submitted,

/s/ L. John Bird

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Attorneys for the Debtors and Debtors in Possession

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

ESSAR STEEL MINNESOTA LLC and
ESML HOLDINGS INC.,¹

Debtors.

Chapter 11

Case No. 16-11626 (BLS)

(Jointly Administered)

Re: Docket Nos. 703, 775, 786 & _____

**ORDER AND JUDGMENT ALLOWING GREAT LAKES GAS
TRANSMISSION LIMITED PARTNERSHIP'S PROOF OF CLAIM**

Upon consideration of the motion (the "**Motion**"),² dated March 13, 2017, of Mesabi Metallics Company LLC (f/k/a Essar Steel Minnesota LLC) ("**Mesabi**") and ESML Holdings Inc. ("**Holdings**," and, together with Mesabi, the "**Debtors**"), as debtors and debtors in possession in the above-captioned chapter 11 cases, for entry of an order and judgment allowing Great Lakes' proof of claim in the Chapter 11 Cases; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding within the meaning of 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and upon the record of all of the proceedings had before the Court; and the Court having found and determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and all

¹ Essar Steel Minnesota LLC has changed its name to Mesabi Metallics Company LLC. The last four digits of its federal taxpayer identification number are 8770. The last four digits of ESML Holdings Inc.'s federal taxpayer identification number are 8071.

² Where the context requires, each capitalized term used but not otherwise defined herein shall have the meaning ascribed to such term in the Motion.

parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is GRANTED.
2. Great Lakes' proof of claim in these Chapter 11 Cases is allowed in the total amount of \$32,902,183 and is hereby granted judgment in the amount of \$32,902,183 against the Debtors.
3. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order and to grant all other and further relief that is just and proper.

Dated: _____, 2017
Wilmington, Delaware

Hon. Brendan L. Shannon
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

ESSAR STEEL MINNESOTA LLC and
ESML HOLDINGS INC.,¹

Debtors.

Chapter 11

Case No. 16-11626 (BLS)

(Jointly Administered)

Hearing Date: April 26, 2017 at 9:30 A.M.

Objections Due: March 27, 2017 at 4:00 P.M.

**NOTICE OF HEARING ON DEBTORS' MOTION, PURSUANT TO
BANKRUPTCY RULE 9019, FOR AN ORDER ALLOWING GREAT LAKES
GAS TRANSMISSION LIMITED PARTNERSHIP'S PROOF OF CLAIM**

TO: (i) The Office of the United States Trustee for the District of Delaware, (ii) counsel to the Official Committee of Unsecured Creditors, (iii) Counsel to Great Lakes Gas Transmission Limited Partnership, and (iv) all parties requesting notices pursuant to Bankruptcy Rule 2002.

PLEASE TAKE NOTICE that Mesabi Metallics Company LLC (f/k/a Essar Steel Minnesota LLC) and ESML Holdings Inc. have filed the attached **Debtors' Motion, Pursuant to Bankruptcy Rule 9019, for an Order Allowing Great Lakes Gas Transmission Limited Partnership's Proof of Claim** (the "Motion").

PLEASE TAKE FURTHER NOTICE that responses or objections to the Motion, if any, are to be filed on or before **March 27, 2017 at 4:00 p.m. (Prevailing Eastern Time)**. At the same time, you must serve a copy of the objection or response on the undersigned attorneys.

PLEASE TAKE FURTHER NOTICE that if any responses are timely filed in accordance with this Notice, a hearing on the Motion will be held on **April 26, 2017 at 9:30 a.m. (Prevailing Eastern Time)** before The Honorable Brendan L. Shannon at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE APPLICATION WITHOUT FURTHER NOTICE OR HEARING.

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Dated: March 13, 2017

Respectfully submitted,

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