IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: US MAGNESIUM LLC, Debtor.[1]	Chapter 11 Case No. 25-11696 (BLS) **Hearing Date: To be determined** **Objection Deadline: To be determined**

MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN ORDER (I) CONVERTING THE DEBTOR'S CHAPTER 11 CASE TO A CASE UNDER CHAPTER 7 OF THE BANKRUPTCY CODE

The Official Committee of Unsecured Creditors (the "Committee") of the above-captioned debtor and debtor in possession (the "Debtor"), by and through its undersigned proposed counsel, Eversheds Sutherland (US) LLP and Cole Schotz P.C., hereby submits to this Court its motion (the "Motion") requesting that the Court (as defined below) enter an order converting the Debtor's above-captioned chapter 11 case (the "Chapter 11 Case") to a case under chapter 7 of title 11 of the United States Code (the "Bankruptcy Code") and, as grounds therefor, respectfully represents as follows:

PRELIMINARY STATEMENT[2]

1. The Debtor entered chapter 11 seeking Court approval of its restructuring strategy that would (a) burden the Debtor's estate (the "Estate") with DIP Financing that benefits the DIP Lender more than the Estate, (b) use the DIP Financing to draw previously unencumbered assets into the collateral package for the DIP Lender's *prepetition* secured loan, thus transferring those assets' value

[1] The last four digits of the Debtor's federal tax identification number are 5446. The Debtor's service address for the purpose of this chapter 11 case is: 238 N. 2200 W. Salt Lake City, UT 84116.

[2] Capitalized terms used but not otherwise defined in the Preliminary Statement shall have the meanings ascribed to them below or, if not defined herein, in the DIP Motion or Bid Procedures Motion (each as defined herein), as applicable.

from unsecured creditors to the Debtor's DIP Lender, and (c) run a sham sale process that is too rushed to support the diligence and planning necessary to buy these types of assets, thus handing the Debtor's assets to the stalking horse bidder, a newly formed subsidiary of the Debtor's parent company, (d) pass the business, cleansed of liabilities, back into the parent company's control, and (e) facilitate the parent company's purchase (*i.e.*, complete release) of all possible claims and causes of action against it and its affiliates for no meaningful value to the creditors that otherwise would receive the proceeds of such claims. All in all, it is a restructuring strategy that successfully maximizes the value of Estate assets—for the Debtor's prepetition secured lender and parent company only. For unsecured creditors and other parties in interest, it is disastrous.

2. As reflected in the Committee's Objection to the DIP Motion and the Bid Procedures Motion, as well as objections by multiple other stakeholders to those motions, the Debtor's proposed DIP Financing and sale scheme lacks fairness, transparency, and legal justification. The DIP Financing and sale terms only benefit insiders and secured lenders, and they obviously are intended to, and would in fact, harm unsecured creditors and the integrity of the bankruptcy process.

3. The Debtor has lost sight of its fiduciary duties. Rather than structure a strategy to maximize value to all creditors to whom fiduciaries duties are owed,[3] the Debtor has chosen a strategy that effectively hands all Estate value to its Prepetition Secured Lenders (notwithstanding all or a

[3] The fiduciary duties of a debtor in possession are derived from the trustee's duties under 11 U.S.C. § 1107, which grants the debtor in possession the rights and responsibilities of a trustee. These duties include operating the debtor's business and managing the estate in a manner that benefits creditors. As a debtor in possession, the Debtor "owe[s] fiduciary duties to all creditors, including the Committee's constituents, to maximize the value of the estate." *In re Whittaker Clark & Daniels Inc.*, 2025 WL 2611753, at *12 n. 16 (3d Cir. Sep. 10, 2025) (citing *In re Marvel Ent. Grp., Inc.*, 140 F.3d 463, 471 (3d Cir. 1998) ("The debtor-in-possession is a fiduciary of the creditors and, as a result, has an obligation to refrain from acting in a manner which could damage the estate, or hinder a successful reorganization.")).

portion of the Debtor's obligations to the lenders, even if properly perfected which has not been determined, are insider claims that may be unsecured or recharacterized as equity).

4. The time has come to put in place a new fiduciary for this case—one that will act for the benefit of the creditors and will be able to liquidate the Debtor's assets more effectively, equitably, and efficiently.

5. Section 1112(b) of the Bankruptcy Code empowers a court to convert a chapter 11 case to one under chapter 7 for cause. 11 U.S.C. § 1112(b). "Cause" exists where, among other things, a debtor experiences "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A).

6. Cause for conversion undoubtedly exists here. The Debtor's operations have all but shut down in recent years following equipment failures, market pressures, and actions by federal and state authorities alleging violations of environmental and regulatory obligations. What remains of the Debtor's operations generates significant losses. Each day operating in chapter 11 only deepens those losses and strips more value from the Estate.

7. Converting the Chapter 11 Case to a case under chapter 7 at this juncture is in the best interests of the Estate and creditors.[4] While the Court has already approved liens and claims related to the Interim DIP Order, the Court can preserve value going forward by converting this case to a chapter 7 liquidation while the Unencumbered Assets are still minimally encumbered or unencumbered.[5] In chapter 7, the Debtor may avoid many of the financial burdens imposed by the proposed DIP Financing. Without the truncated timeline imposed by the DIP Financing, a chapter

[4] If the Court sustains the Committee's objection to the DIP Motion and the Bid Procedures Motion [D.I. 130], there may be no further DIP Financing, which in itself is cause to convert the Chapter 11 Case, as there will be no funding to pay for administrative expense claims incurred in the Chapter 11 Case.

[5] The Committee reserves all rights for itself and any chapter 7 trustee to the extent that the Court determines that the terms of the DIP Financing were not properly presented to the Court.

7 trustee may take more time to market the Debtor's assets to potential buyers, thus maximizing asset values for creditors. Moreover, an independent chapter 7 trustee could investigate, pursue, and ultimately liquidate any claims and causes of action of the Debtor's Estate (including against Renco) for the benefit of creditors.

8. There is cause here to convert the Debtor's case, and doing so would significantly increase the value of the Estate to unsecured creditors and other parties in interest who would otherwise receive nothing on their claims. The Court should therefore grant this Motion to convert the Debtor's Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

JURISDICTION

9. The United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to the United States Bankruptcy Court for the District of Delaware (the "Court") under 28 U.S.C. § 157 pursuant to the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Committee confirms its consent pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

10. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

11. The statutory bases for the relief requested herein are sections 1112(b) and 1104(a) of title 11 of the Bankruptcy Code.

BACKGROUND

12. On September 10, 2025 (the "Petition Date"), the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code (the "Chapter 11 Case"). The Debtor continues to operate its business and manage its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Additional information about the Debtor's Chapter 11 Case is set forth in the *Declaration of Ron Thayer in Support of First Day Motions* [D.I. 4] (the "First Day Declaration") filed on the Petition Date.

13. Pursuant to the First Day Declaration, as of the Petition Date, the Debtor's magnesium operations and lithium carbonate production have been idled for years and cannot be restarted without, at a minimum, significant investment. First Day Decl. ¶¶ 18-19 ("To restart magnesium production following the Force Majeure Event, USM would need to make substantial capital investments and see a significant increase in magnesium market prices."); *id.* at ¶ 22; Deposition of R. Thayer, Sept. 29, 2025 (hereinafter, "Thayer Dep."),[6] at 23:6–24:9 (estimating the cost to restart Lithium production at "somewhere between 30 and 100 million dollars"); *id.* at 27:12-28:2 (estimating the cost to restart magnesium production at "approximately $40 million dollars"); *Objection of the United States to Debtor's Motion for Interim and Final Orders (I) Authorizing the Debtor to (A) Obtain Postpetition Financing, (B) Grant Senior Secured Priming Liens and Superpriority Administrative Expense Claims and (C) Utilize Cash Collateral; (II) Granting Adequate Protection; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief* [D.I. 124] (the "EPA Objection"), at 5 ¶ 6 (" . . . the United States' updated projections for future clean-up costs at the Superfund Site and surrounding

---

[6] Attached hereto as **Exhibit B** are excerpts from the deposition transcript of Ron Thayer, referenced herein.

area are more than $100 million inclusive of the funds received from the MagCorp bankruptcy settlement.”). Currently, the Debtor’s operations are limited to producing certain products from existing material stocks. First Day Decl. ¶ 27.

A. The Debtor’s Prepetition Secured Debt

14. As of the Petition Date, the Debtor, which is a fully-owned subsidiary of The Renco Group, Inc. (“Renco”), was party to three secured loans with a combined secured funded debt amount of approximately $115 million. Wells Fargo, National Association (“Wells Fargo” or “DIP Lender”) is the Debtor’s first lien secured lender pursuant to that certain pre-petition Loan and Security Agreement dated June 24, 2002 (the “Wells Fargo Prepetition Credit Agreement”), under which the Debtor owed approximately $67 million, including a letter of credit limit of $821,588 (the “Wells Fargo Prepetition Secured Loan”). Pursuant to the Wells Fargo Prepetition Credit Agreement, prepetition loan obligations designated as “Term Loan C”, issued by Renco, were issued in the aggregate amount of $25 million. On information and belief, all or a portion of the remaining loan obligations under the Wells Fargo Prepetition Credit Agreement are guaranteed by Renco.

15. In 2023, the Debtor entered into a subordinated secured loan funded by Renco Global Capital, Inc. (“Renco-Affiliated Lender”), an affiliate of Renco, as the secured lender under which approximately $45.4 million is outstanding. Less than two weeks prior to the Petition Date, on August 28, 2025, the Debtor borrowed an additional approximately $2.5 million through a subordinated secured bridge loan offered by its parent company, Renco (Renco, Renco-Affiliated Lender, and Wells Fargo, collectively, the “Prepetition Secured Lenders”).

16. The Debtor’s prepetition secured loans were each secured by the Debtor’s assets, *except* for certain fully unencumbered assets which have material value. Those unencumbered

assets include: (a) an office building (the "Salt Lake City Property") for which there currently is a pending purchase offer (subject to customary contingencies) of $3.5 million,[7] (b) a business interruption insurance claim seeking $56 million in proceeds that is currently in litigation (the "Ace Commercial Tort Claim"),[8] (c) the mineral lease with the State of Utah under which the Debtor obtains the right to extract magnesium chloride and other salts from the Great Sale Lake (the cornerstone of any future operations), which is subject to a non-pledge restriction,[9] (d) the Debtor's interests in a non-debtor subsidiary whose "reasonably substantial" water rights may have material value,[10] (e) any commercial tort claims, including claims against Renco and other insiders[11], and (f) any avoidance actions (collectively, the "Unencumbered Assets").

B. The DIP Financing

17. On the Petition Date, the Debtor filed a motion [D.I. 10] (the "DIP Motion") seeking entry of interim and final orders that, among other things, authorize the Debtor's proposed postpetition debtor-in-possession financing (the "DIP Financing") offered by Wells Fargo as the lender pursuant to that certain *Ratification and Amendment Agreement* attached as Exhibit B to the DIP Motion (the "DIP Agreement"), which ratifies and amends (and, in places, incorporates

---

7 *See* Thayer Dep., 38:7-39:1.

8 Thayer Dep., 26:19-27:11.

9 *See Mineral Lease & Option Agreement*, dated March 8, 1961, § 9 (barring, among other things, encumbrance without the consent of the State of Utah), as amended by the *Agreement*, dated July 31, 1969, § 14 (same).

10 *See* Thayer Dep., 58:23-59:1.

11 According to the EPA Objection, this is not the first time a Renco-affiliated entity has been involved in a bankruptcy with significant consequences. In August 2001, Magnesium Corporation of America ("MagCorp") and its parent company, Renco Metals — both subsidiaries of Renco — filed for bankruptcy in the Southern District of New York. *See In re Magnesium Corp. of America, et al.*, Case No. 01-14312 (Bankr. S.D.N.Y. 2001). Approximately one year later, US Magnesium, a newly formed Renco subsidiary and the Debtor in this case, acquired substantially all of MagCorp's assets. Following the sale, MagCorp's case was converted to Chapter 7, and a trustee was appointed. The Chapter 7 Trustee pursued extensive litigation concerning fraudulent transfers involving MagCorp, Renco, and related parties. After more than a decade of litigation, the Trustee secured a judgment "***against Renco and others***" that ultimately generated over $200 million for MagCorp.'s bankruptcy estate. EPA Objection, at 5 ¶ 5. A subsequent settlement with the United States resulted in a payment exceeding $81 million to resolve environmental claims related to the Superfund Site and surrounding federal lands.

without restating) the Wells Fargo Prepetition Credit Agreement.[12]

18. The Debtor requests DIP Financing that provides for (a) "new money" financing of up to $10 million, plus a roll up of the $821,588 of prepetition letter of credit obligations (the "DIP Term Loan"), and (b) a roll up of up to $10 million of the Wells Fargo Prepetition Secured Loan obligations, on a dollar for dollar basis for all new money financing (the "Roll Up").[13] The DIP Term Loan has two tranches, which are drawn at the same time on a *pro rata* basis. Tranche A consists of $5 million funded by Wells Fargo, and Tranche B consists of $5 million effectively funded by Renco through the purchase of a subordinated junior participation interest in that tranche.

19. Under the DIP Motion, the Debtor seeks a payment waterfall that pays prepetition allegedly secured loan obligations before the DIP Financing obligations (before the Challenge Period has run). The Debtor seeks to apply "any payments or proceeds arising from the sale of the Debtor's assets" ***first*** to all Wells Fargo Prepetition Secured Loan obligations other than $25 million of those prepetition obligations designated as "Term Loan C" obligations.[14] *See* Interim DIP Order, at 2 ¶ 2 (describing the DIP Agreement "providing for, among other things: . . . the application of any payments or proceeds arising from the sale of the Debtor's assets first, to the Pre-Petition Obligations (other than Term Loan C) until such Pre-Petition Obligations are paid and satisfied in full"); *accord* DIP Agreement § 7.3 (providing for same repayment waterfall for unspecified "payments or proceeds"). Only once all such Wells Fargo Prepetition Secured Loan

[12] The Wells Fargo Prepetition Credit Agreement was not attached to the DIP Motion.

[13] The Debtor's filings are consistent in these financing terms, except in the DIP Motion's opening paragraph, which requests DIP Financing up to an aggregate amount of $12,500,000. DIP Motion, at 1.

[14] Term Loan C is wholly participated out to Renco. US Magnesium LLC Rule 30(b)(6) Dep., R. Mayo, Oct. 1, 2025 (hereinafter, "Mayo Dep."), at 120:12-17; Stalking Horse APA §§ 2.5(a)(ii), 1.1 (providing for the Renco-Affiliated Bidder to credit bid the Term Loan C obligations).

obligations are satisfied, the proceeds of the Debtor's assets would be applied, second, to the Tranche A DIP Term Loan funded by Wells Fargo. *Id.* Third, proceeds would be applied to the remaining $25 million Term Loan C portion of the Wells Fargo Prepetition Secured Loan obligations. *Id.* Finally—***and only if there are any funds left over after satisfying all prepetition and postpetition obligations to Wells Fargo***—the remainder of the superpriority secured DIP Term Loan funded by Renco, Tranche B, would be paid. *Id.*

20. The Debtor seeks to include as collateral for the DIP Financing obligations (the "<u>DIP Collateral</u>") the Debtor's Unencumbered Assets, as well as all collateral under the Wells Fargo Prepetition Secured Loan and all other Estate property. Notwithstanding the material potential value of the Unencumbered Assets, the DIP Motion seeks a waiver of the Debtor's rights under sections 506(c) and 552 of the Bankruptcy Code upon entry of a final order approving the DIP Financing (the "<u>Final DIP Order</u>").

21. On September 12, 2025, the Court entered its *Interim Order (I) Authorizing the Debtor to (A) Obtain Postpetition Financing, and (B) Grant Senior Secured Priming Liens and Superpriority Administrative Expense Claims; (II) Granting Adequate Protection; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief* [D.I. 32] (the "<u>Interim DIP Order</u>").

22. Following objections to the DIP Motion, the Court declined to approve the Roll Up on an interim basis, but included the Unencumbered Assets as DIP Collateral with respect to the "new money" DIP Term Loan. *See* Interim DIP Order, at 11 ¶ 5 (conditioning Roll Up on Final DIP Order); *Utah Division of Forestry, Fire, and State Lands' Objection to Debtor's Motion for Interim and Final Orders (I) Authorizing the Debtor to (A) Obtain Postpetition Financing, (B) Grant Senior Secured Priming Liens and Superpriority Administrative Expense Claims and (C)*

Utilize Cash Collateral; (II) Granting Adequate Protection; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief ¶¶ 12, 14 [D.I. 17]. Though the Interim DIP Order authorized the payment waterfall requested by the Debtor, it limited the use of the Unencumbered Assets as DIP Collateral to payment of only the postpetition DIP Financing. Interim DIP Order, at 11 ¶ 8.

23. Though not expressly addressed in the DIP Motion or at the first day hearing, the Debtor's proposed budget that was approved by the Interim DIP Order [D.I. 32-2, p.2-3 of 3] (the "Budget") provides for the sweep of all Debtor receipts to pay down the Wells Fargo Prepetition Secured Loan—an estimated nearly $3.9 million payment of the prepetition obligations that is independent of, and in addition to, the requested $10 million Roll Up. The Budget provides for various other payments for the benefit of Wells Fargo, including: (i) adequate protection interest payments on the Wells Fargo Prepetition Secured Loan totaling over $800,000, (ii) cash payments of DIP Financing interest of over $435,000, and (iii) unlimited legal fees and expenses that have been estimated in the Budget at $900,000. Over the 18-week Budget period, the Estate would divert around $6.2 million dollars of cash away from the Debtor's operations for payments to Wells Fargo, which is lending only $5 million of new money over the entire life of the case. After these cash payments (which could be higher if the Chapter 11 Case extends beyond 18 weeks or the DIP Lender's attorney's fees exceed the budgeted amount), the Debtor will receive less than $4 million in new financing, though it will be burdened by $20 million of superpriority liens and claims on all assets, including the Unencumbered Assets.

C. The Proposed Bid Procedures and Stalking Horse Bid

24. On September 12, 2025, the Debtor filed a motion [D.I. 41] (the "Bid Procedures Motion") seeking, among other relief, (i) approval of bid procedures for the sale of substantially

all of its assets under section 363 of the Bankruptcy Code (the "Bid Procedures") and (ii) approval of the stalking horse bid and asset purchase agreement (the "Stalking Horse APA" or "APA", and "Stalking Horse Bid," respectively) offered by LiMag Holdings, LLC, a newly-formed affiliate of Renco (the "Renco-Affiliated Bidder"), as the stalking horse bidder.

25. Given Renco's involvement in the sale process, the Debtor appointed an "independent' manager (the "Independent Manager") to *impartially* review, negotiate, and decide whether to approve any transactions proposed between the Debtor and Renco or a Renco affiliate. First Day Decl. ¶¶ 15, 50. The Independent Manager, however, was selected by Renco without the Debtor's participation in the decision-making process. *See First Stipulation of Facts Between the Debtor and Official Committee of Unsecured Creditors* [D.I. 128] (the "First Stipulation"), at 2. That is the very opposite of "independent."

26. Under the Stalking Horse Bid, the Renco-Affiliated Bidder would purchase, along with substantially all other Debtor assets, the Unencumbered Assets that may be worth tens of millions of dollars. Among those Unencumbered Assets, the Renco-Affiliated Bidder would purchase all claims and causes of action against current and former directors, officers, and managers, as well as all possible claims and causes of action against Renco and its affiliates—effectively "purchasing" (though for no apparent value) sweeping plan-like releases. *See* Stalking Horse APA §§ 2.1, 1.1.[15] The Debtor agreed to sell its potential claims and causes of action against Renco and other insiders without any investigation into viable claims, notwithstanding a corporate history of alleged environmental violations and insider wrongdoing. Mayo Dep.,[16]

[15] It is unclear whether the Stalking Horse Bid would include the purchase of the Salt Lake City Property if it is not otherwise sold beforehand, since it is not an Excluded Asset and the bid documents do not disclose the schedule of real property that will be purchased.

[16] Attached hereto as **Exhibit C** are excerpts from the deposition transcript of Ron Mayo, referenced herein.

67:23-68:15; EPA Objection, at 5 ¶¶ 1-5 (noting the entry of a $200 million judgment against Renco and its affiliates in connection with the MagCorp bankruptcy). Similarly, the Debtor contracted to sell its non-debtor subsidiary interests (*i.e.*, the Debtor's interests in the Skull Valley Joint Venture) without any valuation of the asset. Thayer Dep., 59:10-59:15.

27. In exchange for stripping the Unencumbered Assets and nearly all other assets from the Estate, the Stalking Horse Bid will provide no more than $250,000 in cash—insufficient funding for even a plan process or wind down of the Estate. APA § 2.5, § 1.1 ("Cash Consideration" definition). The Stalking Horse Bid purchase price is almost entirely comprised of a credit bid[17] and assumption of liabilities—a significant portion of which are liabilities owed to Renco or its affiliate that could be found to be unsecured, recharacterized or equitably subordinated after the sale closes.[18] Under the DIP Financing milestones, the sale must close no later than November 17, 2025 (unless the DIP Lender chooses to extend it),[19] which is before the Challenge Deadline of November 26, 2025. DIP Agreement § 5.4(f); Interim DIP Order, at 24-25 ¶ 32(a) (increasing the Challenge Period from the originally-proposed 45 days to 75 days).

28. The Bid Procedures require all competing bids to be submitted within only 45 days of the Petition Date, and ***less than three weeks*** after the hearing on the Bid Procedures Motion—an unrealistic timeline for any competing bidder that may *otherwise* have offered real value for the Estate assets, leaving the Renco-Affiliated Bidder to win by default. The Debtor did not run a

[17] The Renco-Affiliated Bidder would credit bid the Renco-funded Tranche B of the DIP Term Loan for up to $5 million and the "Term Loan C" portion of the Wells Fargo Prepetition Secured Loan, for approximately $25 million.

[18] And yet assumption of these likely valueless liabilities is the sole currency for the Unencumbered Assets – the Mineral Lease, the Ace Commercial Tort Claim, the insider claims, etc. (since the credit bid, by definition, cannot be used to bid on assets not subject to the lien being credited).

[19] The DIP Agreement establishes the deadline for entry of an order approving the sale as 60 days after the Petition Date, and the sale must close within five days after entry of that order. Since both milestones fall on weekends, they are moved to November 10, 2025 and November 17, 2025, respectively, pursuant to Bankruptcy Rule 9006.

marketing or sale process for its assets prior to the Petition Date, and the expedited postpetition marketing process simply does not allow enough time for interested buyers to diligence the Debtor's assets (which even the Debtor has not properly evaluated) or reach necessary agreements with state and federal authorities. *See* First Day Declaration, at 18 ¶ 49 (the Debtor first engaged an investment banker to "explore potential going concern transactions and strategic alternatives" in the weeks before the Petition Date); Stalking Horse APA, at 28-29 §§ 6.3, 6.4, and 6.6 (listing the conditions precedent to the obligations of the Stalking Horse Bidder, which include, among other things, satisfaction "in [Renco's] sole discretion" of certain matters related to the Mineral Lease, Consent Decree, and Water Rights (which requires the consent of the State of Utah and the EPA, as applicable)).

29. Even if the Stalking Horse Bid is the winning bid for the Debtor's assets, *and* if the Court approves the sale at a hearing planned for November 7, 2024, it would be almost impossible for the sale to close by the milestone date under the DIP Agreement, November 14, 2025. The Stalking Horse APA provides the following conditions precedent that must be met prior to Closing, ***each of which could take months, if not longer***, and are outside the control of the Debtor and the Renco-Affiliated Bidder:

- § 6.3 **Mineral Lease**. A mineral lease and/or royalty agreement with the State of Utah that addresses, **to the reasonable satisfaction of Purchaser**, all matters associated with the mining of magnesium and lithium in the State of Utah shall be in full force and effect as of the Closing Date.

- § 6.4 **Consent Decree**. Seller and Purchaser shall have reached agreement with the United States Environmental Protection Agency and the State of Utah, satisfactory to Purchaser **in its sole discretion**, which agreement shall provide for the following: (i) no work related to process modifications or corrective action under RCRA needs to be undertaken unless and until such work is agreed to by Purchaser and magnesium production is to be restarted at the Facility; (ii) agreement on a reasonable schedule for the completion of the waste pond; and (iii) a framework for releasing funds in the EPA Special Accounts to Purchaser for use in undertaking any work for which such EPA Special Accounts may be applied, and (iv) agreement by the United States that the facility as operated for the production of magnesium and/or lithium with the modifications set forth in the Consent Decree shall be in compliance with RCRA and no further process modifications will be required. (emphasis added)

- § 6.5 **Receivership Action Dismissal**. The Receivership Court shall have entered an order dismissing the Receivership Action with prejudice.
- § 6.6 **Water Rights**. A voluntary agreement with the State of Utah regarding water rights, in form and substance **satisfactory to Purchaser**, shall be in full force and effect as of the Closing Date. (emphasis added)

Stalking Horse APA §§ 6.3-6.6.

D. The Committee's Objections to the DIP Motion and the Bid Procedures Motion

30. On September 23, 2025, pursuant to section 1102 of the Bankruptcy Code, the United States Trustee for Region 3 (the "U.S. Trustee") appointed the Committee. D.I. 70.

31. On September 24, 2025, the Committee selected Eversheds Sutherland (US) LLP and Cole Schotz P.C. as its proposed counsel, and Province LLC as its proposed financial advisor.

32. On October 3, 2025, the Committee timely filed an omnibus objection to the DIP Motion and the Bid Procedures Motion. D.I. 130 (the "Committee Objection"). The Committee Objection is fully incorporated herein in further support of the relief requested. A hearing to consider the DIP Motion on a final basis and the Bid Procedures Motion is currently scheduled for October 6, 2025 at 11:00 a.m. (ET) (the "October 6 Hearing").

RELIEF REQUESTED

33. By this Motion, the Committee requests entry of an order, substantially in the form attached hereto as **Exhibit A**, converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code pursuant to section 1112(b) of the Bankruptcy Code.[20]

[20] The proposed Order requires, among other things, that following conversion the Debtor immediately turn over all amounts held in escrow by the Estate's professionals. This relief is consistent with relief previously granted in this

BASIS FOR RELIEF

34. Section 1112(b) of the Bankruptcy Code ("Section 1112(b)") provides:

> Except as provided in paragraph (2)[21] and subsection (c) [which is not relevant here] …, the court *shall* convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1) (emphasis added).

35. Section 1112(b) calls for a two-step analysis. *First*, the Court must determine whether there is "cause" to convert or dismiss the Chapter 11 Case. *Second*, if cause exists, the Court must choose between conversion and dismissal based on "the best interest of creditors and the estate." *See In re Am. Cap. Equip., LLC*, 688 F.3d 145, 161 (3d Cir. 2012) (citing § 1112(b)(1)); *In re SGL Carbon Corp*., 200 F.3d 154, 159 n.8 (3d Cir. 1999)).

36. Absent unusual circumstances, "[section 1112(b)] makes conversion *mandatory* once a court finds . . . any of the elements of 'cause.' . . . *The Court does not have discretion*." *In re Rsrvs. Resort, Spa & Country Club LLC*, No. 12-13316 (KG), 2013 WL 3523289, at *2 (Bankr. D. Del. July 12, 2013) (emphasis added); *accord In re Midwest Properties of Shawano, LLC*, 442 B.R. 278, 283 (Bankr. D. Del. 2010) (noting that the BAPCPA amendments to Section 1112(b) "limit the Court's discretion to refuse to dismiss or convert a chapter 11 case upon a finding of cause").

A. "Cause" for Conversion Exists Here Based on Section 1112(b)(4)(A) of the Bankruptcy Code and Other Factors.

---

district in connection with the conversion of a case to chapter 7. *See* Order in Aid of Conversion [D.I. 339] at 1, *In re Affirmative Insurance Holdings, Inc.*, No. 15-12136 (CSS) (Bankr. D. Del. Mar. 11, 2016).

[21] Section 1112(b)(2) states that the "court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate," and certain other findings are established as set forth therein. 11 U.S.C. § 1112(b)(2).

37. Section 1112(b)(4)(A) expressly provides that "cause" for conversion exists where there is a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A). This "*per se* cause" is satisfied by a showing of two prongs: (i) either a substantial *or* continuing loss to the Estate or diminution of the Estate; and (ii) no reasonable likelihood of rehabilitation. *In re Creekside Sr. Apartments, L.P.*, 489 B.R. 51, 61 (B.A.P. 6th Cir. 2013).

i. The Debtor's Estate Will Lose Value if it Remains in Chapter 11.

38. The first prong required for "*per se* cause" under section 1112(b)(4)(A) may be satisfied by "demonstrating that the debtor suffered or has continued to experience a negative cash flow or declining asset values following the order for relief." *In re Kanterman*, 88 B.R. 26, 29 (S.D.N.Y. 1988) ("All that need be found is that the estate is suffering some diminution in value."); 7 COLLIER ON BANKRUPTCY, ¶ 1112.04[6][a] (Alan N. Resnik & Henry J. Sommer eds., 16th ed. 2014) (hereinafter, "<u>7 Collier</u>") ("[Section 1112(b)(4)(A)] tests whether, after the commencement of the case, the debtor has suffered or continued to experience . . . declining asset values."). Where a debtor's loss is "sufficiently large given the financial circumstances of the debtor as to materially negatively impact the bankruptcy estate and interest of creditors, the loss is substantial" within the meaning of Section 1112(b)(4)(A). *In re TMT Procurement Corp.*, 534 B.R. 912, 918 (Bankr. S.D. Tex. 2015) (citing 7 Collier at ¶ 1112.04[6][a][i]).

39. First, cause to convert this case to a liquidation exists here because the Debtor's operations have been cash flow negative for "a substantial period of time" and the Estate's value will only continue to diminish in chapter 11. *See* Mayo Dep., 41:25-43:10 (discussing Debtor's ongoing negative cash flow). The Debtor's limited operations simply do not provide sufficient revenue to cover the costs of running the business, even *after* the Debtor ceased complying with various

environmental obligations. *See* Thayer Dep., 70:5-70:17 (stating that construction of a retrofitted waste pond required by the EPA Consent Decree ceased 18-20 months prior to the Petition Date because the Debtor lacked the revenues to continue it). Even if the Debtor's receipts exceeded its operational costs, however, the Debtor would be unable to apply those receipts to fund its operations. Every dollar of the Debtor's receipts gets swept out of the Estate to pay down the Wells Fargo Prepetition Secured Loan. *See* Budget; *accord* Thayer Dep., 31:2-31:14 (stating the Debtor has "an income stream that is continually swept . . . into the Wells Fargo system"). The Debtor must still pay royalties to the state of Utah on its sales, though the Debtor does not keep the receipts; thus, the Debtor pays out of pocket for the privilege to sell products for Wells Fargo's financial benefit. *Id.*

40. The Budget paints a stark picture of the Debtor's rapidly eroding financial situation: over 18 weeks, the Debtor's total retained cash receipts are $0.00, whereas total operating disbursements total over $4.4 million.[22] Even if the Debtor's cash receipts were *not* swept to pay down the Debtor's prepetition loan, they still would be insufficient (at less than $3.9 million) to fund business operations ($4.4 million). *Id.* The chapter 11 process does not change that fact.

41. Second, the costs of continuing the Chapter 11 Case only exacerbate the Estate's negative cash flow, further diminishing the value of the Estate by "burden[ing] the estate with mounting attorney and administrative fees." *In re Am. Cap. Equip., LLC*, 688 F.3d 145, 163 (3d Cir. 2012) (upholding bankruptcy court's conversion of debtor's chapter 11 case to chapter 7).[23]

42. Third—and most critically—the DIP Financing that the Debtor has requested to fund the Chapter 11 Case would destroy the meaningful value that the Unencumbered Assets could

[22] Notably, the Debtor's salary roll, produced to the Committee in response to formal document requests, reflects a monthly budget of $368,701.20 for its 24 employees — inclusive of salaries, payroll taxes, and employee benefits — equating to an average annualized cost of approximately $184,350.60 per employee.

[23] *See* Mayo Dep., 90:6-90:20 (noting that budgeted amounts for professionals may require adjustment).

otherwise provide for unsecured creditors, burden the Estate with unnecessary secured debt, and further deplete Estate assets. If the proposed DIP Financing terms are approved on a final basis, the Unencumbered Assets would become secured collateral *not only* for the $10 million in "new money" advanced under the DIP Loan, but also the additional $10 million rolled-up amount.[24] The Debtor also proposes a repayment waterfall for the DIP Financing that substantially depletes Estate value by paying off the Wells Fargo Prepetition Secured Loan in full before full payment of the DIP Financing.

43. Moreover, the Debtor seeks to waive its rights under the marshalling doctrine, and under sections 506(c) and 552(b) of the Bankruptcy Code—rights that otherwise would preserve some unencumbered value for unsecured creditors. Instead, the Debtor would continue to bear the costs of preserving and selling Wells Fargo's collateral while, in addition, making cash payments to Wells Fargo that surpass the actual value of Wells Fargo's new money contribution. In short, the longer the Debtor remains in chapter 11, the more value the DIP Financing would divert from unsecured creditors and other stakeholders.

44. Absent material changes to the DIP Financing and the Bid Procedures, converting the Chapter 11 Case to a chapter 7 liquidation is necessary to preserve and maximize the Estate's remaining value for the benefit of all creditors, not solely the Prepetition Lenders. First, "[a] Chapter 7 bankruptcy can be accomplished more efficiently, thus halting the mounting liabilities

---

[24] In fact, as noted in footnote 4 of the Committee Objection, the DIP Agreement provides that the Unencumbered Assets would serve as collateral securing ***all*** of the Wells Fargo Prepetition Secured Loan obligations, not only the Roll Up amount. However, subsequent to filing the Committee Objection, counsel for Wells Fargo informed Committee counsel that the DIP Lender will retract this position and indicated the proposed Final DIP Order will be revised accordingly. *See* DIP Agreement § 1.2(c), § 1.1 (definitions); *accord Notice of Filing Proposed Final Order (I) Authorizing the Debtor to (A) Obtain Postpetition Financing, and (B) Grant Senior Secured Priming Liens and Superpriority Administrative Expense Claims; (II) Granting Adequate Protection; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief*, D.I. 126, Ex. 2 ¶ 8 (proposed Final DIP Order).

against the estate." *See Am. Cap. Equip., LLC*, 688 F.3d at 163. Second, prompt conversion to a chapter 7 liquidation will cut off any further burdening of the Unencumbered Assets[25], which currently are secured as DIP Collateral by only the approximately $2.3 million budgeted for the DIP Term Loan through the October 6 Hearing. *Cf.* Mayo Dep., 85:2-15 (stating that Debtor intends to draw DIP Funding through week 6 of the Budget (10/13/25-10/19/25) for a total of $2.8 million of funding prior to the October 6 Hearing). Last, a chapter 7 sale process may be more effective at maximizing the value of the Estate's assets (most of which are currently non-performing anyway). Because a chapter 7 sale process can be run more efficiently, chapter 7 could offer prospective buyers more time to conduct due diligence and seek regulatory approvals, thus encouraging competitive bidding for the Estate's assets.

ii. The Debtor Does Not Have a Reasonable Likelihood of Rehabilitation in Chapter 11.

45. The second prong for establishing "cause" under section 1112(b)(4)(A)—the absence of a reasonable likelihood of rehabilitation—is also met here. "Rehabilitation" is not simply a question of whether a debtor can confirm a plan, but whether "the debtor's business prospects justify continuance of the reorganization effort." *TMT Procurement Corp.*, 534 B.R. at 920 (quoting *In re LG Motors, Inc.*, 422 B.R. 110, 116 (Bankr. N.D. Ill. 2009)). In other words, it refers to a "debtor's ability to restore the viability of its business." *Loop Corp.*, 379 F.3d 511, 516 (8th Cir. 2004) (citing *In re Gonic Realty Trust*, 909 F.2d 624, 626 (1st Cir. 1990)).

46. As the Third Circuit Court of Appeals has emphasized, "[h]owever honest in its efforts the debtor may be, and however sincere its motives, the District Court is not bound to clog its docket

[25] The Committee does not concede, and reserves all rights to contest, that the encumbrances imposed by the Interim DIP Order on the Unencumbered Assets are binding, due to the incomplete disclosure of the DIP Financing terms in the DIP Motion and at the First Day Hearing.

with visionary or impracticable schemes for resuscitation." *Brown*, 951 F.2d at 572 (quoting *Tennessee Publishing Co. v. American Nat'l Bank*, 299 U.S. 18, 22 (1936)). To remain in chapter 11, "[t]here must be 'a reasonable possibility of a successful reorganization within a reasonable time.'" *Id.* (quoting *United Sav. Ass'n v. Timbers of Inwood Forest Assocs*., 484 U.S. 365, 376 (1988)).

47. Here, neither the Debtor's business prospects nor its sale process justify continuing, or funding, this chapter 11 reorganization effort. The Debtor's reorganization strategy is designed solely to benefit the Prepetition Secured Parties at the expense of unsecured creditors. The Debtor seeks to sell substantially all assets through a chapter 11 process funded by DIP Financing that would strip the Estate of previously unsecured value. The proposed sale process, however, is not structured to maximize Estate value—it is not even structured to be viable. The diligence timeline is too short to allow any potentially interested buyer to conduct meaningful diligence or clear the regulatory hurdles to purchase the Estate assets. As such, the procedures are structured to box out any real competition to the Renco-Affiliated Bidder's Stalking Horse Bid.

48. But, if the Stalking Horse Bid ultimately becomes the successful bid, the conditions precedent to closing could take months or even years to satisfy—if they can be satisfied at all. The Renco-Affiliated Bidder must materially amend the Consent Decree, which requires approval by the United States District Court for the District of Utah, as well as negotiate mutually-agreeable resolutions to the mineral lease and water rights disputes with the State of Utah and obtain a dismissal of the Receivership Action by the Utah court overseeing it. Nothing short of a miracle could accomplish so much by November 17, 2025. In short, if the Debtor is allowed to implement its restructuring plan, the Estate will take on all of the burdens of the DIP Financing to run a sale process, only to get to the end of the process and be unable to sell the assets as planned.

49. Even if, for the sake of argument, the Debtor could close the Stalking Horse APA

upon its current terms, the sale may well leave the Estate administratively insolvent. The Estate would receive no more than $250,000 of cash value, which is insufficient funding to confirm a plan or to undertake an orderly winddown, much less return any recovery to unsecured creditors.[26]

50. Further, if a sale to the Renco-Affiliated Bidder were to close, there is no basis to conclude the sale would lead to a viable operating business—*i.e.*, a rehabilitation. Restoring the Debtor's magnesium and lithium production operations would, for *each*, require an investment of tens of millions of dollars, and even then, production would only be profitable if there is a change in global prices (or significant outside support). It is unclear whether the Renco-Affiliated Bidder has any plans to invest the tens of millions of dollars required to restore business operations for either the magnesium or lithium carbonate production lines. Instead, it may be that the Renco-Affiliated Bidder seeks to purchase the Debtor's near-shuttered operations together with all potential claims and causes of action against Renco and its affiliates, effecting a sweeping release of liabilities that otherwise could have been asserted for the benefit of the Estate, and it may never restore the Debtor's business operations.[27]

51. Proceeding in chapter 11 under the value-destructive framework sought by the Debtor simply is not justified in this case, where the prospects for rehabilitation are so precarious and the costs of the chapter 11 process so significant (particularly to unsecured creditors). Unsecured creditors would fare much better in a chapter 7 liquidation.

iii. Cause for Conversion Exists for Other Statutory and Equitable Reasons.

52. The factors establishing "cause" listed in Section 1112(b)(4) are "not exhaustive"

---

[26] In addition to the typical chapter 11 expenses and winddown costs, the Debtor must satisfy a $7 million tax liability that would not be assumed under the Stalking Horse APA and for which there is no budget or identified strategy to satisfy. Mayo Dep., 125:6-126:3.

[27] *See supra*, n. 9.

and courts may "consider other factors" in addition to those listed. *In re Brown*, 951 F.2d 564, 572 (3d Cir. 1991) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 117 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5903; H.R. Rep. No. 595, 95th Cong., 1st Sess. 406 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6362.); *accord SGL Carbon Corp.*, 200 F.3d at 160 ("[A] court may consider whether other facts and circumstances qualify as 'cause.'") (citing *Brown*, 951 F.2d at 572; 7 Collier at 1112–20).

53. Cause may also exist to convert a chapter 11 case to a case under chapter 7 where a chapter 11 process would benefit only the lender at the expense of unsecured creditors. *See In re Sugarfina, Inc.*, Sept. 9, 2019 Hrg. Tr. 75:12-75:19, No. 19-11973 (MFW) (Bankr. D. Del. Sept. 9, 2019) (stating "Well, but there is another alternative and that is just convert and liquidate today. The first person being advantaged by a sale is the prepetition lender. So, they have an incentive to assure that the debtor continues to operate until a sale can be concluded. And using that opportunity to extract more money out of the debtor in the form of fees, quite frankly, is a little offensive to me.").[28].

54. That is clearly the dynamic of this Chapter 11 Case. As more fully described in the Committee Objection, to fund the Chapter 11 Case, the Debtor currently seeks final approval of DIP Financing that strips the Estate of previously unsecured assets, and would further encumber those assets the longer the Debtor remains in chapter 11, causing an irreversible loss of value for unsecured creditors. Meanwhile, the DIP Agreement's milestones would force a rushed sale on a timeline that forecloses competition and, instead, hands substantially all Estate assets (including whatever remains of the Unencumbered Assets) to an affiliate of the Debtor's parent company for negative real value

[28] An excerpt of the *Sugarfina* transcript is attached hereto as **Exhibit D**.

to the Estate. Such a chapter 11 process benefits only the Prepetition Secured Lenders at the expense of potentially material returns to unsecured creditors from the Unencumbered Assets. The Chapter 11 Case should not be allowed to go forward on these terms.

55. Instead, conversion of this Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code is in the best interest of unsecured creditors because conversion would preserve important Estate assets as unencumbered assets that are available to fund distributions to unsecured creditors once the interim funding of the DIP Financing is paid off. A chapter 7 liquidation therefore would create more value for unsecured creditors, and nearly all parties in interest *other than* the Prepetition Secured Lenders.

B. No Unusual Circumstances Exist Here to Prevent Conversion of this Case.

56. Although the moving party has the burden to show "cause" by a preponderance of the evidence, once "cause" has been established, the burden of proof shifts to the party opposing conversion to demonstrate "unusual circumstances" establishing that conversion is not in the best interests of the Debtor's creditors and bankruptcy Estate. *See Midwest Properties of Shawano*, 442 B.R. at 283 (initial burden is on the movant to show cause); 11 U.S.C. § 1112(b)(2). The term, "'[u]nusual circumstances,' contemplates conditions that are not common in chapter 11 cases." *LG Motors*, 422 B.R. at 116 (citations omitted).

57. No conditions or circumstances have been identified in this Chapter 11 Case that could render "cause" overcome and conversion inappropriate. Further, no factors have been identified that would prove conversion is *not* in the best interests of the Estate or creditors. Opposing parties will not be able to sustain their burden to overcome the "cause" shown to convert the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

C. The Court Should Convert the Debtor's Case, Rather than Dismiss the Case.

58. After the Court has made the threshold determination that "cause" exists here, the Court must decide whether conversion or dismissal "is in the best interest of creditors and the estate." 11 U.S.C. § 1112(b); *see also Matter of NuGelt, Inc*., 142 B.R. 661, 669 (Bankr. D. Del. 1992). The Court's determination is "discretionary, based on the facts of each case." *Id.* at 669 (citing *In re Winslow*, 123 B.R. 641, 631 (D. Colo. 1991); *In re Sullivan*, 108 B.R. 555, 557 (W.D. Pa. 1989)).

59. Here, the creditors and the Estate are best served by conversion to chapter 7, rather than dismissal. The Estate's assets, including the *currently*-minimally-secured Unencumbered Assets, may have significant value that could be monetized for the benefit of creditors. Chapter 7, unlike dismissal, offers a cost-effective way to sell the Debtor's assets *and* will provide for the disbursement of the liquidated value among creditors in a fair and equitable manner pursuant to the priority scheme of the Bankruptcy Code. Further, under chapter 7, an independent trustee will be free to investigate and pursue the Debtor's potential claims and causes of action, and market and monetize the Debtor's assets for the benefit of *all* creditors without the rigid and truncated timeline imposed by milestones in the DIP Agreement and Bid Procedures Motion.

60. As such, "cause" exists to convert the Chapter 11 Case to a chapter 7 case, and conversion is in the best interests of creditors and other parties in interest.

CONCLUSION

61. For the reasons set forth above, and in the Committee Objection, and pursuant to sections 1112(b) and 1104(a) of the Bankruptcy Code, the Committee submits that the Chapter 11 Case should be converted to a case under chapter 7 of the Bankruptcy Code.

WHEREFORE, the Committee respectfully requests the entry of an order, substantially in the form attached hereto as Exhibit A, (i) converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, and (ii) granting such other relief as is just and proper.

Dated: October 5, 2025
Wilmington, Delaware

COLE SCHOTZ P.C.

/s/ Justin R. Alberto
Justin R. Alberto (No. 5126)
Michael E. Fitzpatrick (No. 6797)
500 Delaware Avenue, Suite 600
Wilmington, DE 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
Email: jalberto@coleschotz.com
mfitzpatrick@coleschotz.com

- and -

EVERSHEDS SUTHERLAND (US) LLP
Todd C. Meyers (admitted *pro hac vice*)
Danielle Barav-Johnson (admitted *pro hac vice*)
999 Peachtree Street, NE
Atlanta, GA 30309
Telephone: (404) 853-8000
Email: toddmeyers@eversheds-sutherland.com
dahnibarav-johnson@eversheds-sutherland.com

-and-

Todd C. Meyers (admitted *pro hac vice*)
John J. Ramirez (admitted *pro hac vice*)
Sameer M. Alifarag (admitted *pro hac vice*)
1114 Avenue of the Americas, 40th Floor
New York, NY 10036
Telephone: (212) 389-5000
Email: toddmeyers@eversheds-sutherland.com
johnramirez@eversheds-sutherland.com
sameeralifarag@eversheds-sutherland.com

Proposed Counsel to the Official Committee of Unsecured Creditors

Exhibit A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: US MAGNESIUM LLC, Debtor.[1]	Chapter 11 Case No. 25-11696 (BLS)

ORDER GRANTING MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN ORDER (I) CONVERTING THE DEBTOR'S CHAPTER 11 CASE TO A CASE UNDER CHAPTER 7 OF THE BANKRUPTCY CODE

This matter is before the Court upon the *Motion of the Official Committee of Unsecured Creditors for Entry of an Order (I) Converting the Debtor's Chapter 11 Case to a Case Under Chapter 7 of the Bankruptcy Code* (the "Motion"),[2] filed by the Official Committee of Unsecured Creditors of US Magnesium LLC (the "Committee"); and due and proper notice of the Motion having been given; and it appearing that no other or further notice is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that the relief requested is in the best interest of the Committee, the Debtor, the Debtor's Estate, and creditors, and after due deliberation and sufficient cause appearing therefore;

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Motion is GRANTED.

2. Pursuant to section 1112(b) of the Bankruptcy Code and rules 1017 and 1019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Chapter 11 Case is hereby

---

[1] The last four digits of the Debtor's federal tax identification number are 5446. The Debtor's service address for the purpose of this chapter 11 case is: 238 N. 2200 W. Salt Lake City, UT 84116.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

converted, effective as of the date and time of entry of this Order (the "Conversion Date"), to a case under chapter 7 of the Bankruptcy Code.

3. The U.S. Trustee shall immediately appoint a chapter 7 trustee (such trustee or any successor appointed, the "Chapter 7 Trustee").

4. The Debtor, as soon as practicable after the Conversion Date, shall:

a. turn over to the Chapter 7 Trustee any and all records and estate property under its dominion, control, and custody as required by Bankruptcy Rule 1019(4), including, but not limited to, all amounts held in escrow by the Estate's professionals;

b. within fifteen (15) days after the Conversion Date, file a schedule of unpaid debts as of the Conversion Date incurred after commencement of the case, including the name and address of each creditor as required by Bankruptcy Rule 1019(5); and

c. within thirty (30) days after the Conversion Date, file and transmit to the U.S. Trustee a final report and account as required by Bankruptcy Rule 1019(5)(A).

5. The Debtor, at the direction of the Chapter 7 Trustee, shall comply with rule 2002-1(e)(x) of the Local Rules.

6. A representative of the Debtor and, if so requested by the Chapter 7 Trustee, counsel to the Debtor in the Chapter 11 Case, shall appear at the first meeting of creditors pursuant to Bankruptcy Code section 341(a) and 343 and such representative shall be available to testify at such hearing.

7. As of the Conversion Date, all causes of action of the Debtor and its Estate shall vest in the Chapter 7 Trustee.

8. Within thirty (30) days after the Conversion Date (the "Professional Fees Bar Date"), the professionals retained in the Chapter 11 Case shall file final applications for compensation and reimbursement (in each case, "Professional Fees"). Any claims for Professional Fees arising prior to the Conversion Date will be allowed only if (i) on or before the Professional Fees Bar Date, the entity holding such Professional Fees claim files with the Court a final application for approval of its Professional Fees; and (ii) the Court enters an order allowing such Professional Fees claim. A hearing on such timely filed final Professional Fee applications shall be held before this Court at a date and time to be scheduled by the Chapter 7 Trustee no sooner than sixty (60) days after the Conversion Date.

9. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Order.

Exhibit B

Ron Thayer Deposition Transcript Excerpts

A When we initiated operations in the latter part of 2020, we had 1.5 million tons of tailings stored here on-site. Currently we have approximately 1.25 million tons of ore still sitting here on-site.

Q You say here, Mr. Thayer, "Although USM was successful in developing this technology on a commercial scale, it has not yet been able to do so at a profit due to a number of factors," and it continues on.

A I do see that, yes, sir.

Q That's a true statement, Mr. Thayer?

A It is correct, yes.

Q Why would US Magnesium produce lithium carbonate if it's unprofitable?

A Well, the intent, sir, is to make it a profitable business, but these -- these operations are complex. There is a commissioning process that takes a certain amount of time, in some cases considerable amounts of time, and you have to go through that exercise to get to the point where you can produce at a profitable level.

Q What's the commissioning process that you're describing?

A Well, sir, it can be rather complicated. For this specific plant, it involved commissioning

each and every piece of fairly unique equipment within the plant to understand its operating ranges and performance levels. It then involved optimizing the process to maximize recovery and improve production volume.

Q How long do you anticipate that will take?

A Well, sir, we had a delay in the initial commercial -- commissioning, excuse me, of this plant because of COVID-related absence of hydrochloric acid, which is needed for the process, so we lost almost -- we had to run at reduced rates for about a year and a half. I believe, personally, as an engineer, this process will take somewhere between three and four years of actual work to get to the point where you can run at a profit.

Q And do you have any estimate of the cost it will take to complete that process?

A Well, sir, as we've gotten into understanding the specifics of lithium carbonate production, we've learned a lot of information about what works and what doesn't. With the new realization of what pricing in the market is likely to be with some of the major changes and shifts that have occurred, we believe we're going to have to introduce a slightly different purification process

into this plant in order to get it all the way up to full rates and at reasonable profitability. The capital ranges for that are varied. We have external quotes from three companies who are willing to do it. We also have internal engineering estimates to perform that technology change on our own. Back to your original question, somewhere between 30 and 100 million dollars, depending on which option is selected.

Q I'm turning now to page 4 of your -- let's see. Not 4. This is page 9 of your declaration. There's a footnote at the bottom that says, in part, "Query whether the DLE technology referenced here is the same as the technology developed to increase efficiency of the production of lithium from feedstock (as distinct from brine)." Do you see that?

A Yes, sir, I do see that.

Q And so what is the answer to that query?

A Well, sir, the technology that we are referencing will work on any feedstock of lithium, whether it's brine-based or leach brine-based, which is the piles of ore that we were talking about, so it is the same technology.

Q And you say in paragraph 22 that lithium

carbonate production at the facility has, likewise, been idled. Do you see that?

A Yes, sir.

Q So the debtor cannot today produce lithium carbonate; is that true?

A Sir, we have the capability of producing lithium carbonate. We have opted not to because of the economics in the marketplace and then ongoing negotiations with FFSL to clarify some of our longer-term disagreements.

Q Leaving aside the questions with FFSL, how long do you think it would take for the other contingency that you mentioned to materialize?

A Sir, are we talking about the DLE technology that we've been discussing?

Q Yes.

A That technology is between ten and 12 months to acquire all materials and bring the plant back to production.

Q And I assume a substantial capital investment would be required to do that as well.

A Yes, sir. As we explained, depending on the selection of technology chosen, between 30 million and 100 million of capital would be needed to efficiently produce lithium carbonate.

Q All right. I'm going to turn now to paragraph 6 of the declaration, and you state here that there was a mothballing of magnesium operations; is that correct?
A Yes, sir, that is correct.
Q And that occurred beginning in about September 2021; is that correct?
A The actual suspension of production occurred in September of 2022.
Q Okay. And that's a result of the force majeure event that's mentioned in this declaration?
A Yes.
Q So the debtor has not produced magnesium since September 2022; is that correct?
A That is correct.
Q Paragraph 18 of your declaration talks about that force majeure event. Do you see that?
A Yes, I do see it.
Q And the last sentence says "US Magnesium is currently pursuing business interruption claims under applicable insurance policies in respect to the force majeure event"; is that correct?
A Yes, sir.
Q And that claim is currently in litigation?
A It's in the early stages of litigation,

yes, sir.
Q Do you have any kind of a preliminary estimate of the dollar amount of damages that are sought through that litigation?
A I'm told by counsel that the insurance policy we have would provide $56 million of additional funding.
Q And through that litigation, US Magnesium is seeking to recover that full $56 million, at least?
A Yes, sir.
Q Paragraph 19 of your declaration indicates that "To restart magnesium production following the force majeure event, US Magnesium would need to make substantial capital investments and see a significant increase in magnesium market prices." Do you see that?
A Yes, sir.
Q Do you have any estimate of the substantial capital investments that would be needed to restart magnesium production?
A Yes, sir. Those have been engineered and estimated.
Q And what's the dollar figure of that estimate?

A It's approximately $40 million to rebuild and restart magnesium.
Q And if I'm reading your -- this sentence -- first sentence of paragraph 19 correctly, in addition to investing $40 million of capital, there would also have to be an increase in magnesium market prices; is that true?
A Yes, sir. We're referencing pricing that we have recently been exposed to, and pricing has certainly come up since we have not been in the market.
Q So your answer confused me a little bit. Are you referring in paragraph 19 to the current magnesium market prices or at some time in the past?
A Well, sir, there's some complexity to this. When -- because we are a fairly significant producer, when we enter the market, prices tend to drop because of the additional supply versus demand, so by this statement, what I was saying was we would need to see an increase from what I consider to be historical magnesium prices.
Q And what would be what you consider historical magnesium prices?
A Historical pricing, sir, normally is in the 1.50-per-pound to $2-per-pound range.

Q And what type of significant increase did you reference in this paragraph 19?
A Our engineering plan says we would need to achieve $2.50 per pound to see a profitable steady business in magnesium.
Q So the debtor's operations cannot produce magnesium today; is that correct?
MR. BUSENKELL: Objection to form.
Q (BY MR. HOFMANN) Go ahead and answer.
A As of today, we cannot produce magnesium without some equipment repairs, yes, sir.
Q Which would cost something like $40 million?
A Yes, sir.
Q Thank you. In paragraph 28 of your declaration, you talk about US Magnesium's loan from Wells Fargo. Do you see that?
A Yes, sir.
Q And you said as of the petition date, the debtor has approximately $67 million -- paraphrasing -- in total debt obligations to Wells Fargo; is that correct?
A That is my understanding, yes, sir.
Q And that loan was originally extended in 2002, as you state in your first sentence of this

30

paragraph?
A It was initiated in 2002 and amended from time to time, yes, sir.
Q Forty-two times, specifically?
A I don't recall the total number, sir.
Q Okay. Is the most recent amendment referenced there as the "Forbearance Agreement and Amendment Number 42 to Loan and Security Agreement dated as of February 19th, 2025"?
A I believe that to be correct.
Q Okay. I'm going to share my screen with Exhibit 6. I'll ask if you recognize this document.
A Yes, sir. I'm familiar with it.
Q This Forbearance Agreement and Amendment Number 42 to Loan and Security Agreement is the document that was referenced in your declaration?
A Yes, sir.
Q And the second "whereas" clause in this document, which hopefully I've highlighted for you, mentions a defined term, "specified defaults." Do you see that?
A I do see it, yes.
Q To your knowledge, were the specified defaults all of the defaults that existed as of February 19th, 2025?

31

A I believe that to be the case, yes.
Q Has US Magnesium made any payments on account of this debt to Wells Fargo since February 19th, 2025?
A I believe we have, sir, but that's speculation. We'd have to ask our CFO. I know some payments were made here recently.
Q Okay. How recently, approximately?
A Well, sir, we have an income stream that is continually swept, as they describe it, into the Wells Fargo system, and I believe that within the last year, there's been some additional payments made, but, as I said, I'm speculating. Our CFO would have to give you the detail on that.
Q Is it the case that in the past year when the debtor has made payments on this loan, it could only make those payments because of advances to the debtor from Renco?
A Yes, sir.
Q And Renco provided a guarantee of the loan; is that true?
A They guaranteed a number of provisions within the loan, yes, sir.
Q And Renco granted collateral that's not owned by US Magnesium to secure the loan; is that

32

correct?
A I believe they did, yes, sir.
Q Do you know what collateral Renco has granted to Wells Fargo to secure this loan?
A As I recall, there was some cash collateral that was used in the loan.
Q Do you know the amount of the cash collateral?
A I don't. I'm speculating. I recall somewhere around $75 million.
Q So Renco has a bank account or some other financial account with $75 million in it owned by Renco that secures this loan; is that correct?
A That's my understanding, but, as I said, we would need to confirm that with our CFO.
Q So I am looking at page 3 of Exhibit 6, and there's a defined term, "Renco Guarantor Documents." Can you see that?
A Yes, sir.
Q And I'm just going to ask you if you know what these documents are, one by one. Do you know what the Additional Renco Guaranty is?
A Only as it clearly reads in this particular description.
Q You can't give me any information beyond

33

what I can read on the screen about the Additional Renco Guaranty?
A I don't have anything specific to add to it, no.
Q What about the "Term Loan B Limited Guarantee"?
A Again, the guarantees on specific loans, if they're not clearly listed in the document, Paula Chu would have a better idea of what those totals are.
Q Right. My question is, have you -- can you provide me any information about the Term Loan B Limited Guarantee beyond those words that I can read here on the screen?
A I cannot, no.
Q Okay. Well, then, I'm going to skip ahead a couple to the Renco Collateral Support Guarantee. Do you know what that is?
A I believe it's a guarantee for collateral for the loan that Wells has given us.
Q Do you know if there's additional collateral beyond that cash collateral that Renco has pledged to secure this loan to Wells Fargo?
A I don't know the specifics, no.
Q And then there's the cash collateral pledge agreement. Would you understand that to pertain to

38

A We talked about our Salt Lake corporate office in Salt Lake City as having commercial value. We talked about excess surplus equipment at the plant, most notably a turbine generator set, and we also talked about the possibility of selling our lithium carbonate inventory.

Q And you're aware, I assume, that through the debtor-in-possession financing, it's proposed to -- that the Salt Lake corporate office would secure this loan, correct?

A The Salt Lake office is part of that overall financing, yes. The sale of the Salt Lake office is.

Q So the debtor intends to sell its Salt Lake office?

A Yes, sir.

Q Separate and apart from the sale of substantially all of its assets?

A That is our intent, yes, sir.

Q Is it listed for sale today?

A It has been listed for several months, sir. Yes.

Q Tell me the listing price.

A I believe we initially listed for 3.9 million. It's been listed at 3.5 million on a

39

subsequent basis.

Q And the turbine generator that's excess equipment you mentioned, have you attempted to sell that?

A Yes, sir.

Q Does that have some kind of a listing price associated with it today?

A Well, yes, sir, but it's a little less formal. We are using an equipment broker who has specialty skills in the area of marketing heavy electrical equipment into the general global industry, and so we are trying to market that particular unit for 8 to 10 million dollars.

Q What's the name of the broker?

A That broker is called Phoenix Equipment Company.

Q And were they retained by the company before its bankruptcy filing?

A Yes, sir.

Q And have they continued to market the assets subsequent to the bankruptcy filing?

A Yes, sir, they have.

Q The last thing you mentioned was lithium inventory. Has the debtor attempted to sell its lithium inventory?

40

A Sir, not actively. I've made inquiries as to whether there would be interest in buying that inventory. Beyond that, no.

Q What inquiries did you make?

A We made an inquiry in terms of the volume and the general quality of the material to a group on the outside that expressed an interest in buying it.

Q Was a price mentioned for the quantity that would be sold?

A You know, we discussed pricing and volumes on a -- let's call it a fluid level, meaning we have some flexibility.

Q But there would be a price range?

A Yes, sir. The range would be a market index minus a percentage for the transaction fee.

Q What is the -- the market index minus what percentage?

A The percentage is a negotiable value. The market price is typically an Asian index, because essentially all this material has to go to Asia. There is very little consumption of lithium carbonate within the continental U.S.

Q And did you discuss a specific percentage?

A I did initially. We haven't finalized the value, though.

41

Q I'm going to return to your declaration, which is Exhibit 1. Can you see that on your screen, Mr. Thayer?

A I do see it, sir. Yes, sir.

Q And according to the last -- look at paragraph 29, the last sentence of that paragraph. "The debtor has approximately 45 million in total funded debt obligations under the Renco Global Loan Agreement." Do you see that?

A I do see that.

Q Now, at the first of this paragraph 29, it says "Renco Global Capital, Inc., as lender." Do you see that?

A I do see it.

Q My question is -- I asked you earlier about the distinction, if any, between Renco Global Capital, Inc., and Renco Global Capital, LLC. Does that statement in your declaration refresh your recollection as to who the lender is?

A It does, yes, sir. It says it's Renco Global Capital.

Q That is, in fact, the lender, correct?

A That's what it says, so yes, I believe it is.

Q Okay. I'm going to switch and share

58

plant, those are part of the asset of the company called Skull Valley.
Q Is that Skull Valley Water, LLC?
A Yes, sir.
Q And does the debtor own a percentage interest in Skull Valley Water, LLC?
A You know, there was a split of those assets when that was originally installed. I don't know the actual percentage split as of today.
Q Do you know what it was at any particular point in time?
A I'm speculating, sir, but I think initially we were 60 or 70 percent. It was based on percentage of water consumed.
Q So at some point in time, the debtor owned 60 to 70 percent of Skull Valley Water, LLC, and Allegheny Technology owned the remainder; is that correct?
A That's my understanding, sir.
Q And Skull Valley, I assume, has water rights in the Skull Valley, as the name implies?
A Yes, sir, it does.
Q Do you know the extent of those water rights?
A I don't recall the specific numbers. They

59

are reasonably substantial, though.
Q Do you know approximately how many acre-feet of water we're talking about?
A I don't off the top of my head, no, sir.
Q When were those water rights acquired?
A Oh, sir, that's a long time ago. Many of those were applied for, some certified, some dropped and some reapplied for, so over a number of years from the 1970s to the present day.
Q Do you have any estimation of the value of those water rights?
A I do not, no.
Q Have they ever been valued, to your knowledge?
A Not to my knowledge, no.
Q When's the most recent water right that the debtor acquired comprising the Skull Valley Water, LLC water rights?
A I don't recall the year, sir. It's been a while. It's been a number of years before we acquired water rights in that area.
Q More than five years ago?
A I believe so, yes, sir.
Q More than ten?
A I don't know for sure, but I believe it's

60

been a while, sir.
Q So tell me why, for accounting purposes, there's no asset listed on this balance sheet for investment in subsidiaries and joint ventures.
MR. BUSENKELL: Objection to form.
Q (BY MR. HOFMANN) Go ahead and answer, Mr. Thayer.
A Well, there's nothing listed for investment.
Q There's nothing listed here for investment in subsidiaries and joint ventures, and my question is why is not the debtor's interest in Skull Valley Water, LLC listed here?
A You know, Mr. Hofmann, I'm not sure of that. I think those particular assets are carried under a different accounting system, but to be sure, we would have to ask Paula Chu.
Q So do you think they would be in one of these other categories of assets?
A You know, I don't know, sir. We'd have to ask Paula. I'm not sure how she's doing that.
Q Okay. So this is page 2 of Exhibit 22 and it lists as a debt of the company, if I'm reading this correctly, deferred compensation of about $7.8 million as of 7-31-24 and about $8.2 million as of

61

7-31-25. Am I reading that correctly?
A Yes, sir.
Q To whom is that deferred compensation owed?
A Deferred compensation includes categories of executive pension as well as deferred salary to the -- to several individuals within the company. In this case, I believe there's three.
Q And who are those three persons?
A The three persons would involve two individuals no longer with the company, but there's an agreement to make payments on particular agreements that were made. Those two individuals include Michael Edmonds and Susan Slade. The third entity is myself.
Q How much in deferred compensation are you owed, approximately, Mr. Thayer?
A I'm not sure of the exact number, sir, but I think with what I've turned down in salary and my executive pension, it's probably somewhere around 8 or 9 million dollars.
Q That's owed to you personally?
A That's my understanding. Again, we'd have to confirm that with Paula Chu.
Q I'm going to move to page 3 of Exhibit 22, and my question here is about the Renco fee. Do you

construction of the retrofitted waste pond proceeded on schedule?
A You know, my understanding, sir, was there was a work scope without a specific schedule.
Q Has the construction of that waste pond ceased?
A Yes, sir.
Q When did that cease?
A I don't have the exact date. I would say 18 to 20 months ago.
Q Why did the construction cease?
A There wasn't funding to continue with the operation regarding work scope in the phases that were listed in the consent decree.
Q Why was not the funding available?
A US Magnesium did not have the revenue to pursue the project.
Q Was Renco unwilling to pay for that?
A We did not get supplemental revenue from anyone to pay for that. We requested the EPA to release some of the funds that they were holding in their special accounts, and they refused to do so.
Q Did US Magnesium request funding to complete that construction from Renco?
A I don't recall whether we made a separate

funding request identifying that. It was listed in our operating plan.
Q And is that the basis on which Renco funds US Magnesium, is based on that plan?
A We generally have fairly close communication with Renco, so it's a combination of inputs regarding those types of decisions.
Q Are there written draw requests made to Renco?
A You know, I believe our CFO does do that at a certain interval and frequency, so yes.
Q Do you review those or not?
A Periodically. Not always.
Q Have you reviewed draw requests to Renco that include construction of the retrofitted waste pond?
A I don't recall doing that, no.
Q What is the status of that construction?
A The status of the construction is, is there's -- I believe it's either three or four phases. I believe there's a total of four. We've completed the diking work. We've completed roughly 60 percent of the slurry wall installation, so the project has moved along to a significant degree, so I would say it's a little over halfway done.

Q Does US Magnesium today have a plan to complete that construction?
A We don't have a plan today. We have committed to the State of Utah and EPA we would finish all those requirements if and when magnesium is restarted. We're currently not generating any wastewater that is discharged into the pond.
Q I'm sure you've seen the budget for debtor-in-possession financing in this case, Mr. Thayer.
A I have, yes, sir.
Q Does that include any amounts budgeted to complete that construction?
A It does not.
Q Do you know what the estimated cost to complete that construction is?
A I believe the cost to finish the work that we believe is required there is in the neighborhood of about $10 million.
Q So we've been looking at Exhibit 15, which is the Notice of Noncompliance mentioned in your declaration. The Notice of Noncompliance is dated July 18th, 2024. US Magnesium has received several other Notices of Noncompliance in the last three years, hasn't it?

A We've received several over the years, yes.
Q Let me share Exhibit 17 with you. This is a notice from the EPA dated August 13th, 2025, addressed to Rob Hartman, Environmental Manager. Do you see this document on your screen?
A I do see that, yes, sir.
Q Have you reviewed this document before?
A I discussed it with Mr. Hartman here in the last several weeks.
Q So have you reviewed it before?
A This particular letter, no. I reviewed the topic with Mr. Hartman.
Q Okay. Are you aware that there's a requirement to submit a work plan to the EPA?
A Yes, sir.
Q And that's due within 90 days?
A Yes, it is.
Q And so that date is November 11th, 2025?
A Yes, sir.
Q Will US Magnesium be submitting a timely work plan to the EPA?
A Yes, sir, we will be submitting one.
Q Has it begun the work to submit a work plan?
A Only in respect that our environmental

Exhibit C

Ron Mayo Deposition Transcript Excerpts

Q. Got it. No other customers that they are selling to for -- within their operations; just those two? 11:50:35AM 11:50:39AM 11:50:44AM

A. Not to my knowledge. 11:50:45AM

Q. Are they seeking to expand their customer base? 11:50:46AM 11:50:49AM

A. They have discussed that, but nothing has come of it. 11:50:49AM 11:50:54AM

Q. Is U.S. Magnesium working with any professional to get new customers? 11:50:55AM 11:51:02AM

A. Not to my knowledge. 11:51:10AM

Q. You're talking about the process of extracting the Great Salt Lake water and putting it through the ponds to get to the final product? 11:51:17AM 11:51:20AM 11:51:23AM

A. Correct. 11:51:26AM

Q. Is it U.S. Magnesium's employees that do this process? 11:51:26AM 11:51:28AM

A. Yes. 11:51:32AM

Q. What is the training necessary to do that process? 11:51:32AM 11:51:37AM

A. I'm uncertain of that, the training that they go through to do that process. 11:51:37AM 11:51:43AM

Q. On page -- never mind. I'm going to move forward. 11:51:59AM 11:52:01AM

Okay. Are the current U.S. Magnesium 11:52:08AM

operations, business operations, cash flow positive? 11:52:10AM
A. **No.** 11:52:14AM
Q. So are they cash flow negative? 11:52:17AM
A. **Correct.** 11:52:19AM
Q. What do you mean by "cash flow negative"? Explain that to me. 11:52:20AM 11:52:23AM
A. **That the cost of producing the sales exceeds the sales.** 11:52:27AM 11:52:32AM
Q. How long have U.S. Magnesium's operations been cash flow negative? 11:52:34AM 11:52:39AM
A. **For a substantial period of time. I don't know the exact time when they're cash flow negative.** 11:52:41AM 11:52:44AM 11:52:48AM
Q. Would you say more than one year? 11:52:49AM
A. **Yes.** 11:52:51AM
Q. More than two years? 11:52:51AM
A. **Likely, but don't know that for a fact.** 11:52:53AM 11:52:58AM
Q. How do you determine that the operations are cash flow negative? 11:53:02AM 11:53:03AM
A. **You look at what their collections are and what their disbursements are. And if it's a negative number, they're negative. You either look at it on an accrual basis, on a sales basis and if the cost of the sales they generated exceed the cost** 11:53:05AM 11:53:13AM 11:53:17AM 11:53:21AM 11:53:25AM

of generating those sales on a GAAP bases, that's again negative cash flow. So one's on a cash basis; one's on an accrual basis. 11:53:28AM 11:53:32AM 11:53:37AM

Q. And is it your understanding that it's cash flow negative on both of those bases? 11:53:39AM 11:53:40AM

A. Correct. 11:53:44AM

Q. And have you seen documents that you -- have you seen reliable U.S. Magnesium documents to support that understanding? 11:53:45AM 11:53:50AM 11:53:53AM

A. Yes, yes. 11:53:54AM

Q. So going back to the process of producing magnesium chloride and sodium chloride, it sounds like those are both produced from the waters of the Great Salt Lake; is that correct? 11:53:58AM 11:54:00AM 11:54:06AM 11:54:08AM

A. Correct. 11:54:10AM

Q. Is fresh water used to produce those sale products? 11:54:14AM 11:54:20AM

A. No. The process is evaporating water from that to concentrate those minerals. 11:54:20AM 11:54:27AM

Q. Is U.S. Magnesium using fresh water in any of its operations currently? 11:54:32AM 11:54:34AM

A. Not to a significant amount to my knowledge or at all. 11:54:40AM 11:54:42AM

MS. BARAV-JOHNSON: Let's go to Exhibit 5, please. 11:54:49AM 11:54:49AM yourself, but when you are finished, if you could give me your understanding of what an action means here generally. 12:41:32PM 12:41:35PM 12:41:37PM

A. I'm not sure how to define "Action" other than how they've defined it here. 12:42:22PM 12:42:24PM

Q. Do you want to just I guess read the definition? 12:42:27PM 12:42:30PM

A. Means any action, suit, claim, counterclaims, demand, hearing, summons, litigation, investigation, prosecution, content, inquest, audit, examination, proceeding (including any civil, criminal, administrative, investigative, appellate or eminent domain proceedings) condemnation, mediation, arbitration, dispute or similar matter by or before any Governmental Authority." 12:42:30PM 12:42:36PM 12:42:39PM 12:42:42PM 12:42:46PM 12:42:50PM 12:42:55PM 12:42:58PM

Q. Okay. Let's go to page 86 of this exhibit. This is the Purchase Asset, Section 2.1. I'm going to bring your attention to subparagraph "aa" where one of the purchase assets is: "The claims and actions of Seller, including Avoidance Action against the Renco Group Inc. and/or its affiliates." 12:43:04PM 12:43:07PM 12:43:14PM 12:43:19PM 12:43:23PM 12:43:27PM 12:43:30PM

Has U.S. Magnesium undertaken any efforts to investigate whether it may have a claim or action against Renco Group or any of its affiliates? 12:43:34PM 12:43:36PM 12:43:41PM

A. To my knowledge, no. 12:43:48PM
Q. And just to refresh memory, the stalking horse bidder is a Renco affiliate, correct? 12:43:55PM 12:43:57PM
A. Correct. 12:44:02PM
Q. So it would be purchasing any claims and actions against itself and all of its affiliates, correct? 12:44:02PM 12:44:06PM 12:44:09PM
A. As I understand it, yes. 12:44:09PM
Q. So U.S. Magnesium has not investigated whether it has any claims or actions against Renco Group or Renco Group affiliate? 12:44:14PM 12:44:18PM 12:44:20PM
A. To my knowledge -- 12:44:25PM
Q. Has it had any discussions -- I'm sorry. 12:44:26PM 12:44:29PM
A. To my knowledge, no. 12:44:29PM
Q. Has it had any discussions about whether it should investigate this? And I don't want to ask about in the presence of counsel. 12:44:30PM 12:44:35PM 12:44:40PM
MR. BUSENKELL: Yeah, I object to the extent that you're calling for privileged information and I would remind Mr. Mayo not to disclose any conversations he's had with counsel or -- and that anyone else at U.S. Magnesium's had with counsel. 12:44:43PM 12:44:45PM 12:44:46PM 12:44:50PM 12:44:55PM
BY MS. BARAV-JOHNSON: 12:45:07PM
Q. Other than any of those types of 12:45:08PM

Q. Who is funded Tranche A? 01:03:58PM
A. I believe Tranche A is Wells Fargo and Tranche B is Renco. 01:04:01PM 01:04:03PM
Q. So Tranche A is funded by Wells Fargo, correct? 01:04:07PM 01:04:10PM
A. Correct. 01:04:10PM
Q. And Tranche B is funded by Renco, correct? 01:04:11PM 01:04:14PM
A. Correct. 01:04:15PM
Q. And both of those tranches are funded equally for each draw in the DIP financing, correct? 01:04:18PM 01:04:21PM
A. They're 50/50, yes. 01:04:26PM
Q. Do you know how much lending has been approved under the DIP financing on an interim basis? 01:04:29PM 01:04:36PM
A. Well, they've agreed to fund the first four weeks of the case. 01:04:44PM 01:04:47PM
Q. Do you know how much that amount is estimated to be? 01:04:49PM 01:04:51PM
A. Roughly $2 million, I believe. It may be higher. I'd have to look back at the debt. It's the funding through the -- 6th date. It's the funding through the October 6th date. 01:04:52PM 01:05:01PM 01:05:05PM 01:05:21PM
Q. How much funding has been estimated to be needed through the October -- through October 6th, 2025? 01:05:24PM 01:05:26PM 01:05:29PM

A. Over $2 million. It's on the Schedule. We can add up the numbers and you can get the exact number but I don't have it off the top of my head. 01:05:33PM 01:06:06PM 01:06:09PM 01:06:11PM

Q. So that was the number that was estimated, that would be needed? 01:06:16PM 01:06:17PM

A. Correct. 01:06:23PM

Q. Now, that we're a few weeks into the case, what is your best estimation of the exact number -- you know, close to exact number that would be needed to fund this case through October 6th? 01:06:24PM 01:06:26PM 01:06:34PM 01:06:38PM

A. We're requesting the entirety of the DIP amounts through October 6th from the lenders. 01:06:42PM 01:06:46PM

Q. What do you mean by "the entirety of the DIP amounts"? 01:06:53PM 01:06:56PM

A. So if you look at Week 1 through Week 5 of the DIP, we're requesting that entire amount. Prior to -- 01:06:58PM 01:07:08PM 01:07:15PM

Q. Can I ask where you're reading -- I'm sorry. Go ahead. Prior to -- I didn't hear you. I'm sorry. 01:07:15PM 01:07:19PM 01:07:25PM

A. October 6th. 01:07:26PM

Q. It looks like you're looking at a document. 01:07:29PM 01:07:31PM

Can you point me to where you're 01:07:32PM

Q. Okay. 01:08:49PM

A. In this case, you know, the first one, obviously, is a sub period and was not updated from being the actual filing date from 9/8 but every week following that is the week beginning -- if you look at No. 2, it's the week beginning September 15th and ending on September 21, it's a seven-day period. 01:08:52PM 01:08:53PM 01:08:58PM 01:09:02PM 01:09:05PM 01:09:09PM

Q. Okay. 01:09:15PM

A. Each one of these are seven-day periods, through the 18 weeks. 01:09:16PM 01:09:18PM

Q. And is there -- thank you. 01:09:20PM

Is there a line item here for funding from the DIP week by week? 01:09:23PM 01:09:28PM

A. That would be the number listed as net expenses. We agreed with the lenders that we would ask for funding every two weeks; two weeks in advance. 01:09:34PM 01:09:36PM 01:09:46PM 01:09:57PM

Q. Two weeks in advance, okay. And when I'm looking at net expenses, I'm seeing, you know, for the first week 126,000, the second week is $622,500. The numbers go up and the numbers go down. So I make sure I'm clear, the number listed for each week under that net expenses row is the amount that is anticipated to be requested from the DIP financing for that week; is that correct? 01:09:57PM 01:10:01PM 01:10:08PM 01:10:16PM 01:10:19PM 01:10:23PM 01:10:29PM 01:10:35PM

A. Correct, correct. 01:10:36PM
Q. Do you know how much money the Debtor has borrowed under the DIP financing to date? 01:10:46PM 01:10:48PM
A. We requested the first four weeks there, so that's what they funded. 01:10:54PM 01:10:56PM
Q. Okay. And does U.S. Magnesium plan to request the amount associated through Week 4 of this DIP budget? 01:10:58PM 01:11:07PM 01:11:16PM
A. We're already through Week 4 so now we're into 5 and 6 and we plan to request that. 01:11:17PM 01:11:20PM
Q. Okay. Before October 6th? 01:11:24PM
A. Yes. 01:11:27PM
Q. Do you expect to receive those financing amounts before October 6th? 01:11:28PM 01:11:34PM
A. We expect to. 01:11:39PM
Q. Do you know how much was approved to be borrowed under the DIP financing agreement on an interim basis by the court? 01:11:41PM 01:11:44PM 01:11:48PM
A. No. 01:11:52PM
Q. Okay. So we talked about kind of what I call the new money financing portion of the DIP finance. There's another aspect of the DIP financing and that is what I call the roll-up. Are you familiar with that term, a roll-up? 01:11:56PM 01:11:59PM 01:12:01PM 01:12:06PM 01:12:11PM
A. Yes. 01:12:12PM

in this budget accurately reflect USM's restructuring costs? 01:19:03PM 01:19:06PM

A. Yes, within the time period we have here under the way the case was contemplated when initially filed. 01:19:10PM 01:19:13PM 01:19:16PM

Q. Now, that we're a few weeks into the case, do you still think this accurately reflects the operating costs and the restructuring costs? 01:19:22PM 01:19:24PM 01:19:28PM

A. I believe that there may need to be some adjustments to some of these costs if we learned additional information. 01:19:30PM 01:19:44PM 01:19:48PM

Q. Which costs do you think might need to be adjusted? 01:19:52PM 01:19:55PM

A. It's going to have to do with mostly the professionals due to the questions being asked, the timing of when the 363 sale process could be approved by the Court; ultimately, it may take longer to get this case to its conclusion than originally budgeted here and it may also require some additional professionals. 01:19:59PM 01:20:01PM 01:20:06PM 01:20:13PM 01:20:18PM 01:20:23PM 01:20:29PM

Q. Which -- which professionals specifically do you think would be affected by that to the extent that their budget would need to be adjusted? 01:20:30PM 01:20:35PM 01:20:39PM 01:20:43PM

A. I can't speak to the other 01:20:45PM

Loan C Participation Amount plus other things that I'm not going to read. What is -- what is the Wells Term Loan C Participation Amount? 02:08:38PM 02:08:41PM 02:08:51PM

A. My understanding that there was a loan to USM and this is the amount that the -- was stepped in for by Renco. 02:08:55PM 02:08:56PM 02:09:04PM

Q. Would this be similar to Renco's participation in the Tranche B funding of the DIP facility? 02:09:10PM 02:09:12PM 02:09:16PM

A. I'd have to read more thoroughly the credit agreement before I could comment on that. 02:09:16PM 02:09:21PM

Q. Is it your understanding that this Wells Term Loan C Participation amount is the amount in which Renco purchased a participation in the Wells Fargo loan to U.S. Magnesium? 02:09:23PM 02:09:27PM 02:09:33PM 02:09:42PM

A. That would be a fair characterization. 02:09:45PM 02:09:49PM

MS. BARAV-JOHNSON: We've been going for a little while. I propose we take another ten-minute break and come back here -- actually, let's make it 11 -- just turned 2:10. Let's make it a ten-minute break, come back here at 2:20 and then I think I'll have just one or two more questions and then I think we can wrap it up. 02:09:53PM 02:09:54PM 02:09:57PM 02:10:01PM 02:10:06PM 02:10:10PM 02:10:13PM

THE DEPONENT: Can we just wrap it up 02:10:15PM

A. That's commonly referred to as the Rowley property because that's the city it's in, but that's everything where they extract everything, they process it, that's the property and equipment that is there. 02:23:06PM 02:23:08PM 02:23:16PM 02:23:18PM 02:23:20PM

Q. Does U.S. Magnesium have any plans to satisfy this $7 million tax obligation as part of the bankruptcy? 02:23:31PM 02:23:35PM 02:23:39PM

A. It will need to be satisfied as part of the bankruptcy process. 02:23:40PM 02:23:46PM

Q. There is -- I don't see any funding in the budget to satisfy the $7 million claim? 02:23:54PM 02:23:59PM

A. There's not. 02:24:02PM

Q. And the sale wouldn't produce $7 million of cash, correct? It's maximum $250,000 of cash? 02:24:04PM 02:24:06PM 02:24:12PM

A. Correct. It's either going to have to be assumed or another path. 02:24:12PM 02:24:15PM

Q. Currently, it's not listed in the stalking horse bid as an assumed liability, correct? 02:24:22PM 02:24:24PM

A. Correct. 02:24:26PM

Q. So under the current stalking horse bid, it would not be assumed; is that right? 02:24:27PM 02:24:30PM

A. That is correct. 02:24:33PM

Q. So it looks like, for that $7 million 02:24:34PM tax obligation, to be resolved through the bankruptcy, there would have to be some other path? 02:24:40PM 02:24:45PM

A. Correct. 02:24:48PM

MS. BARAV-JOHNSON: Those are all of my questions. Thank you very much for your time. I appreciate it. 02:24:54PM 02:24:56PM 02:24:58PM

THE DEPONENT: Okay. 02:24:59PM

MS. BARAV-JOHNSON: And I'm happy to go off the record at this point. 02:24:59PM 02:25:01PM

THE REPORTER: Can I have everybody's orders if you know what they are. 02:25:04PM 02:25:11PM

MS. BARAV-JOHNSON: For Eversheds, we would like a rough transcript as soon as it is prepared and then a transcript on a rush order. 02:25:13PM 02:25:18PM 02:25:23PM

THE REPORTER: How many days? 02:25:27PM

MS. BARAV-JOHNSON: What's your earliest turnaround? 02:25:33PM 02:25:34PM

THE REPORTER: Daily. 02:25:38PM

MS. BARAV-JOHNSON: Why don't we get back to you if we can. I don't want to keep everybody for that but I can do it off the record if that works for you. 02:25:41PM 02:25:42PM 02:25:45PM 02:25:47PM

THE REPORTER: Okay. 02:25:49PM

MR. MEYERS: For Eversheds, on behalf of the Committee, we would like it as soon as 02:25:52PM 02:25:58PM

Exhibit D

In re Sugarfina, Inc.
September 9, 2019 Hearing Transcript Excerpts

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
SUGARFINA, INC., *et al.*,	Case No. 19-11973 (MFW)
	Courtroom No. 4 824 North Market Street Wilmington, Delaware 19801
Debtors.	September 9, 2019 3:00 P.M.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors:	Brya Keilson, Esquire Jeffrey Waxman, Esquire Eric Monzo, Esquire MORRIS JAMES LLP 500 Delaware Avenue Wilmington, Delaware 19801
For U.S. Trustee:	Timothy Fox, Esquire OFFICE OF UNITED STATES TRUSTEE 844 King Street Wilmington, Delaware 19801
Audio Operator:	Dana Moore
Transcription Company:	Reliable 1007 N. Orange Street Wilmington, Delaware 19801 (302)654-8080 Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES Continued:

For DIP Lender: Vadim Rubinstein, Esquire
LOEB & LOEB
345 Park Avenue
New York, New York 10154

For Candy Cube Holdings: Marc Camel
MCDONALD HOPKINS LLC
300 N. LaSalle Street
Chicago, Illinois 60654

For Goldman: W. Austin Jowers, Esquire
KING & SPALDING
1185 Avenue of the Americas
New York, New York 10036

- and -

William Chipman, Esquire
CHIPMAN BROWN CICERO & COLE LLP
1313 North Market Street
Wilmington, Delaware 19801

INDEX

#8) Motion Pursuant to Sections 105 and 366 of the Bankruptcy Code for Entry of Interim and Final Orders (I) Prohibiting Utility Companies from Altering, Refusing or Discontinuing Services to, or Discrimination Against, The Debtors, (II) Determining That the Utility Companies are Adequately assured of Postpetition Payment and (III) Establishing Procedures for Resolving Requests for Additional Adequate Assurance [D.I. 7, filed September 6, 2019].

Ruling: 28

#9) Debtors' Motion Pursuant to Sections 105(a), 507(a)(8), and 541(d) of the Bankruptcy Code for an Interim and Final Order: (1) Authorizing Payment of Prepetition Sales, Use, and Franchise Tax and Other Similar Taxes and Fees; and (2) Authorizing Banks and Other Financial Institutions to Receive, Process, Honor and Pay Checks Issues and Electronic Payments Requests Made Related to Such Taxes and Fess [D.I. 9, filed September 6, 2019].

Ruling: 30

#10) Debtors' Motion for an Interim and Final Order Authorizing Debtors to Honor and Continue Certain Customer Programs and Customer Obligations in the Ordinary Course of Business and Granting Related Relief [D.I. 10, filed September 6, 2019].

Ruling: 31

#11) Debtors' Motion for Entry of Interim and Final Orders Authorizing Debtors to Pay PrePetition Amounts to Certain Critical Vendors [D.I. 11, filed September 6, 2019].

Ruling: 36

#12) Motion of Debtors Pursuant to Sections 105, 361, 362, 363, 364, and 507 of the Bankruptcy Code, Bankruptcy Rule 4001, and Local Rule 4001-2, for Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing and Use Cash Collateral; (II) Granting Liens and Super-Priority Claims and Adequate Protection; (III) Scheduling a Final Hearing; (IV) Modifying the Automatic Stay; and (V) Granting Related Relief [D.I. 21, filed September 6, 2019].

Ruling: Adjourned to a later date

MR. CARMEL: Your Honor, its Marc Carmel standing up in my capacity as a DIP lender for Candy Cube.

I think I understand Your Honor's hesitancy when thinking about the percentages, but I think there's other ways to think about this. And the two that I would focus on is, number one, what other opportunities and what other alternatives the company has in terms of financing. This is junior to the first lien. So, there is some risk and, you know, I don't know that we can sit here or if it would be a good use of time to sit here and figure out how much risk there is, but there is some risk that there's not full repayment here.

Then the second aspect is the absolute dollars that we're talking about. It's, obviously, a total of $500,000 dollars for the $4 million dollars of DIP financing. So, if the alternative was another lender coming in here out of the blue then that other lender would have another set of advisors that presumably, the debtor would have to pay. There would be requests from either the first lien lender, potentially, if that new lender wanted to put in a priming lien, and then certainly something from Goldman because, presumably, even if they were stepping into the shoes of the current lenders they'd be priming Goldman.

So, there may actually be other expenses. You'd certainly have the professional fees and in any event there'd be some recovery that the debtors would have to offer to this lender to become involved. So, when thinking about it in terms of what is the total amount of money that they're spending and then thinking about, well, what is that total compared to, what the debtor would, otherwise, have to spend for any other competing party.

I think the -- while the percentage sounds high as an absolute dollar term this is less expensive and certainly may even be -- I mean, we wouldn't be here if it wasn't the best alternative that the debtors have, but may be significantly better.

THE COURT: Well, but there is another alternative and that is just convert and liquidate today. The first person being advantaged by a sale is the prepetition lender. So, they have an incentive to assure that the debtor continues to operate until a sale can be concluded. And using that opportunity to extract more money out of the debtor in the form of fees, quite frankly, is a little offensive to me.

And I know the debtor has no other alternative, but to agree to it. But I do have an alternative. And maybe we're at the final hearing on the DIP and there is no committee formed because there is nothing that's going to go to the creditors who are below Goldman or the committee has been formed, has kicked the tires and realizes that the best alternative is simply to go ahead with a sale that assures that their constituency continues to have a customer, but I don't know that at this stage.

We're here on no notice to anybody and I'm being asked in a vacuum to decide if these economic terms are something that should be approved in order to allow a secured creditor to, in essence, liquidate its position in bankruptcy, liquidate its collateral in bankruptcy. That's the way I'm viewing it. So, I have a little different perspective.

Why don't the parties talk a few minutes and see if we can come up with something that alleviates my agita today. We'll stand adjourned.

(Recess taken at 5:20 p.m.)

(Proceedings resumed at 6:00 p.m.)

(Call to Order of the Court)

THE COURT: Good evening.

MR. WAXMAN: Yes, it is. Day has turned to night. Jeff Waxman of Morris James on behalf of the debtors.

Your Honor, thank you for the time. I don't think we are where we want to be, but we do have a path forward that I wanted to address with Your Honor. First, the lenders -- excuse me, the secured parties have agreed to the use of cash collateral through tomorrow for an additional $50,000 dollars. So, that will give the parties some time to try to work through some issues.

MR. WAXMAN: Thank you very much, Your Honor. And thank you for your patience.

THE COURT: All right. We will stand adjourned. Thank you.

MR. CARMEL: Your Honor, its Marc Carmel. One quick question; is that offer to appear telephonically for other people that are also out of state?

THE COURT: Yes, it is. Nobody needs to stay in Delaware tonight.

MR. CARMEL: Thank you very much.

THE COURT: Except for those that live here. All right. We'll stand adjourned.

(Proceedings concluded at 6:05 p.m.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Mary Zajaczkowski September 12, 2019

Mary Zajaczkowski, CET**D-531