

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT WITH RESPECT TO HORSEHEAD HOLDING
CORP., HORSEHEAD CORPORATION, HORSEHEAD METAL PRODUCTS, LLC,
THE INTERNATIONAL METALS RECLAMATION COMPANY, LLC AND
ZOCHEM INC. (collectively the "Debtors")**

**APPLICATION OF ZOCHEM INC.
UNDER SECTION 46 OF THE
*COMPANIES' CREDITORS ARRANGEMENT ACT***

MOTION RECORD
(returnable March 3, 2016)

Date: March 2, 2016

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I N D E X

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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**APPLICATION OF ZOCHEM INC.
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*COMPANIES' CREDITORS ARRANGEMENT ACT***

I N D E X

Tab Document

1. Notice of Motion
 - (a) Draft Recognition Order
2. Affidavit of James M. Hensler sworn March 2, 2016

Exhibits to Affidavit

- (a) February 2, 2016 Hensler Affidavit
- (b) Initial Recognition Order
- (c) February 5, 2016 Supplemental Recognition Order
- (d) Notice of Appointment of Committee of Unsecured Creditors
- (e) Letter to Hourly Pension Plan Members
- (f) Letter to Salaried Pension Plan Members
- (g) February 8, 2016 Decision of Justice Newbould
- (h) Blackline of Final U.S. DIP Order

Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C 36, AS AMENDED**

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**APPLICATION OF ZOCHEM INC.
UNDER SECTION 46 OF THE
*COMPANIES' CREDITORS ARRANGEMENT ACT***

NOTICE OF MOTION

Zochem Inc. ("**Zochem**") will make a motion to a judge presiding over the Commercial List on Thursday, March 3, 2016 at 10 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

1. **THE MOTION IS FOR** an Order, substantially in the form attached hereto as **Schedule "A"**:
 - (a) abridging the time for service and filing of this Notice of Motion and the Motion Record and dispensing with service thereof on any interested party other than those served with these proceedings;
 - (b) recognizing in Canada and enforcing the following orders (collectively, the "**Second Day Orders**") of the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") made in the proceedings commenced by the Debtors

in the U.S. Court for the District of Delaware (the “**U.S. Court**”) under chapter 11 of title 11 of the United States Code (the “**Chapter 11 Proceedings**”)

- (i) Final Order Authorizing, But Not Directing, Debtors to (a) Pay Prepetition Wages, Salaries, Other Compensation, Reimbursable Expenses, and Payroll Processing Fees, (b) Pay Withholding Obligations, (c) Continue Employee Benefits Programs, and (d) Continue Ordinary Course Incentive Programs for Non-Insiders;
- (ii) Final Order Authorizing Debtors to (a) Pay Prepetition Claims of Shippers and Miscellaneous Lien Claimants, (b) Pay Section 503(b)(9) Claims, and (c) Grant Administrative Expense Priority to all Undisputed Obligations for Goods Ordered Prepetition and Delivered Postpetition and Satisfy such Obligations in the Ordinary Course of Business;
- (iii) Final Order (a) Determining Adequate Assurance of Payment for Future Utility Services; (b) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services; (c) Establishing Procedures for Determining Adequate Assurance of Payment;
- (iv) Final Order Authorizing Debtors to (a) Continue Insurance Coverage Entered Into Prepetition; (b) Honor their Prepetition Insurance Premium Financing Agreements; and (c) Renew their Premium Financing Agreements in the Ordinary Course of Business;
- (v) Final Order Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors;
- (vi) Final Order Approving Notification and Hearing Procedures for Certain Transfers of, and Declarations of Worthlessness with Respect to, Common Stock;

(vii) Final Order (A) Authorizing the Debtors to Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Adequate Protection to the Prepetition Secured Parties, (D) Scheduling a Final Hearing, and (E) Granting Related Relief (the “**Final U.S. DIP Order**”); and

(c) approving the first report (the “**First Report**”) to the court of Richter Advisory Group Inc. (“**Richter**”), in its capacity as the information officer in this proceedings (the “**Information Officer**”), and the activities set out therein;

and such further and other relief as counsel may advise and this Court may permit.

2. **THE GROUNDS FOR THE MOTION ARE:**

(a) on February 1, 2016, the Debtors commenced the Chapter 11 Proceedings by each filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the U.S. Court;

(b) the Chapter 11 Proceedings are the only foreign proceedings in respect of the Debtors;

(c) on February 2, 2016, the Honourable Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) granted an order providing certain interim relief to the Debtors including, without limitation, a stay of proceedings in respect of the Debtors, their property and their officers and directors;

(d) on February 3, 2016, the U.S. Court made various “first day” orders including an interim order authorizing Zochem to act as foreign representative of the Debtors before the Canadian Court;

(e) on February 5, 2106, the Honourable Justice Newbould granted:

- (i) an Initial Recognition Order in these proceedings which, among other things: (i) recognized Zochem as the foreign representative of the Debtors (the “**Foreign Representative**”); (ii) declared the Chapter 11 Proceedings to be a “foreign main proceeding” pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (the “**CCAA**”); and (iii) stayed all proceedings against the Debtors; and
- (ii) a Supplemental Order in the proceedings which, among other things: (i) recognized and enforced in Canada certain orders of the U.S. Court made in the Chapter 11 Proceedings including the liens and claims granted therein; (ii) appointed Richter as the Information Officer; (iii) stayed all claims and proceedings in respect of the Debtors, their property and business and their directors and officers; (vi) granted a super-priority charge over the Debtors’ property in Canada (the “**DIP Charge**”) in favour of Cantor Fitzgerald Securities, as administrative agent (the “**DIP Agent**”) to the Ad Hoc Group of Senior Secured Noteholders and the Post-Petition Lenders (the “**DIP Lenders**”); and (v) granted a super-priority charge over the Debtors’ property in Canada in favour of the Information Officer and its counsel, as security for their professional fees and disbursements (the “**Administration Charge**”);
- (f) on March 1, 2016, the U.S. Court entered all the Second Day Orders but for the Final U.S. DIP Order;
- (g) on March 2, 2016, the Debtors will be seeking entry of the Final U.S. DIP Order by the U.S. Court;
- (h) following the entry of the Final U.S. DIP Order, the Foreign Representative intends to serve and file with the Canadian Court a supplementary affidavit, appending the Second Day Orders (the “**Supplemental Affidavit**”);

- (i) the recognition of the Second Day Orders is necessary for the protection of the Debtors' property and the interest of their creditors;
- (j) the Debtors, including Zochem, require continued access to the post-petition financing offered by the DIP Lenders (the "**DIP Facility**");
- (k) the DIP Facility required entry of the Final U.S. DIP Order by March 3, 2016 and issuance and entry of an order this Court in recognition thereof by March 4, 2016;
- (l) concerns expressed by the U.S. Court and this Court related to Zochem's participation in the DIP Facility on a full joint and several liability basis with the other Debtors have been addressed by: (i) a new senior carve-out of any proceeds of Zochem assets in an amount equal to US \$12 million reserved to satisfy claims of Zochem's unsecured creditors; and (ii) the appointment of an independent director of Zochem, who has reviewed the amended terms of the DIP Facility with independent counsel in both the United States and Canada, and supports the same;
- (m) Zochem's largest trade creditor is a member of the Unsecured Creditors' Committee in the Chapter 11 Proceedings;
- (n) there are no unresolved objections in the Chapter 11 Proceedings to the Second Day Orders from any creditor of Zochem;
- (o) the other grounds set out in the First Report and in the Affidavit of James M. Hensler sworn March 2, 2016 (the "**Hensler Affidavit**");
- (p) the provisions of the CCAA and, in particular, sections 11 and 11.2 and Part IV;
- (q) rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (r) such further and other grounds as counsel may advise and this Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the Hensler Affidavit;
- (b) the First Report;
- (c) the Supplemental Affidavit, and
- (d) such further and other material as counsel may submit and this Court may permit.

Date: March 2, 2016

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED,
IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT
TO THE DEBTORS, AND APPLICATION OF ZOICHEM INC. UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT**

Applicant

Court File No. CV-16-11271-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

NOTICE OF MOTION



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Tab 1(a)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE ) THURSDAY, THE 3rd
JUSTICE ) DAY OF MARCH, 2016
)


IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED
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ZOCHEM INC. (collectively, the "Debtors")

APPLICATION OF ZOCHEM INC.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)

THIS MOTION, made by Zochem Inc. ("Zochem") in its capacity as the foreign representative (the "Foreign Representative") of the Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of James M. Hensler sworn March 2, 2016, the First Report of Richter Advisory Group Inc. in its capacity as information officer (the "Information Officer") dated March , 2016 (the "First Report") and on hearing the submissions of counsel for the Foreign Representative, counsel to the Information Officer, counsel to the Ad Hoc Group of Senior Secured Noteholders and proposed Post-Petition

Lenders (the “**DIP Lenders**”) and Cantor Fitzgerald Securities, as administrative agent (the “**DIP Agent**”), counsel for UNIFOR Local 591G and no one else appearing although duly served as appears from the affidavit of service of Daphne Porter sworn March 2, 2016, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the following orders (collectively, the “**Foreign Orders**”) of United States Bankruptcy Court for the District of Delaware made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) Final Order (I) Authorizing, but not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, Reimbursable Expenses, and Payroll Processing Fees, (B) Pay Withholding Obligations, (C) Continue Employee Benefits Programs, and (D) Continue Ordinary Course Incentive Programs for Non-Insiders, and (II) Granting Related Relief, attached as **Schedule “A”** to this Order;
- (b) Final Order (I) Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and (II) Granting Related Relief, attached as **Schedule “B”** to this Order;
- (c) Final Order (I) Authorizing the Debtors to (A) Continue Insurance Coverage Entered into Prepetition, (B) Honor Their Prepetition Insurance Premium Financing Agreements, (C) Renew Their Premium Financing Agreements in the Ordinary Course of Business, and (II) Granting Related Relief, attached as **Schedule “C”** to this Order;
- (d) Final Order (I) Determining Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Establishing Procedures for Determining

Adequate Assurance of Payment, and (IV) Granting Related Relief, attached as **Schedule "D"** to this Order;

- (e) Final Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief, attached as **Schedule "E"** to this Order;
- (f) Final Order (A) Authorizing the Debtors to Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code, (B) Authorizing The Debtors to Use Cash Collateral, (C) Granting Adequate Protection to the Prepetition Secured Parties, and (D) Granting Related Relief, attached as **Schedule "F"** to this Order,

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to the Debtors' current and future assets, undertakings and properties of every nature and kind whatsoever, where situate in Canada, including all proceeds thereof.

3. **THIS COURT ORDERS** that the First Report and the activities of the Information Officer described therein be and are hereby approved.

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Debtors, the Foreign Representative, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

5. **THIS COURT ORDERS** that each of the Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any

court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

6. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. on the date of this Order.

SCHEDULE "A"

[attached]

SCHEDULE "B"

[attached]

SCHEDULE "C"

[attached]

SCHEDULE "D"

[attached]

SCHEDULE "E"

[attached]

SCHEDULE "F"

[attached]

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ARRANGEMENT ACT**

Court File No. CV-16-11271-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

**RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)**

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Tab 2

**ONTARIO
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UNDER SECTION 46 OF THE
*COMPANIES' CREDITORS ARRANGEMENT ACT***

**AFFIDAVIT OF JAMES M. HENSLER
(sworn March 2, 2016)**

**I, JAMES M. HENSLER, of Gibsonia, in Pine Township, in the State of Pennsylvania,
MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Chairman of the Board, President and Chief Executive Officer of Horsehead Holding Corp. ("**Horsehead Holding**"), the indirect parent of Horsehead Metal Products, LLC and the direct parent of the remaining Debtors, including Zochem Inc. ("**Zochem**"). I am also the President, the Chief Executive Officer and a Director of Zochem. As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

2. This Affidavit is sworn in support of motion by Zochem Inc. ("**Zochem**") for an order, among other things, recognizing the "second day" orders which are expected to be made by the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") in the

proceedings commenced by the Debtors under chapter 11 of title 11 of the United States Code (the “**Chapter 11 Proceedings**”).

I. BACKGROUND

The Proceedings

3. On February 2, 2016 (the “**Petition Date**”), the Debtors commenced the Chapter 11 Proceedings by each filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the U.S. Court.

4. On February 2, 2016 Horsehead Holding, as proposed foreign representative of the Debtors, commenced the within application with this Court under Part IV of the CCAA for recognition of the Chapter 11 Proceedings as “foreign main proceedings”. In support of the application, I swore an affidavit dated February 2, 2016, a copy of which, minus all exhibits but one, is attached as **Exhibit “A”** to this Affidavit. The one exhibit included is Exhibit “F”, my initial declaration filed in the Chapter 11 Proceedings.

5. On February 2, 2016, Justice Newbould granted an Interim Order, thereby enforcing a limited stay of proceedings in Canada, pending the appointment of a foreign representative pursuant to the Chapter 11 Proceedings.

6. On February 3, 2016, the U.S. Court held a hearing on certain “first day” motions necessary to continue the operations of the Debtors during the pendency of the Chapter 11 Proceedings (the “**First Day Hearing**”). Although Judge Christopher Sontchi was assigned to the Chapter 11 Proceedings, he was unavailable on February 3 and the First Day Hearing was instead held before Judge Mary Walrath.

7. In response to concerns of Judge Walrath at the First Day Hearing, Horsehead Holding was replaced with Zochem as the proposed foreign representative.

8. On February 5, 2106, Justice Newbould granted the following two orders in these proceedings:

- (a) an Initial Recognition Order which, among other things: (i) recognized Zochem as the foreign representative of the Debtors (the “**Foreign Representative**”); (ii) declared the Chapter 11 Proceedings to be a “foreign main proceeding” pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (the “**CCAA**”); and (iii) stayed all proceedings against the Debtors, a copy of which Initial Recognition Order is attached as **Exhibit “B”** to this Affidavit; and
- (b) a Supplemental Order which, among other things: (i) recognized and enforced in Canada certain orders of the U.S. Court made in the Chapter 11 Proceedings including the liens and claims granted therein; (ii) appointed Richter Advisory Group Inc. as the Information Officer; (iii) stayed all claims and proceedings in respect of the Debtors, their property and business and their directors and officers; (vi) granted a super-priority charge over the Debtors’ property in Canada (the “**DIP Charge**”) in favour of Cantor Fitzgerald Securities, as administrative agent (the “**DIP Agent**”) to the Ad Hoc Group of Senior Secured Noteholders and the Post-Petition Lenders (the “**DIP Lenders**”); and (v) granted a super-priority charge over the Debtors’ property in Canada in favour of the Information Officer and its counsel, as security for their professional fees and disbursements (the “**Administration Charge**”), a copy of which Supplemental Order, minus its schedules, is attached as **Exhibit “C”** to this Affidavit.

9. On February 16, 2016, the Committee of Unsecured Creditors (the “**Creditors’ Committee**”) was formed in connection with the Chapter 11 Proceedings. The Creditors’ Committee includes Hubbay Marketing & Sales, Inc., Zochem’s single largest trade creditor, representing well over two-thirds in dollar value of Zochem’s accounts payable. A copy of the notice of appointment of the Creditors’ Committee, listing all members thereof, is attached as **Exhibit “D”** to this Affidavit. The Creditors’ Committee has selected Lowenstein Sandler LLP as its lead counsel, FTI as its financial advisor and Drinker Biddle & Reath LLP as its Delaware counsel.

10. On March 1, 2016, Judge Sontchi entered the following orders of which Zochem is seeking recognition:

- (a) Final Order (I) Authorizing, but not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, Reimbursable Expenses, and Payroll Processing Fees, (B) Pay Withholding Obligations, (C) Continue Employee Benefits Programs, and (D) Continue Ordinary Course Incentive Programs for Non-Insiders, and (II) Granting Related Relief;
- (b) Final Order (I) Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and (II) Granting Related Relief;
- (c) Final Order (I) Authorizing the Debtors to (A) Continue Insurance Coverage Entered into Prepetition, (B) Honor Their Prepetition Insurance Premium Financing Agreements, (C) Renew Their Premium Financing Agreements in the Ordinary Course of Business, and (II) Granting Related Relief;
- (d) Final Order (I) Determining Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (IV) Granting Related Relief (the “**Final Utilities Order**”); and
- (e) Final Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief.

11. Also on March 1, 2016, Judge Sontchi entered an Order (i) Extending Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs, and (ii) Granting Related Relief, which was previously adjourned from the First Day Hearing.

12. The Debtors are scheduled to appear before Judge Sontchi on March 2, 2016 at their second day hearing (the “**Second Day Hearing**”) to seek entry of a Final Order (A) Authorizing the Debtors to Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code, (B) Authorizing The Debtors to Use Cash Collateral, (C) Granting Adequate Protection to

the Prepetition Secured Parties, and (D) Granting Related Relief (the “**Final U.S. DIP Order**” and, together with the orders set out in paragraph 10 above, the “**Second Day Orders**”)

13. Although the final hearing on the Final U.S. DIP Order was originally scheduled for February 22, 2016, the DIP Lenders agreed, at the request of the Creditors’ Committee, to extend the relevant deadlines (as set out below) to adjourn the hearing to March 2, 2016, in order to allow the parties to discuss the post filing financing (the “**DIP Facility**”).

14. At the request of the Creditors’ Committee, the Debtors obtained an adjournment until April 6, 2016 of the hearing of the motion for the Final Order (I) Authorizing The Debtors to (A) Continue to Operate their Cash Management Systems, (B) Honor Certain Prepetition Obligations related Thereto, (C) Maintain Existing Business Forms and (D) Continue to Perform Intercompany Transactions, and (II) Granting Related Relief.

15. Apart from the Chapter 11 Proceedings, there are no current or pending foreign proceedings in respect of the Debtors.

Background to the Debtors

16. Together with their predecessors, the Debtors have operated in the zinc industry for more than 150 years and in the nickel-bearing waste industry for more than 30 years. The Debtors operate through three business units: Horsehead Corporation and its subsidiaries (collectively, “**Horsehead**”), Zochem, and The International Metals Reclamation Company, LLC (“**INMETCO**”). Horsehead, Zochem, and INMETCO are each subsidiaries of Horsehead Holding. Horsehead is a prominent recycler of electric arc furnace (“**EAF**”) dust, a zinc-containing waste generated by North American steel “mini-mills”, and in turn uses the recycled EAF dust to produce specialty zinc and zinc-based products. Zochem is a producer of zinc oxide. INMETCO is a recycler of nickel-bearing wastes and nickel-cadmium batteries, and a producer of nickel-chromium-molybdenum-iron remelt alloy for the stainless steel and specialty steel industries. Collectively, the Debtors hold a market-leading position in zinc production in the United States, zinc oxide production in North America, EAF dust recycling in North America, and are a leading environmental service provider to the U.S. steel industry.

17. Zochem is a *Canada Business Corporations Act* corporation with its head office in Pittsburgh, Pennsylvania and its operations located in owned premises at 1 Tilbury Court, Brampton, Ontario (the “**Ontario Premises**”). Zochem’s registered office address is the Ontario Premises. Zochem was formed by the amalgamation of Horsehead Canada Holding Corp., a British Columbia corporation, and Zochem Inc., an Ontario corporation, on June 28, 2012.

18. The pre-amalgamation Zochem Inc. was acquired by Horsehead Holding in November 2011. Zochem is one of the largest single-site producers of zinc oxide in North America. Zinc oxide is used as an additive in various materials and products, including plastics, ceramics, glass, rubbers, cement, lubricants, pigments, sealants, ointments, fire retardants, and batteries. The Debtors sell zinc oxide to over 250 producers of tire and rubber products, chemicals, paints, plastics, and pharmaceuticals, and have supplied zinc oxide to the majority of their largest customers for over ten years. Zochem has the capacity to produce approximately 72,000 tons of zinc oxide a year.

19. As of December 31, 2015, Zochem had 19 salaried personnel and 25 hourly personnel. Approximately 25 of these employees are organized under Unifor and its Local 591-G-850 (successor by merger to the Communications, Energy and Paperworkers Union Local 591-G-850), whose collective labour agreement is set to expire on June 30, 2016. Zochem uses ADP as its payroll service provider.

20. Zochem maintains separate pension plans for its salaried and hourly personnel, both of which have been closed to new members since July 1, 2012. Newer employees have joined Zochem’s group RRSP. Neither of the two Zochem pension plans has been wound up.

II. OBJECTIONS TO SECOND DAY ORDERS

21. The Debtors received a total of six objections to the motions for the Second Day Orders (the “**Second Day Motions**”) by the objection deadlines (February 25th for the motion for the Final U.S. DIP Order for the Creditors’ Committee, February 22nd for each of Macquarie (as defined below) and the indenture trustee to the U.S. Debtors’ senior secured notes and February 19th for the remaining Second Day Orders and for all other objections to the motion for Final U.S. DIP Order). The objections were:

- (a) an objection from the Creditors' Committee to the motion for the Final U.S. DIP Order, which was subsequently joined by Aquamarine Capital Management, LLC;
- (b) limited objections from the U.S. Debtors' incumbent secured lender, Macquarie Bank Limited ("**Macquarie**"), to the motion for the Final U.S. DIP Order;
- (c) two objections from utilities companies to the motion for the Final Utilities Order;
- (d) a limited objection to the motion for the Final U.S. DIP Order from a materials supplier claiming "20-day goods" rights; and
- (e) a limited objection to the motion for the Final U.S. DIP Order from a mechanic's lien claimant.

22. On February 25, 2016, the Creditors' Committee filed a joinder to the objection of Macquarie.

23. As at the time of swearing this Affidavit, the Debtors have resolved all of the above objections save for Macquarie's objection to the motion for the Final U.S. DIP Order. Macquarie is not a creditor of Zochem.

III. ZOCHEM PENSION PLANS

24. As at the commencement of these proceedings: (a) the Zochem hourly pension plan (the "**Hourly Plan**") was overfunded based on its most recent actuarial valuation effective December 31, 2013; and (b) the Zochem salaried pension plan (the "**Salaried Plan**") was underfunded on a solvency basis based on its most recent actuarial valuation effective December 31, 2014. Zochem has since made payments to the Salaried Plan totalling \$254,585 to erase the solvency deficit identified in its December 31, 2014 actuarial valuation.

25. Zochem's pension benefits consultants have advised that: (a) both Zochem pension plans are now fully funded on a solvency basis based on the most recent actuarial valuation reports; and (b) apart from current service cost contributions, the *Income Tax Act* will not permit any further payments to be made to the pension plans until further actuarial valuations are performed

and filed with the regulators. The next actuarial valuation for the Hourly Plan is scheduled to be performed as at December 31, 2016 and the next actuarial valuation for the Salaried Plan is scheduled to be performed as at December 31, 2017.

26. The Supplemental Order made by Justice Newbould on February 5, 2016 is explicit that the DIP Charge has priority over any deemed trust under the *Pension Benefits Act*. The subsequent payments to the Salaried Plan, bringing both pension plans into a fully funded position based on the most recent actuarial valuations, were made specifically to avoid any potential priority conflict between the DIP Charge and priority claims, if any, for pension amounts in excess of the pension amounts protected in the CCAA.

27. The Debtors' Canadian counsel, Aird & Berlis LLP ("**A&B**"), has advised that, on February 11, 2016, it wrote to the members of the Zochem pension plans to describe the current restructuring proceedings and their potential impact on the pension plans. A copy of the letter sent to Hourly Plan members is attached as **Exhibit "E"** to this Affidavit and a copy of the letter sent to the Salaried Plan members is attached as **Exhibit "F"** to this Affidavit.

28. During the week of February 15 to 19, a number of inquiries from Zochem pension plan members were received and responded to by A&B, by Zochem's pension benefits consultants and by Zochem's general manager.

IV. CHANGES TO ZOICHEM BOARD

29. At the commencement of these proceedings, Zochem had four directors, three of whom were also directors of the other Debtors and were operationally involved as officers in the Debtors' businesses. These three directors all lived and worked in Pennsylvania. Zochem's fourth director was Jeffrey Merk, a partner at A&B, who had been appointed to satisfy the statutory requirement of 25% Canadian residency for the Zochem board of directors (the "**Zochem Board**").

30. At the First Day Hearing, Judge Walrath expressed concerns related to Zochem's participation in the DIP Facility on a full joint and several liability basis with the other Debtors. In addition to the amendments to the DIP Facility limiting Zochem's liability (as discussed below), the following actions were taken to address Judge Walrath's concerns:

- (a) Jeffrey Merk and one other director, Gary Whitaker, were replaced as directors of Zochem with the persons described in (b) and (c) below;
- (b) a new director, Mohit Sharma, a Canadian citizen and Zochem executive who also satisfies the Canadian residency requirement, was appointed to the Zochem Board; and
- (c) a new independent director, Harvey Tepner, was appointed to the Zochem Board.

31. Mr. Tepner has extensive restructuring experience as a former senior executive of WL Ross & Co., and also is or has been a director for a number of different companies, including Canadian enterprises. Pursuant to the resolutions (the “**Resolutions**”) of the Zochem Board appointing Mr. Tepner, Mr. Tepner has been delegated authority to: (i) consider and, if appropriate, make recommendations regarding intercompany transactions between Zochem and Horsehead Holding and its affiliates; (ii) consider and evaluate potential material debt, financial, or other restructuring transactions involving Zochem or any of its assets, provided that that any such transactions shall require approval by the Zochem Board pursuant to Zochem’s by-laws and the articles of amalgamation; and (iii) perform any other activities consistent with Zochem’s by-laws or as the Zochem Board deems necessary or appropriate. Pursuant to the Resolutions, Mr. Tepner has been further delegated authority to make recommendations to the Zochem Board with respect to certain aspects of the management and operation of Zochem’s business as it specifically relates to Zochem’s restructuring and in each case, subject to the direction and approval of the Zochem Board, including the following responsibilities: (i) determining the overall strategy for the Chapter 11 Cases; (ii) determining the borrowing and use of funds by Zochem as a debtor in possession; and (iii) making any other decisions or performing such other acts consistent with the foregoing.

V. AMENDMENTS TO DIP FACILITY

32. At the commencement of these proceedings, the DIP Facility contemplated that Zochem would be jointly and severally liable with the other Debtors for all obligations under the DIP Facility. At the First Day Hearing, a compromise was reached to limit Zochem’s liability to U.S. \$25 million until the Final U.S. DIP Order is made. This compromise was intended to address

certain concerns voiced by Judge Walrath and this Court about Zochem's full joint and several liability.

33. I and the other directors of Zochem received a copy of Justice Newbould's February 8, 2016 reasons for decision (a copy of which is attached as **Exhibit "G"** to this Affidavit) as directed in paragraph 41 thereof.

34. In order to further address the concerns of Judge Walrath and Justice Newbould and to address the objections raised by other parties, the DIP Facility has been amended to, among other things, provide a senior carve-out of any proceeds of Zochem assets in an amount equal to US \$12 million, with such carve-out being reserved to satisfy claims of Zochem's unsecured creditors (the "**Zochem Carve-out**"). Advances made under the DIP Facility prior to the date of the Final U.S. DIP Order will continue to have priority over Zochem's other creditors to a maximum amount of US \$25 million, as previously approved by the U.S. Court and this Court.

35. The Zochem Carve-out was designed by the Debtors and their advisors, in terms of its quantum, to cover all unsecured claims against Zochem that might be outstanding at any given time during the Chapter 11 Proceedings, plus an approximate 29% cushion versus the net projected payables balance.

36. The proposed priority scheme with regard to the assets of the Debtors in Canada would be:

- (a) claims under the Administration Charge and a customary carve-out for professional fees;
- (b) claims of Macquarie under the adequate protection liens granted in the Final U.S. DIP Order (the "**Macquarie Adequate Protection Liens**") to the extent of any diminution in value to Macquarie's pre-petition security;
- (c) DIP Facility claims up to US\$25 million;
- (d) claims of unsecured Zochem creditors in an amount up to \$12 million allocated among pre-petition and post-petition claims in order of priority;

- (e) all remaining DIP Facility claims;
- (f) claims of the pre-filing senior secured noteholders under the adequate protection liens and claims granted under the Final U.S. DIP Order; and
- (g) any remaining claims in general order of priority.

37. The Debtors believe Macquarie to be significantly over-secured and thus regard it unlikely that any valid claim will arise under the Macquarie Adequate Protection Liens.

38. The priority scheme of the amended DIP Facility was also vetted and approved by Zochem's new independent director, Mr. Tepner, who had the benefit of both U.S. and Canadian Counsel (Thornton Grout Finnegan LLP) in that process. The terms of the Zochem Carve-out was also negotiated with the Creditor's Committee who ultimately came to support the proposed structure.

39. To facilitate the Zochem Carve-out, new paragraph 44 of the Final U.S. DIP Order provides:

Zochem. Notwithstanding anything herein to the contrary: if (x) the DIP Agent or any DIP Lender receive proceeds from DIP Collateral that are proceeds from Zochem's assets on account of DIP Superpriority Claims and/or DIP Liens and/or (y) any DIP Lender that is also a Prepetition Senior Secured Notes Party receives any proceeds from a sale or any other disposition of Zochem's assets on account of any Senior Secured Note Adequate Protection Obligations, all such proceeds in excess of \$25,000,000 but less than \$37,000,001 in the aggregate shall be promptly turned over to the DIP Agent to be held in trust and used solely for payment, first, of any allowed postpetition claims against Zochem arising in the ordinary course of business, including claims held by employees, and thereafter, other allowed unsecured claims asserted against Zochem (regardless of whether such claims arose prior to or after the Petition Date); provided that after all such claims are paid, any excess balance, if any, shall be distributed by the DIP Agent in accordance with the priority provisions set forth herein.

A blackline showing the changes in the filed form of Final U.S. DIP Order as compared to the filed Interim U.S. DIP Order, including the provisions for the Zochem Carve-out, is attached as **Exhibit "H"** to this Affidavit.

40. The Debtors believe that the Zochem Carve-out provides Zochem's creditors with more than adequate protection to address the concerns voiced by Judge Walrath and Justice Newbould.

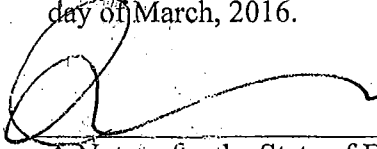
41. Zochem, like each of the Debtors, requires continued access to the DIP Facility to operate its business during the Chapter 11 Proceedings with an appropriate liquidity cushion. On the Petition Date, Zochem had only \$1.2 million in cash on hand. Since then, Zochem has been unable to generate meaningful positive cash flow due to a variety of factors. For example, Zochem purchases the bulk of its raw materials from one customer, who has imposed "cash in advance" terms, notwithstanding efforts by Zochem and its management team to negotiate trade terms, including through proposed payments of outstanding prepetition claims in accordance with relief granted by the U.S. Court. This loss of trade credit has exacerbated Zochem's working capital position, which was already significantly strained prior to the Petition Date as a result defaults outstanding under Zochem's prepetition facility with PNC Bank, National Association ("PNC") and resulting constraints on its access to cash.

42. Since the Petition Date, Zochem has been a net beneficiary of financing provided through the DIP Facility (in excess of the funds used to refinance its prepetition debt to PNC) through funds extended through goods or services received by Zochem but paid-for by the other Debtors, which payments already exceed US \$1 million. Zochem's funding needs are expected to continue. The prices of raw materials used in Zochem's operations have significantly increased in recent weeks. Although Zochem expects to enjoy the benefit of the increased pricing when it eventually converts the raw material into the sale of finished goods and collects the resulting accounts receivable from its customers, the "cash-in-advance" nature of its vendor payments means that its working capital bears the full brunt of those increased commodity prices now, on the front-end, and that it needs access to additional liquidity to ensure it can continue to pay for such raw materials. Zochem also continues to face significant expenses related to the restructuring process and material price volatility. I therefore believe that access to the DIP Facility is in the best interest of Zochem's stakeholders and will preserve business value. As noted above, the Zochem Carve-out structure also reflects the independent review and oversight from Zochem's independent director and is supported by the Creditors' Committee, a fiduciary for all unsecured creditors in the Chapter 11 Proceedings.

43. The DIP Facility requires entry of the Final U.S. DIP Order by March 3, 2016 and entry of an order of this Court in recognition thereof by March 4, 2016.

44. This Affidavit is sworn in support of the relief requested by the Debtors and for no other or improper purposes

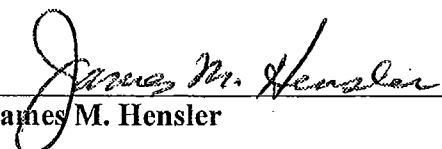
SWORN BEFORE ME at the City of
Wilmington, in the State of Delaware, this 2nd
day of March, 2016.



A Notary for the State of Delaware

**K A JOHN BOWER
NOTARY PUBLIC
STATE OF DELAWARE**

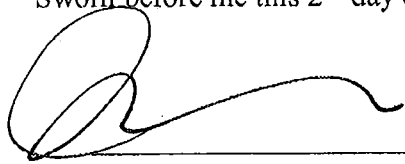
My Commission Expires October 14, 2016



James M. Hensler

Tab 2(a)

Attached is Exhibit "A" Referred to in the
AFFIDAVIT OF JAMES M. HENSLER
Sworn before me this 2nd day of March, 2016



A Notary for the State of Delaware
K A JOHN BOWER
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires October 14, 2016

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT WITH RESPECT TO HORSEHEAD HOLDING
CORP., HORSEHEAD CORPORATION, HORSEHEAD METAL PRODUCTS, LLC,
THE INTERNATIONAL METALS RECLAMATION COMPANY, LLC AND
ZOCHEM INC. (collectively, the "Debtors")**

**APPLICATION OF HORSEHEAD HOLDING CORP.
UNDER SECTION 46 OF THE
*COMPANIES' CREDITORS ARRANGEMENT ACT***

AFFIDAVIT OF JAMES M. HENSLER
(sworn February 2, 2016)

I, **JAMES M. HENSLER**, of Gibsonia, in Pine Township, in the State of Pennsylvania,
MAKE OATH AND SAY AS FOLLOWS:

1. I am the Chairman of the Board, President and Chief Executive Officer of Horsehead Holding Corp. ("**Horsehead Holding**"), the indirect parent of Horsehead Metal Products, LLC and the direct parent of the remaining Debtors, including Zochem Inc. ("**Zochem**"). I am also the President, the Chief Executive Officer and a Director of Zochem. As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

I. BACKGROUND

Background to the Debtors

2. This Affidavit is sworn in support of an application by Horsehead Holding for an order, among other things, recognizing the Chapter 11 Proceedings (as defined below) as a foreign

main proceeding pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA").

3. On February 1, 2016, the Debtors commenced proceedings (collectively, the "**Chapter 11 Proceedings**") by each filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**"). Copies of these voluntary petitions are attached to this Affidavit as follows:

- (a) the petition of Horsehead Holding is attached as **Exhibit "A"**;
- (b) the petition of Horsehead Corporation is attached as **Exhibit "B"**;
- (c) the petition of Horsehead Metal Products, LLC ("**Horsehead Metals**") is attached as **Exhibit "C"**;
- (d) the petition of The International Metals Reclamation Company, LLC ("**INMETCO**") is attached as **Exhibit "D"**; and
- (e) the petition of Zochem is attached as **Exhibit "E"**.

4. I have filed a declaration in the Chapter 11 Proceedings (the "**Declaration**"), which provides background on the Debtors and outlines the various relief being sought from the U.S. Court in the first day motions (collectively, the "**First Day Motions**"). A copy of the Declaration is attached as **Exhibit "F"** to this affidavit.

5. There are no other foreign proceedings currently pending for any of the Debtors.

6. The Debtors have indicated in the Chapter 11 Proceedings that they intend to continue to operate their business in the ordinary course during the Chapter 11 Proceedings. Further background and details of the Chapter 11 Proceedings are disclosed in the material filed by the Chapter 11 Debtors in the U.S. Court, which may be obtained at the website of the noticing agent appointed in the Chapter 11 Proceedings at <http://dm.epiq11.com/Horsehead>.

7. A copy of an organization chart for the Debtors is attached as **Exhibit "G"** to this Affidavit.

8. Together with their predecessors, the Debtors have operated in the zinc industry for more than 150 years and in the nickel-bearing waste industry for more than 30 years. The Debtors operate through three business units: Horsehead Corporation and its subsidiaries (collectively, "Horsehead"), Zochem, and INMETCO. Horsehead, Zochem, and INMETCO are each subsidiaries of Horsehead Holding. Horsehead is a prominent recycler of electric arc furnace ("EAF") dust, a zinc-containing waste generated by North American steel "mini-mills", and in turn uses the recycled EAF dust to produce specialty zinc and zinc-based products. Zochem is a producer of zinc oxide. INMETCO is a recycler of nickel-bearing wastes and nickel-cadmium batteries, and a producer of nickel-chromium-molybdenum-iron remelt alloy for the stainless steel and specialty steel industries. Collectively, the Debtors hold a market-leading position in zinc production in the United States, zinc oxide production in North America, EAF dust recycling in North America, and are a leading environmental service provider to the U.S. steel industry.

9. Horsehead Holding is publicly-traded company and trades its common stock on the NASDAQ Stock Market, listed under the ticker symbol ZINC.

10. The jurisdiction of organization and location of head office of each of the Debtors is as follows:

Debtor	Jurisdiction of Organization	Location of Head Office
Horsehead Holding	Delaware	Pennsylvania
Horsehead Corporation	Delaware	Pennsylvania
Horsehead Metals	North Carolina	Pennsylvania
INMETCO	Delaware	Pennsylvania
Zochem	Canada	Pennsylvania

Zochem

11. Zochem is a *Canada Business Corporations Act* corporation with its head office in Pittsburgh, Pennsylvania and its operations located in owned premises at 1 Tilbury Court, Brampton, Ontario (the "Ontario Premises"). Zochem's registered office address is the Ontario

Premises. Zochem was formed by the amalgamation of Horsehead Canada Holding Corp., a British Columbia corporation, and Zochem Inc., an Ontario corporation, on June 28, 2012. A corporation information report for Zochem, obtained from Industry Canada, is attached as **Exhibit "H"** to this Affidavit.

12. The pre-amalgamation Zochem Inc. was acquired by Horsehead Holding in November 2011. Zochem is one of the largest single-site producers of zinc oxide in North America. Zinc oxide is used as an additive in various materials and products, including plastics, ceramics, glass, rubbers, cement, lubricants, pigments, sealants, ointments, fire retardants, and batteries. The Debtors sell zinc oxide to over 250 producers of tire and rubber products, chemicals, paints, plastics, and pharmaceuticals, and have supplied zinc oxide to the majority of their largest customers for over ten years. Zochem has the capacity to produce approximately 72,000 tons of zinc oxide a year.

13. As of December 31, 2015, Zochem had 19 salaried personnel and 25 hourly personnel. Approximately 25 of these employees are organized under Unifor and its Local 591-G-850 (successor by merger to the Communications, Energy and Paperworkers Union Local 591-G-850), whose collective labour agreement is set to expire on June 30, 2016. Zochem uses ADP as its payroll service provider.

14. Zochem maintains separate pension plans for its salaried and hourly personnel, which have been closed to new members since July 1, 2012. Newer employees have joined Zochem's group RRSP. According to a report prepared by Corporate Benefit Analysis, Inc., the pensions were, collectively, overfunded as at December 31, 2015, though the salaried plan had a small unfunded projected benefit obligation in the amount of \$181,499. Neither plan has been wound up.

15. Zochem is operational in its focus. Three out of four of Zochem's officers and three out of four of its directors are residents of Pennsylvania. Most of Zochem's officers are also officers of each of the other Debtors. Zochem's statutorily required one Canadian director (representing 25% of the board) is a partner at the law firm Aird & Berlis LLP ("A&B"), the Debtors' Canadian counsel. The only Zochem officer resident in Canada is the plant's general manager, who formerly was resident in Pennsylvania and employed by the U.S. Debtors.

Otherwise, all local functions associated with managing and operating the Zochem facility are performed from the Debtors' Pittsburgh, Pennsylvania headquarters in the United States

16. Zochem and the U.S. Debtors maintain a highly integrated business. Zochem's communications decisions, pricing decisions, and business development decisions are made in Pittsburgh. Zochem's accounts receivable, accounts payable and treasury departments are also located in Pittsburgh.

17. On April 29, 2014, Zochem, as borrower, and Horsehead Holding, as guarantor, entered into a U.S. \$20 million secured revolving credit facility (the "**Zochem Facility**") with PNC Bank, National Association ("**PNC**"), as agent and lender. The Zochem Facility is secured by a first priority lien (subject to certain permitted liens) on substantially all of Zochem's tangible and intangible personal property, and, pursuant to the terms of the PNC Forbearance Agreement (as defined in paragraph 25 below, a charge on the Ontario Premises. Approximately U.S. \$16.9 million remains outstanding under the Zochem Facility. Zochem's obligations to PNC are guaranteed by its parent, Horsehead Holding.

18. On January 27, 2016, PNC assigned its position as lender under the Zochem Facility to an arm's length party. PNC remains the agent under Zochem Facility.

19. Zochem operates a cash management system (the "**Zochem Cash Management System**") is in place whereby:

- (a) all receipts flow into a collection account at PNC in the United States, in part via a lockbox maintained at PNC;
- (b) funds from the PNC collection account are transferred daily into an operating account at PNC in the United States; and
- (c) funds are then transferred, as the Debtors' treasury department (in Pittsburgh) determines is required, to a U.S. dollar operating account and a Canadian dollar operating account at Scotiabank in Canada to pay vendors and payroll, as applicable.

The chart at **Exhibit "I"** to this Affidavit illustrates the Zochem Cash Management System in simplified form.

20. In the above ways, the business and operation of Zochem is part of a larger, U.S.-based enterprise. The Debtors are all managed in the United States as an integrated group from a corporate, strategic, financial and management perspective.

21. I have been advised by Aird & Berlis LLP ("**A&B**"), Canadian counsel to the Debtors, that lien searches were conducted on January 25, 2016 against Zochem under the *Personal Property Security Act* in Ontario and Manitoba (where Zochem is extra-provincially registered). Other than registrations in favour of PNC, the only registrations were:

- (a) one in favour of Liftcapital Corporation, in respect of specific equipment; and
- (b) one in favour of Liftow Limited, in respect of specific equipment.

Financial Difficulties and Default

22. Notwithstanding their market-leading position, the Debtors' financial position has been negatively impacted by low commodity prices coupled with weaker near-term global demand. Spot London Metals Exchange prices have declined approximately 30% over the past year. Material decreases in zinc prices significantly and directly affects the Debtors' revenue because the Debtors' zinc pricing is generally tied to overall market pricing. The Debtors' stressed pricing environment has been further impacted by operational challenges at their zinc processing facility located in Mooresboro, North Carolina. Collectively, these macroeconomic factors and operational issues have strained the Debtors' ability to sustain their existing debt load.

23. On January 5, 2016, the Debtors in the United States (the "**US Debtors**") received a notice of default (due to, among other things, insufficient availability) under their asset-based lending facility with Macquarie Bank Limited ("**Macquarie**"). Macquarie froze certain of the US Debtors' bank accounts, including their main operating account. As a result, the US Debtors have been unable to access a material portion of their liquidity. Approximately U.S. \$27.3 million remains outstanding under the Macquarie credit facility.

24. On January 6, 2016, PNC also asserted an event of default arising under the Zochem Facility on account of, among other things, the Debtors' failure to comply with a fixed charge covenant test as of November 30, 2015. On January 13, 2016, PNC froze certain of the Debtors' bank accounts associated with their Zochem operations, and demanded immediate payment of all outstanding obligations. PNC's demand was accompanied by a notice of intention to enforce security under section 244 of the *Bankruptcy and Insolvency Act* (the "**BIA**").

25. Since that time, the Debtors and their advisors have engaged in ongoing negotiations with their lenders to obtain incremental access to liquidity. Through significant efforts by all parties, the Debtors entered into a forbearance agreement on January 14, 2016 with PNC with respect to the asset-based lending facility at Zochem (the "**PNC Forbearance Agreement**"), pursuant to which PNC agreed to temporarily forbear from exercising rights and remedies related to certain events of defaults for the failure to comply with the fixed-charge coverage ratio covenant. In consideration for the Zochem Forbearance, the Debtors agreed, among other things, to pay a forbearance fee to PNC of U.S. \$1 million, due and payable at the termination of the forbearance period, and to provide a mortgage on Zochem's unencumbered real property in Ontario, Canada.

26. The Debtors further entered into a separate forbearance agreement with Macquarie (the "**Macquarie Forbearance**") with respect to the Macquarie Credit Facility on January 15, 2016. Pursuant to the Macquarie Forbearance, Macquarie agreed to temporarily forbear from exercising rights and remedies related to certain events of default related to insufficient availability under the Macquarie Credit Facility. In exchange, the Debtors agreed to, among other things, pay down borrowings under the Macquarie Credit Facility, pay a restructuring fee in an amount ranging from U.S. \$1 million in the event that obligations under the Macquarie Credit Facility are not paid in full by February 1, 2016, with the put fee increasing over time.

27. Horsehead Holding was authorized to file in the Chapter 11 Proceedings and appointed as the foreign representative of the Debtors therein pursuant to a written resolution of its authorizing body by written consent on January 31, 2016 (the "**Foreign Representative Resolution**"). A copy of the Foreign Representative Resolution is attached as **Exhibit "J"** to this Affidavit.

28. I understand that a copy of the order authorizing Horsehead Holding to act as the foreign representative, if granted by the U.S. Court, will be provided to this Court.

DIP Facility

29. The Debtors, with the assistance of their advisors, Lazard Middle Market LLC, solicited debtor-in-possession financing from not less than twenty-five third party lenders, hedge funds, and financial institutions, as well as existing noteholders. As a result of these discussions and ensuing negotiations, the Debtors have received a non-binding term sheet for a senior secured super priority debtor-in-possession credit facility in the amount of U.S. \$90 million (the “**DIP Facility**”) from a group of Horsehead Holding secured noteholders (collectively, the “**DIP Lenders**”). The DIP Lenders’ existing notes are subordinate to the Macquarie facility and represent the single-largest class of funded debt in the Debtors’ prepetition capital structure, totaling \$205 million of the approximately \$450 million of funded debt outstanding. The DIP Facility will be used to pay off the Zochem Facility and to finance the Debtors’ operations and the Chapter 11 Proceedings. A condition of advance under the DIP Facility is the granting of a super-priority charge over the assets of the Debtors in Canada in favour of the DIP Lender.

30. The DIP Facility will, however, only have a second priority security over assets that are currently Macquarie’s first priority collateral. In contrast, no other potential third party lender was willing to finance with less than first priority security over all the Debtors’ assets.

31. Because of the steps taken by Macquarie and PNC, the Debtors’ operations have had highly limited access to cash for almost three weeks, with associated levels of business disruption. A number of significant vendors, suppliers, and transportation service providers have either threatened to suspend their working relationship with the Debtors or in fact cut off the Debtors completely. The DIP Facility provides a necessary liquidity infusion that will benefit all stakeholders while also sending a strong signal to customers, vendors, and contract counterparties that operations are appropriately funded as the Debtors enter restructuring.

II. NATURE OF APPLICATION AND RELIEF SOUGHT

32. Horsehead Holding is seeking three orders: an interim order (the “**Interim Order**”); an initial order (the “**Initial Order**”); and a supplemental order (the “**Supplemental Order**”). The

Interim Order would be sought as soon as possible after filing of Horsehead Holding's application, to impose a stay of proceedings until the hearing date for the Initial Order and Supplemental Order. The Initial Order would, among other things:

- (a) recognize Horsehead Holding as the foreign representative of the Debtors in respect of the Chapter 11 Proceedings;
- (b) recognize the Chapter 11 Proceedings as a foreign main proceeding; and
- (c) stay all proceedings against the Debtors (the "**Stay**").

33. The Supplemental Order would, among other things:

- (a) recognize the orders sought in the First Day Motions, which are outlined in detail in the Declaration;
- (b) appoint Richter Advisory Group Inc. ("**Richter**") as the Court's information officer (the "**Information Officer**");
- (c) broaden the Stay to include any exercise or enforcement of claims, rights or liens, and to protect directors and officers of the Debtors as well;
- (d) restrain the right of any person to discontinue or terminate supply to the Debtors to protect the Debtors' efforts at a restructuring plan in the Chapter 11 Proceedings;
- (e) grant an administration charge in over the assets of the Debtors in Canada in favour of the Information Officer and its counsel (if any), in the maximum amount of \$100,000 (the "**Administration Charge**"); and
- (f) grant a charge over the assets of the Debtors in Canada in favour of the DIP Lender (the "**DIP Charge**" and, together with the Administration Charge, the "**Charges**").

34. The Charges would rank in priority to all claims other than properly perfected purchase money security interests and certain statutory liens or trusts. The Administration Charge would rank above the DIP Charge.

35. The United States is the center of main interest of each of the Debtors. Specifically, with respect to Zochem (being the only Debtor with a registered head office in Canada), the true centre of main interest is the United States, as demonstrated by the previously discussed facts that Pennsylvania is the location of:

- (a) Zochem's management;
- (b) its banking relationship with PNC (and, going forward, with the DIP Lender);
- (c) the core of its cash management system;
- (d) its accounts receivable, accounts payable and treasury department; and
- (e) communications, pricing and business development decision-making.

36. The Stay is necessary in order to protect the Debtors' efforts at a restructuring plan in the Chapter 11 Proceedings. Zochem generates approximately 30% of the Debtors' revenues, its assets are a significant part of the Debtors' holdings and Horsehead Holding has guaranteed the Zochem Facility. A stay of proceedings will restrain temporarily the exercise of rights and remedies under the various agreements, preserving the status quo.

37. Richter is a trustee licensed under the BIA and has consented to act as Information Officer, subject to the Court order, and subject to the granting of the Administration Charge.

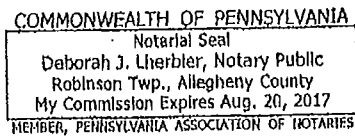
38. The DIP Facility is the result of a competitive process and is necessary to satisfy the outstanding demand made by PNC and to fund the Debtors' ongoing operations during the Chapter 11 Proceedings, including those of Zochem. The DIP Facility is conditional on the granting of the DIP Charge. A definitive agreement for the DIP Facility is close to completion.

39. This Affidavit is sworn in support of the relief requested by the Applicants and for no other or improper purposes.

SWORN BEFORE ME at the City of
Pittsburgh, in the State of Pennsylvania,
this 2nd day of February, 2016.

Deborah J. Zierber
A Notary for the State of Pennsylvania

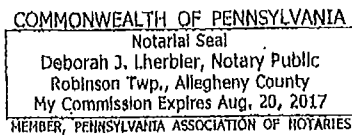
James M. Hensler
JAMES M. HENSLER



Attached is Exhibit "F" Referred to in the
AFFIDAVIT OF JAMES M. HENSLER
Sworn before me this 2nd day of February, 2016

Deborah J. Therber

A Notary for the State of Pennsylvania



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
HORSEHEAD HOLDING CORP., <u>et al.</u> , ¹)	Case No. 16-10287 ()
Debtors.)	(Joint Administration Requested)

DECLARATION OF JAMES M. HENSLER
IN SUPPORT OF FIRST DAY MOTIONS

I, James M. Hensler, hereby declare under penalty of perjury to the best of my knowledge, information, and belief:

1. I am the Chairman of the Board, President, and Chief Executive Officer of Horsehead Holding Corp. ("Horsehead Holding"), one of the debtors and debtors in possession (collectively, the "Debtors") in the above-captioned case. I initially joined Horsehead Holding in 2004, and I am generally familiar with the Debtors' day-to-day operations, business and financial affairs, and books and records. I am above 18 years of age, and I am competent to testify.

2. I am authorized to submit this declaration (this "Declaration") on behalf of the Debtors. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors' operations and finances, information learned from my review of relevant documents, and information I have received from other members of the Debtors' management or the Debtors' advisors. If I were called upon to testify, I could and would testify competently to the facts set forth herein on that basis.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Horsehead Holding Corp. (7377); Horsehead Corporation (7346); Horsehead Metal Products, LLC (6504); The International Metals Reclamation Company, LLC (8892); and Zochem Inc. (4475). The Debtors' principal offices are located at 4955 Steubenville Pike, Suite 405, Pittsburgh, Pennsylvania 15205.

3. The Debtors have requested a variety of relief in their “first day” motions and applications (collectively, the “First Day Motions”) filed concurrently herewith to minimize the adverse effects of the commencement of these chapter 11 cases. I am familiar with the contents of each First Day Motion, and I believe that the relief sought therein is necessary to permit an effective transition into chapter 11. I further believe the relief requested in the First Day Motions will aid in the implementation of timely and efficient chapter 11 cases that will preserve and maximize the value of the Debtors’ estates.

Preliminary Statement

4. Together with their predecessors, the Debtors have operated in the zinc industry for more than 150 years and in the nickel-bearing waste industry for more than 30 years. Generally, the Debtors operate through three distinct business units: Horsehead Corporation and its subsidiaries (collectively, “Horsehead”), Zochem Inc. (“Zochem”), and The International Metals Reclamation Company, LLC (“INMETCO”). Horsehead, Zochem, and INMETCO are each subsidiaries of Horsehead Holding. Horsehead is a prominent recycler of electric arc furnace (“EAF”) dust, a zinc-containing waste generated by North American steel “mini-mills,”² and in turn uses the recycled EAF dust to produce specialty zinc and zinc-based products. Zochem, located in Brampton, Ontario, Canada, is a producer of zinc oxide. INMETCO is a recycler of nickel-bearing wastes and nickel-cadmium batteries, and a producer of nickel-chromium-molybdenum-iron remelt alloy for the stainless steel and specialty steel industries. Collectively, the Debtors hold a market-leading position in zinc production in the United States, zinc oxide production in North America, EAF dust recycling in North America, and are a leading environmental service provider to the U.S. steel industry.

² “Mini-mills” are traditionally secondary steel producers, where scrap metal is melted and refined in an EAF to make steel products.

5. Horsehead Holding is a publicly-traded company and trades its common stock on the NASDAQ Stock Market, listed under the ticker symbol ZINC. In the nine months ended September 30, 2015, the Debtors generated revenues totaling approximately \$331.9 million on a consolidated basis, consisting of: (a) revenues totaling approximately \$198.8 million arising from Horsehead's operations; (b) revenues totaling approximately \$101.7 million arising from Zochem's operations; and (c) revenues totaling approximately \$37 million arising from INMETCO's operations, less eliminations of intercompany transactions totaling approximately \$5.6 million. As of the date hereof (the "Petition Date"), the Debtors' collective funded debt balance consists of approximately \$420.7 million in secured and unsecured indebtedness, and is described more fully below.

6. Notwithstanding their market-leading position, the Debtors' financial position has been negatively impacted by many of the same macroeconomic effects presently being felt throughout the metals-processing sector: historically low commodity prices coupled with weaker near-term global demand. Base metals prices on the London Metals Exchange (the "LME"), a leading measure of metals pricing, have fallen significantly over the past year, with spot LME zinc prices declining approximately 30% over the past year. Material decreases in zinc prices significantly and directly affect the Debtors' revenue because the Debtors' zinc pricing is generally tied to overall market pricing.

7. The Debtors' stressed pricing environment has been further impacted by operational challenges at their zinc processing facility located in Mooresboro, North Carolina (the "Mooresboro Facility"). The Debtors began construction of the Mooresboro Facility in September 2011, which was designed to employ state-of-the-art zinc processing technology. However, the Mooresboro Facility has been plagued by significant operational challenges and

cost overruns, and has operated at levels significantly below its capacity. These challenges have had a corresponding impact on the Debtors' financial position, and, collectively, these macroeconomic factors and operational issues have strained the Debtors' ability to sustain their existing debt load. Additionally, decreased cash flow has also impacted the Debtors' ability to complete repairs that are necessary to bring the Mooresboro Facility up to full operating capacity.

8. On January 5, 2016, Macquarie (as defined below), administrative agent under the Debtors' asset-based lending facility, notified the Debtors of an event of default arising from an over-advance position under the Macquarie Credit Facility (as defined below), and froze certain of the Debtors' bank accounts, including the Debtors' main operating account.³ As a result, the Debtors have been unable to access a material portion of their liquidity since that time. On January 6, 2016, PNC (as defined below), administrative agent under the Debtors' asset-based lending facility at Zochem, also asserted an event of default arising under that facility on account of, among other things, the Debtors' failure to comply with a fixed charge covenant test as of November 30, 2015. PNC also froze certain of the Debtors' bank accounts associated with their Zochem operations, and demanded payment of all outstanding obligations on January 13, 2016.

9. Since that time, the Debtors and their advisors have engaged in ongoing negotiations with their lenders to obtain incremental access to liquidity. The Debtors entered into a forbearance agreement on January 14, 2016 with PNC with respect to the asset-based lending facility at Zochem (the "Zochem Forbearance"), pursuant to which PNC agreed to temporarily forbear from exercising rights and remedies related to certain defaults noted above. In consideration for the Zochem Forbearance, the Debtors agreed, among other things, to pay a

³ As described more fully below, each of the Debtors other than Zochem is a borrower or obligor under the Macquarie Credit Facility (as defined below).

forbearance fee to PNC of \$1 million, due and payable at the termination of the forbearance period, and to provide a mortgage on Zochem's unencumbered real property in Ontario, Canada.

10. The Debtors further entered into a separate forbearance agreement with Macquarie (the "Macquarie Forbearance") with respect to the Macquarie Credit Facility on January 15, 2016. Pursuant to the Macquarie Forbearance, Macquarie agreed to temporarily forbear from exercising rights and remedies related to certain events of default related to insufficient availability under the Macquarie Credit Facility. In exchange, the Debtors agreed to, among other things, pay down borrowings under the Macquarie Credit Facility, pay a restructuring fee of \$1 million in the event that obligations under the Macquarie Credit Facility are not paid in full by February 1, 2016, with that fee increasing over time.

11. Over the past several weeks, the Debtors, with the assistance of their advisors, have engaged in a significant marketing process to solicit debtor-in-possession financing. In connection with this process, the Debtors contacted no less than 25 third party lenders, hedge funds, and financial institutions. Through this process, after vigorous, arm's-length negotiations between the Debtors, the Debtors' advisors, and potential lending parties and their advisors, the Debtors seek to obtain a financing package to address their liquidity needs, enable them to operate their businesses in a manner that will permit the Debtors to preserve and maximize the value of their estates, and avoid immediate and irreparable harm to their estates and stakeholders. The Debtors are finalizing negotiations with respect to a financing package (the "DIP Credit Agreement"), which will provide for the terms and conditions of debtor-in-possession financing (the "DIP Financing"). The Debtors and certain holders of their Senior Secured Notes have negotiated, among other things, the following chapter 11 plan milestones:

- file a plan of reorganization acceptable to certain DIP lenders and the ad hoc group of Senior Secured Note holders, on the one hand, and the Debtors, on the other hand (an “Acceptable Plan”) within forty (40) days of the Petition Date;
- file a disclosure statement with respect to the Acceptable Plan (the “Disclosure Statement”) with the Court within forty (40) days of the Petition Date;
- entry of an order confirming the Acceptable Plan within one hundred-fifteen (115) days of the Petition Date; and
- consummation of the Acceptable Plan within one hundred-thirty (130) days of the Petition Date.

12. The Debtors therefore elected to commence these chapter 11 cases to, among other things, subject to the Court’s approval, obtain access to liquidity to stabilize operations pursuant to the terms of the Debtors’ proposed DIP Financing. To familiarize the Court with the Debtors and the relief the Debtors seek on the first day of these chapter 11 cases, this Declaration is organized in three parts. Part I describes the Debtors’ business and their capital structure. Part II details the circumstances surrounding the commencement of these chapter 11 cases. Part III sets forth relevant facts in support of each of the First Day Motions filed in connection with these chapter 11 cases.

Part I General Background

I. The Debtors’ Corporate History and Business Operations

13. Based in Pittsburgh, Pennsylvania, Horsehead Holding was incorporated in May 2003, although together with the Debtors’ predecessors, the Debtors’ zinc operations date to the mid-1800s. In 2002, the Debtors’ predecessors-in-interest filed for chapter 11 protection in the Southern District of New York (collectively, the “Previous Chapter 11 Cases”)⁴ as a result of their record-low zinc prices, production inefficiencies, high operational costs, and legacy

⁴ Case Nos. 02-14024, 02-14025, 02-14026, 02-14027.

environmental costs. In the Previous Chapter 11 Cases, the Debtors' predecessors sold substantially all of their operating assets to a private equity investor, which subsequently exited that investment following an initial public offering in 2007. Currently, Horsehead Holding's equity owners are a diversified group of public investors, without a single entity owning or beneficially controlling more than 11% of Horsehead Holding's outstanding equity as of September 30, 2015. The Debtors produce zinc and nickel-based products for sale primarily to customers throughout the United States and Canada. Additionally, the Debtors are the largest recycler of EAF dust and a leading recycler of hazardous and non-hazardous waste for the steel industry in the United States. The Debtors and their non-Debtor affiliates have production and/or recycling operations at seven facilities located in five states and Canada.

14. As noted above, the Debtors operate in three distinct, but related, lines of business: (a) the processing of EAF dust and other zinc-bearing material to produce and sell zinc and other metals, undertaken by Horsehead; (b) the production and sale of zinc oxide, undertaken by Zochem; and (c) the processing of a variety of metal-bearing waste material, and the production of nickel-based alloys, undertaken by INMETCO. These operations are detailed below.

A. Horsehead

1. EAF Dust Recycling.

15. Through Horsehead, the Debtors are one of North America's largest recyclers of EAF dust. Steel mini-mills melt and refine scrap metal in EAFs, and such process produces metal dust—the "EAF dust"—which is designated as a hazardous waste by and subject to disposal restrictions from the Environmental Protection Agency.⁵ Mini-mills or third party

⁵ See, e.g., 40 C.F.R. §§ 261, 268, 271.

carriers then transport EAF dust to one of Horsehead's four EAF dust recycling facilities.⁶ There, Horsehead collects and recycles the zinc-bearing EAF dust by using a proprietary "Waelz Kiln" process, which allows Horsehead to extract zinc from EAF dust in the form of Waelz oxide ("WOX"),⁷ and recycle the remaining components of the dust.

16. Horsehead's multiple EAF dust recycling facilities are strategically located near major EAF operators, which reduces transportation costs and enhances the Debtors' ability to compete effectively with other means of EAF dust disposal. Additionally, a competitive cost position, an extensive zinc distribution network, and proprietary market knowledge, allow the Debtors to maintain their market-leading position. The Debtors are one of the leading environmental service providers to the U.S. steel industry, having recycled, together with their predecessors, 11.2 million tons of EAF dust since 1990, which is equivalent to approximately 2.2 million tons of zinc, and represents the dust generated in the production of over 650 million tons of steel. Horsehead's recycling and conversion of EAF dust reduces a steel mini-mill's exposure to environmental liabilities that may arise when the EAF dust is sent to a landfill.

2. Zinc Production.

17. Horsehead is also a leading producer of zinc products, including zinc metal, used in the galvanizing⁸ of steel, in zinc die castings, and zinc-bearing alloys in the U.S. Horsehead also produces WOX and zinc calcine for sale to other zinc producers. Horsehead uses WOX—the primary by-product of its recycling operations—as a low-cost, raw material feedstock in the

⁶ These facilities are located in: (a) Barnwell, South Carolina; (b) Calumet, Illinois; (c) Palmerton, Pennsylvania; and (d) Rockwood, Tennessee. As described more fully below, the Barnwell, South Carolina recycling facility operated by the Debtors is located on real property owned by Horsehead Zinc Recycling, LLC, a non-Debtor subsidiary of Horsehead, an above-captioned Debtor.

⁷ WOX, known also as crude zinc oxide, contains approximately 55–60% zinc.

⁸ Galvanization is the process of applying a protective zinc coating to steel or iron to prevent rusting.

production of zinc metal and value-added zinc products, which yields a competitive cost advantage. Moreover, by using large amounts of recycled feedstock, the Debtors reduce their exposure to LME zinc pricing, which increases their operating margins during periods of high LME zinc prices. Additionally, the Debtors' EAF dust recycling operations provide them with a reliable, cost-effective source of recycled feedstock without relying on third-party sellers.

18. Horsehead conducts its zinc production (as opposed to recycling) operations from the Mooresboro Facility, which the Debtors began constructing in September 2011 to replace their former zinc smelter located in Monaca, Pennsylvania (the "Monaca Facility").⁹ The Mooresboro Facility, which began production in May 2014, allows the Debtors to produce special high grade zinc, continuous galvanizing grade zinc, and high grade zinc, in addition to the prime western zinc the Debtors produced at the Monaca Facility.

19. The Mooresboro Facility's design is intended to use sustainable manufacturing practices to produce zinc solely from recycled materials, and uses significantly less fossil fuel than the Monaca Facility, which allows the Debtors to significantly reduce greenhouse gas emissions and particulates into the atmosphere. To illustrate, before WOX can be used to produce various zinc metals, it has to first generally be "calcined" into a product called zinc calcine. The calcining process further refines WOX and involves heating WOX to eliminate impurities, which increases the zinc content of WOX from approximately 55–60% to approximately 65–70%. Horsehead uses rotary kiln-based operations at its recycling facilities to calcine WOX to create zinc calcine. The Mooresboro Facility was operating at approximately 25% of capacity during the fourth quarter of 2015, but due to financial constraints, the Debtors

⁹ The Debtors permanently shut down the Monaca Facility in April 2014, although the Debtors retain ownership of a non-hazardous captive landfill located at that site.

announced the temporary idling of the facility on January 22, 2016.¹⁰ However, once fully operational, the Mooresboro Facility will eliminate the need to calcine the majority of WOX prior to its use, thereby reducing Horsehead's manufacturing conversion and operational costs.

B. Zochem

20. The Debtors acquired Zochem in November 2011, which produces zinc oxide at a dedicated facility in Brampton, Ontario, Canada. Zochem is one of the largest single-site producers of zinc oxide in North America. Zinc oxide is used as an additive in various materials and products, including plastics, ceramics, glass, rubbers, cement, lubricants, pigments, sealants, ointments, fire retardants, and batteries. The Debtors sell zinc oxide to over 250 producers of tire and rubber products, chemicals, paints, plastics, and pharmaceuticals, and have supplied zinc oxide to the majority of their largest customers for over 10 years. Zochem has the capacity to produce approximately 72,000 tons of zinc oxide a year.

C. INMETCO

21. The Debtors acquired INMETCO in November 2009. INMETCO is a leading recycler of nickel-bearing waste generated by the stainless and specialty steel producers, and a leading recycler of nickel-cadmium and other types of batteries in North America. INMETCO operates out of a facility located in Ellwood City, Pennsylvania, which produces nickel-based products by using 100% recycled materials. Additionally, INMETCO collects and recycles batteries through its own collection programs and Call2Recycle, which was founded in 1994 by five major rechargeable battery makers. INMETCO also provides environmental services to over 200 customers that generate nickel-containing waste products, such as filter cake, spent pickle liquor, grinding swarf, and mill scale.

¹⁰ See Horschhead Holding Corp., Current Report (Form 8-K), at Ex. 99.1 (Jan. 22, 2016).

D. Non-Debtor Affiliates

1. Thirty Ox, LLC.

22. In December 2013, Horsehead Metal Products, LLC ("HMP") entered into a joint venture with Imperial Zinc Corp., known as Thirty Ox, LLC ("Thirty Ox"), for the acquisition and processing of zinc-bearing secondary materials. Thirty Ox's processing operation is located in North Carolina near the Mooresboro Facility, and Horsehead's EAF dust recycling operations supply the majority of feedstock used by Thirty Ox.

2. Horsehead Zinc Recycling, LLC.

23. Horsehead owns or controls 99.99% of Horsehead Zinc Recycling, LLC ("HZR").¹¹ HZR was formed in 2009 as part of the financing arrangement that resulted in the NMTC Loans (as defined below), which were used to fund Horsehead's expansion project at its EAF dust-recycling facility located in Barnwell, South Carolina (the "Barnwell Facility"). The Barnwell Facility began production in April 2010.

3. Chestnut Ridge Railroad Corp.

24. Chestnut Ridge Railroad Corp. ("Chestnut") was incorporated in 2004 and is a direct, wholly-owned subsidiary of Horsehead. Chestnut provides short-line railroad service in Palmerton, Pennsylvania, for the transportation of materials for both intercompany and outside-customer use.

E. The Debtors' Employees

25. The Debtors currently employ approximately 730 individuals on a full-time basis, of which approximately 220 are salaried and 510 are paid on an hourly basis. Approximately 38% of the Debtors' full-time employees are represented by collective bargaining units. In

¹¹ The other .01% of HZR is owned by Banc of America CDE III, LLC and CCM Community Development IV LLC (collectively, the "Minority HZR Owners").

addition to the Debtors' full-time employees, the Debtors' workforce includes two individuals employed on a part-time basis, and approximately 120 temporary production workers employed on a full-time basis that are sourced through various staffing agencies.

II. The Debtors' Corporate and Capital Structure

26. The Debtors' corporate organization is depicted on the chart attached hereto as Exhibit A. As set forth therein, Horsehead, Zochem, and INMETCO are each wholly owned by Horsehead Holding. In addition, and as noted above, Horsehead owns HMP,¹² non-Debtor Chestnut, and owns or controls 99.99% of non-Debtor HZR. As of the Petition Date, the Debtors' consolidated long-term debt obligations totaled approximately \$420.7 million. The primary components of the Debtors' consolidated funded debt obligations outstanding as of the Petition Date are described below.

<u>Indebtedness</u>	<u>Principal Outstanding (\$ millions)</u>
Macquarie Credit Facility	\$ 27.2
10.50% Secured Notes	205.0
Zochem Secured Credit Facility	16.9
9.00% Unsecured Notes	40.0
3.80% Convertible Notes	100.0
Banco Bilbao Credit Facility	17.4
NMTC Loans	14.2
Total	\$420.7

A. The Macquarie Senior Secured Revolver

27. On June 30, 2015, each of the Debtors other than Zochem entered into an \$80 million secured revolving credit facility (the "Macquarie Credit Facility") as borrowers or guarantors with Macquarie Bank Limited ("Macquarie"). The Macquarie Credit Facility became effective on July 6, 2015, and matures on May 15, 2017. This facility replaced the maximum

¹² As discussed above, HMP has a 50% interest in non-Debtor Thirty Ox through a joint venture it entered into in 2013.

aggregate \$80 million principal amount of two prior facilities. Obligations arising under the Macquarie Credit Facility are secured by first priority liens (subject to certain permitted liens) on substantially all of the Debtors' assets, other than those relating to Zochem. Certain of these assets securing the Debtors' obligations under the Macquarie Credit Facility also secure the Debtors' obligations under the Senior Secured Notes (as defined below).

28. In connection with the applicable Debtors' entry into the Macquarie Credit Facility, the collateral agents for the Senior Secured Notes and the Macquarie Credit Facility also entered into an intercreditor agreement dated June 30, 2015 (the "Intercreditor Agreement"), which, among other things, assigns relative priority between Macquarie and holders of the Senior Secured Notes with regard to certain shared collateral. Pursuant to the Intercreditor Agreement, liens granted by the Debtors to secure the Macquarie Credit Facility: (a) are senior to any liens granted by the Debtors to secure the Senior Secured Notes with respect to (i) all INMETCO assets, and (ii) certain personal property of Horsehead and its subsidiaries, including accounts receivables, inventory, cash, and deposit accounts; and (b) are junior to (i) any liens granted to secure the Senior Secured Notes with respect to real property, fixtures, and equipment of Horsehead and its subsidiaries, and (ii) with respect to liens granted on Horsehead Holding's assets. As of the Petition Date, approximately \$27.2 million remains outstanding under the Macquarie Credit Facility.

B. The Senior Secured Notes

29. In July 2012, the Debtors completed a private placement of \$175 million in principal amount of 10.50% senior secured notes due 2017 (the "Senior Secured Notes") at an issue price of 98.188% of par. The Debtors used the proceeds from the Senior Secured Notes primarily for construction costs of the Mooresboro Facility. On June 3, 2013, the Debtors issued \$20 million of additional Senior Secured Notes at an issue price of 106.50% of par, and

completed the sale of an additional \$10 million of Senior Secured Notes at an issue price of 113.00% of par on July 29, 2014. As of the Petition Date, approximately \$205.0 million of Senior Secured Notes are outstanding.

30. The Senior Secured Notes are guaranteed by each of the Debtors other than Zochem, and obligations arising under the Senior Secured Notes are secured by such Debtors' existing and future property and assets. Pursuant to the Intercreditor Agreement, liens securing the Senior Secured Notes with respect to accounts receivable, inventory, certain deposit accounts, cash, and certain other assets (including the proceeds thereof) are junior to liens securing the Macquarie Credit Facility. Similarly, the Intercreditor Agreement provides that liens securing the Senior Secured Notes shall be senior to liens securing the Macquarie Credit Facility with respect to real property, fixtures, and equipment of Horsehead and Horsehead Holding's assets. In addition, the Senior Secured Notes are secured by a first-priority pledge from Horsehead Holding of 65% of Horsehead Holding's equity interest in Zochem.

C. The Zochem Senior Secured Revolver

31. On April 29, 2014, Zochem, as borrower, and Horsehead Holding, as guarantor, entered into a \$20 million secured revolving credit facility (the "Zochem Facility") with PNC Bank, N.A. ("PNC") as agent. The Zochem Facility is secured by a first priority lien (subject to certain permitted liens) on substantially all of Zochem's tangible and intangible personal property, and, pursuant to the Zochem Forbearance, a lien on Zochem's processing facility located in Brampton, Ontario. Horsehead Holding unconditionally guarantees Zochem's obligations under the Zochem Facility, and pursuant to that certain Pledge Agreement dated as of April 29, 2014, Horsehead Holding pledged 65% of its equity interests in Zochem as additional collateral. The Debtors pay an unused line fee of 0.75% per annum, based on average undrawn availability multiplied by the amount that the maximum revolving advance amount exceeds the

average daily unpaid balance of the Zochem Facility's loans and undrawn amount of any outstanding letters of credit during any calendar quarter. As of the Petition Date, approximately \$16.9 million remains outstanding under the Zochem Facility.

D. The Banco Bilbao Credit Facility

32. Horsehead, as borrower, and Horsehead Holding, as guarantor, entered into a credit agreement with Banco Bilbao Vizcaya Argentaria, S.A. on August 28, 2012 (the "Banco Bilbao Credit Facility"), which closed on November 14, 2012. The Banco Bilbao Credit Facility provides financing up to approximately €18.8 million (approximately \$25.8 million) in addition to \$968,090.25 for purchases under certain contracts related to the Mooresboro Facility between Horsehead and Técnicas Reunidas, S.A. The obligations under the Banco Bilbao Credit Facility are secured by an unconditional guarantee from Horsehead Holding, but are not otherwise secured by any of the Debtors' property. As of the Petition Date, approximately \$17.4 million remains outstanding under the Banco Bilbao Credit Facility.

E. The Senior Unsecured Notes

33. The Debtors issued \$40 million aggregate principal amount of 9.00% senior notes due 2017 (the "Unsecured Notes") on July 29, 2014 at an issue price of 100.00% of par, pursuant to an indenture among certain Debtors and U.S. Bank, N.A. as trustee. The Unsecured Notes are listed as guaranteed by each of the Debtors, other than Zochem. The Unsecured Notes and the related guarantees were offered to investors in a private placement, and mature on June 1, 2017. As of the Petition Date, approximately \$40 million of Unsecured Notes remain outstanding.

F. The Convertible Senior Unsecured Notes

34. On July 27, 2011, the Debtors issued \$100 million of 3.80% convertible senior notes due 2017 (the "Convertible Notes") in a private placement, the proceeds of which were primarily used for the initial construction stages of the Mooresboro Facility. The Convertible

Notes mature on July 1, 2017. The Convertible Notes are unsecured obligations of Horsehead Holding and are not guaranteed by any other Debtor. As of the Petition Date, approximately \$100 million of Convertible Notes remain outstanding.

G. The New Markets Tax Credit Program Financing Arrangement

35. On May 29, 2009, non-Debtor HZR entered into two construction loan agreements with Banc of America CDE III, LLC and CCM Community Development IV LLC (collectively, the “NMTC Lenders”) for approximately \$6.9 million and approximately \$7.3 million, respectively (collectively, the “NMTC Loans”). A small portion of the funding provided in connection with the NMTC Loans included an equity investment in HZR by the NMTC Lenders, who also own 0.01% of HZR. HZR entered into the NMTC Loans to fund the development and completion of the EAF dust recycling facility located in Barnwell, South Carolina through a tax-advantaged structure that permitted the monetization of certain tax credits through the New Markets Tax Credit program enacted through the Community Renewal Tax Relief Act of 2000.¹³

36. Horsehead Holding guarantees HZR’s obligations under the NMTC Loans. As of the Petition Date, approximately \$14.2 million of the NMTC Loans remain outstanding. The NMTC Loans mature in June 2016, and the Debtors believe that they have certain set-off rights and related repayment obligations due to them that will permit the Debtors to fully satisfy the NMTC Loans for approximately \$1 million in the aggregate upon maturity.

H. The Debtors’ Equity

37. On August 15, 2007, the Debtors completed an initial public offering and began trading their common stock on the NASDAQ Stock Market, listed under the ticker symbol

¹³ Generally, the New Markets Tax Credit Program is intended to provide tax credit incentives for qualifying investments in certain low-income communities.

ZINC. The Debtors completed underwritten public offerings of 6,325,000 shares of common stock at \$12.00 per share on October 30, 2013, and 5,750,000 shares of common stock at \$12.75 per share on January 28, 2015. The Debtors' last equity offering was launched in October 2015 as a \$50 million "At the Market" program. The Debtors raised approximately \$8.8 million before suspending trading under this program.

I. The Debtors' Other Obligations

1. Hedging Obligations.

38. The Debtors' marketing strategy includes a metal hedging program that allows its customers to secure a firm price for future deliveries under a sales contract. The Debtors enter into hedges based on firm sales contracts to deliver specified quantities of product on a monthly basis for terms generally not exceeding one (1) year. As of the Petition Date, approximately two of such agreements remain outstanding.

2. Surety Bonds.

39. The Debtors maintain three surety bonds to address financial assurance requirements for potential future remediation costs and permit termination under the Resource Conservation and Recovery Act (the "RCRA") for three facilities located in Pennsylvania. The RCRA permit requirements require financial assurance for the Ellwood City and Palmerton facilities, and financial assurance is required for the eventual closure of the Debtors' residual landfill located at the site of the Monaca Facility. As of the Petition Date, the Debtors have approximately \$11.2 million in outstanding surety bonds.

3. Other Secured Claims.

40. In the ordinary course of business, the Debtors routinely transact business with a number of third-party contractors and vendors who may be able to assert liens against the

Debtors and their property if the Debtors fail to pay for the goods delivered or services rendered, as well as cash collateralizing certain letters of credit.

Part II
Events Leading to the Chapter 11 Cases

I. Economic Environment

41. The Debtors' operating performance has been negatively impacted by challenges arising from the Mooresboro Facility and the current economic environment, including material fluctuations in zinc prices. Base metals prices, including zinc and nickel prices, have fallen significantly over the past year. The spot LME zinc price in December 2015 averaged \$0.69/lb, which represents a decrease of approximately 30% since 2014, while nickel prices declined roughly 41% over the same period, and averaged \$3.94/lb in December 2015. The challenges facing the global steel industry, a major market for zinc, further depress zinc prices. The depressed commodity environment continues to put the Debtors' balance sheet under severe stress.

42. Increased competition in the industry and decreased demand from their customer base has contributed to the Debtors' need to restructure their debts. On a national level, the demand for zinc is softening. For example, certain types of zinc that the Debtors produce are used by continuous galvanizers to produce galvanized flat-rolled sheet steel for the automotive market, and many automotive companies have begun using lightweight aluminum sheet to replace galvanized steel. Additionally, while the Debtors' nickel-based products are used in the stainless steel industry, demand for such products faces competition from stainless steel containing a lower level of nickel or no nickel. Moreover, the strong U.S. dollar makes it cheaper for companies in the United States to import stainless steel and galvanized carbon steel, further driving down demand for zinc and nickel-iron remelt alloy as well as the generation of

EAF dust by both carbon steel and stainless steel producers. Thus, the Debtors face twin challenges of a declining zinc-pricing environment and reduced customer demand.

II. Mooresboro Facility Challenges

43. Since construction began in 2011, the Debtors have experienced a number of significant operational, production, and equipment issues associated with the ramp-up of the Mooresboro Facility. For example, the newly-constructed facility already has required replacements of faulty and poor-quality anodes, pumps, and filters. As a result, costs associated with the Mooresboro Facility significantly exceeded the estimated expenses. To date, the Debtors have invested approximately \$550 million for the construction, development, and operation of the Mooresboro Facility. The Debtors expect that at full capacity, the Mooresboro Facility will be capable of producing over 155,000 tons of zinc per year, and up to 170,000 tons per year with certain modifications. However, during the third quarter of 2015, the Mooresboro Facility only produced approximately 9,700 tons of zinc, at an annualized rate of approximately 38,800 tons per year. The Debtors presently anticipate that approximately 12 to 18 months may be required to implement engineering and operational repairs or modifications necessary to bring the Mooresboro Facility up to full capacity.

44. Over the past few weeks, the Debtors, with the assistance of their advisors, have engaged in a significant marketing process to solicit debtor-in-possession financing. In connection with this process, the Debtors contacted no less than 25 third party lenders, hedge funds, and financial institutions. Through this process, after vigorous, arm's-length negotiations between the Debtors, the Debtors' advisors, and potential lending parties and their advisors, the Debtors are finalizing negotiations with respect to a financing package that will address their liquidity needs, enable them to operate their businesses in a manner that will permit the Debtors to preserve and maximize value of their estates, and avoid immediate and irreparable harm to

their estate and stakeholders. The Debtors and certain holders of their Senior Secured Notes have negotiated, among other things, the following chapter 11 plan milestones:

- file the Acceptable Plan with the Court, acceptable to certain DIP lenders, the ad hoc group of Senior Secured Note holders, and the Debtors, within forty (40) days of the Petition Date;
- file the Disclosure Statement with respect to the Acceptable Plan with the Court within forty (40) days of the Petition Date;
- entry of an order confirming the Acceptable Plan within one hundred-fifteen (115) days of the Petition Date; and
- consummation of the Acceptable Plan within one hundred-thirty (130) days of the Petition Date.

Part III
First Day Motions¹⁴

45. Contemporaneously herewith, the Debtors have filed a number of First Day Motions in these chapter 11 cases seeking orders granting various forms of relief intended to stabilize the Debtors' business operations, facilitate the efficient administration of these chapter 11 cases, and expedite a swift and smooth restructuring of the Debtors' balance sheet. The First Day Motions include:

- *Debtors' Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases, and (II) Granting Related Relief;*
- *Debtors' Application for Entry of an Order Pursuant to 28 U.S.C. § 156(c) (I) Approving the Retention and Appointment of Epiq Bankruptcy Solutions, LLC as the Claims and Noticing Agent to the Debtors, Effective Nunc Pro Tunc to the Petition Date, and (II) Granting Related Relief;*
- *Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to File a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for Each Debtor, (II) Authorizing the Debtors to Redact Certain Personal Identification Information for Individual Creditors, and (III) Granting Related Relief;*

¹⁴ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the respective First Day Motions.

- *Debtors' Motion for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs, and (II) Granting Related Relief;*
- *Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Secured Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364, (II) Authorizing the Postpetition Use of Cash Collateral, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b), and (V) Granting Related Relief;*
- *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management Systems, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue to Perform Intercompany Transactions, and (II) Granting Related Relief;*
- *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing, but Not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, Reimbursable Expenses, and Payroll Processing Fees, (B) Pay Withholding Obligations, (C) Continue Employee Benefits Programs, and (D) Continue Ordinary Course Incentive Programs for Non-Insiders, and (II) Granting Related Relief;*
- *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors, and (II) Granting Related Relief;*
- *Debtors' Motion for Entry of an Order (I) Authorizing Debtors to (A) Pay Prepetition Claims of Shippers and Miscellaneous Lien Claimants, (B) Pay Section 503(b)(9) Claims, and (C) Grant Administrative Expense Priority to All Undisputed Obligations for Goods Ordered Prepetition and Delivered Postpetition and Satisfy Such Obligations in the Ordinary Course of Business, and (II) Granting Related Relief;*
- *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Insurance Coverage Entered into Prepetition, (B) Honor Their Prepetition Insurance Premium Financing Agreements, and (C) Renew Their Premium Financing Agreements in the Ordinary Course of Business, and (II) Granting Related Relief;*
- *Debtors' Motion for Entry of an Order (I) Authorizing, but Not Directing, the Payment of Certain Prepetition Taxes, Governmental Assessments, and Fees, and (II) Granting Related Relief;*
- *Debtors' Motion for Entry of Interim and Final Orders (I) Determining Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility*

Companies from Altering, Refusing, or Discontinuing Services, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (IV) Granting Related Relief,

- *Debtors' Motion for Entry of Interim and Final Orders (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock, and (II) Granting Related Relief, and*
- *Debtors' Motion for Entry of an Order (I) Authorizing Horsehead Holding Corp. to Act as Foreign Representative Pursuant to 11 U.S.C. § 1505, and (II) Granting Related Relief.*

46. The First Day Motions seek authority to, among other things, obtain debtor-in-possession financing on an interim basis, honor employee-related wages and benefits obligations, preserve client and customer relationships, and ensure the continuation of the Debtors' cash management systems and other business operations without interruption. I believe that the relief requested in the First Day Motions is necessary to giving the Debtors an opportunity to work towards a successful restructuring that will benefit all of the Debtors' stakeholders.

47. Several of the First Day Motions request authority to pay certain prepetition claims. I understand that Rule 6003 of the Federal Rules of Bankruptcy Procedures provides, in relevant part, that the Court shall not consider motions to pay prepetition claims during the first 20 days following the filing of a chapter 11 petition, "except to the extent relief is necessary to avoid immediate an irreparable harm." In light of this requirement, the Debtors have narrowly tailored their requests for immediate authority to pay certain prepetition claims to those circumstances where the failure to pay such claims would cause immediate and irreparable harm to the Debtors and their estates. Other relief will be deferred for consideration at a later hearing.

48. I am familiar with the content and substance of the First Day Motions. The facts stated therein are true and correct to the best of my knowledge, information, and belief, and I believe that the relief sought in each of the First Day Motions is necessary to enable the Debtors

to operate in chapter 11 with minimal disruption to their business operations and constitutes a critical element in successfully restructuring the Debtors' businesses.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: February 2, 2016

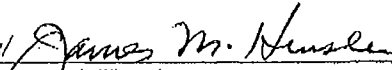
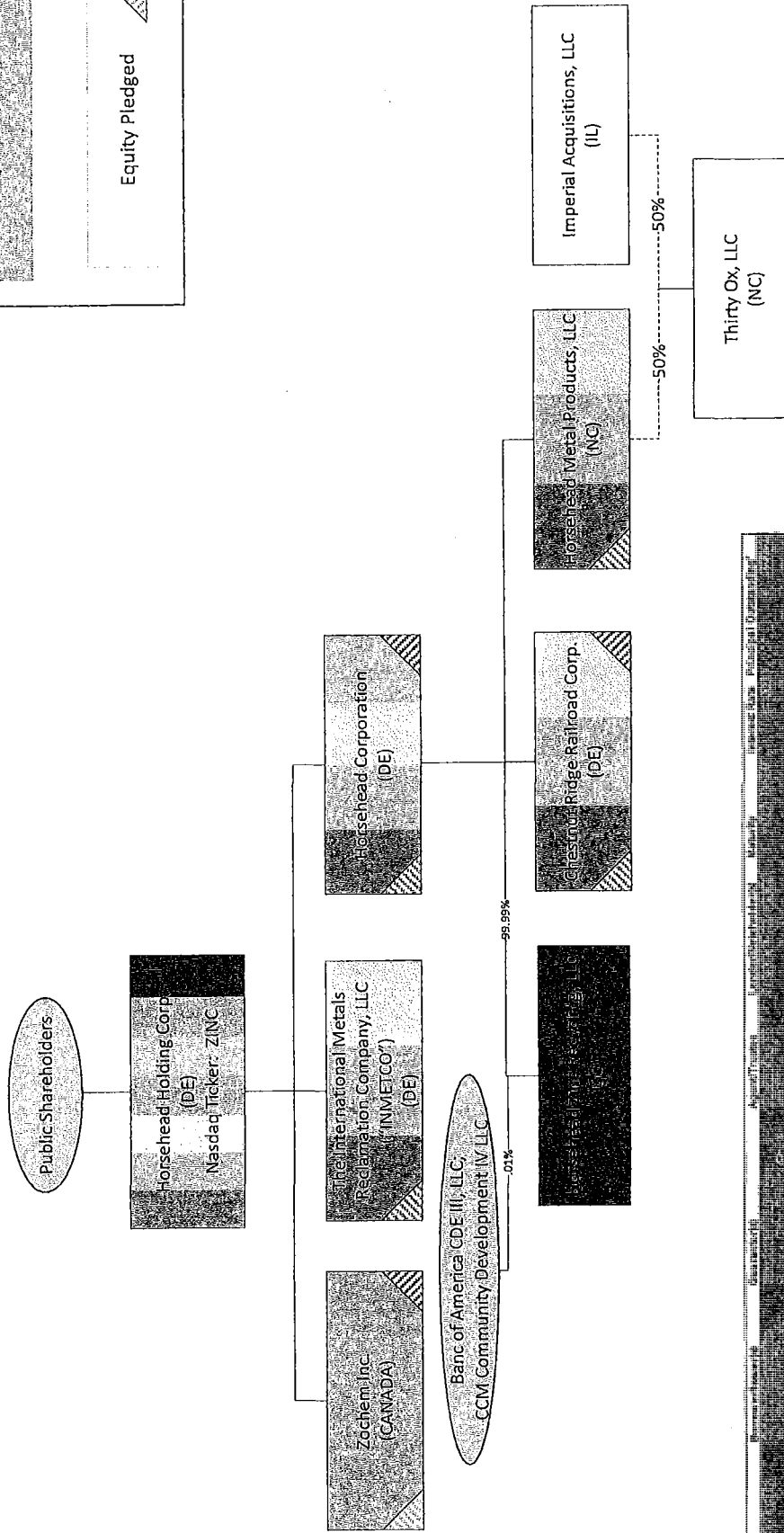
/s/ 
James M. Hensler
Horsehead Holding Corp.
Chairman of the Board, President,
and Chief Executive Officer

EXHIBIT A

Corporate Organizational Chart



Entity	Business or Industry	Class of Security	Amount of Investment	Exercisable Period	Expiry Date	Business or Industry
Banc of America CDE III, LLC	Financial Services	Common Stock	1,000,000	2017	2020	Financial Services
CCM Community Development IV, LLC	Real Estate	Common Stock	1,000,000	2017	2020	Real Estate
Horsehead Metal Products, LLC	Manufacturing	Common Stock	1,000,000	2017	2020	Manufacturing
Imperial Acquisitions, LLC	Manufacturing	Common Stock	1,000,000	2017	2020	Manufacturing
Thirty Ox, LLC	Manufacturing	Common Stock	1,000,000	2017	2020	Manufacturing
Horsehead Corporation	Manufacturing	Common Stock	1,000,000	2017	2020	Manufacturing
Chestnut Ridge Railroad Corp.	Transportation	Common Stock	1,000,000	2017	2020	Transportation
The International Metals Reclamation Company, LLC	Manufacturing	Common Stock	1,000,000	2017	2020	Manufacturing
Zochem Inc.	Manufacturing	Common Stock	1,000,000	2017	2020	Manufacturing
Horsehead Holding Corp.	Manufacturing	Common Stock	1,000,000	2017	2020	Manufacturing
Public Shareholders	Manufacturing	Common Stock	1,000,000	2017	2020	Manufacturing

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED,
IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH
RESPECT TO THE DEBTORS, AND APPLICATION OF HORSEHEAD HOLDING CORP. UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

Court File No. CV-16-10271-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF JAMES M. HENSLER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

Sam Babe (LSUC # 49498B)

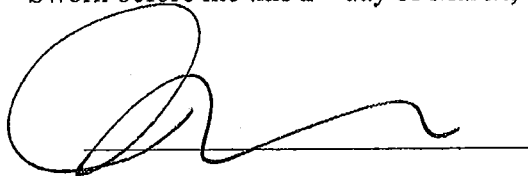
Tel: 416.863.1500

Fax: 416.863.1515

Solicitors for the Applicant

Tab 2(b)

Attached is Exhibit "B" Referred to in the
AFFIDAVIT OF JAMES M. HENSLER
Sworn before me this 2nd day of March, 2016

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by 'A' and 'BOWER' in a cursive script. The signature is written over a horizontal line.

A Notary for the State of Delaware

K A JOHN BOWER
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires October 14, 2016



ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.

JUSTICE NEWBOULD

)
)
)

FRIDAY, THE 5th

DAY OF FEBRUARY, 2016

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT WITH RESPECT TO HORSEHEAD HOLDING
CORP., HORSEHEAD CORPORATION, HORSEHEAD METAL PRODUCTS, LLC,
THE INTERNATIONAL METALS RECLAMATION COMPANY, LLC AND
ZOCHEM INC. (collectively, the "Debtors")

APPLICATION OF HORSEHEAD HOLDING CORP.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

INITIAL RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made by Zochem Inc. ("Zochem"), in its capacity as the foreign representative of the Debtors (the "Foreign Representative"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of James M. Hensler sworn February 2, 2016, the preliminary report of Richter Advisory Group Inc. ("Richter"), in its capacity as proposed information officer (the "Proposed Information Officer") dated February

4, 2016, each filed, and upon being provided with copies of the documents required by s.46 of the CCAA,

AND UPON BEING ADVISED by counsel for the Foreign Representative that, in addition to this Initial Recognition Order, a Supplemental Order (Foreign Main Proceeding) is being sought (the "**Supplemental Order**"),

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for the Proposed Information Officer, counsel for PNC Bank, National Association, counsel to the Ad Hoc Group of Senior Secured Noteholders and proposed Post-Petition Lenders (the "**DIP Lenders**") and Cantor Fitzgerald Securities, as administrative agent (the "**DIP Agent**"), counsel to UNIFOR Local 591G, no one else appearing although duly served as appears from the affidavit of service of Daphne Porter sworn February 2, 2016.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

SUBSTITUTE APPLICANT

2. **THIS COURT ORDERS** that Horsehead Holding Corp. be and is hereby replaced as Applicant in these proceedings by Zochem and the title of these proceedings be and is hereby changed to:

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT WITH RESPECT TO HORSEHEAD HOLDING
CORP., HORSEHEAD CORPORATION, HORSEHEAD METAL PRODUCTS, LLC,
THE INTERNATIONAL METALS RECLAMATION COMPANY, LLC AND
ZOCHEM INC. (collectively, the "Debtors")**

**APPLICATION OF ZOCHEM INC.
UNDER SECTION 46 OF THE
*COMPANIES' CREDITORS ARRANGEMENT ACT***

FOREIGN REPRESENTATIVE

3. **THIS COURT ORDERS AND DECLARES** that the Foreign Representative is the “foreign representative” as defined in section 45 of the CCAA of the Debtors in respect of the proceedings commenced on February 2, 2016, in the United States Bankruptcy Court for the District of Delaware, under chapter 11 of title 11 of the United States Code (the “**Foreign Proceeding**”).

CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING

4. **THIS COURT DECLARES** that the centre of its main interests for each of the Debtors is the United States, and that the Foreign Proceeding is hereby recognized as a “foreign main proceeding” as defined in section 45 of the CCAA.

STAY OF PROCEEDINGS

5. **THIS COURT ORDERS** that until otherwise ordered by this Court:

- (a) all proceedings taken or that might be taken against any Debtor under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;
- (b) further proceedings in any action, suit or proceeding against any Debtor are restrained; and
- (c) the commencement of any action, suit or proceeding against any Debtor is prohibited.

NO SALE OF PROPERTY

6. **THIS COURT ORDERS** that, except with leave of this Court, each of the Debtors is prohibited from selling or otherwise disposing of:

- (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and
- (b) any of its other property in Canada.

GENERAL

7. **THIS COURT ORDERS** that within two business days from the date of this Order, or as soon as practicable thereafter, the Information Officer (as defined in the Supplemental Order) shall cause to be published a notice substantially in the form attached to this Order as **Schedule "A"**, once a week for two consecutive weeks, in the Globe & Mail, national edition.


8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist the Debtors and the Foreign Representative and their respective counsel and agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS AND DECLARES** that the Interim Initial Order made on February 2, 2016 shall be of no further force and effect once this Order becomes effective, and that this Order shall be effective as of 12:01 a.m. on the date of this Order, provided that nothing herein shall invalidate any action taken in compliance with such Interim Initial Order prior to the effective time of this Order.

10. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtors and the Foreign Representative and their respective counsel, to counsel to the DIP Lenders and the DIP Agent, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

FEB 08 2016


SCHEDULE "A"

Court File No. CV-16-11271-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT WITH RESPECT TO HORSEHEAD HOLDING
CORP., HORSEHEAD CORPORATION, HORSEHEAD METAL PRODUCTS, LLC,
THE INTERNATIONAL METALS RECLAMATION COMPANY, LLC AND
ZOCHEM INC. (collectively, the "Debtors")**

Application of ZOCHEM INC.

**Under Section 46 of the *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

PLEASE BE ADVISED that this Notice is being published pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**"), granted on February 5, 2016.

PLEASE TAKE NOTICE that on February 2, 2016, Horsehead Holding Corp., Horsehead Corporation, Horsehead Metal Products, LLC, the International Metals Reclamation Company, LLC and Zochem Inc. (collectively, the "**Debtors**") commenced voluntary reorganization proceedings (the "**Chapter 11 Proceedings**") in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") by each filing a voluntary petition for relief under chapter 11 of title 11 of the *United States Code*, 11 U.S.C. 101-1532 (the "**Bankruptcy Code**"). In connection with the Chapter 11 Proceedings, the Debtors have appointed Zochem Inc. as their foreign representative (the "**Foreign Representative**").

PLEASE TAKE FURTHER NOTICE that an Initial Recognition Order (Foreign Main Proceeding) and a Supplemental Order (Foreign Main Proceeding) dated February 5, 2016 (together, the "**Recognition Orders**" and the proceedings commenced thereby, the "**Recognition Proceedings**") have been granted by the Canadian Court under Section 47 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, that, among other things: (i) recognize the Chapter 11 Proceedings as a foreign main proceeding; (ii) recognize Zochem Inc. as the Foreign Representative of the Debtors; (iii) recognize certain orders granted by the U.S. Court in the Chapter 11 Proceedings; (iv) stay all proceedings against the Debtors and their directors and officers; and (v) appoint Richter Advisory Group Inc. as the Information Officer with respect to the Recognition Proceedings.

PLEASE TAKE FURTHER NOTICE that persons who wish to receive a copy of the Recognition Orders or obtain any further information in respect of the Recognition Proceedings

or the matters set forth in this Notice, should contact the Information Officer at the address below:

RICHTER ADVISORY GROUP INC.
in its capacity as Information Officer
of Horsehead Holding Corp. *et al.*
and not in its personal capacity
181 Bay Street, Suite 3320
Bay Wellington Tower
Attention: Pritesh Patel
Tel: 416.642.9421
Fax: 416.488.3765
E-mail: ppatel@richter.ca

PLEASE FINALLY NOTE that the Recognition Orders, and any other orders that may be granted by the Canadian Court, can be viewed at <http://www.richter.ca/en/folder/insolvency-cases/h/horsehead-holdings>.

ZOCHEM INC. (the Foreign Representative)
1 Tilbury Court
Bampton, ON L6T 3T4
Attention: [insert contact name]
Tel: ☐
Fax: ☐
E-mail: ☐

AIRD & BERLIS LLP (counsel to the Foreign Representative)
Brookfield Place, 181 Bay Street
Suite 1800, Box 754
Toronto, ON M5J 2T9
Attention: Sam Babe
Tel: 416.865.7718
Fax: 416.863.1515
E-mail: sbabe@airdberlis.com

DATED AT TORONTO, ONTARIO, this ☐ day of February, 2016.

RICHTER ADVISORY GROUP INC.
in its capacity as Information Officer
of Horsehead Holding Corp. *et al.*
and not in its personal capacity

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED,
IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH
RESPECT TO THE DEBTORS, AND APPLICATION OF HORSEHEAD HOLDING CORP. UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

Court File No. CV-16-11271-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**INITIAL RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)**

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

Sam Babe (LSUC # 49498B)

Tel: 416.863.1500

Fax: 416.863.1515

Email sbabe@airdberlis.com

Lawyers for the Applicant

Tab 2(c)

Attached is Exhibit "C" Referred to in the
AFFIDAVIT OF JAMES M. HENSLER
Sworn before me this 2nd day of March, 2016

A handwritten signature in black ink, appearing to read 'K A John Bower', is written over a horizontal line.

A Notary for the State of Delaware
K A JOHN BOWER
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires October 14, 2016

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.

)

FRIDAY, THE 5TH

JUSTICE NEWBOULD

)

DAY OF FEBRUARY, 2016

)



**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C 36, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT WITH RESPECT TO HORSEHEAD HOLDING
CORP., HORSEHEAD CORPORATION, HORSEHEAD METAL PRODUCTS, LLC,
THE INTERNATIONAL METALS RECLAMATION COMPANY, LLC AND
ZOCHEM INC. (collectively, the "Debtors")**

**APPLICATION OF ZOCHEM INC.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT**

**SUPPLEMENTAL ORDER
(FOREIGN MAIN PROCEEDING)**

THIS APPLICATION, made by Zochem Inc. ("**Zochem**") in its capacity as the foreign representative (the "**Foreign Representative**") of the Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of James M. Hensler sworn February 2, 2016, and on hearing the submissions of counsel for the Foreign Representative, counsel to Richter Advisory Group Inc. ("**Richter**"), in its capacity as proposed information officer (the "**Proposed Information Officer**"), counsel to PNC Bank, National Association, counsel to the Ad Hoc Group of Senior Secured Noteholders and proposed Post-Petition

Lenders (the "**DIP Lenders**") and Cantor Fitzgerald Securities, as administrative agent (the "**DIP Agent**"), counsel to UNIFOR Local 591G, no one else appearing although duly served as appears from the affidavit of service of Daphne Porter sworn February 2, 2016, and on reading the consent of Richter to act as the information officer:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

INITIAL RECOGNITION ORDER

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated February 5, 2016 (the "**Recognition Order**").

3. **THIS COURT ORDERS** that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

RECOGNITION OF FOREIGN ORDERS

4. **THIS COURT ORDERS** that the following orders (collectively, the "**Foreign Orders**") of United States Bankruptcy Court for the District of Delaware made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) Order Directing Joint Administration of Chapter 11 Cases, attached as **Schedule "A"** to this Order;
- (b) Order Authorizing Horsehead Holding Corp. to Act as Foreign Representative Pursuant to 11 U.S.C § 1505, attached as **Schedule "B"** to this Order;

- (c) Amended Interim Order Authorizing Debtors to (a) Continue to Operate their Cash Management Systems, (b) Honor Certain Prepetition Obligations related Thereto, (c) Maintain Existing Business Forms and (d) Continue to Perform Intercompany Transactions, attached as **Schedule "C"** to this Order;
- (d) Interim Order Authorizing, But Not Directing, Debtors to (a) Pay Prepetition Wages, Salaries, Other Compensation, Reimbursable Expenses, and Payroll Processing Fees, (b) Pay Withholding Obligations, (c) Continue Employee Benefits Programs, and (d) Continue Ordinary Course Incentive Programs for Non-Insiders, attached as **Schedule "D"** to this Order;
- (e) Interim Order Authorizing Debtors to (a) Pay Prepetition Claims of Shippers and Miscellaneous Lien Claimants, (b) Pay Section 503(b)(9) Claims, and (c) Grant Administrative Expense Priority to all Undisputed Obligations for Goods Ordered Prepetition and Delivered Postpetition and Satisfy such Obligations in the Ordinary Course of Business, attached as **Schedule "E"** to this Order;
- (f) Interim Order (a) Determining Adequate Assurance of Payment for Future Utility Services; (b) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services; (c) Establishing Procedures for Determining Adequate Assurance of Payment, attached as **Schedule "F"** to this Order;
- (g) Interim Order Authorizing Debtors to (a) Continue Insurance Coverage Entered Into Prepetition; (b) Honor their Prepetition Insurance Premium Financing Agreements; and (c) Renew their Premium Financing Agreements in the Ordinary Course of Business, attached as **Schedule "G"** to this Order;
- (h) Order Authorizing, But Not Directing, Debtors to Remit and Pay Certain Prepetition Taxes, Governmental Assessments, and Fees, attached as **Schedule "H"** to this Order;
- (i) Interim Order Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors, attached as **Schedule "I"** to this Order;

- (j) Interim Order Approving Notification and Hearing Procedures for Certain Transfers of, and Declarations of Worthlessness with Respect to, Common Stock, attached as **Schedule "J"** to this Order;
- (k) Order Authorizing Debtors to (a) File a Consolidated List of Creditors in Lieu of Submitting Separate Mailing Matrices for each Debtor and (b) Authorizing Debtors to Redact Certain Personal Identification Information for Individual Creditors, attached as **Schedule "K"** to this Order; and
- (l) Interim Order (A) Authorizing the Debtors to Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Adequate Protection to the Prepetition Secured Parties, (D) Scheduling a Final Hearing, and (E) Granting Related Relief (the **"U.S. DIP Order"**), attached as **Schedule "L"** to this Order.

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

APPOINTMENT OF INFORMATION OFFICER

5. **THIS COURT ORDERS** that Richter is hereby appointed as an officer of this Court, with the powers and duties set out herein (the **"Information Officer"**).

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

6. **THIS COURT ORDERS** that until such date as this Court may order (the **"Stay Period"**) no proceeding or enforcement process in any court or tribunal in Canada (each, a **"Proceeding"**) shall be commenced or continued against or in respect of the Debtors or affecting their business (the **"Business"**) or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the **"Property"**), except with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

7. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Debtors or the Foreign Representative, or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies outside of Canada, (ii) empower any of the Debtors to carry on any business in Canada which that Debtor is not lawfully entitled to carry on, (iii) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (iv) prevent the DIP Lenders under the post-filing financing approved in the Foreign Proceeding pursuant to the U.S. DIP Order (the "**DIP Credit Agreement**") or the agent thereunder (the "**DIP Agent**") from making any filing or registration contemplated by or consistent with the DIP Credit Agreement, or (v) prevent the indenture trustee for the prepetition secured noteholders from making any filing or registration contemplated by or consistent with the U.S. DIP Order.

NO INTERFERENCE WITH RIGHTS

8. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Debtors and affecting the Business in Canada, except with leave of this Court.

ADDITIONAL PROTECTIONS

9. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use in

Canada of their current premises, bank accounts, telephone numbers, facsimile numbers, internet addresses and domain names.

10. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

11. **THIS COURT ORDERS** that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

OTHER PROVISIONS RELATING TO INFORMATION OFFICER

12. **THIS COURT ORDERS** that the Information Officer:

- (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) shall report to this Court at such times and intervals as the Information Officer considers appropriate with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;
- (c) shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial

documents of the Debtors, to the extent that is necessary to perform its duties arising under this Order; and

- (d) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. **THIS COURT ORDERS** that the Debtors and the Foreign Representative shall (i) advise the Information Officer of all material steps taken by the Debtors or the Foreign Representative in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. **THIS COURT ORDERS** that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

15. **THIS COURT ORDERS** that the Information Officer (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

16. **THIS COURT ORDERS** that the Information Officer may provide any creditor of a Debtor with information provided by the Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Debtors is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the relevant Debtors may agree.

17. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be paid by the Debtors their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Debtors are hereby authorized and directed to pay the accounts of the Information Officer and counsel for the Information Officer on a bi-weekly basis (or such other time period as should be agreed between the Debtors and the Information Officer and counsel to the Information Officer) and, in addition, the Debtors are hereby authorized to pay to the Information Officer and counsel to the Information Officer, retainers in the amounts of \$50,000 and \$50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

18. **THIS COURT ORDERS** that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

19. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property in Canada, which charge shall not exceed an aggregate amount of \$100,000, as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 21 and 23 hereof.

INTERIM FINANCING

20. **THIS COURT ORDERS** that the DIP Agent shall be entitled, for its own benefit and the benefit of the DIP Lenders, to the benefit of and is hereby granted a charge (the "**DIP Lenders' Charge**") on the Property in Canada, which DIP Lenders' Charge shall be consistent with the liens and charges created by the U.S. DIP Order in favour of the DIP Agent, provided however that the DIP Lenders' Charge (i) shall not secure an obligation that exists before this Order is made, and (ii) with respect to the Property in Canada, shall have the priority set out in paragraphs 21 and 23 hereof, and further provided that the DIP

Lenders' Charge shall not be enforced except in accordance with the terms of the U.S. DIP Order.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

21. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lenders' Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – the Administration Charge; and

Second – the DIP Lenders' Charge.

22. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

23. **THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall (i) constitute a charge on the Property in Canada and (ii) such Charges shall rank in priority to all other security interests, trusts (including, without limitation, constructive trusts and any deemed trust that may be created under the Ontario *Pension Benefits Act*), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person except, in the case of clause (ii) only, as set forth in the U.S. DIP Order.

24. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, either the Administration Charge or the DIP Lender's Charge.

25. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii)

any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by a Debtor of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

26. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Debtor's interest in such real property leases.

SERVICE AND NOTICE

27. **THIS COURT ORDERS** that that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the

Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL:
<http://www.richter.ca/en/folder/insolvency-cases/h/horsehead-holdings>.

28. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtors, the Foreign Representative and the Information Officer are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the applicable Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

29. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

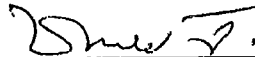
30. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of any Debtor, the Business or the Property.

31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Debtors, the Foreign Representative, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.


32. **THIS COURT ORDERS** that each of the Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtors, the Foreign Representative, the Information Officer and their respective counsel, to counsel to the DIP Lenders and the DIP Agent, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

34. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. on the date of this Order.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

FEB 08 2016


**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED,
IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH
RESPECT TO THE DEBTORS, AND APPLICATION OF ZOICHEM INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT**

Court File No. CV-16-11271-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SUPPLEMENTAL ORDER
(FOREIGN MAIN PROCEEDING)**

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

Sam Babe (LSUC # 49498B)

Tel: 416.863.1500

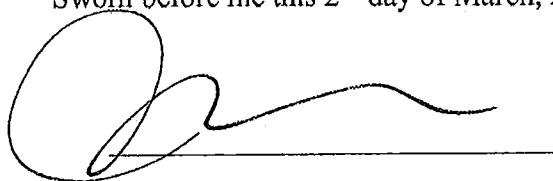
Fax: 416.863.1515

Email sbabe@airdberlis.com

Lawyers for the Applicant

Tab 2(d)

Attached is Exhibit "D" Referred to in the
AFFIDAVIT OF JAMES M. HENSLER
Sworn before me this 2nd day of March, 2016

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a wavy flourish.

A Notary for the State of Delaware
K A JOHN BOWER
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires October 14, 2016

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
DISTRICT OF DELAWARE

IN THE MATTER OF:	:	Chapter 11
	:	
Horsehead Holding, Corp., <i>et al.</i>	:	Case No. 16-10287(CSS)
	:	
	:	NOTICE OF APPOINTMENT OF
	:	COMMITTEE OF UNSECURED
Debtors.	:	CREDITORS

Pursuant to Section 1102(a)(1) of the Bankruptcy Code, I hereby appoint the following persons to the Committee of Unsecured Creditors in connection with the above captioned case:

1. **Delaware Trust Company as Trustee**, Attn: Sandra E. Horwitz, 2711 Centreville Rd. Wilmington, DE, 19808 Phone: 877-374-6010 Fax: 302-636-8666
2. **Wilmington Trust as Trustee**, Attn: Steven Cimalore, 1100 N Market Street Wilmington, DE, 19801, Phone: 302-636-6058, Fax: 302-636-4140
3. **Hudbay Marketing & Sales, Inc.**, Attn: Eugene Lee, 25 York St. Ste. 800 Toronto, ON M5J 2V5 Canada, Phone: 416-601-9540,
4. **Chemicals Inc.**, Attn: Richard Winans, 1270 Osborne Dr. Fairfield, OH 45014, Phone: 513-682-2000, Fax: 513-682-2008
5. **Powers Coal and Coke**, Attn: Martin J. Powers, 4807 Rocksied Road, Ste. 240, Cleveland, OH 44131, Phone: 216-264-4804, Fax: 216-264-4815
6. **United Steelworkers**, Attn: David R. Jury, 60 Boulevard of the Allies, Rm 807 Pittsburgh, PA 15222, Phone: 412-562-2545, Fax: 412-562-2574
7. **Dhandho Holdings Corp.**, Attn: Fahad Missmar, 206 Tetuan Street, Ste. 703 San Juan, Puerto Rico 00902, Phone: 1 787-395-7287

ANDREW R. VARA
Acting United States Trustee, Region 3

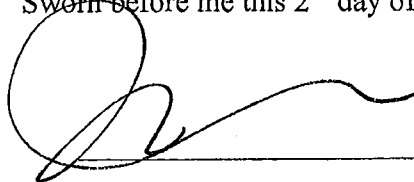
/s/ Timothy J. Fox for
T. PATRICK TINKER
ASSISTANT UNITED STATES TRUSTEE

DATED: February 16, 2016

Attorney assigned to this Case: Timothy J. Fox, Esquire, Phone: (302) 573-6491, Fax: (302) 573-6497
Debtors' Counsel: Laura Davis-Jones, Esquire, Phone: (302) 652-4100, Fax: (302) 652-4400

Tab 2(e)

Attached is Exhibit "E" Referred to in the
AFFIDAVIT OF JAMES M. HENSLER
Sworn before me this 2nd day of March, 2016

A handwritten signature in black ink, appearing to read "K A John Bower", is written over a horizontal line.

A Notary for the State of Delaware

K A JOHN BOWER
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires October 14, 2016

AIRD & BERLIS LLP

Barristers and Solicitors

Sam Babe
Direct: 416.723.1400
E-mail: sbabe@airdberlis.com

February 11, 2016

BY REGULAR MAIL

Zochem Inc. Hourly Pension Beneficiaries

Dear Sir/Madam,

Re: Zochem Inc. Hourly Employee Pension Plan No. 0576744

We are counsel to Zochem Inc. ("**Zochem**"), its corporate parent Horsehead Holding Corp. ("**Horsehead Holding**") and three other affiliated companies (collectively, the "**Companies**") in connection with the matters discussed in this letter. You are receiving this letter because you are a present or future beneficiary under the defined benefit pension plan administered by Zochem for certain of its present and former hourly employees, registered with the Financial Services Commission of Ontario under registration number 0576744 (the "**Pension Plan**"). Certain restructuring proceedings have commenced that could affect your rights under the Pension Plan and/or governing statutes.

On Tuesday, February 2, 2016, the Companies commenced proceedings (collectively, the "**U.S. Proceedings**") by each filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**"). That same day, Zochem filed an application with the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**") for, among other things, recognition of the U.S. Proceedings as the main court proceedings in the restructuring of the Companies pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"). On Wednesday, February 3, 2016, the U.S. Court granted a series of orders including one giving interim approval of a credit facility (the "**Post-Filing Credit Facility**") to finance the Companies' restructuring efforts and to pay off Zochem's existing credit facilities. On Friday, February 5, 2016, the Ontario Court made an order, among other things, recognizing the U.S.'s Court's order approving of the Post-Filing Credit Facility. As part of that recognition order, the Ontario Court granted a charge or lien in favour of the lenders under the Post-Filing Credit Facilities (the "**Post-Filing Lenders**") over all of Zochem's Assets, as security for repayment of the Post-Filing Credit Facility (the "**Lenders' Charge**"). The Lenders' Charge ranks above all other claims against the Companies, including any claims by pension beneficiaries, even those that might otherwise benefit from a deemed trust under the *Pension Benefits Act* (Ontario) (the "**PBA**").

The Companies will re-appear before the U.S. Court on or before February 26, 2016, to seek, among other relief, final approval of the Post-Filing Credit Facility. Zochem will re-appear before the Ontario Court shortly thereafter to seek recognition of that final order.

February 11, 2016
Page 2

Zochem intends to continue to administer the Pension Plan in the normal course during its restructuring proceedings, and has no plans to wind up the Pension Plan. The Pension Plan is currently in an accrued benefit asset (i.e. positive) position. Because the Pension Plan has not been wound up, there presently is no deemed trust under the PBA. Because the Pension Plan is fully funded, there is no known claim under the Pension Plan that could benefit from a deemed trust under the PBA if the Pension Plan were to be wound up in the future. Pension beneficiaries are also given specific, more limited protection under the CCAA. Nevertheless we are writing you to give you opportunity to seek counsel with regard to these matters.

If you are a current members of Unifor Local 591-G-850, the union was served with Zochem's court materials and its external counsel appeared at the hearing before the Ontario Court on February 5, 2016. The union may be able to give you advice or may otherwise have intention to further respond to Zochem's application.

Information about the proceedings before the Ontario Court can be found at: <http://www.richter.ca/en/folder/insolvency-cases/h/horsehead-holdings>. Information on the U.S. Proceedings can be found at: <http://dm.epiq11.com/HOC/Project#>.

Yours truly,

AIRD & BERLIS LLP

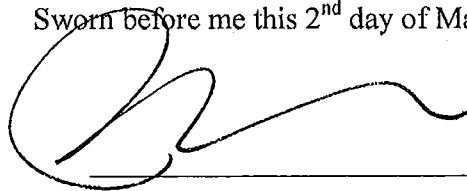


Sam Babe

25061358.1

Tab 2(f)

Attached is Exhibit "F" Referred to in the
AFFIDAVIT OF JAMES M. HENSLER
Sworn before me this 2nd day of March, 2016

A handwritten signature in black ink, appearing to be "K. A. John Bower", written over a horizontal line.

A Notary for the State of Delaware
K A JOHN BOWER
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires October 14, 2016

AIRD & BERLIS LLP

Barristers and Solicitors

Sam Babe
Direct: 416.723.1400
E-mail: sbabe@airdberlis.com

February 11, 2016

BY REGULAR MAIL

Zochem Inc. Salaried Pension Beneficiaries

Dear Sir/Madam,

Re: Zochem Inc. Salaried Employee Pension Plan No. 0399832

We are counsel to Zochem Inc. ("**Zochem**"), its corporate parent Horsehead Holding Corp. ("**Horsehead Holding**") and three other affiliated companies (collectively, the "**Companies**") in connection with the matters discussed in this letter. You are receiving this letter because you are a present or future beneficiary under the defined benefit pension plan administered by Zochem for certain of its present and former salaried employees, registered with the Financial Services Commission of Ontario under registration number 0399832 (the "**Pension Plan**"). Certain restructuring proceedings have commenced that could affect your rights under the Pension Plan and/or governing statutes.

On Tuesday, February 2, 2016, the Companies commenced proceedings (collectively, the "**U.S. Proceedings**") by each filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**"). That same day, Zochem filed an application with the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**") for, among other things, recognition of the U.S. Proceedings as the main court proceedings in the restructuring of the Companies pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"). On Wednesday, February 3, 2016, the U.S. Court granted a series of orders including one giving interim approval of a credit facility (the "**Post-Filing Credit Facility**") to finance the Companies' restructuring efforts and to pay off Zochem's existing credit facilities. On Friday, February 5, 2016, the Ontario Court made an order, among other things, recognizing the U.S.'s Court's order approving of the Post-Filing Credit Facility. As part of that recognition order, the Ontario Court granted a charge or lien in favour of the lenders under the Post-Filing Credit Facilities (the "**Post-Filing Lenders**") over all of Zochem's Assets, as security for repayment of the Post-Filing Credit Facility (the "**Lenders' Charge**"). The Lenders' Charge ranks above all other claims against the Companies, including any claims by pension beneficiaries, even those that might otherwise benefit from a deemed trust under the *Pension Benefits Act* (Ontario) (the "**PBA**").

The Companies will re-appear before the U.S. Court on or before February 26, 2016, to seek, among other relief, final approval of the Post-Filing Credit Facility. Zochem will re-appear before the Ontario Court shortly thereafter to seek recognition of that final order.

Zochem intends to continue to administer the Pension Plan in the normal course during its restructuring proceedings, and has no plans to wind up the Pension Plan. A small accrued benefit liability (the "**Benefit Liability**") has been funded. Because the Pension Plan has not been wound up, there presently is no deemed trust under the PBA. Because the Benefit Liability has now been paid, there is no known claim under the Pension Plan that could benefit from a deemed trust under the PBA if the Pension Plan were to be wound up in the future. Pension beneficiaries are also given specific, more limited protection under the CCAA. Nevertheless we are writing you to give you opportunity to seek counsel with regard to these matters.

Information about the proceedings before the Ontario Court can be found at: <http://www.richter.ca/en/folder/insolvency-cases/h/horsehead-holdings>. Information on the U.S. Proceedings can be found at: <http://dm.epiq11.com/HOC/Project#>.

Yours truly,

AIRD & BERLIS LLP

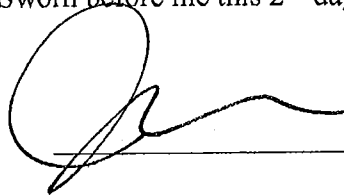


Sam Babe

25122114.1

Tab 2(g)

Attached is Exhibit "G" Referred to in the
AFFIDAVIT OF JAMES M. HENSLER
Sworn before me this 2nd day of March, 2016

A handwritten signature in black ink, appearing to be 'K.A. John Bower', written over a horizontal line.

A Notary for the State of Delaware
K.A. JOHN BOWER
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires October 14, 2016

CITATION: Zochem Inc. (Re), 2016 ONSC 958
COURT FILE NO.: CV-16-11271-00CL
DATE: 20160208

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT WITH RESPECT TO HORSEHEAD HOLDING
CORP., HORSEHEAD CORPORATION, HORSEHEAD METAL PRODUCTS, LLC,
THE INTERNATIONAL METALS RECLAMATION COMPANY, LLC AND
ZOCHEM INC. (collectively, the "Debtors")

APPLICATION OF ZOCHEM INC.
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

HEARD: February 5, 2016

COUNSEL:

Sam Babe, Martin E. Kovnats, Jeffrey Merk and J. Nemers, for the Applicant

Ryan Jacobs, Jane Dietrich and Natalie Levine, for the DIP lenders

Christopher G. Armstrong, Sydney Young and Caroline Descours, for Richter Advisory Group
as proposed Information Officer

Linc A. Rogers and Christopher Burr, for PNC Bank, National Association

Denis Ellickson, for UNIFOR Local 591G

Newbould J.

[1] On February 5, 2016 an application was brought by Zochem Inc. ("Zochem"), in its capacity as foreign representative of itself as well as Horsehead Holding Corp., Horsehead Corporation, Horsehead Metal Products, LLC ("Horsehead Metals"), and The International

Metals Reclamation Company, LLC ("INMETCO") for orders pursuant to sections 46 through 49 of the *CCAA* recognizing First Day Orders made by Judge Mary Walrath of the U.S. Bankruptcy Court for the District of Delaware in chapter 11 proceedings brought by the debtors under the U.S. Bankruptcy Code.

[2] At the conclusion of the hearing I made the orders sought with reasons to follow. These are my reasons for making the orders.

[3] The debtors operate in the zinc and nickel-bearing waste industries through three business units: Horsehead Corporation and its subsidiaries (collectively, "Horsehead"), Zochem, and INMETCO. Horsehead is a prominent recycler of electric arc furnace ("EAF") dust, a zinc-containing waste generated by North American steel "mini-mills", and in turn uses the recycled EAF dust to produce specialty zinc and zinc-based products. Zochem is a producer of zinc oxide. INMETCO is a recycler of nickel-bearing wastes and nickel-cadmium batteries, and a producer of nickel-chromium-molybdenum-iron remelt alloy for the stainless steel and specialty steel industries. Collectively, the debtors hold a market-leading position in zinc production in the United States, zinc oxide production in North America, EAF dust recycling in North America, and are a leading environmental service provider to the U.S. steel industry.

[4] Zochem is a Canada Business Corporations Act corporation with its head office in Pittsburgh, Pennsylvania and its operations located in owned premises at 1 Tilbury Court, Brampton, Ontario. Zochem's registered office address is the Ontario premises.

[5] Zochem is one of the largest single-site producers of zinc oxide in North America. Zinc oxide is used as an additive in various materials and products, including plastics, ceramics, glass, rubbers, cement, lubricants, pigments, sealants, ointments, fire retardants, and batteries. The debtors sell zinc oxide to over 250 producers of tire and rubber products, chemicals, paints, plastics, and pharmaceuticals, and have supplied zinc oxide to the majority of their largest customers for over ten years.

[6] As of December 31, 2015, Zochem had 19 salaried personnel and 25 hourly personnel. Approximately 25 of these employees are organized under Unifor and its Local 591-G-850, whose collective labour agreement is set to expire on June 30, 2016.

[7] Zochem maintains separate pension plans for its salaried and hourly personnel, which have been closed to new members since July 1, 2012. Newer employees have joined Zochem's group RRSP. According to a report prepared by Corporate Benefit Analysis, Inc., the pensions were, collectively, overfunded as at December 31, 2015, though the salaried plan had a small unfunded projected benefit obligation in the amount of \$181,499, which is to be paid next week. Neither plan has been wound up.

[8] On April 29, 2014, Zochem, as borrower, and Horsehead Holding, as guarantor, entered into a U.S. \$20 million secured revolving credit facility (the "Zochem Facility") with PNC Bank, National Association ("PNC"), as agent and lender. The Zochem Facility is secured by a first priority lien (subject to certain permitted liens) on substantially all of Zochem's tangible and intangible personal property, and a charge on the Brampton, Ontario premises of Zochem. Zochem's obligations to PNC are guaranteed by its parent, Horsehead Holding. On January 27, 2016, PNC assigned its position as lender under the Zochem Facility to an arm's length party. PNC remains the agent under Zochem Facility.

[9] Three out of four of Zochem's officers and three out of four of its directors are residents of Pennsylvania. Most of Zochem's officers are also officers of each of the other debtors. Zochem's statutorily required one Canadian director (representing 25% of the board) is a partner at the law firm Aird & Berlis LLP, the debtors' Canadian counsel. The only Zochem officer resident in Canada is the plant's general manager, who formerly was resident in Pennsylvania and employed by the U.S. debtors. Otherwise, all local functions associated with managing and operating the Zochem facility are performed from the debtors' Pittsburgh, Pennsylvania headquarters in the United States.

[10] Zochem and the U.S. debtors maintain a highly integrated business. Zochem's communications decisions, pricing decisions, and business development decisions are made in Pittsburgh. Zochem's accounts receivable, accounts payable and treasury departments are also located in Pittsburgh.

[11] Zochem operates a cash management system whereby:

- a. all receipts flow into a collection account at PNC in the United States, in part via a lockbox maintained at PNC;
- b. funds from the PNC collection account are transferred daily into an operating account at PNC in the United States; and
- c. funds are then transferred, as the debtors' treasury department (in Pittsburgh) determines is required, to a U.S. dollar operating account and a Canadian dollar operating account at Scotiabank in Canada to pay vendors and payroll, as applicable.

[12] The debtors in the United States have had limited access to liquidity since January 5, 2016 when their lender, Macquarie Bank Limited ("Macquarie"), issued a notice of default and froze certain of their bank accounts, including their main operating account. On January 6, 2016, Zochem's lender, PNC, also asserted an event of default. On January 13, 2016, PNC froze certain of the debtors' bank accounts associated with their Zochem operations, and demanded immediate payment of all outstanding obligations. PNC's demand was accompanied by a notice of intention to enforce security under section 244 of the *BIA*. Although the debtors entered into forbearance agreements with Macquarie and PNC, the term of those agreements expired on February 1, 2016.

[13] With the assistance of Lazard Middle Market LLC, the debtors reached agreement for a senior secured super priority debtor-in-possession credit facility in the amount of U.S. \$90

million from a group of Horsehead Holding secured noteholders. The DIP facility is intended to pay off the Zochem's obligations to PNC and to finance the debtors' operations and the chapter 11 proceedings. A condition of advance under the DIP facility is the granting of a super-priority charge over the assets of the debtors in Canada in favour of the DIP lender.

[14] On February 3, 2016 Judge Walrath of the U.S. Bankruptcy Court granted the following First Day Orders:

- (a) Joint Administration Order;
- (b) Foreign Representative Order;
- (c) Interim Cash Management Order;
- (d) Interim Wages and Benefits Order;
- (e) Interim Shippers and Lien Claimants Order;
- (f) Interim Utilities Order;
- (g) Interim Insurance Order;
- (h) Interim Prepetition Taxes Order;
- (i) Interim Critical Vendors Order; and
- (j) Interim Financing Order.

Analysis

[15] The purpose of Part IV of the *CCAA* is to effect cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada. See my comments on the *BIA* version of the same provisions in *MtGox Co., Ltd (Re)* (2014), 20 C.B.R. (6th) 307.

[16] Pursuant to section 46(1) of the *CCAA*, a foreign representative may apply to the court for recognition of a foreign proceeding in respect of which he or she is a foreign representative.

[17] Pursuant to section 47 of the *CCAA*, two requirements must be met for an order recognizing a foreign proceeding:

- a. the proceeding is a “foreign proceeding”; and
- b. the applicant is a “foreign representative” in respect of that foreign proceeding.

[18] Section 45(1) of the *CCAA* defines a “foreign proceeding” as any judicial proceeding, including interim proceedings, in a jurisdiction outside of Canada dealing with creditors’ collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company’s business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

[19] Section 45(1) of the *CCAA* defines a “foreign representative” to include one who is authorized in a foreign proceeding in respect of a debtor company to act as a representative in respect of the foreign proceeding. In the chapter 11 proceeding, the debtors applied to have Horsehead Holding Corp. named as the foreign representative. Judge Walrath for reasons I will discuss had concerns regarding the position of Zochem and directed that Zochem be named as the foreign representative.

[20] There is no question but that the chapter 11 proceeding is a foreign proceeding and that Zochem is a foreign representative. Thus it has been established that the chapter 11 proceeding should be recognized in this Court as a foreign proceeding.

[21] Once it has determined that a proceeding is a foreign proceeding, a court is required, pursuant to section 47(2) of the *CCAA*, to specify in its order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

[22] Section 45(1) of the *CCAA* defines a foreign main proceeding as a “foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests” (“COMI”). Section 45(2) of the *CCAA* provides that, in the absence of proof to the contrary, a debtor company’s

registered office is deemed to be its COMI. In circumstances where it is necessary to go beyond the s. 45 (2) registered office presumption, the following principal factors, considered as a whole, will indicate whether the location in which the proceeding has been filed is the debtor's centre of main interests:

- (1) the location is readily ascertainable by creditors,
- (2) the location is one in which the debtor's principal assets or operations are found;
and
- (3) the location is where the management of the debtor takes place.

[23] See *Lightsquared LP, Re*, (2012), 92 C.B.R. (5th) 321 (Ont. S.C.J. [Commercial List]). In *Lightsquared*, Justice Morawetz further stated:

26. In most cases, these factors will all point to a single jurisdiction as the centre of main interests. In some cases, there may be conflicts among the factors, requiring a more careful review of the facts. The court may need to give greater or less weight to a given factor, depending on the circumstances of the particular case. In all cases, however, the review is designed to determine that the location of the proceeding, in fact, corresponds to where the debtor's true seat or principal place of business actually is, consistent with the expectations of those who dealt with the enterprise prior to commencement of the proceedings.

[24] In this case, all of the factors do not point to a single jurisdiction as the COMI as Zochem's operations are located in Brampton, Ontario.

[25] In the present case, the applicants, supported by the proposed Information Officer, contend that Zochem's COMI is in the United States because:

- (i) all the debtors other than Zochem, comprising Zochem's corporate family, are incorporated, and have their registered head office, in the United States;
- (ii) all the debtors, including, Zochem are managed from Pittsburgh, Pennsylvania;

- (iii) all three of Zochem's "inside" directors (comprising 75% of the board) are residents of Pennsylvania;
- (iv) all of Zochem's officers are Pennsylvania residents, with the one exception of its general manager who is a former Pennsylvania resident and employee of the other debtors;
- (v) most of Zochem's officers are also officers of each of the other debtors;
- (vi) Zochem is operational in its focus and all local functions associated with managing and operating the Zochem facility are performed from the debtors' Pittsburgh headquarters;
- (vii) Zochem's communications decisions, pricing decisions, and business development decisions are made in Pittsburgh;
- (viii) Zochem's accounts receivable, accounts payable and treasury departments are located in Pittsburgh;
- (ix) Zochem's cash management system is centred in the United States;
- (x) Zochem's existing credit facilities are with a bank in Pittsburgh; and
- (xi) the debtors are all managed in the United States as an integrated group from a corporate, strategic, financial and management perspective.

[26] In this case it is perhaps an academic exercise to decide if the foreign proceeding is a main or non-main proceeding because it is appropriate for a stay to be ordered in either event. However, I am satisfied that for our purposes the applicants have established that the foreign proceeding is a foreign main proceeding.

[27] The only matter that is somewhat contentious is the recognition of the interim financing order (interim DIP order) made by Judge Walrath and the request for an order providing for a charge for the benefit of the DIP lender.

[28] Counsel for the Union went on the record as opposing the granting of a charge because although there will be no underfunding of the pension plans upon the granting of the DIP facility, it is possible in the future that there may be underfunding. The pension plans are not being wound up and there is no evidence at the moment that there is a risk of future underfunding or in what amount. In the circumstances I do not see the position of the Union as an impediment to the granting of the relief requested.

[29] When recognizing a financing order granted by a foreign court, consideration should be given as to whether there would be any material adverse interest to any Canadian interests. See *Re Xinergy Ltd.*, 2015 ONSC 2692 (Ont. S.C.J. [Commercial List]), at para 20.

[30] It was such a concern that led Judge Walrath to require changes to the interim DIP order that was applied for.

[31] The debtors sought interim approval from the U.S. Court of a senior secured super priority DIP credit facility in the amount of \$90 million offered by the DIP lenders. The Proposed DIP Facility contemplated that the liens granted in connection with the DIP Facility would be first-priority liens over a portion of the debtors' assets (including all of the assets of Zochem and the assets of the debtors subject to a first-priority lien in respect of the Senior Secured Notes), and second-priority liens with respect to the assets of the U.S. debtors that are presently subject to a first-priority lien in favour of Macquarie.

[32] Under the Proposed DIP Facility, the maximum amount permitted to be advanced on an interim basis was \$40 million, and it was contemplated that all of the debtors would be jointly and severally liable for all advances made. The contemplated uses of the initial \$40 million DIP advance were approximately \$18.5 million to pay out the Zochem Facility (including a \$1

million forbearance fee), with the balance of the advances being used to fund the operations and restructuring activities of the Debtors during the interim period until a final order approving the Proposed DIP Facility is sought from the U.S. Court in late February.

[33] At the hearing on February 3, 2016, Judge Walrath raised concerns about the position of Zochem, including her concern that no independent counsel for Zochem considered whether the DIP facility was in the best interest of Zochem as there was a conflict of interest in the three U.S. directors of Zochem approving Zochem to be jointly and severally liable for the entire DIP loan. Judge Walrath stated that she would consider a DIP facility that obligates Zochem only to the extent there is a direct benefit to Zochem, i.e. payment of its debt or a loan which they use in their operations for working capital.

[34] After an adjournment, the debtors and the DIP lenders agreed to certain interim amendments to the Proposed DIP Facility including a provision that the maximum liability of Zochem pursuant to the Proposed DIP Facility in the interim period would be capped at \$25 million (reduced from the prior contemplated maximum amount of \$40 million). Counsel for the debtors advised Judge Walrath that the \$25 million would reflect both the payoff of the PNC loan and reflect the fact that Zochem continues to have a funding need. The debtors also proffered testimony that

1. Zochem is approximately break-even on a cash flow basis, and was projected to be approximately \$1 million dollars cash flow positive over the following four week period, not accounting for any disruption in its business, including, for example, a notice that the debtors received from one of the largest vendors saying that they will reprice their business with the debtors, and that they will demand that the debtors pay one month in advance.
2. The break-even cash position did not take into account any bankruptcy related costs, all of which are allocated to Horsehead.

3. The debtors, in their business judgement, determined that it would not be prudent to operate the business on a break-even basis given business pressures, and liquidity from the Proposed DIP Facility would be available to Zochem to provide a liquidity cushion for the first four weeks of the case.

[35] What essentially Judge Walrath was told in answer to her concerns was that the difference between the approximately \$18.5 million needed to pay Zochem's loan facility with PNC and the \$25 million limit of Zochem's liability was to be used as a cushion for Zochem's cash flow needs. In the circumstances, and taken the proffered testimony that Zochem required a cushion, I suggested to the parties that a term of my order recognizing the U.S. interim financing order should be that the difference between the \$18.5 million and the \$25 million was in the interim to be used only for Zochem working capital requirements.

[36] After a break to permit the parties to discuss this situation, counsel for the DIP lenders said they were not prepared to lend on that basis and that they wished to adjourn the matter until the following Monday. The problem with this request was two-fold. The first was that it was a requirement of the DIP that an order be made by this Court by the date of the hearing on February 5, 2016, and without an order the debtors had no right to the DIP facility. The second was that the interim advance under the DIP was required to meet the payroll that day.

[37] The proposed Information Officer pointed out that it is estimated by the debtors that up to \$38.5 million will be drawn under the Proposed DIP Facility in the interim period to be used as follows:

- (a) approximately \$18.5 million will be used to repay the Zochem Facility (including the \$1 million forbearance fee payable to PNC);
- (b) approximately \$4 million will be used to pay fees associated with the Proposed DIP Facility; and

(c) approximately \$15.6 million will be used to finance the debtors' operations and restructuring activities pursuant to an agreed upon budget, including payment of professional fees, utility deposits and certain critical materials and freight vendors.

[38] In the circumstances I made the order recognizing the U.S. interim financing order, and granting the security requested for the DIP, which in my view met the tests as enunciated in the authorities, including the factors set out in *Indalex Ltd. (Re)*, (2009), 52 C.B.R. (5th) 61 for the guarantee of a Canadian debtor of its U.S. parent's obligations under the DIP facility, and as set out in *Crystallex International Corp. (Re)* (2012), 91 C.B.R. (5th) 169; *aff'd* (2012), 4 B.L.R. (5th) 1.

[39] However I stated at the hearing, and reiterate, that if in the interim period a request is made for further funding for working capital requirements of Zochem because not enough available cash was kept for that purpose, I would be extremely loathe to grant any such further relief.

[40] The directors of Zochem have fiduciary duties to Zochem. In *820099 Ontario Inc. v. Harold E. Ballard Ltd.* (1991), 3 B.L.R. (2d) 113 at 123; *aff'd* (1991), 3 B.L.R. (2d) 113 at 122 Justice Farley stated clearly that the directors' duties are to the corporation of which they are directors and they cannot just be yes men for the controlling shareholders:

It may well be that the corporate life of a nominee director who votes against the interest of his "appointing" shareholder will be neither happy nor long. However, the role that any director must play (whether or not a nominee director) is that he must act in the best interests of the corporation. If the interests of the corporation (and indirectly the interests of the shareholders as a whole) require that the director vote in a certain way, it must be the way that he conscientiously believes after a reasonable review is the best for the corporation. The nominee director's obligation to his "appointing" shareholder would seem to me to include the duty to tell the appointer that his requested course of action is wrong if the director in fact feels this way. Such advice, although likely initially unwelcome, may well be valuable to the appointer in the long run. The nominee director cannot be a "Yes man"; he must be an analytical person who can say "Yes" or "No" as the occasion requires (or to put it another way, as the corporation requires).

[41] I trust the directors of Zochem will keep these principles in mind. I direct that they be given a copy of these reasons for judgment.

[42] I also recognized all of the other First Day Orders made by Judge Walrath. They were appropriate and no opposition to their recognition was voiced.

A handwritten signature in dark ink, appearing to read "Newbould J.", is written over a horizontal line.

Newbould J.

Released: February 8, 2016

CITATION: Zochem Inc. (Re), 2016 ONSC 958
COURT FILE NO.: CV-16-11271-00CL
DATE: 20160208

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF CERTAIN
PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT WITH
RESPECT TO HORSEHEAD HOLDING CORP.,
HORSEHEAD CORPORATION, HORSEHEAD
METAL PRODUCTS, LLC, THE
INTERNATIONAL METALS RECLAMATION
COMPANY, LLC AND ZOICHEM INC.
(collectively, the "Debtors")

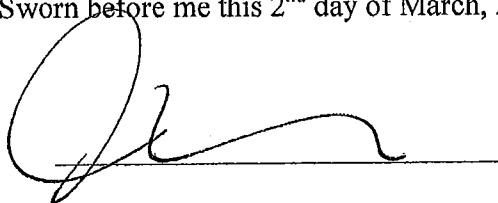
APPLICATION OF ZOICHEM INC. UNDER
SECTION 46 OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT

REASONS FOR JUDGMENT

Newbould J.

Tab 2(h)

Attached is Exhibit "H" Referred to in the
AFFIDAVIT OF JAMES M. HENSLER
Sworn before me this 2nd day of March, 2016

A handwritten signature in black ink, appearing to read "RAJOHN BOWER", is written over a horizontal line.

A Notary for the State of Delaware
RAJOHN BOWER
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires October 14, 2016

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

In re:)	Chapter 11
HORSEHEAD HOLDING CORP., <u>et al.</u> , ¹)	Case No. 16-10287 (CSS)
Debtors.)	(Joint _____ Administration Requested) <u>Jointly Administered</u>

**INTERIM~~FINAL~~ ORDER (A) AUTHORIZING
THE DEBTORS TO OBTAIN POSTPETITION
SECURED FINANCING PURSUANT TO SECTION 364 OF THE
BANKRUPTCY CODE, (B) AUTHORIZING THE DEBTORS TO
USE CASH COLLATERAL, (C) GRANTING ADEQUATE PROTECTION
TO THE PREPETITION SECURED PARTIES, (D) SCHEDULING A FINAL
HEARING, AND (E) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an interim order (~~this "Interim Order"~~) and a final order (the s "Final Order"):

- (I) authorizing the Debtors to obtain secured postpetition financing up to an aggregate principal amount of \$90,000,000 (the "DIP Facility") subject to and pursuant to the terms and conditions set forth in this ~~Interim~~Final Order and the *Senior Secured Superpriority Debtor-in-Possession Credit, Security and Guaranty Agreement*, dated as of February ~~1~~8, 2016 (substantially in the form attached hereto as Exhibit 1, and as hereafter amended, supplemented, or otherwise modified from time to time, the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Horsehead Holding Corp. (7377); Horsehead Corporation (7346); Horsehead Metal Products, LLC (6504); The International Metals Reclamation Company, LLC (8892); and Zochem Inc. (4475). The Debtors' principal offices are located at 4955 Steubenville Pike, Suite 405, Pittsburgh, Pennsylvania 15205.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion or the DIP Documents Credit Agreement (as defined herein), as applicable.

"DIP Credit Agreement"; together with all agreements, documents, and instruments executed and delivered in connection therewith, as hereafter amended, supplemented, or otherwise modified from time to time in accordance with this ~~Interim Order or the Final Order~~, the "DIP Documents"), among Horsehead Corporation, The International Metals Reclamation Company, Inc. ("INMETCO"), Horsehead Metal Products, LLC, Zochem Inc. ("Zochem") and Horsehead Holding Corp. (as borrowers, the "Borrowers"), Cantor Fitzgerald Securities, as administrative agent (in such capacity, together with its permitted successors and assigns, the "DIP Agent"), and the lenders from time to time a party to the DIP Facility (collectively, in such capacities, the "DIP Lenders" and, together with the DIP Agent, in such capacities, the "DIP Parties");

- (II) authorizing and directing the Debtors to execute, deliver, and perform their respective obligations under the DIP Credit Agreement and the other DIP Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;
- (III) authorizing the Debtors to (a) use Cash Collateral (as defined herein) and proceeds of the DIP Facility consistent with the Budget (as defined herein), including with respect to any permitted variances provided therein, and (b) provide adequate protection, solely to the extent provided herein, to the Prepetition Secured Parties (as defined herein) under: (i) that certain indenture for the 10.50% senior secured notes due 2017, dated

as of July 26, 2012 (as the same has been and may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Prepetition Senior Secured Notes Indenture"), between and among Horsehead Holding Corp., as issuer, the guarantors party thereto, U.S. Bank National Association, as trustee (in such capacity, the "Prepetition Senior Secured Notes Indenture Trustee") and as collateral agent (in such capacity, the "Prepetition Senior Secured Notes Collateral Agent"), in the principal amount of \$205,000,000 (the "Prepetition Senior Secured Notes" and holders of such Prepetition Senior Secured Notes, the "Prepetition Senior Secured Noteholders" and, together with all security, pledge, mortgages, and guaranty agreements and all other documentation executed in connection with the Prepetition Senior Secured Notes, each as amended, supplemented, or otherwise modified, the "Prepetition Senior Secured Notes Documents"); and (ii) that certain revolving credit facility, dated as of June 30, 2015, as amended, between and among Horsehead Corporation, INMETCO and Horsehead Metal Products, LLC as borrowers, Horsehead Holding Corp. and Chestnut Ridge Railroad Corp. as guarantors, Macquarie Bank Limited as administrative agent (in such capacity, and as collateral agent, the "Prepetition Macquarie Facility Agent" and, with the Prepetition Senior Secured Notes Collateral Agent, the "Prepetition Secured Agents") and as lender (in such capacity, the "Prepetition Macquarie Facility Lender" and, together with the Prepetition Macquarie Facility Agent, the "Prepetition

Macquarie Facility Parties” and, together with the Prepetition Senior Secured Noteholders, the Prepetition Senior Secured Notes Indenture Trustee and the Prepetition Senior Secured Notes Collateral Agent, the “Prepetition Secured Parties”), providing for borrowings of up to \$80,000,000 (the “Prepetition Macquarie Facility” and, together with all security, pledge, mortgages, and guaranty agreements and all other documentation executed in connection with the Prepetition Macquarie Facility, each as amended, supplemented, or otherwise modified, the “Prepetition Macquarie Facility Documents” and, together with the Prepetition Senior Secured Notes Documents, the “Prepetition Debt Documents”), solely to the extent of any diminution in the value of the Prepetition Secured Parties’ respective interests in the Prepetition Collateral (as defined herein) as of the Petition Date (as defined herein);

- (IV) ~~subject to entry of this Interim Order,~~ authorizing the Debtors to refinance in full obligations outstanding under the Zochem Facility with proceeds of the DIP Facility and to grant adequate protection, cash collateral, and other related relief;
- (V) granting (i) to the DIP Agent, for the benefit of itself and the DIP Lenders, priming liens, security interest and pledges on all of the DIP Collateral (as defined below) pursuant to sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, which Liens shall be senior to all liens, security interests and pledges, except that such liens, security interests and pledges shall be junior solely to (a) the Carve-Out, (b) the Macquarie Adequate

Protection Liens, (c) those Prepetition Macquarie Facility Liens (as defined herein) on the Facilities Priority Shared Collateral (as defined in the Intercreditor Agreement) securing the Prepetition Macquarie Facility, to the extent such liens are valid and perfected as of the Petition Date, (d) to PNC Bank, N.A. ("PNC") cash collateral securing the Zochem letter of credit, the Horsehead letter of credit, and the cash collateral granted in Paragraph 22 herein, (e) the Permitted ~~Pre-Petition~~Prepetition Liens set forth on Schedule 1.01(a) to the DIP Credit Agreement, and (f) with respect to the DIP Collateral located in Canada, the Administration Charge provided for in the Supplemental Order of the Canadian Court (as defined in the DIP Documents) in an amount not to exceed CAD\$100,000, but the DIP Claims and Liens shall be senior to any other charges granted by the Canadian Court in the Recognition Proceedings (as defined in the DIP Documents) and junior to cash collateral securing the Zochem letter of credit issued by PNC; and (ii) to the DIP Agent, for the benefit of the DIP Lenders, pursuant to section 364(c)(1) of the Bankruptcy Code, a superpriority administrative claim;

- (VI) ~~subject to entry of this Interim Order,~~ authorizing the DIP Agent to exercise remedies under the DIP Documents upon the occurrence and during the continuance of an Event of Default ~~(as defined in the DIP Credit Agreement);~~subject to the terms herein;
- (VII) ~~subject to entry of the Final Order,~~ authorizing the Debtors to grant liens to the DIP Lenders on the proceeds of Avoidance Actions (as defined

herein) but not on the Avoidance Actions themselves subject to the terms hereof;

- (VIII) ~~subject to entry of this Interim Order, and subject to entry of the Final Order with respect to the Prepetition Senior Secured Notes Parties,~~ waiving the Debtors' right to surcharge against the DIP Collateral (as defined herein) or the Prepetition Senior Secured Notes Collateral (as defined herein) pursuant to section 506(c) of title 11 of the United States Code (the "Bankruptcy Code") to the extent provided herein;
- (IX) ~~subject to entry of this Interim Order, and subject to entry of the Final Order with respect to the Prepetition Senior Secured Notes Parties,~~ waiving any application of the "equities of the case" exception under section 552(b) of the Bankruptcy Code to the Prepetition Senior Secured Notes Parties, the DIP Agent, and the DIP Lenders with respect to (i) proceeds, products, offspring or profits of any of the Prepetition Senior Secured Notes Collateral (as defined herein), including the Cash Collateral, or the DIP Collateral, as applicable, or (ii) the extension of the Adequate Protection Liens (as defined herein) to cover proceeds of the Prepetition Senior Secured Notes Collateral;
- (X) modifying the automatic stay under section 362 of the Bankruptcy Code to use cash collateral pledged to secure the letter(s) of credit to fund the draws from time to time on the letter(s) of credit or to reimburse the issuing bank to reimburse itself for any draws on the letter(s) of credit from time to time;
- (XI) scheduling at the final hearing (the "Final Hearing") on the Motion ~~for a date that is before the twenty-first (21st) day after the Petition Date to consider entry of the~~

Final Order authorizing the borrowings under, and the Debtors' entry into, the DIP Credit Agreement on a final basis and approval of notice procedures with respect thereto;

(XII) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of this ~~Interim~~Final Order; and

(XIII) waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this ~~Interim~~Final Order.

The interim hearing (the "Interim Hearing") for this Court to consider entry of this ~~Interim Order granting the relief requested in~~ by the Motion on an interim basis having been held by this Court on February 3, 2016; and upon the record made by the Debtors at the Interim Hearing (including the First Day Declaration, the Hensler Declaration, and the Torgove Declaration); ~~and this Court having heard and resolved or overruled all objections to the relief requested in the Motion; and it appearing that the relief requested on an interim and evidence adduced at the Interim Hearing); and the Court having entered an order granting the relief requested by the Motion on an interim basis on February 4, 2016 [Docket No. 81] (the "Interim Order"); and the Final Hearing for this Court to consider entry of this Final Order granting the relief requested by the Motion on a final basis having been held; and the Court having considered the objections raised with respect to the relief requested by the Motion and the reply filed by the Debtors on February 29, 2016 [Docket No. 222] (the "Reply"); upon the record made by the Debtors at the Final Hearing (including the Supplemental Torgove Declaration and the Supplemental Boates Declaration (each as defined in the Reply)); and this Court having overruled all objections to the relief requested in the Motion to the extent not resolved by the~~

Debtors; and it appearing that the relief requested on a final basis in the Motion is in the best interests of the Debtors, their estates and creditors; and after due deliberation and consideration and sufficient cause appearing therefor,

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *The Motion.* The Motion is granted on ~~an interim~~ final basis as set forth herein. Any objection to the Motion to the extent not withdrawn or resolved is hereby overruled.

2. *Jurisdiction.* This Court has core jurisdiction over the above-captioned chapter 11 cases commenced on February 2, 2016 (the "Petition Date"), the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. *Notice.* Telephonic, facsimile notice or overnight mail notice of the Interim Hearing and the proposed entry of this ~~Interim~~ Final Order has been provided to: (a) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"); (b) counsel to the official committee of unsecured creditors appointed in these chapter 11 cases (the "Creditors' Committee"); (c) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (d) the United States Environmental Protection Agency; (e) the state attorneys general for states in which the Debtors conduct business; (f) the Office of the United States Attorney for the District of Delaware; (g) the Internal Revenue Service; (h) the Securities and Exchange Commission; (i) counsel to the Prepetition Macquarie Facility Parties; (j) the Prepetition Senior Secured Notes Indenture Trustee; (k) ~~the indenture trustee under the Debtors' 9.00% senior unsecured notes~~; (l) the indenture trustee under the Debtors' 9.00% senior unsecured notes; (m) the indenture trustee under the Debtors' 3.80% convertible senior

notes; (4m) Banco Bilbao Vizcaya Argentaria, S.A.; (mn) counsel to PNC Bank, National Association; (no) counsel for the DIP Lenders and the Ad Hoc Group of Prepetition Senior Secured Noteholders; (op) all parties known, after reasonable inquiry, to have asserted a security interest in the Prepetition Collateral; (pg) Richter Advisory Group Inc. in its capacity as ~~proposed~~ information officer in the Debtors' foreign recognition proceedings; (qr) the Financial Services Commission of Ontario (FSCO); (rs) Unifor Local 591G; (st) LIFTCAPITAL Corporation; (tu) Liftow Limited; (uv) counsel to the DIP Agent; and (vx) any party that has requested notice pursuant to Bankruptcy Rule 2002. Requisite notice of the Motion and the relief requested thereby and this ~~Interim~~Final Order has been provided in accordance with Bankruptcy Rule 4001, and no other notice need be provided for entry of this ~~Interim~~Final Order.

4. *Debtors' Stipulations (Prepetition Senior Secured Notes Obligations).* Without prejudice to the rights of any other party to assert Claims and Defenses subject to Paragraph 25 hereof and prior to expiration of the Challenge Period (as defined herein) and the Retained Claims Challenge Period (as defined herein), each Debtor (other than Zochem) admits, stipulates, and agrees that:

(a) as of the Petition Date, ~~the~~ each Debtor (other than Zochem) is unconditionally indebted and liable to the Prepetition Senior Secured Notes Parties (as defined herein), without defense, counterclaim or offset of any kind, for all of the obligations under the Prepetition Senior Secured Notes Documents (together with the Note Guarantees (as defined below), including the \$205,000,000 issued pursuant to the Senior Secured Notes Indenture, plus accrued and unpaid interest and fees in accordance with the terms of the Prepetition Senior Secured Notes Documents, the "Prepetition Senior Secured Notes Obligations"); the Prepetition Senior Secured Notes Obligations

are unconditionally and irrevocably guaranteed by the Subsidiary Guarantors (as defined in the Prepetition Senior Secured Notes Indenture) (the "Note Guarantees") and, subject to certain permitted liens, secured by certain first and second priority security interests in and liens (collectively, the "Prepetition Senior Secured Notes Liens") on certain of the Debtors' assets described in the Prepetition Senior Secured Notes Documents (collectively, the "Prepetition Senior Secured Notes Collateral" and, with all assets of the Debtors and Debtors' subsidiaries (other than Zochem) subject to security interests and liens, the "Prepetition Collateral");

(b) the Prepetition Senior Secured Notes Obligations including, without limitation, the Note Guarantees, constitute legal, valid, binding, non-avoidable obligations of each of the Debtors (other than Zochem) and, subject to Paragraphs 4(g) and 2425 hereof, the Prepetition Senior Secured Notes Liens are valid, binding, perfected, non-avoidable, and enforceable liens on and security interests in the Prepetition Senior Secured Notes Collateral;

(c) (i) no portion of the Prepetition Senior Secured Notes Obligations, the Prepetition Senior Secured Notes Documents, or the transactions contemplated thereby are subject to contest, attack, objection, recoupment, defense, setoff, counterclaim, avoidance, recharacterization, reclassification, reduction, disallowance, recovery, disgorgement, attachment, "claim" (as defined by section 101(5) of the Bankruptcy Code), impairment, or subordination (whether equitable, contractual, or otherwise) or other challenge of any kind pursuant to the Bankruptcy Code or applicable nonbankruptcy law (including without limitation, under sections 502(d) or 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act,

Uniform Fraudulent Conveyance Act or similar statute or common law) or any other applicable U.S. or Canadian law; and (ii) the Debtors (other than Zochem) do not have any claims, challenges, counterclaims, causes of action, defenses, recoupment, disgorgement, or setoff rights arising out of, relating to or in connection with the Prepetition Senior Secured Notes Obligations or the Prepetition Senior Secured Notes Documents, whether arising under the Bankruptcy Code, applicable nonbankruptcy law, or any other applicable U.S. or Canadian law, on or prior to the date hereof, against the Prepetition Senior Secured Noteholders, the Prepetition Senior Secured Notes Collateral Agent or the Prepetition Senior Secured Notes Indenture Trustee (together, the "Prepetition Senior Secured Notes Parties"), and, subject to Paragraphs 4(g) and 2425 hereof, the Debtors (other than Zochem) each irrevocably waive, for themselves, and their subsidiaries, any right to challenge or contest in any way the perfection, validity, and enforceability of the Prepetition Senior Secured Notes Liens or the validity or enforceability of the Prepetition Senior Secured Notes Obligations and the Prepetition Senior Secured Notes Documents;

(d) the Prepetition Senior Secured Notes Obligations constitute allowed claims for all purposes between and against the Debtors' estates (other than Zochem) and neither the Prepetition Senior Secured Notes Indenture Trustee, the Prepetition Senior Secured Notes Collateral Agent, nor any Prepetition Senior Secured Noteholder is required to file a proof of claim with regard to the Prepetition Senior Secured Notes Obligations or the Prepetition Senior Secured Notes Liens, and any order entered by this Court in relation to the establishment of a bar date for any claims (including administrative expense claims) in any of these chapter 11 cases or subsequent chapter 7

or chapter 11 cases (each, a "Successor Case") shall not apply to the Prepetition Senior Secured Notes Parties with respect to the Prepetition Senior Secured Notes Obligations (including the Prepetition Senior Secured Notes Liens);

(e) the Prepetition Senior Secured Notes Liens, security interests, and rights granted to the Prepetition Senior Secured Notes Parties pursuant to, and in connection with, the Prepetition Senior Secured Notes Documents, including the Prepetition Senior Secured Notes Indenture and that certain Intercreditor Agreement, dated as of June 30, 2015 (as amended, restated, supplemented or otherwise modified, the "Intercreditor Agreement") between and among the Prepetition Senior Secured Notes Collateral Agent and the Prepetition Senior Secured Notes Indenture Trustee, and Macquarie Bank Limited ~~in its capacity, as collateral agent to the Prepetition Macquarie Facility,~~ which grants first priority liens (subject to permitted liens) over the Shared Collateral (as defined in the Intercreditor Agreement) other than the Facilities Priority Shared Collateral to the Prepetition Senior Secured Notes ~~Liens~~Collateral Agent, are, subject to Paragraphs 4(g) and ~~24~~25 hereof, valid, binding, perfected, enforceable, non-avoidable liens and security interests on the Prepetition Senior Secured Notes Collateral, senior in priority over any and all other liens on the Prepetition Senior Secured Notes Collateral other than the Prepetition Macquarie First Priority Liens (as defined herein), subject to any permitted exceptions under the Prepetition Senior Secured Notes Documents, to the extent such permitted exceptions were valid, properly perfected, non-avoidable liens senior in priority to the liens and security interests of the Prepetition Senior Secured Notes Parties ~~on~~as of the Petition Date;

(f) certain of the Debtors' cash (including, without limitation, any and all accounts referred to in the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management Systems, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue to Perform Intercompany Transactions, and (II) Granting Related Relief* [Docket No. 6])) (the "Cash Management Motion")), other than with respect to Zochem, and any amounts generated by the collection of accounts receivable, the exercise of letter of credit rights, the sale of inventory, or other disposition of the Prepetition Collateral existing as of the Petition Date, the proceeds of any of the foregoing and the Prepetition Collateral is cash collateral within the meaning of section 363(a) of the Bankruptcy Code (collectively, the "Cash Collateral") provided that the Cash Collateral shall not include the PNC L/C Cash Collateral (as defined herein), the Payoff Indemnity Account (as defined herein), and the rights of PNC to charge the Debtors' deposit accounts for applicable fees and charges in accordance with applicable depository account agreements and/or cash management agreements (collectively, "PNC Cash Collateral"); and

(g) the Prepetition Senior Secured Noteholders hold legal, valid, binding and enforceable liens securing certain real property located in Mooresboro, North Carolina, granted pursuant to that certain Future Advances Deed of Trustee, Assignment of Rents and Leases and Financing Statement from Horsehead Metal Products Inc. to First American Title Insurance Company, Inc. for the benefit of U.S. Bank N.A., as collateral agent, dated as of October 22, 2012 and any subsequently filed mortgages (the "Mooresboro Senior Secured Notes Lien"), and any claims brought with respect to the

Mooresboro Senior Secured Notes Lien (the "Retained Claims") are subject to the Retained Claims Challenge Period (as defined herein).

5. [Reserved].

5.6. Debtors' Stipulations (Zochem Facility). Without prejudice to the rights of any other party to assert Claims and Defenses subject to Paragraph 25 hereof and prior to expiration of the Challenge Period, each Debtor admits, stipulates, and agrees that:

(a) as of the Petition Date, Zochem, as borrower, and Horsehead Holding, as guarantor, are unconditionally indebted and liable, without defense, counterclaim or offset of any kind, for all of the obligations under the Zochem Facility, totaling not less than \$18,519,100.18, plus accrued and unpaid interest and fees in accordance with the terms of the Zochem Credit Agreement (the "Zochem Debt Obligations") and the Other Zochem Documents³; the Zochem Debt Obligations are secured by, subject to permitted liens, certain first priority security interests in and liens on certain of Zochem's assets as described in the Zochem Credit Agreement and the Other Zochem Documents (collectively, the "Zochem Facility Collateral" and, with all assets of Zochem and any of its subsidiaries subject to security interests and liens, the "Zochem Collateral"), pursuant to the Zochem Credit Agreement and the Other Zochem Documents;

(b) the Zochem Debt Obligations constitute legal, valid, binding, non-avoidable obligations of each of the Horsehead Holding and Zochem, and the Zochem Debt Obligations are secured by valid, binding, perfected, non-avoidable, and enforceable liens on and security interests in the Zochem Collateral;

³ The "Other Zochem Documents" means the Other Documents as defined in the Zochem Credit Agreement.

(c) (i) no portion of the Zochem Debt Obligations, the Zochem Credit Agreement, or the Other Zochem Documents, or the transactions contemplated thereby are subject to contest, attack, objection, recoupment, defense, setoff, counterclaim, avoidance, recharacterization, reclassification, reduction, disallowance, recovery, disgorgement, attachment, "claim" (as defined by section 101(5) of the Bankruptcy Code), impairment, or subordination (whether equitable, contractual, or otherwise) or other challenge of any kind pursuant to the Bankruptcy Code or applicable nonbankruptcy law (including without limitation, under sections 502(d) or 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law) or any other applicable U.S. or Canadian law; and (ii) Horsehead Holding and Zochem do not have any claims, challenges, counterclaims, causes of action, defenses, recoupment, disgorgement, or setoff rights arising out of, relating to, or in connection with, the Zochem Debt Obligations, the Zochem Credit Agreement, or the Other Zochem Obligations, whether arising under the Bankruptcy Code, applicable nonbankruptcy law, or any other applicable U.S. or Canadian law, on or prior to the date hereof, against PNC Bank, N.A., in its capacity as administrative and collateral agent under the Zochem Facility (in such capacity, the "Zochem Agent") and the current and/or prior lenders under the Zochem Facility as of the Petition Date (the "Zochem Lenders", and, together with the Zochem Agent, the "Zochem Secured Parties"), and (iii) the Debtors waive any right to challenge or contest in any way the perfection, validity, and enforceability of the liens securing the Zochem Debt Obligations or the validity or enforceability of the

Zochem Debt Obligations, the Zochem Credit Agreement, and the Other Zochem Documents;

(d) the Zochem Debt Obligations constitute allowed claims for all purposes between and against Zochem and Horsehead Holdings, and neither the Zochem Agents nor any Zochem Lender is required to file a proof of claim in any of the Debtors' chapter 11 cases with regard to the Zochem Debt Obligations or the liens securing such obligations, and any order entered by this Court in relation to the establishment of a bar date for any claims (including administrative expense claims) in any Successor Case shall not apply to the Zochem Agent and the Zochem Lenders with respect to the Zochem Debt Obligations (including the liens securing such obligations); and

(e) PNC has issued certain letters of credit for the benefit of the Debtors secured by the PNC L/C Cash Collateral (as defined herein), and holds a first priority, perfected secured claim in such cash collateral, and PNC is not required to file a proof of claim in any of the Debtors' chapter 11 cases with regard to such secured claim and any order entered by this Court in relation to the establishment of a bar date for any claims (including administrative expense claims) in any Successor Case shall not apply to the PNC with respect to such secured claim (including the liens securing such obligations).

6.7. Debtors' Stipulations (Prepetition Unsecured Notes Indenture). Without prejudice to the rights of any other party to assert Claims and Defenses subject to Paragraph 25 hereof and prior to expiration of the Challenge Period, the Debtors (other than Zochem) admit, stipulate, and agree that:

(a) Pursuant to that certain indenture, dated as of July 29, 2014 (as the same has been and may be amended, restated, supplemented or otherwise modified from time

to time in accordance with the terms thereof, the "Prepetition Unsecured Notes Indenture" and, together with all other agreements, instruments, notes, guaranties and other documents executed in connection therewith, the "Prepetition Unsecured Notes Documents"), between and among Horsehead Holding Corp., as issuer, the Subsidiary Guarantors (as defined therein), and U.S. Bank National Association, as trustee (in such capacity, the "Prepetition Unsecured Notes Indenture Trustee"), Horsehead Holding Corp. issued the 9.00% senior unsecured notes due 2020 (the "Prepetition Unsecured Notes" and, the holders of such Prepetition Notes, the "Prepetition Unsecured Noteholders" and, together with the Prepetition Unsecured Notes Indenture Trustee, the "Prepetition Unsecured Notes Parties" and, together with the Prepetition Senior Secured Notes Parties, the "Prepetition Notes Parties"), and as of the Petition Date, \$40,000,000 in aggregate principal amount of Prepetition Unsecured Notes, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the Prepetition Unsecured Notes Documents, including but not limited to, accrued and unpaid interest, any fees, expenses and disbursements as provided under the Prepetition Unsecured Notes Documents (collectively, the "Prepetition Unsecured Notes Obligations" and, together with the Prepetition Senior Secured Notes Obligations, the "Prepetition Notes Obligations") was outstanding;

(b) (i) the Prepetition Unsecured Notes Obligations constitute legal, valid, enforceable non-avoidable and binding obligations of Horsehead Holding Corp., as issuer, and each of the guarantors party thereto; (ii) no offsets, defenses or counterclaims to the Prepetition Unsecured Notes Obligations exist; (iii) no portion of the Prepetition Unsecured Notes Obligations is subject to contest, attack, objection, recoupment,

defense, setoff, counterclaim, avoidance, recharacterization, reclassification, reduction, disallowance, recovery, disgorgement, attachment, "claim" (as defined by section 101(5) of the Bankruptcy Code), impairment, or subordination (whether equitable, contractual, or otherwise) or other challenge of any kind pursuant to the Bankruptcy Code, applicable nonbankruptcy law, or any other applicable U.S. or Canadian law (including without limitation, under sections 502(d) or 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute, or common law) or any other applicable U.S. or Canadian law; (iv) the Prepetition Unsecured Notes Documents are valid and enforceable by the Prepetition Unsecured Notes Parties against Horsehead Holding Corp. and the Subsidiary Guarantors (as defined therein); and (v) the Debtors and their estates have no claim, objection, challenge or cause of action against the Prepetition Unsecured Notes Parties or any of their respective affiliates, parents, subsidiaries, partners, controlling persons, agents, attorneys, advisors, professionals, officers, directors and employees, whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Bankruptcy Code), arising out of, relating to or in connection with the Prepetition Unsecured Notes Indenture or the transactions contemplated thereunder or the Prepetition Unsecured Notes Obligations, including without limitation, any right to assert any disgorgement or recovery;

(c) the Prepetition Unsecured Notes Obligations constitute allowed claims for all purposes between and against the Debtors' estates (other than Zochem), and neither the Prepetition Unsecured Notes Indenture Trustee, nor any Prepetition Unsecured

Noteholder, is required to file a proof of claim with regard to the Prepetition Unsecured Notes Obligations, and any order entered by this Court in relation to the establishment of a bar date for any claims (including administrative expense claims) in any of these chapter 11 cases or any Successor Case shall not apply to the Prepetition Unsecured Notes Indenture Trustee or the Prepetition Unsecured Noteholders with respect to the Prepetition Unsecured Notes Obligations.

7.8. *Findings Regarding the DIP Facility and the Use of Prepetition Collateral.*

(a) The Debtors require the DIP Facility and the use of Cash Collateral, *inter alia*, to repay certain outstanding debt obligations as set forth in the DIP Credit Agreement (including the Zochem Debt Obligations), for general corporate purposes, to pay administrative expenses for goods and services in the ordinary course of business in each case as permitted by the DIP Documents and the Budget (including any permitted variances), and to pay fees and expenses and other obligations arising from the DIP Facility and as set forth in the DIP Documents.

(b) The Debtors are unable to obtain financing on more favorable terms and conditions, both with regard to the DIP Facility itself as well as with regard to support for the Debtors' overall restructuring efforts, from sources other than the DIP Lenders pursuant to, and for the purposes set forth in, the DIP Documents. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also not able to obtain credit secured by a lien allowable only under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without granting the DIP Lenders liens junior to the Macquarie Adequate Protection Liens and the Prepetition Macquarie First Priority Liens (each as

described herein), and certain other obligations as further described herein, and further granting the DIP Lenders the DIP Superpriority Claims (as defined herein) on the terms and conditions set forth in this ~~Interim~~Final Order and the DIP Documents. In addition, the Debtors are unable to obtain credit for borrowed money without the Debtors granting to the DIP Lenders priming liens under section 364(d)(1) of the Bankruptcy Code over the Senior Secured Notes Replacement Adequate Protection Liens (as defined herein) and the Prepetition Senior Secured Notes Liens, on the terms and conditions set forth in this ~~Interim~~Final Order and the DIP Documents.

(c) The DIP Lenders have indicated a willingness to provide financing to the Debtors subject to entry of this ~~Interim~~Final Order, and conditioned upon the entry of the is Final Order, including findings that such financing is essential to the Debtors' estates, the DIP Lenders are extending credit to the Debtors as set forth in the DIP Facility in good faith, and that the DIP Superpriority Claims, security interests, liens, rights and other protections granted to the DIP Lenders and the DIP Agent will have the protections provided in section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument or reconsideration of this ~~Interim Order~~, the Final Order or any other order.

(d) All of the Debtors have received and will receive fair and reasonable consideration in exchange for access to the DIP Facility and all other financial accommodations provided under the DIP Documents and this ~~Interim~~Final Order. The terms of the DIP Documents are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

(e) The terms of the DIP Documents and the use of the Prepetition Collateral, including the Cash Collateral, including, without limitation, the interest rates and fees applicable, and intangible factors relevant thereto, are more favorable to the Debtors than those available from alternative sources. Based upon the record before this Court, the DIP Documents have been negotiated in good faith and at arm's-length among the Debtors, the DIP Lenders, and the DIP Agent. The DIP Facility and other financial accommodations made to the Debtors by the DIP Agent and the DIP Lenders pursuant to the DIP Documents and this ~~Interim~~Final Order (collectively, the "DIP Obligations") shall be deemed to have been extended by the DIP Agent and the DIP Lenders in good faith, as that term is used in sections 363(m) and 364(e) of the Bankruptcy Code, and in express reliance upon the protections set forth therein, and the DIP Agent and the DIP Lenders shall be entitled to all protections afforded thereby.

(f) ~~Good cause has been shown for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2).~~ The authorization granted herein to enter into the DIP Documents, to continue using Cash Collateral and to obtain funds under the DIP Facility, including on a priming basis as set forth herein, is necessary to avoid immediate and irreparable harm to the Debtors and their estates. Entry of this ~~Interim~~Final Order is in the best interests of the Debtors, their estates and creditors because it will, among other things, allow for access to the financing necessary for the Debtors to, among other things, maintain business relationships with vendors, suppliers, customers and other parties, permit the orderly continuation of their businesses and pay for certain costs and expenses related to the Debtors' chapter 11 cases.

8.9. Findings Regarding Adequate Protection.

(a) The DIP Facility contemplated hereby provides for a priming of certain of the Prepetition Secured Parties' respective interests in the Prepetition Collateral pursuant to section 364(d) of the Bankruptcy Code. The Prepetition Secured Parties are entitled to the adequate protection as set forth herein, including, with respect to the Prepetition Secured Parties, pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code. Based on the DIP Motion, the DIP Motion Declarations and on the record presented to the Court at the Interim Hearing and at the Final Hearing, the terms of the proposed adequate protection arrangements and the DIP Facility contemplated hereby are fair and reasonable, reflect the Debtors' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the consent of the Prepetition Secured Parties.

9.10. Authorization of the DIP Facility and the DIP Documents.

(a) The Debtors are hereby authorized to enter into, deliver, and perform under, the DIP Documents and, in the case of the Borrowers, to borrow, subject to the terms and conditions of (1) this ~~Interim~~Final Order, (2) the DIP Documents and any related guarantees as contemplated by the DIP Documents, and (3) the Budget, the DIP Facility in an aggregate principal amount of \$90,000,000 in the increments and for the purposes set forth in the DIP Documents, including repayment of certain debt obligations and for working capital and other general corporate purposes of the Debtors consistent with the Budget (including permitted variances).

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to perform all acts (and to the extent such acts have already occurred, such acts are hereby ratified) and to execute and deliver all

instruments and documents that the DIP Lenders and DIP Agent determine to be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Documents including, without limitation:

(i) the execution, delivery and performance of the DIP Documents;

(ii) the non-refundable payment to the DIP Agent, or the DIP Lenders, as the case may be, of the fees, expenses, indemnification obligations and other amounts set forth in the DIP Documents including, without limitation:

(1) 14% interest per annum paid in cash, monthly in arrears on the first day of each such month; (2) upon the occurrence and during the continuance of any Event of Default, at the election of the Required Lenders ~~(as defined in the DIP Documents)~~, interest in cash (a) in the case of principal or interest on any loan at a rate of 2% per annum plus the rate otherwise applicable to such loan and (b) in the case of any other amount, at a rate equal to the interest rate applicable to outstanding loans plus 2% per annum; (3) 4.5% of the aggregate commitments under the DIP Facility to each DIP Lender upon the Closing Date (x) in cash as a commitment fee or (y) as original issue discount (the "Commitment Fee"); (4) an unused commitment fee of 4% per annum of the aggregate unfunded commitments under the DIP Facility, payable to the DIP Lenders in cash monthly in arrears on the first day of each such month; (5) a repayment premium equal to 2.5% of the principal amount of loans under the DIP Facility that are repaid; and (6) reasonable and documented out of pocket costs and expenses as may be due from time to time as provided in this ~~Interim~~Final Order and in the DIP Documents, including, without limitation, reasonable attorneys' fees and other

financial advisory, consultant, "seasoning" and professional fees and disbursements as provided in the DIP Documents; and

(iii) the performance of all other acts required under or in connection with the DIP Documents.

(c) The DIP Documents constitute valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with the terms of this ~~Interim~~Final Order and the DIP Documents. No obligation, payment, transfer or grant of security by the Debtors under the DIP Documents (or, as it relates to the DIP Facility, this ~~Interim~~Final Order) shall be subject to contest, attack, objection, recoupment, defense, setoff, counterclaim, avoidance, recharacterization, reclassification, reduction, disallowance, recovery, disgorgement, attachment, "claim" (as defined by section 101(5) of the Bankruptcy Code), impairment, or subordination (whether equitable, contractual, or otherwise) or other challenge of any kind pursuant to the Bankruptcy Code or applicable nonbankruptcy law (including without limitation, under sections 502(d) or 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law).

~~40.11.~~ Budget. Attached as Exhibit 2 hereto and incorporated by reference herein is the 13-week budget setting forth the Debtors' projected receipts, disbursements and accrued Professional Fees (as defined herein) (the "Budget"). Subject to the permitted variances as set forth in the DIP Documents, the use of proceeds of the DIP Facility and Cash Collateral shall in all cases be used consistently with this ~~Interim~~Final Order, and the Budget ~~and any permitted variances therein.~~ The DIP Agent, the DIP Lenders, and the Prepetition Macquarie Facility ~~Lenders~~Parties shall have no obligations with respect to the Debtors' use of the Cash Collateral.

The consent of the DIP Agent and the applicable DIP Lenders to the Budget shall not be construed as consent to the use of any Cash Collateral during the continuance of an Event of Default, regardless of whether the aggregate funds shown on the Budget have been expended. The Debtors shall have an obligation to deliver, on or prior to the third Business Day after (i) the end of every week, a Variance Report, and (ii) the end of every other week, an updated Budget for the rolling 13-week period commencing with the first day of the week in which such delivery occurs, subject to any applicable grace periods provided in the DIP Credit Agreement (but without duplication of such grace periods); which Variance Report and updated Budget the Debtors shall provide contemporaneously (for informational purposes only) to counsel to each of the Creditors' Committee and Prepetition Macquarie Facility Agent; provided that, such updated Budget shall not become the "DIP Budget" for purposes of the DIP Facility unless such updated Budget is approved by the Required Lenders in their sole discretion. Notwithstanding anything herein to the contrary, with respect to the updated Budget to be delivered on or prior to the third Business Day after the tenth week covered by the initial Budget (subject to any applicable grace period provided in the DIP Credit Agreement), delivery of an updated Budget that is not satisfactory to the Required Lenders for whatever reason, in their sole discretion, at such time shall constitute an Event of Default under the DIP Facility, subject to any applicable grace periods provided in the DIP Credit Agreement (but without duplication of such grace periods). Notwithstanding anything to the contrary herein or elsewhere, nothing in this ~~Interim~~Final Order nor any other DIP Document shall be construed as a cap or limitation on the accrued amounts benefitting from the Carve-Out.

11.12. DIP Claims and Liens. As security for the DIP Obligations, the DIP Lenders are hereby granted the following claims, liens, security interests, rights, and benefits, in each case,

and notwithstanding anything herein to the contrary in each case subject and subordinate to (i) the Carve-Out (as defined herein), (ii) the Prepetition Macquarie First Priority Liens, (iii) the Macquarie Adequate Protection Liens (as defined herein), (iv) the Macquarie Adequate Protection Claims (as defined herein); and (v) with respect to all DIP Collateral of the Debtors located in Canada, the Administration Charge (defined below); (including paragraphs (a), (b), and (c) below, collectively, the "DIP Claims and Liens");

(a) *DIP Superpriority Claims.* An allowed superpriority administrative expense claim pursuant to sections 364(c)(1), 503(b), 507(a), and 507(b) of the Bankruptcy Code on account of the DIP Obligations (the "DIP Superpriority Claim"), subject only to the Carve-Out, the Macquarie Adequate Protection Claims, and, with respect to all DIP Collateral of the Debtors located in Canada, the Administration Charge. The DIP Superpriority Claim shall be an allowed claim against each of the Debtors (jointly and severally) with priority over any and all administrative expenses, adequate protection and other diminution claims (in each case other than the Carve Out, the Macquarie Adequate Protection Claims, and with respect to all DIP Collateral of the Debtors located in Canada, the Administration Charge), unsecured claims, and all other claims asserted against the Debtors now existing or hereafter arising of any kind whatsoever, including all other administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all other administrative expenses or other claims arising under any other provision of the Bankruptcy Code, including, or ordered pursuant to, sections 105, 326, 327, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546, 726, 1113, and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual

lien, levy, or attachment, payable from and with recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof; provided that (x) the DIP Superpriority Claim will have recourse to proceeds of Avoidance Actions (as defined herein) only upon entry of the Final Order; provided however, that the DIP Superpriority Claim shall not have recourse to, or otherwise collect from, proceeds of Avoidance Actions prosecuted against any trade creditor of one or more of the Debtors and (y) the DIP Superpriority Claim will not have recourse to proceeds of the Excluded Accounts (as defined in the DIP Credit Agreement).

(b) *DIP Liens on DIP Collateral.* Except as set forth herein, and pursuant to sections 364(c)(2), 363(c)(2), and 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected, non-avoidable, first priority, (i) pledge of (a) all promissory notes owned by the Debtors and (b) all capital stock owned by the Debtors and (ii) senior, priming lien on, and security interest in, all property, except as otherwise set forth herein, whether now owned or hereafter acquired or existing and wherever located, of each Debtor and each Debtor's "estate" (as created pursuant to section 541(a) of the Bankruptcy Code), of any kind or nature whatsoever, real or personal, tangible or intangible, and now existing or hereafter acquired or created, including, without limitation, all cash, accounts, inventory, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, accounts receivable, receivables and receivables records, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, owned real estate, real property leaseholds, fixtures, deposit accounts, commercial tort claims, securities accounts, instruments, investment property, letter-of-credit rights, supporting obligations, machinery and

equipment, real property, leases (and proceeds from the disposition thereof), all of the issued and outstanding capital stock of each Debtor, other equity or ownership interests, including, without limitation, a first priority priming lien on the equity interests of Horsehead Zinc Recycling, LLC, equity interests in subsidiaries (including non-wholly owned and non-Debtor subsidiaries), money, investment property, upon entry of the Final Order, any proceeds of causes of action under chapter 5 of the Bankruptcy Code (collectively, the "Avoidance Actions," and, together with the foregoing in clauses (i) and (ii), the "DIP Collateral", and the liens, pledges, and security interests granted pursuant to this Paragraph 12(b), the "DIP Liens"), but ~~the~~ not the Avoidance Actions themselves, and the DIP Collateral shall further exclude (x) the Excluded Collateral and ~~(y) the PNC,~~ (y) any proceeds of Avoidance Actions prosecuted against any trade creditor of one or more of the Debtors, and (z) the PNC Cash Collateral (including the PNC L/C Cash Collateral⁴); provided that: (i) the DIP Liens shall be subordinate to (a) the Carve-Out, (b) the Macquarie Adequate Protection Liens, (c) the Prepetition Macquarie Facility Liens on the Facilities Priority Shared Collateral, to the extent such liens are valid and perfected as of the Petition Date (the "Prepetition Macquarie First Priority Liens"), (d) certain valid, perfected liens that are senior to the liens securing the Zochem Facility, the Prepetition Macquarie Facility and the Prepetition Senior Secured Notes as of the Petition Date, which are set forth on Schedule 1.01(a) to the DIP Credit Agreement (liens referenced in this clause (d), the "Permitted Prepetition Liens"), (e) with respect to all DIP Collateral of

⁴ The "PNC L/C Cash Collateral" means cash collateralizing those certain letters of credit issued by PNC Bank, N.A for the benefit of the Debtors, including but not limited to, that certain Letter of Credit No. 18112064 (HH) and that certain Letter of Credit No. 18112054 (HH), which in the aggregate total not less than \$7,940,197.65 as of the Petition Date, and that certain Letter of Credit No. 18121075 (Zochem), which totals not less than CAD\$422,342.00 as of the Petition Date.

the Debtors located in Canada, the Administration Charge provided for in the Supplemental Order of the Canadian Court (as defined in the DIP Documents) in an amount not to exceed CAD\$100,000 (the "Administration Charge"), but the DIP Liens shall be senior to any other charges granted by the Canadian Court in the Recognition Proceedings, and (f) the Excluded Collateral. Notwithstanding the foregoing, however, to the extent that the Prepetition Macquarie Facility is repaid in full, the DIP Lenders shall be granted a first priority lien on the Collateral securing the Prepetition Macquarie First Priority Liens. In addition, to the extent that the existing indebtedness of Horsehead Zinc Recycling, LLC is repaid in full, Horsehead Zinc Recycling, LLC shall become a debtor under these chapter 11 cases and the DIP Lenders shall be granted a first priority lien on all assets of Horsehead Zinc Recycling, LLC, subject to customary permitted liens.

(c) *DIP Liens Senior to Other Liens.* Other than with respect to the Carve-Out, the Macquarie Adequate Protection Liens, the Prepetition Macquarie First Priority Liens, the Permitted Prepetition Liens, and Administration Charge, the DIP Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (B) any liens arising after the Petition Date, or (ii) subordinated to or made *pari passu* with any other lien or security interest under sections 363 or 364 of the Bankruptcy Code or otherwise, or (iii) any liens or deemed trusts that may arise under statute including without limitation the *Pension Benefits Act* (Ontario).

(d) *Carve-Out.* For purposes hereof, the "Carve-Out" shall mean the sum of (i) all fees required to be paid to the clerk of the Court and to the U.S. Trustee under

section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) fees and expenses of up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim or final compensation order, all unpaid fees and expenses (including transaction fees or success fees) (the "Professional Fees") incurred, at any time before or on the first business day following delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined herein), by persons or firms ("Borrower Professionals") retained by the Borrowers pursuant to section 327, 328 or 363 of the Bankruptcy Code and any ~~official committee of unsecured creditors~~ (the "Creditors' Committee" and (such professionals, together with the Borrower Professionals, the "Professional Persons") appointed in these chapter 11 cases pursuant to section 1103 of the Bankruptcy Code, whether allowed by this Court prior to or after delivery of a Carve-Out Trigger Notice, but only to the extent actually earned prior to the delivery of a Carve-Out Trigger Notice and not subsequently disallowed; and (iv) Professional Fees of Professional Persons in an aggregate amount not to exceed \$1,250,000 incurred after the first business day following delivery by the DIP Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim or final compensation order (the amounts set forth in this clause (iv) being the "Post-Carve Out Trigger Notice Cap"), but only to the extent actually earned after the delivery of a Carve-Out Trigger Notice and not subsequently disallowed; provided, however, that nothing herein shall be construed to impair the ability of any party to object to the reasonableness of any fees, expenses, reimbursement or compensation described in clauses (iii) or (iv) above, on any grounds. "Carve-Out

Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent or the Required Lenders to the Borrowers, their lead restructuring counsel, the U.S. Trustee, and lead counsel to the Creditors’ Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked. On the day on which a Carve-Out Trigger Notice is given by the DIP Agent to the Borrowers, the Carve-Out Trigger shall constitute a demand to the Borrowers to utilize all cash on hand as of such date and any available cash thereafter held by any Borrower to fund a reserve in an aggregate amount equal to the accrued and/or unpaid amounts of the Professional Fees, and the Borrowers shall deposit and hold any such amounts in a segregated account at the DIP Agent or under the exclusive control of the DIP Agent in trust to pay such then unpaid Professional Fees (the “Pre-Carve Out Trigger Notice Reserve”) prior to any and all other claims, including DIP Administrative Claims. The Borrowers shall deposit and hold such amounts in a segregated account at DIP Agent or under the exclusive control of the DIP Agent in trust to pay such Professional Fees benefiting from the Carve Out Trigger Notice Cap (the “Post-Carve Out Trigger Notice Reserve” and, together with the Pre-Carve Out Trigger Notice Reserve, the “Carve-Out Reserves”) prior to any and all other claims, including DIP Superpriority Claims. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (ii) through (iii) of the definition of Carve-Out set forth above, but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP

Agent for the benefit of the DIP Lenders, unless the obligations under the DIP Facility have been paid in full, in which case any such excess shall be paid as directed by this Court. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve-Out set forth above, and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Lenders, unless the DIP Obligations have been paid in full, in which case any such excess shall be paid as directed by this Court.

(e) Following delivery of a Carve-Out Trigger Notice, the DIP Agent and any Prepetition Secured Party shall deposit any cash swept or foreclosed upon (including cash received as a result of the sale or other disposition of any assets) in the Carve-Out Reserves until such Carve-Out Reserves have been fully funded, and shall have a security interest in any residual interest in the Carve-Out Reserves, with any excess paid to the DIP Agent for application in accordance with the DIP Documents. Further, notwithstanding anything to the contrary herein, (i) disbursements by the Borrowers from the Carve-Out Reserves shall not constitute loans or increase or reduce the DIP Obligations, (ii) the failure of the Carve-Out Reserves to satisfy in full the Professional Fees shall not affect the priority of the Carve-Out, and (iii) in no way shall the Carve-Out, Post-Carve Out Trigger Notice Cap, Carve-Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Professional Fees due and payable by the Borrowers.

(f) Subject to Paragraph 4 ~~herein~~of and with respect to the Investigation Budget, the Borrowers shall not assert or prosecute, and no portion of the proceeds of the

DIP Facility, the DIP Collateral, or the Carve-Out, and no disbursements set forth in the Budget, shall be used for the payment of Professional Fees, disbursements, costs or expenses incurred by any Professional Person, including, without limitation, any committee appointed in these chapter 11 cases the Creditors' Committee, in connection with (a) preventing, hindering or delaying any of the DIP Agent's, the DIP Lenders' or the Zochem Secured Parties' enforcement or realization upon any of the DIP Collateral once an Event of Default has occurred, (b) objecting or challenging or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the obligations under (x) the DIP Facility, the Prepetition Senior Secured Notes, or the Zochem Facility, (y) the liens securing the DIP Facility, the Prepetition Senior Secured Notes, or the Zochem Facility, (z) any other rights or interest of any of the DIP Agent, the DIP Lenders, the Prepetition Senior Secured Noteholders Notes Parties, or the Zochem Secured Parties, or (c) asserting, commencing or prosecuting any claims or causes of action, including, without limitation, any Avoidance Actions against the DIP Agent, any DIP Lender, any Prepetition Senior Secured Noteholder Notes Party, any Zochem Secured Party, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees; provided that, an amount not to exceed \$75100,000 in the aggregate (the "Investigation Budget") of the proceeds of the DIP Facility and the DIP Collateral may be used for the Creditors' Committee to investigate (but not prepare, initiate or prosecute) prepetition liens of, and claims and defenses against, the Prepetition Senior Secured Noteholders Notes Parties so long as it is utilized prior to the termination of the Challenge

Period, it being understood that the Investigation Budget shall not constitute part of the Carve-Out.

~~12.13.~~ Protection of DIP Parties' and Prepetition Senior Secured Notes' Rights.

(a) Unless the DIP Agent and ~~DIP~~Required Lenders shall have provided prior written consent, or all obligations under the DIP Documents have been paid in full, there shall not be entered in these cases, or in any Successor Cases, any order which authorizes the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral and/or that is entitled to administrative priority status, in each case which is senior to or *pari passu* with the DIP Liens and/or the DIP Superpriority Claim.

(b) Unless the requisite Prepetition Senior Secured Notes Parties under the Prepetition Senior Secured Notes Documents shall have provided their prior written consent, or all obligations under the Prepetition Senior Secured Notes Documents have been paid in full, there shall not be entered in these cases, or in any Successor Cases, any order (other than this ~~Interim Order or the Final Order~~) which authorizes the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral and/or that is entitled to administrative priority status, in each case which is senior to or *pari passu* with the Senior Secured Notes Adequate Protection Liens, the Senior Secured Notes Adequate Protection Claims, or the liens under the Prepetition Debt Documents.

(c) The Debtors (and/or their legal and financial advisors in the case of clauses (a) and (c) below) will, in each case as set forth and subject to the terms of the DIP Documents, including all applicable grace periods: (a) maintain books, records, and

accounts to the extent and as required by the DIP Documents; (b) reasonably cooperate, consult with, and provide to the DIP Agent, DIP Lenders, and the Prepetition Senior Secured Notes Parties all such information and documents as required or allowed under the DIP Documents, the Prepetition Senior Secured Notes Documents and/or the provisions of this ~~Interim~~Final Order; and ~~(e)(c)~~ use commercially reasonable efforts to cooperate with the Prepetition Macquarie Facility Agent with respect to reasonable information requests as required or allowed under the Prepetition Macquarie Facility Documents; (d) grant representatives of the DIP Agent, DIP Lenders, ~~and the Prepetition Senior Secured Notes Parties,~~ and the Prepetition Macquarie Facility Agent reasonable access during normal business hours and upon reasonable prior notice to information (including historical information) and personnel as DIP Agent, DIP Lenders, ~~or the Prepetition Senior Secured Notes Parties,~~ or the Prepetition Macquarie Facility Agent may reasonably request from time to time, including, without limitation, regularly scheduled meetings among senior management, company advisors and the DIP Agent, DIP Lenders, ~~and the Prepetition Senior Secured Notes Parties,~~ and the Prepetition Macquarie Facility Agent.

~~13.14.~~ Proceeds of Subsequent Financing. Subject to the rights of parties with liens or claims senior to the DIP Claims and Liens (including the Carve Out, the Prepetition Macquarie First Priority Liens, the Macquarie Adequate Protection Liens and Macquarie Adequate Protection Claims, and, with respect to all DIP Collateral of the Debtors located in Canada, the Administration Charge), if at any time prior to the payment in full of all the obligations under the DIP Documents (including subsequent to the confirmation of any Chapter 11 plan or plans with respect to any of the Debtors), the Debtors' estates, any trustee, any examiner with enlarged

powers, or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d), or any other provision of the Bankruptcy Code in violation of the DIP Documents, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over to the DIP Agent until payment in full of the obligations under the DIP Documents occurs.

~~14.15.~~ Disposition of DIP Collateral. Unless the obligations under the DIP Documents are paid in full upon the closing of such sale or other disposition, the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral (or enter into any binding agreement to do so) outside the ordinary course of business without the prior written consent of the DIP Agent and the DIP Lenders (and no such consent shall be implied from any other action, inaction, or acquiescence by any DIP Agent or DIP Lender or any order of this Court), except as permitted in the DIP Documents and/or this ~~Interim~~Final Order.

~~15.16.~~ Remedies ~~Upon~~ Event of Default. The Debtors shall promptly provide notice to the DIP Agent (with a copy to counsel for the Creditors' Committee, ~~if any,~~counsel to the Prepetition Senior Secured Notes Indenture Trustee, counsel to the Prepetition Macquarie Facility Agent, and the information officer appointed in the Recognition Proceedings and the U.S. Trustee) of the occurrence of any Event of Default. Upon the occurrence of an Event of Default and following the giving of five (5) business days' written notice (the "DIP Enforcement Notice") to the Debtors, counsel to the Prepetition Senior Secured Notes Indenture Trustee, counsel to the Prepetition Macquarie Facility Agent, and counsel for the Creditors' Committee, ~~if any,~~ and the U.S. Trustee (the "DIP Notice Period"), the DIP Lenders and the DIP Agent may exercise any remedies available to them under this ~~Interim~~Final Order, the DIP Documents, and applicable non-bankruptcy law, including but not limited to foreclosing upon the DIP Collateral

or otherwise enforcing the DIP Obligations and the DIP Claims and Liens on any or all of the DIP Collateral and/or exercising any other default-related remedies under the DIP Credit Agreement, this ~~Interim~~Final Order or applicable law in seeking to recover payment of the DIP Obligations. Unless this Court orders otherwise during the DIP Notice Period (unless such period may be extended by this Court), the automatic stay pursuant to section 362 of the Bankruptcy Code shall be automatically terminated at the end of the DIP Notice Period, without further notice or order of the Court, and the DIP Lenders and the DIP Agent shall be permitted to exercise all rights and remedies set forth in this ~~Interim~~Final Order, the DIP Documents, and as otherwise available at law without further order or application or motion to this Court, and without restriction or restraint by any stay under section 362 or 105 of the Bankruptcy Code, including, without limitation, (i) immediately terminate the Debtors' limited use of any Cash Collateral; (ii) terminate the DIP Facility and any DIP Document as to any future liability or obligation of the DIP Agent or DIP Lenders, but without affecting any of the DIP Obligations or the liens securing the DIP Obligations; (iii) declare all DIP Obligations to be immediately due and payable; (iv) freeze monies or balances in the Debtors' accounts; and (v) immediately set-off any and all amounts in accounts (other than Excluded Collateral) maintained by the Debtors with the DIP Agent or the DIP Lenders against the DIP Obligations, or otherwise enforce any and all rights against the DIP Collateral in the possession of any of the applicable DIP Agent or DIP Lenders, including, without limitation, disposition of the DIP Collateral solely for application towards the DIP Obligations; provided, however, that PNC shall have no liability to the Debtors, their estates, or any other lienholder on the deposit accounts for following any direction notice received from the DIP Agent, provided further, however, that any enforcement action taken under this Paragraph shall be subject to PNC's right to receive required fees and charges for

disallowed items as prescribed by the applicable depository account agreements and/or cash management agreements.

~~16.17.~~ Entitlement to Adequate Protection (Prepetition Senior Secured Notes Parties).

The Prepetition Senior Secured Notes Parties are entitled to adequate protection of their interests in the Prepetition Senior Secured Notes Collateral as of the Petition Date in an amount equal to the aggregate postpetition diminution in value, if any, of such interests from and after the Petition Date, consisting of any such diminution resulting from the use by the Debtors of such Prepetition Collateral, the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, the Debtors' incurrence of the DIP Facility and the granting of the priming liens and claims with respect thereto or to any other party under the Interim Order or this Final Order, the subordination of the Prepetition Collateral to the Carve-Out, and the use of the Cash Collateral pursuant to this Interim Order or this Final Order (such diminution in value, and any and all liens and claims arising thereof, the "Senior Secured Notes Adequate Protection Obligations"). All distributions made on account of the Senior Secured Notes Adequate Protection Obligations shall be made and applied in accordance with the Prepetition Senior Secured Notes Documents, including the Intercreditor Agreement. The Prepetition Senior Secured Notes Parties shall be, and hereby are, granted the following forms of adequate protection:

(a) *Senior Secured Notes Adequate Protection Claim.* An allowed superpriority administrative expense claim pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code as provided for by section 507(b) of the Bankruptcy Code on account of the Adequate Protection Obligations (as defined herein) (the "Senior Secured Notes Adequate Protection Claim"). Subject and junior in priority in all respects

to the Carve-Out, the DIP Superpriority Claim, the Administration Charge and the Macquarie Adequate Protection Claims, and with respect to all DIP Collateral of the Debtors located in Canada, the Administration Charge, the Senior Secured Notes Adequate Protection Claim shall be an allowed claim against each of the Debtors (jointly and severally) with priority over any and all administrative expenses, adequate protection or diminution claims (in each case other than the Carve-Out, the DIP Superpriority Claim and the Macquarie Adequate Protection Claims, and with respect to all DIP Collateral of the Debtors located in Canada, the Administration Charge), unsecured claims, and all other claims asserted against the Debtors now existing or hereafter arising of any kind whatsoever, including all other administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all other administrative expenses or other claims arising under any other provision of the Bankruptcy Code, including sections 105, 326, 327, 328, 330, 331, 503(a), 503(b), 507(a), 507(b), 546, 726, 1113, and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, payable from and with recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof. Except to the extent expressly set forth in this ~~Interim~~Final Order, the Prepetition Secured Parties shall not receive or retain any payments, property, or other amounts in respect of any Senior Secured Notes Adequate Protection Claim unless and until all DIP Obligations shall have indefeasibly been paid in full in cash or otherwise satisfied in a manner acceptable to the DIP Lenders and until the Carve-Out shall have been satisfied as provided herein; provided that the Senior Secured Notes Adequate Protection Claim shall not have recourse to proceeds from the Excluded

Accounts and shall not have recourse to, or otherwise collect from, proceeds of Avoidance Actions prosecuted against any trade creditor of one or more of the Debtors.

(b) *Senior Secured Notes Adequate Protection Liens.* Subject and junior in priority in all respects to the Carve-Out, the Administration Charge, the DIP Liens, the Permitted Prepetition Liens, the Prepetition Macquarie First Priority Liens and the Macquarie Adequate Protection Liens (as defined herein), effective as of the Petition Date and perfected without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, or the possession or control by the Prepetition Senior Secured Notes Secured Parties, the following security interests and liens are hereby granted to the Prepetition Senior Secured Notes Parties Collateral Agent, as collateral agent (under and pursuant to the Prepetition Senior Secured Notes Indenture) for itself, the Prepetition Senior Secured Notes Indenture Trustee and the Prepetition Senior Secured Noteholders (all such liens and security interests, the “Senior Secured Notes Adequate Protection Liens”); provided that the Senior Secured Notes Adequate Protection Liens shall not encumber the Excluded Collateral or the PNC Cash Collateral;

(i) *Liens on Unencumbered Property.* Subject and junior in priority in all respects to the Carve-Out, the DIP Liens, the Administration Charge and the Macquarie Adequate Protection Liens, pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully-perfected, non-avoidable additional and replacement liens on, and security interests in, all property (including any previously unencumbered property), whether now owned or hereafter acquired or existing and wherever located, of each Debtor and each

Debtor's "estate" (as created pursuant to section 541(a) of the Bankruptcy Code), of any kind or nature whatsoever, real or personal, tangible or intangible, and now existing or hereafter acquired or created, including, without limitation, all cash, accounts, inventory, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, accounts receivable, receivables and receivables records, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, owned real estate, real property leaseholds, fixtures, deposit accounts, commercial tort claims, securities accounts, instruments, investment property, letter-of-credit rights, supporting obligations, machinery and equipment, real property, leases (and proceeds from the disposition thereof), all of the issued and outstanding capital stock of each Debtor, other equity or ownership interests, including equity interests in subsidiaries and non-wholly-owned subsidiaries, money, investment property, Cash Collateral, and all cash and non-cash proceeds, rents, products, substitutions, accessions, and profits of any of the collateral described above, documents, vehicles, intellectual property, securities, partnership or membership interests in limited liability companies and capital stock, including, without limitation, the products, proceeds and supporting obligations thereof, whether in existence on the Petition Date or thereafter created, acquired, or arising and wherever located (all such property in each case that is not subject to (x) valid, perfected, unavoidable, and enforceable liens in existence on or as of the Petition Date or (y) valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected after the Petition Date solely to the extent permitted by section 546(b)

of the Bankruptcy Code); provided that, such liens shall encumber the proceeds of Avoidance Actions (but not the Avoidance Actions themselves) ~~only upon entry of the Final Order~~ other than the proceeds of Avoidance Actions prosecuted against any trade creditor of one or more of the Debtors and such liens shall not encumber the Excluded Collateral and the PNC Cash Collateral.

(ii) *Liens Junior to Certain Existing Liens.* Subject and junior in priority in all respects to the Carve-Out, the DIP Liens, the Administration Charge, the Prepetition Macquarie First Priority Liens, and the Macquarie Adequate Protection Liens, a valid, binding, continuing, enforceable, fully-perfected non-avoidable junior priority replacement lien on, and security interest in, all property, whether now owned or hereafter acquired or existing and wherever located, of each Debtor and each Debtor's "estate" (as created pursuant to section 541(a) of the Bankruptcy Code), property of any kind or nature whatsoever, real or personal, tangible or intangible, and now existing or hereafter acquired or created, including, without limitation, all cash, accounts, inventory, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, accounts receivable, receivables and receivables records, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, contracts, owned real estate, real property leaseholds, fixtures, deposit accounts, commercial tort claims, securities accounts, instruments, investment property, letter-of-credit rights, supporting obligations, machinery and equipment, real property, leases (and proceeds from the disposition thereof), all of the issued and outstanding capital stock of each Debtor,

other equity or ownership interests, including equity interests in subsidiaries and non-wholly-owned subsidiaries, money, investment property, Cash Collateral, and all cash and non-cash proceeds, rents, products, substitutions, accessions, and profits of any of the collateral described above, documents, vehicles, intellectual property, securities, partnership or membership interests in limited liability companies and capital stock, including, without limitation, the products, proceeds and supporting obligations thereof, whether now existing or hereafter acquired, that is only subject to (x) valid, perfected, non-avoidable and enforceable liens in existence immediately prior to the Petition Date or (y) valid and non-avoidable liens in existence immediately prior to the Petition Date that are perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code. For the avoidance of doubt, any and all liens granted as adequate protection to the Prepetition Senior Secured Noteholders on the Prepetition Collateral shall be junior in all respects to the Carve-Out, the DIP Liens, the Macquarie Facility Adequate Protection Liens, the Administration Charge, the Prepetition Macquarie First Priority Liens, and the Permitted Prepetition Liens.

(c) Senior Secured Notes Adequate Protection Liens Senior to Other Liens.

Other than as expressly provided in this Final Order (including with respect to the Carve-Out, the DIP Liens, the Administration Charge, the Macquarie Adequate Protection Liens, and the Permitted Prepetition Liens, which each are senior to the Senior Secured Notes Adequate Protection Liens in all respects), the Senior Secured Notes Adequate Protection Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section

551 of the Bankruptcy Code or (B) any liens arising after the Petition Date, or (ii) subordinated to or made pari passu with any other lien or security interest under sections 363 or 364 of the Bankruptcy Code or otherwise, or (iii) subject or subordinated to any liens or deemed trusts that may arise under statute, including without limitation the Pension Benefits Act (Ontario).

(e)(d) Right to Seek Additional Adequate Protection. This ~~Interim~~Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition Senior Secured Notes Parties to request additional forms of adequate protection ~~during the continuation of a Termination Event~~, or the rights of all parties (including the Debtors) to oppose such relief.

~~47.18.~~ Entitlement to Adequate Protection (Prepetition Macquarie Facility Parties). The Prepetition Macquarie Facility Parties are entitled to adequate protection of their interests in the Prepetition Collateral that is subject to Prepetition Macquarie First Priority Liens (it being understood that the Prepetition Macquarie Facility Parties' interests extend to the Cash Collateral) as of the Petition Date in an amount equal to the aggregate postpetition diminution in value, if any, of such interests from and after the Petition Date, consisting of any such diminution resulting from the use by the Debtors of such Prepetition Collateral, the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, the Debtors' incurrence of the DIP Facility, and the use of the Cash Collateral pursuant to this ~~Interim~~Final Order (such diminution in value and any and all liens and claims arising thereof, the "Macquarie Facility Adequate Protection Obligations" and, together with the Senior Secured Notes Adequate Protection Obligations and the Zochem Adequate Protection Obligations (as defined herein), the "Adequate Protection Obligations"). For the avoidance of doubt, and notwithstanding anything

herein to the contrary, the Macquarie Facility Adequate Protection Liens and the Macquarie Facility Adequate Protection Claim (each as defined herein) shall be junior to the Carve-Out and the Administration Charge in all respects. The Prepetition Macquarie Facility Parties shall be, and hereby are, granted the following forms of adequate protection:

(a) Macquarie Facility Adequate Protection Claim. Solely in an amount equal to the aggregate postpetition diminution in value of the Prepetition Macquarie Lenders' Facility Parties' interests in the Prepetition Collateral that is subject to Prepetition Macquarie First Priority Liens, an allowed super-priority administrative expense claim pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code as provided for by section 507(b) of the Bankruptcy Code on account of the Macquarie Facility Adequate Protection Obligations (the "Macquarie Facility Adequate Protection Claim"); or "Macquarie Adequate Protection Claim"). Subject and junior in priority in all respects only to the Carve-Out, the Administration Charge, the Macquarie Facility Adequate Protection Claim shall be an allowed claim against each of the Debtors (jointly and severally) with priority over any and all administrative expenses and all other claims asserted against the Debtors now existing or hereafter arising of any kind whatsoever, including all other administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all other administrative expenses or other claims arising under any other provision of the Bankruptcy Code, including sections 105, 326, 327, 328, 330, 331, 503(b), 507(a), 507(b), or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment; provided that notwithstanding anything herein to the contrary, the Macquarie Adequate Protection Claim shall have no recourse

to the proceeds of Avoidance Actions or proceeds from Excluded Collateral or the PNC Cash Collateral.

(b) Macquarie Facility Adequate Protection Liens. Subject and junior in priority in all respects to the Carve-Out, the Administration Charge, and duly perfected Permitted Prepetition Liens that are senior to the Prepetition Macquarie First Priority Liens as of the Petition Date, and without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, or the possession or control by the Prepetition Macquarie Facility Parties, the following security interests and liens are hereby granted to the Prepetition Macquarie Facility Parties (all such liens and security interests, the "Macquarie Facility Adequate Protection Liens," or "Macquarie Adequate Protection Liens" and, together with the Senior Secured Notes Adequate Protection Liens, the "Adequate Protection Liens") a valid, binding, continuing, enforceable, fully-perfected, non-avoidable senior priority replacement lien on, and security interest in, all DIP Collateral; provided that, the Macquarie Facility Adequate Protection Liens shall not encumber the Avoidance Actions or proceeds from Avoidance Actions or the Excluded Collateral or the PNC Cash Collateral.

~~(e) Release. Effective upon entry of the Interim Order as to the DIP Parties~~

(c) Right to Seek Additional Adequate Protection. This Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition Macquarie Facility Parties to request additional forms of adequate protection, or the rights of all parties (including the Debtors) to oppose such relief.

~~18.19. Release. and otherwise subject~~Subject to the expiration of the Challenge Period with respect to each party other than the Debtors, each of the Debtors, and the Debtors' estates, on its own behalf and on behalf of each of their predecessors, their successors, and assigns (collectively, the "Releasers") shall to the maximum extent permitted by applicable law, unconditionally, irrevocably and fully forever release, remise, acquit, relinquish, irrevocably waive and discharge each of the DIP Lenders, the DIP Agent, the Zochem Secured Parties, the Prepetition Senior Secured Notes Parties, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, predecessors and predecessors in interest, each in their capacities as such (collectively, the "Releasees") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract (under U.S. or Canadian laws), of every nature and description that exist on the date hereof arising out of, relating to, or in connection with any of the (a) Prepetition Senior Secured Notes Documents or the transactions contemplated under such documents (subject to the Challenge Period and the Retained Claims Challenge Period), (b) the Zochem Facility, the Zochem Credit Agreement, and the Other Zochem Documents, and (c) the DIP Documents or the transactions contemplated under such documents, including, without limitation, (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii)

any and all claims and causes of action arising under title 11 of the United States Code, and (iii) any and all claims and causes of action regarding the validity, priority, perfection or avoidability of the liens of the Prepetition Senior Secured Notes Parties, and the Zochem Secured Parties, in each case subject to the Retained Claims Challenge Period.

~~19.20.~~ Termination. The Debtors' right to use the Cash Collateral and proceeds of the DIP Financing Loans pursuant to this ~~Interim~~Final Order shall automatically terminate (the date of any such termination, the "Termination Date") (unless such period is extended by the ~~DIP~~Required Lenders) on the occurrence of any of the events set forth in Paragraphs ~~19.20(a)~~ through Paragraph ~~19(f)~~20(b) below (unless waived by the ~~DIP~~Required Lenders or the Prepetition Macquarie Facility Agent, as applicable) (the events set forth in Paragraph ~~19.20(a)-19(f)~~ below are collectively referred to herein as the "Termination Events"), in each case without limiting grace periods provided under the DIP Credit Agreement (but without duplication of such grace periods):

(a) the Debtors' failure to comply with the adequate protection provisions or the covenants and other Adequate Protection Obligations of the Debtors contained in this ~~Interim~~Final Order upon three (3) business day's written notice and an opportunity cure;

(b) any Event of Default under the DIP Documents that is not waived by the ~~DIP~~Required Lenders. For the avoidance of doubt, such Events of Default include, but are not limited to, failure by the Debtors to timely achieve any of the following milestones:

(i) ~~Entry of this Interim Order within three (3) days of the Petition~~

~~Date;~~

~~(ii)~~ Entry of the ~~Interim~~Final DIP Recognition Order (as defined in the DIP Documents) within ~~four (on or prior to March 4)~~ days of the Petition Date;

~~(iii)~~ Entry of the Final Order within ~~twenty-one (21)~~ days of the Petition Date;

~~(iv)~~(i) Entry of the Final DIP Recognition Order (as defined in the DIP Documents) within ~~twenty-three (23)~~ days of the Petition Date, 2016;

~~(v)~~(ii) Filing of a plan of reorganization that is acceptable to the Required Lenders and the Ad Hoc Group, on the one hand, and the Borrowers, on the other hand (an "Acceptable Plan") and disclosure statement with respect to the Acceptable Plan (the "Disclosure Statement") with this Court within ~~forty (40)~~fifty-five (55) days of the Petition Date;

~~(vi)~~(iii) Entry by this Court of an order approving the Disclosure Statement within ~~seventy-five (75)~~ninety (90) days of the Petition Date;

~~(vii)~~(iv) Entry by the Canadian Court (as defined in the DIP Documents) of an order recognizing the order approving the Disclosure Statement within ~~seventy-seven (77)~~ninety-two (92) days of the Petition Date;

~~(viii)~~(v) Entry by this Court of an order confirming the Acceptable Plan within ~~115~~one hundred thirty (130) days of the Petition Date;

~~(ix)~~(vi) Entry by the Canadian Court of an order recognizing the order confirming the Acceptable Plan within ~~117~~one hundred thirty-two (132) days of the Petition Date; and

~~(x)~~(vii) Consummation of the Acceptable Plan within ~~130~~one hundred forty-five (145) days of the Petition Date;

- (c) the Maturity Date;
- (d) with respect to the updated Budget to be delivered on or prior to the third business day after the tenth week covered by the initial Budget, delivery of an updated Budget that is not satisfactory to the Required Lenders for whatever reason, in their sole discretion;
- (e) the Debtors seek any amendment, modification, or extension of this ~~Interim~~Final Order without the prior written consent of the DIP Agent and the ~~DIP~~Required Lenders, and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Agent or DIP Lenders;
- (f) default shall be made by Borrower or any Guarantor in the due observance or performance of any term, condition or obligation contained in the DIP Orders, the Interim DIP Recognition Order or the Final DIP Recognition Order in each case beyond any grace period for such specific default set forth therein or herein, other than any such default of an administrative or procedural nature which is cured within 3 days after the earlier of (x) notice by the Administrative Agent or the Required Lenders or (y) knowledge of such default by any of the Borrower Parties;
- (g) Upon the occurrence and during the continuation of a Termination Event, upon written notice to the Debtors, the counsel to the DIP Agent, and counsel to the DIP Lenders (with a copy to counsel to any ~~the~~ Creditors' Committee ~~appointed in the Bankruptcy Cases,~~ counsel to the Prepetition Senior Secured Notes Indenture Trustee and the U.S. Trustee), and upon five (5) Business Days' prior written notice, the Prepetition Macquarie Facility Agent may in its sole discretion exercise remedies in accordance with the Prepetition Macquarie Credit Agreement Facility Documents and this ~~Interim~~Final

Order (including by collecting accounts receivable and applying the proceeds thereof to the Prepetition Macquarie ~~Debt~~Credit Facility Obligations, and by occupying the Debtors' premises to sell or otherwise dispose of the DIP Collateral or the Prepetition Collateral); provided that the Debtors may seek relief from the Court within such five (5) Business Days period with respect to such Termination Event asserted by the Prepetition Macquarie Facility Agent.

20-21. Perfection of DIP Liens and Adequate Protection Liens.

(a) Without regard to the terms of section 362 of the Bankruptcy Code regarding the automatic stay, the DIP Agent or the Prepetition Secured Agents, as applicable, are each hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, notices of lien, or similar instruments in any jurisdiction in order to validate and perfect the liens and security interests granted on account of the DIP Liens and the Adequate Protection Obligations hereunder. Whether or not the DIP Agent or the Prepetition Secured Agents, as applicable, shall, in their respective sole discretion, file such financing statements, intellectual property filings, mortgages, notices of lien, or similar instruments, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute, subordination, contest, attack, objection, recoupment, defense, setoff, counterclaim, avoidance, recharacterization, reclassification, reduction, disallowance, recovery, disgorgement, attachment, "claim" (as defined by section 101(5) of the Bankruptcy Code), impairment, subordination (whether equitable, contractual or otherwise) or other challenge of any kind pursuant to the Bankruptcy Code or applicable nonbankruptcy law as of the date of entry of this ~~Interim~~Final Order. If the DIP Agent or

the any of the Prepetition Secured Agents, as applicable, determines to file any financing statements, notice of liens or similar instruments, the Debtors will cooperate and assist in any such filings as reasonably requested by the DIP Agent or the Prepetition Secured Agents and the automatic stay shall be modified to allow such filings.

(b) DIP Agent or the Prepetition Secured Agents as applicable, may, in their discretion, cause a certified copy of this ~~Interim~~Final Order to be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this ~~Interim~~Final Order for filing and recording.

~~21,22.~~ 22. Further Assurances. Subject to the terms and conditions of the DIP Documents, the Debtors shall promptly execute and deliver to the DIP Agent or the Prepetition Secured Agents, as applicable, all such agreements, financing statements, instruments and other documents as the DIP Agent or the Prepetition Secured Agents, as applicable, may reasonably request in writing to evidence, confirm, validate, or perfect the DIP Liens and the Adequate Protection Liens, as applicable.

~~22,23.~~ 23. Zochem Payoff.

(a) The Debtors are authorized to and shall pay the Zochem Debt Obligations, including, without limitation, cash collateralization of the Zochem letters of credit, to the Zochem Agent and provide certain cash collateral in an amount not to exceed \$150,000 as security for indemnity and expense obligations of the Borrower under the Zochem Credit Agreement (the "Payoff Indemnity Account"), including all legal fees and expenses of the Zochem Agent and the right to indemnification of the Zochem Secured Parties incurred or

arising in the Bankruptcy Cases (and the Zochem Secured Parties are permitted to be paid for such legal fees and expenses from time to time upon submission of a summary invoice to the Debtors, the Creditors' Committee, and the Office of the United States Trustee), and the Zochem Secured Parties are hereby granted, as adequate protection for such indemnity and expense obligations, replacement liens (without the necessity of filing any lien perfection documents or charges) on the DIP Collateral securing the Zochem Debt Obligations including all indemnity and expense reimbursement obligations under the Zochem Credit Agreement (collectively, the "Zochem Adequate Protection Liens") and an administrative claim in each of the Debtors' chapter 11 cases ("Zochem Adequate Protection Claim" collectively with the Zochem Adequate Protection Liens, the "Zochem Adequate Protection Obligations"), and the Debtors shall obtain from the Canadian Court a Recognition Order recognizing the enforceability of this ~~Interim~~Final DIP Order in the Canadian Court; provided that, the (x) the Zochem Adequate Protection Liens shall be automatically released and of no force and effect and any unused balance held in the Payoff Indemnity Account shall be promptly released to the Debtors upon expiration of the Challenge Period where no Challenge has been timely filed with respect to the Zochem Facility and/or the Zochem Secured Parties and (y) the Zochem Adequate Protection Liens shall be junior in priority to the DIP Liens, the Prepetition Senior Secured Notes Liens, Senior Secured Notes Adequate Protection Liens, and any liens that are senior to the DIP Liens (including the Carve Out, the Prepetition Macquarie First Priority Liens, the Macquarie Adequate Protection Liens, and with respect to all DIP Collateral of the Debtors located in Canada, the Administration Charge) or that are senior to the prepetition liens securing the Zochem Debt Obligations.

(b) For the avoidance of doubt, repayment of the Zochem Debt Obligations shall be conditional and subject to disgorgement, in whole or in part, pending expiration of the

applicable Challenge Period with respect to the admissions, stipulations, and agreements set forth at Paragraph 56 hereof.

23-24. Preservation of Rights Granted Under this ~~Interim~~Final Order.

(a) Notwithstanding any order dismissing any of these chapter 11 cases under section 1112 of the Bankruptcy Code or otherwise entered at any time, but subject to the Carve-Out and the Administration Charge in all respects, (x) the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens, the Zochem Adequate Protection Liens, the Zochem Adequate Protection Claim, and the other administrative claims granted pursuant to this ~~Interim~~Final Order shall continue in full force and effect and shall maintain their priorities as provided in this ~~Interim~~Final Order until all DIP Obligations and the Adequate Protection Obligations shall have been indefeasibly paid and satisfied in full in cash, as applicable, and (y) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens, and security interests referred to in clause (x) above.

(b) If any or all of the provisions of this ~~Interim~~Final Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacatur shall not affect: (i) the validity, priority, or enforceability of the DIP Liens, Zochem Adequate Protection Liens, or DIP Obligations or any Adequate Protection Obligations incurred prior to the actual receipt of written notice by counsel to the DIP Agent (with respect to the DIP Obligations) and counsel to the Prepetition Secured Agents and counsel to the Zochem Secured Parties, of the effective date of such reversal, stay, modification or vacatur; or (ii) the validity, priority or enforceability of the DIP Liens and the Adequate Protection Liens, as applicable. Notwithstanding any such reversal, stay, modification or

vacatur, any use of the Prepetition Collateral (including the Cash Collateral), the DIP Liens, or the Adequate Protection Obligations incurred by the Debtors hereunder, as the case may be, prior to the actual receipt of written notice by counsel to the DIP Agent (with respect to the DIP Obligations) and counsel to the Prepetition Secured Agents (with respect to the Adequate Protection Obligations) of the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of this ~~Interim~~Final Order, and the DIP Lenders, the DIP Agent, the Zochem Secured Parties, and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits granted in section 363(m) of the Bankruptcy Code with respect to all uses of the Prepetition Collateral (including the Cash Collateral), all Adequate Protection Obligations, and the DIP Obligations.

(c) Except as expressly provided in this ~~Interim~~Final Order, and subject to the Carve-Out, and the Administration Charge, the DIP Liens, the Zochem Adequate Protection Liens, and the Adequate Protection Liens and all other rights and remedies of the DIP Lenders, Zochem Secured Parties, and the Prepetition Secured Parties granted by the provisions of this ~~Interim~~Final Order shall survive, and shall not be modified, impaired, or discharged by the entry of an order converting any of these chapter 11 cases to a case under chapter 7 of the Bankruptcy Code or dismissing any of these chapter 11 cases. The terms and provisions of this ~~Interim~~Final Order shall continue in these chapter 11 cases and in any Successor Cases, and the DIP Liens, Zochem Adequate Protection Liens, Zochem Adequate Protection Claim, and the Adequate Protection Liens, the DIP Superpriority Claim, and the other administrative claims granted pursuant to this ~~Interim~~Final Order, and all other rights and remedies of the DIP Agent, the DIP Lenders,

Zochem Secured Parties, and the Prepetition Secured Parties granted by the provisions of this ~~Interim~~Final Order shall continue in full force and effect.

24.25. Effect of Stipulations. The Debtors' acknowledgments, stipulations, and releases set forth in Paragraphs 4, 5, ~~6, and 18 of this Interim~~6, 7, and 19 of this Final Order (collectively, the "Stipulations") shall be binding on the Debtors, the Debtors' estates, and their respective representatives, successors, and assigns and, subject to any action timely commenced before the expiration of the Challenge Period by: (x) the Creditors' Committee, ~~if any;~~ or (y) a party in interest with requisite standing other than the Creditors' Committee, ~~if any,~~ on each of the Debtors' estates, all creditors thereof and each of their respective representatives, successors, and assigns, including any trustee appointed or elected for any of the Debtors, whether such trustee or representative is appointed in chapter 11 or chapter 7 (a "Trustee"). The Stipulations contained in this ~~Interim~~Final Order, including in Paragraphs 4 through ~~6~~7 hereof, shall be binding upon all other parties in interest, including any Trustee, unless (a) the Creditors' Committee, ~~if any;~~ or any other party in interest (including any Trustee), in each case, with requisite standing, has duly filed an adversary proceeding (each, a "Challenge") challenging the validity, enforceability, allowability, priority or extent of (x) the Prepetition Notes Obligations or the Prepetition Senior Secured Notes Liens, or (y) the Zochem Debt Obligations or prepetition liens on the Zochem Collateral, as applicable, or otherwise asserting or prosecuting any Avoidance Actions or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "Claims and Defenses") against the Prepetition Notes Parties ~~or, the~~ Zochem Secured Parties, as applicable, in connection with any matter related to the Prepetition Notes Obligations, Prepetition Notes Senior Secured Notes Collateral, or the Zochem Debt Obligations or the Zochem Collateral, as applicable, by no later than the latest of (i) in the case

of a Challenge commenced by a party in interest other than ~~at the~~ Creditors' Committee, ~~seventy-five (75) days after the date of entry of this Interim Order~~ April 19, 2016, (ii) in the case of a Challenge commenced by a ~~Creditors' Committee~~, ~~sixty (60) days after the appointment of such Creditors' Committee~~, May 6, 2016; provided that if the Creditors' Committee files a motion seeking standing on or prior to May 6, 2016, the Challenge Period for the Creditors' Committee shall be shall be tolled through the date that is three (3) business days after this Court enters a ruling on such motion solely with respect to any Claims and Defenses specifically identified in such motion (including any proposed complaint or pleading attached thereto), and (iii) any such later date agreed to in writing by (~~xxx~~) the Zochem Agent under the Zochem Facility, with respect to the stipulations set forth in Paragraphs ~~56~~ and Paragraph ~~1819~~ (with respect to the Zochem Secured Parties and their related Releasees) hereof, or (~~yyy~~) the Ad Hoc Group (as defined herein) with respect to the Stipulations set forth in Paragraphs ~~4~~, ~~67~~, and ~~1819~~ hereof (with respect to all Releasees other than the Zochem Secured Parties and the Zochem Secured Parties' related Releasees), as applicable, ~~each in their respective sole and absolute discretion~~ (the time period established by the latest of the foregoing clauses (i), (ii), and (iii), the "Challenge Period"); provided, however, that in the event that, prior to the expiration of the Challenge Period, (x) these chapter 11 cases are converted to chapter 7 or (y) a chapter 11 trustee is appointed in these chapter 11 cases, then, in each such case, the Challenge Period shall be extended for a period of sixty (60) days solely with respect to any Trustee, commencing on the occurrence of either of the events described in the foregoing (x) and (y); and (b) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding. If no such Challenge is timely filed prior to the expiration of the Challenge Period, without

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further order of this Court (x) the Prepetition Notes Obligations and the Zochem Debt Obligations, as applicable, shall constitute allowed claims, not subject to any Claims and Defenses (whether characterized as a counterclaim, setoff, subordination, recharacterization, defense, avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance, recovery, disgorgement, attachment, "claim" (as defined by section 101(5) of the Bankruptcy Code), impairment, subordination (whether equitable, contractual or otherwise), or other challenge of any kind pursuant to the Bankruptcy Code or applicable nonbankruptcy law), for all purposes in these chapter 11 cases and any subsequent chapter 7 case; (y) the Prepetition Notes Obligations, the Prepetition Notes Parties, and the Prepetition Senior Secured Notes Liens, and the Zochem Debt Obligations, Zochem Secured Parties, and the prepetition liens on the Zochem Collateral, as applicable, shall not be subject to any other or further challenge, including, without limitation, any Claims and Defenses, which shall be deemed to be forever waived and barred, and all parties in interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including any successor thereto (including any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period); and (z) all of the findings, the Debtors' stipulations, waivers, releases, and affirmations hereunder shall be of full force and effect and forever binding upon the applicable Debtors' bankruptcy estates and all creditors, interest holders, and other parties in interest in these cases and any Successor Cases. If any such adversary proceeding is timely filed prior to the expiration of the Challenge Period, the stipulations and admissions contained in this ~~Interim~~Final Order, including in Paragraphs 4-7 hereof, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on the Creditors' Committee, if any, and any other Person (as defined in the Prepetition Senior Secured Notes Documents) or

party in these cases, including any Trustee, except as to any such findings and admissions that were expressly and successfully challenged in such adversary proceeding. Notwithstanding anything contained herein to the contrary, the challenge period as it pertains to any Retained Claims shall be ~~150 days after the date of entry of this Interim Order~~ July 3, 2016 (the "Retained Claims Challenge Period"). If the Retained Claims are not commenced prior to the expiration of the Retained Claims Challenge Period, the Mooresboro Senior Secured Notes Lien shall be deemed valid and enforceable as against the Debtors' bankruptcy estates and all creditors, interest holders and other parties in these cases and any Successor Cases, and shall not otherwise be avoidable or subject to any other or further challenge, and such Retained Claims shall be deemed forever waived and barred, and all parties in interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including any successor thereto (including any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Retained Claims Challenge Period). Nothing in this ~~Interim~~ Final Order vests or confers on any Person, including at the Creditors' Committee ~~(if any)~~, or Trustee, standing or authority to pursue any cause of action belonging to the Debtors or their estates.

25.26. Limitation on Charging Expenses Against Collateral. As a further condition of the DIP Facility and any obligation of the DIP Lenders to make credit extensions pursuant to the DIP Documents, (a) no costs or expenses of administration of these chapter 11 cases, any Successor Cases or any other future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral, the Prepetition Senior Secured Notes Collateral or the Cash Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law or equity without the prior written consent of the DIP Agent, the DIP Lender, or, ~~subject to entry of~~

~~the Final Order~~, the Prepetition Senior Secured Notes Parties, as applicable, (b) no such consent or waiver shall be implied from any further action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, or the Prepetition Senior Secured Notes Parties, and (c) any exercise of any rights under section 506(c) of the Bankruptcy Code or otherwise to charge any costs or expense of administration of the chapter 11 cases or any Successor Cases from or against the DIP Collateral, the Prepetition Senior Secured Notes Collateral or the Cash Collateral shall be prohibited and shall not impair and shall be subject to, and junior to, the DIP Liens on and the DIP Agent's and DIP Lenders' other interests in the DIP Collateral and the Prepetition Senior Secured Notes Liens and the Prepetition Secured Parties' other interests in the Prepetition Collateral, the Cash Collateral and the Adequate Protection Liens accorded the Prepetition Secured Parties; provided that the foregoing shall not limit nor be deemed to limit the rights of the Debtors or parties in interest to seek such a surcharge solely with respect to Prepetition Macquarie Debt Obligations to the maximum extent permitted by section 506(c) of the Bankruptcy Code.

26.27. Limitations under Section 552(b) of the Bankruptcy Code. The Prepetition Senior Secured Notes Parties (~~upon entry of the Final Order~~), the DIP Agent, and the DIP Lenders shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Senior Secured Notes Parties, the DIP Agent, and the DIP Lenders with respect to (i) proceeds, products, offspring or profits of any of the Prepetition Senior Secured Notes Collateral (upon entry of the Final Order) or the DIP Collateral, as applicable, or (ii) the extension of the Senior Secured Notes Adequate Protection Liens and the Macquarie Facility Adequate Protection Liens to cover proceeds of the Prepetition Senior Secured Notes Collateral.

27-28. Credit Bidding. ~~Subject to and upon entry of this Interim Order:~~ (i) ~~the~~ DIP Agent shall have the right to credit bid as part of any asset sale process or plan sponsorship process and shall have the right to credit bid the full amount of their claims during any sale of the Debtors' assets (in whole or in part), including without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any restructuring plan subject to confirmation under section 1129(b)(2)(A)(ii)-(iii) of the Bankruptcy Code; and (ii) ~~the Debtors acknowledge that the Prepetition Senior Secured Notes Collateral Agent shall have the right to credit bid as part of any asset sale process or plan sponsorship process and shall have the right to credit bid the full amount of their claims~~the Prepetition Secured Notes Parties' claims, including, for the avoidance of doubt, the Senior Secured Notes Adequate Protection Claim, during any sale of the Debtors' assets (in whole or in part) with respect to any asset subject to a duly perfected lien in favor of the Prepetition Senior Secured Notes Collateral Agent as of the Petition Date, including without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any restructuring plan subject to confirmation under section 1129(b)(2)(A)(ii)-(iii) of the Bankruptcy Code; ~~provided that such relief will be binding on the Debtors' estates and all parties in interest upon entry of the Final Order,~~ that the Creditors' Committee shall retain the right to object to any such credit bid pursuant to subparagraph (ii) hereof by the Prepetition Senior Secured Notes Collateral Agent in its capacity as such or any Prepetition Senior Secured Noteholder in its capacity as such.

~~28.29.~~ Marshaling. Subject to entry of the Final Order, ~~none~~None of the DIP Collateral, the DIP Lenders, the DIP Agent, the Prepetition Senior Secured Notes Collateral, the Senior Secured Notes Adequate Protection Liens or the Prepetition Senior Secured NoteholdersNotes Parties shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine.

30. Information and Other Covenants.

(a) The Debtors shall comply with the reporting requirements set forth in the DIP Credit Agreement, ~~together with such additional information as the DIP Agent may reasonably request from time to time.~~ The Debtors shall maintain their cash management arrangements in a manner consistent with that described in Cash Management Motion and any successor or final orders with respect thereto.

(b) The Debtors shall promptly provide the professionals for the Creditors’ Committee’s and the Prepetition Macquarie Facility Agent with copies of any reports or notices delivered pursuant to Section 5.06 and Section 5.07 of the DIP Credit Agreement.

~~29.31.~~ Insurance Policies. ~~Upon entry of this Interim Order, the~~The DIP Agent and the DIP Lenders shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees, as applicable, on each insurance policy maintained by the Debtors which in any way relates to the DIP Collateral.

~~30.32.~~ Expenses and Indemnification. All reasonable and documented out-of-pocket expenses (including but not limited to reasonable legal fees and expenses (which shall include the fees and expenses of one primary counsel for each of the DIP Agent, the DIP Lenders and Greywolf Capital Management, LP (“Greywolf”) and one local counsel in each applicable jurisdiction for each of the DIP Agent, the DIP Lenders and Greywolf), reasonable and documented out-of-pocket fees and expenses of one financial advisor for the DIP Lenders,

reasonable and documented out-of-pocket fees and expenses of one or more operational consultants for the DIP Lenders, expenses incurred in connection with due diligence and travel, courier, reproduction, printing and delivery expenses) and administrative fees and “seasoning fees” of the DIP Agent and its affiliates and the DIP Lenders in connection with the preparation, execution and delivery, administration, amendment, waiver or modification (including proposed amendments, waivers or modifications) of the DIP Credit Agreement and the DIP Documents, whether or not the DIP Facility is successfully consummated, and in connection with the syndication of the DIP Facility and all collateral appraisals and field exams prepared or conducted by or on behalf of the DIP Agent or the DIP Lenders are to be paid by the Debtors in cash promptly upon submission of invoices therefor. In addition, all reasonable and documented out-of-pocket fees, costs and expenses (including but not limited to reasonable and documented legal fees and expenses (which shall include the fees and expenses of one primary counsel for each of the DIP Agent and the DIP Lenders and one local counsel in each applicable jurisdiction for each of the DIP Agent and the DIP Lenders) and a financial advisor for the DIP Lenders) of the DIP Agent and the DIP Lenders for workout proceedings, enforcement costs and documentary taxes associated with the DIP Facility are to be paid by the Debtors in cash promptly upon submission of invoices therefor. The Debtors shall also reimburse the ad hoc group of Prepetition Senior Secured Noteholders (the “Ad Hoc Group”) and Greywolf for reasonable and documented out-of-pocket fees and expenses for one financial advisor, one or more operational consultants and legal advisors (including one primary counsel for each of the group and Greywolf, and local counsel in each applicable jurisdiction for the group), and the obligation of the Debtors to reimburse such fees and expenses shall continue and survive the termination and payment in full of the DIP Facility, but shall terminate upon payment in full in

cash of all obligations under the Prepetition Senior Secured Notes. All fees and expenses described above shall be payable by the Debtors whether accrued or incurred prior to, on, or after the Petition Date; provided that the Debtors shall promptly provide copies of the invoices related to such fees and expenses to the U.S. Trustee and the Creditors' Committee, and each of the U.S. Trustee and the Creditors' Committee shall have ten (10) days from receipt of such invoices to raise an objection. If the U.S. Trustee or the Creditors' Committee raises an objection to a particular invoice, and the parties are unable to resolve any dispute regarding the fees and expenses included in such invoice, the Court shall hear and determine such dispute. In addition, the Debtors will indemnify the DIP Lenders, the DIP Agent and their respective affiliates, and hold them harmless from and against all reasonable and documented out-of-pocket costs, expenses (including but not limited to reasonable and documented legal fees and expenses) and liabilities arising out of or relating to the transactions contemplated hereby and any (which shall include the fees and expenses of one primary counsel for each of the DIP Agent and the DIP Lenders and one local counsel in each applicable jurisdiction for each of the DIP Agent and the DIP Lenders, and any additional counsel to the extent reasonably required due to actual or perceived conflicts) actual or proposed use of the proceeds of any loans made under the DIP Facility; provided, however, that no such person will be indemnified for costs, expenses or liabilities to the extent determined by a final, non-appealable judgment of a court of competent jurisdiction to have been incurred solely by reason of the (x) gross negligence or willful misconduct of such person (or their related persons) or a (y) a material breach of the obligations of such person (other than the DIP Agent or any sub-agent thereof) under the DIP Documents; provided further that the Debtors shall promptly provide copies of the invoices related to such indemnification to the U.S. Trustee and the Creditors' Committee, and each of the U.S. Trustee

and the Creditors' Committee shall have ten (10) days from receipt of such invoices to raise an objection. If the U.S. Trustee or the Creditors' Committee raises an objection to a particular invoice, and the parties are unable to resolve any dispute regarding the fees and expenses included in such invoice, the Court shall hear and determine such dispute.

31.33. Limitation on Use of the DIP Facility, the DIP Collateral, and the Prepetition Collateral (Including the Cash Collateral). The Debtors shall use the proceeds of the DIP Facility and the Prepetition Collateral, including the Cash Collateral, as provided in this ~~Interim~~Final Order, consistent with the Budget (including any permitted variances with respect thereto), and the DIP Documents. Notwithstanding anything herein or in any other order of this Court to the contrary, neither the DIP Facility, the DIP Collateral, the Prepetition Senior Secured Notes Collateral, including the Cash Collateral, nor the Carve-Out (other than the Investigation Budget) may be used to (a) object, contest, or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents, the Prepetition Senior Secured Notes Documents, the Zochem Facility, or the liens or claims granted under this ~~Interim~~Final Order, the DIP Documents or Prepetition Senior Secured Notes Documents, (b) assert any Claims and Defenses or any other causes of action against the DIP Agent, the DIP Lenders, the Prepetition Senior Secured Notes Parties, the Zochem Secured Parties, or their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the DIP Agent's, the Prepetition Secured Agents', or the Zochem Secured Parties' assertion, enforcement, or realization on the Prepetition Collateral, the DIP Collateral, the Zochem Collateral, or Zochem Adequate Protection Obligations, as applicable, in accordance with the DIP Documents, the Prepetition Debt Documents or this ~~Interim~~Final Order, (d) seek to modify any of the rights granted to the DIP

Agent, the DIP Lenders or the Prepetition Senior Secured ~~Note~~Notes Collateral Agent hereunder or under the DIP Documents or the Prepetition Senior Secured Notes Documents, in the case of each of the foregoing clauses (a) through (d), without such party's prior written consent or (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are (i) approved by an order of this Court and (ii) permitted under the DIP Documents; provided, however, that notwithstanding anything to the contrary herein, the Debtors shall not be authorized to use the DIP Facility or DIP Collateral to pay fees or expenses in excess of the Investigation Budget for the Creditors' Committee, if any, to investigate Claims and Defenses against the Prepetition Senior Secured Notes Parties or the Prepetition Unsecured Notes Parties before the termination of the Challenge Period, or to initiate or prosecute proceedings or actions on account of any Claims or Defenses against the Prepetition Senior Secured Notes Parties or the Prepetition Unsecured Notes Parties.

32-34. Draws on Letters of Credit; Modification of Automatic Stay. To the extent there is one or more draws on the letters of credit issued by PNC to the Debtors, the automatic stay imposed by section 362 of the Bankruptcy Code is hereby modified to permit PNC to use the PNC L/C Cash Collateral to fund the draws from time to time on the letter(s) of credit or to reimburse itself for any draws on the letter(s) of credit from time to time, and any lien on any such cash collateral shall be discharged without notice to any party including any junior lienholders.

33-35. No Standing Granted. Nothing in this ~~Interim~~Final Order vests or confers on any person (as defined in the Bankruptcy Code), including the Creditors' Committee ~~or any other statutory committee appointed in these chapter 11 cases,~~ standing or authority to pursue any

Claims and Defenses or other causes of action belonging to the Debtors or their estates with respect to the Prepetition Debt Documents or any obligations arising thereof.

34.36. Binding Effect; Successors and Assigns. The provisions of this ~~Interim~~Final Order, the DIP Credit Agreement, and the other DIP Documents shall be binding upon all parties in interest in the Debtors' chapter 11 cases and any Successor Cases, including the Prepetition Secured Parties, ~~any~~the Creditors' Committee, the Debtors and their respective successors and assigns (including any Trustee hereinafter appointed or elected for the estates of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors), and shall inure to the benefit of the DIP Agent, the Prepetition Senior Secured Notes Parties and the Zochem Secured Parties.

35.37. Modifications of DIP Documents. The Debtors and the DIP Parties are hereby authorized to implement, in accordance with the terms of the DIP Documents, (i) any non-material amendments or modifications (including without limitation, any change in the number or composition of the DIP Lenders or the DIP Agent) of the DIP Documents (other than this ~~Interim Order and the Final Order~~Final Order) or (ii) any other modifications of the DIP Documents necessary to reflect the terms of this Final Order, each without further notice, motion or application to, order of or hearing before, this Court. Any material modification or amendment to the DIP Documents (other than as contemplated in the previous sentence) shall only be permitted pursuant to an order of this Court, after being submitted to this Court upon notice to counsel for the Creditors' Committee, ~~if any,~~ the U.S. Trustee, the Prepetition Secured Agents (including the Prepetition Macquarie Facility Agent) and the Prepetition Unsecured Notes Indenture Trustee, including with respect to any fees or expenses payable by the Debtors

in connection with such modification; provided, however, that any forbearance from, or waiver of, (or amendment having the effect of waiving) (a) a breach by the Debtors of a covenant, representation or any other agreement or (b) an existing or anticipated default or an Event of Default, in each case under the DIP Documents shall not require an order of this Court.

36.38. Limitation of Liability. In determining to make any loan under the DIP Credit Agreement or in exercising any rights or remedies as and when permitted pursuant to this ~~Interim~~Final Order, the DIP Documents or the Prepetition Senior Secured Notes Documents, the DIP Agent, the DIP Lenders, the Prepetition Senior Secured Notes Parties, and the Prepetition Senior Secured Note~~Macquarie~~ Parties shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute). Furthermore, nothing in this ~~Interim~~Final Order, the DIP Documents, or the Prepetition Senior Secured Notes Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or the Prepetition Senior Secured Notes Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

37.39. Rights Reserved. Notwithstanding anything herein to the contrary, but subject to Paragraphs ~~11-12~~12-15 hereof, no term or provision of this ~~Interim~~Final Order or the Budget shall prejudice the rights or interests of any party in interest with respect to the Intercreditor Agreement or the rights of offset or recoupment of any party.

40. FS Sperry. To the extent those certain mechanics' liens asserted by F.S. Sperry Co., Inc. ("FS Sperry") with respect to certain of the Debtors' property described more fully in

the objection filed by FS Sperry at [Docket No. 143] (collectively, the "FS Sperry Liens") are senior to the Prepetition Senior Secured Notes Liens with respect to such assets, the FS Sperry Liens shall be, and shall be deemed to be, Permitted Prepetition Liens; provided that the rights of any party (including the Debtors) to challenge the priority of the FS Sperry Liens versus the Prepetition Senior Secured Notes Liens, or the extent, validity, and perfection of the FS Sperry Liens, and the claims supporting such liens, are fully preserved, and all rights of FS Sperry with regard to the FS Sperry Liens, including the rights to defend the priority, extent, validity and perfection of the FS Sperry Liens, and the claims supporting such liens, are fully preserved.

41. *Powers Coal & Coke.* Subject to a good faith reconciliation among the Debtors and Power Coal & Coke ("Powers"), the Debtors shall promptly pay all claims asserted by Powers that are entitled to priority pursuant to section 503(b)(9) of the Bankruptcy Code in an amount not to exceed \$218,714.30 (the "Powers Claim"). Unless the Debtors raise an objection to the amount of the Powers Claim, the Debtors shall pay the Powers Claim no later than twenty-one (21) days from the date of this Order with funds budgeted per Paragraph 45 (and not in addition to such funds). In the event of a dispute, Debtors shall identify in writing the disputed amount and immediately pay any undisputed amount to Powers.

42. *Chubb Insurance.* For the avoidance of doubt and notwithstanding anything herein to the contrary (including, without limitation, any other provision that purports to be preemptory or supervening), (a) to the extent ACE American Insurance Company and/or any of its affiliates (collectively, and together with each of their successors, "Chubb") had valid and perfected liens and/or security interests on property (including Cash Collateral) of the Debtors as of the Petition Date, which liens and/or security interests were senior to the liens and/or security interests of each of the Prepetition Secured Parties, such liens and/or security interests shall be

senior to any liens and/or security interests granted pursuant to this Order and shall be considered Permitted Prepetition Liens; (b) the DIP Agent, the DIP Lenders and the Prepetition Secured Parties do not have liens and/or security interests on any letter(s) of credit for which Chubb is the beneficiary or any proceeds thereof; and (c) this Order does not grant the Debtors any right to use any property (or the proceeds thereof) held by Chubb as collateral to secure obligations under insurance policies and related agreements.

43. *Sales of Macquarie Collateral Outside the Ordinary Course of Business.* For the avoidance of doubt, the Debtors shall not sell any asset, outside the ordinary course of business, that is subject to a Prepetition Macquarie First Priority Lien or a Macquarie Facility Adequate Protection Lien unless (a) the proceeds from such sale are used to satisfy the Macquarie Credit Facility Obligations or (b) as otherwise authorized pursuant to an order of the Court.

44. *Zochem.* Notwithstanding anything herein to the contrary: if (x) the DIP Agent or any DIP Lender receive proceeds from DIP Collateral that are proceeds from Zochem's assets on account of DIP Superpriority Claims and/or DIP Liens and/or (y) any DIP Lender that is also a Prepetition Senior Secured Notes Party receives any proceeds from a sale or any other disposition of Zochem's assets on account of any Senior Secured Note Adequate Protection Obligations, all such proceeds in excess of \$25,000,000 but less than \$37,000,001 in the aggregate shall be promptly turned over to the DIP Agent to be held in trust and used solely for payment, first, of any allowed postpetition claims against Zochem arising in the ordinary course of business, including claims held by employees, and thereafter, other allowed unsecured claims asserted against Zochem (regardless of whether such claims arose prior to or after the Petition Date); provided that after all such claims are paid, any excess balance, if any, shall be distributed by the DIP Agent in accordance with the priority provisions set forth herein.

45. Section 503(b)(9) Claims. The DIP Lenders and the Debtors shall revise the Budget to provide for the payment of claims entitled to priority under section 503(b)(9) of the Bankruptcy Code in an amount equal to \$2.75 million during the six-week period following entry of this Final Order and the balance of claims entitled to priority under section 503(b)(9) of the Bankruptcy Code shall be paid on or before the effective date of a confirmed chapter 11 plan.

38-46. Choice of Law; Jurisdiction. The DIP Facility and DIP Documents (and the rights and obligations of the parties thereto) shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, including, without limitation, Sections 5-1401 and 5-1402 of the New York General Obligations Law, and, to the extent applicable, the Bankruptcy Code, except for certain security documents to be delivered by Zochem, which will be governed by applicable Canadian law. The Court shall have exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, either the DIP Facility or DIP Documents.

39-47. Controlling Effect of InterimFinal Order. To the extent any provision of this InterimFinal Order conflicts or is inconsistent with any provision of the Motion or the DIP Documents, the provisions of this InterimFinal Order shall control.

40-48. No Waiver. The failure of the DIP Agent or DIP Lenders to seek relief or otherwise exercise their respective rights and remedies under this InterimFinal Order, the DIP Documents, or otherwise (or any delay in seeking or exercising same), shall not constitute a waiver of any of such parties' rights hereunder, thereunder, or otherwise. Nothing contained in this InterimFinal Order shall impair or modify any rights, claims, or defenses available in law or equity to any Prepetition Notes Party or any of the DIP Agent, DIP Lenders, or the Zochem Secured Parties. Except as prohibited by this InterimFinal Order, the entry of this InterimFinal

Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, the ability of the Prepetition Notes Parties ~~or~~, the DIP Agent or DIP Lenders, the Prepetition Macquarie Facility Parties, or the Zochem Secured Parties under the Bankruptcy Code or under non-bankruptcy law to (i) request conversion of these cases to cases under chapter 7, dismissal of the cases, or the appointment of a trustee in these cases, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, any Chapter 11 plan or plans with respect to any of the Debtors, or (iii) except as expressly provided herein, exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) of the DIP Agent, DIP Lenders, the Prepetition Notes Parties, the Prepetition Macquarie Facility Parties, or the Zochem Secured Parties, respectively.

~~41.49.~~ No Third Party Rights. Except as explicitly provided for herein or in any DIP Documents, this ~~Interim~~Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary. In determining to make any loan (whether under the DIP Documents or otherwise) or in exercising any rights or remedies as and when permitted pursuant to this ~~Interim~~Final Order or the DIP Documents, the DIP Agent and DIP Lenders shall not (i) be deemed to be in control of the operations of the Debtors or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

~~42.50.~~ Jurisdiction. This Court shall retain jurisdiction to enforce the terms of this ~~Interim~~Final Order and to adjudicate any and all matters arising from or related to the interpretation or implementation of this ~~Interim~~Final Order.

~~43. — *Zochem's Obligations.* — Notwithstanding anything herein to the contrary, Zochem's obligations with respect to the DIP Facility, including the DIP Claims and Liens, shall not exceed \$25,000,000.00 pending further order of the Court.~~

~~44. — *Interim Borrowings.* — Notwithstanding anything herein to the contrary, the Debtors' borrowings under the DIP Credit Agreement shall not exceed \$38,500,000.00 pending further order of the Court.~~

~~45. — *Final Hearing.* — The Final Hearing shall be heard before this Court on February 22, 2016 at 3:00 p.m., prevailing Eastern Time in Courtroom No. 6 (Fifth Floor) at the United States Bankruptcy Court, 824 Market Street, Wilmington, DE 19801.~~

~~46. — *Objections.* Any objections or responses to entry of the Final Order shall be filed on or before 12:00 p.m., prevailing Eastern Time, on February 18, 2016, and shall be served on: (a) the Debtors, 4955 Steubenville Pike, Suite 405, Pittsburgh, Pennsylvania 15205, Attn: Gary R. Whitaker; (b) proposed counsel for the Debtors, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Ryan Preston Dahl, Esq. and Angela M. Snell, Esq.; (c) proposed co-counsel for the Debtors, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attn: Laura Davis Jones, Esq.; (d) counsel to the Prepetition Senior Secured Notes Indenture Trustee, Waller Lansden Dortch & Davis, LLP, Nashville City Center, 511 Union Street, Suite 2700, Nashville, Tennessee 37219, Attn: Beth E. Vessel; (e) counsel to the Prepetition Macquarie Facility Agent, Stroock & Stroock & Lavan LLP, Attn: Mark A. Speiser; (f) counsel to the Prepetition Unsecured Note Indenture Trustee, Waller Lansden Dortch & Davis, LLP, Nashville City Center, 511 Union Street, Suite 2700, Nashville, Tennessee 37219, Attn: Beth E. Vessel; (g) counsel to the DIP Agent, Shipman & Goodwin LLP, One Constitution Plaza,~~

~~Hartford, Connecticut 06103, Attn: Nathan Z. Plotkin; (h) counsel to the DIP Lenders, Akin Gump Strauss Hauer & Held, One Bryant Park, New York, New York 10036, Attn: Michael S. Stamer and Meredith A. Lahaie; (i) counsel to any statutory committee appointed in these cases; (j) counsel to PNC Bank, N.A., Blank Rome LLP, 1200 Market Street, Wilmington, Delaware 19801, Attn: Regina Stango Kelbon; (k) counsel to any statutory committee appointed in these cases; and (l) Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Timothy J. Fox, Esq. In the event no objections to entry of the Final Order are timely received, this Court may enter such Final Order without need for the Final Hearing.~~

Dated: _____, 2016
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

DIP FINANCING AGREEMENT

Exhibit 2

BUDGET

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED,
IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH
RESPECT TO THE DEBTORS, AND APPLICATION OF ZOICHEM INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT**

Court File No. CV-16-11271-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

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Lawyers for Zochem Inc.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED,
IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT WITH RESPECT
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Applicant

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MOTION RECORD

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