IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated,	:	
Plaintiffs,	:	
v.	:	**NO.** 3:18-cv-1144
MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, NATALIE D. RAMSEY and LEONARD A. BUSBY,	:	**FILED ELECTRONICALLY**
Defendants.	:	

NOTICE OF REMOVAL

Defendants Montgomery McCracken Walker & Rhoads, LLP, Natalie D. Ramsey and Leonard A. Busby (referred to collectively hereinafter as "MMWR"), hereby give notice of the removal of the action entitled *Stanley Waleski, on his own behalf and on behalf of all others similarly situated v. Montgomery, McCracken, Walker & Rhoads, LLP, Natalie D. Ramsey and Leonard A. Busby*, No. 201804431, ("the State Court Action"), from the Court of Common Pleas of

Luzerne County to the United States District Court for the Middle District of Pennsylvania.[1] The grounds for removal are as follows:

BACKGROUND

1. On April 11, 2018, Plaintiff Stanley Waleski ("Waleski") commenced the State Court Action on his own behalf and on behalf of a putative class of persons exposed to chemicals emitted from a wood treatment plant in Avoca, Pennsylvania (referred to in the Complaint and hereinafter as "the Avoca Plaintiffs"). (A copy of the Complaint in the State Court Action is attached hereto as Exhibit "A.") The Complaint alleges purported breaches of contract under a direct breach of contract theory (Count I) and an intended beneficiary theory (Count II).

2. The claims in the State Court Action are based on legal services provided during a Chapter 11 proceeding in the matter entitled *In re Tronox Inc., et al.*, No. 09-10156, in the United States Bankruptcy Court for the Southern District of New York (hereinafter "the Tronox Bankruptcy").

[1] By removing this action to this Court, MMWR does not waive any defenses, objections or motions available under state or federal law. MMWR will move to dismiss Waleski's claims and for transfer to the most appropriate federal venue within the period prescribed by Fed. R. Civ. P. 81(c)(2).

3. The Complaint in the State Court Action alleges that Waleski is seeking "to recover damages for breach of contract arising from [MMWR's] actions and inactions committed while representing the interests of [the Avoca Plaintiffs] in connection with" the Tronox Bankruptcy. (Compl. ¶ 1.) Specifically, Waleski alleges that MMWR breached professional obligations set forth in a Contingent Fee Agreement dated January 27, 2009 between Defendant Montgomery McCracken Walker & Rhoads, LLP and Powell Law Group, P.C., the Avoca Plaintiffs' tort law firm, by: (a) serving as "bankruptcy court-approved counsel" for Michael E. Carroll (a putative class member) in his capacity as a member of the Creditors' Committee, (*id.* ¶¶ 42-43, 53); (b) failing to object to a proof of claim filed by another group of personal injury claimants asserting claims against Tronox, Inc. arising from creosote exposure (referred to in the Complaint as the "Mississippi Claimants") (*id.* ¶ 49); (c) assisting in drafting tort claims trust distribution documents (the "Tort Claims Trust" and "Tort Claims Trust Distribution Procedures") which were incorporated into the debtors' Chapter 11 plan to govern administration of personal injury and property damage claims ("Tort Claims") and which allegedly failed to accord priority to claims of the putative class members over competing claims, (*id.* ¶¶ 53, 56, 58); and (d) assigning inadequate values to the disease claims of the Avoca Plaintiffs under the Tort Claims Trust created to pay the holders of Tort Claims, (*id.* ¶¶ 85-87). The

Chapter 11 plan which is the subject of Waleski's claims was approved by Order of the United States Bankruptcy Court for the Southern District of New York on November 30, 2010 and became effective on February 14, 2011. (*Id.* ¶ 56.)

4. Waleski further alleges that Defendants breached professional obligations in the Contingent Fee Agreement by failing to object to a $5.15 billion settlement of fraudulent transfer claims involving estate assets which was approved by the United States Bankruptcy Court for the Southern District of New York on May 30, 2014 and by the United States District Court for the Southern District of New York on November 10, 2014, as amended on November 19, 2014. (*Id.* ¶¶ 66-69.) (Copies of the November 10, 2014 Opinion & Order and November 19, 2014 Corrected Judgment are attached hereto as Exhibits "B" and "C," respectively.)

5. Waleski avers in the Complaint that MMWR's alleged failure to object to the Mississippi Claimants' proof of claim prior to plan confirmation resulted in allowance of the competing claims. (Compl. ¶ 71.) The United States Bankruptcy Court for the Southern District of New York, however, also concluded that the Avoca Plaintiffs' objections to the proposed settlement lacked merit. Specifically, the Bankruptcy Court concluded that the Trustee properly allowed the Mississippi Claimants' claims and that their "group" proof of claim was "acceptable." (A copy of the June 17, 2015 Memorandum Opinion as to Tort

Claims Trustee's Motion for Instructions (referenced in Paragraph 71 of Waleski's Complaint) is attached hereto as Exhibit "D.")

6. Waleski alleges that $329,693,120 was ultimately paid to the Avoca Plaintiffs from the Tort Claims Trust. (Compl. ¶ 75.) In the State Court Action, he seeks an additional payment in the amount of $619,306,880, which is the difference between the amount recovered and the purported full value of the Avoca Plaintiffs' claims. (*Id.* ¶¶ 72-75.)

REMOVAL JURISDICTION

7. Pursuant to 28 U.S.C. § 1441(a), "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

8. 28 U.S.C. § 1452(a) provides that "[a] party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title."

9. Pursuant to 28 U.S.C. § 1334(b), "the district courts shall have original . . . jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11."

10. The State Court Action is properly removed to this Court under 28 U.S.C. § 1452(a) because the alleged breaches of professional obligations purportedly occurred during the Tronox Bankruptcy and there is original federal jurisdiction over such claims under 28 U.S.C. § 1334(b). *See Baker v. Simpson*, 613 F.3d 346, 350-52 (2d Cir. 2010) (legal malpractice and related tort claims asserted by debtor against court-appointed bankruptcy counsel "arose in" bankruptcy proceeding and case was properly removed from state court), *cert. denied*, 562 U.S. 1149 (2011); *In re Seven Fields Dev. Corp.*, 505 F.3d 237, 260 (3d Cir. 2007) (professional malpractice claims against accountants for misconduct during bankruptcy on which bankruptcy judge relied in confirming reorganization plan and in awarding fees to accountants were subject to bankruptcy court's "arising in" jurisdiction because they "implicated the integrity of the entire bankruptcy process"); *Grausz v. Englander*, 321 F.3d 467, 471-72 (4th Cir. 2003) ("broad interpretation of 'arising in' jurisdiction surely means that jurisdiction exists over a malpractice claim against a lawyer for providing negligent advice to a debtor in a bankruptcy case"); *In re V&M Mgmt, Inc.*, 321 F.3d 6 (1st Cir. 2003) (bankruptcy court properly retained jurisdiction over debtor's malpractice and

related claims against bankruptcy counsel following removal); *In re Southmark Corp.*, 163 F.3d 925, 931-32 (5th Cir. 1999) (malpractice claim against court-appointed accountant based on work performed in plaintiff's Chapter 11 case was "core proceeding" which was "inseparable from the bankruptcy context"), *cert. denied*, 527 U.S. 1004 (1999); *Billing v. Ravin, Greenberg & Zackin, P.A.*, 22 F.3d 1242, 1244 (3d Cir. 1994) (district court had jurisdiction over plaintiffs' malpractice action against bankruptcy counsel as claims "arose under title 11"), *cert. denied*, 513 U.S. 999 (1994); *In re Kaiser Grp. Int'l Inc.*, No. 00-02263-MFW, No. 09-52317-MFW, 2010 WL 3271198, at *2 (D. Del. Aug. 17, 2010) (claims against counsel for professional negligence and breach of fiduciary duty subject to court's "arising in" jurisdiction); *Winstar Holdings v. Blackstone Grp., L.P.*, No. 07 Civ. 4634(GEL), 2007 WL 4323003, at *5 (S.D.N.Y. Dec. 10, 2007) (common law tort claims against court-approved financial advisor are within bankruptcy court's "arising in" jurisdiction because claims are "intimately related to the administration of the bankruptcy").[2]

11. Further, the claims in the State Court Action "arise in" the Tronox Bankruptcy because they challenge allocation of estate assets and operation of the Tort Claims Trust and thereby implicate the integrity of the bankruptcy process

[2] The unpublished cases cited herein are reproduced in the attached Appendix.

and are inseparable from the bankruptcy context. *See In re Seven Fields Dev. Corp.*, 505 F.3d at 258-61.

12. Removal is also authorized because the State Court Action requires interpretation and enforcement of Orders entered in the Tronox Bankruptcy over which the Bankruptcy Court has retained jurisdiction. *See* 28 U.S.C. § 157; *see also In re Allegheny Health Educ. & Research Found.*, 383 F.3d 169, 176 (3d Cir. 2004).

13. Pursuant to the First Amended Joint Plan of Reorganization of Tronox Incorporated et al. Pursuant to Chapter 11 of The Bankruptcy Code (the "Plan") entered in the Tronox Bankruptcy, the U.S. Bankruptcy Court for the Southern District of New York expressly retained jurisdiction over all matters relating to the effect of confirmation and all cases or controversies in connection therewith as well as all cases in connection with enforcement of orders entered by the Bankruptcy Court. (*See* Plan, Article XI, ¶¶ 6-7, 9, 11-12, 14, 16, 19, 21-22.) (A copy of the Plan is appended as Exhibit A to the Findings of Fact, Conclusions of Law and Order Confirming the First Amended Joint Plan of Reorganization (referred to hereinafter as "Findings of Fact") which is attached hereto as Exhibit "E.")

14. The State Court Action challenges the reasonableness of the Tort Claims Trust and its governing documents, including the Tort Claims Trust Distribution Procedures. The settlement embodied in the Tort Claims Trust was found to be fair and equitable and was approved and Ordered by the U.S. Bankruptcy Court for the Southern District of New York. (*See* Findings of Fact. ¶¶ 37-38, 85.) MMWR's involvement in the formulation and preparation of the Tort Claims Trust and its governing documents was in its capacity as counsel for committee member Michael Carroll. (*See* Plan, Article XII(E).)

15. The State Court Action also purports to challenge and circumvent the November 10, 2014 decision of the United States District Court of the Southern District of New York, as corrected on November 19, 2014, which approved the $5.15 billion settlement of the fraudulent transfer claims and the distribution of those settlement funds. (*See* Nov. 10, 2014 Op. & Order; Nov. 19, 2014 Corrected Judgment.)

16. For these reasons, removal is proper under 28 U.S.C. §§ 1334(b), 1441(a) and 1452(a).

COMPLIANCE WITH 28 U.S.C. § 1446

17. This Notice of Removal is timely because it is filed within 30 days after May 10, 2018 when MMWR was served with the Complaint in the State

Court Action. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999); *Di Loreto v. Costigan*, 351 F. App'x 747, 753 (3d Cir. 2009); *Cmiech v. Electrolux Home Prods., Inc.*, 520 F. Supp. 2d 671, 676 (M.D. Pa. 2007).

18. Attached hereto as Exhibit "F" are copies of all process, pleadings and orders served upon MMWR in the State Court Action.

19. Attached hereto as Exhibit "G" is a copy of the Notice of Filing of Notice of Removal (without exhibits) which is being filed contemporaneously with the state court and is also being served upon Waleski.

WHEREFORE, MMWR, having demonstrated that this Court has jurisdiction over this matter and having timely filed this Notice of Removal, the above-captioned action is hereby removed from the Luzerne County Court of

Common Pleas to the United States District Court for the Middle District of Pennsylvania.

Respectfully submitted,

/s/ Daniel T. Brier
Daniel T. Brier (PA ID 53248)
dbrier@mbklaw.com
Donna A. Walsh (PA ID 74833)
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Emily.Montion@ThompsonHine.com

THOMPSON HINE LLP
312 Walnut Street, Suite 1400
Cincinnati, OH 45202
513-352-6769

Attorneys for Defendants, Montgomery McCracken Walker & Rhoads, LLP, Natalie D. Ramsey, Esquire and Leonard A. Busby, Esquire

Date: June 4, 2018

CERTIFICATE OF SERVICE

I, Daniel T. Brier, hereby certify that a true and correct copy of the foregoing Notice of Removal was served upon the following counsel of record via electronic and first-class mail, postage prepaid, on this 4th day of June, 2018:

Scott M. Hare, Esquire
1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219

/s/ Daniel T. Brier
Daniel T. Brier

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

3:18-cv-1144

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
Stanley Waleski, on his own behalf and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Luzerne
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Scott M. Hare, Esquire
1806 Frick Building, 437 Grant Street
Pittsburgh, PA 15219

DEFENDANTS
Montgomery McCracken Walker & Rhoads, LLP, Natalie D. Ramsey and Leonard A. Busby

County of Residence of First Listed Defendant Philadelphia
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
Daniel T. Brier, Esquire
Myers, Brier & Kelly, LLP
425 Spruce Street, Suite 200, Scranton, PA 18503

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*
Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. Section 1334(b)
Brief description of cause:
Alleged failure to adequately represent Plaintiff in connection with bankruptcy action.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:
JUDGE Michael E. Wiles, US Bankr. SD NY DOCKET NUMBER 09-10156

DATE
06/04/2018

SIGNATURE OF ATTORNEY OF RECORD
/s/ Daniel T. Brier

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Exhibit A

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, NATALIE D. RAMSEY and **LEONARD A. BUSBY**,

Defendants.

No. 201804431

CLASS ACTION COMPLAINT AND JURY DEMAND FOR BREACH OF CONTRACT

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Scott M. Hare, Esquire
Pa. I.D. No. 63818

1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Tel: 412-338-8632

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, **NATALIE D. RAMSEY** and **LEONARD A. BUSBY**,

Defendants.

No. 201804431

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyer Referral Service
Luzerne County Bar Association
200 N. River Street
Wilkes-Barre, PA 18711

Telephone: 570-822-6029

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, NATALIE D. RAMSEY and **LEONARD A. BUSBY**,

Defendants.

No. _____

CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiff Stanley Waleski, by his undersigned counsel, acting on his own behalf and on behalf of all those who are similarly situated, files this Class Action Complaint and Jury Demand for Breach of Contract against Defendants Montgomery, McCracken, Walker and Rhoads LLP, Natalie D. Ramsey and Leonard A. Busby, and states the following good cause in support:

Introduction and Summary of this Lawsuit

1. This is a class action lawsuit to recover damages for breach of contract arising from the Defendants' actions and inactions committed while representing the interests of the members of the Plaintiff Class in connection with bankruptcy proceedings filed by the Kerr-McGee Corporation and its affiliates (collectively herein "Kerr-McGee").

2. The Plaintiff Class consists of the 4300-plus injured victims of Kerr-McGee Chemical and Kerr-McGee Corporation, whose Wood Treatment Plant in Avoca, Pennsylvania poisoned Avoca residents with toxic and carcinogenic creosote and its constituents for many decades. As the Avoca Plaintiffs' devastating physical injuries and illnesses began to manifest (including skin, lung, kidney, colon, pancreatic and breast cancers, cardiovascular disease, pre-

cancerous skin lesions, and asthma), Plaintiffs commenced filing lawsuits in January 2005 to recover damages from Kerr-McGee. In 2007 this Court placed the cases on the "Inactive Docket" to allow the cases to proceed to binding arbitration before former Pennsylvania Supreme Court Justice Russell M. Nigro.

3. The Avoca Plaintiffs prevailed on all issues in each of the first two arbitration cases before Justice Nigro, who found that Kerr-McGee was liable for the claims being made and awarded damages to each of the arbitration claimants.

4. In the meantime, unknown to the Avoca Plaintiffs, the Kerr-McGee defendants and their affiliates schemed to deprive the Plaintiffs of any source of recovery for their devastating injuries by fraudulently transferring billions of dollars' worth of assets of the Kerr-McGee entities, for little or no consideration, to a newly-formed entity known as "New Kerr-McGee," ostensibly leaving the "Old Kerr-McGee" entities with no assets with which to satisfy Plaintiffs' claims.

5. As the Avoca Plaintiffs readied to present their next batch of arbitration claims, the "Old Kerr-McGee" defendants (by then renamed Tronox, Inc.) filed consolidated chapter 11 bankruptcy cases in the United States Bankruptcy Court for the Southern District of New York on January 12, 2009. As a result, any further arbitration proceedings were halted by the bankruptcy automatic stay.

6. Given the complex legal issues arising from the bankruptcy filing, and the likely impact of the bankruptcy on the administration and collection of the Avoca Plaintiffs' claims, Plaintiffs' state-court attorneys contracted with Defendants Montgomery, McCracken, Walker and Rhoads LLP, Natalie D. Ramsey and Leonard A. Busby, who professed expertise in complex bankruptcy litigation and related matters, to protect the Avoca Plaintiffs' interests and maximize their recovery in the bankruptcy case.

7. Unfortunately, as elaborated below at greater length, the Defendants failed to fulfill their contractual obligation to protect the Avoca Plaintiffs' interests and failed to take necessary steps to maximize their recovery in the bankruptcy case, as they agreed to do, resulting in damages to the Plaintiff Class of $619,306,880.

8. Plaintiff therefore brings this lawsuit to make the Plaintiff Class whole by recovering the additional payments to which the class members were entitled in the bankruptcy case, but which were lost to them as a result of the Defendants' contractual breaches described below.

Parties

9. Plaintiff Stanley Waleski is an adult citizen of the Commonwealth of Pennsylvania and resides in Luzerne County. Waleski was one of the Avoca Plaintiffs in the underlying litigation and bankruptcy proceedings.

10. Defendant Montgomery, McCracken, Walker and Rhoads LLP ("Montgomery") is a Pennsylvania limited liability partnership formed under the laws of the Commonwealth of Pennsylvania. Montgomery describes itself as a full-service law firm representing leading businesses, multinational corporations, nonprofit organizations and individuals across a wide range of industries in complex litigation matters and challenging disputes.

11. Defendant Natalie D. Ramsey is an adult citizen of the Commonwealth of Pennsylvania, is a licensed Pennsylvania attorney and is a Partner in the Montgomery firm. Ramsey is the Chair of the firm's Creditors' Rights and Bankruptcy practice group with a practice focusing on corporate reorganization and bankruptcy, including asset recovery litigation.

12. Ramsey expressly or impliedly agreed to represent the interests of Waleski and the other members of the Plaintiff Class as set forth herein.

13. Defendant Leonard A. Busby is an adult citizen of the Commonwealth of Pennsylvania, is a licensed Pennsylvania attorney and is a former Partner (now Senior Counsel) in the Montgomery firm. Busby is a member of the firm's Complex Litigation group with a litigation practice emphasizing complex litigation, injunctions and appeals.

14. Busby expressly or impliedly agreed to represent the interests of Waleski and the other members of the Plaintiff Class as set forth herein.

Class Allegations

15. Plaintiff Stanley Waleski files this lawsuit as a class action pursuant to Pa. R. Civ. P. 1701 *et seq.*, on his own behalf and on behalf of all injured claimants, known as the "Avoca Plaintiffs," whose interests Defendants represented as creditors in bankruptcy proceedings involving Tronox/Kerr-McGee and its affiliates, all as described at greater length herein.

16. Defendants agreed to represent the interests of all of the Avoca Plaintiffs collectively. As such, the material facts relevant to this action are identical for all members of the Plaintiff Class.

17. The Plaintiff Class includes approximately 4362 members and is, therefore, so numerous that joinder of all members would be impracticable and would create a substantial administrative burden for the Court and the parties. The identity of each member has already been determined in prior legal proceedings, including the bankruptcy proceedings discussed herein.

18. There are questions of law and fact common to all members of the Plaintiff Class, and such common questions will predominate in the disposition of this action. Among the common questions of law and/or fact are whether Defendants breached their contractual obligations, whether Defendants failed to advocate, protect and advance the interests of the Plaintiff Class members, as they agreed to do, and whether Plaintiffs are entitled to recover damages.

19. The claims of the Plaintiff Class representative, Stanley Waleski, are identical to or at least typical of the claims of the remaining class members.

20. The Plaintiff Class representative will fairly and adequately assert and protect the interests of the class as required by Pa. R. Civ. P. 1709. In particular: (1) the undersigned counsel will vigorously and adequately represent the interests of the class; (2) the class representative has no conflict of interest in maintaining a class action; and (3) class counsel has adequate financial resources to assure that the interests of the class will not be harmed.

21. A class action will provide a fair and efficient method for adjudication of the controversy set forth herein. In particular, with respect to Plaintiffs' claims for monetary recovery: (1) common questions of law and fact will predominate over particular questions affecting only individual members; (2) management of the action as a class action will not create any special difficulties, whereas the filing of 4300-plus individual claims would dramatically and needlessly overburden the court system; (3) the prosecution of separate actions by individual class members would create a risk of either inconsistent adjudications or the disposition or impairment of the interests of others similarly situated; (4) the representative Plaintiff is unaware of any similar pending class action litigation against these Defendants raising the claims to be adjudicated in this action; (5) this forum is appropriate and well-equipped to handle the claims of the entire class; and (6) the amounts likely to be recovered by individual class members are adequate to justify the expense and effort of administering the claims as a class action. Further, some members of the Plaintiff Class may be unaware that they have claims as articulated herein. Finally, to the extent this Court determines that equitable relief is warranted, Defendants have acted on grounds applicable generally to the class as a whole, thereby making final equitable relief appropriate with respect to the class as a whole.

CAFA Is Not Applicable

22. Waleski asserts solely Pennsylvania state-law claims and causes of action against Pennsylvania Defendants.

23. This lawsuit solely concerns contractual services provided by Defendants on behalf of Pennsylvania residents and/or one-time residents. The overwhelming majority of the members of the Plaintiff Class are domiciliaries and residents of Pennsylvania.

24. Defendants are all domiciliaries and residents of Pennsylvania.

25. For these reasons, the Federal Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1332(d), 1453 and 1711–15, does not apply to this lawsuit.

26. Additionally, even if CAFA were otherwise applicable, far more than two-thirds of the members of the proposed Plaintiff Class, and all Defendants, are citizens of Pennsylvania, and therefore this lawsuit is subject to mandatory abstention under the local controversy exception. See 28 U.S.C. § 1332(d)(4)(the federal court "shall decline" to exercise removal jurisdiction over any class action in which "two-thirds or more of the members of all proposed Plaintiff Classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.").

27. Defendants are well aware of the domicile and citizenship of the members of the Plaintiff class as a result of their work representing the interests of the Plaintiffs. For these reasons, any attempted removal of this action under CAFA would lack factual or legal basis and would violate Fed. R. Civ. P. 11.

Background Facts

A. The Avoca Litigation – Plaintiffs' Injury Claims are Proven

28. During the forty-year period from 1956 to 1996, the company then known as Kerr-McGee Chemical poisoned its neighbors and their community by recklessly operating a creosote factory in Avoca, Pennsylvania.

29. Beginning in January 2005, Plaintiffs' original attorneys began filing lawsuits on their behalf in this Court, seeking damages from Kerr-McGee for the injuries caused to the Avoca Plaintiffs.

30. In or about May 2007 this Court placed the cases on an administrative "Inactive Docket" to allow the claims to be adjudicated through binding arbitration conducted by former Pennsylvania Supreme Court Justice Russell M. Nigro.

31. Justice Nigro and the parties thereafter agreed on procedures to adjudicate the Plaintiffs' claims in batches, each consisting of a manageable number of individual plaintiffs with similar medical conditions.

32. By the end of 2008, Justice Nigro had conducted arbitration trials and issued decisions in the first two sets of arbitration cases, finding in Plaintiffs' favor on all liability issues and awarding damages to each of the individual plaintiffs consistent with their individual claims.

33. With Plaintiffs' liability theories thereby vindicated and established for all subsequent claims by collateral estoppel, Plaintiffs' state-court attorneys prepared to present the next batch of claims to Justice Nigro for determination and liquidation of damages.

34. Further adjudication of the arbitration cases was stayed, however, on January 12, 2009, because Tronox/Kerr-McGee and its affiliated companies filed Chapter 11 bankruptcy Petitions, giving immediate rise to the automatic stay in bankruptcy pursuant to 11 U.S.C. § 362.

B. Bankruptcy Proceedings – Montgomery Impairs Plaintiffs' Claims

35. Even before the January 12, 2009 bankruptcy filings, Plaintiffs' state-court attorneys had begun developing concerns that Kerr-McGee might seek to sidestep its obligations to the Avoca Plaintiffs by filing a bankruptcy or otherwise attempting to frustrate collection of anticipated recoveries in the arbitration proceedings. Recognizing that bankruptcy proceedings would require specialized expertise in bankruptcy law to protect Plaintiffs' interests, Plaintiffs' state-court attorneys contracted with Montgomery to obtain its assistance.

36. By Contingent Fee Agreement dated January 27, 2009, Montgomery contractually agreed to render assistance to Plaintiffs' state-court attorneys in representing the interests of the Avoca Plaintiffs in the Tronox Bankruptcy case. A true copy of the Contingent Fee Agreement is attached as Exhibit A.

37. Montgomery prepared the Contingent Fee Agreement and placed it on Montgomery firm letterhead. The Contingent Fee Agreement provides, in relevant part, as follows:

> **Contingent Fee Agreement**
>
> The Powell Law Group, P.C. ("PLG") hereby retains Montgomery, McCracken, Walker & Rhoads, LLP ("MMW&R") on a contingent fee basis in connection with the PLG's current representation of approximately 4,362 plaintiffs in the case captioned as In Re: Avoca Litigation now pending in the Court of Common Pleas of Luzerne County, Pennsylvania, Civil Action No. 7-2005 (the "Avoca Litigation"). ***MMWR will, in a manner to be mutually agreed with PLG, represent the interests of these same plaintiffs in the bankruptcy proceedings of Tronox, Incorporated, and all related entities, now pending in the United States Bankruptcy Court for the Southern District of New York***, Case No. 09-10156-ALG ("Tronox Bankruptcy"). ***MMWR shall proceed in the Tronox Bankruptcy in such manner as PLG and MMWR shall both agree. MMWR shall also assist PLG in the Avoca Litigation in such manner as PLG and MMWR shall both agree.***
>
> * * *
>
> ***MMWR shall have no obligation to represent PLG's said clients in any appeal.***

Exhibit A (emphasis added).

38. By its express terms, the Contingent Fee Agreement obligates Montgomery, *inter alia*, to perform tasks as allocated by PLG and agreed by the two law firms.

39. By its express terms, the sole limitation on the scope of work to be performed by Montgomery pursuant to the Contingent Fee Agreement is a disclaimer of any obligation to represent the clients in any appeal. But for this single express limitation, the scope of Montgomery's contractual obligation was plenary and encompassed all work needed to represent the interests of the Plaintiffs in the Tronox Bankruptcy.

40. Montgomery has repeatedly admitted that the purpose and effect of the Contingent Fee Agreement was to retain the firm to assist in representing the interests of the Plaintiffs.

41. Among other specific tasks assigned to Montgomery early in the bankruptcy case, Plaintiffs' state-court attorneys repeatedly warned that other purported claimants asserting unrelated claims against Kerr-McGee might seek to intrude upon Plaintiffs' rightful recovery. In particular, Plaintiffs' state-court attorneys repeatedly warned of potential claims from property owners in Mississippi who were represented by an aggressive lawyer from that state, and repeatedly instructed Montgomery to take steps to protect against any intrusion from such claims. (As elaborated below, these concerns were well-founded and prophetic, as the Mississippi claimants eventually succeeded in taking at least $140,000,000 of recoveries that otherwise would have been paid to the Plaintiff Class, which loss resulted directly from Montgomery's failure to protect Plaintiffs as agreed.)

42. On February 5, 2009, Ramsey filed a Motion for Admission *Pro Hac Vice* with the bankruptcy court in order to represent Michael E. Carroll in his capacity as a member of the Creditors' Committee, to which he was appointed at Montgomery's suggestion and recommendation.

43. Defendants' decision to represent Mr. Carroll individually in his capacity as a member of the Creditors' Committee, while already contractually obligated to represent the interests of the Avoca Plaintiffs collectively as uniquely-situated unsecured creditors, placed them in an irreconcilable and undisclosed conflict of interest. In particular, the Unsecured Creditors' Committee is a fiduciary of the class of unsecured creditors as a whole. *In re* Adelphia Comm. Corp., 544 F.3d 420, 424 n.1 (2d Cir. 2008). As such, members of the Unsecured Creditors' Committee "have obligations of fidelity, undivided loyalty, and impartial service in the interest of the creditors they represent." *In re* Mesta Mach. Co., 67 B.R. 151, 156 (Bankr. W.D. Pa. 1986). Individual creditors on the committee must "act with undivided loyalty for the benefit of all of the unsecured creditors." *In re* ABC Auto. Prods. Corp., 210 B.R. 437, 441 (Bankr. E.D. Pa. 1997)(denying application of law firm to be appointed as counsel to the Unsecured Creditors' Committee where it simultaneously represented individual creditors). Accordingly, by undertaking to represent a member of the committee in that fiduciary capacity, Defendants created an improper conflict of interest which impaired their existing obligations to represent the unique interests of the Avoca Plaintiffs. Defendants failed to disclose this conflict of interest (which was unknown to the Avoca Plaintiffs or their state-court attorneys) and failed to obtain a knowing waiver thereof.

44. By Order dated May 28, 2009 (the "Bar Date Order"), the bankruptcy court established August 12, 2009 as the bar date for filing creditor claims in the bankruptcy case. The Bar Date Order was served directly upon all creditors and other parties-in-interest in the case, and in particular was served directly upon Montgomery, Natalie Ramsey and Leonard Busby. Proof of Service of the Bar Date Order was recorded on the bankruptcy docket by Affidavit dated and filed June 10, 2009. A true copy of the Bar Date Order dated May 28, 2009 is attached as Exhibit B.

45. The Bar Date Order mandated, *inter alia*, that all alleged creditor claims be filed on or before August 12, 2009 and that each purported creditor file a separate, individual proof of

claim meeting certain designated substantive requirements. Pursuant to the Bar Date Order, any claims that were not timely and properly filed would be disallowed and therefore entitled to no payment.

46. Montgomery directed the Avoca Plaintiffs' state-court attorneys to prepare individual proofs of claim for each individual Plaintiff, instructing the state-court attorneys to document and substantiate each individual claim as required by the Bar Date Order. The Avoca Plaintiffs' state-court attorneys promptly completed the task, and on June 2, 2009, well before the Bar Date deadline, Montgomery filed more than 4300 individual proofs of claim, all of which were prepared for the Avoca Plaintiffs by their state-court attorneys.

47. Contrary to the mandates of the Bar Date Order (and unlike Plaintiffs' own proofs of claim, which were properly detailed and filed on an individual basis), on or about August 3, 2009, a so-called "Mississippi *Ad Hoc* Committee," which was allegedly "formed" just days earlier on July 12, 2009, filed a purported "omnibus claim" in the amount of $12.5 million on behalf of the *Ad Hoc* Committee as an ostensible surrogate for alleged (though entirely unidentified) Mississippi-based creditors. In reality, the "*Ad Hoc* Committee" was an imaginary creation with no legal existence or identity.

48. Prompted by the early warnings of Plaintiffs' state-court attorneys regarding the anticipated – and eventual – Mississippi competing claims, Defendants purportedly spent substantial legal time researching issues surrounding the Mississippi claims and the objectionable "omnibus claim" filed by the *Ad Hoc* Committee.

49. Unfortunately for the Plaintiff Class – whose interests Montgomery was required to protect - despite the early and repeated warnings and instructions of Plaintiffs' state-court attorneys, despite the clear mandate of the Bar Date Order, and despite the research and investigation purportedly conducted by Montgomery, Defendants failed to object at any time to

the "omnibus claim" filed by the *Ad Hoc* Committee. (As elaborated below, this failure directly resulted in the allowance and payment of alleged claims to the Mississippi claimants, not in the original stated amount of $12.5 million, but in the amount of at least $140,000,000, all of which was diverted on a dollar-for-dollar basis from the recovery that was otherwise eventually paid to the Plaintiff Class.)

C. Creation and Funding of Creditors Trust

50. As prefaced above, prior to filing their bankruptcy petitions, Kerr-McGee and its affiliates secretly and fraudulently transferred billions in assets of the Kerr-McGee entities, for little or no consideration, to a newly-formed entity, "New Kerr-McGee."

51. The fraudulent transfer was soon detected in the bankruptcy proceedings, resulting in the filing of litigation to recover the value of the fraudulent transfer for the benefit of the bankruptcy estate and its creditors.

52. Because the Tronox/Kerr-McGee debtors transferred the bulk of the companies' assets, leaving only an insolvent shell to satisfy the extensive creditor claims, including the claims of the Avoca Plaintiffs, it was apparent that the fraudulent transfer litigation would be the primary source of funds to pay creditor claims such as those filed on behalf of the Plaintiffs herein.

53. Acting in its official capacity as bankruptcy court-approved counsel for Plaintiff Class member Michael E. Carroll, a member of the Creditors' Committee, Montgomery took responsibility for drafting trust documents (which Montgomery described, boastfully, as "state-of-the-art") to establish and govern the administration of a personal injury creditors' trust, which would be responsible for receiving funds recovered in the fraudulent transfer litigation and administering and paying allowed personal injury creditor claims.

54. Montgomery eventually billed the bankruptcy estate $250,000 for its time spent representing Mr. Carroll on the Creditors' Committee, including time spent drafting the so-called state-of-the-art trust documents. This substantial payment was, of course, in addition to the contingent fees (to be taken from Plaintiffs' eventual recovery) that it negotiated for itself.

55. Defendants' decision to draft the trust documents (and to be paid handsomely to do so), while already contractually obligated to represent the unique interests of the Avoca Plaintiffs as unsecured creditors, exacerbated their conflict of interest described above.

56. By order dated November 30, 2010, the bankruptcy court confirmed the debtors' Chapter 11 plan and the so-called state-of-the-art trust documents. The Chapter 11 plan became effective as of February 14, 2011. The confirmed plan provided in relevant part that all tort claims would be administered (as to allowance and disallowance, and as to amount) in accordance with the terms of the trust documents.

57. The following day, February 15, 2011 – long before the Avoca Plaintiffs' claims were fully adjudicated, much less paid through the bankruptcy proceedings or the personal injury trust – Montgomery purported to terminate its representation of the Avoca Plaintiffs' interests, without the consent or agreement of the Avoca Plaintiffs or their state-court attorneys.

58. Unfortunately for the Plaintiff Class – whose interests Montgomery was required to protect - despite the early and repeated warnings and instructions of Plaintiffs' state-court attorneys, despite the fact that Montgomery agreed to represent the interests of the Avoca Plaintiffs in the bankruptcy case, despite the fact that the fraudulent transfer litigation was known to be the primary source of funds to pay creditor claims such as those filed on behalf of the Plaintiffs, despite the so-called "state-of-the-art" polish of the trust documents, and despite the receipt of a further $250,000 fee, Montgomery failed to draft the trust documents in a fashion to protect the Avoca Plaintiffs' claims or to exclude improper competing claims, such as those of the purported

Mississippi claimants. (As elaborated below, this failure likewise directly resulted in the allowance and payment of alleged claims to the Mississippi claimants in the amount of at least $140,000,000, all of which was diverted on a dollar-for-dollar basis from the recovery that was otherwise paid to the Plaintiff Class.)

59. Although the personal injury trust was created in the course of the Chapter 11 plan confirmation, the trust had little funding, and therefore little ability to pay creditor claims, while the fraudulent transfer litigation remained pending.

60. The trial of the fraudulent transfer lawsuit commenced in the bankruptcy court on May 15, 2012.

61. After four months of lengthy trial proceedings, the bankruptcy court issued its initial decision as to liability in the fraudulent transfer litigation on December 12, 2013, finding that the debtor entities had committed a fraudulent transfer of their assets to the newly-formed entity, and that the bankruptcy estate was entitled to payment of damages in the range of $5.15 billion to $14.16 billion, with the final amount to be determined after further proceedings.

62. On January 15, 2014, the trustee of the personal injury trust (formed pursuant to the so-called state-of-the-art trust documents crafted by Montgomery) issued a final report of the claims to be paid by the trust. Among other claims to be paid were the "Category D" claims, which included the claims of the Avoca Plaintiffs in the allowed amount of approximately $949 million. Unfortunately for the Avoca Plaintiffs, however, as a result of Montgomery's failure to take any steps to object to the "omnibus claim" filed by the *Ad Hoc* Committee and its failure to draft trust documents in a fashion to protect the Avoca Plaintiffs (whose interests it agreed to protect), the "Category D" claims also included the Mississippi claims, which were recognized in the amount of approximately $343 million (*more than 27 times* the amount stated in the defective "omnibus claim"), together with other miscellaneous claims in the amount of approximately $39 million.

63. Despite Montgomery's failure to object to the "omnibus claim" filed by the *Ad Hoc* Committee and its failure to draft competent trust documents to protect the Avoca Plaintiffs (whose interests it agreed to protect), the damages to be recovered in the fraudulent transfer litigation would nonetheless potentially pay the Plaintiff Class in full for its $949 million allowed claim, if ultimately recovered within the mid-range of damages already recognized by the bankruptcy court.

64. In light of the data reported in the January 15, 2014 trustee's final report, and the concern over potential eventual harm to the Avoca Plaintiffs (whose interests it agreed to protect), Plaintiffs' state-court attorneys attempted to contact Montgomery throughout February 2014 to instruct the firm to object to the allowance of the Mississippi claims under Category D and rebut those claims. Unfortunately for the Plaintiff Class, Montgomery took no further steps to protect the interests of the Avoca Plaintiffs, which interests the firm itself had put at potential risk.

65. In the meantime, the parties in the fraudulent transfer litigation and the United States government (representing the interests of federal and state government agencies) negotiated a proposed settlement of the lawsuit for $5.15 billion (the absolute bottom end of the range found by the bankruptcy court), resulting in a written settlement agreement signed on April 2, 2014. Because the settlement constituted a compromise of claims in the bankruptcy case, it was subject to objection by creditors and approval by the bankruptcy court, and therefore remained only tentative pending final court approval.

66. On May 30, 2014 the bankruptcy court issued a report and recommendation tentatively approving the proposed settlement, subject to any objections to the settlement filed by creditors on or before July 7, 2014.

67. Although the proposed $5.15 billion settlement was considerable (though it represented the "bare minimum" figure already reached by the court), it failed to recover sufficient funds to pay the Category D claims fully in the amount of approximately $1.33 billion, and would

therefore result in an underpayment to the Avoca Plaintiffs on account of their claims in the allowed amount of approximately $949 million. Despite this significant potential underpayment, and despite renewed outreach and instructions by Plaintiffs' state-court attorneys throughout February 2014, Montgomery failed to file any objection on behalf of the Avoca Plaintiffs on or before July 7, 2014.

68. By order dated November 10, 2014, the United States District Court adopted the bankruptcy court report and recommendation and approved the proposed settlement.

69. On November 19, 2014, the district court clerk entered a "Corrected Judgment" approving the settlement agreement, with an effective date of January 21, 2015.

70. Having thus suffered actual damages (and the fact of damages) as of January 21, 2015, and having been abandoned by Montgomery, the Avoca Plaintiffs, through their state-court attorneys, continued their effort to object to the Mississippi competing claims by appealing directly to the trustee. As a result, on April 24, 2015 the trustee filed a motion with the bankruptcy court seeking instructions regarding the objection to the Mississippi claims.

71. By order dated June 17, 2015 the bankruptcy court found that the Avoca Plaintiffs had no standing to object to the claims administration process because they (to-wit, Montgomery, which was contractually bound to protect their interests) failed to file an objection to the Mississippi "omnibus" proof of claim prior to plan confirmation. The bankruptcy court also noted that the trust documents could have been drafted differently (to-wit, by Montgomery) to give the Avoca Plaintiffs greater rights to challenge the Mississippi claims.

D. Payment of Avoca Plaintiff's Claims in a Diminished Amount

72. Pursuant to the final, non-appealable settlement agreement, to which Montgomery failed to object, a total of $618 million was paid into the trust for satisfaction of Category D claims on a diminished, *pro rata* basis.

73. Had Montgomery properly and timely objected to the Mississippi "omnibus" proof of claim, as it was requested, instructed and contractually required to do, and/or had it properly drafted the trust documents to protect the interests of the Avoca Plaintiffs, the entire $618 million paid into the trust for satisfaction of Category D claims would have been remitted to the Avoca Plaintiffs.

74. Further, had Montgomery properly and timely objected to the proposed settlement agreement, which underfunded payment of Category D claims, as it was requested, instructed and contractually required to do, the entire balance of the Avoca Plaintiffs' allowed claims of approximately $949 million would have been remitted to the Plaintiffs.

75. Instead, because of these contractual failures by Montgomery, the Avoca Plaintiffs received a diminished total of $329,693,120, resulting in damages to the Avoca Plaintiffs of $619,306,880.

COUNT I – BREACH OF CONTRACT
Plaintiffs v. All Defendants

76. Plaintiff incorporates the foregoing paragraphs as if fully repeated herein.

77. Defendants agreed to protect and advance the interests of the Plaintiff Class. In particular, and without limitation, Defendants agreed to represent the interests of the Plaintiffs in the bankruptcy proceedings, agreed to maximize the recovery obtained by Plaintiffs in the

bankruptcy proceedings, and agreed to protect the claims of the Plaintiffs as against other purported creditors of the bankruptcy estate.

78. In addition to the firm itself, Ramsey and Busby expressly or impliedly agreed to represent the interests of the Plaintiff Class as set forth herein.

79. The parties' agreement included the implied promise and legal mandate that Defendants would zealously, competently and diligently represent the interests of the Plaintiffs. See Pa. R. Prof. Conduct 1.1, 1.3, *passim*.

80. The parties' agreement included the implied promise and legal mandate that Defendants would avoid any conflicts of interest in the representation. See Pa. R. Prof. Conduct 1.7, 1.8, 1.8(f), 1.10, *passim*.

81. Among other contractual obligations arising under the Contingent Fee Agreement, Defendants were required (i) to beware of, and guard against, the intrusion of competing claims, including specifically the Mississippi claims, (ii) to object to the Mississippi claims, (iii) to protect, advance and maximize Plaintiffs' claims and recovery, and (iv) to object to the inadequate proposed settlement agreement. Defendants materially breached the agreement by failing to discharge these obligations.

82. Defendants materially breached the parties' agreement by failing to represent the interests of the Plaintiffs zealously, competently and diligently in the bankruptcy proceedings, failing to maximize the recovery obtained by Plaintiffs in the bankruptcy proceedings, failing to protect the claims of the Plaintiffs as against other purported creditors of the bankruptcy estate, failing to object to competing claims and claimants whose effect was to diminish the recovery to Plaintiffs, failing to advise regarding procedural options (including a possible return to state court), and failing to avoid conflicts of interest.

83. In breach of their contractual obligations, Defendants failed to conduct sufficient due diligence with respect to the alleged Mississippi claims.

84. In breach of their contractual obligations, Defendants failed to protect the interests of the Avoca Plaintiffs, and failed to maximize their recovery, by failing to object to the "omnibus" proof of claim ostensibly filed on behalf of the Mississippi claimants on multiple grounds, including, *inter alia*, (i) that it failed to conform to the claim requirements; (ii) that it purported to assert multiple claims on behalf of multiple claimants in a single proof of claim; (iii) that it purported to assert a claim on behalf of an "ad hoc" entity that did not exist and/or, in any event, was not a creditor of the debtor; (iv) that it failed to document and substantiate the alleged claims; and (v) that it asserted purported claims that were inappropriate subject matter for the Category D fund.

85. In breach of their contractual obligations, Defendants failed to exercise available procedural options to adjudicate and maximize the Avoca Plaintiffs' claims (including a possible return to state court) and instead, artificially and without reason, assigned inadequate values to the disease categories comprising the Avoca Plaintiffs' claims, resulting in diminished claims that failed to compensate the Plaintiffs fully.

86. In breach of their contractual obligations, Defendants failed to avoid conflicts of interest, and instead created such conflicts by representing Mr. Carroll as a member of the Creditors' Committee, and in that capacity undertaking to draft the trust documents, while already contractually obligated to protect the unique interests of the Avoca Plaintiffs.

87. In breach of their contractual obligations, Defendants failed to draft the trust documents in a manner to protect Plaintiffs' unique and superior interests in the Category D fund, and specifically failed to draft those documents to protect Plaintiffs' interests from dilution resulting from the inclusion and eventual allowance of the Mississippi claims.

88. In breach of their contractual obligations, Defendants improperly, prematurely, without cause and without client consent abandoned the interests of the Avoca Plaintiffs in the bankruptcy proceedings while their claims remain unresolved.

89. In breach of their contractual obligations, Defendants failed to object to the proposed settlement agreement, which underfunded payment of Category D claims.

90. In breach of their contractual obligations, Defendants failed to provide the Avoca Plaintiffs with critical information necessary for the continued prosecution of their claims in the bankruptcy proceedings.

91. As a result of Defendants' material breaches of contract, Plaintiffs sustained damages, including but not limited to the loss of more than $140 million in recoveries allocated to Category D claimants, and the loss of further sums that would have been allocated to Plaintiffs' claims had Montgomery valued them properly and/or had Defendants objected to the proposed settlement agreement.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in favor of the Plaintiff class and against Defendants, jointly and severally, and to award damages in the amount of $619,306,880, plus statutory interest and costs.

COUNT II – BREACH OF CONTRACT (INTENDED BENEFICIARY)
Plaintiffs v. Montgomery, McCracken, Walker and Rhoads LLP

92. Plaintiff incorporates the foregoing paragraphs as if fully repeated herein.

93. Montgomery entered a written contract with Powell Law Group (the Contingent Fee Agreement attached as Exhibit A) to represent the interest of Plaintiffs, in exchange for which Montgomery would receive legal fees. In particular, and without limitation, Montgomery agreed to represent the interests of the Plaintiffs in the bankruptcy proceedings, agreed to protect Plaintiffs'

interests (and thereby maximize their recovery) in the bankruptcy proceedings, and agreed to protect the claims of the Plaintiffs as against other purported creditors of the bankruptcy estate.

94. Plaintiffs were express intended beneficiaries of the Contingent Fee Agreement, and Defendants have acknowledged as much.

95. In the alternative, Plaintiffs were implied intended beneficiaries of the Contingent Fee Agreement, and Defendants have acknowledged as much.

96. By entering the Contingent Fee Agreement, Montgomery agreed to and did undertake obligations directly to Plaintiffs, notwithstanding the financial arrangements of the representation. See Pa. R. Prof. Conduct 1.7, 1.8, *passim*.

97. The Contingent Fee Agreement included the implied promise and legal mandate that Montgomery would zealously, competently and diligently represent the interests of the Plaintiffs. See Pa. R. Prof. Conduct 1.1, 1.3, *passim*.

98. The Contingent Fee Agreement included the implied promise and legal mandate that Montgomery would avoid any conflicts of interest in the representation. See Pa. R. Prof. Conduct 1.7, 1.8, 1.8(f), 1.10, *passim*.

99. Among other contractual obligations arising under the Contingent Fee Agreement, Montgomery was required (i) to beware of, and guard against, the intrusion of competing claims, including specifically the Mississippi claims, (ii) to object to the Mississippi claims, (iii) to protect, advance and maximize Plaintiffs' claims and recovery, and (iv) to object to the inadequate proposed settlement agreement. Montgomery materially breached the Contingent Fee Agreement by failing to discharge these obligations.

100. Montgomery materially breached the Contingent Fee Agreement by failing to represent the interests of the Plaintiffs zealously, competently and diligently in the bankruptcy proceedings, failing to maximize the recovery obtained by Plaintiffs in the bankruptcy proceedings,

failing to protect the claims of the Plaintiffs as against other purported creditors of the bankruptcy estate, failing to object to competing claims and claimants whose effect was to diminish the recovery to Plaintiffs, failing to advise Plaintiffs regarding procedural options (including a possible return to state court), and failing to avoid conflicts of interest.

101. In breach of its contractual obligations, Montgomery failed to conduct sufficient due diligence with respect to the alleged Mississippi claims.

102. In breach of its contractual obligations, Montgomery failed to protect the interests of the Avoca Plaintiffs, and failed to maximize their recovery, by failing to object to the "omnibus" proof of claim ostensibly filed on behalf of the Mississippi claimants on multiple grounds, including, *inter alia*, (i) that it failed to conform to the claim requirements; (ii) that it purported to assert multiple claims on behalf of multiple claimants in a single proof of claim; (iii) that it purported to assert a claim on behalf of an "ad hoc" entity that did not exist and/or, in any event, was not a creditor of the debtor; (iv) that it failed to document and substantiate the alleged claims; and (v) that it asserted purported claims that were inappropriate subject matter for the Category D fund.

103. In breach of its contractual obligations, Montgomery failed to exercise available procedural options to adjudicate and maximize the Avoca Plaintiffs' claims (including a possible return to state court) and instead, artificially, and without reason, assigned inadequate values to the disease categories comprising the Avoca Plaintiffs' claims, resulting in diminished claims that failed to compensate the Plaintiffs fully.

104. In breach of their contractual obligations, Defendants failed to avoid conflicts of interest, and instead created such conflicts by representing Mr. Carroll as a member of the Creditors' Committee, and in that capacity undertaking to draft the trust documents, while already contractually obligated to protect the unique interests of the Avoca Plaintiffs.

105. In breach of its contractual obligations, Montgomery failed to draft the trust documents in a manner to protect Plaintiffs' interests in the Category D fund, and specifically failed to draft those documents to protect Plaintiffs' interests from dilution resulting from the inclusion and eventual allowance of the Mississippi claims.

106. In breach of its contractual obligations, Montgomery improperly, prematurely and without cause abandoned the interests of the Avoca Plaintiffs in the bankruptcy proceedings while their claims remain unresolved.

107. In breach of its contractual obligations, Montgomery failed to object to the proposed settlement agreement, which underfunded payment of Category D claims.

108. In breach of its contractual obligations, Montgomery failed to provide the Avoca Plaintiffs with critical information necessary for the continued prosecution of their claims in the bankruptcy proceedings.

109. As a result of Montgomery's material breaches of contract, Plaintiffs sustained damages, including but not limited to the loss of more than $140 million in recoveries allocated to Category D claimants, and the loss of further sums that would have been allocated to Plaintiffs' claims had Montgomery valued them properly.

110. As express and/or implied intended third-party beneficiaries, Plaintiffs have standing to bring this action for breach of contract and to recover damages herein.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in favor of the Plaintiff class and against Defendant Montgomery, McCracken, Walker and Rhoads LLP, and to award damages in the amount of $619,306,880, plus statutory interest and costs.

Plaintiffs demand trial by jury.

Respectfully submitted,

Scott M. Hare, Esquire
Pa. I.D. No. 63818

Scott@ScottLawPGH.com

1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Tel: 412-338-8632

Counsel for Plaintiffs

Date: April 11, 2018

Exhibit A

Contingent Fee Agreement dated January 27, 2009

Contingent Fee Agreement

The Powell Law Group, P.C. ("PLG") hereby retains Montgomery, McCracken, Walker & Rhoads, LLP ("MMW&R") on a contingent fee basis in connection with the PLG's current representation of approximately 4,362 plaintiffs in the case captioned as In Re: Avoca Litigation now pending in the Court of Common Pleas of Luzerne County, Pennsylvania, Civil Action No. 7-2005 (the "Avoca Litigation"). MMWR will, in a manner to be mutually agreed with PLG, represent the interests of these same plaintiffs in the bankruptcy proceeding of Tronox, Incorporated, and all related entities, now pending in the United States Bankruptcy Court for the Southern District of New York, Case No. 09-10156-ALG ("Tronox Bankruptcy"). MMWR shall proceed in the Tronox Bankruptcy in such manner as PLG and MMWR shall both agree. MMWR shall also assist PLG in the Avoca Litigation in such manner as PLG and MMWR shall both agree.

Attached hereto as Exhibit A is a copy of the form of Contingent Fee Agreement that is now in effect in identical or similar form between PLG and each of its said clients in the Avoca Litigation.

From PLG's own contingent fee paid to it by its own said clients, and from no other source, PLG hereby agrees to pay MMWR compensation for its professional services as follows:

> (a) MMW&R, for and in consideration of its professional services in the Tronox Bankruptcy and Avoca Litigation shall retain and be paid as its contingent fee the greater of (1)1% of the cumulative gross recovery of all of PLG's said clients (whether obtained through the Tronox Bankruptcy or otherwise); or (2) 1.5 times MMWR's standard hourly rates with respect to the gross recovery during the first six months after execution of this Contingent Fee Agreement; 1.8 times MMWR's standard hourly rates with respect to the gross recovery during the next six months after execution of this Contingent Fee Agreement standard hourly rates; and 2.1 times MMWR's standard hourly rates with respect to the gross recovery during the period more than twelve months after execution of this Contingent Fee Agreement. The amount of monies actually recovered after the date of execution of this Contingent Fee Agreement, whether by settlement, verdict, or otherwise, and before the deduction of any costs, is referred to herein as the "gross recovery."

(b) MMWR will prepare monthly statements for PLG that reflect all work performed at MMWR's standard hourly rates then in effect, and such statements will be deemed approved unless questioned by PLG within 30 days of delivery of the statement.

(c) Should no money be recovered, MMW&R shall have no claim against PLG except for payment of expert witness costs as provided for below.

(d) The amount on which 1% of the gross recovery will be based shall include the present value (i.e., the current worth of the value of future payments) of any settlements involving future payments.

From any sum recovered by PLG's said clients, MMW&R shall also then be reimbursed for all of its costs other than attorney's fees, including but not limited to transcript costs, costs for service of process, filing fees, costs associated with downloading court filings and then preserving copies thereof, photocopying, postage, computerized research, and travel. PLG agrees to pay for itself, or to reimburse MMWR for if paid for initially by MMWR, the cost of any experts retained in the Tronox Bankruptcy or otherwise.

This Agreement shall be binding upon the heirs executors, successors, and assigns of PLG and MMW&R.

MMW&R shall have no obligation to represent PLG's said clients in any appeal.

It is understood and agreed that MMW&R does not guarantee in any way the likelihood of success for any recovery or any particular outcome. The provision for payment to MMWR as described above shall not be considered an indication that some particular amount, or any amount, will be recovered.

PLG shall communicate with its own clients in the Avoca Litigation in a manner acceptable to MMWR so as to conform with the requirements of Pennsylvania Rule of Professional Conduct 1.5(e).

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP

PLG hereby acknowledges receipt of a duplicate copy of this Contingent Fee Agreement.

The Powell Law Group, P.C.

Date: 1/27/09

By: Robert J. Powell, President
Robert J. Powell, Principal

Date: _____

By: _____
Jill A. Moran, Principal

The foregoing terms and conditions are accepted by
Montgomery, McCracken, Walker & Rhoads, LLP

Date: January 22, 2009

By: Leonard A. Busby
Leonard A. Busby, Partner

Exhibit B

Bar Date Order dated May 28, 2009

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
TRONOX INCORPORATED, et al.,[1]	)	Case No. 09-10156 (ALG)
Debtors.	)	Jointly Administered

ORDER (A) SETTING BAR DATES FOR FILING PROOFS OF CLAIM, (B) APPROVING THE FORM AND MANNER FOR FILING PROOFS OF CLAIM AND (C) APPROVING NOTICE THEREOF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order") (a) establishing the deadline for filing claims in these chapter 11 cases (the "Chapter 11 Cases"), (b) approving the form and manner for filing such claims and (c) approving notice thereof; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED

1. The Motion is granted.

---

1 The Debtors in these cases include: Tronox Luxembourg S.ar.L; Tronox Incorporated; Cimarron Corporation; Southwestern Refining Company, Inc.; Transworld Drilling Company; Triangle Refineries, Inc.; Triple S, Inc.; Triple S Environmental Management Corporation; Triple S Minerals Resources Corporation; Triple S Refining Corporation; Tronox LLC; Tronox Finance Corp.; Tronox Holdings, Inc.; Tronox Pigments (Savannah) Inc.; and Tronox Worldwide LLC.

2 Capitalized terms used, but not otherwise defined, herein shall have the meanings set forth in the Motion.

2. Pursuant to Bankruptcy Rule 3003(c)(3), except as provided in paragraph 7 hereof, all persons and entities (including individuals, partnerships, corporations, joint ventures, trusts, and governmental units), holding or wishing to assert a claim, as that term is defined in section 101(5) of the Bankruptcy Code (each, a "Claim"), against any of the Debtors that arose on or prior to the filing of the Debtors' Chapter 11 Cases on January 12, 2009, are required to file proof of such Claim (a "Proof of Claim") pursuant to the procedures and on or before the deadlines (each a "Bar Date" and, collectively, the "Bar Dates") established by this Order.

3. Except as expressly provided herein, each and every Proof of Claim for a Claim that arose before the Petition Date against any of the Debtors, including a Claim pursuant to section 503(b)(9) of the Bankruptcy Code, in these Chapter 11 Cases shall be actually received on or before **August 12, 2009 at ~~8:00~~ 5:00 p.m. ~~(Eastern Time)~~ (Pacific Time)** (the "Bar Date").

4. Pursuant to Bankruptcy Rule 3003(c)(2), all creditors that fail to comply with this Order by timely filing a Proof of Claim in appropriate form shall not be treated as a creditor with respect to such Claim for purposes of voting on a chapter 11 plan and distribution thereunder on account of such Claim.

5. The standard form of Proof of Claim (the "Proof of Claim Form") attached to the Motion as Exhibit B is hereby approved.

6. The following rules shall govern the completion and filing of each Proof of Claim:

a. Each Proof of Claim must conform substantially with the Proof of Claim Form or Official Form No. 10;

b. All Proofs of Claim must be **actually received** no later than **~~8:00~~ 5:00 p.m. ~~(Eastern Time)~~ (Pacific Time) on August 12, 2009** at the following address:

Tronox Claims Processing Center
c/o Kurtzman Carson Consultants LLC
2335 Alaska Ave.
El Segundo, CA 90245

Proof of Claim must be delivered to the above address by first class U.S. mail (postage prepaid), in person, by courier service, or by overnight delivery;

The Debtors' notice and claims agents, Kurtzman Carson Consulting LLC ("KCC"), will not accept a Proof of Claim sent by facsimile or e-mail;

c. Each Proof of Claim will be deemed filed only when received;

d. Each Proof of Claim must: (i) be signed by the creditor or if the creditor is not an individual, by an authorized agent of the creditor; (ii) be written in English; (iii) include a Claim amount denominated in United States dollars; (iv) state a Claim against only one Debtor; and (v) clearly indicate the Debtor against which the creditor is asserting a Claim;

e. Each Proof of Claim must include supporting documentation (or, if such documentation is voluminous, a summary of such documentation) or an explanation as to why such documentation is not available; provided, however, that a Proof of Claim may be filed without supporting documentation upon the prior written consent of the Debtors and any other party in interest; provided, further, that any creditor that received such written consent shall be required to transmit such writings to the Debtors or other party in interest upon request no later than ten (10) days from the date of such request; and

f. A creditor who wishes to receive acknowledgment of receipt of its Proof of Claim Form may submit a copy of the Proof of Claim Form and a self-addressed, stamped envelope to KCC along with the original Proof of Claim Form.

7. Parties are not required to submit Proofs of Claim or interest in accordance with the procedures established herein for the following ~~categories of Claims~~:

a. Any Claim for which a Proof of Claim has already been filed against the Debtors with the Clerk of the Court (the

"Clerk") in a form substantially similar to Official Bankruptcy Form No. 10;

b. Any Claim that is listed on the Debtors' Schedules; provided, however, that: (i) the Claim is not scheduled as "disputed," "contingent" or "unliquidated"; (ii) the Claimant does not disagree with the amount, nature and priority of the claim as set forth in the Schedules; and (iii) the Claimant does not dispute that the Claim is an obligation of the specific Debtor(s) as set forth in the Schedules;

c. Any Claim that has been allowed previously pursuant to an order of this Court;

d. Any Claim against a Debtor that has been paid in full by any of the Debtors or any other party;

e. Any Claim that is subject to specific deadlines, aside from those established pursuant to this Order, fixed by this Court;

f. Any Claim held by a Debtor in these Chapter 11 Cases;

g. Any Claim held by a current employee of the Debtors for Wages and Benefits (as defined in the order of this Court entered on February 6, 2009 [Dkt. No. 143] authorizing the Debtors to honor Claims for Employee Wages and Benefits);

h. Any Claim that is limited exclusively to the repayment of principal, interest and/or other applicable fees and charges ("Debt Claim") owed under any bond or note issued by the Debtors pursuant to an indenture (a "Debt Instrument"); provided, however, that: (i) an indenture trustee under a Debt Instrument (the "Indenture Trustee") must file one Proof of Claim, on or before the Bar Date, with respect to all of the amounts owed under each of the Debt Instruments and (ii) any holder of a Debt Claim wishing to assert a Claim, other than a Debt Claim, arising out of or relating to a Debt Instrument must file a Proof of Claim on or before the Bar Date, unless another exception in this paragraph applies;

i. Any Claim or interest that is based on an interest in an equity security of the Debtors; provided, however, that any ~~Claimant~~ person who wishes to assert a Claim against any of the Debtors based on, without limitation, Claims for

damages or rescission based on the purchase or sale of an equity security, must file a Proof of Claim on or before the Bar Date;[3] and

j. Any Claim allowable under sections 503(b) and 507(a)(1) of the Bankruptcy Code as an administrative expense of the Debtors' Chapter 11 Cases, with the exception of any Claim allowable under section 503(b)(9) of the Bankruptcy Code, which is subject to Bar Date as provided above.

8. In the event the Debtors amend or supplement their schedules of liabilities (collectively, the "Schedules"), the Debtors shall give notice of any amendment or supplement to the holders of any Claim affected thereby, and such holders shall be afforded thirty (30) days from the date on which such notice is given or until the Bar Date, if the Bar Date is later, to file a Proof of Claim with respect to their Claim or be forever barred from doing so.

9. The holder of any Claim that arises from the Debtors' rejection of any executory contract or unexpired lease after the date of entry of this Order shall file a Proof of Claim based on such rejection by the later of (a) the Bar Date, (b) a date provided in an order authorizing the Debtors to reject (or notice of rejection of) an executory contract or unexpired lease or (c) if no date is provided, thirty (30) days after the date of any order authorizing such rejection or notice of such rejection is entered.

10. The Debtors, with the assistance of KCC, are hereby authorized and directed to serve the following materials by first class U.S. mail, postage prepaid, on all known creditor holding actual or potential Claims no later than five (5) business days after the date of entry of this Order: (a) written notice of the Bar Date in substantially the form annexed to the Motion as

[3] The Debtors reserve all rights with respect to any such Claims including, *inter alia*, to assert that such Claims are subject to subordination pursuant to section 510(b) of the Bankruptcy Code

Exhibit C, (the "Bar Date Notice"); and (b) the Proof of Claim Form (collectively, the "Bar Date Package").

11. The Bar Date Notice, substantially in the form attached to the Motion as Exhibit C, is hereby approved.

12. KCC is further authorized and directed to mail the Bar Date Package no later than five (5) business days after the date of entry of this Order to the following parties:

a. The U.S. Trustee;

b. Counsel to the agent for the Debtors' prepetition and postpetition secured lenders;

c. Counsel to the Creditors' Committee;

d. Counsel to the Equity Committee;

e. Anadarko Petroleum Corporation;

f. The ~~United States Attorney for the Southern District of New York~~ Attorney General of the United States or such other officer, as appropriate, on behalf of the United States Department of Justice, the Environmental Protection Agency, and the Securities and Exchange Commission;

g. All persons or entities that have requested notice of the proceedings in the Chapter 11 Cases;

h. All persons or entities that have filed Claims against the Debtors as of the date of entry of this Order;

i. All creditors and other known holders of Claims against the Debtors as of the date of entry of this Order, including all persons or entities listed in the Schedules as holding Claims against one or more of the Debtors;

j. All parties to executory contracts and unexpired leases of the Debtors listed on the Schedules;

k. All parties to litigation with the Debtors or, where individual addresses are not available, through their counsel of record;

l. The Attorney General of the United States or the United States Attorney for the Southern District of New York **or such other officer,** as appropriate, on behalf of the Environmental Protection Agency, and other agencies and instrumentalities of the Unites States of America;

m. State attorneys general for the states in which the Debtors' property is located;

n. The Internal Revenue Service;

o. The Debtors' current employees, and the Debtors' former employees to the extent that contact information for former employees is available in the Debtors' records; and

p. Such additional persons and entities as deemed appropriate by the Debtors.

13. The Debtors are further directed, with the assistance of KCC, to include the following information on every Proof of Claim Form that they supply to a creditor whose Claim is listed on the Debtors' Schedules: (a) the amount of such creditor's Claim against the applicable Debtor (if such information is reasonably ascertainable), as reflected in the Schedules; (b) the type of Claim held by such creditor (i.e., non-priority unsecured, priority unsecured or secured), as reflected in the Schedules; and (c) whether such Claim is contingent, unliquidated or disputed as reflected in the Schedules. Any person or entity that receives the Proof of Claim Form is authorized to correct any incorrect information contained in the name and address portion of such form.

14. The Debtors are hereby authorized to provide supplemental mailings of the Bar Date Package as may be necessary in situations, including, without limitation, (a) notices that are returned by the post office with forwarding addresses, (b) certain parties acting on behalf of parties in interest (e.g., banks and brokers with respect to bondholders and equity holders) that decline to pass along notices to these parties and instead return their names and addresses to the Debtors for direct mailing and (c) additional potential creditors that become known as the result of the Bar Date noticing process. Such mailings made at any time up to 30 days in advance of the Bar Date are hereby deemed timely. Notwithstanding the foregoing, the Debtors shall not be required to provide any additional notice to any creditor to whom the Debtors mailed the Bar

Date Package in accordance with the terms of this Order and such notice was returned to the Debtors as undeliverable without a forwarding address.

15. Pursuant to Bankruptcy Rule 2002(f), the Debtors shall give notice of the Bar Dates by publishing the Bar Date Notice, modified for publication in substantially the form annexed to the Motion as Exhibit D (the "General Publication Notice"), in *The Wall Street Journal* on one occasion on or before July ~~12~~ 10, 2009. The General Publication Notice shall include a telephone number that creditors may call to obtain copies of the Proof of Claim Form, a URL for a website where the creditors may obtain a copy of a Proof of Claim Form, and information concerning the procedures for filing Proofs of Claim. The Debtors are authorized to enter into such transactions to cause such publication to be made and to make reasonable payments required for publication.

16. The Debtors shall also give notice of the Bar Dates by publishing certain Site-Specific Publication Notices, modified for publication in substantially the form attached to the Motion as Exhibit E, in the publications listed in Exhibit F to the Motion, on one occasion on or before July ~~12~~ 10, 2009. The Debtors are authorized to enter into such transactions to cause such publication to be made and to make reasonable payments required for publication.

17. The forms of the General Publication Notice and the Site-Specific Publication Notices substantially in the form attached to the Motion as Exhibits D and E are hereby approved.

18. The Debtors, with the assistance of KCC, are authorized to mail the Bar Date Notice to counsels of record for Tort Claimants for whom the Debtors lack personal information.

19. The Debtors are authorized ~~to establish~~ without further notice to file with the Court one or more orders establishing additional Bar Dates, as necessary, (the "Supplemental

Bar Dates") with respect to (a) creditors as to whom a remailing of the Bar Date Package is appropriate, but which cannot be accomplished in time to provide at least thirty (30) days' notice of the Bar Date and (b) other creditors that become known to the Debtors after the applicable Bar Date; provided, however, that the Debtors obtain the written consent of the Creditors' Committee before establishing a Supplemental Bar Date;. ~~provided, further, that the Debtors advise the Court of a Supplemental Bar Date by filing notice of such Supplemental Bar Date which identifies the Supplemental Bar Date and the creditors subject thereto.~~ In the event the Debtors establish a Supplemental Bar Date, the Debtors shall mail a Bar Date Package, modified to include the Supplemental Bar Date, to Claimants who are subject to the Supplemental Bar Date within thirty (30) days of any Supplemental Bar Date.

20. Notice of the Bar Dates as set forth in this Order and in the manner set forth herein (including the Bar Date Notice, the Bar Date Package, the General Publication Notice, the Site-Specific Publication Notices, and any supplemental notices that the Debtors may send from time to time) constitutes adequate and sufficient notice of each of the Bar Dates (including with respect to any environmental or tort Claims arising from or relating to the Legacy Businesses), and satisfies the requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York and General Order M-279.

21. The Debtors are authorized, in their discretion and upon the written consent of the Creditors' Committee, to extend a Bar Date by stipulation where the Debtors determine that such extension is in the best interests of the Debtors and their estates.

22. The Debtors are authorized to use the services of KCC to coordinate the processing of Proofs of Claim.

23. Nothing in this Order shall prejudice the right of the Debtors or any other party in interest to dispute or assert offsets or defenses to any Claim reflected in the Schedules.

24. Entry of this Order is without prejudice to the right of the Debtors to seek a further order of this Court fixing a date by which holders of Claims or interests not subject to the Bar Dates contained herein must file such Proofs of Claim or interests or be barred from doing so.

25. The Debtors and KCC are authorized to take all actions necessary or appropriate to effectuate the relief granted pursuant to this Order in accordance with the Motion.

26. The terms and conditions of this Order shall be immediately effective and enforceable upon entry of the Order.

27. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: May 28, 2009
New York, New York

/s/ Allan L. Gropper
UNITED STATES BANKRUPTCY JUDGE

VERIFICATION

I, **Stanley Waleski**, verify that the statements made in the foregoing Class Action Complaint and Jury Demand are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties set forth in 18 Pa. Cons. Stat. Ann. § 4904 relating to unsworn falsification to authorities.

DATE: 3/29/18

Stanley Waleski

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE TRONOX INCORPORATED	
TRONOX INCORPORATED, et al.,	
Plaintiffs,	
-v-	14-cv-5495 (KBF)
ANADARKO PETROLEUM CORPORATION, et al.,	OPINION & ORDER
Defendants.	

KATHERINE B. FORREST, District Judge:

In this case,[1] the Court is asked to approve a settlement agreement resolving two lawsuits in which Tronox, Incorporated[2] ("Tronox") and the Government[3] asserted fraudulent transfer and other claims against Kerr-McGee Corporation ("Kerr-McGee") and its parent company, Anadarko Petroleum Corporation ("Anadarko").[4] Tronox, which is in chapter 11 bankruptcy before the United States

[1] References to entries on the docket of the main bankruptcy case (no. 09-10156) will be formatted "Bankr. Dkt. No. ___," references to entries on the docket of the adversary proceeding (no. 09-1198) will be formatted "Adv. Dkt. No. ___," and references to entries on the docket of the proceedings before this court (no. 14-cv-5495) will be formatted "ECF No. ___."

[2] Tronox Incorporated was joined by Tronox LLC, Tronox Worldwide LLC, and several affiliates. (Adv. Dkt. No. 1.)

[3] The United States is acting on behalf of the U.S. Environmental Protection Agency ("EPA"); the U.S. Department of Agriculture, acting through the U.S. Forest Service; the U.S. Department of Commerce, acting through the National Oceanic and Atmospheric Administration; the U.S. Department of the Interior, acting through the Fish and Wildlife Service and the Bureau of Land Management; the U.S. Department of Defense, including the U.S. Department of the Army, U.S. Army Corps of Engineers, U.S. Department of the Navy, and U.S. Department of the Air Force; and the Nuclear Regulatory Commission. (ECF No. 1 ex. A at 1.)

[4] Also named as defendants are Anadarko US Offshore Corporation (f/k/a Kerr-McGee Oil & Gas Corporation), Kerr-McGee Worldwide Corporation, Kerr-McGee Investment Corporation, Kerr-McGee Credit LLC, Kerr-McGee Shared Services Company LLC, and Kerr-McGee Stored Power Company LLC. (Adv. Dkt. No. 223.)

Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), initially filed this lawsuit on behalf of creditors who hold environmental and tort claims against it. The Government subsequently intervened on behalf of Tronox. The case was litigated before the Bankruptcy Court, which recommends that this Court approve the settlement agreement. (See Findings of Fact and Conclusions of Law on Joint Motion for a Report and Recommendation to the District Court Recommending Approval of Settlement Agreement Resolving the Adversary Proceeding and Issuance of an Injunction in Support Thereof at 5, ECF No. 1 ("R&R").)

The settlement is historic, providing $4.4 billion for the removal of pollution and environmental contaminants, the largest such recovery in American history. The settlement amount is also over $4 billion greater than what plaintiffs might recover if they pursued the damages phase of this litigation to its conclusion. Perhaps unsurprisingly, the settlement agreement enjoys overwhelming support among Tronox's many creditors.

Nevertheless, two tort claimants have objected to the settlement agreement as inadequate and unfair. Both hail from Columbus, Mississippi, where for three decades Kerr-McGee operated a wood treatment plant that discharged creosote, a toxic and carcinogenic substance. The objectors argue the settlement amount is too low, or that they are entitled to a greater share of the settlement proceeds. The Court is sympathetic to the objectors, whose community is coping with the toxic legacy Kerr-McGee has left in its wake. Nevertheless, the Court must consider the

broad interests of all of the parties affected by this litigation, not simply the narrow interests of the objectors.

After reviewing de novo the Bankruptcy Court's proposed findings of fact and conclusions of law and the matters to which parties have timely and specifically objected, the Court OVERRULES the objections, ADOPTS the Bankruptcy Court's findings of fact and conclusions of law, and APPROVES the settlement agreement. The Court also ISSUES the requested permanent injunction.

I. PROCEDURAL HISTORY

In 2006, Kerr-McGee completed a series of transactions that resulted in the spin-off of Tronox, which Kerr-McGee left saddled with the massive environmental and tort liabilities it had accumulated over the course of decades of operating in the chemical, mining, and oil and gas industries, but without sufficient assets with which to address these liabilities. (See Adv. Dkt. No. 622 at 19-26.) Tronox voluntarily filed for chapter 11 bankruptcy in the United States Bankruptcy Court for the Southern District of New York on January 12, 2009. (Bankr. Dkt. No. 1.) Subsequently, the United States and numerous state, local, and tribal governments filed proofs of claim against Tronox on account of alleged environmental liabilities, and many private individuals submitted proofs of claim on account of alleged tort liabilities. (R&R at 5-6.) These claims will be resolved pursuant to a reorganization plan that has been confirmed by the Bankruptcy Court (the "Plan"). (See Bankr. Dkt. No. 2567.)

On May 12, 2009, Tronox filed a lawsuit (the "Adversary Proceeding") for the benefit of its environmental and tort claimants against Kerr-McGee and Anadarko,[5] alleging that the transactions that resulted in Tronox's spinoff from Kerr-McGee amounted to an actual and constructive fraudulent conveyance. (See Adv. Dkt. No. 1.) Under the Plan and several related agreements, Tronox's environmental claimants will receive approximately 88% of the net proceeds from the lawsuit, and its tort claimants will receive approximately 12%. (See Bankr. Dkt. Nos. 2692 at 2, 11-12 & ex. 1 ¶¶ 119-23; 2747; 2567 ¶¶ 35-38 & ex. A art. III §§ B.4.(b), 5.(b)(i); see also R&R at 7-8.) On May 21, 2009, the Government filed a complaint-in-intervention (the "U.S. Joinder") asserting claims under the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3301 et seq. (Adv. Dkt. No. 5.) On February 14, 2011, the Bankruptcy Court appointed a litigation trust (the "Litigation Trust") to represent Tronox, and substituted it for Tronox as the party in this litigation. (Bankr. Dkt. No. 2812.) The Litigation Trust and the Government litigated the Adversary Proceeding jointly. (See R&R at 6.)

After a 34-day trial, the Bankruptcy Court issued a 166-page opinion finding Kerr-McGee and Anadarko liable for actual and constructive fraudulent transfers. (Adv. Dkt. No. 622.) But the Bankruptcy Court declined to award damages, instead provisionally finding defendants liable either for approximately $5.15 billion or for

[5] On May 8, 2012, the Bankruptcy Court dismissed Anadarko Petroleum Corporation from the case; a final order has not yet been entered effecting that dismissal. (R&R at 3 n.5.)

approximately $14.17 billion, depending on the resolution of a legal question on which the Bankruptcy Court ordered further briefing. (Id. at 149).

In their briefs, the parties argued that the actual amount of damages should be higher or lower than the Court's initial estimates by billions of dollars. Defendants argued that they were not liable for any damages, and that if they were, their liability was limited to approximately $850 million. (Adv. Dkt. No. 623 at 20.) By comparison, the Litigation Trust and the Government argued that damages were in excess of $20 billion. (Adv. Dkt. No. 624 at 1, 26.)

Before the Bankruptcy Court could award damages, the parties agreed to settle.[6] In essence, the settlement agreement, as corrected on April 9, 2014 (the "Settlement Agreement") (Adv. Dkt. No. 637), provides that Anadarko will pay the Litigation Trust $5.15 billion in exchange for releases, and that the United States and Anadarko will not sue each other or assert claims relating to the sites with which the environmental and tort claims are concerned (see id.; R&R at 9-12). The settlement represents the largest-ever environmental cleanup recovery in the Government's history. (United States of America's Response to Objections to Proposed Findings of Fact and Conclusions of Law at 2-3, ECF No. 7 ("U.S. Response").)

On April 9, 2014, the parties filed a motion (the "Recommendation Motion") seeking a report and recommendation from the Bankruptcy Court advising this

[6] The key provisions of the Settlement Agreement are included in the Bankruptcy Court's report and recommendation. (See R&R at 8-12.)

Court to enter a final order approving the Settlement Agreement, and to permanently enjoin certain parties from asserting certain related claims (the "Injunction"). (Adv. Dkt. No. 638.)

On April 12, 2014, the claims and noticing agent in the chapter 11 cases completed timely service of more than 66,000 copies of the Recommendation Motion and the Settlement Agreement to potentially interested parties, as required by Bankruptcy Rule 2002(a)(3). (Adv. Dkt. Nos. 640, 653.) The settling parties also published notices in 86 newspapers across the country over the course of 14 days, and created an informative website that received hundreds of unique visits. (Adv. Dkt. Nos. 651, 653.) Five objections to the Recommendation Motion were then filed on the docket, of which three were from tort claimants from Columbus, Mississippi, where from 1964 to 2003 Kerr-McGee Chemical LLC owned and operated a wood-treatment plant that discharged the toxic and carcinogenic chemical creosote. (Adv. Dkt. Nos. 643-48, 650; Bankr. Dkt. Nos. 2991-95.)

On April 14, 2014, the Government published notice of the Settlement Agreement in the Federal Register, commencing a period of public comment that ran through May 14, 2014. 79 Fed. Reg. 20,910, 20,910-11 (Apr. 14, 2014). Residents of Columbus, Mississippi requested additional time to submit public comments, and the Government extended the deadline to May 21, 2014. 79 Fed. Reg. 27,638, 27,638-39 (May 14, 2014). Ultimately, the Government received 338 timely comments and 94 untimely comments, nearly all of which were form letters provided by individuals interested in the Columbus, Mississippi site. (R&R at 16;

Government's Letter to Bankruptcy Judge Gropper, ECF No. 5 ("Gov't's Letter").) At the request of members of the local community in Columbus, the Government held a public meeting there on May 5, 2014. (Adv. Dkt. 657 ex. A.) After considering the written comments it received and the transcript of the public meeting, the Government decided to support the Settlement Agreement. (Adv. Dkt. Nos. 656-57.)

The Bankruptcy Court held a hearing on the Recommendation Motion on May 28, 2014, and two days later it issued a Report and Recommendation advising this Court to approve the Settlement Agreement and to issue the Injunction. (Adv. Dkt. Nos. 658, 661.) The Bankruptcy Court provided the parties with 35 days to file objections to the Report and Recommendation—the maximum amount of time permitted under the Bankruptcy Rules, see Fed. R. Bankr. P. 9033—plus 3 days for mailing. (Adv. Dkt. No. 661.) By the end of this 38-day period, only two parties had filed objections: Maranatha Faith Center, Inc. ("Maranatha") and Anita Gregory, both from Columbus, Mississippi. (Objection to Proposed Findings of Facts and Conclusions of Law and Entry of Judgment, ECF No. 3 ("Maranatha Objection"); Objection of Anita Gregory, ECF No. 4 ("Gregory Objection").) Anadarko and the Government filed responses to these objections. (See ECF Nos. 6-7.)

II. JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction over Tronox's claims under 28 U.S.C. § 1334 because they are related to Tronox's chapter 11 bankruptcy proceeding, which was properly referred to the Bankruptcy Court under 28 U.S.C. § 157(a).[7] The Court has supplemental jurisdiction over the U.S. Joinder under 28 U.S.C. § 1367.

This Court reviews the Bankruptcy Court's findings of fact and conclusions of law de novo. Under 28 U.S.C. § 157(b), there are two kinds of bankruptcy proceedings: "core" proceedings and "non-core" proceedings. Under Article III of the Constitution, a bankruptcy court has authority to issue final orders and judgments only in certain core proceedings. See Stern v. Marshall, 131 S. Ct. 2594, 2611 (2011).[8] In both core and non-core proceedings, a bankruptcy court may, instead of issuing a final order or judgment, submit proposed findings of fact and conclusions of law to a district court. 28 U.S.C. § 157(c)(1) (in non-core proceeding "otherwise related to a case under title 11 . . . the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court"); Exec. Benefits Ins. Agency v. Arkison, 134 S. Ct. 2165, 2173 (2014) (in a core proceeding in which a district court does not have authority to issue a final order or judgment, it may issue proposed findings of fact and conclusions of law to the district court); In re Orion Pictures Corp., 4 F.3d 1095, 1100-01 (2d Cir. 1993) (in a non-core proceeding,

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[7] The Southern District of New York has a standing order in place that provides for the automatic referral of bankruptcy cases to the Bankruptcy Court. Amended Standing Order of Reference (S.D.N.Y. Jan. 31, 2012) (most recent order).

[8] In Stern v. Marshall, the Supreme Court held that in certain core proceedings, bankruptcy courts lack authority under Article III of the Constitution to enter final orders and judgments. 131 S. Ct. at 2611.

"the bankruptcy court is only empowered to submit proposed findings of fact and conclusions of law to the district court for de novo review"); Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC, 490 B.R. 46, 55-56 (S.D.N.Y. 2013) (in cases in which Congress attempted to grant bankruptcy courts the power to issue final orders and judgments, bankruptcy courts necessarily also have authority to issue proposed findings of fact and conclusions of law); Kirschner v. Agoglia, 476 B.R. 75, 82 (S.D.N.Y. 2012) (same). The district court may then enter a final order or judgment after "considering the bankruptcy judge's proposed findings and conclusions" and "reviewing de novo those matters to which any party has timely and specifically objected." 28 U.S.C. § 157(c)(1). The district court "may accept, reject, or modify the proposed findings of fact or conclusions of law, receive further evidence, or recommit the matter to the bankruptcy judge with instructions." Fed. R. Bankr. P. 9033(d).[9]

[9] The settling parties argue that the settlement-approval proceeding should be treated as a non-core proceeding. (ECF No. 26.) This Court need not decide whether the settlement-approval proceeding was core or non-core because the standard of review employed by this Court would be the same regardless. Of course, by their plain text, 28 U.S.C. § 157(c)(1) and Rule 9033(d) of the Federal Rules of Bankruptcy Procedure only provide the standard of review for proposed findings of fact and conclusions of law in non-core proceedings, and no rule or statutory provision sets forth the standard of review for proposed findings of fact and conclusions of law in core proceedings. However, the most logical explanation for the absence of specific legislative guidance as to district court review of proposed findings of fact and conclusions of law in core proceedings is that § 157(c)(1) and Rule 9033(d) embody the standards of review Congress intended for district courts to employ whenever they are tasked with reviewing a bankruptcy court's proposed findings of fact and conclusions of law.

III. THE BANKRUPTCY COURT'S FINDINGS OF FACT

In her objection, Gregory makes a number of factual assertions in support of her arguments for rejecting the Settlement Agreement. In particular, Gregory details at length her understanding of the effects of environmental contamination on the health of members of the Columbus, Mississippi community, as well as her belief that defendants knew the activities of their chemical industry operations could cause such effects. (See Gregory Objection at 2-5, 7-9, 11). Gregory also disputes one of plaintiffs' experts' estimates of environmental cleanup costs (see id. at 3-4), and she suggests that the Bankruptcy Court's findings of fact were based on fraudulent documents, though she does not provide any evidence to support this claim (see id. at 12).

The Bankruptcy Court's conclusions of fact, however, relate only to the procedural history of this action and the Settlement Agreement itself. (See R&R at 5-19). Gregory's factual objections and the Bankruptcy Court's conclusions of fact are therefore like ships passing in the night, as Gregory's factual objections do not concern the specific findings of fact in the Bankruptcy Court's report and recommendation, with the exception of her baseless claim that the Bankruptcy Court relied on fraudulent documents. Accordingly, the Court ADOPTS the Bankruptcy Court's findings of fact in their entirety.

IV. THE BANKRUPTCY COURT'S CONCLUSIONS OF LAW

A. General Approval of Settlement Agreement and Specific Objections

The Court may only approve a settlement agreement if it is "fair and equitable." Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v.

Anderson, 390 U.S. 414, 424 (1968). To determine whether a settlement agreement is fair and equitable, the Court considers the following interrelated factors:

1. "the balance between the litigation's possibility of success and the settlement's future benefits";
2. "the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment";
3. "the paramount interests of the creditors, including each affected class's relative benefits and the degree to which creditors either do not object to or affirmatively support the proposed settlement";
4. "whether other parties in interest support the settlement";
5. "the competency and experience of counsel supporting, and the experience and knowledge of the bankruptcy court judge reviewing, the settlement";
6. "the nature and breadth of releases to be obtained by officers and directors";
7. "the extent to which the settlement is the product of arm's length bargaining."

In re Iridium Operating LLC, 478 F.3d 452, 462 (2d Cir. 2007) (internal quotation marks omitted). Here, each of these factors counsels in favor of approving the Settlement Agreement:

1. If the parties pursued the damages phase of the litigation to its conclusion, plaintiffs may only receive approximately $850 million in

damages, whereas the Settlement Agreement provides for $5.15 billion dollars. In addition, approving the Settlement Agreement would enable plaintiffs to obtain their damages award much more quickly than may occur if additional litigation is required.

2. Given the wide disparity in plaintiffs' and defendants' estimates of the appropriate damages award, which range from approximately $850 million to approximately $20 billion, resolving the damages phase of this litigation would likely be quite time-consuming and costly for the parties. Further, delay is a significant concern here, as every day that goes by before its resolution is another day that ailing tort claimants sit waiting for the funds needed to address their health problems, and that unremediated environmental sites continue to pose a risk to those who live or work near or on them.

3. The Settlement Agreement enjoys overwhelming support among Tronox's creditors. Although the settlement concerns over 1,880 contaminated sites all across the country (see 79 Fed. Reg. 20,910, 20,911 (Apr. 14, 2014)), only two parties have filed objections to it.

4. No parties in interest other than Maranatha and Gregory have objected to the Settlement Agreement.

5. All of the parties to the Settlement Agreement are represented by experienced counsel from prominent law firms or the Department of Justice. Further, the bankruptcy judge practiced as a bankruptcy

attorney for decades, and he has an excellent reputation for both fairness and legal ability. See 1 Almanac of the Federal Judiciary, 2014 WL 3753675 (2014 ed.) (profile of Judge Allan L. Gropper).

6. The Settlement Agreement's releases of officers and directors are no broader than any other releases contained in the agreement.

7. There is no evidence that any of the parties to the Adversary Proceeding coerced any of the other parties into accepting the Settlement Agreement.

Thus, a full consideration of the In re Iridium factors suggests that this Court should accept the Bankruptcy Court's conclusion that the Settlement Agreement is fair and equitable and meets the standards for approval under applicable law. (R&R at 24.) But before reaching a final conclusion on this issue, the Court must consider the specific objections set forth by Maranatha and Gregory.[10]

First, both Maranatha and Gregory object that the settlement amount is too low. Specifically, Maranatha objects to the Settlement Agreement on the grounds that Anadarko's cash position and cash flow enable it to pay significantly more than

[10] In its objection, Maranatha seeks to incorporate by reference all of the arguments from its objection at the hearing on May 28, 2014. (Maranatha Objection ¶ 5.) However, Rule 9033(d) of the Federal Rules of Bankruptcy Procedure provides that this Court must only review "specific written objection[s]" to the Bankruptcy Court's findings of fact or conclusions of law. Fed. R. Bankr. P. 9033(d) (emphasis added). Further, Rule 9033(d) is modeled on Federal Rule of Civil Procedure 72(b), under which such incorporation by reference is not permitted because ""[i]t is improper for an objecting party to attempt to relitigate the entire content of the hearing before the Magistrate Judge by submitting papers to a district court which are nothing more than a rehashing of the same arguments and positions . . . ." Camardo v. Gen. Motors Hourly-Rate Emps. Pension Plan, 806 F. Supp. 380, 381-82 (W.D.N.Y. 1992); accord Russell v. Astrue, No. CIV–09–617–D, 2010 WL 3292821, at * 1 n.1 (W.D. Okla. Aug. 19, 2010); Edwards v. Niagara Credit Solutions, Inc., 586 F. Supp. 2d 1346, 1348 (N.D. Ga. 2008) (Martin, J.); Jackson v. Rohm & Haas Co., No. 05-4988, 2008 WL 123921, at *2 n.1 (E.D. Pa. Jan. 10, 2008). For this reason, the Court consider will not consider the arguments Maranatha seeks to incorporate by reference except to the extent that they are specifically set forth in its objection.

the amount it has agreed to pay under the Settlement Agreement. (See Maranatha Objection at 1-3 & ex. 1.)[11] Along these lines, both Maranatha and Gregory object to the Settlement Agreement because Anadarko and its affiliates have allegedly benefited from it financially, either through the effects of the announcement of the settlement on Anadarko's stock price (Maranatha Objection at 2) or its effects on Anadarko's tax liabilities (Gregory Objection at 5).

These arguments misunderstand the standard for approving a settlement, as well as the "policy of the law generally to encourage settlements." West Virginia v. Chas. Pfizer & Co., 440 F.2d 1079, 1085 (2d Cir. 1971). The law does not require a defendant to completely empty its pockets before a settlement may be approved—indeed, if it did, it is hard to imagine why a defendant would ever settle a case. Rather, the law merely requires a settlement to be "fair and equitable," In re Iridium, 478 F.3d at 462, which is to say, not overly one-sided. Because the settlement amount falls well within the range of reasonable possibilities, Anadarko's ability to pay more than it has agreed to is simply immaterial to whether this court should approve the Settlement Agreement. Accordingly, the Court rejects these objections.

Gregory also objects to the Settlement Agreement because she believes the Columbus, Mississippi creosote claimants are entitled to a greater share of the

[11] Maranatha also objects that the Bankruptcy Court failed to take into account a potential award of punitive damages when it assessed the reasonableness of the settlement amount. (See Maranatha Objection at 3.) However, punitive damages cannot be awarded in this action. See In re Tronox, 429 B.R. 73, 110-12 (Bankr. S.D.N.Y. 2010) (plaintiffs not entitled to punitive damages under the Bankruptcy Code or Oklahoma law).

proceeds, and she requests that the Court award them an additional $1.5 billion.[12] (Gregory Objection at 2.) However, this Court cannot now change how the net proceeds of this litigation will be allocated, because these allocations were confirmed by the Bankruptcy Court in the Plan and thus became final and non-appealable years ago. (See Bankr. Dkt. 2567 at ¶¶ 36-37, 85, 92-95; Bankr. Dkt. 2747 ex. A ¶ 1.) Accordingly, the Court rejects this objection because it is barred under the doctrine of res judicata. See Sure-Snap Corp. v. State St. Bank & Trust Co., 948 F.2d 869, 873 (2d Cir. 1991) (order confirming Chapter 11 plan has res judicata effect).

The Court also rejects Maranatha's and Gregory's remaining objections to the Settlement Agreement. First, the Court rejects Maranatha's argument that the Settlement Agreement should be approved because it violates the "clear heads doctrine" (Maranatha Objection at 3) because no such doctrine is recognized in the Second Circuit. Second, the Court rejects Gregory's objection to the Settlement Agreement on the basis of the proposed environmental remediation method for the Columbus, Mississippi site (see Gregory Objection at 10-11) because the Settlement Agreement does not address remediation methods. Third, the quality of the legal representation provided by the attorney for the Columbus, Mississippi creosote claimants (see Gregory Objection at 6-7, 12-15) is not a valid basis for declining to

[12] Gregory also requests that the Court appoint a lawyer and an accountant for the Columbus, Mississippi creosote claimants, apparently for the purposes of obtaining and administering the $1.5 billion she believes should be awarded to them. (See Gregory Objection at 2.) Litigants do not have a right to counsel in this kind of proceeding, see Turner v. Rogers, 131 S. Ct. 2507, 2516-17 (2011) (party has right to counsel in civil matters only if they face a threat of imprisonment or loss of physical liberty), nor do they have a right to the appointment of an accountant.

approve the Settlement Agreement. Lastly, the Court rejects Gregory's request that the Court not approve the Settlement Agreement before the Columbus, Mississippi creosote claimants have had the opportunity to meet with Congress. (See Gregory Objection at 1.) This argument misunderstands our Constitution's separation of powers—the Court's decision is based on its review of the facts and the law. The views of members of Congress as to the merits of this litigation are not a proper basis upon which this Court can rest a decision.

B. Approval of Settlement Agreement Relating to Liabilities under Federal Environmental Law

A settlement agreement relating to liabilities under federal environmental law may be approved where it is fair, reasonable, and consistent with federal environmental law. In re Cuyahoga Equip. Corp., 980 F.2d 110, 118-20 (2d Cir. 1992). In assessing an environmental settlement agreement to which an agency of the federal government is a party, courts "ordinarily defer to the agency's expertise and the voluntary agreement of the parties in proposing the settlement." Id. at 118 (citing Chevron, U.S.A. Inc. v. Natural Res. Def. Council, 467 U.S. 837, 842-44 (1984); United States v. Cannons Eng'g Corp., 899 F.2d 79, 84 (1st Cir. 1990)).

The Bankruptcy Court concluded that the Settlement Agreement met this standard (R&R at 27-28), and no party has specifically contested this conclusion. The Court agrees with the Bankruptcy Court's conclusion. The Settlement Agreement promotes federal environmental law's objectives of "encourag[ing] prompt and effective responses to hazardous waste releases," "impos[ing] liability on responsible parties," and "reduc[ing] the inefficient expenditure of public funds

on lengthy litigation." In re Cuyahoga, 980 F.2d at 119 (discussing the objectives underlying the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 et seq.).

C. Approval of Government Enforcement Consent Decree

"A consent decree 'embodies an agreement of the parties' and is also 'an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees." Frew v. Hawkins, 540 U.S. 431, 437 (2004) (quoting Rufo v. Inmates of Suffolk Cnty. Jail, 502 U.S. 367, 378 (1992)). A settlement agreement may function as a consent decree even if it is not labeled a "consent decree" and even if it does not impose injunctive obligations on the parties it binds. See, e.g., SEC v. Citigroup Global Mkts., Inc., 752 F.3d 285, 294 (2d Cir. 2014) (consent decree may or may not provide for injunctive relief); Doe v. Pataki, 481 F.3d 69, 70 (2d Cir. 2007) (a "court-approved stipulation of settlement between private and governmental parties" may be "equivalent to a consent decree"); see also VanDesande v. United States, 673 F.3d 1342, 1348 (Fed. Cir. 2012) ("[C]onsent decrees and settlement agreements are not, as a matter of law, mutually exclusive . . . ."); Williams v. Vukovich, 720 F.2d 909, 920 (6th Cir. 1983) ("A consent decree is essentially a settlement agreement subject to continued judicial policing." (citations omitted)).

Section 13.2 (ECF No. 1 ex. A § 13.2) of the Settlement Agreement expressly provides for continuing jurisdiction in the Bankruptcy Court and in this Court for

purposes of its enforcement.[13] See P.J. ex rel. W.J. v. Katz, 550 Fed. App'x 20, 23 (2d Cir. 2013) (summary order) (settlement agreement is a consent decree due to district court's continuing jurisdiction over it). Further, it is clear both from the Settlement Agreement itself and frp, the parties' submissions (ECF Nos. 30, 31) that the parties specifically intend the Settlement Agreement to be subject to the Court's approval and enforcement. See Doe v. Pataki, 427 F. Supp. 2d. 398, 405 (S.D.N.Y. 2006) (parties' intent controls whether a settlement agreement is treated as a consent decree), modified, 439 F. Supp. 2d 324 (S.D.N.Y. 2006), vacated on other grounds, 481 F.3d 69 (2d Cir. 2007). For these reasons, the Settlement Agreement is a governmental consent decree.

A district court may approve a proposed consent decree involving an enforcement agency of the Government only if the decree is "fair and reasonable."[14] Citigroup, 752 F.3d at 293. To determine whether a governmental enforcement decree is fair and reasonable, courts assess four key factors:

> (1) the basic legality of the decree; (2) whether the terms of the decree, including its enforcement mechanism, are clear; (3) whether the consent decree reflects a resolution of the actual claims in the complaint; and (4) whether the consent decree is tainted by improper collusion or corruption of some kind.

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[13] Although this Court's Individual Rules of Practice in Civil Cases establish a presumption against the retention of jurisdiction over settlement agreements except in unusual circumstances upon a showing of good cause prior to submission of the settlement agreement, the procedural posture of this case did not permit the parties to make such an advance showing of good cause, and accordingly the Court waives this requirement with respect to the Settlement Agreement.

[14] This standard applies to consent judgments in cases involving federal environmental law, and not just in the securities context in which it initially arose. See United States v. IBM Corp., No. 14-cv-936 (KMK), 2014 WL 3057960, at *1-2 (S.D.N.Y. July 7, 2014), clarified, 2014 WL 4626010 (Aug. 7, 2014).

Id. at 294-95 (citations omitted). The "primary focus of the inquiry . . . should be on ensuring the consent decree is procedurally proper . . . taking care not to infringe on [the Government's] discretionary authority to settle on a particular set of terms." Id. at 295. If the governmental enforcement decree includes injunctive relief, an additional requirement applies: the district court must ensure that the "public interest would not be disserved" by the approval and enforcement of the consent decree. Id. at 294 (quoting eBay v. MercExchange, 547 U.S. 388, 391 (2006)). "Absent a substantial basis in the record for concluding that the proposed consent decree does not meet the requirements, the district court is required to enter the order." Id. at 294.

Each of the Citigroup factors here counsels toward the approval of the Settlement Agreement. First, it is clear that the Court has the authority to enter the decree under section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and the Government has the authority to enforce it under sections 107 and 113, id. §§ 9607, 9613. Second, the terms of the decree, and its enforcement mechanism, are clearly stated in the Settlement Agreement: principally, defendants are to pay the Litigation Trust $5.15 billion in exchange for releases, covenants not to sue, and contribution protection, and the agreement may be enforced through actions before this Court and the Bankruptcy Court. Third, the Settlement Agreement expressly resolves all of the claims asserted in the complaint, as well as related environmental matters. Fourth, the record reflects that the Settlement Agreement was the product of arms-length negotiation among sophisticated parties represented

by competent and experienced counsel following years of intense litigation. Finally, the settlement agreement does not disserve the public interest, because it facilitates the enforcement of federal environmental laws, resolves a proceeding that requires significant judicial resources to administer, and facilitates the more speedy and full compensation of Tronox's many creditors.

Accordingly, the Court approves the settlement agreement as a governmental consent decree.

* * *

Accordingly, the Court OVERRULES all of the objections, ADOPTS the Bankruptcy Court's findings of fact and conclusions of law, and APPROVES the Settlement Agreement.

V. INJUNCTIVE RELIEF

The parties request that this Court issue a permanent injunction that enjoins certain parties from asserting any claim that could have been asserted against Anadarko or its affiliates by the Litigation Trust in the Adversary Proceeding or Tronox's chapter 11 bankruptcy case. (See R&R ex. A at 2-3, 8, 16-17, 20-21.) The Bankruptcy Court has endorsed the Injunction, finding it to be "narrowly tailored and appropriate under the circumstances," "limited in accordance with Second Circuit precedent," and "necessary and appropriate to carry out the provisions of the Bankruptcy Code." (R&R at 27-31.) Neither objector has specifically challenged the Injunction.

This Court has broad discretion to issue an injunction after "weigh[ing] the potential benefits and harm to be incurred by the parties from the granting or

denying of such relief." Ticor Title Ins. Co. v. Cohen, 173 F.3d 63, 68 (2d Cir. 1999) (citing Yakus v. United States, 321 U.S. 414, 440 (1944)). Such an injunction must not disserve the public interest. Citigroup, 752 F.3d at 296-97.

This Court agrees with the Bankruptcy Court's conclusions regarding the propriety of issuing the requested permanent injunction. Although the Injunction does bar potential claims by third parties, the Injunction is carefully limited so that it does not apply to any type of claim that could not have been litigated in this action, including, inter alia, claims predicated on criminal liability, tax liability, liability under the securities laws, actions to enforce the Settlement Agreement, or liability for claims against Anadarko or Kerr-McGee that accrued after the spinoff of Tronox in 2005. The Injunction is also necessary to prevent entities other than the Litigation Trust from exercising control or possession over property that has been transferred to it. Further, Anadarko and Kerr-McGee agreed to pay an historic settlement amount in order to ensure that they would not have to re-litigate the claims they aim to settle here, and without the requested injunction they may have paid billions of dollars for nothing. And the Injunction does not disserve the public interest because, as stated above, it facilitates the enforcement of federal environmental laws, resolves a proceeding that requires significant judicial resources to administer, and facilitates the more speedy and full compensation of Tronox's many creditors.

The Injunction is also consistent with Second Circuit precedent. In a recent case that involved a multi-billion dollar settlement of fraudulent transfer claims,

the Second Circuit upheld a permanent injunction that, like the one at issue here, was "limited to third-party claims based on derivative or duplicative liability or claims that could have been brought by the Trustee against the . . . releasees." In re Bernard L. Madoff Inv. Sec. LLC, 740 F.3d 81, 89, 95 (2d Cir. 2014).

The Court therefore ISSUES the following permanent injunction, the terms of which are defined in the Settlement Agreement:

> Pursuant to 28 U.S.C. §§ 1367 & 1651, § 105(a) of the Bankruptcy Code and Bankruptcy Rules 7001 and 7065, (i) any Debtor(s), (ii) any creditor of any Debtor who filed or could have filed a claim in the Chapter 11 Cases, (iii) any other Person whose claim (A) in any way arises from or is related to the Adversary Proceeding, (B) is a Trust Derivative Claim, or (C) is duplicative of a Trust Derivative Claim, and (iv) any Person acting or purporting to act as an attorney for any of the preceding is hereby permanently enjoined from asserting against any Anadarko Released Party (I) any Trust Derivative Claims or (II) any claims that are duplicative of Trust Derivative Claims, whether or not held or controlled by the Litigation Trust, or whether or not the Litigation Trust could have asserted such claims against any Anadarko Released Party.
>
> The injunction herein shall not apply to or bar the following: (i) any criminal liability; (ii) any liability arising under Title 26 of the United States Code (Internal Revenue Code) or state tax laws; (iii) any liability arising under federal or state securities laws; (iv) any action to enforce a covenant not to sue, release, or agreement not to seek reimbursement contained in the Settlement Agreement; (v) any liability that an Anadarko Released Party might have that does not arise from or through a liability of a Debtor; (vi) any liability of an Anadarko Released Party due to its status or acts or omissions since November 28, 2005 as a/an (A) owner, (B) operator, (C) discharger, (D) lessee, (E) permittee, (F) licensee, (G) person in charge, (H) holder of a right of use and easement, (I) arranger for disposal or treatment, (J) transporter, or (K) person who generates, handles, transports, treats, stores or disposes of solid or

> hazardous waste; (vii) any liability relating to the E&P Business or the stored power or battery business (including, but not limited to, as owned or operated by U.S. Avestor LLC and Kerr-McGee Stored Power Company LLC[15]); and (viii) any liability that any Anadarko Released Party retained, received or assumed pursuant to the Assignment Agreement or Assignment, Assumption, and Indemnity Agreement.
>
> For the avoidance of doubt, to the extent that a liability of an Anadarko Released Party excluded from the injunction herein by the preceding sentence would be a liability for which such Anadarko Released Party would be jointly and severally liable with others, including but not limited to one or more Debtors or Reorganized Debtors, under applicable law, nothing in this injunction is intended to alter any such applicable principles of joint and several liability where otherwise provided by law.
>
> The injunction herein does not apply to the Litigation Trust and the United States, which are providing releases and covenants not to sue in the Settlement Agreement.

VI. CONCLUSION

For the foregoing reasons, the Court OVERRULES the objections in their entirety, ADOPTS all of the Bankruptcy Court's findings of fact and conclusions of law, APPROVES the Settlement Agreement in its entirety, and ISSUES the requested permanent injunction. This Court and the Bankruptcy Court shall retain jurisdiction over any and all disputes arising under or otherwise relating to this Opinion & Order. The parties to the Settlement Agreement are authorized and directed to take such action as is necessary to effectuate the terms of the Settlement

[15] Provided, however, that as it relates to Kerr-McGee Stored Power Company LLC, subpart (vii) is applicable only to the extent that such liability, if any, relates to or arises from the stored power or battery business.

Agreement.

SO ORDERED.

Dated: New York, New York
November 10, 2014

KATHERINE B. FORREST
United States District Judge

Copies to:

Anita Gregory
918 Osceola Street
Jacksonville, FL 32204
PRO SE

Hal H. McClanahan , III
P. O. Box 1091
Columbus, MS 39703-1091

Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

IN RE TRONOX INCORPORATED

TRONOX INCORPORATED, et al.,
Plaintiffs,

-against-

ANADARKO PETROLEUM CORPORATION, et al. ,
Defendants.

----------X

14 **CIVIL** 5495 (KBF)

CORRECTED JUDGMENT

Whereas after reviewing de novo the Bankruptcy Court's proposed findings of fact and conclusions of law and the matters to which parties have timely and specifically objected, and the matter having come before the Honorable Katherine B. Forrest, United States District Judge, and the Court, on November 10, 2014, having rendered its Opinion and Order overruling the objections in their entirety, adopting all of the Bankruptcy Court's findings of fact and conclusions of law, approving the Settlement Agreement in its entirety, issuing the requested permanent injunction, and authorizing and directing the parties to the Settlement Agreement to take such action as is necessary to effectuate the terms of the Settlement Agreement, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion and Order dated November 10, 2014, the Court overrules the objections in their entirety, adopts all of the Bankruptcy Court's findings of fact and conclusions of law, approves the Settlement Agreement in its entirety, and issues the requested permanent injunction; the Court therefore issues the following permanent injunction, the terms of which are defined in the Settlement Agreement:

Pursuant to 28 U.S.C. §§ 1367 & 1651, § 105(a) of the Bankruptcy Code and Bankruptcy Rules 7001 and 7065, (I) any Debtor(s), (ii) any creditor of any Debtor

who filed or could have filed a claim in the Chapter 11 Cases, (iii) any other Person whose claim (A) in any way arises from or is related to the Adversary Proceeding, (B) is a Trust Derivative Claim, or (C) is duplicative of a Trust Derivative Claim, and (iv) any Person acting or purporting to act as an attorney for any of the preceding is hereby permanently enjoined from asserting against any Anadarko Released Party (I) any Trust Derivative Claims or (II) any claims that are duplicative of Trust Derivative Claims, whether or not held or controlled by the Litigation Trust, or whether or not the Litigation Trust could have asserted such claims against any Anadarko Released Party.

The injunction herein shall not apply to or bar the following: (i) any criminal liability; (ii) any liability arising under Title 26 of the United States Code (Internal Revenue Code) or state tax laws; (iii) any liability arising under federal or state securities laws; (iv) any action to enforce a covenant not to sue, release, or agreement not to seek reimbursement contained in the Settlement Agreement; (v) any liability that an Anadarko Released Party might have that does not arise from or through a liability of a Debtor; (vi) any liability of an Anadarko Released Party due to its status or acts or omissions since November 28, 2005 as a/an (A) owner, (B) operator, (C) discharger, (D) lessee, (E) permittee, (F) licensee, (G) person in charge, (H) holder of a right of use and easement, (I) arranger for disposal or treatment, (J) transporter, or (K) person who generates, handles, transports, treats, stores or disposes of solid or hazardous waste; (vii) any liability relating to the E&P Business or the stored power or battery business (including, but not limited to, as owned or operated by U.S. Avestor LLC and Kerr-McGee Stored Power Company LLC[1]); and (viii) any liability that any Anadarko Released Party retained, received or assumed pursuant to the Assignment Agreement or Assignment, Assumption, and Indemnity Agreement.

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[1] Provided, however, that as it relates to Kerr-McGee Stored Power Company LLC, subpart (vii) is applicable only to the extent that such liability, if any, relates to or arises from the stored power or battery business.

For the avoidance of doubt, to the extent that a liability of an Anadarko Released Party excluded from the injunction herein by the preceding sentence would be a liability for which such Anadarko Released Party would be jointly and severally liable with others, including but not limited to one or more Debtors or Reorganized Debtors, under applicable law, nothing in this injunction is intended to alter any such applicable principles of joint and several liability where otherwise provided by law.

The injunction herein does not apply to the Litigation Trust and the United States, which are providing releases and covenants not to sue in the Settlement Agreement.

This Court and the Bankruptcy Court shall retain jurisdiction over any and all disputes arising under or otherwise relating to the Opinion & Order dated November 10, 2014. The parties to the Settlement Agreement are authorized and directed to take such action as is necessary to effectuate the terms of the Settlement Agreement.

Dated: New York, New York
November 19, 2014

RUBY J. KRAJICK

Clerk of Court

BY: _____

Deputy Clerk

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON _____

United States District Court
Southern District of New York

Ruby J. Krajick
Clerk of Court

Dear Litigant:

Enclosed is a copy of the judgment entered in your case. If you disagree with a judgment or final order of the district court, you may appeal to the United States Court of Appeals for the Second Circuit. To start this process, file a "Notice of Appeal" with this Court's Pro Se Intake Unit.

You must file your notice of appeal in this Court within 30 days after the judgment or order that you wish to appeal is entered on the Court's docket, or, if the United States or its officer or agency is a party, within 60 days after entry of the judgment or order. If you are unable to file your notice of appeal within the required time, you may make a motion for extension of time, but you must do so within 60 days from the date of entry of the judgment, or within 90 days if the United States or its officer or agency is a party, and you must show excusable neglect or good cause for your inability to file the notice of appeal by the deadline.

Please note that the notice of appeal is a *one-page* document containing your name, a description of the final order or judgment (or part thereof) being appealed, and the name of the court to which the appeal is taken (the Second Circuit) – *it does not* include your reasons or grounds for the appeal. Once your appeal is processed by the district court, your notice of appeal will be sent to the Court of Appeals and a Court of Appeals docket number will be assigned to your case. At that point, all further questions regarding your appeal must be directed to that court.

The filing fee for a notice of appeal is $505 payable in cash, by bank check, certified check, or money order, to "Clerk of Court, S.D.N.Y." *No personal checks are accepted*. If you are unable to pay the $505 filing fee, complete the "Motion to Proceed *in Forma Pauperis* on Appeal" form and submit it with your notice of appeal to the Pro Se Intake Unit. If the district court denies your motion to proceed *in forma pauperis* on appeal, or has certified under 28 U.S.C. § 1915(a)(3) that an appeal would not be taken in good faith, you may file a motion in the Court of Appeals for leave to appeal *in forma pauperis*, but you must do so within 30 days after service of the district court order that stated that you could not proceed *in forma pauperis* on appeal.

For additional issues regarding the time for filing a notice of appeal, see Federal Rule of Appellate Procedure 4(a). There are many other steps to beginning and proceeding with your appeal, but they are governed by the rules of the Second Circuit Court of Appeals and the Federal Rules of Appellate Procedure. For more information, visit the Second Circuit Court of Appeals website at **http://www.ca2.uscourts.gov/.**

THE DANIEL PATRICK MOYNIHAN
UNITED STATES COURTHOUSE
500 PEARL STREET
NEW YORK, NY 10007-1312

THE CHARLES L. BRIEANT, JR.
UNITED STATES COURTHOUSE
300 QUARROPAS STREET
WHITE PLAINS, NY 10601-4150

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____

_____
(List the full name(s) of the plaintiff(s)/petitioner(s).)

_____CV_____( )( )

-against-

NOTICE OF APPEAL

_____

_____
(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: _____

_____
(list the names of all parties who are filing an appeal)

in the above-named case appeal to the United States Court of Appeals for the Second Circuit from the ☐ judgment ☐ order entered on: _____
(date that judgment or order was entered on docket)

that: _____

_____
(If the appeal is from an order, provide a brief description above of the decision in the order.)

_____ _____
Dated Signature*

_____
Name (Last, First, MI)

_____
Address City State Zip Code

_____ _____
Telephone Number E-mail Address (if available)

* Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.

Rev. 12/23/13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____

_____
(List the full name(s) of the plaintiff(s)/petitioner(s).)

-against-

_____

_____
(List the full name(s) of the defendant(s)/respondent(s).)

_____CV_____( )( )

MOTION FOR EXTENSION OF TIME TO FILE NOTICE OF APPEAL

I move under Rule 4(a)(5) of the Federal Rules of Appellate Procedure for an extension of time to file a notice of appeal in this action. I would like to appeal the judgment entered in this action on _____ but did not file a notice of appearance within the required time period because:
date

_____

_____

_____
(Explain here the excusable neglect or good cause that led to your failure to file a timely notice of appeal.)

_____ _____
Dated: Signature

_____
Name (Last, First, MI)

_____
Address City State Zip Code

_____ _____
Telephone Number E-mail Address (if available)

Rev. 12/23/13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____

_____ _____CV_____( )( )

(List the full name(s) of the plaintiff(s)/petitioner(s).)

-against-

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL

_____

_____

(List the full name(s) of the defendant(s)/respondent(s).)

I move under Federal Rule of Appellate Procedure 24(a)(1) for leave to proceed *in forma pauperis* on appeal. This motion is supported by the attached affidavit.

_____ _____

Dated Signature

_____

Name (Last, First, MI)

_____

Address City State Zip Code

_____ _____

Telephone Number E-mail Address (if available)

Application to Appeal In Forma Pauperis

_____ v. _____ Appeal No. _____

District Court or Agency No. _____

Affidavit in Support of Motion	**Instructions**
I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)	Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.
Signed: _____	Date: _____

My issues on appeal are: (required):

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$	$	$	$
Self-employment	$	$	$	$
Income from real property (such as rental income)	$	$	$	$

Interest and dividends	$	$	$	$
Gifts	$	$	$	$
Alimony	$	$	$	$
Child support	$	$	$	$
Retirement (such as social security, pensions, annuities, insurance)	$	$	$	$
Disability (such as social security, insurance payments)	$	$	$	$
Unemployment payments	$	$	$	$
Public-assistance (such as welfare)	$	$	$	$
Other (specify):	$	$	$	$
Total monthly income:	**$ 0**	**$ 0**	**$ 0**	**$ 0**

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	**Address**	**Dates of employment**	**Gross monthly pay**
			$
			$
			$

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	**Address**	**Dates of employment**	**Gross monthly pay**
			$
			$
			$

4. *How much cash do you and your spouse have? $_____*

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	**Type of Account**	**Amount you have**	**Amount your spouse has**
		$	$
		$	$
		$	$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. *List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.*

Home	**Other real estate**	**Motor vehicle #1**
(Value) $	(Value) $	(Value) $
		Make and year:
		Model:
		Registration #:

Motor vehicle #2	**Other assets**	**Other assets**
(Value) $	(Value) $	(Value) $
Make and year:		
Model:		
Registration #:		

6. *State every person, business, or organization owing you or your spouse money, and the amount owed.*

Person owing you or your spouse money	**Amount owed to you**	**Amount owed to your spouse**
	$	$
	$	$
	$	$
	$	$

7. *State the persons who rely on you or your spouse for support.*

Name [or, if a minor (i.e., underage), initials only]	**Relationship**	**Age**

8. *Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.*

	You	**Your Spouse**
Rent or home-mortgage payment (including lot rented for mobile home) Are real estate taxes included? ☐ Yes ☐ No Is property insurance included? ☐ Yes ☐ No	$	$
Utilities (electricity, heating fuel, water, sewer, and telephone)	$	$
Home maintenance (repairs and upkeep)	$	$
Food	$	$
Clothing	$	$
Laundry and dry-cleaning	$	$
Medical and dental expenses	$	$

Transportation (not including motor vehicle payments)	$	$
Recreation, entertainment, newspapers, magazines, etc.	$	$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	$	$
Life:	$	$
Health:	$	$
Motor vehicle:	$	$
Other:	$	$
Taxes (not deducted from wages or included in mortgage payments) (specify):	$	$
Installment payments		
Motor Vehicle:	$	$
Credit card (name):	$	$
Department store (name):	$	$
Other:	$	$
Alimony, maintenance, and support paid to others	$	$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$	$
Other (specify):	$	$
Total monthly expenses:	$ 0	$ 0

9. *Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?*

☐ Yes ☐ No If yes, describe on an attached sheet.

10. *Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit?* ☐ Yes ☐ No

If yes, how much? $ _____

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

12. *Identify the city and state of your legal residence.*

City _____ State _____

Your daytime phone number: _____

Your age: _____ Your years of schooling: _____

Last four digits of your social-security number: _____

United States District Court
Southern District of New York

How to Appeal Your Case to the United States Court of Appeals for the Second Circuit

If you disagree with a judgment or final order of the district court, you may appeal to the United States Court of Appeals for the Second Circuit. To start this process, file a "Notice of Appeal" with this Court's Pro Se Intake Unit.

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Please note that the notice of appeal is a *one-page* document containing your name, a description of the final order or judgment (or part thereof) being appealed, and the name of the court to which the appeal is taken (the Second Circuit) – *it does not* include your reasons or grounds for the appeal. Once your appeal is processed by the district court, your notice of appeal will be sent to the Court of Appeals and a Court of Appeals docket number will be assigned to your case. At that point, all further questions regarding your appeal must be directed to that court.

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THE DANIEL PATRICK MOYNIHAN
UNITED STATES COURTHOUSE
500 PEARL STREET
NEW YORK, NY 10007-1312

THE CHARLES L. BRIEANT, JR.
UNITED STATES COURTHOUSE
300 QUARROPAS STREET
WHITE PLAINS, NY 10601-4150

Exhibit D

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
TRONOX INCORPORATED, et al.,	:	Case No. 09-10156 (MEW)
	:	Jointly Administered
Reorganized Debtors.	:	

MEMORANDUM OPINION AS TO TORT CLAIMS TRUSTEE'S MOTION FOR INSTRUCTIONS

A P P E A R A N C E S:

KEATING MUETHING & KLEKAMP PLL
Cincinnati, Ohio
Counsel for the Debtors
By: Robert G. Sanker, Esq.

BROWN RUDNICK
New York, New York
Counsel for the Avoca Plaintiffs
By: Edward S. Weisfelner, Esq.
Bennett S. Silverberg, Esq.

JENNER & BLOCK
New York, New York
Counsel for the Mississippi Claimants
By: Richard Levin, Esq.

HAL L. McCLANAHAN, III
Columbus, Mississippi
Counsel for Maranatha Faith Center
By: Hal L. McClanahan, III, Esq.

MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE

The Garretson Resolution Group, Inc. (the "**Trustee**") administers the Tronox Incorporated Tort Claims Trust (the "**Trust**"). The Trust was established under the Debtors' First Amended Joint Plan of Reorganization (as amended, the "**Plan**"). The Trust is governed by a Tort Claims Trust Agreement (the "**Trust Agreement**") and by a set of Tort Claims Trust

Distribution Procedures (the "**TDPs**"). The Plan and the Trust Agreement establish categories into which allowed tort claims are to be divided, and the TDPs are the rules that the Trustee follows in collecting, reviewing, categorizing, allowing and paying such tort claims.

The Trustee has filed a motion seeking instructions as to claims made by individuals (the "**Mississippi Claimants**") who were plaintiffs in many pre-bankruptcy lawsuits relating to releases of creosote from a plant in Columbus, Mississippi. The Trustee seeks instructions as to whether the Trustee was correct in permitting Mississippi Claimants who had asserted "nuisance" claims to seek compensation from the Trust for alleged personal injury, wrongful death, sickness or disease, and/or whether the TDPs should be amended to allow the Trustee to undo the Trustee's prior notices of determination that allowed those claims.

The Trustee's request for instructions is the outgrowth of complaints made by another large group of claimants (the "**Avoca Plaintiffs**") who have asserted tort claims arising out of creosote releases from a plant in Avoca, Pennsylvania. The Avoca Plaintiffs contend that the Trustee should not have permitted Mississippi Claimants who made "nuisance" claims in the bankruptcy case to file any claims against the Trust for personal injury, wrongful death, sickness or disease, and that instructions should not have been necessary.

The Mississippi Claimants oppose the Trustee's motion; they argue that the governing documents are clear and that the Trustee's prior notices of determination as to the claims were correct. The Maranatha Faith Center, Inc. ("**Maranatha**"), which holds a claim in a different category under the Trust, argues that the Trustee acted correctly and that the claims of the Mississippi Claimants should stay in the previously designated categories.

For the reasons set forth below, the Court grants the Trustee's request for instructions, and holds that the Trustee properly allowed the Mississippi Claimants who had timely filed "nuisance" claims in the bankruptcy case to file claims seeking compensation from the Trust for

personal injury, wrongful death, sickness or disease. The Court also holds that the Avoca Plaintiffs have no standing to object to the claims filed by the Mississippi Claimants, and that the objections are without merit in any event.

Background

On January 12, 2009, Tronox Incorporated and related entities filed voluntary chapter 11 petitions in this Court. On May 28, 2009, the Court entered an order setting August 12, 2009 (the "Bar Date") as the deadline by which to file any proof of claim against the Debtors.

A. Claims of the Mississippi Claimants

On August 3, 2009, the Columbus, Mississippi Creosote Plaintiffs Ad Hoc Committee (the "**Ad Hoc Committee**") filed a proof of claim (the "**Mississippi Claim**") in the Tronox chapter 11 case on behalf of approximately 2,690 individuals or their estates who were plaintiffs in many cases pending in Mississippi. *See* Exhibit C to the Trustee's Motion [ECF Dkt. 3030]. The Mississippi Claim attached an Order dated October 3, 2007 that listed the pending cases and described the terms under which the parties had agreed to mediate individual claims "based on categories of injuries, which categories shall be randomly selected." *Id.* A separate Mediation Agreement dated December 1, 2007 (attached to the Mississippi Claim) provided that the defendants would reserve a sum of $3 million to pay settlements reached during mediation; if the $3 million was exhausted, either the mediations would end or the defendants would replenish the reserve fund, in which case the mediations would continue.

The Mississippi Claim stated that the amount of the claim was unliquidated but was "not less than $12,500,000.00 based on personal injury and property damage arising out of toxic tort litigation arising more than one year prior to the filing of the bankruptcy petition." It stated that the "names of the entities and the nature of their claims is attached hereto as Exhibit B" and that a "detailed explanation of the claim is set out below." The description of the claim referred to

the operation of a wood treatment plant in Columbus, Mississippi at which railroad ties were treated with creosote, and stated that the pending Mississippi lawsuits sought damages that "included personal injury/wrongful death, diminution of property values, and interference with the use of domicile (nuisance)." The claim attached, as Exhibit B, "[a] list of individuals and the categories of individual claims" to which the parties had agreed as part of their Mediation Agreement. Exhibit B divided claims into the following categories:

Category	**Number Listed**
Autoimmune (includes Sarcoidosis, Lupus)	48
Blood (includes Leukemia, Aplastic Anemia, Finger Hemangiosarcoma, Multiple Myeloma)	21
Bone and Lymphatic (includes Bone Cancer, Hodgkins Lymphoma, Lymphosarcoma, Non-Hodgkins Lymphoma)	10
Brain Cancer	12
Congenital (includes Birth Defects, Encephalopathy, Neuroblastoma and in some cases "other nuisance type ailments"	83
Digestive (includes Gastrointestinal, Small Intestine Cancer, Colon Cancer, Pancreatic Cancer, Stomach Cancer, Esophogeal Cancer, Oral Cancer, Gall Bladder Cancer, Liver Cancer)	45
Nuisance Claims and No Complaint Nuisance Claims	186
Reproductive (Prostate Cancer, Cervical Cancer, Uterine Cancer, Testicular Cancer, Ovarian Cancer)	42
Respiratory (Mesothelioma, Lung Cancer, other Lung Disease, Larynx Cancer, Nasal Cancer, Bronchial Cancer, Throat Cancer, Trachea Cancer, Pleural Plaques)	42
Skin (Skin Cancer, Melanoma)	30
"Unspecified" (Thyroid Cancer, "Cancer Cells," Unspecified Cancer, Cancerous Ulcers, Amyloidosis)	27
Urinary (Kidney Cancer, Bladder Cancer)	11
Nuisance Claims	2135

Exhibit B therefore has two separate lists of "nuisance" claimants, without explanation. The first list of nuisance claims (consisting of 186 claims) has different headings on different pages: the

first page is entitled "Nuisance Claims," but the rest of those pages are entitled "No Complaint Nuisance Claims." Again, there is no further explanation.

The Mississippi Claim also summarized the "types of claims" being mediated as follows:

> There were three broad classifications: personal injury/wrongful death, property, and nuisance. Personal injury was further divided into classifications . . . There were 371 claimants with categorized personal injury or wrongful death claims, and an additional 50 who were placed in multiple categories. There were 200 individuals claiming only diminution of property values, and the other approximately 2100 individuals could claim only nuisance damages.

The claim stated that twelve personal injury cases had been mediated and that some of them "were determined to have been better classified as nuisance cases, and were settled as such."

The Mississippi Claim did not explain the types of injuries for which the "nuisance" claimants sought compensation or what (if anything) distinguished them from "personal injury" claims and claims alleging "diminution of property values." The complaints in the Mississippi lawsuits were not attached to the proof of claim, but copies of two of the complaints were submitted to the Court in connection with the Trustee's motion for instructions. Count Seven of the complaint in *Hunter v. Kerr-McGee Corp.*, case no. 1:04CV271-D-A (N.D. Miss. Aug. 31, 2004), asserted a cause of action for "Private Nuisance," and alleged that the Defendants' actions constituted a nuisance that had deprived Plaintiffs of "the enjoyment and use of their own property." The very next paragraph then stated:

> 180. As a direct and proximate result of the acts of private nuisance of the Defendants and their employees, agents, and representatives, the Plaintiffs have suffered physical and emotional injuries; past, present and future pain and suffering; loss of wages; past, present and future medical expenses; severe, permanent, disabling and life threatening injuries; permanent medical and emotional distress; loss of enjoyment of life, property damage and other actual and compensatory damages.

See Exhibit A to the Mississippi Claimants' Submission [ECF Dkt. 3039]. Similarly, the Complaint in *Aurthur v. Kerr-McGee Corp., et al.*, case no. 1:05-cv-00225-JAD (N.D. Miss.),

which apparently was originally filed in state court, asserted a "private nuisance" claim. The Complaint alleged that as a result:

> . . . the Plaintiffs have suffered physical and emotional injuries; past, present and future pain and suffering; loss of wages; past, present and future medical expenses; severe, permanent, disabling and life threatening injuries; permanent mental and emotional distress; loss of enjoyment of life, property damage, and other actual and compensatory damages in excess of Five Million Dollars ($5,000,000.00) per Plaintiff.

See Exhibit B to the Declaration of Bennett S. Silverberg in Support of Response of the Avoca Plaintiffs [ECF Dkt. 3041 at ¶ 81].

In addition, the Mississippi Claimants provided the Court with a copy of a memorandum dated November 2, 2007 that proposed categories of claims for mediation in Mississippi. One part of the Memorandum sets forth thirty-one proposed categories of "Nuisance" claims for mediation, and another part sets forth fourteen proposed categories of "Personal Injury" claims for mediation. The "Nuisance" claims were divided into categories based on two factors: (a) the distance between a plaintiff's residence and the Columbus facility, and (b) the number of "illnesses" linked to creosote exposure that had been manifested by the plaintiff. Accordingly, some categories of "nuisance" claims were for individuals who had manifested "three or fewer linked illnesses"; other categories were for nuisance claimants who had "at least three but fewer than ten of the common illnesses causally linked to creosote exposure by the Epidemiologist"; and others were for nuisance claimants who had "ten or more" of such illnesses. *See* Exhibit B to the Mississippi Claimants' Submission [ECF Dkt. 3039].

B. The Plan

On November 30, 2010, the Court confirmed the Debtors' First Amended Joint Plan of Reorganization (the "Plan"), which became effective on February 14, 2011. The Plan established the Trust and specified four separate categories of tort claims that would be allowed

and paid through the Trust. The Trust was to be funded with a payment of $12.5 million in cash, plus insurance assets, plus the right to 12% of the proceeds of a litigation (the "**Anadarko Litigation**"). The Plan and the Trust established separate categories for Property Damage Claims and various other kinds of Tort Claims. Most of the funding (at least 82.25%) was to be set aside for Fund D, which was a category of "Allowed Non-Asbestos Toxic Exposure Claims."

The Plan defines "Non-Asbestos Toxic Exposure Claims" as:

> . . . timely filed Tort Claims against any Tronox Debtor for personal injury, wrongful death, sickness or disease arising directly or indirectly from exposure to or release of creosote, benzene, radiation or other environmental contamination or chemical exposure or release.

Plan, Article I(A)(110) [ECF Dkt. 2567, Ex.]. The Plan defines "Tort Claims" as:

> . . . non-governmental Claims against Tronox, whether such Claims are known or unknown, whether by contract, tort or statute, whether existing or hereinafter arising, for death, bodily injury, sickness, disease, medical monitoring or other personal physical injuries or damage to property to the extent caused or allegedly caused directly or indirectly by the presence of or exposure to any product or toxin manufactured or disposed of, or other property owned, operated or used for disposal by, Tronox or any Entity for whose products or operations Tronox allegedly has liability . . .

Id., Article I(A)(156) [ECF Dkt. 2567, Ex.].

The Plan provides that all Tort Claims, including Non-Asbestos Toxic Exposure Claims, were to be allowed or disallowed in accordance with the terms of the Trust and the TDPs. Accordingly, the term "Allowed," when used with respect to Tort Claims, was defined as "a Claim that is allowed pursuant to the Tort Claims Trust Distribution Procedures." *Id.*, Article I(A)(4); *see also id.,* Article IV(c)(4) ("Holders of Allowed Tort Claims will receive on account of such Allowed Tort Claims a Distribution from the Tort Claims Trust in accordance with the Tort Claims Trust Distribution Procedures . . .") The Plan defined the Tort Claims Trust Distribution Procedures as:

> . . . the procedures to be implemented by the Tort Claims Trustee, pursuant to the terms and conditions of the Plan and the Tort Claims Trust Agreement, to process, liquidate and make Distributions on account of Tort Claims.

Id., Article I (A)(161). The Plan stated that "[f]inal determinations" as to the allowance or disallowance of Tort Claims would be made in accordance with the TDPs. *Id.* The order confirming the Plan similarly states that all Tort Claims would be resolved pursuant to the TDPs. *See* Findings of Fact, Conclusions of Law and Order Confirming the First Amended Joint Plan (the "**Confirmation Order**") [ECF Dkt. 2567 at ¶ 184].

C. The Trust and the TDPs

A proposed Trust Agreement and proposed TDPs were filed as part of a Plan Supplement on October 29, 2010 [ECF Dkt. 2343]. Amended copies were filed on February 4, 2011, several months after the entry of the Confirmation Order but prior to the effective date of the Plan. [ECF Dkt. 2768]. The origin and reasons for the amendments were not explained. However, no party has challenged the amendments, and all of the parties who appeared in connection with the Trustee's Motion treated the amended TDPs as those that had been authorized by the Plan and by the Confirmation Order.

The Trust Agreement includes defined terms that are not entirely identical to those used in the Plan but that are comparable to them. The Trust Agreement defines "Allowed Non-Asbestos Toxic Exposure Claim" as "a Non-Asbestos Toxic Exposure Claim which was the subject of a timely filed proof of claim . . . and is Allowed through the [TDPs]." *See* Trust Agreement, submitted as Exhibit A to the Trustee's Motion [ECF Dkt. 3030 at ¶ 1.2(d)]. The Trust Agreement also defines "Non-Asbestos Toxic Exposure Claims" as "timely filed Tort Claims against any Tronox Debtor for personal injury, wrongful death, sickness or disease arising directly or indirectly from exposure or release of creosote" or other contaminants. *Id.* at

¶ 1.2(p). The Trust Agreement confirmed that the final allowance or disallowance of any Tort Claim would occur pursuant to the TDPs. *Id.* at ¶ 1.2(v). The Trustee had power to do anything "necessary or proper to fulfill the purposes of the Tort Claims Trust," subject to the limits set forth in the Trust Agreement and the TDPs themselves. *Id.* at ¶ 3.1(a).

The TDPs also confirmed that all Tort Claims would be processed and resolved in the manner set forth in the TDPs. *See* TDPs, submitted as Exhibit B to the Trustee's Motion [ECF Dkt. 3030 at ¶ 2.1]. Paragraph 2.2(b) of the TDPs specifies that a "Holder of a Tort Claim" may "assert a Claim against the Trust" pursuant to the TDPs. *Id.* Paragraph 2.2(b) provided that a timely filed proof of claim in the bankruptcy case "shall be accepted as irrefutable and final proof of exposure and injury asserted in the proof of claim with respect to such exposure . . ." *Id.* at ¶ 2.2(b). However, it also contemplated that claimants could specify injuries that differed from those set forth in their original proofs of claim:

> Where illness/injury was not specified on a timely Proof of Claim Form or where the illness/injury sought to be compensated has changed, a sworn statement by the Holder of a Tort Claim or such Holder's authorized representative shall be sufficient proof of injury.

Id.

The TDPs further contemplated that the Trustee would send "Trust Claim Forms" to persons who had filed timely proofs of claim. Paragraph 5.1 of the TDPs provided that the Trust Claim Forms "shall require" claimants to assert "all diseases" for which their Claims qualified at the time of filing of the Trust Claim Forms. *Id.* at ¶ 5.1. The claimant was to specify, in the Trust Claim Form, the specific category into which the Trust Claim belonged; only one category could be specified. *Id.* at ¶ 2.2(c). The TDPs stated, however, that Category D claims (for Non-Asbestos Toxic Exposure) would be disallowed if "no official bankruptcy proof of claim was timely filed." *Id.* at ¶ 2.2(e).

The TDPs called for the Trustee to issue a "Determination Notice" as to Trust Claims in Category D, stating whether the Trust Claim Form was complete. *Id.* at ¶ 3.2(a). The TDPs also required the Trustee to propose an allowed "Scheduled Value" for each Category D claim that differed depending on the nature of the illness, injury, disease or other damage described in the Trust Claim Form. The Scheduled Values for claims based on creosote exposures were:

Disease	**Scheduled Value**
Precancerous Skin Lesion	$26,000
Skin Cancer	$120,000
Lung Cancer	$700,000
Breast Cancer	$475,000
Other Cancer	$600,000
Asthma Adult	$150,000
Asthma Child	$175,000
Cardiovascular	$250,000
Respiratory	$80,000
Medical Monitoring/Unimpaired	$5,000

See Schedule B to the TDPs. Holders of claims could accept the proposed Scheduled Values (and were deemed to accept them if they did not demand other treatment within thirty days), but otherwise could elect to proceed with mediation or other methods to resolve the amounts of the claims. *Id.* The TDPs state that "A Holder accepting the Scheduled Value shall not be required to meet any further evidentiary requirements . . . with regard to such Claim, and the Claim shall then be liquidated and Allowed in the amount of the Scheduled Value." *Id.* at ¶ 3.2(f).

D. Trust Claims Submitted by the Mississippi Claimants

At some point after the Plan became effective, the Trustee sent Trust Claim Forms to persons who had filed proofs of claim for tort liabilities in the bankruptcy cases; the date when this happened is unclear. In response, 2,120 of the Mississippi Claimants submitted Trust Claim Forms asserting that they held Category D "Non-Asbestos Toxic Exposure Claims." Of those,

296 were filed by individuals who had been listed in the original Mississippi Claim as holding "categorized personal injury or wrongful death claims," and the other 1,824 were filed by individuals who had been listed as holding "nuisance" claims. It is not clear when the Trust Claim Forms were filed, though apparently they were filed some time prior to 2012.

The Trustee determined that the Mississippi Claim was a timely proof of claim and that "nuisance" claimants had the right, under the TDPs, to assert that they suffered from diseases, injuries or conditions that qualified for compensation under Category D. In accordance with the TDPs, the Trustee accepted the assertions in the Trust Claim Forms (all of which had been signed under penalty of perjury) and issued Determination Notices that proposed to allow the claims for their Scheduled Values. The total Allowed Scheduled Values for all of the Mississippi Claimants is $357,215,500, of which $262,138,500 is attributable to claims that were originally described as "nuisance" claims.

E. Objections by Other Claimants and the Trustee's Motion

The Trustee acknowledges that it received complaints from other claimants in 2011 regarding the allowance of the Category D claims filed by the Mississippi Claimants. The Trustee discussed the issues with the attorneys who had made complaints, and the Trustee defended (and adhered to) its determination to allow the claims of the Mississippi Claimants.

The Trustee has also represented to the Court that in May 2012 the Trustee conducted a random audit of some of the Trust Claim Forms filed by the Mississippi Claimants to attempt to identify any fraud that might have occurred in the filing of the claims. The Trustee reviewed medical records of one hundred Mississippi Claimants selected at random and determined that 95% of the claims were adequately supported. The Trustee concluded from this review that no fraud had occurred.

Issues regarding the Mississippi Claimants intensified in 2014, however, after it became apparent that there would be a very large recovery from the Anadarko Litigation. The Trust ultimately received more than $599 million as its share of the proceeds from that litigation. As a result, the expected recoveries for tort claimants have increased exponentially. The Avoca Plaintiffs hold Allowed Scheduled Claims in Category D totaling approximately $966 million, and the payments on their allowed claims are significantly affected by the allowance of the claims of the Mississippi Claimants.

The parties submitted correspondence which shows that until late 2014 the Trustee vehemently defended the prior determinations and took the position that the Trustee's actions were in accord with the plain language of the Plan, the Trust and the TDPs. At some point in late 2014, however, the members of the Trust Advisory Council (the "**TAC**"), with whom the Trustee is to consult on various issues, raised questions about the Trustee's allowance of the Mississippi Claims and about the complaints made by the Avoca Plaintiffs.[1] After discussions with the TAC, the Trustee filed the motion for instructions. In the motion, the Trustee stated that it had come to believe (notwithstanding earlier arguments) that the TDPs actually were ambiguous as to whether the Mississippi Claimants had to explicitly assert claims for personal injury, wrongful death, illness or disease in their original bankruptcy proof of claim in order to qualify as claimants in Category D. Later, in its reply brief, the Trustee went further and argued that the "better view" is that the "nuisance" claimants should never have been permitted to assert Category D claims. The Trustee also submitted a set of possible amendments to the TDPs that would permit the Trustee to reconsider claims (a practice not authorized by the TDPs as they currently are formulated) and that would further clarify that Category D claims should be

[1] It appears that one of the three members of the TAC is an attorney who represented the Avoca Claimants.

disallowed if the original bankruptcy proof of claim did not specify that an individual held a claim for personal injury, wrongful death, sickness or disease. However, the Trustee stated that it only sought instructions regarding the proposed amendment if the Court determined that "nuisance" claimants should have been barred from making claims in Category D.

The Avoca Plaintiffs filed a response in which they did not oppose the proposed amendments or the request for instructions, but in which they argued that the Category D claims of the "nuisance" claimants should never have been permitted and that no instructions should have been necessary. They argue that the Mississippi Claimants did not file proper proofs of claim in the bankruptcy cases but instead filed a "group" claim that should not have been permitted; that only some of the Mississippi Claimants had asserted personal injury claims in the "group" claim that was filed; that the individual Mississippi Claimants who held "nuisance" claims should have been barred from filing Trust Claims based on illness, disease or other personal injury; and that the claims filed by the Mississippi Claimants against the Trust are so different in number, nature and dollar value from those described in the bankruptcy proof of claim that a further inquiry should be made as to whether fraud was committed.

As noted above, the Mississippi Claimants have opposed the Trustee's motion and have argued that the Trustee's prior determinations were correct. Maranatha also filed a response, arguing that the claims of the Mississippi Claimants belong where they are and that they should not be moved to the "Property Damage" category in which Maranatha holds an allowed claim.

DISCUSSION

The Court has some skepticism as to whether the motion before this Court is an appropriate request for instructions. Ordinarily a Trustee seeks instructions when it has not yet taken action and where the Trustee is unsure as to what to do, and may even face liability for an incorrect choice. *See Peierls Family Inter Vivos Trusts*, 59 A.3d 471, 477 (Del. Ch. 2012)

(noting that a "request for judicial relief involving a trust can be appropriate in many circumstances," including when the trust agreement is "genuinely ambiguous"); *see also In re Am. Home Mortg. Inv. Trust*, 2005–2, No. 14 Civ. 2494(AKH), 2014 WL 3858506, at *12 (S.D.N.Y. July 24, 2014) (noting that "trust instruction proceedings are a well-established procedure by which trustees (and other affected parties) can seek judicial guidance from the court about how to resolve immediate and difficult issues of interpretation of governing documents"). Here, the Trustee has already taken action – the Trustee allowed the Mississippi Claims several years ago – but now has misgivings about the determinations it made. In this regard the Trustee's motion seems mainly to be a request for "comfort" as to actions already taken, rather than truly a request for "instructions" as to what the Trustee should do going forward in administering the Trust.

Similarly, the Trustee's request for "instructions" as to the proposed amendment of the TDPs is not really a request for "instructions" as to how to interpret the existing Trust documents. Instead, it is more of a request for an advisory opinion as to whether a proposed change to the TDPs would be consistent (or inconsistent) with the terms of the Plan and the vested rights of claimants.

On the other hand, it is plain that the Trustee's prior actions, and the disputes among the parties as to the interpretation of the Plan, the Trust Agreement and the TDPs, represent genuine, active controversies. It is also plain that further litigation – and thereby further delays in distributions to the beneficiaries of the Trust, who have already been waiting for many years – are inevitable unless some binding clarification of these issues is provided. The Plan provides that this Court has continuing jurisdiction over any issue relating to the interpretation and application of the Trust Agreement and the TDPs, *see* Article XI of Plan at ¶¶ 14, 16 [ECF

Dkt. 2567, Ex.]; *see also* Trust Agreement at ¶ 9.16 [ECF Dkt. 3030, Ex. A], and it is appropriate to exercise that power in the hope that a ruling will avoid further expense and delay.

I. "Nuisance" Claimants Who Suffered From Creosote-Related Diseases Or Medical Conditions Were Not Prohibited From Filing Trust Claim Forms In Category D

The gist of the argument made by the Trustee and the Avoca Plaintiffs is that Category D is reserved for claimants who explicitly asserted claims for personal injury, wrongful death, sickness or disease in their original bankruptcy proofs of claim, and excludes all other claimants. In their view, the "nuisance" claimants only alleged property damage in their bankruptcy proof of claim; the Plan, the Trust Agreement and the TDPs irrevocably classified those claims as "property damage" claims; and the "nuisance" claimants therefore were prohibited from making Category D Trust Claims – even if the nuisance claims were timely filed, and even if the claimants actually had serious illnesses at the time the Trust Claim Forms were filed. The Court rejects the Trustee's and the Avoca Plaintiffs' arguments for two independent reasons.

First, the Trustee and the Avoca Plaintiffs are wrong in their interpretation of the underlying Mississippi Claim and the types of injuries for which the "nuisance" claimants sought compensation. The Trustee and the Avoca Plaintiffs urge the Court to interpret the Mississippi Claim as if it were an affirmative statement that the nuisance claimants *only* held claims for property damage and never held, or could hold, any claims for personal injury, wrongful death, disease or sickness. However, that is not a fair reading of the claims that were made.

Under Mississippi law, a nuisance claim must be premised on an invasion of a property interest, but damages for a valid nuisance claim are not limited to property damages, and may include damages for sickness or other personal injury. *See T.K. Stanley, Inc. v. Cason*, 614 So. 2d 942, 944, 953 (Miss. 1992); *Shaw v. Owen*, 229 Miss. 126, 90 So. 2d 179, 181 (1956). In this case, the Mississippi Claim referred to and incorporated the claims asserted in the underlying

Mississippi lawsuits. The parties before this Court in connection with the Trustee's Motion treated the two Mississippi complaints that were provided to the Court as being representative of the complaints in all of the Mississippi lawsuits. The two complaints were explicit in alleging that the "nuisance" violations had resulted in various forms of personal injury, wrongful death, sickness and disease, for which the plaintiffs sought compensation.

The proposed categories of "nuisance" claims for mediation in Mississippi (set forth in the November 2, 2007 memorandum described above) were even more explicit in stating that "nuisance" claimants included persons who had shown signs of illnesses associated with creosote exposure. Some categories of "nuisance" claims were for individuals who had shown signs of "ten or more" such illnesses.

The Trustee and the Avoca Plaintiffs seize on the fact that the Mississippi Claim (viewed without reference to the other materials cited above) appears to distinguish between "nuisance" claims and "personal injury" claims. However, the November 2, 2007 memorandum that listed categories of "nuisance" claims for mediation – broken down by the number of illnesses that claimants had suffered – also listed separate categories of "Personal Injury" claims for mediation. No party explained how the categories were developed but, in context, the separate listing of "personal injury" claims cannot reasonably be interpreted as meaning that the "nuisance" claimants had no claims to recover for personal injury, wrongful death, sickness or disease. Instead, it was quite clear, in context, that many of the nuisance claims had an injury or illness component. One or more of the Debtors was a party to the Mississippi cases and is properly charged with knowledge of the complaints and the mediation categories, and therefore with knowledge of the nature of the injuries being asserted by "nuisance" claimants.

Second, the Trustee and the Avoca Plaintiffs are wrong in their contentions as to what the Plan and the TDPs contemplated. The Plan did not "freeze" claims into inflexible categories

based on narrow readings of the way the original proofs of claim were worded. Instead, the Plan contemplated that Tort Claims would be categorized based on the actual injuries that claimants suffered, as reflected in the Trust Claim Forms that they filed. The TDPs (which were incorporated into the Plan) compel this conclusion.

The TDPs do not say that claims will be categorized based on the ways in which the original bankruptcy proofs of claim were worded. Nor do they say that the "category" of a claim could not change from the category into which the original bankruptcy claim might have been placed. Instead, paragraph 2.2(c) of the TDPs states clearly that the *claimant* is to specify the proper category into which the claim falls, and that the claimant is to do so in the Trust Claim Form.

Similarly, the TDPs do not say that a claimant is limited to the "types" of injuries specified in the original bankruptcy proof of claim. To the contrary: paragraph 5.1 of the TDPs requires Holders of Tort Claims to identify all diseases for which they are entitled to compensation at the time the Trust Claim Forms are filed. Paragraph 2.2(b) of the TDPs also explicitly allows a claimant to make a claim for personal injury, wrongful death, sickness or disease even if the original proof of claim did not specify such an injury or if the nature of the illness or injury had changed. Paragraph 2.2(b) states:

> Where illness/injury was not specified on a timely Proof of Claim Form or where the illness/injury sought to be compensated has changed, a sworn statement by the Holder of a Tort Claim or such Holder's authorized representative shall be sufficient proof of injury.

The Avoca Plaintiffs argue that the second part of Paragraph 2.2(b) of the TDPs only permits a claimant to "change" the nature of an illness or "personal injury" that the claimant previously asserted, and does not allow the claimant to allege a personal injury if the original proof of claim did not already specify a different kind of personal injury. However, paragraph

2.2(b) referred to changes in the type of "illness/injury" being asserted; the word "injury" was not limited to "personal injury." If (as the Avoca Plaintiffs wrongly contend) each "nuisance" claimant had only alleged an "injury to property," the subsequent allegation of personal injury, wrongful death, sickness or disease would just have been a "change" to the "injury" for which compensation was sought, which was permitted by Paragraph 2.2(b).

Moreover, even if the phrase "illness/injury" in Paragraph 2.2(b) were interpreted as a reference to "illness/personal injury," as the Avoca Plaintiffs urge, the result would still be contrary to the result they seek. In addition to "changes" in illnesses or injuries, Paragraph 2.2(b) permits claimants to file claims for personal injury "[w]here illness/injury was not specified on a timely proof of claim form." If (as the Avoca Plaintiffs argue) this was a reference to persons as to whom "illness/personal injury was not specified" on a proof of claim form, and if (as the Avoca Plaintiffs also argue) the "nuisance" claimants were persons who did not specify an "illness/personal injury" in their proof of claim, then under Paragraph 2.2(b) the Mississippi Claimants would still be entitled to assert Category D claims.

The interpretation of Paragraph 2.2(b) urged by the Trustee and the Avoca Plaintiffs also would have unreasonable and unfair consequences, in violation of the terms of the Trust Agreement. During argument the Court asked hypothetical questions as to how the interpretation of the Plan and the TDPs now advocated by the Trustee and by the Avoca Plaintiffs would affect similar proofs of claim that might have been worded slightly differently but that had all been filed by persons who wished to file Trust Claim Forms alleging they currently suffered from brain cancer. One hypothetical involved a claimant who filed an unliquidated bankruptcy proof of claim alleging exposure to creosote, stating at that time that the only symptom experienced to date had been nausea. A second hypothetical question involved a claimant whose bankruptcy proof of claim stated generally that "I have suffered a personal injury," without more. The

Trustee answered that these two claimants would be permitted to file a Category D claim seeking compensation for brain cancer, because the original bankruptcy claim had alleged some form of personal injury. In the Trustee's view, however, a "nuisance" claimant could not do so. In short, the Trustee contends that the Plan, the Trust and the TDPs allow some holders of Tort Claims to change the injury for which they seek compensation (*e.g.*, the "nausea" claimant may seek compensation for brain cancer), but prohibit other holders of Tort Claims (*e.g.,* those who held "nuisance" claims) from doing the same thing.

The Court can think of no good reason why the Plan and the TDPs would have imposed such a manifestly unfair distinction between similarly-situated claimants. The Trust Agreement states that the Trust Agreement and the TDPs are to be interpreted to promote fairness in the treatment of similar claims [Trust Agreement at ¶ 1.3(a), ECF Dkt. 3030, Ex. A], but the interpretation urged by the Trustee and the Avoca Plaintiffs would do the opposite. Similar treatment of similar claims is also a bedrock principle of bankruptcy law, yet the Trustee and the Avoca Plaintiffs urge the Court to adopt an interpretation of the Plan and its implementing documents that would be utterly inconsistent with the principle of similar treatment.

The Court also asked the Trustee how a claim should have been treated if the claimant currently had brain cancer but had stated, in a bankruptcy proof of claim, that "so far as I know, the only injury I have suffered is damage to my property, but I fully reserve all of my rights to all injuries that manifest themselves by the time the claim is allowed." The Trustee answered only that this was a "good question" to which the Trustee could not provide a clear answer. However, common sense compels the conclusion that a proof of claim worded in this way had to be sufficient to preserve a claimant's rights to seek compensation for whatever injuries had manifested themselves at the time the claim was allowed or disallowed. In fact, it appears that at least some of the bankruptcy proofs of claim filed by the Avoca Plaintiffs were very similar to

the claim described in this hypothetical question. Copies of the Avoca Plaintiffs' proofs of claim were not provided to the Court, but the Court was able to locate two of them (claims 3784 and 3793) and takes judicial notice of them. These two proofs of claim asserted that the claimants sought damages for medical monitoring under Pennsylvania law and compensation for "[d]iseases not yet known or diagnosed and to be proven at the time of trial." The Trustee and the other parties who have appeared in this Court in connection with the Trustee's request for instructions have acknowledged that the Avoca Plaintiffs made valid Category D Claims, yet these two Avoca claims were no more specific about the "injuries" or diseases that the claimants had suffered than the "nuisance" claims were.

The contention that minor differences in the terminology used in a proof of claim would have such drastic consequences – and that a "nuisance" claimant should be barred from making a Category D Claim regardless of the illness, condition or injury that the claimant actually suffered – is not reasonable. The Proofs of Claim were filed before the Bar Date, which was long before the Plan was confirmed and long before the Plan divided Tort Claims into various categories. No tort claimant could have known or appreciated, at the bar date, the significance of the categories of tort claims that were later established. Nor was any tort claimant advised that the kinds of injuries for which compensation could be sought might be "frozen" by the language used in the proof of claim.

The injuries suffered from exposures to creosote can manifest themselves in different ways over time. All of the Mississippi Claimants alleged injury due to creosote exposure, and a reservation of rights to seek compensation for all injuries resulting from that exposure is implicit in the claim, regardless of whether that reservation of rights was stated expressly. Even if that were not the case, the Court in the ordinary course would have routinely permitted an amendment to a proof of claim that had alleged exposure to creosote if the nature of the

claimant's injury had changed. The TDPs effectively allowed the same thing: claims were categorized based on the injuries asserted in the Trust Claim Forms, which were not limited to the injuries set forth in the timely filed bankruptcy proofs of claim.

Accordingly, the Court holds that the Plan and the TDPs contemplated that Tort Claimants who filed timely proofs of claim would be able to make claims for any illness, injury or medical condition they had actually suffered at the time the Trust Claim Forms were due, and that such claims would be placed into categories based on the injuries actually specified in the Trust Claim Forms. This ruling moots the Trustee's request for instructions regarding a possible amendment to the TDPs, as the Trustee only sought such instructions in the event the Court held that the Plan and the TDPs did not permit the nuisance claimants to make Category D claims.

II. The Avoca Plaintiffs Have No Standing To Object To The Mississippi Claim And In Any Event Their Objections To The Claim Are Unfounded

Parties in interest ordinarily have a right to file objections to proofs of claim with the Bankruptcy Court. 11 U.S.C. § 502(a). Here, however, the Confirmation Order and the confirmed Plan provided that all Tort Claims would be "deemed objected to" and that the allowance or disallowance of those claims would occur pursuant to the TDPs. *See* Confirmation Order at ¶ 184; Plan, Article I(A)(4), (28). The Plan also stated that, "except as provided" in the Plan, the only party who could file objections to claims was Reorganized Tronox. *See* Plan, Article VII(C). The Plan (and the TDPs incorporated into the Plan) gave the Trustee the right to resolve claims, but other claimants were given no rights to object. The Avoca Plaintiffs made no objection to the proof of claim filed by the Ad Hoc Committee prior to confirmation of the Plan and have no right to make any such objection thereafter.

In addition, there is no merit to the objections asserted by the Avoca Plaintiffs. They argue that the claim filed by the Ad Hoc Committee was an impermissible "group" claim.

However, the cases cited by the Avoca Plaintiffs do not involve "group" claims, but instead involve purported "class action" claims, in which one claimant attempts to appoint itself as a representative of other claimants (without prior authorization by those claimants) for purposes of making claims. Courts have often held that permission should be obtained before a "class" proof of claim is filed. *See Ephedra Products Liability Litigation*, 329 B.R. 1, 5 (S.D.N.Y. 2005); *In re Musicland Holding Corp.*, 362 B.R. 644, 650 (Bankr. S.D.N.Y. 2007). Here, however, the claim was filed by the Ad Hoc Committee, which represented that it had authority to file the claim on behalf of the individuals listed therein. Such a "group" proof of claim was acceptable. *See Adair v. Bartholow (In re Great Western Cities*, Inc.), 107 B.R. 116, 119 (N.D. Tex. 1989).

The Avoca Plaintiffs also argue that the Ad Hoc Committee did not provide evidence of its authority to file claims on behalf of the Mississippi Claimants. It is plain, however, that the Avoca Plaintiffs are not trying to protect the Mississippi Claimants from unauthorized acts; instead, they are trying to disallow the claims that were filed, to the detriment of the Mississippi Claimants. In any event, the Trust Claim Form required claimants to identify the bankruptcy proof of claim on which their claims were based, and the Mississippi Claimants filed individually-signed Trust Claim Forms that adopted and ratified the original proof of claim filed by the Ad Hoc Committee. As a result, the authority of the Ad Hoc Committee to make the original filing is not properly at issue.

III. Allegations of Fraud

For the reasons stated above, the Mississippi Claim cannot fairly be read as foreclosing contentions that "nuisance" claimants suffered (or would suffer) from illnesses and serious medical conditions, and the Plan and the TDPs permitted "nuisance" claimants to assert Category D Claims in their Trust Claim Forms. However, it is difficult to understand how nearly every

one of the "nuisance" claimants could have a Category D claim, with "Scheduled Values" that average more than $143,000 each.

An inflation of claims is an inherent risk of trusts that are structured in the manner that the Trust in this case was structured. The Trust (like similar trusts in many other cases, especially those involving asbestos claims) requires the submission of statements made under oath, but contemplates no further investigation of the facts asserted by claimants. In an effort to avoid delay and expense, the Trust contemplates that the sworn statements by claimants will simply be accepted as true, and that the vast majority of claimants will receive allowed claims based on Scheduled Values, without further inquiry or dispute. The "Scheduled Values" for various creosote-based claims also were very high, as indicated in the table on page 10 of this Opinion. In fact, the Avoca Plaintiffs have reported that the Scheduled Values of their own creosote-based claims are approximately $966 million. There were approximately 4,000 Avoca Plaintiffs (the precise number was not provided to the Court), which means that the average Scheduled Value for the Avoca Plaintiffs' own claims is approximately $240,000.

The Avoca Plaintiffs ask for further investigation, but it is not clear what can or should be done. During oral argument the Trustee took the position that fraud had not occurred and that the Trustee was satisfied with the results of the previous random audit that the Trustee had completed. The Avoca Plaintiffs argue that the Trustee should have done a more thorough review, but no party has sought instructions from the Court on that point. Nor is it clear that a further investigation would make any difference. The Plan states that "final" determinations as to the allowance or disallowance of claims will occur under the TDPs, and the TDPs state that claims "shall" be allowed if Notices of Determination are issued and Scheduled Values are accepted. The TDPs also state that the holders of such allowed claims shall not be required to meet "any further evidentiary requirements" with regard to those claims. Since the claims of the

Mississippi Claimants have already been allowed pursuant to the Trustee's prior notices of determination, it is not clear that any further investigation of the circumstances would be fruitful.

In any event, if the Avoca Plaintiffs believe that further investigations should be made by the Trustee or by the TAC, the Avoca Plaintiffs should raise those issues with those parties.

CONCLUSION

The request for instructions is granted, and instructions are provided as set forth above. The Court will issue a separate Order incorporating the rulings set forth in this Opinion.

Dated: New York, New York
June 17, 2015

s/Michael E. Wiles
UNITED STATES BANKRUPTCY JUDGE

Exhibit E

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
TRONOX INCORPORATED, et al.,[1]	)	Case No. 09-10156 (ALG)
Debtors.	)	Jointly Administered

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CONFIRMING THE FIRST AMENDED JOINT PLAN OF REORGANIZATION OF TRONOX INCORPORATED *ET AL.* PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

The above-captioned debtors and debtors in possession (collectively, "**Tronox**") having:[2]

a. commenced, on January 12, 2009 (the "**Petition Date**"), these chapter 11 cases (collectively, the "**Chapter 11 Cases**") by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**");

b. continued to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

c. filed, on July 7, 2010, the *Joint Plan of Reorganization of Tronox Incorporated* et al. *Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1706] and the *Disclosure Statement Regarding the Joint Plan of Reorganization of Tronox Incorporated* et al. *Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1707], which documents were subsequently amended and modified, as described herein;

d. filed, on July 8, 2010, *Tronox's Motion for Entry of an Order (I) Approving the Disclosure Statement; (II) Establishing a Record Date for Voting on the Plan of Reorganization; (III) Approving Solicitation Packages and Procedures for the Distribution Thereof; (IV) Approving the Forms of Ballots; (V) Establishing Procedures*

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[1] The debtors in these cases include: Tronox Luxembourg S.ar.l; Tronox Incorporated; Cimarron Corporation; Southwestern Refining Company, Inc.; Transworld Drilling Company; Triangle Refineries, Inc.; Triple S, Inc.; Triple S Environmental Management Corporation; Triple S Minerals Resources Corporation; Triple S Refining Corporation; Tronox LLC; Tronox Finance Corp.; Tronox Holdings, Inc.; Tronox Pigments (Savannah) Inc.; and Tronox Worldwide LLC.

[2] Capitalized terms used but not otherwise defined in this order (the "**Confirmation Order**") shall have the meanings ascribed to such terms in the *First Amended Joint Plan of Reorganization of Tronox Incorporated* et al. *Pursuant to Chapter 11 of the Bankruptcy Code*, dated November 5, 2010 [Ex. B to Docket No. 2402] (the "**Plan**") and attached hereto as **Exhibit A**. The rules of interpretation set forth in Article I.B of the Plan shall apply to this Confirmation Order.

for Voting on the Plan; and (VI) Establishing Notice and Objection Procedures for the Confirmation of the Plan [Docket No. 1710] (the "**Solicitation Procedures Motion**");

e. filed, on August 27, 2010, *Tronox's Motion for an Order (A) Authorizing Tronox to Enter Into (I) a Plan Support Agreement and (II) an Equity Commitment Agreement, and to Pay Certain Fees in Connection Therewith, and (B) Approving Procedures for a Rights Offering* [Docket No. 1936];

f. filed, on September 1, 2010, the *First Amended Joint Plan of Reorganization of Tronox Incorporated* et al. *Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1947], the related *Disclosure Statement Regarding the First Amended Joint Plan of Reorganization of Tronox Incorporated* et al. *Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1948] (the "**Disclosure Statement**"); and the proposed *Amended Order (I) Approving the Disclosure Statement; (II) Establishing a Record Date for Voting on the Plan of Reorganization; (III) Approving Solicitation Packages and Procedures for the Distribution Thereof; (IV) Approving the Forms of Ballots; (V) Establishing Procedures for Voting on the Plan; and (VI) Establishing Notice and Objection Procedures for Confirmation of the Plan* [Docket No. 1957], which documents were subsequently amended as set forth herein;

g. filed, on September 21, 2010, a revised version of the Plan [Docket No. 2124] and a revised version of the Disclosure Statement [Docket No. 2125];

h. filed, on September 22, 2010, a further revised version of the Plan [Docket No. 2148] and a further revised version of the Disclosure Statement [Docket No. 2149];

i. filed, on September 24, 2010, a further revised version of the Plan [Docket No. 2158] and a further revised version of the Disclosure Statement [Docket No. 2159];

j. filed, on September 27, 2010, Tronox's Motion for Entry of an Order Authorizing Tronox to (A) Enter into the Facility Syndication Engagement Letter and (B) Pay Fees and Costs to GS Lending Partners in Connection Therewith [Docket No. 2167];

k. filed, on October 1, 2010, solicitation versions of the Plan [Ex. A. to Docket No. 2196] and the Disclosure Statement [Ex. B to Docket No. 2196];

l. distributed rights offering and solicitation materials beginning on or about October 4, 2010, consistent with the Bankruptcy Code, the Bankruptcy Rules, the *Order Approving Tronox's Rights Offering Procedures* [Docket No. 2186] (the "**Rights Offering Order**") and the *Amended Order (I) Approving the Disclosure Statement; (II) Establishing a Record Date for Voting on the Plan of Reorganization; (III) Approving Solicitation Packages and Procedures for the Distribution Thereof; (IV) Approving the Forms of Ballots; (V) Establishing Procedures for Voting on the Plan; and (VI) Establishing Notice and Objection Procedures for Confirmation of the Plan* [Docket No. 2187] (the "**Solicitation Procedures Order**"), which Solicitation Procedures Order also approved, among other things, solicitation procedures (the "**Solicitation Procedures**") and related notices, forms and ballots (collectively, the "**Solicitation Packages**"), distribution of the rights offering and solicitation materials being evidenced by the *Affidavit of Service of*

Alison M. Tearnen re: Solicitation Materials for Holders of Claims and Equity Interests [Docket No. 2310] and the *Affidavit of Service of David M. Sharp re: Rights Offering Materials* [Docket No. 2269] (the "**KCC Affidavits**");

m. published, on October 7, 2010, notice of the Confirmation Hearing (the "**Confirmation Hearing Notice**") in *The Oklahoman* and the national edition of *The Wall Street Journal*, to provide notice to creditors who are unknown or not reasonably ascertainable by Tronox and creditors whose identities are known but whose addresses are unknown by Tronox, as evidenced by the *Affidavit of Publication of Notice of (A) Hearing to Consider Confirmation of the Chapter 11 Plan Filed by the Debtors and (B) Related Voting and Objection Deadlines* [Docket No. 2324] (the "**Publication Affidavit**");

n. filed, on October 14, 2010, *Tronox's Motion for Interim and Final Orders (A) Authorizing (I) Replacement Postpetition Secured Financing, (II) Use of Cash Collateral and (III) Repayment of Existing Postpetition Financing; and (B) Scheduling a Final Hearing* [Docket No. 2252];

o. filed, on October 15, 2010, *Tronox's Motion for Entry of an Order Authorizing Tronox to (A) Enter into an Exit Financing Commitment Letter and (B) Pay Fees and Expenses to Wells Fargo in Connection Therewith* [Docket No. 2257] (the "**Revolving Facility Commitment Motion**");

p. filed, on October 29, 2010, portions of the Plan Supplement (as amended and supplemented from time to time, the "**Plan Supplement**") for the *First Amended Joint Plan of Reorganization of Tronox Incorporated* et al. *Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 2343] (which included forms of the Tort Claims Trust Agreement, the Tort Claims Trust Distribution Procedures, the Registration Rights Agreement, the Amended and Restated Certificate of Incorporation and Bylaws of Reorganized Tronox Incorporated, the Assumed Executory Contract and Lease List, and the Exit Credit Agreement), and filed the amendments and supplements thereto on November 9, 2010 [Docket No. 2441] (which included the Environmental Claims Settlement Agreement), November 12, 2010 [Docket No. 2480] (which included the form of the Management 2010 Bonus Plan), November 16, 2010 [Docket No. 2520] (which included the Members of the New Board) and November 26, 2010 [Docket No. 2559] (which included the forms of the New Management Agreements and the Management Equity Plan);

q. filed, on November 5, 2010, *Tronox's Motion for Entry of an Order Approving Immaterial Modifications to Tronox's First Amended Joint Plan of Reorganization* [Docket No. 2402] (the "**Plan Modification Motion**");

r. filed, on November 13, 2010, the proposed *Findings of Fact, Conclusions of Law and Order Confirming the First Amended Joint Plan of Reorganization of Tronox Incorporated et al. Pursuant to Chapter 11 of the Bankruptcy Code* [Dkt. No. 2481];

s. filed, on November 13, 2010, *Tronox's Memorandum of Law (A) in Support of Confirmation of the First Amended Joint Plan of Reorganization of Tronox Incorporated*

et al. *Pursuant to Chapter 11 of the Bankruptcy Code and (B) in Response to Objections Thereto* [Docket No. 2482] (the "**Plan Confirmation Brief**");

t. filed, on November 15, 2010, the *Amended Certification of Alison M. Tearnen with Respect to the Tabulation of Votes on the First Amended Joint Plan of Reorganization of Tronox Incorporated et al. Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 2492] (the "**Voting Certification**"), detailing the results of the Plan voting process;

u. filed, on November 15, 2010, the Declaration of Dennis L. Wanlass in Support of Confirmation of the First Amended Joint Plan of Reorganization of Tronox Incorporated et al. Pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 2500]; the Declaration of Todd R. Snyder in Support of Confirmation of the First Amended Joint Plan of Reorganization of Tronox Incorporated et al. Pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 2501]; Declaration of Gary Barton in Support of Confirmation of First Amended Joint Plan of Reorganization of Tronox Incorporated, et al. Pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 2502] (the "**Declarations in Support of Confirmation**");

This Court having:

a. entered, on September 17, 2010, the *Order Authorizing Tronox to Enter Into (A) a Plan Support Agreement and (B) an Equity Commitment Agreement, and to Pay Certain Fees in Connection Therewith* [Docket No. 2072];

b. entered on September 30, 2010, the Rights Offering Order [Docket No. 2186];

c. entered, on September 30, 2010, the Solicitation Procedures Order [Docket No. 2187], which, among other things, set November 17, 2010, at 11:00 a.m. (ET), as the date and time for the commencement of the Confirmation Hearing pursuant to Bankruptcy Rules 3017 and 3018 and sections 1126, 1128 and 1129 of the Bankruptcy Code;

d. entered, on September 30, 2010, the Order Authorizing Tronox to (A) Enter into the Facility Syndication Engagement Letter and (B) Pay Fees and Costs to GS Lending Partners in Connection Therewith [Docket No. 2183];

e. entered, on October 20, 2010, the *Interim Order (I) Authorizing Debtors (A) to Obtain Postpetition Secured Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (C) to Use Postpetition Financing to Repay Existing Debtor-in-Possession Financing, and (II) Scheduling Final Hearing Under Bankruptcy Rule 4001(B) and (C)* [Docket No. 2281];

f. entered, on October 27, 2010, the *Order Authorizing Tronox to (A) Enter Into an Exit Financing Commitment Letter and (B) Pay Fees and Expenses to Wells Fargo in Connection Therewith* [Docket No. 2318];

g. entered, on November 9, 2010, the Final Order Authorizing Debtors (A) to Obtain Postpetition Secured Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1),

364(c)(2), 364(c)(3), 364(d)(1) and 364(e), (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (C) to Use Postpetition Financing to Repay Existing Debtor-in-Possession Financing [Docket No. 2421];

h. entered, on November 17, 2010, an order approving the Plan Modification Motion [Docket No. 2533];

i. reviewed the Plan, the Disclosure Statement, the filed portions of the Plan Supplement, the Plan Confirmation Brief, the Declarations in Support of Confirmation, the Voting Certification and all pleadings, exhibits, statements, responses and comments regarding Confirmation, including all objections, statements and reservations of rights made with respect thereto;

j. heard the statements, arguments and objections made by counsel in respect of Confirmation;

k. considered all oral representations, testimony, documents, filings and other evidence regarding Confirmation;

l. overruled, including for the reasons stated on the record of the Confirmation Hearing, any and all objections to the Plan and Confirmation thereof and all statements and reservations of rights not consensually resolved or withdrawn unless otherwise indicated; and

m. taken judicial notice of all papers and pleadings filed in the Chapter 11 Cases.

NOW, THEREFORE, it appearing to the Court that notice of the Confirmation Hearing, the Plan and all modifications thereto has been adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated thereby and that any party in interest so affected has had the opportunity to object to Confirmation; and, after due deliberation and based upon the record described above, it appearing to the Court that the legal and factual bases set forth in the documents filed in support of Confirmation and presented at the Confirmation Hearing, as well as the representations made by Tronox on the record of the Confirmation Hearing, establish just cause for the relief granted herein; the Court hereby makes and issues the following Findings of Fact, Conclusions of Law and Order:[3]

[3] The findings of fact and the conclusions of law set forth herein shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. All findings of fact and conclusions of law set forth in the Bench Decision are hereby

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

IT IS HEREBY DETERMINED, FOUND, ADJUDGED, DECREED AND ORDERED THAT:

A. Jurisdiction and Venue

1. Venue in this Court was proper as of the Petition Date pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2). The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334. The Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

B. Eligibility for Relief

2. The Tronox Debtors were and are entities eligible for relief under section 109 of the Bankruptcy Code.

C. Commencement and Joint Administration of the Chapter 11 Cases

3. On the Petition Date, Tronox commenced the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code in this Court. By prior order of the Court, the Chapter 11 Cases were consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015 [Docket No. 39]. Tronox has operated its businesses and managed its properties as debtors in possession since the Petition Date pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

D. Judicial Notice

4. The Court takes judicial notice of (and deems admitted into evidence for

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incorporated herein. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Confirmation) the docket of the Chapter 11 Cases and all related adversary proceedings and appeals maintained by the clerk of the applicable court or its duly appointed agent, including all pleadings and other documents on file, all orders entered, all hearing transcripts and all evidence and arguments made, proffered or adduced at the hearings held before the applicable court during the pendency of the Chapter 11 Cases. Any resolutions of objections to Confirmation explained on the record at the Confirmation Hearing are hereby incorporated by reference. All unresolved objections, statements and reservations of rights to the extent not sustained as set forth in the Bench Decision are hereby overruled on the merits.

E. Claims Bar Date

5. On May 28, 2009, the Bankruptcy Court entered the *Order (A) Setting Bar Dates for Filing Proofs of Claim, (B) Approving the Form and Manner for Filing Proofs of Claim and (C) Approving Notice Thereof* [Docket No. 466] (the "**Bar Date Order**"). The Bar Date Order established, as applicable, (a) 5:00 p.m. (PT) on August 12, 2009 or (b) such other period of limitation as may be specifically fixed by an order of the Bankruptcy Court for filing such Claims as the deadline for filing Proofs of Claim.

F. Solicitation Procedures Order and Rights Offering Order

6. On September 30, 2010, the Bankruptcy Court entered the Solicitation Procedures Order, which, among other things: (a) approved the Disclosure Statement as containing adequate information within the meaning of section 1125 of the Bankruptcy Code; (b) fixed September 22, 2010 as the Record Date; (c) fixed November 5, 2010 at 4:00 p.m. (ET), as the Plan Objection Deadline; (d) fixed November 5, 2010 at 5:00 p.m. (PT), as the Voting Deadline; (e) fixed November 17, 2010 at 11:00 a.m. (ET), as the date and time for the commencement of the Confirmation Hearing; and (f) approved the Solicitation Procedures, the Solicitation Packages and other materials relating to solicitation that were attached as exhibits to the Solicitation

Procedures Order, including the Confirmation Hearing Notice, the Tort Notice, the Notice of Non-Voting Status, the Notice to Disputed Claims and the Notice to Contract and Lease Counterparties.

7. On September 30, 2010, the Bankruptcy Court entered the Rights Offering Order, which, among other things, approved the procedures associated with the Rights Offering (the "**Rights Offering Procedures**"), the Rights Exercise Form and the Q&A with respect to the Rights Offering.

G. Transmittal and Mailing of Materials; Notice

8. As evidenced by the KCC Affidavits, due, adequate and sufficient notice of the Disclosure Statement, the Plan and the Confirmation Hearing, together with all deadlines for voting on or objecting to the Plan and with respect to Confirmation, has been given to: (a) all known holders of Claims and Equity Interests; (b) all parties that requested notice in accordance with Bankruptcy Rule 2002; and (c) all counterparties to Executory Contracts and Unexpired Leases with Tronox, in substantial compliance with the Solicitation Procedures Order, Bankruptcy Rules 2002(b), 3017 and 3020(b), and the Local Bankruptcy Rules for the Southern District of New York (the "**Local Rules**") and no other or further notice is or shall be required. Adequate and sufficient notice of the Confirmation Hearing, and any applicable dates, deadlines and hearings described in the Solicitation Procedures Order was given in compliance with the Bankruptcy Rules, the Local Rules and the Solicitation Procedures Order as evidenced by the KCC Affidavits, and no other or further notice is or shall be required.

9. Tronox published the Confirmation Hearing Notice once each in *The Oklahoman* and the national edition of *The Wall Street Journal*, in compliance with the Disclosure Statement, the Solicitation Procedures Order and Bankruptcy Rule 2002(l), as evidenced by the Publication Affidavit, and no other or further notice is or shall be required.

H. Solicitation

10. Votes for acceptance and rejection of the Plan were solicited in good faith and in compliance with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, the Disclosure Statement, the Solicitation Procedures Order, all other applicable provisions of the Bankruptcy Code, Bankruptcy Rules, Local Rules and any other applicable rules, laws and regulations.

11. Specifically, the Solicitation Packages approved by the Court in the Solicitation Procedures Order (including the Disclosure Statement, the Plan, the form of ballots and related notices approved thereby) were transmitted to and served on all holders of Claims or Equity Interests in Classes that were entitled to vote to accept or reject the Plan, and relevant portions of the Solicitation Packages and other notices approved by the Solicitation Procedures Order were transmitted to and served on other parties in interest in the Chapter 11 Cases, all in compliance with section 1125 of the Bankruptcy Code, the Solicitation Procedures Order, the Solicitation Procedures, the Bankruptcy Rules and the Local Rules. Transmittal and service of such documents was adequate and sufficient, and no further notice is or shall be required.

12. The Rights Offering Procedures, Rights Exercise Form and Q&A approved by the Court in the Rights Offering Order were transmitted to and served on all holders of Claims that were entitled to participate in the Rights Offering. Transmittal and service of such documents was adequate and sufficient, and no further notice is or shall be required.

I. Voting Certification

13. Tronox filed the Voting Certification before the commencement of the Confirmation Hearing, consistent with the Solicitation Procedures Order. All procedures used to tabulate ballots received in connection with Confirmation were fair and conducted in accordance with the Solicitation Procedures Order, as evidenced by the KCC Affidavits.

14. As set forth in the Plan and Disclosure Statement, holders of Claims and Equity Interests in Classes 3, 4, 5, 6, 7 and 8 (collectively, the "**Voting Classes**") were eligible to vote on the Plan pursuant to the Plan and the Solicitation Procedures. In addition, holders of Claims in Classes 1 and 2 (collectively, the "**Deemed Accepting Classes**") are deemed to accept the Plan and, therefore, are not entitled to vote to accept or reject the Plan.

15. As evidenced by the Voting Certifications, holders of Equity Interests in Class 8 (the "**Rejecting Class**") voted to reject the Plan. As further evidenced by the Voting Certifications, all other Voting Classes, specifically holders of Claims in Classes 3, 4, 5, 6 and 7, voted to accept the Plan (collectively, the "**Impaired Accepting Classes**").

16. Based on the foregoing, and as evidenced by the Voting Certification, at least one Impaired Class of Claims (excluding the acceptance by any insiders of Tronox) has voted to accept the Plan in accordance with the requirements of sections 1124 and 1126 of the Bankruptcy Code.

J. Plan Supplement

17. On October 29, 2010, as supplemented on November 9, 2010, November 12, 2010, November 16, 2010, November 26, 2010 and the record of the Confirmation Hearing, Tronox filed portions of the Plan Supplement with the Bankruptcy Court and served notice of such filing on the Core Group and the 2002 List (each as defined in Dkt. No. 47, the case management order in the Chapter 11 Cases) and those other parties affected by documents contained therein. The documents contained in the filed portions of the Plan Supplement are integral to, part of and incorporated by reference into the Plan. The filed portions of the Plan Supplement comply with the terms of the Plan, and the filing and notice of such documents constitutes good and proper notice in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the Solicitation Procedures Order, and no other or further notice is or

shall be required. Pursuant to the Plan, Tronox reserves its right to modify and/or supplement the Plan Supplement prior to the Effective Date in a manner consistent with and contemplated by the Plan.

K. Modifications to the Plan

18. On November 5, 2010, Tronox filed the Plan Modification Motion. The filing of the Plan Modification Motion and the description therein and at the Confirmation Hearing of certain modifications to the Plan constitutes due and sufficient notice thereof. In addition, subsequent to the Voting Deadline (as defined in the Solicitation Procedures Order), Tronox made certain modifications to the Plan. Any and all modifications to the Plan since the entry of the Solicitation Procedures Order, including as described in the Plan Modification Motion or otherwise set forth in this Confirmation Order, are consistent with all of the provisions of the Bankruptcy Code, including sections 1122, 1123, 1125 and 1127 thereof. None of the modifications made since the entry of the Solicitation Procedures Order effects a materially adverse change in the treatment of any holder of a Claim or Equity Interest under the Plan. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, these modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that the holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan as modified and attached hereto as **Exhibit A** shall constitute the Plan submitted for Confirmation. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all holders of Claims or Equity Interests who voted to accept the Plan are hereby deemed to have accepted the Plan as modified, and no holder of a Claim or Equity Interest shall be permitted to change its vote on account of any such modifications to the Plan.

L. Bankruptcy Rule 3016

19. The Plan is dated and identifies the Entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the clerk of the Court satisfied Bankruptcy Rule 3016(b).

M. Burden of Proof

20. Tronox, as proponent of the Plan, has met its burden of proving the elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard for Confirmation.

N. Compliance with the Requirements of Section 1129 of the Bankruptcy Code

21. The Plan complies with all applicable provisions of section 1129 of the Bankruptcy Code as follows:

i. Section 1129(a)(1)—Compliance of the Plan with Applicable Provisions of the Bankruptcy Code

22. The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code, including sections 1122 and 1123 thereof.

a. Sections 1122 and 1123(a)(1)—Proper Classification

23. The classification of Claims and Equity Interests under the Plan is proper under the Bankruptcy Code. Pursuant to sections 1122(a) and 1123(a)(1) of the Bankruptcy Code, Article III of the Plan provides for the separate classification of Claims and Equity Interests into 8 Classes, based on differences in the legal nature or priority of such Claims and Equity Interests (other than Administrative Claims, Priority Tax Claims, Replacement DIP Facility Claims and statutory fees owed to the U.S. Trustee ("**Statutory Fees**"), which are addressed in Article II of the Plan and which are not required to be designated as separate Classes pursuant to section

1123(a)(1) of the Bankruptcy Code). Valid business, factual and legal reasons exist for the separate classification of the various Classes of Claims and Equity Interests created under the Plan, the classifications were not done for any improper purpose and the creation of such Classes does not unfairly discriminate between or among holders of Claims or Equity Interests.

24. As required by section 1122(a) of the Bankruptcy Code, each Class of Claims and Equity Interests contains only Claims or Equity Interests that are substantially similar to the other Claims or Equity Interests within that Class. Accordingly, the requirements of sections 1122(a), 1122(b) and 1123(a)(1) of the Bankruptcy Code are satisfied.

b. Section 1123(a)(2)—Specification of Unimpaired Classes

25. Article III of the Plan specifies that Claims in Classes 1 and 2 are Unimpaired under the Plan. Additionally, Article II of the Plan specifies that Administrative Claims, Priority Tax Claims, Replacement DIP Facility Claims and Statutory Fees are Unimpaired, although these Claims are not classified under the Plan. Accordingly, the requirements of section 1123(a)(2) of the Bankruptcy Code are satisfied.

c. Section 1123(a)(3)—Specification of Treatment of Impaired Classes

26. Article III of the Plan specifies the treatment of each Impaired Class under the Plan, including Classes 3, 4, 5, 6, 7 and 8. Accordingly, the requirements of section 1123(a)(3) of the Bankruptcy Code are satisfied.

d. Section 1123(a)(4)—No Discrimination

27. Pursuant to section 1123(a)(4) of the Bankruptcy Code, Article III of the Plan uniformly provides for the same treatment of each Claim or Equity Interest in a particular Class, as the case may be, unless the holder of a particular Claim or Equity Interest has agreed to a less favorable treatment with respect to such Claim or Equity Interest. Accordingly, the requirements of section 1123(a)(4) of the Bankruptcy Code are satisfied.

e. Section 1123(a)(5)—Adequate Means for Plan Implementation

28. Pursuant to section 1123(a)(5) of the Bankruptcy Code, Article IV and various other provisions of the Plan, and various documents and agreements set forth in the filed portions of the Plan Supplement, provide adequate and proper means for the Plan's implementation, including: (a) the deemed substantive consolidation of the Tronox Debtors; (b) the general settlement of Claims and Equity Interests under the Plan; (c) the settlement of Environmental Claims and Tort Claims, including the Environmental Claims Settlement Agreement, the creation and funding of the Environmental Response Trusts, the lease relating to the Henderson Facility, the creation and funding of the Tort Claims Trust and the creation and funding of the Anadarko Litigation Trust; (d) the Exit Financing (which includes, for the avoidance of doubt, the Revolving Facility[4]) and the conversion of Replacement DIP Facility Claims into a portion of the Exit Financing and the incurrence of new indebtedness as part of the Exit Financing; (e) the Rights Offering; (f) the issuance and distribution of the New Common Stock, the New Warrants and the other securities issued under the Plan, and the application of section 1145 of the Bankruptcy Code; (g) entry into the Registration Rights Agreement and the New Warrant Agreement; (h) the cancellation of existing agreements, Unsecured Notes and Equity Interests; (i) the proposed restructuring transactions under the Plan; (j) the continued corporate existence of the Tronox Debtors; (k) the vesting of the Retained Assets in Reorganized Tronox; (l) certain amendments to the Tronox Debtors' organizational documents, including adoption and filing of

[4] Consistent with the terms and conditions set forth in the commitment letter attached to the Revolving Facility Commitment Motion (the "**Revolving Commitment Letter**"), the Revolving Facility shall mean the $125 million asset -based revolving credit facility (the "**Revolving Facility**") to be entered into on the Effective Date pursuant to the terms of the Credit Agreement (the "**Revolving Credit Agreement**"), as the same may be amended, restated, supplemented or otherwise modified from time to time, by and among Reorganized Tronox, the other U.S. Borrowers and Guarantors party thereto, Wells Fargo Capital Finance, LLC, as Agent (the "**Revolving Agent**"), and the lenders signatory thereto (the "**Revolving Lenders**"), together with all other agreements and documents related to the Revolving Facility, in each case, as the same may be amended, restated, supplemented or otherwise modified form time to time (together with the Revolving Credit Agreement, collectively, the "**Revolving Credit Documents**").

the Amended and Restated Certificate of Incorporation of Reorganized Tronox Incorporated and the adoption of the Amended and Restated Bylaws of Reorganized Tronox Incorporated; (m) the appointment of the New Board; (n) adoption and implementation of the Management Equity Plan, the Management 2010 Bonus Plan and the New Management Agreements; (o) the application of section 1146 of the Bankruptcy Code; (p) the preservation of certain specified Causes of Action; (q) the treatment of employee and retiree benefits, including assumption of the Pension Plan; (r) and the assumption of indemnification provisions and the D&O Liability Insurance Policies.

29. As of the Effective Date, Environmental Properties Management, LLC; Le Petomane XXVII, Inc.; Greenfield Environmental Multistate Trust, LLC; Greenfield Environmental Savannah Trust, LLC; and Weston Solutions, Inc., shall be appointed as environmental response trustees for the Cimarron Environmental Response Trust, Henderson Environmental Response Trust, Multistate Environmental Response Trust, Savannah Environmental Response Trust, and West Chicago Environmental Response Trust, respectively, provided that the Environmental Claims Settlement Agreement shall first have been approved by the Court under applicable environmental laws after the completion of public comment.

30. Moreover, Reorganized Tronox will have, immediately upon the Effective Date, sufficient Cash to make all payments required to be made on the Effective Date pursuant to the terms of the Plan. Accordingly, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

f. Section 1123(a)(6)—Voting Power of Equity Securities

31. The Amended and Restated Certificate of Incorporation of Reorganized Tronox Incorporated contained in the Plan Supplement prohibits the issuance of non-voting securities. The Plan, therefore, satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code.

g. Section 1123(a)(7)—Selection of Officers and Directors

32. The identity and affiliations of the members of the New Board have been disclosed prior to and on the record of the Confirmation Hearing. The New Board shall consist of seven (7) directors, including (a) the Chief Executive Officer of Reorganized Tronox Incorporated and (b) six other directors who each shall be an "independent director" within the meaning of the rules of the New York Stock Exchange. The members of the New Board were selected by the Backstop Parties in consultation with Tronox and the Creditors' Committee, and subject to background checks reasonably satisfactory to Tronox and the Creditors' Committee, with the Creditors' Committee having unconditional veto rights with respect to the selection of two of the directors. The existing officers of Tronox shall remain in their current capacities as officers of Reorganized Tronox on the Effective Date pursuant to the terms of the New Management Agreements. The selection of the initial directors and officers of Reorganized Tronox was, is and will be consistent with the interests of holders of Claims and Equity Interests and public policy. Accordingly, the requirements of section 1123(a)(7) of the Bankruptcy Code are satisfied.

h. Section 1123(b)—Discretionary Contents of the Plan

33. The Plan contains various provisions that may be construed as discretionary and are not required for Confirmation under the Bankruptcy Code. As set forth below, such discretionary provisions comply with section 1123(b) of the Bankruptcy Code and are not inconsistent with the applicable provisions of the Bankruptcy Code. Thus, section 1123(b) of the Bankruptcy Code is satisfied.

(i) Section 1123(b)(1)-(2)—Claims and Executory Contracts

34. Pursuant to sections 1123(b)(1) and 1123(b)(2) of the Bankruptcy Code, Article III of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims

and Equity Interests, and Article V of the Plan provides for the assumption, assumption and assignment or rejection of the Executory Contracts and Unexpired Leases of Tronox not previously assumed, assumed and assigned or rejected pursuant to section 365 of the Bankruptcy Code and appropriate authorizing orders of the Court.

(ii) Section 1123(b)(3)—Settlement, Releases, Exculpation, Injunction and Preservation of Claims and Causes of Action

35. **Compromise and Settlement.** The Plan settles numerous litigable issues in the Chapter 11 Cases pursuant to Bankruptcy Rule 9019 and sections 363 and 1123 of the Bankruptcy Code. These settlements are in consideration for the distributions and other benefits provided under the Plan and any other compromise and settlement provisions of the Plan and the Plan itself constitute a compromise of all Claims, Equity Interests or Causes of Action relating to the contractual, legal and subordination rights that a holder of a Claim or Equity Interest may have with respect to any Allowed Claim or Equity Interest or any distribution to be made on account of such an Allowed Claim or Equity Interest. The compromise and settlement of such Claims and Equity Interests embodied in the Plan is in the best interests of Tronox, its Estates and all holders of Claims and Equity Interests, and is fair, equitable and reasonable.

36. **Global Creditor Settlement.** The Plan is premised on a global settlement (the "**Global Creditor Settlement**") among Tronox, the Creditors' Committee, the Ad Hoc Noteholders' Committee, the Backstop Parties, the United States, the Governmental Environmental Entities, the Nevada Parties and the holders of Tort Claims (collectively, the "**Settling Parties**"), which has enabled the implementation of Tronox's restructuring goals and includes the Environmental Claims Settlement Agreement, the creation and funding of the Environmental Response Trusts, the lease relating to the Henderson Facility, the creation and

funding of the Tort Claims Trust, the creation and funding of the Anadarko Litigation Trust and the Rights Offering.

37. The Global Creditor Settlement is the cornerstone of the Plan. It (a) is a product of Tronox's reasonable business judgment, (b) is fair and equitable, (c) is a necessary component to the feasibility of the Plan, (d) falls well above the lowest point in the range of reasonableness, (e) is in the best interests of Tronox, its Estates and all holders of Claims and Equity Interests, (f) does not violate the absolute priority rule, (g) was negotiated at arm's length and in good faith with the assistance of experienced counsel and financial advisors and (h) is an essential element of the Plan.

38. In reaching an ultimate decision on the substantive fairness of the Global Creditor Settlement, the Court considered the following factors: (a) the balance between the possibility of success of litigation and the Global Settlement's future benefits, including avoiding expensive and lengthy estimation or other proceedings with respect to the amount and priority of Environmental Claims and Tort Claims; (b) the likelihood of complex and protracted litigation, including with respect to the amount and priority of the Environmental Claims and Tort Claims, and risk and difficulty of collecting on the judgment; (c) the proportion of creditors and parties in interest that support the Global Settlement; (d) the competency of counsel reviewing the Global Settlement; (e) the nature and breadth of releases to be obtained by officers and directors; and (f) the extent to which the Global Settlement is the product of arm's length bargaining.

39. **Equity Committee Settlement.** As described more fully in the Plan Modification Motion and the Plan Confirmation Brief, for settlement purposes only, the Plan provides holders of Class 8 Equity Interests in Tronox Incorporated their pro rata share of the New Warrants (the "**Equity Committee Settlement**," and together with the Global Creditor

Settlement, the "**Global Settlement**"). The Equity Committee Settlement was proposed in good faith, is the product of Tronox's reasonable business judgment and is in the best interests of Tronox, its Estates and all holders of Claims and Equity Interests. It provides certainty regarding valuation issues and ensures that Tronox can proceed toward confirmation of the Plan and emergence from chapter 11 in an expeditious manner, free from the distraction of substantial litigation with the Equity Committee. The Equity Committee Settlement was negotiated at arm's length and in good faith with the assistance of experienced counsel and financial advisors.

40. As a result of the foregoing, the Global Settlement is fair, reasonable and meets the standard for approval of settlements pursuant to section 1123(b)(3) of the Bankruptcy Code, Bankruptcy Rule 9019 and applicable United States Supreme Court and Second Circuit law. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968); *In re Iridium Operating LLC*, 478 F.3d 452 (2d Cir. 2007).

41. Pursuant to Bankruptcy Rule 9019, Tronox is authorized, without further approval of this Court, to execute and deliver all agreements, documents, instruments, and certificates relating to the Global Settlement and consistent with the terms of the Plan and the Global Settlement and to perform its obligations thereunder.

42. **Releases by Tronox.** The releases and discharges of Claims and Causes of Action by Tronox described in Article VIII.C of the Plan (the "**Tronox Release**") pursuant to section 1123(b)(3)(A) of the Bankruptcy Code represents a valid exercise of Tronox's business judgment. Pursuing any such claims against the Released Parties is not in the best interests of Tronox's various constituencies as the costs involved likely would outweigh any potential benefits from pursuing such claims.

43. **Third Party Releases.** For the reasons reflected on the record of the Confirmation Hearing, the releases of Claims and causes of action by holders of Claims and Equity Interests described in Article VII.D of the Plan (the "**Third Party Releases**") are appropriate and warranted under the unique circumstances of the Chapter 11 Cases.

44. The Plan and the Global Settlement reflect the settlement and resolution of complex issues, and the releases are an integral part of the consideration to be provided in exchange for the compromises and resolutions embodied in the Plan and the Global Settlement. The release provisions in the Plan are a critical component of the Global Settlement, which maximizes recoveries to Tronox's stakeholders and affords Tronox the opportunity to restructure its businesses to compete effectively post-emergence.

45. In approving the Third Party Releases, the Bankruptcy Court determined the Third Party Releases are (a) in exchange for the good, valuable and significant consideration provided by the Released Parties, (b) a good faith settlement and compromise of the claims released by holders of Claims and Equity Interests; (c) in the best interests of Tronox and all holders of Claims and Equity Interests; (d) fair, equitable and reasonable; (e) necessary to the Plan because the enjoined claims would directly impact Tronox's reorganization as many of the Released Parties are beneficiaries of indemnity obligations; (f) given and made after notice and opportunity for hearing; (g) a product of the Global Settlement, which was negotiated at arm's length and in good faith with multiple creditor constituencies and which was accepted overwhelmingly by all Voting Classes; and (h) a bar to any holders of Claims and Equity Interests asserting any Claim released by the Third Party Release against any of the Released Parties to the fullest extent permitted by applicable law.

46. **Exculpation.** The exculpation provisions set forth in Article VIII.F of the Plan are essential to the Plan. The record in the Chapter 11 Cases fully supports the exculpation, and the exculpation provisions set forth in Article VIII.F of the Plan, as modified herein, are appropriately tailored to protect the Exculpated Parties from inappropriate litigation related to acts or omissions up to and including the Effective Date and are hereby approved; provided that nothing in the Plan shall (a) exculpate any Person or Entity from any liability resulting from any act or omission constituting fraud, willful misconduct, gross negligence, criminal conduct, malpractice, misuse of confidential information that causes damages or ultra vires acts as determined by a Final Order or (b) limit the liability of the professionals of the Exculpated Parties to their respective clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8 Rule 1.8(h)(1) (2009).

47. Notwithstanding anything to the contrary herein, the release provisions in the Plan do not release any post-Effective Date obligations of any party under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan. No Person shall be discharged, released or relieved from any liability with respect to the Pension Plan as a result of the Chapter 11 Cases or the Plan, nor shall the PBGC, the Pension Plan or any other Person be enjoined or precluded from enforcing any liability with respect to the Pension Plan as a result of the Chapter 11 Cases, the Plan's provisions or the Plan's Confirmation. Notwithstanding anything to the contrary herein, the release provisions in the Plan do not release the personal liability of any of the aforementioned Released Parties for any statutory violation of applicable tax laws or bar any right of action asserted by a governmental taxing authority against the aforementioned Released Parties for any statutory violation of applicable tax laws.

48. **Injunction.** The injunction provisions set forth in Article VIII.E of the Plan (the "**Plan Injunction**") are essential to the Plan and are necessary to preserve and enforce the Tronox Releases, the Third Party Releases and the Plan, and are narrowly tailored to achieve that purpose.

49. Each of the Tronox Release, the Third Party Releases, the exculpation provision and the Plan Injunction are: (a) to the fullest extent permitted by applicable law, within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), 1334(b) and 1334(d); (b) an essential means of implementing the Plan pursuant to section 1123(a)(6) of the Bankruptcy Code; (c) an integral element of the transactions incorporated into the Plan; (d) in the best interests of Tronox, its Estates and all stakeholders in the Chapter 11 Cases; (e) important to the overall objectives of the Plan to finally resolve all Claims among or against the parties-in-interest in the Chapter 11 Cases with respect to Tronox; and (f) consistent with sections 105, 1123 and 1129 of the Bankruptcy Code, other provisions of the Bankruptcy Code and other applicable law. The record of the Confirmation Hearing and the Chapter 11 Cases is sufficient to support the Tronox Release, the Third Party Releases, the exculpation provisions and the injunction contained in Article VIII of the Plan.

50. **No Release of Certain Claims or Liabilities.** Notwithstanding anything to the contrary herein or in the Plan, except insofar as any release or discharge is expressly provided in the Environmental Claims Settlement Agreement, the Plan does not release or discharge (a) any criminal liability, (b) any liability to any Governmental Unit that is not a claim within the meaning of section 101(5) of the Bankruptcy Code, (c) any claim of any Governmental Unit or the Nevada Parties that arises after the Effective Date, (d) any liability of a non-debtor to any Governmental Unit or the Nevada Parties, or (e) subject to the provisions of the Environmental

Claims Settlement Agreement, any liabilities to which Reorganized Tronox may be subject under applicable laws to a Governmental Unit or the Nevada Parties as the owner or operator of the Retained Assets after the Effective Date.

51. Notwithstanding anything to the contrary herein or in the Plan: (a) the rights of the Internal Revenue Service to setoff and recoupment shall be preserved; and (b) nothing in Article VIII.D of the Plan shall constitute a release of the Internal Revenue Service's claims, if any, against the Released Parties and nothing shall affect the ability of the Internal Revenue Service to pursue, to the extent allowed by non-bankruptcy law, any non-debtors for any liabilities that may be related to any federal tax liabilities owed by Tronox or Reorganized Tronox.

52. Notwithstanding anything to the contrary herein or in the Plan, nothing herein or in the Plan shall discharge, release or preclude (a) any liability to the Securities and Exchange Commission that is not a Claim and (b) any liability to the SEC on the part of any Person or Entity that is not a Tronox Debtor or a Reorganized Tronox Debtor.

53. Nothing herein, in the Plan, the Plan Supplement or any document related thereto shall in any way release any claim against or liability of the following parties (or their Affiliates), who are not Released Parties: Lehman Brothers Holdings Inc., Ernst & Young LLP, Kerr-McGee Corporation and Anadarko Petroleum Corporation and their respective officers, directors, partners, managers, employees, advisors, attorneys, professionals, accountants, investment bankers, consultants, agents and other representatives (including their respective officers, directors, partners, managers, employees, members and professionals) in their capacity as such, whether such claims or liabilities be direct or indirect, fixed or contingent, including the claims asserted in the Anadarko Litigation. For the avoidance of doubt, nothing herein, in the Plan, the

Plan Supplement or any document or agreement shall in any way release any individuals who were former directors or officers of the Tronox Debtors or their subsidiaries and also were or currently are directors or officers of Kerr-McGee Corporation and/or Anadarko Petroleum Corporation.

54. **Preservation of Claims and Causes of Action.** Article IV.O of the Plan appropriately provides for the preservation and retention by Reorganized Tronox of all Causes of Action (excluding the Anadarko Litigation) in accordance with section 1123(b)(3)(B) of the Bankruptcy Code. The provisions regarding the retained Causes of Action in the Plan are appropriate and are in the best interests of Tronox, its Estates and all holders of Claims and Equity Interests.

i. Section 1123(d)—Cure of Defaults

55. Article V.C of the Plan provides for the satisfaction of any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan in accordance with section 365 of the Bankruptcy Code by payment of any "cure amount" pursuant to the terms thereof. Tronox, in accordance with the Plan, distributed notices of proposed assumption and proposed cure amounts to the applicable counterparties, which notices included procedures for objecting to and resolving proposed assumptions of Executory Contracts and Unexpired Leases and any cure amounts paid in connection therewith. Accordingly, the requirements of section 1123(d) of the Bankruptcy Code are satisfied.

ii. Section 1129(a)(2)—Compliance of Tronox with the Applicable Provisions of the Bankruptcy Code

56. Tronox, as proponent of the Plan, has complied with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(2) of the Bankruptcy Code, including

sections 1122, 1123, 1124, 1125, 1126 and 1128 of the Bankruptcy Code and Bankruptcy Rules 3017, 3018 and 3019.

57. Votes to accept or reject the Plan were solicited by Tronox and its present and former members, partners, representatives, officers, directors, employees, advisors, attorneys and agents after the Court approved the adequacy of the Disclosure Statement pursuant to section 1125(a) of the Bankruptcy Code.

58. Tronox and its respective present and former members, partners, representatives, officers, directors, employees, advisors, attorneys and agents have solicited and tabulated votes on the Plan and have participated in the activities described in section 1125 of the Bankruptcy Code fairly, in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in a manner consistent with the applicable provisions of the Disclosure Statement, the Solicitation Procedures Order, the Bankruptcy Code, the Bankruptcy Rules and all other applicable rules, laws and regulations, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

59. Tronox and its respective present and former members, officers, directors, employees, advisors, attorneys and agents have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the offering, issuance and distribution of recoveries under the Plan and, therefore, are not, and on account of such distributions will not be, liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or distributions made pursuant to the Plan, so long as such distributions are made consistent with and pursuant to the Plan. Accordingly, the requirements of section 1129(a)(2) of the Bankruptcy Code are satisfied.

iii. Section 1129(a)(3)—Proposal of Plan in Good Faith

60. Tronox has proposed the Plan in good faith and not by any means forbidden by law. In so determining, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan itself and the process leading to its formulation, including the negotiation of the Global Settlement. Tronox's good faith is evident from the facts and record of the Chapter 11 Cases, the Disclosure Statement and the hearing thereon, the record of the Confirmation Hearing and other proceedings held in the Chapter 11 Cases.

61. The Plan is the product of extensive, good faith, arm's-length negotiations among Tronox and certain of its principal constituencies, including the Settling Parties and the Equity Committee. The Plan itself and the process leading to its formulation provide independent evidence of Tronox's good faith, serve the public interest and assure fair treatment of holders of Claims and Equity Interests. Consistent with the overriding purpose of chapter 11, the Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate purpose of allowing Tronox to reorganize and emerge from chapter 11 free of the Environmental Claims (to the extent provided by the Environmental Claims Settlement Agreement) and Tort Claims, and with a capital structure that will allow it to satisfy its obligations with sufficient liquidity and capital resources. Accordingly, the requirements of section 1129(a)(3) of the Bankruptcy Code are satisfied.

iv. Section 1129(a)(4)—Court Approval of Certain Payments as Reasonable

62. The procedures set forth in the Plan for the Court's review and ultimate determination of the fees and expenses to be paid by Tronox in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, satisfy the objectives

of, and are in compliance with, section 1129(a)(4) of the Bankruptcy Code. Accordingly, the requirements of section 1129(a)(4) of the Bankruptcy Code are satisfied.

v. Section 1129(a)(5)—Disclosure of Identity of Proposed Management, Compensation of Insiders and Consistency of Management Proposals with the Interests of Creditors and Public Policy

63. The Plan complies with the requirements of section 1129(a)(5) of the Bankruptcy Code because, in the Disclosure Statement, the Plan and the Plan Supplement, Tronox has disclosed the following (a) the identity and affiliations of each proposed director, each proposed officer and the manner in which additional officers and directors of Reorganized Tronox will be chosen following Confirmation; and (b) the identity of and nature of any compensation for any insider who will be employed or retained by Reorganized Tronox. The method of appointment of directors and officers of Reorganized Tronox was, is and will be consistent with the interests of holders of Claims and Equity Interests and public policy. Accordingly, the requirements of section 1129(a)(5) of the Bankruptcy Code are satisfied.

vi. Section 1129(a)(6)—Approval of Rate Changes

64. The Plan does not contain any rate changes subject to the jurisdiction of any governmental regulatory commission and therefore will not require governmental regulatory approval. Therefore, section 1129(a)(6) of the Bankruptcy Code is inapplicable to the Chapter 11 Cases.

vii. Section 1129(a)(7)—Best Interests of Holders of Claims and Equity Interests

65. The liquidation analysis attached as **Exhibit E** to the Disclosure Statement (the "**Liquidation Analysis**") and the other evidence related thereto in support of the Plan that was proffered or adduced at or prior to, or in declarations in connection with, the Confirmation Hearing: (a) are reasonable, persuasive, credible and accurate as of the dates such analysis or evidence was prepared, presented or proffered; (b) utilize reasonable and appropriate

methodologies and assumptions; (c) have not been controverted by other evidence; and (d) establish that holders of Allowed Claims and Equity Interests in every Class will recover property of a value at least as much or more under the Plan on account of such Claim or Equity Interest, as of the Effective Date, than the amount such holder would receive if Tronox was liquidated on the Effective Date under chapter 7 of the Bankruptcy Code. Accordingly, the requirements of section 1129(a)(7) of the Bankruptcy Code are satisfied.

viii. Section 1129(a)(8)—Conclusive Presumption of Acceptance by Unimpaired Classes; Acceptance of the Plan by Each Impaired Class

66. Classes 1 and 2 are Unimpaired Classes of Claims and are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. As set forth in the Voting Certification, Classes 3, 4, 5, 6 and 7 have voted to accept the Plan and Class 8 has voted to reject the Plan.

67. Because the Plan has not been accepted by the Rejecting Class, Tronox seeks Confirmation under section 1129(b), rather than section 1129(a)(8), of the Bankruptcy Code. Thus, although section 1129(a)(8) of the Bankruptcy Code has not been satisfied with respect to the Rejecting Class, the Plan is confirmable because the Plan does not discriminate unfairly and is fair and equitable with respect to the Rejecting Class and thus satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to the Rejecting Class as described further below.

ix. Section 1129(a)(9)—Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code

68. The treatment of Administrative Claims, Priority Tax Claims, Replacement DIP Facility Claims and Statutory Fees under Article II of the Plan satisfies the requirements of, and complies in all respects with, section 1129(a)(9) of the Bankruptcy Code. Accordingly, the requirements of section 1129(a)(9) of the Bankruptcy Code are satisfied.

x. Section 1129(a)(10)—Acceptance By At Least One Impaired Class

69. As set forth in the Voting Certifications, the Impaired Accepting Classes have voted to accept the Plan. Specifically, holders of Claims in Classes 3, 4, 5, 6 and 7 voted to accept the Plan. As such, there is at least one Class of Claims that is Impaired under the Plan and has accepted the Plan, determined without including any acceptance of the Plan by any insider (as defined by the Bankruptcy Code). Accordingly, the requirements of section 1129(a)(10) of the Bankruptcy Code are satisfied.

xi. Section 1129(a)(11)—Feasibility of the Plan

70. The Plan satisfies section 1129(a)(11) of the Bankruptcy Code. The evidence supporting the Plan proffered or adduced by Tronox at, or prior to, or in declarations filed in connection with, the Confirmation Hearing: (a) is reasonable, persuasive, credible and accurate as of the dates such analysis or evidence was prepared, presented or proffered; (b) utilizes reasonable and appropriate methodologies and assumptions; (c) has not been controverted by other evidence; (d) establishes that the Plan is feasible and Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of Reorganized Tronox or any successor to Reorganized Tronox under the Plan except as provided in the Plan; and (e) establishes that Reorganized Tronox will have sufficient funds available to meet its obligations under the Plan. Accordingly, the requirements of section 1129(a)(11) of the Bankruptcy Code have been satisfied.

xii. Section 1129(a)(12)—Payment of Bankruptcy Fees

71. Article II.D of the Plan provides that all fees payable pursuant to section 1930 of the United States Judicial Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases

are converted, dismissed, or closed, whichever occurs first. Accordingly, Tronox has satisfied the requirements of section 1129(a)(12) of the Bankruptcy Code.

xiii. Section 1129(a)(13)—Retiree Benefits

72. Section 1129(a)(13) of the Bankruptcy Code requires a plan to provide for "retiree benefits" (as defined in section 1114 of the Bankruptcy Code) at levels established pursuant to section 1114 of the Bankruptcy Code. Article V.I of the Plan provides that, on and after the Effective Date, all retiree benefits shall continue to be paid in accordance with applicable law. Accordingly, the requirements of section 1129(a)(13) of the Bankruptcy Code are satisfied.

xiv. Section 1129(b)—Confirmation of Plan Over Nonacceptance of Impaired Class

73. The Plan may be confirmed pursuant to section 1129(b) of the Bankruptcy Code notwithstanding that the requirements of section 1128(a)(8) have not been met because Tronox has demonstrated by a preponderance of the evidence that the Plan (a) satisfies all of the other requirements of section 1129(a) of the Bankruptcy Code and (b) does not "discriminate unfairly" and is "fair and equitable" with respect to Class 8 (the only impaired Class that voted to reject the Plan).

74. The Plan is "fair and equitable" with respect to Class 8 because no junior Class of Claims or Equity Interests will receive or retain any property under the Plan on account of such Claims or Equity Interests.

75. The evidence supporting the Plan proffered or adduced by Tronox at, or prior to, or in declarations filed in connection with, the Confirmation Hearing regarding Tronox's classification and treatment of Claims and Equity Interests: (a) is reasonable, persuasive, credible and accurate; (b) utilizes reasonable and appropriate methodologies and assumptions; and (c) has not been controverted by other creditable evidence.

76. The Plan, therefore, satisfies the requirements of section 1129(b) of the Bankruptcy Code and may be confirmed despite the fact that not all Impaired Classes have voted to accept the Plan.

xv. Section 1129(c)—Only One Plan

77. Other than the Plan (including previous versions thereof), no other plan has been filed in the Chapter 11 Cases that was not previously withdrawn. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

xvi. Section 1129(d)—Principal Purpose of the Plan Is Not Avoidance of Taxes

78. No governmental unit has requested that the Court refuse to confirm the Plan on the grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act. As evidenced by its terms, the principal purpose of the Plan is not such avoidance. Accordingly, the requirements of section 1129(d) of the Bankruptcy Code are satisfied.

O. Satisfaction of Confirmation Requirements

79. Based upon the foregoing, all other filed pleadings, documents, exhibits, statements, declarations and affidavits filed in connection with Confirmation of the Plan and all evidence and arguments made, proffered or adduced at the Confirmation Hearing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

P. Disclosure: Agreements and Other Documents

80. Tronox has disclosed all material facts regarding: (a) the adoption of the Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws of Reorganized Tronox Incorporated; (b) the selection of the members of the New Board and the officers of Reorganized Tronox; (c) Reorganized Tronox's obligations under (i) the Exit Credit Documents and (ii) the Revolving Credit Documents; (d) the sources and distribution of Cash

under the Plan; (e) the terms and conditions of the Rights Offering; (f) the terms and issuance of the New Common Stock and Reorganized Tronox's reliance on the exemptions under section 1145(a) of the Bankruptcy Code and section 4(2) of the Securities Act; (g) the exemption provided by section 1146(a) of the Bankruptcy Code; (h) the Registration Rights Agreement; (i) the cancellation of the Unsecured Notes and the Equity Interests; (j) the terms of the Management Equity Plan, the Management 2010 Bonus Plan and the New Management Agreements; (k) the adoption, execution and delivery of all contracts, leases, instruments, releases, indentures and other agreements related to any of the foregoing; and (l) the adoption, execution and implementation of the other matters provided for under the Plan involving corporate action to be taken by or required of Reorganized Tronox.

Q. Transfers by Tronox; Vesting of the Retained Assets

81. Except as otherwise provided in the Plan or any agreement, instrument or other document incorporated therein, on the Effective Date, the Retained Assets shall vest in Reorganized Tronox free and clear of all Liens, Claims, charges or other encumbrances (except for Liens granted to secure the Exit Financing and the Revolving Facility, including the Liens securing the Replacement DIP Facility Claims that are converted into the Converted Term Loan Exit Financing, as defined below).

82. Notwithstanding anything to the contrary herein or in the Plan, (a) the Environmental Trust Assets, the Nevada Assets and the Environmental Insurance Assets shall be transferred to Tronox Worldwide LLC and shall then vest in the applicable Environmental Response Trusts as provided in the Environmental Claims Settlement Agreement, (b) the Tort Claims Trust Insurance Assets shall be transferred to Tronox Worldwide LLC and shall then vest in the Tort Claims Trust and (c) Tronox's right and interest in the Anadarko Litigation shall be transferred to Tronox Worldwide LLC and shall then vest in the Anadarko Litigation Trust, in

each case free and clear of all Liens, Claims, interests, charges or other encumbrances. All of the foregoing transfers are essential elements of the Plan and are in the best interests of Tronox and its Estates. Any transfer of ownership by Tronox of any real property assets (including the Environmental Trust Assets and the Nevada Assets) pursuant to the Plan and this Confirmation Order shall be accomplished by quitclaim deed.

83. On and after the Effective Date, except as otherwise provided in the Plan or the Plan Supplement, Reorganized Tronox may operate its businesses and may use, acquire or dispose of property and compromise or settle any Claims, Equity Interests or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

R. Likelihood of Satisfaction of Conditions Precedent to the Effective Date

84. Each of the conditions precedent to the Effective Date, as set forth in Article IX.B of the Plan, has been satisfied or waived in accordance with the provisions of the Plan, or is reasonably likely to be satisfied, provided, however, that no waiver of the conditions precedent to the Effective Date Shall have occurred without the consent of Tronox, the Replacement DIP Agent, the Creditors' Committee, the Required Backstop Parties and, to the extent applicable, the United States and the Nevada Parties.

S. Implementation

85. All documents and agreements necessary to implement the Plan, including those contained in the Plan Supplement, and all other relevant and necessary documents (including the Environmental Claims Settlement Agreement and related exhibits, the Environmental Response Trust Agreements, the Anadarko Litigation Trust Agreement, the Tort Claims Trust Agreement, the Tort Claims Trust Distribution Procedures, the Equity Commitment Agreement, the Plan Support Agreement, the Exit Credit Agreement, the other Exit Credit Documents, the Revolving

Credit Agreement, the other Revolving Credit Documents, the Registration Rights Agreement, the New Warrant Agreement, the New Management Agreements, the Management Equity Plan and the Management 2010 Bonus Plan) are essential elements of the Plan and entry into and consummation of the transactions contemplated by each such document and agreement is in the best interests of Tronox, its Estates and holders of Claims and Equity Interests. Tronox has exercised reasonable business judgment in determining to enter into these documents and has provided sufficient and adequate notice of these documents (to the extent filed). With the exception of the New Warrant Agreement, the Anadarko Litigation Trust Agreement and the Environmental Response Trust Agreements, which remain subject to ongoing negotiation, the terms and conditions of these documents are fair and reasonable and were negotiated in good faith and at arm's length. Tronox is authorized, without further approval of the Court, to execute and deliver all agreements, documents, instruments and certificates relating thereto and perform its obligations thereunder; provided, however, that the terms of the Anadarko Litigation Trust Agreement, the Environmental Response Trust Agreements and the New Warrant Agreement remain subject to ongoing negotiation, and such agreements shall be filed with the Court on notice to parties in interest with an opportunity to be heard prior to such documents becoming effective pursuant to the Plan and this Confirmation Order; and provided further that it shall be a condition precedent to the Effective Date that (a) the terms of the Anadarko Litigation Trust Agreement are subject to the agreement of the Tort Claims Trustee and the other parties thereto and (b) the terms of the Environmental Response Trust Agreements and New Warrant Agreement are reasonably acceptable to the parties affected thereby or are approved by the Bankruptcy Court.

T. Good Faith

86. Tronox has proposed the Plan in good faith, with the legitimate and honest purposes of reorganizing Tronox's ongoing businesses and maximizing the value of Tronox and the recovery to stakeholders. Based on the record in the Chapter 11 Cases, (a) Tronox and its non-debtor affiliates; (b) the agents and lenders under each of the Prepetition Facilities, the Original DIP Facility, the Replacement DIP Facility and the debtor-in-possession credit facility that was refinanced from the proceeds of the Replacement DIP Facility; (c) the Ad Hoc Noteholders' Committee; (d) the Creditors' Committee; (e) the United States; (f) the Nevada Parties; (g) the Backstop Parties; and (h) with respect to each of the foregoing Entities in clauses (a) through (g), such Entities' current or former subsidiaries, affiliates, managed accounts or funds, officers, directors, principals, members, employees, agents, financial advisors, attorneys, accountants, investments bankers, consultants, representatives and other Professionals, have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all their respective activities relating to the Plan, including any action or inaction in connection with their participation in the activities described in section 1125 of the Bankruptcy Code, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Article VIII.F of the Plan. Such parties will continue to act in good faith if they proceed to (a) consummate the Plan and the agreements, settlements, transactions and transfers contemplated thereby; and (b) take the actions authorized and directed or contemplated by the Confirmation Order. Therefore, the Plan has been proposed in good faith to achieve a result consistent with the objectives and purposes of the Bankruptcy Code.

U. Corporate Action

87. Upon the Effective Date, all actions contemplated by and set forth in the Plan shall be deemed authorized and approved in all respects, including (a) entry into the New Management Agreements and adoption of the Management Equity Plan and Management 2010 Bonus Plan; (b) selection of the directors and officers of Reorganized Tronox; (c) the rationalization of Reorganized Tronox's corporate structure; (d) the completion of (i) the Exit Financing, including the conversion of the Replacement DIP Facility Claims into the Converted Term Loan Exit Financing and (ii) the Revolving Facility; (e) the authorization, issuance and distribution of New Common Stock and New Warrants as provided in the Plan; and (f) all other actions contemplated by the Plan (whether to occur before, on or after the Effective Date). All matters provided for in the Plan involving the corporate structure of Tronox or Reorganized Tronox, and any corporate action required by Tronox or Reorganized Tronox in connection with implementation of the Plan shall be deemed to have occurred and shall be in effect upon the Effective Date, without any requirement of further action by the directors or officers of Tronox or Reorganized Tronox.

V. Issuance of New Common Stock and New Warrants

88. The issuance of New Common Stock and New Warrants is an essential element of the Plan, and is in the best interests of Tronox, its Estates, and holders of Claims and Equity Interests.

W. Executory Contracts and Unexpired Leases

89. Tronox has exercised reasonable business judgment in determining whether to assume or reject each of their Executory Contracts and Unexpired Leases as set forth in the Plan, the Plan Supplement, this Confirmation Order or otherwise. Each assumption, assumption and assignment or rejection of an Executory Contract or Unexpired Lease in accordance with the

Plan, the Plan Supplement, this Confirmation Order or otherwise shall be legal, valid and binding upon (a) Tronox and Reorganized Tronox if such Executory Contract or Unexpired Lease is assumed, (b) the assignee of such Executory Contract or Unexpired Lease if such contract or lease is assumed and assigned and (c) all non-debtor parties to such Executory Contract or Unexpired Lease, all to the same extent as if such assumption, assumption and assignment or rejection had been authorized and effectuated pursuant to a separate order of the Court that was entered pursuant to section 365 of the Bankruptcy Code before Confirmation.

X. Approval of the Management Compensation Programs

90. The Management Equity Plan and the Management 2010 Bonus Plan (collectively, the "**Management Compensation Programs**") are essential elements of the Plan. The terms and conditions of the Management Compensation Programs were negotiated in good faith and at arm's length with the Creditors' Committee and the Ad Hoc Noteholders' Committee. The terms of the Management Compensation Programs are reasonable, and Tronox has provided adequate notice of the material terms of such programs. Tronox and Reorganized Tronox are authorized, without further approval of the Court, and with the consent of the Creditors' Committee and the Ad Hoc Noteholders' Committee, to execute and deliver all agreements, documents, instruments and certificates relating to the Management Compensation Programs and perform their obligations thereunder in accordance with, and subject to, the terms of the Management Compensation Programs.

Y. Retention of Jurisdiction

91. The Court properly may retain jurisdiction over the matters set forth in Article XI and other applicable provisions of the Plan.

II. ORDER

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

A. Order

92. This Confirmation Order shall confirm the Plan. A copy of the Plan is attached hereto as **Exhibit A**.

B. Objections

93. To the extent that any objections, reservations of rights, statements, or joinders to Confirmation have not been withdrawn, waived or settled before entry of this Confirmation Order or otherwise resolved as stated on the record of the Confirmation Hearing, such objections are hereby overruled on the merits.

C. Confirmation of the Plan

94. The Plan and the filed portions of the Plan Supplement (as such may be amended by this Confirmation Order or in accordance with the Plan) and all of their provisions are confirmed in all respects pursuant to section 1129 of the Bankruptcy Code. Except as otherwise provided herein, the documents contained in the filed portions of the Plan Supplement, and any amendments, modifications and supplements thereto, and all documents and agreements related thereto (including all exhibits and attachments thereto and documents referred to in such papers), and the execution, delivery and performance thereof by Tronox and Reorganized Tronox, are authorized and approved as finalized, executed and delivered. Without further order or authorization of the Court, Tronox, Reorganized Tronox and their successors are authorized and empowered to make all modifications to all documents included and filed as part of the Plan Supplement that are consistent with the Plan, provided such modifications are not material or do not require the consent of another party. As set forth in the Plan, once finalized, executed and, to

the extent necessary, approved by the Bankruptcy Court, upon the occurrence of the Effective Date, the documents comprising the Plan Supplement and all other documents contemplated by the Plan shall constitute legal, valid, binding and authorized obligations of the respective parties thereto, enforceable in accordance with their terms and, to the extent applicable, shall create, as of the Effective Date (or in the case of the Liens and security interests securing the Converted Term Loan Exit Financing, on October 20, 2010 (when the interim order approving the Replacement DIP Facility was entered)), all Liens and other security interests purported to be created or assumed thereby.

95. The terms of the Plan, the Plan Supplement (and any portion thereof that may be subsequently approved) and exhibits thereto are incorporated by reference into, and are an integral part of, this Confirmation Order. The terms of the Plan, the Plan Supplement (and any portion thereof that may be subsequently approved), all exhibits thereto, and all other relevant and necessary documents, shall be effective and binding as of the Effective Date of the Plan (or in the case of the Replacement DIP Documents, as of the applicable date prior to the Effective Date).

D. Findings of Fact and Conclusions of Law

96. The findings of fact and the conclusions of law set forth herein shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to the proceeding by Bankruptcy Rule 9014. To the extent any of the following constitute findings of fact or conclusions of law, they are adopted as such. To the extent any of the prior findings of fact or conclusions of law constitutes an order of this Court, they are adopted as such.

E. Plan Classification Controlling

97. The terms of the Plan shall solely govern the classification of Claims and Equity Interests for purposes of the distributions to be made thereunder. The classifications set forth on

the ballots tendered to or returned by the holders of Claims or Equity Interests in connection with voting on the Plan pursuant to the Solicitation Procedures Order: (a) were set forth on the ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims and Equity Interests under the Plan for distribution purposes; (c) may not be relied upon by any holder of a Claim or Equity Interest as representing the actual classification of such Claim or Equity Interest under the Plan for distribution purposes; and (d) shall not be binding on Tronox and Reorganized Tronox except for voting purposes.

F. General Settlement of Claims and Equity Interests

98. As one element of, and in consideration for, an overall negotiated settlement of numerous disputed Claims and issues embodied in the Plan, including the Global Settlement and the Equity Committee Settlement, pursuant to Bankruptcy Rule 9019 and section 1123 of the Bankruptcy Code and in consideration for the classification, Distributions, Releases and other benefits provided under the Plan, the provisions of the Plan shall upon Consummation constitute a good faith compromise and settlement of all Claims, Equity Interests and controversies resolved pursuant to the Plan. Subject to Articles VI and VII of the Plan, all distributions made to holders of Allowed Claims and Equity Interests in any Class are intended to be and shall be final.

G. Approval of Environmental Claims Settlement Agreement

99. Tronox's entry into the Environmental Claims Settlement Agreement is expressly approved as being reasonable, fair and equitable pursuant to Bankruptcy Rule 9019 and section 1123 of the Bankruptcy Code. The Environmental Claims Settlement Agreement shall not become effective until approved by the Bankruptcy Court under applicable environmental law following a public comment process as provided in paragraph 169 of the Environmental

Claims Settlement Agreement. Any further findings by the Bankruptcy Court with respect to the Environmental Claims Settlement Agreement shall be incorporated herein by reference.

100. Environmental Properties Management, LLC; Le Petomane XXVII, Inc.; Greenfield Environmental Multistate Trust, LLC; Greenfield Environmental Savannah Trust, LLC; and Weston Solutions, Inc., are hereby approved as environmental response trustees for the Cimarron Environmental Response Trust, Henderson Environmental Response Trust, Multistate Environmental Response Trust, Savannah Environmental Response Trust, and West Chicago Environmental Response Trust, respectively, and are hereby appointed to such positions as of the Effective Date, provided that the Environmental Claims Settlement Agreement shall first have been approved by the Bankruptcy Court under applicable environmental laws after the completion of public comment.

H. Solicitation and Notice

101. Notice of the Confirmation Hearing complied with the terms of the Solicitation Procedures Order, was appropriate and satisfactory based on the circumstances of the Chapter 11 Cases and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules. The solicitation of votes on the Plan and the Solicitation Packages complied with the Solicitation Procedures, were appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases, and were in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

I. References to Plan Provisions

102. The failure specifically to include or to refer to any particular article, section or provision of the Plan, Plan Supplement or any related document in the Confirmation Order shall not diminish or impair the effectiveness of such article, section or provision, it being the intent of the Bankruptcy Court that the Plan and any related documents be confirmed in their entirety.

J. Immediate Binding Effect

103. Notwithstanding Bankruptcy Rules 3020(e), 6004(h) or 7062 or otherwise, upon the occurrence of the Effective Date, to the fullest extent permitted by applicable law, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon Tronox, Reorganized Tronox and any and all holders of Claims or Equity Interests (irrespective of whether holders of such Claims or Equity Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges and injunctions described in the Plan or herein, each Entity acquiring property under the Plan and any and all non-debtor parties to Executory Contracts and Unexpired Leases with Tronox.

K. Cancellation of Agreements, Unsecured Notes and Equity Interests

104. On the Effective Date, except as otherwise specifically provided for in the Plan: (a) the obligations of Tronox under the Indenture and any other Certificate, Equity Security, share, note, bond, indenture, purchase right, option, warrant or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in Tronox or giving rise to any Claim or Equity Interest (except for the Replacement DIP Documents and the Replacement DIP Facility Claims thereunder and except for such certificates, notes or other instruments or documents evidencing indebtedness or obligation of or ownership interest in Tronox that are reinstated pursuant to the Plan), shall be cancelled solely as to Tronox and its Affiliates, and Reorganized Tronox shall not have any continuing obligations thereunder; and (b) the obligations of Tronox and its Affiliates pursuant, relating or pertaining to any agreements, indentures, Certificates of designation, by-laws or certificate or articles of incorporation or similar documents governing the shares, Certificates, notes, bonds, indentures, purchase rights, options, warrants or other instruments or documents evidencing or creating any indebtedness or obligation of or ownership interest in Tronox (except for the Replacement DIP

Documents and the Replacement DIP Facility Claims thereunder and except for such agreements, Certificates, notes or other instruments evidencing indebtedness or obligation of or ownership interest in Tronox that are specifically Reinstated pursuant to the Plan) shall be released and discharged; *provided, however, that*:

- Notwithstanding Confirmation or Consummation, any such indenture or agreement that governs the rights of the holder of a Claim, including the Indenture, Indenture shall continue in effect solely for the purposes of: (a) allowing holders to receive the distributions provided for hereunder and (b) to the extent that the Indenture Trustee Fee Claim is not paid in full by Reorganized Tronox, of allowing the Indenture Trustee to exercise its Indenture Charging Lien and to make distributions to the holders of Unsecured Notes Claims on account of such Claims, as set forth in Article VI.D of the Plan;
- The foregoing shall not affect the discharge of Claims or Equity Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan or result in any expense or liability to Reorganized Tronox;
- The foregoing shall not effect the cancellation of shares issued pursuant to the Plan nor any other shares held by one Tronox Debtor in the capital of another Tronox Debtor; and
- The Replacement DIP Facility Claims, as converted into the Converted Term Loan Exit Financing, and the guarantees of and the Liens securing such Replacement DIP Facility Claims, and the Replacement DIP Documents, as Exit Credit Documents, shall not be cancelled, released or discharged, and such guarantees and Liens shall continue to guarantee or secure, as the case may be, such Replacement DIP Facility Claims in accordance with the terms of the applicable Exit Credit Documents.

L. Approval of the Exit Financing

105. On the Effective Date, and without further notice to or order or other approval of the Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization or approval of any Person or Entity (including the boards of directors of the Tronox Debtors) except for the Confirmation Order and as otherwise required by the Replacement DIP Documents: (a) the Replacement DIP Facility Claims shall convert into a corresponding portion of the Exit Financing in accordance with the terms of the Replacement DIP Documents (such portion of the Exit Financing, the "**Converted Term Loan Exit Financing**"); (b) Reorganized

Tronox shall assume, and be bound by the terms of, the Replacement DIP Agreement and the other Replacement DIP Documents, and without limiting the foregoing, Reorganized Tronox shall assume the Replacement DIP Facility Claims on the terms and conditions set forth in the Replacement DIP Documents, which from and after the Effective Date shall constitute Exit Credit Documents; (c) all Replacement DIP Documents, as Exit Credit Documents, shall remain in full force and effect on and after the Effective Date, and all Liens, rights, interests, duties and obligations thereunder shall survive the Effective Date and shall continue to secure all Replacement DIP Facility Claims assumed by Reorganized Tronox and all other obligations under the Exit Credit Documents; and (d) Reorganized Tronox shall, and is authorized to, enter into and perform and to execute and deliver an Accession and Novation Agreement (as defined in the Replacement DIP Agreement) and such other agreements, instruments or documents reasonably requested by the Replacement DIP Agent (in form and substance acceptable to the Replacement DIP Agent) to evidence or effectuate the conversion of the Replacement DIP Facility into part of the Exit Financing in accordance with the terms of the Replacement DIP Documents.

106. The Exit Financing (including the conversion of the Replacement DIP Facility into the Converted Term Loan Exit Financing), the Exit Credit Documents (including all Replacement DIP Documents that upon the Effective Date become Exit Credit Documents), all transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by Reorganized Tronox in connection therewith, including the payment of all fees, indemnities, expenses and other amounts provided for by the Exit Credit Documents, are hereby approved. Without limiting the foregoing, Reorganized Tronox shall pay, as and when due, all fees, indemnities, expenses and other amounts provided under the Exit

Credit Documents. The Exit Credit Documents shall constitute legal, valid, binding and authorized obligations of Reorganized Tronox, enforceable in accordance with their terms. The financial accommodations to be assumed or extended pursuant to the Exit Credit Documents are being assumed or extended, and shall be deemed to have been assumed or extended, in good faith, for legitimate business purposes and for fair consideration and reasonably equivalent value, are reasonable, shall not be subject to avoidance, recharacterization or subordination (including equitable subordination) for any purposes whatsoever, and shall not constitute preferential transfers, fraudulent conveyances or other voidable transfers under the Bankruptcy Code or any other applicable non-bankruptcy law. On the Effective Date, all of the Liens and security interests to be assumed or granted in accordance with the Exit Credit Documents (a) shall be deemed to be approved; (b) shall be legal, binding and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Credit Documents; (c) shall be deemed perfected on the Effective Date (or in the case of the Liens and security interests securing the Converted Term Loan Exit Financing, on October 20, 2010 (when the interim order approving the Replacement DIP Facility was entered)), subject only to such Liens and security interests as may be permitted under the Exit Credit Documents, and with the priorities established in respect thereof under the Exit Credit Documents (including the intercreditor agreement referenced therein) and applicable non-bankruptcy law; and (d) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law. Reorganized Tronox and the Persons and Entities granted such Liens and security interests are authorized to make all filings and recordings, and to obtain all

governmental approvals and consents necessary to establish and perfect such liens and security interests under the provisions of the applicable state, provincial, federal or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order, or in the case of Liens and security interests granted pursuant to the Replacement DIP Documents, by virtue of the interim and final orders of the Court approving same, and any such filings, recordings, approvals and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties. To the extent that any holder of a Secured Claim that has been satisfied or discharged in full pursuant to the Plan, or any agent for such holder, has filed or recorded publicly any Liens and/or security interests to secure such holder's Secured Claim, then as soon as practicable on or after the Effective Date, such holder (or the agent for such holder) shall take any and all steps requested by Tronox, Reorganized Tronox or any administrative agent under the Exit Credit Documents that are necessary to cancel and/or extinguish such publicly-filed Liens and/or security interests, in each case all costs and expenses in connection therewith to be paid by Tronox or Reorganized Tronox.

107. Notwithstanding anything to the contrary in this Order or the Plan, the Bankruptcy Court's retention of jurisdiction shall not govern the enforcement of any rights or remedies relating to, or any other matters arising under, any or all of the Exit Credit Documents.

108. To reflect the refinancing of Tronox's debtor-in-possession financing that occurred on October 21, 2010, the definitions of "Replacement DIP Agreement" and

"Replacement DIP Facility" in the Plan are hereby amended and restated in their entirety as follows:

> "'*Replacement DIP Agreement*' means that certain Senior Secured Super-Priority Debtor-in-Possession and Exit Credit and Guaranty Agreement, dated as of October 21, 2010, among Tronox Incorporated, Tronox Worldwide LLC, Certain Subsidiaries of Tronox Worldwide LLC, as Guarantors, various Lenders, Goldman Sachs Lending Partners LLC, as Sole Lead Arranger and Sole Bookrunner, Goldman Sachs Lending Partners LLC, as Syndication Agent, and Goldman Sachs Lending Partners LLC, as Administrative Agent and Collateral Agent, as amended from time to time."
>
> "'*Replacement DIP Facility*' means the $425 million term loan facility under the Replacement DIP Agreement."

In addition, clause (f) of the definition of "Released Party" in the Plan is hereby amended to read as follows: "(f) the agents and lenders under each of the Prepetition Facilities, the Original DIP Facility, the Replacement DIP Facility and the debtor-in-possession facility that was refinanced from the proceeds of the Replacement DIP Facility, in each case solely in connection with such facilities."

109. Notwithstanding anything to the contrary contained herein or in the Plan, the Letters of Credit Cash Collateral Agreement, dated as of December 24, 2009, among Tronox Incorporated, Tronox Worldwide LLC and JPMorgan Chase Bank, N.A. shall remain in full force and effect, survive the Effective Date of the Plan and be enforceable against Reorganized Tronox.

M. Approval of the Revolving Facility

110. On the Effective Date, Reorganized Tronox is hereby authorized to enter into, perform and execute the Revolving Credit Agreement, including any and all amendments and modifications thereto and execute, deliver, record and file any other agreements, instruments, certificates, financing statements or documents related thereto, and are hereby authorized to enter into, perform and take all other actions to consummate any and all transactions contemplated

thereby. Without limiting the foregoing, Reorganized Tronox is authorized to pay, and shall pay, as and when due, all fees, indemnities, expenses and other amounts provided under the Revolving Credit Documents. The Revolving Credit Documents shall constitute legal, valid, binding and authorized obligations of Reorganized Tronox enforceable in accordance with their terms.

111. The Liens and security interests to be granted in accordance with the Revolving Credit Agreement and the other Revolving Credit Documents shall be valid, binding and enforceable Liens on and security interests in the collateral granted thereunder in accordance with the terms of the Revolving Credit Documents executed by Reorganized Tronox in connection with the Revolving Credit Documents and shall be deemed perfected on the Effective Date. The guarantees, mortgages, pledges, liens and other security interests granted pursuant to or in connection with the Revolving Credit Agreement and the other Revolving Credit Documents are granted in good faith, for legitimate business purposes, fair consideration and reasonably equivalent value as an inducement to the Revolving Lenders to extend credit thereunder and shall be, and hereby are, deemed not to constitute a fraudulent conveyance, fraudulent transfer, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law, and shall not otherwise be subject to avoidance, recharacterization or subordination (including equitable subordination) for any purposes whatsoever, and the priorities of such liens and security interests shall be as set forth in the definitive documentation executed in connection with the Revolving Credit Agreement. Reorganized Tronox is authorized to make all filings and recordings and to obtain all government approvals and consents necessary to establish and perfect such liens and security interests under the provisions of the applicable state, provincial, federal or other law (whether domestic or foreign).

112. Notwithstanding anything to the contrary in this Order or the Plan, (a) the Bankruptcy Court's retention of jurisdiction shall not govern the enforcement of or any rights or remedies related to, or any other matters arising under, the any or all of the Revolving Credit Agreement or the other Revolving Credit Documents, and (b) the Revolving Commitment Letter shall, and shall be deemed to, continue and survive in full force and effect, and shall constitute legal, valid, binding and enforceable obligations of Tronox and Reorganized Tronox and shall not be impaired, prejudiced or modified (without the prior written consent of the Agent (as defined in the Revolving Commitment Letter) at any time prior to the closing of the Revolving Facility on the Effective Date.

N. New Common Stock

113. In accordance with the terms of Article IV.E.2 of the Plan, on the Effective Date, Reorganized Tronox Incorporated shall issue or reserve for issuance all of the New Common Stock. The New Common Stock shall represent all of the direct and indirect common equity of Reorganized Tronox Incorporated authorized, issued or reserved as of the Effective Date. The issuance of New Common Stock by Reorganized Tronox Incorporated (including shares issued upon exercise of the New Warrants or pursuant to the Management Equity Plan (subject to the terms thereof)) is authorized without the need for further corporate action. All of the shares of New Common Stock issued pursuant to the Plan (including upon exercise of the New Warrants or pursuant to the Management Equity Plan (subject to the terms thereof)) is deemed duly authorized, validly issued, fully paid and non-assessable. Distributions of New Common Stock pursuant to the Plan will be made through broker accounts via electronic issuance of the shares and by entry of the registered shareholder's name in the stock ledger of Reorganized Tronox Incorporated.

O. New Warrants

114. On the Effective Date, Reorganized Tronox Incorporated will issue the New Warrants to the holders of Equity Interests in Class 8 pursuant to the terms of the New Warrant Agreement. All New Common Stock issued pursuant to the exercise of the New Warrants is deemed duly authorized and validly issued without the need for further corporate action.

P. Section 1145 Exemption

115. The solicitation of acceptances and rejections of the Plan was exempt from the registration requirements of the Securities Act and applicable state securities laws, and no other non-bankruptcy law applies to the solicitation.

116. Pursuant to Section 1145 of the Bankruptcy Code, the offering, issuance and distribution of (a) the New Common Stock to holders of Class 3 Claims, Class 6 Claims and to participants in the Rights Offering, except as set forth below and with respect to the Backstop Parties, (b) the New Warrants to holders of Class 8 Equity Interests and (c) the New Common Stock deliverable upon exercise of the New Warrants and/or implementation of the Management Equity Plan are exempt from, among other things, the registration requirements of the Securities Act and any other applicable law requiring registration prior to the offering, issuance, distribution or sale of securities. In addition, under Section 1145 of the Bankruptcy Code, such New Common Stock and New Warrants will be freely tradable in the United States, subject to the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act, and compliance with applicable securities laws and any rules and regulations of the Securities Exchange Commission, if any, applicable at the time of any further transfer of such securities and instruments and subject to any restrictions in the Registration Rights Agreement and the Amended and Restated Certificate of Incorporation.

117. Notwithstanding the foregoing, as part of the Global Settlement, Tronox and the Backstop Parties have agreed and the Plan is drafted to provide that any Unsubscribed Shares and Equity Backstop Consideration (each as defined in the Equity Commitment Agreement) issued to the Backstop Parties as consideration for their commitment to backstop the Rights Offering will be issued without registration in reliance upon the exemption set forth in section 4(2) of the Securities Act and will be "restricted securities." Holders of such Unsubscribed Shares and Equity Backstop Consideration shall receive registration rights as set forth in the Registration Rights Agreement.

118. To the extent deemed securities, pursuant to Section 1145 of the Bankruptcy Code, the offering, issuance and distribution of the interests in the Anadarko Litigation Trust and the Environmental Response Trusts are exempt from, among other things, the registration requirements of the Securities Act and any other applicable law requiring registration prior to the offering, issuance, distribution or sale of securities.

Q. Provisions Governing Distributions

119. The distribution provisions of Article VI of the Plan are hereby approved in their entirety. Except as otherwise set forth in the Plan, Reorganized Tronox shall make all distributions required under the Plan.

R. Procedures for Resolving Contingent, Unliquidated and Disputed Claims

120. The procedures contained in Article VII of the Plan for resolving contingent, unliquidated and disputed Claims are hereby approved in their entirety.

S. Treatment of Executory Contracts and Unexpired Leases

121. The Executory Contract and Unexpired Lease provisions of Article V of the Plan are hereby approved in their entirety.

i. Director and Officer Insurance Policies and Agreements

122. To the extent Tronox's D&O Liability Insurance Policies or agreements are deemed Executory Contracts, notwithstanding anything to the contrary in the Plan, Reorganized Tronox shall be deemed to have assumed all of Tronox's unexpired D&O Liability Insurance Policies pursuant to section 365(a) of the Bankruptcy Code effective as of the Effective Date.

123. Reorganized Tronox shall not terminate or otherwise reduce the coverage under any D&O Liability Insurance Policies (including any "tail policy") in effect on the Petition Date, with respect to conduct occurring prior thereto, and all directors and officers of Tronox who served in such capacity as of the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy regardless of whether such directors and officers remain in such positions after the Effective Date.

ii. Indemnification and Reimbursement Obligations

124. On the Effective Date, and except as prohibited by applicable law or subject to the limitations set forth in the Plan, Tronox shall assume all of the Indemnification Provisions in place on and before the Effective Date for Indemnified Parties for Claims related to or in connection with any actions, omissions or transactions occurring before the Effective Date; provided, however, that nothing herein, in the Plan, the Plan Supplement or any document related thereto shall in any way release or provide indemnification for any claim against or liability of the following parties, who are not Indemnified Parties: Lehman Brothers Holdings, Inc., Ernst & Young LLP, Kerr-McGee Corporation and Anadarko Petroleum Corporation and their officers, directors, employees, advisors, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives (including their respective officers, directors, employees, members, and professionals), whether such claims or liabilities be direct or indirect, fixed or contingent, including the claims asserted in the Anadarko Litigation; and

provided further, however, that for the avoidance of doubt, nothing herein, in the Plan, the Plan Supplement or any document related thereto shall in any way release or indemnify any individuals who were former directors or officers of the Tronox Debtors or their subsidiaries and also were or currently are directors or officers of Kerr-McGee Corporation and/or Anadarko Petroleum Corporation.

125. Notwithstanding any contrary provision in the Plan Documents (as defined below), including Articles V.H and V.J of the Plan, nothing contained in the Plan Documents or the preceding paragraph shall be construed to alter any existing obligation of the Tronox Debtors to indemnify, but only as necessary to insure, any individuals who were former directors and/or officers of the Tronox Debtors or their subsidiaries and also were or are currently directors or officers of Kerr-McGee Corporation and/or Anadarko Petroleum Corporation (including their respective affiliates). For the avoidance of doubt, if the Tronox Debtors assume an existing Indemnification Provision or D&O Liability Insurance Policy that affects such individuals, they shall retain their rights under such assumed Indemnification Provision or Insurance Policy but only as necessary to access insurance proceeds.

T. Vesting of the Retained Assets in Reorganized Tronox

126. Except as otherwise provided in the Plan or any agreement, instrument or other document incorporated therein, on the Effective Date, the Retained Assets and all Causes of Action (excluding the Anadarko Litigation and any claim or cause of action of Tronox related thereto) shall vest in Reorganized Tronox free and clear of all liens, Claims, charges or other encumbrances (except for Liens granted to secure the Exit Financing (including Liens securing the Replacement DIP Facility Claims) and the Revolving Facility).

127. Notwithstanding anything to the contrary herein or in the Plan, (a) the Environmental Trust Assets, the Nevada Assets and the Environmental Insurance Assets shall be

transferred to Tronox Worldwide LLC and shall then vest in the applicable Environmental Response Trusts as provided in the Environmental Claims Settlement Agreement, (b) the Tort Claims Trust Insurance Assets shall be transferred to Tronox Worldwide LLC and shall then vest in the Tort Claims Trust and (c) Tronox's right and interest in the Anadarko Litigation shall be transferred to Tronox Worldwide LLC and shall then vest in the Anadarko Litigation Trust, in each case free and clear of all Liens, Claims, charges or other encumbrances. Any transfer of ownership by Tronox of any real property assets (including the Environmental Trust Assets and the Nevada Assets) pursuant to the Plan and this Confirmation Order shall be accomplished by quitclaim deed.

128. On and after the Effective Date, except as otherwise provided in the Plan, Reorganized Tronox may operate its businesses and may use, acquire or dispose of property and compromise or settle any Claims, Equity Interests or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

U. Discharge of Tronox

129. As set forth in Article VIII.A of the Plan, pursuant to and to the fullest extent permitted by section 1141(d) of the Bankruptcy Code, and except as otherwise provided in the Plan, the Exit Credit Documents, this Confirmation Order or such other order of the Bankruptcy Court that may be applicable, the Distributions, rights and treatment that are provided in the Plan shall be in complete satisfaction, discharge and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by Reorganized Tronox), Equity Interests and causes of action of any nature whatsoever, including any interest accrued on Claims or Equity Interests from and after the Petition Date,

whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Equity Interests in, the Tronox Debtors, Reorganized Tronox or any of their assets or properties.

130. Except as otherwise provided in the Plan, this Confirmation Order or such other order of the Bankruptcy Court that may be applicable, all Persons and Entities shall be precluded from asserting against Tronox, its successors or assigns, including Reorganized Tronox, its agents and employees, or their respective assets, properties or interests in property, any other or further Claims based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date, whether or not the facts or legal bases therefor were known or existed prior to the Effective Date regardless of whether a proof of Claim or Equity Interest was filed. Notwithstanding anything to the contrary in the Plan or this Confirmation Order, all Replacement DIP Facility Claims that are converted into the Converted Term Loan Exit Financing in accordance with the terms of the Replacement DIP Documents shall be governed exclusively by the applicable Exit Credit Documents, and shall not be discharged, released or otherwise terminated pursuant to the Plan, section 1141(d) of the Bankruptcy Code or otherwise.

V. Post-Effective Date Compromise or Settlement of Claims

131. In accordance with the Article VII and any other relevant provisions of the Plan, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, Reorganized Tronox may compromise and settle Claims against it and Causes of Action against other Entities (excluding, for the avoidance of doubt, the Anadarko Litigation and any claim or cause of action of Tronox related thereto).

W. Subordinated Claims

132. The allowance, classification and treatment of all Allowed Claims and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims in each Class in connection with any contractual, legal and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code or otherwise. Pursuant to section 510 of the Bankruptcy Code, Tronox reserved the right to reclassify any Allowed Claim in accordance with any contractual, legal or equitable subordination rights relating thereto.

X. Settlement, Release, Injunction and Related Provisions

133. The following release, injunction, exculpation and related provisions set forth in Article VIII of the Plan (or as modified herein) are hereby approved and authorized in their entirety:

i. Releases by Tronox

Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, for good and valuable consideration, including the service of the Released Parties to facilitate the expeditious reorganization of Tronox and the implementation of the restructuring contemplated by the Plan, on and after the Effective Date, the Released Parties are deemed released and discharged by Tronox, Reorganized Tronox and the Estates from any and all Claims, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any derivative Claims asserted or assertable on behalf of the Tronox Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that Tronox, Reorganized Tronox, the Estates or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of

any Claim or Equity Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, Tronox, the Chapter 11 Cases, Tronox's restructuring, the purchase, sale or rescission of the purchase or sale of any Security of Tronox or Reorganized Tronox, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between Tronox and any Released Party, the restructuring of Claims and Equity Interests prior to or in the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Plan Supplement, the Disclosure Statement, the Replacement DIP Documents, the Exit Credit Documents or related agreements, instruments or other documents, upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Confirmation Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, breach of fiduciary duty or a criminal act to the extent such act or omission is determined by a Final Order to have constituted willful misconduct, gross negligence, breach of fiduciary duty or a criminal act.

The foregoing release shall not apply to any express contractual or financial obligations or any right or obligations arising under or that is part of the Plan or any agreements entered into pursuant to, in connection with or contemplated by the Plan.

ii. Release by Holders of Claims and Equity Interests

As of the Effective Date, to the fullest extent permitted by applicable law, each Holder of a Claim or an Equity Interest (including, for the avoidance of doubt, all shareholders of Tronox Incorporated) shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever released and discharged Tronox, Reorganized Tronox and the Released Parties from any and all Claims, Equity Interests, obligations,

rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any derivative Claims asserted on behalf of a debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, Tronox, Tronox's restructuring, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any Security of Tronox or Reorganized Tronox, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between Tronox and any Released Party, the restructuring of Claims and Equity Interests prior to or during the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, the Replacement DIP Documents, the Exit Credit Documents or related agreements, instruments or other documents, upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Confirmation Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, breach of fiduciary duty or a criminal act to the extent such act or omission is determined by a Final Order to have constituted willful misconduct, gross negligence, breach of fiduciary duty or a criminal act.

Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any Replacement DIP Facility Claims (whenever arising) or any post-Effective Date obligations of any party under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the

Plan. No Person shall be discharged, released or relieved from any liability with respect to the Pension Plan as a result of the Chapter 11 Cases or the Plan, nor shall the PBGC, the Pension Plan or any other Person be enjoined or precluded from enforcing any liability with respect to the Pension Plan as a result of the Chapter 11 Cases, the Plan's provisions or the Plan's Confirmation. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release the personal liability of any of the aforementioned Released Parties in this Article VIII for any statutory violation of applicable tax laws or bar any right of action asserted by a governmental taxing authority against the aforementioned Released Parties for any statutory violation of applicable tax laws. The releases set forth herein do not release, nullify or preclude the liability, if any, of the United States to the Nevada Parties under applicable Environmental Laws (as defined in the Environmental Claims Settlement Agreement) as a potentially responsible or liable party with respect to any Henderson Legacy Conditions (as defined in the Environmental Claims Settlement Agreement).

iii. Exculpation

Upon and effective as of the Effective Date, Tronox and its directors, officers, employees, attorneys, investment bankers, financial advisors, restructuring consultants and other professional advisors and agents together with the Exculpated Parties will all be deemed to have solicited acceptances of this Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including section 1125(e) of the Bankruptcy Code.

Except with respect to any acts or omissions expressly set forth in and preserved by the Plan, the Plan Supplement or related documents, the Exculpated Parties shall neither have nor incur any liability to any Entity for any prepetition or postpetition act taken or

omitted to be taken up to and including the Effective Date in connection with, or arising from or relating in any way to, the Chapter 11 Cases, including the operation of Tronox's businesses during the pendency of the Chapter 11 Cases; formulating, negotiating, preparing, disseminating, implementing and/or effecting the Plan Support Agreement, the Equity Commitment Agreement, the Original DIP Facility, the Replacement DIP Documents, the Exit Credit Documents, the Rights Offering, the Rights Offering Procedures, the Disclosure Statement and the Plan (including the Plan Supplement and any related contract, instrument, release or other agreement or document created or entered into in connection therewith); the solicitation of votes for the Plan and the pursuit of Confirmation and Consummation of the Plan; the administration of the Plan and/or the property to be distributed under the Plan; the offer and issuance of any securities under the Plan; and any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of Tronox. In all respects, each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her or its respective duties under, pursuant to or in connection with the Plan.

Notwithstanding anything herein to the contrary, nothing in the foregoing "Exculpation" shall (1) exculpate any Person or Entity from any liability resulting from any act or omission constituting fraud, willful misconduct, gross negligence, criminal conduct, malpractice, misuse of confidential information that causes damages or ultra vires act as determined by a Final Order or (2) limit the liability of the professionals of the Exculpated Parties to their respective clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8 Rule 1.8(h)(1) (2009).

iv. Injunction

Except as otherwise expressly provided in the Plan or the Exit Credit Documents or for obligations issued pursuant to the Plan, all Entities who have held, hold or may hold Claims or Equity Interests that have been released pursuant to Article VIII.C or Article VIII.D, discharged pursuant to Article VIII.A or exculpated pursuant to Article VIII.F, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, Tronox, Reorganized Tronox or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of, in connection with or with respect to any such Claims or Equity Interests; (2) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against Tronox, Reorganized Tronox or the Released Parties on account of or in connection with or with respect to any such Claims or Equity Interests; (3) creating, perfecting or enforcing any encumbrance of any kind against Tronox, Reorganized Tronox or the Released Parties or the property or estates of Tronox, Reorganized Tronox or the Released Parties on account of or in connection with or with respect to any such Claims or Equity Interests; (4) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from Tronox, Reorganized Tronox or the Released Parties or against the property or Estates of Tronox, Reorganized Tronox or the Released Parties on account of or in connection with or with respect to any such Claims or Equity Interests unless such Holder has filed a motion requesting the right to perform such setoff on or before the Confirmation Date, and notwithstanding an indication in a Proof of Claim or Equity Interest or otherwise that such Holder asserts, has or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise; and (5) commencing or continuing in any manner any action or other

proceeding of any kind on account of, in connection with or with respect to any such Claims or Equity Interests released or settled pursuant to the Plan.

134. **The sole recourse of Holders of Tort Claims shall be the Tort Claims Trust, and such Holders shall have no right at any time to assert Tort Claims against Reorganized Tronox or any of its assets.**

135. Nothing in this Confirmation Order shall affect any release granted under any prior order of this Court, all of which remain in full force and effect in accordance with their respective terms.

Y. Release of Liens

136. Except as otherwise provided in the herein, in the Plan, in the Exit Credit Documents, the Revolving Credit Documents or in any contract, instrument, release or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title and interest of any holder of such mortgages, deeds of trust, Liens, pledges or other security interests shall revert to Reorganized Tronox and its successors and assigns.

Z. Preservation of Causes of Action

137. The provisions of Article IV.O of the Plan are hereby approved in their entirety. Subject to the releases set forth in Article VIII of the Plan and the terms of the Environmental Claims Settlement Agreement, and in accordance with section 1123(b) of the Bankruptcy Code, Reorganized Tronox shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date,

including any actions specifically enumerated in the Plan Supplement (excluding the Anadarko Litigation, which will be transferred to the Anadarko Litigation Trust), and Reorganized Tronox's rights to commence, prosecute or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. Reorganized Tronox may pursue such Causes of Action, as appropriate, in accordance with the best interests of Reorganized Tronox.

138. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement or the Disclosure Statement to any Cause of Action against them as any indication that Reorganized Tronox will not pursue any and all available Causes of Action against them. Reorganized Tronox expressly reserves all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Bankruptcy Court order, Reorganized Tronox expressly reserves all Causes of Action, for later adjudication, and therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise) or laches shall apply to such Causes of Action upon, after or as a consequence of the Confirmation or Consummation.

AA. Management Equity Plan

139. On the Effective Date, the Management Equity Plan shall become effective without any further action by Reorganized Tronox. Tronox reserves the right to amend the Management Equity Plan with the consent of the Required Backstop Parties and the Creditors' Committee at any time prior to the Effective Date.

BB. Management 2010 Bonus Plan

140. On the Effective Date, the Management 2010 Bonus Plan shall become effective without any further action by Reorganized Tronox.

CC. Employee Benefits

141. Pursuant to Article V.I.6 of the Plan, on and after the Effective Date, Reorganized Tronox may honor, in the ordinary course of business, any prepetition contracts, agreements, policies, programs and plans for, among other things, compensation (other than prepetition equity based compensation or severance obligations set forth in an employment agreement with Tronox), health care benefits, disability benefits, deferred compensation benefits, travel benefits, vacation benefits, savings plans, severance benefits, retirement benefits, welfare benefits, pension benefits, life insurance and accidental death and dismemberment insurance for the directors, officers and employees of any of the Tronox Debtors who served in such capacity at any time; provided, however, that Tronox's or Reorganized Tronox's performance under any employment agreement will not entitle any person to any benefit or alleged entitlement under any contract, agreement, policy, program or plan that has expired, been waived or deemed waived, released, settled or been terminated before the Effective Date, or restore, reinstate or revive any such benefit or alleged entitlement under any such contract, agreement, policy, program or plan. Nothing herein shall limit, diminish or otherwise alter Reorganized Tronox's defenses, claims, Causes of Action or other rights with respect to any such contracts, agreements, policies, programs and plans, including Reorganized Tronox's rights to modify unvested benefits pursuant to their terms.

142. Notwithstanding anything to the contrary herein or in the Plan, Tronox shall not assume any employment agreements for employees or officers of the Tronox Debtors employed in the United States.

143. The continuation of any compensation and benefits programs shall not be deemed to trigger any applicable change of control, immediate vesting, termination, or similar provisions therein (unless a compensation and benefits program counterparty timely objects to the

continuation contemplated by this Section in which case any such compensation and benefits program shall be deemed rejected or discontinued as of immediately prior to the Petition Date).

DD. Continuation of Retiree Benefits and Pension Plan

144. Notwithstanding anything to the contrary herein or in the Plan, all retiree benefits (as that term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with the terms of the Plan, the underlying employee benefit plan documents (as may be amended or terminated at the discretion of Reorganized Tronox) and applicable law.

145. Pursuant to the Plan, Tronox shall assume the Pension Plan. The Pension Plan shall be continued in accordance with its terms, and Reorganized Tronox shall satisfy the minimum funding standards pursuant to 26 U.S.C. §§ 412 and 430 and 29 U.S.C. §§ 1082 and 1083, be liable for the payment of PBGC premiums in accordance with Title IV of ERISA, subject to any and all applicable rights and defenses of the Tronox Debtors, and administer the Pension Plan in accordance with the provisions of ERISA and the Internal Revenue Code. Notwithstanding any provision of the Plan or the Confirmation Order to the contrary, the Pension Plan shall be continued and administered in accordance with ERISA and the Internal Revenue Code.

EE. Workers' Compensation Programs

146. As of the Effective Date, except as set forth in the Plan or the Plan Supplement, Tronox and Reorganized Tronox shall continue to honor their obligations under: (a) all applicable federal and state workers' compensation laws; and (b) Tronox's written contracts, agreements, agreements of indemnity, self-insurer workers' compensation bonds, policies, programs and plans for workers' compensation and workers' compensation insurance.

147. All Proofs of Claims on account of workers' compensation shall be deemed withdrawn automatically and without any further notice to or action, order, or approval of the

Bankruptcy Court; provided, however, that nothing in the Plan shall limit, diminish, or otherwise alter Tronox's or Reorganized Tronox's defenses, Causes of Action, or other rights under applicable non-bankruptcy law with respect to any such contracts, agreements, policies, programs and plans; provided, further, that nothing herein shall be deemed to impose any obligations on Tronox in addition to what is provided for under applicable state law.

FF. Professional Fee Claims

148. Final Fee Applications. All final requests for payment of Professional Fee Claims (including the Holdback Amount and Professional Fee Claims incurred during the period from the Petition Date through the Confirmation Date) shall be filed with the Bankruptcy Court and served on Tronox and counsel to the Creditors' Committee shall be filed no later than sixty (60) days after the Confirmation Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court orders in the Chapter 11 Cases, the Allowed Amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court shall be paid by Reorganized Tronox in full in cash.

149. Payment of Interim Amounts. Subject to the Holdback Amount, on the Effective Date, Tronox shall pay all amounts owing to Professionals for all outstanding amounts payable relating to prior periods through the Confirmation Date. To receive payment, on or before Effective Date, each Professional shall submit a detailed invoice covering such period in the manner and providing the detail as set forth in the Professional Fee Order.

150. Holdback Escrow Account. On the Effective Date, Reorganized Tronox shall fund the Holdback Escrow Account with Cash equal to the Holdback Amount. The Holdback Escrow Account shall be maintained in trust for the Professionals with respect to whom fees or expenses have been held back pursuant to the Interim Compensation Order or other orders of the Court. Such funds shall not be considered property of Reorganized Tronox. The remaining

amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals by Reorganized Tronox from the Holdback Escrow Account, without interest or other earnings therefrom, when such Claims are Allowed by a Bankruptcy Court order. When all Professional Fee Claims have been paid in full, amounts remaining in the Holdback Escrow Account, if any, shall be paid to Reorganized Tronox.

151. Post-Confirmation Date Fees and Expenses. Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, Tronox or Reorganized Tronox, as the case may be, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation and Consummation of the Plan incurred by Tronox or Reorganized Tronox. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and Tronox or Reorganized Tronox, as the case may be, may employ and pay any Professional in the ordinary course of business without any further notice to or action, order or approval of the Bankruptcy Court.

GG. United States Trustee Statutory Fees

152. Tronox shall pay all United States Trustee quarterly fees under 28 U.S.C. § 1930(a)(6), plus interest due and payable under 31 U.S.C. § 3717 on all disbursements, including Plan payments and disbursements in and outside the ordinary course of Tronox's businesses (including any fraction thereof), until the entry of a Final Order, dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code.

HH. Payment of Fees and Expenses of Indenture Trustee

153. On or before the Effective Date, Reorganized Tronox shall pay, as an Allowed Administrative Claim, the reasonable and documented fees and expenses of the Indenture Trustee in full in Cash, in an amount not to exceed $550,000.

154. Subject to payment in full of the Indenture Trustee Fee Claim in an amount not to exceed $550,000 and the payment of all other fees and expenses (including fees and expenses of counsel) incurred by the Indenture Trustee in administering distributions to holders of Unsecured Notes Claims, to the extent payment of the foregoing fees and expenses is permitted by the Indenture, the Indenture Charging Lien of the Indenture Trustee shall be forever released and discharged. Once the Indenture Trustee has completed performance of all its duties set forth in the Plan or in connection with any Distributions to be made under the Plan, the Indenture Trustee, and its successors and assigns, shall be relieved of all obligations as Indenture Trustee effective as of the Effective Date.

II. Payment of Certain Fees and Expenses

155. Tronox shall pay the fees and expenses of the legal counsel and financial advisors to the Backstop Parties as set forth in the Equity Commitment Agreement. In addition to the fees of Gleacher provided for under the Gleacher engagement letter, Reorganized Tronox may pay, subsequent to the Effective Date, an additional sum of up to $750,000 to Gleacher in connection with Gleacher's services as financial advisor to the Backstop Parties. Tronox and the Backstop Parties agree that the transactions contemplated hereby comprise an Alternative Transaction under the Gleacher engagement letter.

156. On the Effective Date, subject to supporting documentation being provided to counsel to each of Tronox, the Backstop Parties and the Creditors' Committee, Tronox shall pay all reasonable fees and expenses of Michael Carroll's counsel, Montgomery, McCracken, Walker

& Rhoads, LLP, for services rendered and to be rendered in connection with the Chapter 11 Cases, up to a maximum of $200,000.

157. On the Effective Date, Tronox shall pay the Government Environmental Entities $3,000,000 as an Allowed Administrative Claim. Such amount shall be deemed to satisfy all fees and expenses incurred, directly or indirectly, in connection with the Plan or the Chapter 11 Cases, including (a) all fees and expenses of any legal or financial advisors to the Government Environmental Entities and any consultants or other persons retained or engaged by or on behalf of the Governmental Environmental Entities and (b) any other out of pocket costs and expenses incurred by the Governmental Environmental Entities. No Government Environmental Entity shall attempt to recover additional fees or expenses from Tronox or Reorganized Tronox, including through any requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code.

JJ. Exemption from Certain Transfer Taxes and Recording Fees

158. Pursuant to and to the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from Tronox to Reorganized Tronox, Tronox Worldwide LLC or to any other Person or Entity) pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity securities, or other interest in Tronox or Reorganized Tronox; (b) the creation, modification, consolidation, assumption, termination, refinancing and/or recording of any mortgage, deed of trust or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment or recording of any lease or sublease; (d) the grant of collateral as security for any or all of the Exit Financing; or (e) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection

with, the Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee or other similar tax or governmental assessment, and the appropriate state or local government officials or agents shall and shall be directed to forego the collection of any such tax, recordation fee or government assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee or government assessment. The Bankruptcy Court shall retain specific jurisdiction with respect to these matters.

KK. Retention of Jurisdiction

159. Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, except as otherwise provided in the Plan and the Confirmation Order, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including exclusive jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, Secured or unsecured status or amount of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount or allowance of Claims or Equity Interests;
- decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized to be paid by the Tronox Debtors' estates pursuant to the Bankruptcy Code or the Plan;
- resolve any matters related to: (a) the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which a Tronox Debtor is party or with respect to which a Tronox Debtor may be liable and to hear, determine and, if necessary, liquidate, any Claims arising therefrom, including Cure Claims pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual

obligation under any Executory Contract or Unexpired Lease that is assumed; (c) Reorganized Tronox amending, modifying or supplementing after the Effective Date, pursuant to Article V of the Plan, the Assumed Executory Contract and Unexpired Lease List; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

- ensure that Distributions to holders of Allowed Claims and Equity Interests are accomplished pursuant to the provisions of the Plan;
- adjudicate, decide or resolve any motions, adversary proceedings (including the Anadarko Litigation), contested or litigated matters, Causes of Action and any other matters, and grant or deny any applications involving a Tronox Debtor that may be pending on the Effective Date;
- adjudicate, decide or resolve any and all matters related to section 1141 of the Bankruptcy Code;
- enter and implement such orders as may be necessary or appropriate to execute, implement or consummate the provisions of the Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan or the Disclosure Statement;
- enter and enforce any order for the sale of property pursuant to sections 363, 1123 or 1146(a) of the Bankruptcy Code;
- resolve any cases, controversies, suits, disputes or Causes of Action that may arise in connection with the Consummation, interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
- issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;
- resolve any cases, controversies, suits, disputes or Causes of Action with respect to the releases, injunctions and other provisions contained in Article VIII of the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;
- resolve any cases, controversies, suits, disputes or causes of action with respect to the repayment or return of Distributions and the recovery of additional amounts owed by the holder of a Claim or Equity Interest for amounts not timely repaid pursuant to Article V.J.1 of the Plan;
- enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;
- determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan or the Disclosure Statement;

- enter an order or Final Decree concluding or closing the Chapter 11 Cases;
- adjudicate any and all disputes arising from or relating to Distributions under the Plan;
- consider any modifications of the Plan, to cure any defect or omission or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;
- determine requests for the payment of Claims and Equity Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;
- hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents or instruments executed in connection with the Plan;
- hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
- hear and determine all disputes involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions and releases granted in the Plan, including under Article VIII of the Plan, regardless of whether such termination occurred prior to or after the Effective Date;
- enforce all orders previously entered by the Bankruptcy Court; and
- hear any other matter not inconsistent with the Bankruptcy Code.

LL. Other Essential Documents and Agreements

160. The Amended and Restated Certificate of Incorporation, the Amended and Restated Bylaws, the Registration Rights Agreement, any other agreements, instruments, certificates or documents related thereto and the transactions contemplated by each of the foregoing are approved and, upon execution and delivery of the agreements and documents relating thereto by the applicable parties, the Amended and Restated Certificate of Incorporation, the Amended and Restated Bylaws, the Registration Rights Agreement and any other agreements, instruments, certificates or documents related thereto shall be in full force and effect and valid, binding and enforceable in accordance with their terms without the need for any further notice to or action, order or approval of this Court, or other act or action under applicable law, regulation, order or rule. Tronox, and after the Effective Date, Reorganized Tronox, are

authorized, without further approval of this Court or any other party, to execute and deliver all agreements, documents, instruments, securities and certificates relating to such agreements and perform their obligations thereunder, including paying all fees due thereunder or in connection therewith.

161. On or before the Effective Date, Tronox may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. Tronox or Reorganized Tronox, as applicable, and upon request all holders of Claims or Equity Interests receiving distributions pursuant to the Plan and all other parties in interest, shall, from time to time, prepare, execute and delivery any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

MM. Return of Deposits

162. All utilities, including any Person who received a deposit or other form of adequate assurance of performance pursuant to section 366 of the Bankruptcy Code during these Chapter 11 Cases (collectively, the "**Deposits**"), including gas, electric, telephone, water, trash and sewer services, shall return such Deposits to Tronox and/or Reorganized Tronox, as applicable, either by setoff against postpetition indebtedness or by cash refund, by no later than ten (10) days following the Effective Date, and as of the Confirmation Date, such utilities are not entitled to make requests for or receive Deposits.

NN. Governing Law

163. Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict laws, shall govern the rights, obligations, construction and implementation of the Plan, any agreements, documents,

instruments or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control) and corporate governance matters; provided, however, that (a) corporate governance matters relating to Tronox or Reorganized Tronox, as applicable, not incorporated in New York shall be governed by the laws of the state of incorporation of the applicable Tronox Debtor or Reorganized Tronox Debtor, as applicable; and (b) with respect to the Exit Credit Documents, the terms of such agreements shall apply.

OO. Effectiveness of All Actions

164. Except as set forth in the Plan, all actions authorized to be taken shall be effective on, prior to, or after the Effective Date pursuant to and subject to the terms of the Plan, the agreements related thereto and this Confirmation Order, without further application to, or order of this Court, or further action by the respective officers, directors, members or stockholders of Reorganized Tronox and with the effect that such actions had been taken by unanimous action of such officers, directors, members or stockholders.

PP. Approval of Consents and Authorization to Take Acts Necessary to Implement Plan

165. Pursuant to section 1142(b) of the Bankruptcy Code, section 303 of the Delaware General Corporation Law and any comparable provision of the business corporation laws of any other state, each of Tronox and Reorganized Tronox hereby is authorized and empowered to take such actions and to perform such acts as may be necessary, desirable or appropriate to comply with or implement the Plan, the Plan Supplement, the Exit Credit Agreement, the other Exit Credit Documents, the Revolving Credit Agreement, the other Revolving Credit Documents, the Registration Rights Agreement, the Management Compensation Programs and any other Plan documents, including the election or appointment, as the case may be, of directors and officers of the New Board as authorized in the Plan, and all documents, instruments, securities and

agreements authorized thereunder and related thereto and all annexes, exhibits and schedules appended thereto, and the obligations thereunder shall constitute legal, valid, binding and authorized obligations of each of the respective parties thereto, enforceable in accordance with their terms without the need for any stockholder or board of directors' approval. On the Effective Date, the appropriate officers of Reorganized Tronox and members of the New Board are authorized and empowered to issue, execute and deliver the agreements, documents, securities and instruments authorized by and consistent with the Plan in the name of and on behalf of Reorganized Tronox. Subject to the terms of this Confirmation Order, the Plan and the agreements related thereto, each of Tronox, Reorganized Tronox and the officers and directors thereof are authorized to take any such actions without further corporate action or action of the directors or stockholders of Tronox or Reorganized Tronox. On the Effective Date, or as soon thereafter as is practicable, Reorganized Tronox shall file any amended certificates of incorporation with the Secretary of State of the state in which each such entity is (or will be) organized, in accordance with the applicable general business law of each such jurisdiction.

166. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules and regulations of all states and any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments, agreements, any amendments or modifications thereto and any other acts and transactions referred to in or contemplated by the Plan, the Plan Supplement, the Disclosure Statement and any documents, instruments, securities, agreements and any amendments or modifications thereto.

QQ. Modifications or Amendments

167. Except as otherwise specifically provided in the Plan, and subject to the conditions precedent to the Effective Date, Tronox, with the reasonable consent of the

Replacement DIP Agent, the Creditors' Committee, the Required Backstop Parties and the United States (in consultation with the Nevada Parties) reserves the right to modify the Plan, whether such modification is material or immaterial, and seek Confirmation consistent with the Bankruptcy Code. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, Tronox expressly reserves its right to revoke or withdraw or, with the reasonable consent of the Replacement DIP Agent, the Creditors' Committee, the Backstop Parties and the United States, to alter, amend or modify materially the Plan, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article X of the Plan. Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127 of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

RR. Effect of Conflict between Plan and Confirmation Order

168. If there is any direct conflict between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall control.

SS. Payment of Statutory Fees

169. All fees payable pursuant to section 1930(a) of the Judicial Code, as determined by this Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid for

each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed or closed, whichever occurs first.

TT. Dissolution of Official Committees

170. On the Effective Date, the Creditors' Committee and the Equity Committee shall dissolve, and the members thereof shall be released and discharged from all rights and duties arising from, or related to, the Chapter 11 Cases. Tronox shall not be responsible for paying any fees or expenses incurred by the members of or advisors to the Creditors' Committee or the Equity Committee after the Effective Date, except with respect to pending fee applications and appeals of the Confirmation Order.

UU. Reservation of Rights

171. Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by Tronox with respect to the Plan, the Disclosure Statement or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of Tronox with respect to the holders of Claims or Equity Interests prior to the Effective Date.

VV. Notice of Entry of the Confirmation Order

172. In accordance with Bankruptcy Rules 2002 and 3020(c), within ten (10) Business Days of the date of entry of the Confirmation Order, Tronox shall serve a notice of Confirmation by United States mail, first class postage prepaid, by hand, or by overnight courier service to all parties served with notice of the Confirmation Hearing; provided, however, that no notice or service of any kind shall be required to be mailed or made upon any Entity to whom Tronox served the notice of the Confirmation Hearing, but received such notice returned marked

"undeliverable as addressed," "moved, left no forwarding address" or "forwarding order expired," or similar reason, unless Tronox has been informed in writing by such Entity, or are otherwise aware, of that Entity's new address.

173. Mailing of the notice of entry of the Confirmation Order in the time and manner set forth in the previous paragraph shall be good and sufficient notice under the particular circumstances in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c), and no further notice shall be necessary.

WW. Injunctions and Automatic Stay

174. Unless otherwise provided in the Plan or in this Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of this Court and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

175. This Confirmation Order will permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any Claims, Equity Interests, Causes of Action, obligations, suits, judgments, damages, demands, debts, rights or liabilities released pursuant to the Plan.

XX. Nonseverability of Plan Provisions upon Confirmation

176. Each term and provision of the Plan, as it may have been altered or interpreted herein, is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the consent of Tronox, the Creditors' Committee and the Required Backstop Parties; and (c) nonseverable and mutually dependent.

YY. Authorization to Consummate

177. Tronox is authorized to consummate the Plan on any business day selected by the Debtors after the entry of the Confirmation Order, subject to satisfaction or waiver (by the required parties) of the conditions to the Effective Date set forth in Article IX of the Plan.

178. Notwithstanding anything to the contrary herein or in the Plan, the Effective Date and consummation of the Plan are contingent on (a) the Court's entry of an order approving the Environmental Claims Settlement Agreement under applicable environmental laws after the completion of public comment; (b) the Environmental Claims Settlement Agreement becoming effective on or before the Effective Date pursuant to paragraph 169 thereof and (c) the Environmental Claims Settlement Agreement not being null and void pursuant to paragraph 170 thereof. The condition precedent embodied in this paragraph shall not be waived without the consent of the Replacement DIP Agent, the United States and the Nevada Parties, as provided in Article IX.C of the Plan.

ZZ. Miscellaneous Provisions

179. **Environmental Liability.** Notwithstanding anything to the contrary herein or in the Plan, nothing shall release, nullify or preclude any liability of Reorganized Tronox as the owner or operator of a property of Reorganized Tronox with respect to any properties owned or operated after the Effective Date (other than with respect to the Henderson Facility, liability for which shall be as set forth in the Environmental Claims Settlement Agreement and the Henderson Facility Lease (as defined in the Environmental Claims Settlement Agreement)).

180. **Existing Henderson Leases.** As of the effective date of the Henderson Facility Lease, there shall be no other leases or subleases in effect that relate to the Henderson Facility, other than with Pronto Constructors, Inc. and Industrial Supply Co. Inc. (the "**Existing Henderson Leases**"), any other leases being deemed rejected. Each of the Existing Henderson

Leases is subject and subordinate in all respects to the Henderson Facility Lease. The Existing Henderson Leases will automatically terminate on the termination of the Henderson Facility Lease, and each tenant under the Existing Henderson Leases has acknowledged that it will look solely to Tronox Incorporated (and not to the Henderson Trust) (each as defined in the Henderson Facility Lease) with respect to any obligations of landlord under the Existing Henderson Leases.

181. **No Successor Liability.** Notwithstanding anything to the contrary in the Plan or this Confirmation Order, none of the debtors comprising Reorganized Tronox (a) shall be deemed to be a legal successor, alter ego or continuation of, or have merged with, Tronox, Kerr-McGee Corporation, Anadarko Petroleum Corporation or any of their respective affiliates, subsidiaries and predecessors, and, except as expressly provided in any of the Plan Documents, (b) shall have any liability whatsoever based on any theory of successor or vicarious liability of any kind or character, or based upon any theory or legal principle under or relating to antitrust, environmental, tort, successor or transferee liability law for any act or omission of Tronox that took place on or before the Effective Date.

182. **Insurance Neutrality.** Nothing contained herein, in the Plan, the Plan Supplement, the Disclosure Statement or otherwise shall in any way operate to, or have the effect of, altering or impairing in any respect the legal, equitable or contractual rights and defenses of the insureds or insurers under any policy of insurance and related agreements. The rights and obligations of the parties and others under any policy of insurance and related agreements shall be determined under such policies and related agreements, including the terms, conditions, limitations, exclusions and endorsements thereof, which shall remain in full force and effect, and under any applicable non-bankruptcy law.

183. **Continuation of Certain Indemnification and Reimbursement Obligations.** Any obligation to indemnify, pay or reimburse any of the agents or the lenders under the Prepetition Facilities or the Original DIP Facility shall survive, remain in full force and effect and be enforceable against Reorganized Tronox after the Effective Date.

184. **Deemed Objection to Tort Claims.** Except for Tort Claims previously allowed by an order of this Court, all Tort Claims are deemed objected to and shall be channeled to the Tort Claims Trust for allowance or disallowance in accordance with the Tort Claims Trust Distribution Procedures.

185. **Tort Claims Trust Agreement.** The definition of "Future Tort Claimant" in the Tort Claims Trust Agreement shall be deemed to replace the definition of such term set forth in Article I of the Plan. The definition of "Allowed Unknown Tort Claim" in the Tort Claims Trust Agreement is hereby incorporated into Article I of the Plan as a new defined term. The description of the percentage of the Tort Claims Trust Distributable Amount available for distribution to holders of Allowed Indirect Environmental Claims set forth in section 3.4 of the Tort Claims Trust Agreement shall control over the description of such percentage set forth in Article III.B.4 of the Plan.

186. **Inconsistency with Prior Orders.** This Confirmation Order shall supersede any orders issued by this Court prior to the Confirmation Date that are inconsistent with this Confirmation Order; provided, however, that nothing in this Confirmation Order shall affect the continuing validity of (a) the *Order Approving Tronox's Entry Into the Kress Creek Settlement with the United States of America* [Docket No. 1573]; (b) the *Order Approving Revised Stipulation and Order with Respect to Federal Debt Collection Procedures Act* [Adv. Proc. No. 09-01198 (ALG), Docket No. 52]; and (c) the *Stipulation and Agreed Order (I) Permitting Lead*

Plaintiffs to File Proof of Claim Out of Time and (II) Granting Lead Plaintiffs Limited Relief from the Automatic Stay and Other Related Relief [Docket No. 2542].

AAA. Resolutions of Objections and Concerns of Non-Debtor Parties

187. **Non-Impairment of Property Tax Liens.** Any property tax lien securing the payment of real property taxes shall remain in full force and effect until all taxes, penalties and interest secured by those liens are paid in full, and such liens shall not be primed by or subordinated to any liens granted to secure the Exit Financing. To the extent that 2010 property taxes are not timely paid in the ordinary course of business, the relevant taxing authorities shall be entitled to payment of all penalties and interest they would otherwise be entitled to collect under state law.

188. **Resolution of Certain Matters with Lead Plaintiffs.** In full and final resolution of the objection [Docket No. 2392] of LaGrange Capital Partners, LP and LaGrange Capital Partners Offshore Fund, Ltd. (the "**Lead Plaintiffs**"), Tronox and the Lead Plaintiffs have entered into a separate stipulation [Docket No. 2542] which has been "so ordered" by the Bankruptcy Court. In connection therewith, Tronox agrees as follows:

> From and after the Effective Date, Reorganized Tronox and any transferee of Tronox's or Reorganized Tronox's documents, as the case may be, shall preserve and maintain all of Tronox's and Reorganized Tronox's documents, files, books, records, and electronic data (including emails) that relate to the claims, defenses and allegation in the Securities Litigation (collectively, the "**Documents**") whether maintained by Tronox, Reorganized Tronox, any successors to Tronox, or transferred to such other transferee, and Reorganized Tronox, Tronox and/or such other transferee shall not destroy or otherwise abandon any such Documents absent agreement from the Lead Plaintiffs or further order of this Court or such other court of competent jurisdiction after a hearing upon notice to all parties in interest, including Lead Plaintiffs, with an opportunity to be heard until such time as a final, non-appealable judgment is entered in the Securities Litigation.
>
> Nothing in the Plan or this Confirmation Order shall or is intended to (i) affect, release, enjoin or impact in any way the prosecution of the claims asserted against the existing Non-Debtor Defendants or to be asserted against any Non-Debtor (other than the directors and officers being released under the Plan (who are

identified in Exhibit A to the stipulation resolving Lead Plaintiffs' objection to the Plan)), or (ii) affect, enjoin or impact the rights of Lead Plaintiffs and/or the Class from seeking discovery from Tronox, Reorganized Tronox or such other transferee of the Retained Assets, or any other assets of Tronox or Reorganized Tronox, to the fullest extent permitted by applicable law or court order.

189. **Resolution of Certain Matters with Anadarko.** In full and final resolution of the objection [Dkt. No. 2398] of Anadarko Petroleum Corporation and its affiliates and subsidiaries, including the entity now known as Kerr-McGee Corporation, which was formed in May 2001 (collectively "**Anadarko**"), the parties have agreed as follows:

i. Releases; Reservations of Rights.

190. Notwithstanding any contrary provision in this Order, the Plan, any documents contained in the Plan Supplement, or any other documents executed in connection with the Plan (collectively, the "**Plan Documents**"), including Articles VIII.A, VIII.D and VIII.E of the Plan, Anadarko shall not be deemed to have waived, released, or otherwise discharged any of its Claims, rights, suits, damages, defenses, actions, remedies, causes of action or other claims, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, contingent, unliquidated or disputed, existing or hereafter arising, in law, equity or otherwise, against any non-Debtor Released Party except (a) as otherwise provided in Article VIII.F (Exculpation) of the Plan, as modified herein and (b) with respect to any claims against those individuals who were directors and officers of the Tronox Debtors on July 7, 2010, which claims shall be satisfied solely from available insurance proceeds as more fully provided in a separate stipulation between the parties to be submitted to the Court at a later date; provided, however, that nothing in this paragraph shall (i) alter the scope of any covenants not to sue, releases or contribution protection provided in the Environmental Claims Settlement Agreement; (ii) permit Anadarko to assert any claim that is derivative of any claim for which Tronox has provided a release or covenant not to sue under any Plan Document, including the Environmental Claims Settlement

Agreement; and (iii) permit Anadarko to recover any assets held by any Environmental Response Trust or the Anadarko Litigation Trust. All parties reserve the right to make all available arguments concerning the effect, if any, of the Plan Documents (including the Environmental Claims Settlement Agreement and this paragraph 190), including, but not limited to, in the event that Anadarko is found to be liable for the Tronox Debtors' environmental and/or tort liabilities.

191. All parties reserve the right to make any available arguments, and assert any available claims and available defenses concerning the effect, if any, of the Plan Documents on the determination of liability or measure of damages (including, to the extent relevant, the value of the Tort Claims and the Environmental Claims) in the Anadarko Litigation, including under section 550 of the Bankruptcy Code.

192. Nothing in the Plan Documents shall affect Anadarko's rights, if any, to assert prior to entry of an order of the Bankruptcy Court approving the Environmental Claims Settlement Agreement under applicable environmental law, that the Environmental Claims Settlement Agreement is not fair, reasonable or consistent with applicable environmental laws.

ii. Setoff/Recoupment.

193. Notwithstanding any contrary provision in the Plan Documents, including Articles VIII.A and VIII.E of the Plan, Anadarko's (including its affiliates) right (if any) to setoff or recoup against any obligation due from Tronox, Reorganized Tronox or the Released Parties or against the property or Estates of Tronox, Reorganized Tronox or the Released Parties on account of or in connection with or with respect to its Claims shall be preserved, shall not be discharged, and Anadarko (including any of its affiliates) shall not be enjoined from asserting any such rights, irrespective of whether Anadarko or its affiliates have filed a motion requesting the right to perform such setoff and/or recoupment on or before the Confirmation Date; provided,

however, that Anadarko shall not be permitted to setoff or recoup funds out of any judgment rendered in the Anadarko Litigation other than as provided in Article III.D of the Plan.

iii. Disputed Reserve.

194. Notwithstanding any contrary provision in the Plan Documents, including Article VII.B of the Plan, to the extent the Bankruptcy Court determines the amount of Anadarko's and/or its affiliates' Claims (including any claim for rejection damages) for reserve purposes by estimation or otherwise, the Tronox Debtors shall promptly establish a reserve for any such Claim in any amount so determined.

iv. Partial Distributions.

195. Notwithstanding any contrary provision in the Plan Documents, including Article VII.I of the Plan, the Tronox Debtors shall promptly make a distribution on any portion of the Claims of Anadarko and/or its affiliates that becomes Allowed without regard to whether the entirety of any such Claim (including the Anadarko Section 502(h) Claim) has become Allowed.

v. Disallowance of Claims Subject to Avoidance Action.

196. Notwithstanding any contrary provision in the Plan Documents, including Article VII.G of the Plan, if otherwise Allowed and not subordinated, the Anadarko Section 502(h) Claim shall not be disallowed solely on the basis that Anadarko (including its affiliates) has offset, reduced or recouped any judgment against it in the Anadarko Litigation, rather than paying the amount of such judgment or returning the property recovered.

vi. Defaults Deemed Cured.

197. The following sentence of Article VIII.A of the Plan (Discharge) is hereby deemed stricken: "Any default by Tronox or its Affiliates with respect to any Claim or Equity Interest that existed immediately prior to or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date."

BBB. Final Order

198. This Confirmation Order is intended to be a final order and the period in which an appeal must be filed to commence upon the entry hereof.

IT IS SO ORDERED.

Date: November 30, 2010
New York, New York

/s/ Allan L. Gropper
United States Bankruptcy Judge

Exhibit A

First Amended Plan of Reorganization

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
TRONOX INCORPORATED, et al.,[1]	)	Case No. 09-10156 (ALG)
Debtors.	)	Jointly Administered

FIRST AMENDED JOINT PLAN OF REORGANIZATION OF TRONOX INCORPORATED *ET AL.* PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

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Attorneys for the Debtors and Debtors in Possession

Dated: November 5, 2010

[1] The debtors in these cases include: Tronox Luxembourg S.ar.l; Tronox Incorporated; Cimarron Corporation; Southwestern Refining Company, Inc.; Transworld Drilling Company; Triangle Refineries, Inc.; Triple S, Inc.; Triple S Environmental Management Corporation; Triple S Minerals Resources Corporation; Triple S Refining Corporation; Tronox LLC; Tronox Finance Corp.; Tronox Holdings, Inc.; Tronox Pigments (Savannah) Inc.; and Tronox Worldwide LLC.

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INTRODUCTION

Tronox Incorporated, together with its affiliates Tronox Luxembourg S.ar.l; Cimarron Corporation; Southwestern Refining Company, Inc.; Transworld Drilling Company; Triangle Refineries, Inc.; Triple S, Inc.; Triple S Environmental Management Corporation; Triple S Minerals Resources Corporation; Triple S Refining Corporation; Tronox LLC; Tronox Finance Corp.; Tronox Holdings, Inc.; Tronox Pigments (Savannah) Inc.; and Tronox Worldwide LLC, as debtors and debtors in possession, propose this joint plan of reorganization for the resolution of the outstanding claims against and equity interests in Tronox pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined shall have the meanings ascribed to such terms in Article I.A. Holders of Claims and Equity Interests may refer to the Disclosure Statement for a discussion of Tronox's history, businesses, assets, results of operations, historical financial information, accomplishments during the Chapter 11 Cases, and projections of future operations, as well as a summary and description of the Plan and certain related matters. Tronox is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

ARTICLE I.
DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME AND GOVERNING LAW

A. Defined Terms.

As used in this Plan, capitalized terms have the meanings set forth below.

1. "*Administrative Claim*" means a Claim for costs and expenses of administration pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of Tronox (such as wages, salaries, or commissions for services, and payments for goods and other services and leased premises); (b) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of the Judicial Code; and (c) all requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code.

2. "*Administrative Claim Bar Date*" means the date that is the 45th day after the Effective Date.

3. "*Affiliate*" has the meaning set forth in section 101(2) of the Bankruptcy Code. When used in reference to any Backstop Party, "Affiliate" shall include any managed funds or accounts managed or advised by such Backstop Party or an Affiliate of such Backstop Party.

4. "*Allowed*" means (a) with respect to any Claim, except as otherwise provided herein: (i) a Claim that is listed in the Schedules by Tronox as neither disputed, contingent nor unliquidated, and as to which Tronox or any other party in interest has not filed an objection by the Claims Objection Bar Date or such other applicable period of limitation fixed by the Bankruptcy Code, Bankruptcy Rules or the Bankruptcy Court; (ii) a Claim that has been Allowed by a Final Order; (iii) a Claim that is Allowed (x) pursuant to the Plan, (y) in any stipulation that is approved by the Bankruptcy Court or (z) pursuant to any contract, instrument, indenture or other agreement entered into or assumed in connection herewith; (iv) a Claim that is Allowed pursuant to any protocol to be established through the Bankruptcy Court; (v) with respect to Tort Claims, a Claim that is Allowed through the Tort Claims Trust Distribution Procedures; (vi) a Claim relating to a rejected Executory Contract or Unexpired Lease that has been Allowed by a Final Order; or (vii) a Claim as to which a Proof of Claim has been timely filed and as to which no objection has been filed by the Claims Objection Bar Date, and (b), with respect to any Equity Interest (i) any Equity Interest reflected in Tronox's books and records; (ii) any Equity Interest in Tronox Incorporated reflected in files maintained by Tronox Incorporated's stock transfer agent; (iii) any Equity Interest that is allowed pursuant to the Plan; or (iv) any other Equity Interest that has been allowed by a Final Order of the Bankruptcy Court.

Notwithstanding the foregoing, and solely for purposes of determining whether any Entity is an Eligible Holder for purposes of participating in the Rights Offering, "Allowed" shall mean (a) a Claim that is listed in the

Schedules as neither disputed, contingent nor unliquidated, and as to which Tronox or any other party in interest has not filed an objection; (b) a Claim that has been allowed by a Final Order on or prior to the Rights Expiration Date; (c) a Claim that is Allowed in any stipulation that is approved by Tronox, the Required Backstop Parties, the Creditors' Committee and the Bankruptcy Court on or prior to the Rights Expiration Date; or (d) a Claim as to which a Proof of Claim has been timely filed in the Chapter 11 Cases and as to which no objection has been filed by any party in interest on or prior to the Rights Expiration Date; provided, for the sake of clarity, that a Claim that is temporarily allowed for voting purposes shall not be deemed "Allowed" for purposes of this definition on account of so being allowed.

5. *"Anadarko Litigation"* means the adversary proceeding pending in the Bankruptcy Court captioned *Tronox Incorporated, et al. v. Anadarko Petroleum Corporation, et al.*, Adversary Proceeding No. 09-01198 (ALG).

6. *"Anadarko Litigation Trust"* means the trust to be established by Tronox pursuant to the Plan for the benefit of Holders of Environmental Claims and Tort Claims, to which Tronox will contribute its rights to the Anadarko Litigation, as described in more detail in Article IV hereof.

7. *"Anadarko Litigation Trust Agreement"* means the governing documentation for the Anadarko Litigation Trust.

8. *"Anadarko Litigation Trustee"* means the trustee, to be appointed by Tronox and the United States in consultation with certain representatives of Holders of Tort Claims and certain other Government Environmental Entities , who will administer the Anadarko Litigation Trust.

9. *"Anadarko Section 502(h) Claim"* means any claim(s) of Anadarko Petroleum Corporation and its affiliates and subsidiaries, including the entity now known as Kerr Mc-Gee Corporation, which was formed in May 2001, asserted in accordance with section 502(h) of the Bankruptcy Code in connection with any judgment against any such parties in the Anadarko Litigation.

10. *"Asbestos Claims"* means, collectively, any Tort Claims, or allegation or portion thereof against, or any debt, liability or obligation of, any Tronox Debtor or non-debtor Affiliate thereof resulting direct or indirectly from alleged injury to a person or property from asbestos exposure or release, including all claims for indemnification or contribution relating to alleged injury from asbestos exposure or release, whether or not such alleged injury was known or had manifested as of Confirmation, to the extent arising, directly or indirectly, from acts, omissions, business or operations of any Tronox Debtor including all retained claims, debts, obligations or liabilities for compensatory damages (such as loss of consortium, medical monitoring, personal or bodily injury, wrongful death, survivorship, proximate, consequential, general and special damages).

11. *"Assumed Executory Contract and Unexpired Lease List"* means the list (as may be amended at any time prior to the Effective Date), as determined by Tronox, of Executory Contracts and Unexpired Leases (including any amendments or modifications thereto) that will be assumed by Tronox or assumed by Tronox and assigned to any of the Environmental Response Trusts, the Tort Claims Trust or the Anadarko Litigation Trust pursuant to the provisions of Article V; provided, however, that to the extent Tronox proposes to assume and assign an Executory Contract or Unexpired Lease to the Environmental Response Trusts or the Tort Claims Trust, Tronox will obtain the consent (which consent shall not be unreasonably withheld) of the Government Environmental Entities or the Creditors' Committee, as applicable, with respect to the assignment of such contract or lease.

12. *"Avoidance Actions"* means any and all actual or potential claims and causes of action to avoid a transfer of property or an obligation incurred by Tronox pursuant to any applicable section of the Bankruptcy Code, including sections 544, 545, 547, 548, 549, 550, 551, 553(b), and 724(a) of the Bankruptcy Code, or under similar or related state or federal statutes and common law, but excluding the Anadarko Litigation.

13. *"Available Cash"* means, as of any date of determination, the sum of (a) the aggregate amount of unrestricted cash and cash equivalents included in the consolidated balance sheet of the relevant entity as of such date (excluding any proceeds in various escrow accounts and reinvestment accounts created or maintained pursuant

to the Replacement DIP Agreement) that, in each case, are free and clear of all Liens (other than Permitted Liens (as defined in the Replacement DIP Agreement)); and (b) the aggregate amount of cash and cash equivalents included in the Working Capital Escrow Account created or maintained pursuant to the Replacement DIP Agreement as of such date.

14. *"Backstop Consideration"* means 8% of the aggregate purchase price of the Offered Shares (or 545,589 shares of New Common Stock), representing 3.6% of the New Common Stock issued on the Effective Date (subject to dilution by shares issued in connection with the Management Equity Plan and the exercise of the New Warrants); provided that if the Equity Commitment Agreement is terminated without the Rights Offering having been consummated (other than directly and solely as a result of a breach by any Backstop Party of any of the terms and conditions of the Equity Commitment Agreement), the Backstop Parties shall be entitled to Cash consideration in an amount equal to 6% of $185 million (the aggregate purchase price of the Offered Shares) or $11.1 million, payable by Tronox pursuant to the terms of the Equity Commitment Agreement.

15. *"Backstop Parties"* means those certain Holders of Tronox's Unsecured Notes that are party to the Equity Commitment Agreement, together with such Person's respective successors and permitted assigns and Affiliates.

16. *"BRP"* means the Tronox Nonqualified Benefits Restoration Plan.

17. *"Bankruptcy Code"* means title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

18. *"Bankruptcy Court"* means the United States Bankruptcy Court for the Southern District of New York.

19. *"Bankruptcy Rules"* means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of the Judicial Code and the general, local and chambers rules of the Bankruptcy Court.

20. *"Business Day"* means any day, other than a Saturday, Sunday, or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

21. *"Cash"* means the legal tender of the United States of America or the equivalent thereof.

22. *"Causes of Action"* means all actions, causes of action (including Avoidance Actions), liabilities, obligations, rights, suits, damages, judgments, remedies, demands, setoffs, defenses, recoupments, crossclaims, counterclaims, third-party claims, indemnity claims, contribution claims, or any other claims whatsoever, in each case held by Tronox, whether known or unknown, matured or unmatured, fixed or contingent, liquidated or unliquidated, disputed or undisputed, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, in law, equity, or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Cases, including through the Effective Date, but excluding the Anadarko Litigation.

23. *"CERCLA"* means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.

24. *"Certificate"* means any instrument evidencing a Claim or an Equity Interest.

25. *"Chapter 11 Cases"* means (a) when used with reference to a particular Tronox Debtor, the case pending for that Tronox Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court and (b) when used with reference to all Tronox Debtors, the procedurally consolidated cases pending for the Tronox Debtors under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

26. *"Claim"* means any claim, as such term is defined in section 101(5) of the Bankruptcy Code, against Tronox.

27. *"Claims Bar Date"* means August 12, 2009, the date established by the Bankruptcy Court by which Proofs of Claim must have been filed.

28. *"Claims Objection Bar Date"* means the date that is 120 days after the Effective Date, or such later date as may be fixed by order of the Bankruptcy Court, except with respect to Tort Claims, which shall be allowed or disallowed for Distribution purposes in accordance with the Tort Claims Trust Distribution Procedures.

29. *"Claims Register"* means the official register of Claims maintained by the Notice and Claims Agent.

30. *"Class"* means a class of Claims or Equity Interests as set forth in Article III pursuant to section 1122(a) of the Bankruptcy Code.

31. *"Confirmation"* means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

32. *"Confirmation Date"* means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases.

33. *"Confirmation Hearing"* means the hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code, scheduled for November 17, 2010 at 11:00 a.m. (ET), as such hearing may be continued from time to time.

34. *"Confirmation Order"* means an order of the Bankruptcy Court in form and substance reasonably acceptable to Tronox, the Replacement DIP Agent, the Required Backstop Parties and the Creditors' Committee, confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

35. *"Consummation"* means the occurrence of the Effective Date.

36. *"Convenience Claim"* means (a) an Allowed General Unsecured Claim in an amount equal to or less than $250 and (b) 50% of an Allowed Indirect Environmental Claim in an amount equal to or less than $500.

37. *"Creditors' Committee"* means the official committee of unsecured creditors appointed pursuant to section 1102 of the Bankruptcy Code by the U.S. Trustee on January 21, 2009.

38. *"Cure Claim"* means a Claim based upon Tronox's default on an Executory Contract or Unexpired Lease at the time such contract or lease is assumed by Tronox pursuant to section 365 of the Bankruptcy Code.

39. *"D&O Liability Policies"* means all insurance policies of any of the Tronox Debtors for directors', managers' and officers' liability.

40. *"Disbursing Agent"* means Tronox or such other Entity or Entities (which may include the Notice and Claims Agent) selected by Tronox to make or facilitate Distributions pursuant to the Plan.

41. *"Disclosure Statement"* means the *Disclosure Statement for the First Amended Joint Plan of Reorganization of Tronox Incorporated, et al., Pursuant to Chapter 11 of the Bankruptcy Code*, dated October 1, 2010, as may be amended, supplemented or modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan, which is approved by order of the Bankruptcy Code and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules and any such order of approval.

42. *"Disputed"* means, with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

43. *"Disputed Reserve"* means the reserve to be created by Tronox to hold a contribution of Cash and/or New Common Stock, which reserve shall be held for the benefit of Holders of subsequently Allowed Claims

or, to the extent applicable, to Holders of Equity Interests, for Distribution according to the procedures set forth in Articles VI and VII.

44. *"Dissolution Transactions"* means the transactions after the Effective Date that the Tronox Debtors determine to be necessary or appropriate to implement the wind-down, dissolution or other termination of certain of the corporate entities that comprise the Tronox Debtors.

45. *"Distribution"* means a distribution of property pursuant to the Plan, to take place as soon as is practicable after the Effective Date.

46. *"Distribution Record Date"* means the date for determining which Holders of Claims or Equity Interests are eligible to receive Distributions under the plan, which date shall be five (5) days after the Confirmation Date or such other date as designated in an order of the Bankruptcy Court.

47. *"Effective Date"* means the date selected by Tronox that is a Business Day after the Confirmation Date on which the conditions to the occurrence of the Effective Date have been met or waived pursuant to Article IX.B and Article IX.C. Unless otherwise specifically provided in the Plan, anything required to be done by Tronox or Reorganized Tronox, as applicable, on the Effective Date may be done on the Effective Date or as soon as reasonably practicable thereafter.

48. *"Eligible Holder"* means any Person or Entity who, as of the Record Date, is (a) a Holder of a General Unsecured Claim against Tronox in excess of $250, and/or (b) a Holder of an Indirect Environmental Claims against Tronox in excess of $500; provided, in each case, that (x) such Claim has been Allowed on or before the Rights Expiration Date; and provided further, that for Holders of Allowed Indirect Environmental Claims, their respective Allowed Claim for purposes of participation in the Rights Offering shall be limited to 50% of the amount of such Allowed Indirect Environmental Claim.

49. *"Entity"* means an entity as such term is defined in section 101(15) of the Bankruptcy Code.

50. *"Environmental Claims"* means all civil claims asserted by any Government Environmental Entity against, and other civil responsibilities, obligations or liabilities of, Tronox with respect to the Owned Sites and Other Sites, relating to or arising under CERCLA, RCRA or any other Environmental Law, including claims for restoration, corrective action or remediation of environmental or natural resource conditions, the treatment of which Environmental Claims is set forth in the Environmental Claims Settlement Agreement.

51. *"Environmental Claims Settlement Agreement"* means the agreement (together with all appendices or exhibits thereto) among Tronox, the United States and certain other Government Environmental Entities regarding Tronox's liability for the Environmental Claims and the treatment of and responsibility for the Owned Sites, the Other Sites and the Nevada Assets after the Effective Date, as described in more detail in Article IV hereof.

52. *"Environmental Insurance Assets"* means the cash equivalent, in an aggregate amount of 100% of certain financial assurance letters of credit and surety bonds and, to the extent applicable, available insurance policies and other rights to reimbursement or contribution for response actions (whether contractual or otherwise) held by Tronox and related to the Environmental Claims, including (a) Forrest Products Division Pollution Legal Liability and Cost Cap Insurance, Commerce & Industry Insurance Company (AIG) (Chartis) Policy Number PLS/CCC 5295422 – Pre Existing Conditions; (b) Policy Number PLS 5295423 – New Conditions; (c) Henderson, NV, Pollution Legal Liability Select Clean-Up Cost Cap Insurance Policy, American International Specialty Lines Insurance Company (Chartis), Policy Number 6190315, (d) The BMI, et al., Pollution Clean-Up and Legal Liability Policy, American International Specialty Lines Insurance Company (Chartis), Policy Number 267-9176; provided, however, that any payments made by Chartis under the Chartis Policies on account of reimbursement claims made by Tronox for expenditures prior to the Effective Date shall be excluded from "Environmental Insurance Assets" and remain the property of Reorganized Tronox; and provided further, however, that Tronox shall submit all such claims for reimbursement to the appropriate insurance provider no later than 90 days after the Effective Date.

53. *"Environmental Law"* means, whenever in effect, all federal, tribal, state and local statutes, regulations, ordinances and similar provisions having the force or effect of law; all judicial and administrative orders and determinations and all common law concerning public health and safety, worker health and safety, pollution or protection of the environment, including the Atomic Energy Act; CERCLA; the Clean Water Act; the Clean Air Act; the Emergency Planning and Community Right-to-Know Act; the Federal Insecticide, Fungicide, and Rodenticide Act; RCRA; the Safe Drinking Water Act; the Toxic Substances Control Act; and any tribal, state or local equivalents.

54. *"Environmental Response Trusts"* means the trusts to be established by Tronox on the Effective Date of the Plan, to which Tronox will contribute a portion of the Funded Environmental Amount, the Owned Sites and the Nevada Assets, as described in more detail in Article IV hereof.

55. *"Environmental Response Trustee"* means the trustee or trustees to be appointed by Tronox and the United States in consultation with certain other Government Environmental Entities (including, as applicable, the Nevada Parties), who will administer the Environmental Response Trusts.

56. *"Environmental Response Trust Agreements"* means the governing documentation for the Environmental Response Trusts.

57. *"Environmental Trust Assets"* means all Owned Sites and related assets that are identified in the Environmental Claims Settlement Agreement and which will be transferred to the Environmental Response Trusts on the Effective Date; provided, however, that Tronox may, at its expense and in accordance with applicable health and safety requirements, remove certain equipment and other assets related to Tronox's operations from each of the Savannah, GA, Soda Springs, ID and Mobile, AL sites and transfer such equipment and assets to alternate locations to be determined by Reorganized Tronox.

58. *"Equity Commitment Agreement"* means that certain Equity Commitment Agreement, dated as of August 27, 2010, by and among Tronox and the Backstop Parties, as may be amended from time to time.

59. *"Equity Committee"* means the official committee of equity security holders, appointed pursuant to section 1102 of the Bankruptcy Code by the U.S. Trustee on March 13, 2009.

60. *"Equity Interests"* means any: (a) Equity Security, including all issued, unissued, authorized, or outstanding shares of capital stock of Tronox Incorporated together with any warrants, options, or contractual rights to purchase or acquire such Equity Securities at any time and all rights arising with respect thereto, in each case that existed prior to the Effective Date; and (b) partnership, limited liability company, or similar interests held by Tronox Incorporated; provided, however, that Equity Interests do not include Intercompany Interests.

61. *"Equity Security"* means any equity security (as defined in section 101(16) of the Bankruptcy Code) in Tronox Incorporated or any of its direct or indirect subsidiaries.

62. *"ERISA"* means the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461 (2006), and the regulations promulgated thereunder.

63. *"Estate"* means, as to each Tronox Debtor, the estate created for that Tronox Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

64. *"Exchange Act"* means the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a et seq.

65. *"Exculpated Parties"* means, collectively, Reorganized Tronox and the Released Parties.

66. *"Executory Contract"* means a contract to which one or more of the Tronox Debtors is a party and that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

67. *"Existing Letters of Credit"* means all outstanding and undrawn letters of credit under the Replacement DIP Facility and the Prepetition Facilities, as set forth in Exhibit 2 hereto.

68. *"Exit Credit Agreement"* means one or more credit agreements governing the Exit Financing, in each case, as the same may be amended, restated, supplemented or otherwise modified from time to time, including the Replacement DIP Agreement from and after the Effective Date, to the extent the Replacement DIP Facility is converted into all or a portion of the Exit Financing in accordance with the terms of the Replacement DIP Agreement.

69. *"Exit Credit Documents"* means all loan and security documents relating to the Exit Financing, in each case, as the same may be amended, restated, supplemented or otherwise modified from time to time. For avoidance of doubt, if the Replacement DIP Facility is converted into all or a portion of the Exit Financing in accordance with the terms of the Replacement DIP Agreement, the term "Exit Credit Documents" shall mean all "Credit Documents" as defined in the Replacement DIP Agreement from and after the Effective Date and all other agreements, instruments or documents (including an Accession and Novation Agreement (as defined in the Replacement DIP Agreement)), in form and substance acceptable to the Replacement DIP Agent, to evidence or effectuate the conversion of the Replacement DIP Facility into all or a portion of the Exit Financing.

70. *"Exit Financing"* means, collectively, a term facility and revolving credit facility pursuant to which Reorganized Tronox will have approximately $468 million of funded debt on the Effective Date, as follows: (a) a $425 million senior secured term loan facility, either under an amended Replacement DIP Facility having converted into exit financing according to its terms, or under a new credit facility and (b) $43.1 million in loans funded under an asset-based revolving credit facility with commitments of up to $125 million (including $28 million face amount in issued letters of credit). The terms of the Exit Financing shall be reasonably satisfactory to the Creditors' Committee and the Backstop Parties (and in no event on terms less favorable to Tronox than the Replacement DIP Facility upon conversion to exit financing as contemplated by the Replacement DIP Agreement).

71. *"Federal Judgment Rate"* means the federal judgment rate of 0.44%, which was in effect as of the Petition Date.

72. *"Final Order"* means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter, which has not been reversed, stayed, modified, or amended, and as to which the time to appeal, seek certiorari, or move for a new trial, re-argument, or rehearing has expired and no appeal, petition for certiorari, or motion for a new trial, re-argument, or rehearing has been timely filed, or as to which any appeal that has been taken, any petition for certiorari, or motion for a new trial, review, re-argument, or rehearing that has been or may be filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought.

73. *"Funded Environmental Amount"* means $270 million in Cash, which Tronox will contribute to or for the benefit of the Environmental Response Trusts and/or certain Government Environmental Entities and the Anadarko Litigation Trust on the Effective Date, and which will be allocated and apportioned as set forth in the Environmental Claims Settlement Agreement.

74. *"Funded Tort Claims Trust Amount"* means $12.5 million in Cash, which Tronox will contribute to the Tort Claims Trust on the Effective Date.

75. *"Future Tort Claimant"* means an entity that establishes that it holds a Tort Claim that did not arise prior to the Effective Date and was not discharged under the Plan.

76. *"General Administrative Claim"* means any Administrative Claim, including Cure Claims, other than a Professional Fee Claim; provided, however, that, (i) as a result of the Environmental Claims Settlement Agreement, any Environmental Claims that are Administrative Claims shall be treated exclusively as set forth in the Environmental Claims Settlement Agreement and shall not be considered General Administrative Claims and (ii) to the extent the Replacement DIP Facility Claims are converted into the Exit Financing in accordance with the terms of the Replacement DIP Agreement, such converted Replacement DIP Facility Claims shall be exclusively treated as

set forth in the applicable Exit Credit Documents and other related loan and security documents and shall not be considered General Administrative Claims.

77. *"General Unsecured Claim"* means any Unsecured Claim (including the Unsecured Notes Claim) that is not an Intercompany Claim, an Environmental Claim, a Tort Claim, an Indirect Environmental Claim, the Anadarko Section 502(h) Claim or a Convenience Claim.

78. *"Government Environmental Entity"* means federal, state, local or tribal Governmental Units asserting claims or having regulatory authority or responsibilities with respect to Environmental Laws.

79. *"Governmental Unit"* means a governmental unit as defined in section 101(27) of the Bankruptcy Code.

80. *"GUC Pool"* means 50.9% of the New Common Stock to be issued and outstanding as of the Effective Date, subject to dilution by shares issued in connection with the Management Equity Plan and the New Warrants.

81. *"Henderson Business"* means Tronox's Henderson, Nevada manufacturing operations (including all personal property and equipment related thereto), but not the real property or buildings in which such facility is located.

82. *"Henderson Facility"* means a certain portion of the Nevada Property where the Henderson Business is located that will be leased to Reorganized Tronox pursuant to a lease agreement described in Article IV herein.

83. *"Holdback Amount"* means the aggregate holdback of those Professional fees billed to Tronox during the Chapter 11 Cases that are held back pursuant to the Professional Fee Order or any other order of the Bankruptcy Court, which amount is to be deposited in the Holdback Escrow Account as of the Effective Date, and which amount shall not constitute property of Tronox or of Reorganized Tronox; provided, however, that when all Professional Fee Claims have been paid in full, any amounts remaining in the Holdback Escrow Account shall be paid to Reorganized Tronox.

84. *"Holdback Escrow Account"* means the escrow account established by Reorganized Tronox into which Cash equal to the Holdback Amount shall be deposited on the Effective Date for the payment of Allowed Professional Fee Claims to the extent not previously paid or disallowed.

85. *"Holder"* means an Entity holding a Claim or an Equity Interest.

86. *"Impaired"* means, with respect to a Class of Claims or Equity Interests, a Class of Claims or Equity Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

87. *"Indemnification Provision"* means each of the indemnification provisions, agreements or obligations currently in place, whether in the bylaws, certificates of incorporation or other formation documents in the case of a limited liability company, board resolutions or employment contracts, for the Tronox Debtors and the current (as of July 7, 2010) directors, officers, members (including *ex officio* members), employees, attorneys, other professionals and agents of the Tronox Debtors and such current directors, officers and members' respective Affiliates; provided, however, that nothing in the Plan, the Plan Supplement or any document related thereto shall in any way release any claim against or liability of the following parties: Lehman Brothers Holdings, Inc., Ernst & Young LLP, Kerr-McGee Corporation and Anadarko Petroleum Corporation and their officers, directors, employees, advisors, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives (including their respective officers, directors, employees, members, and professionals), whether such claims or liabilities be direct or indirect, fixed or contingent, including the claims asserted in the Anadarko Litigation; provided further, however, that for the avoidance of doubt, nothing in the Plan, the Plan Supplement or any document related thereto shall in any way release any individuals who were former directors or officers of the

Tronox Debtors or their subsidiaries and also were or currently are directors or officers of Kerr-McGee Corporation and/or Anadarko Petroleum Corporation.

88. *"Indemnified Parties"* means, collectively, any Tronox Debtor and current (as of July 7, 2010) director, officer, members (including *ex officio* members), employee, attorney, other professional and agent of the Tronox Debtors and such current directors, officers and members' respective Affiliates who is the beneficiary of an Indemnification Provision; provided, however, that nothing in the Plan, the Plan Supplement or any document related thereto shall in any way release any claim against or liability of the following parties, who are not Indemnified Parties: Lehman Brothers Holdings, Inc., Ernst & Young LLP, Kerr-McGee Corporation and Anadarko Petroleum Corporation and their officers, directors, employees, advisors, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives (including their respective officers, directors, employees, members, and professionals), whether such claims or liabilities be direct or indirect, fixed or contingent, including the claims asserted in the Anadarko Litigation; provided further, however, that for the avoidance of doubt, nothing in the Plan, the Plan Supplement or any document related thereto shall in any way release any individuals who were former directors or officers of the Tronox Debtors or their subsidiaries and also were or currently are directors or officers of Kerr-McGee Corporation and/or Anadarko Petroleum Corporation.

89. *"Indenture"* means that certain Indenture dated as of November 28, 2005, as the same may have been substantially modified, amended or supplemented, together with all instruments and agreements related thereto, between Tronox Worldwide LLC and Tronox Finance Corp. as issuers, and Citibank, N.A., as indenture trustee, under which the 9.5% unsecured notes due December 1, 2012 were issued.

90. *"Indenture Charging Lien"* means any lien of the Indenture Trustee, arising under the Indenture, against Distributions on account of the Unsecured Notes Claim, securing payment of the fees and expenses of the Indenture Trustee, including fees and expenses of counsel and other professionals engaged by or on behalf of or for the benefit of the Indenture Trustee.

91. *"Indenture Trustee"* means Wilmington Trust Company, as the successor trustee to Citibank, N.A., with respect to the Indenture.

92. *"Indenture Trustee Fee Claim"* means, individually and collectively, any claim against Tronox for any compensation, disbursements, fees, expenses, and indemnification pursuant to the Indenture, including any claim under such Indenture for the reasonable and documented fees and expenses of the Indenture Trustee and its counsel, any unpaid prepetition fees and costs of the Indenture Trustee (including its counsel) payable thereunder, and any claim for unpaid fees and expenses of any predecessor Indenture Trustee payable thereunder, up to a maximum of $550,000.

93. *"Indirect Environmental Claim"* means a Claim held by a private party for breach of contract, indemnification, contribution, reimbursement or cost recovery related to environmental monitoring or remediation, including Claims for contribution or direct costs under any Environmental Law.

94. *"Insurance Policies"* means, collectively, all of Tronox's insurance policies, including the D&O Liability Policies, but excluding the Environmental Insurance Assets and the Tort Claims Insurance Assets.

95. *"Intercompany Claim"* means any Claim held by a Tronox Debtor against another Tronox Debtor or any Claim held by an Affiliate against a Tronox Debtor.

96. *"Intercompany Interest"* means an Equity Interest in a Tronox Debtor held by another Tronox Debtor or an Equity Interest in a Tronox Debtor held by an Affiliate of a Tronox Debtor.

97. *"Judicial Code"* means title 28 of the United States Code, 28 U.S.C. §§ 1–4001.

98. *"Lien"* means a lien as defined in section 101(37) of the Bankruptcy Code.

99. *"Management 2010 Bonus Plan"* means that certain cash compensation plan to be assumed and implemented by the New Board as set forth in Article V.I.3 of the Plan, the form of which will be included in the Plan Supplement.

100. *"Management Equity Plan"* means a director and officer compensation plan that shall provide for the issuance of equity awards in the form of restricted stock, restricted stock units, options, stock appreciation rights and other similar forms with respect to no less than 5% and no more than 10 % of the New Common Stock issued and outstanding on the Effective Date, together with all New Common Stock issuable upon exercise of the Management Equity Plan.

101. *"Nevada Assets"* means (a) Tronox's interest in Basic Management, Inc., (b) Tronox's interest in the Landwell Company, LP and (c) the Nevada Property. For the avoidance of doubt, the Nevada Assets do not include the Henderson Business, which is included in the Retained Assets and which Reorganized Tronox will continue to own and operate after the Effective Date.

102. *"Nevada Parties"* means the Nevada Division of Environmental Protection, the Southern Nevada Water Authority, the Central Arizona Project/Central Arizona Water Conservation District and the Metropolitan Water District of Southern California.

103. *"Nevada Property"* means certain real property owned by Tronox, comprising several parcels located in Clark County, Nevada.

104. *"New Board"* means the initial board of directors of Reorganized Tronox Incorporated to be appointed as of the Effective Date, the members of which shall be determined in accordance with sections 1123 and 1129 of the Bankruptcy Code and as set forth in Article IV hereof.

105. *"New Common Stock"* means the common equity in Reorganized Tronox Incorporated to be authorized, issued or reserved on the Effective Date, which shall constitute all of the direct and indirect common equity of Reorganized Tronox Incorporated.

106. *"New Management Agreements"* means employment agreements by and between Reorganized Tronox Incorporated and certain individuals in senior management, the terms of which shall be reasonably acceptable to Tronox, the Creditors' Committee and the Required Backstop Parties and shall be included in the Plan Supplement.

107. *"New Series A Warrants"* means warrants to be issued on the Effective Date pursuant to the terms of the New Warrant Agreement (the form of which will be included in the Plan Supplement) to acquire, in the aggregate, 544,041 shares of New Common Stock, subject to adjustment as set forth in the Warrant Agreement (which represents 3.5% of the New Common Stock issued and outstanding on the Effective Date, together with all New Common Stock issuable upon exercise of the New Series A Warrants), with an expiration date of the seventh anniversary of the Effective Date, and an exercise price of $62.13 per share, based on an implied total enterprise value for Reorganized Tronox of $1.4 billion. The New Series A Warrants and the shares of New Common Stock issued upon exercise thereof will be subject to dilution by any shares of New Common Stock issued after the Effective Date, including upon exercise of the New Series B Warrants and shares issued under the Management Equity Plan.

108. *"New Series B Warrants"* means warrants to be issued on the Effective Date pursuant to the terms of the New Warrant Agreement (the form of which will be included in the Plan Supplement) to acquire, in the aggregate, 672,175 shares of New Common Stock, subject to adjustment as set forth in the New Warrant Agreement (which represents 4.1% of the New Common Stock issued and outstanding on the Effective Date, together with all New Common Stock issuable upon exercise of the New Warrants), with an expiration date of the seventh anniversary of the Effective Date, and an exercise price of $68.56 per share, based on an implied total enterprise value for Reorganized Tronox of $1.5 billion. The New Series B Warrants and the shares of New Common Stock issued upon exercise thereof will be subject to dilution by any shares of New Common Stock issued after the Effective Date, including shares issued under the Management Equity Plan.

109. *"New Warrants"* means, collectively, the New Series A Warrants and the New Series B Warrants.

110. *"Non-Asbestos Toxic Exposure Claims"* means timely filed Tort Claims against any Tronox Debtor for personal injury, wrongful death, sickness or disease arising directly or indirectly from exposure to or release of creosote, benzene, radiation or other environmental contamination or chemical exposure or release.

111. *"Notice and Claims Agent"* means Kurtzman Carson Consultants LLC, located at 2335 Alaska Avenue, El Segundo, California 90245, (866) 967-0675, retained and approved by the Bankruptcy Court as Tronox's notice and claims agent.

112. *"Offered Shares"* means 6,819,857 shares of New Common Stock, par value $0.01 per share, to be offered and sold by Reorganized Tronox pursuant to the Rights Offering and the Equity Commitment Agreement, at a purchase price of $27.13 per share.

113. *"Original DIP Facility"* means the $125 million super priority senior priming secured revolving facility dated January 13, 2009, by and among Tronox Incorporated and Tronox Worldwide LLC, as Borrowers, Credit Suisse Securities (USA) LLC as Sole Lead Arranger and Sole Brookrunner, Credit Suisse, as Administrative Agent, and JPMorgan Chase Bank, N.A. as Collateral Agent.

114. *"Other Sites"* means the sites not owned by Tronox as of the Petition Date and identified in the Other Sites exhibit to the Environmental Claims Settlement Agreement.

115. *"Owned Sites"* means the domestic real property owned by Tronox (other than the Hamilton, Mississippi facility and the Oklahoma City, Oklahoma Technical Center, which real property is included in the Retained Assets) and which shall be identified in the Owned Sites exhibit to the Environmental Claims Settlement Agreement as real property being transferred to the Environmental Response Trusts on the Effective Date.

116. *"PBGC"* means the Pension Benefit Guaranty Corporation.

117. *"Pension Plan"* means the Tronox Incorporated Retirement Plan.

118. *"Petition Date"* means January 12, 2009, the date on which Tronox commenced the Chapter 11 Cases.

119. *"Plan"* means this *First Amended Joint Plan of Reorganization of Tronox Incorporated, et al. Pursuant to Chapter 11 of the Bankruptcy Code*, as may be amended, supplemented or modified from time to time, including the Plan Supplement, which is incorporated herein by reference.

120. *"Plan Supplement"* means the compilation of documents and forms of documents, schedules and exhibits to the Plan, in form reasonably satisfactory to the Creditors' Committee, the Required Backstop Parties and, as applicable, the United States and the Nevada Parties, to be filed by Tronox no later than 14 days prior to the Voting Deadline or such other date as may be approved by the Bankruptcy Court on notice to parties in interest, and additional documents filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement, that may include, among other documents, the following: (a) the Environmental Claims Settlement Agreement and related exhibits; (b) the Environmental Response Trust Agreements; (c) the list of Owned Sites to be transferred to the Environmental Response Trusts; (d) the list of Other Sites covered by the Environmental Claims Settlement Agreement; (e) the Anadarko Litigation Trust Agreement; (f) the Tort Claims Trust Agreement; (g) the Tort Claims Trust Distribution Procedures; (h) the Exit Credit Agreement; (i) the New Warrant Agreement; (j) the Amended and Restated Articles of Incorporation and Bylaws of Reorganized Tronox Incorporated; (k) to the extent known, the identity of members of the New Board, as well as the nature and amount of compensation for any member of the New Board who is an insider under section 101(31) of the Bankruptcy Code; (l) the form of the New Management Agreements and the list of persons entering into New Management Agreements; (m) the Management Equity Plan; (n) the Management 2010 Bonus Plan, (o) the Assumed Executory Contract and Lease List; and (p) the Registration Rights Agreement. Any reference to the Plan Supplement in this Plan shall include each of the documents identified above as (a) through (p). Tronox shall have the right to amend the documents contained in the

Plan Supplement through and including the Effective Date in accordance with Article IX, subject to such amendments being reasonably satisfactory to the Creditors' Committee, the Required Backstop Parties and, as applicable, the United States and the Nevada Parties.

121. *"Plan Support Agreement"* means that certain agreement, dated as of August 27, 2010, by and among Tronox, the Creditors' Committee, certain members of the Creditors' Committee and the Holders of more than 58% in principal amount of the Unsecured Notes.

122. *"Postpetition Period"* means the period of time commencing on the Petition Date and continuing through the Effective Date.

123. *"Prepetition Facilities"* means the secured term loan and revolving credit facilities under that certain credit agreement dated November 28, 2006, by and among Tronox Incorporated and Tronox Worldwide LLC, as Borrowers, Lehman Brothers Inc. and Credit Suisse Securities (USA) LLC, as Joint Lead Arrangers and Bookrunners, ABN Amro, as Syndication Agent, JPMorgan Chase Bank, N.A. and Citicorp USA, Inc., as co-documentation agents, and Lehman Commercial Paper Inc., as Administrative Agent.

124. *"Priority Non-Tax Claims"* means any Claim, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

125. *"Priority Tax Claim"* means any Claim of the kind specified in section 507(a)(8) of the Bankruptcy Code.

126. *"Pro Rata"* means (a) the proportion that an Allowed Claim or Equity Interest in a particular Class bears to the aggregate amount of Allowed Claims or Equity Interests in that Class.

127. *"Professional"* means an Entity: (a) employed pursuant to a Bankruptcy Court order in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date, pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

128. *"Professional Fee Claims"* means all Administrative Claims for the compensation of Professionals and the reimbursement of expenses incurred by such Professionals through the Confirmation Date.

129. *"Professional Fee Order"* means that certain order of the Bankruptcy Court entered on March 9, 2009, establishing procedures for interim compensation and reimbursement of expenses of Professionals [Dkt. No. 218].

130. *"Proof of Claim"* means a proof of Claim timely filed against any of the Tronox Debtors in the Chapter 11 Cases.

131. *"Property Damage Claims"* means timely filed private party property damage, remediation or restoration Tort Claims related to creosote, benzene, or other chemical exposure or release, or environmental contamination, radiation (including naturally occurring radioactive material ("NORM") or related matters. For the avoidance of doubt, Property Damage Claims are included in Class 4 Tort Claims and are not Environmental Claims.

132. *"RCRA"* means the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.

133. *"Record Date"* means 5:00 p.m. (PT) on September 22, 2010, the date on which it will be determined which Holders of Claims and Equity Interests in the Voting Classes are entitled to vote to accept or reject the Plan and whether Claims and Equity Interests have been properly assigned or transferred under Bankruptcy Rule 3001(e) such that an assignee can vote as the Holder of a Claim or Equity Interest

134. *"Registration Rights Agreement"* means that certain Registration Rights Agreement to be included in the Plan Supplement, substantially in the form of Exhibit F to the Equity Commitment Agreement, pursuant to which Reorganized Tronox will be obligated to register certain shares of New Common Stock.

135. *"Released Party"* means each of: (a) Tronox and Reorganized Tronox (b) the current directors and officers of the Tronox Debtors in place as of July 7, 2010; (c) all current and former members of the Creditors' Committee; (d) the Backstop Parties; (e) and the parties to that certain Equity Commitment Agreement dated December 20, 2009, filed with the Bankruptcy Court on December 20, 2009 [see Dkt. No. 1003] and approved by orders entered on December 23, 2009 and January 15, 2010 [Dkt. Nos. 1031 and 1115]; (f) the agents and lenders under each of the Prepetition Facilities, the Original DIP Facility and the Replacement DIP Facility solely in connection with such facilities; (g) the Environmental Response Trustees; (h) all current and former members of the Equity Committee; (i) with respect to each of the foregoing Entities in clauses (a) through (h), such Entities' subsidiaries, Affiliates, members, officers, directors, managing directors, managers, controlling persons, agents, financial advisors, accountants, investment bankers, consultants, attorneys, employees, partners and representatives, in each case, only in their capacity as such and subject to the limitations set forth herein; (j) the Nevada Parties and any other Government Environmental Entity that is party to the Environmental Claims Settlement Agreement; (k) the United States and its agents, attorneys and financial advisors; provided, however, that (x) nothing in the Plan, the Plan Supplement or any document related thereto shall in any way release any claim against or liability of the following parties (or their Affiliates), who are not Released Parties: Lehman Brothers Holdings Inc., Ernst & Young LLP, Kerr-McGee Corporation and Anadarko Petroleum Corporation and their officers, directors, employees, advisors, attorneys, professionals, accountants, investment bankers, consultants, agents and other representatives (including their respective officers, directors, employees, members and professionals) in their capacity as such, whether such claims or liabilities be direct or indirect, fixed or contingent, including the claims asserted in the Anadarko Litigation; (y) for the avoidance of doubt, nothing in the Plan, the Plan Supplement or any document related thereto shall in any way release any individuals who were former directors or officers of the Tronox Debtors or their subsidiaries and also were or currently are directors or officers of Kerr-McGee Corporation and/or Anadarko Petroleum Corporation; and (z) nothing in the Plan or Confirmation Order shall discharge, release or preclude (i) any liability to the Securities and Exchange Commission that is not a Claim and (ii) any liability to the SEC on the part of any Person or Entity that is not a Tronox Debtor or a Reorganized Tronox Debtor.

136. *"Releasing Parties"* means all Entities who have held, hold or may hold Claims or Equity Interests that have been released pursuant to Article VIII.C or VIII.D, discharged pursuant to Article VIII.A or are subject to exculpation pursuant to Article VIII.F.

137. *"Reorganized"* means, with respect to the Tronox Debtors, any Tronox Debtor or any successor thereto, by merger, consolidation or otherwise, on or after the Effective Date.

138. *"Reorganized Tronox"* means Tronox Incorporated, Tronox Worldwide LLC, Tronox LLC, non-debtor foreign subsidiaries of the Tronox Debtors and such other Tronox Debtors and or one or more newly organized successors, or any successor thereto, by merger, consolidation or otherwise, on or after the Effective Date.

139. *"Replacement DIP Agent"* means Goldman Sachs Lending Partners LLC, in its capacity as administrative and collateral agent under the Replacement DIP Facility, and its successors and assigns.

140. *"Replacement DIP Agreement"* means that certain Senior Secured Super-Priority Debtor-in-Possession and Exit Credit and Guaranty Agreement, dated as of December 20, 2009, among Tronox Incorporated, Tronox Worldwide LLC, Certain Subsidiaries of Tronox Worldwide LLC, as Guarantors, various Lenders, Goldman Sachs Lending Partners LLC, as Sole Lead Arranger and Sole Bookrunner, Goldman Sachs Lending Partners LLC, as Syndication Agent, and Goldman Sachs Lending Partners LLC, as Administrative Agent and Collateral Agent, as amended from time to time.

141. *"Replacement DIP Documents"* means the Replacement DIP Agreement and all other loan and security documents relating to the Replacement DIP Facility, in each case, as the same may be amended, restated, supplemented or otherwise modified from time to time, including all "Credit Documents" as defined in the Replacement DIP Agreement.

142. "*Reorganized Tronox Incorporated*" means Tronox Incorporated, as reorganized pursuant to and under the Plan, or any successor thereto by merger, consolidation or otherwise, on or after the Effective Date.

143. *"Replacement DIP Facility"* means the $335 million Tranche B-1 and $90 million Tranche B-2 term loan facilities under the Replacement DIP Agreement.

144. *"Required Backstop Parties"* means Backstop Parties representing, in the aggregate, at least 66 2/3% of the total dollar amount (*i.e.*, $185 million) committed by all Backstop Parties for the purchase of unsubscribed shares in connection with the Rights Offering; and as referenced in, and subject to, each applicable agreement executed by the Backstop Parties in connection with and related to the Plan.

145. *"Retained Assets"* means all assets of Tronox Incorporated and its subsidiaries, and all of their rights, title and interest in any nature of property of any kind, wherever located, as specified in sections 541 of the Bankruptcy Code, other than the Environmental Trust Assets. For the avoidance of doubt, the Retained Assets include Tronox's (a) Hamilton, Mississippi facility; (b) Oklahoma City, Oklahoma Technical Center; (c) the Henderson Business; and (d) certain equipment and other assets related to Tronox's operations from each of the Savannah, GA, Soda Springs, ID and Mobile, AL sites, to be removed from such sites at the discretion of Tronox or Reorganized Tronox. For the avoidance of doubt, the Retained Assets do not include the Funded Environmental Amount, the Nevada Assets, the Environmental Trust Assets, the Environmental Insurance Assets, the Tort Claims Trust Insurance Assets and/or the Funded Tort Claims Trust Amount.

146. *"Rights"* means the rights to subscribe for and acquire an aggregate of 45.5% of the New Common Stock, in exchange for $185 million in Cash, pursuant to the terms of the Rights Offering Procedures and the Equity Commitment Agreement.

147. "*Rights Expiration Date*" means the expiration date of the Rights Offering, as set forth in the Rights Offering Procedures, which is 5:00 p.m. (PT) on November 10, 2010.

148. *"Rights Offering"* means the offering of the Rights by Reorganized Tronox to Eligible Holders and the Backstop Parties.

149. *"Rights Offering Procedures"* means the procedures setting forth the terms and conditions of the Rights Offering, as approved by the Bankruptcy Court and attached hereto as Exhibit 1.

150. *"Schedules"* means the Schedules of Assets and Liabilities and the Statement of Financial Affairs for each of the Tronox Debtors, filed with the Bankruptcy Court on March 30, 2009 [Dkt. Nos. 275-278 and 280-305].

151. *"Secured"* means when referring to a Claim: (a) secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed as such pursuant to the Plan.

152. *"Secured Claim"* means any Claim that is Secured; provided, that Secured Claims classified in Class 2 of the Plan shall not include Claims under the Replacement DIP Facility.

153. *"Securities Act"* means the Securities Act of 1933, 15 U.S.C. §§ 77a-77aa, together with the rules and regulations promulgated thereunder.

154. *"Security"* means a security as defined in section 2(a)(1) of the Securities Act.

155. "*Subscription Agent*" means Kurtzman Carson Consultants LLC, located at 2335 Alaska Avenue, El Segundo, California 90245, (866) 967-0675, in its capacity as the approved subscription agent for the Rights Offering.

156. *"Tort Claim"* means non-governmental Claims against Tronox, whether such Claims are known or unknown, whether by contract, tort or statute, whether existing or hereinafter arising, for death, bodily injury, sickness, disease, medical monitoring or other personal physical injuries or damage to property to the extent caused or allegedly caused directly or indirectly by the presence of or exposure to any product or toxin manufactured or disposed of, or other property owned, operated or used for disposal by, Tronox or any Entity for whose products or operations Tronox allegedly has liability, including all such Claims relating to the Owned Sites, the Other Sites, the Environmental Trust Assets, the Nevada Assets or the Retained Assets to the extent owned, operated or used for disposal by, Tronox prior to the Effective Date and not by Reorganized Tronox, including Non-Asbestos Toxic Exposure Claims, Property Damage Claims, Asbestos Claims and Claims of Future Tort Claimants. For the avoidance of doubt, Tort Claims do not include any workers' compensation claims brought directly by a past or present employee of Tronox under an applicable workers' compensation statute.

157. *"Tort Claims Insurance Assets"* means all net proceeds of any insurance settlements or the rights to such proceeds (after deduction of counsel's contingency fee only) from any Insurance Policies providing any coverage for the benefit of any Holders of Tort Claims, including (a) Home Indemnity Insurance, Policy Numbers: GA 4389610 (1/1/73 - 1/1/74), GA 4389610 (1/1/74 - 1/1/75), GA 4389610 (1/1/75 - 1/1/76), GA 9119366 (1/1/76 - 1/1/77), GA 9119366 (1/1/77 - 7/1/78), GA 9697500 (7/1/78 - 7/1/79), GA 9730184 (7/1/79 - 7/1/80) GA 9730184 (7/1/80 - 7/1-81); (b) Old Republic Insurance Company, Commercial General Liability Policy Numbers: MWZ 43816 (7/1/85 - 7/1/86), MWZ 43956 (7/1/86 - 7/1/87), MWZY 10049 (7/1/87 - 7/1/88); (c) Travelers (Aetna) Indemnity Company, Policy Numbers: 08AL018757SR (1/15/65 - 1/1/66), 8XN4SC (7/1/65 - 1/1/66), 40AL00500SR(Y) (1/1/66 - 1/1/67), 8XN4SC (1/1/66 - 1/1/67), 40AL00500SR(Y) (1/1/67 - 1/1/68), 8XN4SC (1/1/67 - 1/1/68), 40AL00500SR(Y) (1/1/68 - 1/1/69), 8XN4SC (1/1/68 - 4/8/68), 8XN4SC (4/8/68 - 1/1/69); and (d) policies issued by Century Indemnity Co. and described in Dkt. No. 1274.

158. *"Tort Claims Trust"* means the trust to be established by Tronox pursuant to the Plan, from which Distributions to Holders of Tort Claims will be made, as described in more detail in Article IV hereof.

159. *"Tort Claims Trust Agreement"* means the governing documentation for the Tort Claims Trust.

160. *"Tort Claims Trust Distributable Amount"* means the amount available for Distribution from the Tort Claims Trust, after payment of administrative expenses as provided in the Tort Claims Trust Agreement.

161. *"Tort Claims Trust Distribution Procedures"* means the procedures to be implemented by the Tort Claims Trustee, pursuant to the terms and conditions of the Plan and the Tort Claims Trust Agreement, to process, liquidate and make Distributions on account of Tort Claims. Final determinations on the allowance or disallowance of Tort Claims for Distribution purposes shall be made in accordance with the Tort Claims Trust Distribution Procedures.

162. *"Tort Claims Trustee"* means the Garretson Firm Resolution Group, Inc., which will administer the Tort Claims Trust.

163. *"Tronox" or "Tronox Debtors"* means collectively, Tronox Luxembourg S.ar.l; Tronox Incorporated; Cimarron Corporation; Southwestern Refining Company, Inc.; Transworld Drilling Company; Triangle Refineries, Inc.; Triple S, Inc.; Triple S Environmental Management Corporation; Triple S Minerals Resources Corporation; Triple S Refining Corporation; Tronox LLC; Tronox Finance Corp.; Tronox Holdings, Inc.; Tronox Pigments (Savannah) Inc.; and Tronox Worldwide LLC.

164. *"U.S. Trustee"* means the United States Trustee for the Southern District of New York.

165. *"Unexpired Lease"* means a lease to which one or more of the Tronox Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

166. *"Unimpaired"* means, with respect to a Class of Claims or Equity Interests, a Class of Claims or Equity Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

167. *"United States"* means the United States of America and all agencies or instrumentalities thereof.

168. *"Unsecured Claim"* means any Claim that is neither Secured nor entitled to priority under the Bankruptcy Code or any order of the Bankruptcy Court, including any Claim arising from the Unsecured Notes or the rejection of an Executory Contract or Unexpired Lease under section 365 of the Bankruptcy Code.

169. *"Unsecured Notes"* means the 9.5% senior unsecured notes due December 1, 2012, issued pursuant to the Indenture.

170. *"Unsecured Notes Claim"* means the Claim filed by the Indenture Trustee against Tronox Worldwide LLC on account of the Unsecured Notes, consisting of par value plus accrued and unpaid prepetition interest on the Unsecured Notes, which shall constitute an Allowed Claim in the amount of $370,411,805.66. For the avoidance of doubt, the Unsecured Notes Claim shall constitute a General Unsecured Claim in Class 3. Upon the Distribution of New Common Stock to the Holders of the Unsecured Notes on account of such Claim, any Claim filed against a Tronox Debtor that duplicates all or any portion of the Unsecured Notes Claim shall be deemed withdrawn and expunged.

171. *"Voting Deadline"* means 5:00 p.m. (PT) on November 5, 2010, by which time any ballot must be properly executed, completed and delivered to the Notice and Claims Agent by (a) first-class mail; (b) overnight courier or (c) personal delivery.

B. Rules of Interpretation.

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) any reference herein to an existing document, schedule or exhibit, whether or not filed, having been filed or to be filed shall mean that document, schedule or exhibit, as it may thereafter be amended, modified, or supplemented; (4) any reference to an Entity as a Holder of a Claim or Equity Interest includes that Entity's successors and assigns; (5) unless otherwise specified, all references herein to "Articles" are references to Articles hereof or hereto; (6) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (7) unless otherwise specified, the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (8) subject to the provisions of any contract, certificate of incorporation, bylaw, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with the applicable federal law, including the Bankruptcy Code and Bankruptcy Rules; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (10) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (12) all references to docket numbers of documents filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (13) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated; and (14) any immaterial effectuating provisions may be interpreted by Tronox and Reorganized Tronox in such a manner that is consistent with the overall purpose and intent of the Plan, all without further Bankruptcy Court order.

C. Computation of Time.

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

D. Governing Law.

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the state of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); provided, however, that corporate governance matters relating to the Tronox Debtors not incorporated in Delaware shall be governed by the laws of the state of incorporation of the applicable Tronox Debtor.

E. Reference to Monetary Figures.

All references in the Plan to monetary figures shall refer to currency of the United States, unless otherwise expressly provided.

ARTICLE II.
ADMINISTRATIVE CLAIMS, REPLACEMENT DIP FACILITY CLAIMS, PRIORITY TAX CLAIMS AND UNITED STATES TRUSTEE STATUTORY FEES

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Replacement DIP Facility Claims and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Equity Interests set forth in Article III.

A. Administrative Claims.

1. General Administrative Claims.

Except as specified in this Article II, unless otherwise agreed to by the Holder of a General Administrative Claim and Tronox (with the consent of the Creditors' Committee and the Required Backstop Parties) or Reorganized Tronox, as applicable, each Holder of an Allowed General Administrative Claim will receive, in full satisfaction of its General Administrative Claim, Cash equal to the amount of such Allowed General Administrative Claim either: (a) on the Effective Date; (b) if the General Administrative Claim is not Allowed as of the Effective Date, 30 days after the date on which an order allowing such General Administrative Claim becomes a Final Order, or as soon thereafter as reasonably practicable; or (c) if the Allowed General Administrative Claim is based on a liability incurred by Tronox in the ordinary course of business during the Postpetition Period, pursuant to the terms and conditions of the particular transaction giving rise to such Allowed General Administrative Claims, without any further action by the Holder of such Allowed General Administrative Claim.

2. Professional Compensation.

(a) Final Fee Applications.

All final requests for payment of Professional Fee Claims, including the Holdback Amount and Professional Fee Claims incurred during the period from Petition Date through the Confirmation Date, must be filed with the Bankruptcy Court and served on Tronox and counsel to the Creditors' Committee no later than 60 days after the Confirmation Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court in the Chapter 11 Cases, the allowed amounts of such Professional Fee Claims as determined by Final Order of the Bankruptcy Court shall be paid by Reorganized Tronox in full in Cash.

(b) Payment of Interim Amounts.

Subject to the Holdback Amount, on the Effective Date, Tronox shall pay all amounts owing to Professionals for all outstanding amounts payable relating to prior periods through the Confirmation Date. To receive payment, on or before Effective Date, each Professional shall submit a detailed invoice covering such period in the manner and providing the detail as set forth in the Professional Fee Order.

(c) Post-Confirmation Date Fees and Expenses.

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, Tronox or Reorganized Tronox, as the case may be, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation and Consummation of the Plan incurred by Tronox or Reorganized Tronox. Except as otherwise specifically provided in the Plan, upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and Tronox or Reorganized Tronox, as the case may be, may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Administrative Claims Bar Date.

Except as otherwise provided in this Article II, requests for payment of Administrative Claims must be filed and served on Reorganized Tronox pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Administrative Claims Bar Date, which shall be the 45th day after the Effective Date. Holders of Administrative Claims that are required to, but do not, file and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped and enjoined from asserting such Administrative Claims against Tronox or Reorganized Tronox or their property and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests, if any, must be filed and served on Reorganized Tronox and the requesting party no later than 75 days after the Effective Date. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be filed with respect to an Administrative Claim previously Allowed by Final Order, including all Administrative Claims expressly Allowed under this Plan or granted under the order approving the Replacement DIP Facility.

B. Replacement DIP Facility Claims

The Replacement DIP Facility Claims shall be Allowed in full, including (i) all Claims for unpaid principal, interest and other charges outstanding on the Effective Date and (ii) all Claims for fees and expenses and other charges provided for under the Replacement DIP Documents. On the Effective Date, either (i) (x) the Allowed Replacement DIP Facility Claims shall convert into the Exit Financing in accordance with the terms of the Replacement DIP Documents, (y) Reorganized Tronox shall be bound by the Replacement DIP Documents (which shall thereupon constitute the Exit Facility Credit Documents), and (z) Reorganized Tronox shall assume the Allowed Replacement DIP Facility Claims in accordance with the terms of the Exit Credit Documents, or (ii) (w) the Allowed Replacement DIP Facility Claims shall be paid in full in Cash on the Effective Date, (x) all Existing Letters of Credit shall be terminated without liability to the issuer thereof or any agent or lender under the Replacement DIP Facility or such Existing Letters of Credit shall be cash collateralized in accordance with the terms of the applicable Exit Credit Documents, (y) Reorganized Tronox shall assume all contingent Claims under the Replacement DIP Documents that expressly survive the termination thereof, and (z) all financing commitments under the Replacement DIP Documents shall terminate in full.

C. Priority Tax Claims.

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be paid in full in cash on the Effective Date, or as soon thereafter as is practicable, provided, however, that Tronox or Reorganized Tronox shall be authorized, at its

option, and in lieu of payment in full in Cash of an Allowed Priority Tax Claim, to make deferred Cash payments on account thereof in the manner and to the extent permitted under section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on or before the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between Tronox and such Holder, or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business.

D. United States Trustee Statutory Fees.

Tronox shall pay all United States Trustee quarterly fees under 28 U.S.C § 1930(a)(6), plus any interest due and payable under 31 U.S.C. § 3717 on all disbursements, including Plan payments and disbursements in and outside the ordinary course of Tronox's businesses, for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed or closed, whichever occurs first.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. Classification of Claims and Equity Interests.

All Claims and Equity Interests, except for Administrative Claims, Replacement DIP Facility Claims and Priority Tax Claims, are classified in the Classes set forth in this Article III. A Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Equity Interest qualifies within the description of such other Classes. A Claim or Equity Interest also is classified in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim or Equity Interest is an Allowed Claim or Equity Interest in that Class and has not been paid, released or otherwise satisfied prior to the Effective Date.

1. Deemed Substantive Consolidation of the Tronox Debtors

Pursuant to Article IV.A, the Plan provides for the consensual deemed substantive consolidation of the Estates into a single Estate for certain limited purposes related to the Plan, including voting, Confirmation and Distribution. As a result of the deemed substantive consolidation of the Estates, each Class of Claims and Interests will be treated as against a single consolidated Estate without regard to the separate identification of the Tronox Debtors.

2. Summary of Classification and Treatment.

The classification of Claims and Equity Interests against the Tronox Debtors pursuant to the Plan is as follows:

Class	Claims and Equity Interests	Status	Voting Rights
Class 1	Priority Non-Tax Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 2	Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 3	General Unsecured Claims	Impaired	Entitled to Vote
Class 4	Tort Claims	Impaired	Entitled to Vote
Class 5	Environmental Claims	Impaired	Entitled to Vote
Class 6	Indirect Environmental Claims	Impaired	Entitled to Vote
Class 7	Convenience Claims	Impaired	Entitled to Vote
Class 8	Equity Interests in Tronox Incorporated	Impaired	Entitled to Vote

B. *Treatment of Claims and Equity Interests.*

1. Class 1 - Priority Non-Tax Claims.

(a) *Classification*: Class 1 consists of all Priority Non-Tax Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Priority-Non Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Non-Tax Claim, each Holder of such Allowed Priority Non-Tax Claim shall be paid in full in Cash on or as soon as reasonably practicable after (i) the Effective Date or (ii) the date on which such Priority Non-Tax Claim becomes Allowed.

(c) *Voting*: Class 1 is Unimpaired by the Plan. Each Holder of a Priority Non-Tax Claim is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Priority Non-Tax Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 - Secured Claims.

(a) *Classification*: Class 2 consists of all Secured Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Secured Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Secured Claim, Holders of Allowed Secured Claims shall receive one of the following treatments, at the discretion of Tronox (with the reasonable consent of the Creditors' Committee and Required Backstop Parties): (i) Tronox or Reorganized Tronox shall pay such Allowed Secured Claim in full in Cash including the payment of any interest required to be paid under section 506(b) of the Bankruptcy Code; (ii) Tronox or Reorganized Tronox shall deliver the collateral securing any such Allowed Secured Claim; or (iii) Tronox or Reorganized Tronox shall otherwise treat any Allowed Secured Claim in any other manner such that the Claim shall be rendered Unimpaired.

(c) *Voting*: Class 2 is Unimpaired by the Plan. Each Holder of a Secured Claim is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Secured Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 - General Unsecured Claims.

(a) *Classification:* Class 3 consists of all General Unsecured Claims, including the Unsecured Notes Claim.

(b) *Treatment:* On the Effective Date, in full and final satisfaction, settlement, release and discharge of and in exchange for each Allowed General Unsecured Claim, Holders of Allowed General Unsecured Claims will receive on account of such Allowed General Unsecured Claims the following consideration:

(i) their Pro Rata share of the GUC Pool; and

(ii) their Pro Rata share of Rights to purchase New Common Stock pursuant to the terms of the Rights Offering.

(c) *Voting:* Class 3 is Impaired by the Plan. Holders of General Unsecured Claims are entitled to vote to accept or reject the Plan.

4. Class 4 - Tort Claims.

(a) *Classification*: Class 4 consists of all Tort Claims.

(b) *Treatment*: In full and final satisfaction, settlement, release and discharge of and in exchange for each Tort Claim, Holders of Allowed Tort Claims will receive on account of such Allowed Tort Claims a Distribution from the Tort Claims Trust in accordance with the Tort Claims Distribution Procedures.

As described more fully in Article IV.C herein, on the Effective Date, Tronox will establish the Tort Claims Trust (to be administered by the Tort Claims Trustee pursuant to the Tort Claims Trust Agreement) and transfer to the Tort Claims Trust the following consideration: (i) the right to 12% of the proceeds of the Anadarko Litigation (together with any other fee sharing or other arrangements to be agreed upon in good faith by the United States and holders of Tort Claims, which agreement will be set forth in the Anadarko Litigation Trust Agreement), (ii) the Funded Tort Claims Trust Amount and (iii) the Tort Claims Insurance Assets.

The Tort Claims Trust Distributable Amount will be distributed in accordance with the Tort Claims Trust Agreement along the following parameters:

(i) 6.25% to Holders of Allowed Indirect Environmental Claims if the aggregate amount of Allowed Indirect Environmental Claims is equal to or greater than $80 million, such that the aggregate amount of Allowed Indirect Environmental Claims to be paid out of the Tort Claims Trust Distributable Amount is equal to or greater than $40 million; provided that if the aggregate amount of Allowed Indirect Environmental Claims to be paid out of the Tort Claims Trust is less than $40 million, then the percentage shall be proportionally reduced (for example, if the aggregate amount of Allowed Indirect Environmental Claims is $20 million, then Holders of Allowed Indirect Environmental Claims shall receive 50% of the above allocated percentage of the Tort Claims Trust Distributable Amount, or 3.125%).

(ii) 6.25% to Holders of Asbestos Claims and Future Tort Claimants.

(iii) 6.25% to Holders of Property Damage Claims if the aggregate amount of Allowed Property Damage Claims is equal to or greater than $50 million; provided that if the aggregate amount of Allowed Property Damage Claims is less than $50 million, then the 6.25% shall be proportionally reduced (for example, if the aggregate amount of Allowed Property Damage Claims is $25 million, then Holders of Property Damage Claims shall receive 50% of 6.25%, or 3.125%, of the Tort Claims Trust Distributable Amount).

(iv) The remaining Tort Claims Trust Distributable Amount shall be distributed to Holders of Non-Asbestos Toxic Exposure Claims.

The sole recourse of Holders of Tort Claims shall be the Tort Claims Trust, and such

Holders shall have no right at any time to assert Tort Claims against Reorganized Tronox. Final determinations on the allowance or disallowance of Tort Claims for distribution purposes shall be made in accordance with the Tort Claims Trust Distribution Procedures.

(c) *Voting*: Class 4 is Impaired by the Plan. Holders of any Tort Claim that is not subject to an unresolved objection filed by Tronox or any other party in interest as of the date that is thirty (30) days before the Voting Deadline shall be entitled to vote accept or reject the Plan.

5. Class 5 - Environmental Claims.

(a) *Classification:* Class 5 consists of all Environmental Claims.

(b) *Treatment*: Each Holder of an Environmental Claim shall be entitled to treatment of its Environmental Claim and receive such consideration as is provided in the Environmental Claims Settlement Agreement, all as more fully described in Article IV herein. The sole recourse of Holders of Environmental Claims shall be in accordance with the rights of such Holders set forth in the Environmental Claims Settlement Agreement. On the Effective Date, Tronox will establish the Environmental Response Trusts and transfer to or for the benefit of such Environmental Response Trusts and/or certain of the Government Environmental Entities the following consideration (to be allocated in accordance with the Environmental Claims Settlement Agreement):

(i) the right to 88% of the proceeds of the Anadarko Litigation;

(ii) the Funded Environmental Amount;

(iii) the Environmental Trust Assets;

(iv) the Nevada Assets; and

(v) the Environmental Insurance Assets.

(c) *Voting*: Class 5 is Impaired by the Plan. Holders of Environmental Claims are entitled to vote to accept or reject the Plan.

6. Class 6 - Indirect Environmental Claims.

(a) *Classification*: Class 6 consists of all Indirect Environmental Claims.

(b) *Treatment*: On the Effective Date, in full and final satisfaction, settlement, release and discharge of and in exchange for each Allowed Indirect Environmental Claim, Holders of Allowed Indirect Environmental Claims will have their Allowed Claims split for purposes of sharing in the Distributions to Holders of Allowed General Unsecured Claims and Allowed Tort Claims, as follows:

(i) 50% of the amount of each Allowed Indirect Environmental Claim will be treated in accordance with the treatment provided to Class 3 General Unsecured Claims, and will receive its Pro Rata share of (a) the GUC Pool and (b) Rights to participate in the Rights Offering; provided, however, that if the Indirect Environmental Claim is Allowed in an amount equal to or less than $500, the first 50% of the Allowed Indirect Environmental Claim will be a Convenience Claim and receive the treatment set forth in Class 7; and

(ii) 50% of the amount of each Allowed Indirect Environmental Claim will receive its Pro Rata share of the Tort Claims Trust Distributable Amount allocated to Allowed Indirect Environmental Claims.

(c) *Voting:* Class 6 is Impaired by the Plan. Holders of Indirect Environmental Claims are entitled to vote to accept or reject the Plan.

7. Class 7 - Convenience Claims.

(a) *Classification*: Class 7 consists of all Convenience Claims.

(b) *Treatment*: On the later of the Effective Date and as soon as practicable after such Convenience Claim becomes Allowed, in full and final satisfaction, settlement, release and discharge of and in exchange for each Allowed Convenience Claim, each Holder of an Allowed Convenience Claim shall receive payment in Cash of 89% of the amount of such Allowed Convenience Claim, which payments shall be funded by the Backstop Parties through the purchase of the shares of New Common Stock to which the Holders of such Claims would otherwise have been entitled, in lieu of receiving a distribution of New Common Stock.

(c) *Claim Aggregation*: If a Holder of an Allowed General Unsecured Claim or Indirect Environmental Claim holds two or more Claims, one or more of which is in an amount less than $250 or $500 (as the case may be) but an aggregated total of its Claims would be greater than $250 or $500 (as the case may be), such Holder may elect to aggregate such Claims for the purpose of participating in the Rights Offering.

(d) *Voting:* Class 7 is Impaired by the Plan. Holders of Convenience Claims are entitled to vote to accept or reject the Plan.

8. Class 8 - Equity Interests in Tronox Incorporated.

(a) *Classification:* Class 8 consists of all Equity Interests in Tronox Incorporated.

(b) *Treatment*: On and after the Effective Date, all Equity Interests shall be cancelled and shall be of no further force and effect, whether surrendered for cancellation or otherwise. For settlement purposes only, each Holder of an Equity Interest in Tronox Incorporated shall receive its Pro Rata share of the New Warrants.

(c) *Voting:* Holders of Equity Interests in Tronox Incorporated are entitled to vote to accept or reject the Plan for settlement purposes only.

(d) *Non-Consensual Confirmation of the Plan*: Pursuant to section 1129(b)(2) of the Bankruptcy Code, to the extent all other Voting Classes do not vote to accept the Plan and Tronox pursues non-consensual confirmation of the Plan with respect to those Classes, Class 8 may not be entitled to any recovery, regardless of whether Class 8 votes in favor of or against the Plan.

C. Intercompany Claims

Notwithstanding anything herein to the contrary, on the Effective Date or as soon thereafter as is reasonably practicable, at the option of Tronox or Reorganized Tronox (with the consent of the Creditors' Committee and the Required Backstop Parties), all Intercompany Claims will be: (i) preserved and reinstated, in full or in part; (ii) cancelled and discharged, in full or in part, in which case such discharged and satisfied portion shall be eliminated and the Holders thereof shall not be entitled to, and shall not receive or retain, any property or interest in property on account of such portion under the Plan; (iii) eliminated or waived based on accounting entries in

Tronox's or Reorganized Tronox's books and records and other corporate activities by Tronox or Reorganized Tronox; or (iv) contributed to the capital of the obligation entity.

D. The Anadarko Section 502(h) Claim.

The Anadarko Section 502(h) Claim, if and when Allowed, will be satisfied through a discount or reduction against any judgment against it in the Anadarko Litigation in accordance with the terms set forth in Article IV.C.5 hereof. Such treatment shall be the sole and exclusive remedy on account of any Allowed Section 502(h) Claim and there shall be no recourse against Tronox or Reorganized Tronox on account of the Anadarko Section 502(h) Claim.

E. Special Provision Governing Unimpaired Claims.

Except as otherwise provided in the Plan, nothing under the Plan shall affect Tronox's rights in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

F. Acceptance or Rejection of the Plan.

1. Voting Classes.

Classes 3, 4, 5, 6, 7 and 8 are Impaired under the Plan and are entitled to vote to accept or reject the Plan.

2. Presumed Acceptance of the Plan.

Classes 1 and 2 are Unimpaired under the Plan. The Holders of Claims in such Classes are deemed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

G. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code.

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by any one of Classes 3, 4, 5, 6, 7 or 8. Tronox shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims.

H. Subordinated Claims.

The allowance, classification, and treatment of all Allowed Claims and the respective Distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, Tronox reserves the right to re-classify any Allowed Claim in accordance with any contractual, legal or equitable subordination rights relating thereto.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THE PLAN

A. Deemed Substantive Consolidation.

The Plan shall serve as a motion by Tronox seeking entry of a Bankruptcy Court order deeming the substantive consolidation of all of the Estates into a single consolidated Estate for certain limited purposes related to the Plan, including voting, Confirmation and Distribution.

If the deemed substantive consolidation of all of the Estates is ordered, then on and after the Effective Date, all assets and liabilities of the Tronox Debtors shall be treated as though they were merged into the Estate of Tronox Incorporated for all purposes associated with voting, Confirmation and Distributions, and, subject to Article II.C hereof, all guarantees by any Tronox Debtor of the obligations of any other Tronox Debtor shall be eliminated so

that any Claim and any guarantee thereof by any other Tronox Debtor, as well as any joint and several liability of any Tronox Debtor with respect to any other Tronox Debtor shall be treated as one collective obligation of the Tronox Debtors. Deemed substantive consolidation shall not affect the legal and organizational structure of Reorganized Tronox or its separate corporate existence or that of its subsidiaries and affiliates or any prepetition or postpetition guarantees, Liens, or security interests that are required to be maintained under the Bankruptcy Code, the Plan, the Exit Credit Documents, any contract, instrument, or other agreement or document pursuant to the Plan, or in connection with contracts or leases that were assumed or entered into during the Chapter 11 Cases. Any alleged defaults under any applicable agreement with the Tronox Debtors, Reorganized Tronox or their Affiliates arising from deemed substantive consolidation under the Plan shall be deemed cured as of the Effective Date.

Notwithstanding the deemed substantive consolidation provided for herein, nothing shall affect the obligation of each and every Tronox Debtor to pay Quarterly Fees to the Office of the United States Trustee Pursuant to 28 U.S.C. §1930 until such time as a particular case is closed, dismissed or converted.

B. General Settlement of Claims and Equity Interests.

As discussed in detail in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, Distributions, releases and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and Equity Interests and controversies resolved pursuant to the Plan. Subject to Article VI, all Distributions made to Holders of Allowed Claims or Equity Interests in any Class are intended to and shall be final.

C. Environmental and Tort Claims Settlements.

1. Environmental Claims Settlement Agreement[2]

In connection with the Plan, Tronox, the United States and the applicable Government Environmental Entities will enter into the Environmental Claims Settlement Agreement regarding the Environmental Claims, the Owned Sites and the Other Sites. The Environmental Claims Settlement Agreement is included in the Plan Supplement.

The Environmental Claims Settlement Agreement will govern the operation of the Environmental Response Trusts and the role of the United States and the relevant Government Environmental Entities in approving funding of environmental activities, including response or remedial actions, corrective action, closure, post-closure care and restoration for the duration of the Environmental Response Trusts. Tronox and Reorganized Tronox shall have no responsibility or involvement with respect to the Environmental Response Trusts once they are established and funded in accordance with the Plan, provided that to the extent not completed on or before the Effective Date, Reorganized Tronox will use commercially reasonable efforts to provide the Environmental Response Trusts with access to all files and information related to the Owned Sites and the Other Sites. The Environmental Claims Settlement Agreement shall be submitted for public notice and comment as required under federal environmental law and, where applicable, state environmental law of the state in which the applicable property is located.

The Environmental Claims Settlement Agreement shall (a) contain covenants not to sue (or, for certain states, to the extent allowable under applicable state and federal law, releases of any Environmental Claims) Tronox, Reorganized Tronox and any successors in interest (including any Claims and actions pursuant to sections 106 and 107 of CERCLA) and (b) provide that Tronox, Reorganized Tronox and any successors in interest shall have

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2 The terms of the anticipated environmental settlement described herein reflect a summary description only and are qualified in all respects by reference to definitive settlement documentation to be included in the Plan Supplement.

protection from contribution actions or Claims with respect to the Owned Sites and the Other Sites (including pursuant to section 113 of CERCLA).

The relevant Governmental Environmental Entity and Tronox or Reorganized Tronox, as the case may be, shall file any necessary pleading with the applicable district court seeking to modify applicable consent decrees or related documents, if any, regarding the Owned Sites and the Other Sites, to conform to the Environmental Claims Settlement Agreement and remove any Tronox Debtor as a party to such consent decree after the Effective Date.

Notwithstanding anything to the contrary herein or in the Confirmation Order, nothing shall release, nullify, or preclude any liability of Reorganized Tronox as the owner or operator of a property of Reorganized Tronox with respect to any properties owned or operated after the Effective Date (other than with respect to Henderson, Nevada as set forth in section 3 below entitled "Lease Relating to Henderson Facility") and the Confirmation Order shall so provide.

2. Creation and Funding of Environmental Response Trusts

On the Effective Date, Tronox will establish the Environmental Response Trusts, to which Tronox will transfer the Owned Sites free and clear of all Liens, Claims and Encumbrances other than any liability to governmental entities expressly provided for in the Environmental Response Trust Agreement and the Environmental Claim Settlement Agreement, which agreements shall be included in the Plan Supplement. The Environmental Response Trusts will be administered by the Environmental Response Trustees. Pursuant to the Environmental Response Trust Agreements, the Environmental Response Trusts shall conduct and fund environmental activities, including response or remedial actions, removal actions, corrective action, closure, post-closure care and restoration of or related to the Owned Sites and certain of the Other Sites. As set forth in the Environmental Response Trust Agreements, any property placed into a Environmental Response Trust may be sold or transferred with the approval of the United States and the Government Environmental Entity or Entities of the state in which the property is located, and the proceeds shall be retained by such Environmental Response Trust to be used as provided in the Environmental Response Trust Agreements (a) for costs of administration, (b) to conduct or fund any remaining environmental activities relating to such property, or (c) to reimburse any entity performing such environmental activities.

The Environmental Response Trusts will be funded on the Effective Date with (a) a portion (which may be all) of the Funded Environmental Amount as set forth in the Environmental Claims Settlement Agreement; (b) the right to 88% of the Proceeds of the Anadarko Litigation; (c) the Environmental Trust Assets; (d) the Nevada Assets; and (e) the Environmental Insurance Assets.

In accordance with the Environmental Response Trust Agreements, upon completion of environmental activities and reimbursement of any costs therefor required for an Owned Site and certain of the Other Sites, any funds held for that site by the Environmental Response Trust shall be transferred (a) first, in accordance with instructions provided by the United States and the appropriate state, to the account for any other Owned Sites in that state with remaining environmental activities to be performed related to such sites and a need for additional trust funding; (b) second, in accordance with instructions provided by the United States after consultation with the states, to accounts for Owned Sites in other States with remaining environmental activities to be performed related to the sites and a need for additional trust funding; (c) to certain of the Other Sites; and (d) fourth, to the "Superfund" established under CERCLA.

Except as otherwise provided in the Plan or the Plan Supplement, on the Effective Date, the Environmental Response Trusts will assume responsibility for, and, to the extent applicable, shall reimburse Reorganized Tronox for (a) the payment of any and all utility services, fees and property or other taxes related to such Owned Site that arise, accrue or relate to any period on or after the Effective Date and (b) the Pro Rata share of any payments owed to Assessment Technologies, Ltd. ("ATL"), pursuant to the Bankruptcy Court's order [Dkt. No. 490] approving Tronox's retention of ATL, that relate to Tax Savings (as defined in Exhibit 1 to Dkt. No. 490) related to such Owned Site for any tax period or portion thereof that occurs on or after the Effective Date, provided, however, that any increased tax liability that is assessed during the protest period relating to tax liability related to any tax period or portion thereof that occurs prior to the Effective Date shall remain the responsibility of Tronox. On the Effective

Date, any utility or other deposit held by a utility provider or other entity shall be returned to Tronox, after application of any outstanding balance owed to such utility provider or other entity.

3. Lease Relating to Henderson Facility

Reorganized Tronox and the applicable Environmental Response Trust shall have entered into a lease agreement relating to the Henderson Facility, on terms satisfactory to the Required Backstop Parties, the Creditors' Committee and the relevant government agencies, including the Nevada Parties, the terms of which lease shall specify that Reorganized Tronox is not responsible for costs of any environmental remedial action or restoration associated with the presence or releases of hazardous substances from or at any portion of the Henderson Facility prior to the Effective Date and all areas affected by natural migration of such substances therefrom, except to the extent exacerbated by any act or omission of Reorganized Tronox after the Effective Date. Notwithstanding the rent for which Reorganized Tronox will be responsible under the lease, the rent for the Henderson Facility will be set at up to $10.5 million for the first term, provided that such amount shall then be deducted from the Funded Environmental Amount and allocated and paid on account of the lease on the Effective Date.

Reorganized Tronox shall exercise commercially reasonable due care at the Henderson Facility with respect to existing contamination and shall comply in all material respects with all applicable local, state and federal laws and regulations. Nothing in the previous sentence shall require Reorganized Tronox to clean up existing contamination in or under the ground except to the extent materially exacerbated by any act or omission of Reorganized Tronox after the Effective Date.

Reorganized Tronox recognizes that the implementation of response actions at the Henderson Facility may interfere with Reorganized Tronox's use of the property, and may require commercially reasonable accommodation from Reorganized Tronox. Reorganized Tronox agrees to cooperate fully with the EPA, the Nevada Division of Environmental Protection (the "NDEP") and other relevant state agencies in the implementation of response actions at the Henderson Facility. The EPA and the NDEP, consistent with their responsibilities under applicable law, will use reasonable efforts to minimize any interference with Reorganized Tronox's operations by such entry and response at the Henderson Facility.

The lease shall contain customary provisions relating to indemnity by a tenant with respect to the operation of the tenant at the leased property following the Effective Date. For the avoidance of doubt, Reorganized Tronox shall have liability as an operator of the Henderson Facility, and shall be responsible for related response action, if any, to the extent such liability or responsibility relates to releases of hazardous substances from any portion of the Henderson Facility due to any act or omission of Reorganized Tronox after the Effective Date.

Notwithstanding anything to the contrary herein or in the Plan, the terms of the lease relating to the Henderson Facility remain subject to final agreement and documentation reasonably acceptable to Tronox, the Creditors' Committee, the Backstop Parties, the United States and the Nevada Parties.

4. Creation of Tort Claims Trust

On the Effective Date, Tronox will establish the Tort Claims Trust. The Tort Claims Trust will be governed by the Tort Claims Trust Agreement, which is included in the Plan Supplement, and administered by the Tort Claims Trustee.

The Tort Claims Trust shall be funded with the following: (a) the right to 12% of the proceeds of the Anadarko Litigation, in accordance with the Anadarko Litigation Trust Agreement, (b) the Funded Tort Claims Trust Amount and (c) the Tort Claims Insurance Assets. The sole recourse of Holders of Tort Claims shall be the Tort Claims Trust, and such Holders shall have no right at any time to assert Tort Claims against Reorganized Tronox or any of its assets.

Holders of Allowed Tort Claims will receive on account of such Allowed Tort Claims a Distribution from the Tort Claims Trust in accordance with the Tort Claims Trust Distribution Procedures and the allocations set forth in Article III above.

Tronox and Reorganized Tronox shall not be required to pay any fee or expense for, or assume any liabilities related to, the operation or administration of the Tort Claims Trust or any other arrangement established with respect to the determination, satisfaction or resolution of any issues related to the Tort Claims (which fees and expenses shall be covered by funds contributed to the Tort Claims Trust).

5. Creation of the Anadarko Litigation Trust

On the Effective Date, Tronox will establish the Anadarko Litigation Trust, to which it will contribute its rights to the Anadarko Litigation. The Anadarko Litigation Trust will be governed by the Anadarko Litigation Trust Agreement, which is included in the Plan Supplement.

The United States and Tronox, in consultation with certain representatives of Holders of Tort Claims and certain other Government Environmental Entities, including the Nevada Parties, shall jointly appoint the Anadarko Litigation Trustee to administer the Anadarko Litigation Trust. The United States shall have the right to approve the Anadarko Litigation Trustee. The Anadarko Litigation Trust will be funded on the Effective Date by a portion of the Funded Environmental Amount, as set forth in the Environmental Claims Settlement Agreement (which, for the avoidance of doubt, may be $0). Representatives of the United States, certain other Governmental Environmental Entities and certain representatives of the holders of Tort Claims will have certain agreed rights concerning the pursuit of the Anadarko Litigation. The Anadarko Litigation Trust Agreement provides that Reorganized Tronox shall have no responsibility, obligation or liability with respect to the Anadarko Litigation, other than to retain or transfer to the Anadarko Litigation Trustee books, records and documents relevant to the Anadarko Litigation and to use commercially reasonable efforts to cooperate with the Anadarko Litigation Trustee, and provides that the Anadarko Litigation Trust will reimburse Reorganized Tronox for its reasonable and documented expenses incurred in cooperating with the Anadarko Litigation Trustee. The Anadarko Litigation Trust Agreement will also provide for Reorganized Tronox to have access to the expert solvency environmental liability report being prepared in connection with the Anadarko Litigation, as well as to the expert drafting such report.

Fees, costs and expenses incurred in connection with the administration of the Anadarko Litigation Trust and the prosecution of the Anadarko Litigation after the Effective Date, including fees and expenses incurred by professionals retained by the Anadarko Litigation Trustee, shall be borne by the Anadarko Litigation Trust and Reorganized Tronox shall have no responsibility, obligation or liability with respect thereto. Professional fees and expenses may be paid in accordance with the terms of a special fee arrangement with the Anadarko Litigation Trust, which the United States shall have the sole right to approve following consultation and good faith negotiation with certain other Government Environmental Entities and certain representatives of Holders of Tort Claims. Kirkland & Ellis LLP may represent the Anadarko Litigation Trust in the prosecution of the Anadarko Litigation on a special fee arrangement basis. For the avoidance of doubt, the Anadarko Litigation Trust shall not be liable for any fees, costs or expenses incurred in connection with the prosecution of the Anadarko Litigation prior to the Effective Date.

The Anadarko Litigation Trustee shall (a) pursue the Anadarko Litigation and (b) distribute any recovery as a result thereof in accordance with the Anadarko Litigation Trust Agreement as follows: (i) 88% to the Government Environmental Entities in accordance with the Environmental Claims Settlement Agreement and the Environmental Response Trust Agreements and (ii) 12% to the Holders of Tort Claims by delivery to the Tort Claims Trust. Pursuant to the Anadarko Litigation Trust Agreement, the United States has the right to approve or reject any proposed settlement of the Anadarko Litigation, after consultation with certain other Government Environmental Entities and certain representatives of holders of Tort Claims, all in accordance with the terms of the Anadarko Litigation Trust Agreement.

Notwithstanding any contrary provision contained herein or in any documents executed in connection herewith (including the Anadarko Litigation Trust Agreement), if the Anadarko Section 502(h) Claim is Allowed,

Anadarko[3] will be entitled to discount and/or otherwise reduce any judgment in the Anadarko Litigation by the amount of any Allowed Anadarko Section 502(h) Claim multiplied by the percentage recovery to Allowed Class 3 General Unsecured Claims (which percentage recovery may or may not be computed on a claims base including such Allowed Anadarko Section 502(h) Claim) and Anadarko shall be obligated to pay only the reduced amount of such judgment; provided, however, that the percentage by which any such Allowed Anadarko Section 502(h) Claim may be multiplied shall be determined by the Bankruptcy Court and the parties reserve their rights with respect to the extent of the dilutive effect of the Allowed Anadarko Section 502(h) Claim on Anadarko's ability to reduce any judgment in the Anadarko Litigation.[4] Anadarko has agreed that the foregoing discount or reduction in amount payable with respect to any judgment in the Anadarko Litigation shall be its sole and exclusive remedy on account of any Allowed Anadarko Section 502(h) Claim and that it shall have no recourse against Tronox or Reorganized Tronox on account of such Anadarko 502(h) Claim.

In addition, the United States, separate from its participation in the Anadarko Litigation Trust, shall continue to enjoy the rights to participate in the Anadarko Litigation provided to it under the Order Approving Revised Stipulation and Order with Respect to Federal Debt Collection Procedures Act, signed August 20, 2009 [Adv. Proc. No. 09-01198, Dkt. No. 52].

D. Exit Debt and Equity Financing.

1. Exit Financing.

If all or any portion of the Replacement DIP Facility is converted into all or any portion of the Exit Financing in accordance with the terms of the Replacement DIP Agreement, then on the Effective Date and without further notice to or order or other approval of the Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization or approval of any person or entity (including the boards of directors of the Tronox Debtors) except for the Confirmation Order and as otherwise required by the Replacement DIP Documents: (a) Reorganized Tronox shall assume the Replacement DIP Agreement and the other Replacement DIP Documents, and without limiting the foregoing, Reorganized Tronox shall assume the Replacement DIP Facility Claims on the terms and conditions set forth in the Replacement DIP Documents, which from and after the Effective Date shall constitute Exit Credit Documents; (b) all Replacement DIP Documents, as Exit Financing Credit Documents, shall remain in full force and effect on and after the Effective Date, and all Liens, rights, interests, duties and obligations thereunder shall survive the Effective Date and shall continue to secure all Replacement DIP Facility Claims assumed by Reorganized Tronox and all other obligations under the Exit Credit Documents. Without limiting the generality of the foregoing, all Liens and security interests granted pursuant to the Replacement DIP Documents to the Replacement DIP Agent and/or the lenders under the Replacement DIP Documents and all other Liens and security interests granted pursuant to the Exit Credit Documents shall be (i) valid, binding, perfected and

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3 For purposes of this plan provision, all references to "Anadarko" shall mean Anadarko Petroleum Corporation and its affiliates and subsidiaries, including the entity now known as Kerr Mc-Gee Corporation, which was formed in May 2001.

4 Nothing herein or in any documents executed in connection herewith (including the Anadarko Litigation Trust Agreement) shall prejudice the rights of Tronox, the Anadarko Litigation Trustee or Anadarko, and the parties expressly reserve all rights and defenses with respect to the Anadarko Litigation, the Anadarko Section 502(h) Claim and any and all matters not expressly addressed herein, including, without limitation, Tronox's or the Litigation Trustee's ability to seek to subordinate or disallow the Anadarko Section 502(h) Claim. The provisions of this paragraph shall not be deemed to be consent by Anadarko to any treatment for purposes of section 1123(a)(4) of the Bankruptcy Code other than with respect to the source of recovery for any Allowed Anadarko Section 502(h) Claim. Further, notwithstanding any contrary provision herein, in the Disclosure Statement or in any documents executed in connection with the Plan (including the Anadarko Litigation Trust Agreement) relating to Tronox's and Anadarko's setoff and recoupment rights, including Art. III.D, Art. VI.I and Art. VIII.E. of the Plan, such provisions shall not apply to the Anadarko Section 502(h) Claim and Anadarko reserves its rights with respect to setoff and recoupment of any of its other claims.

enforceable Liens and security interests in the personal and real property described in such documents, with the priorities established in respect thereof under applicable non-bankruptcy law and (ii) not subject to avoidance, recharacterization or subordination under any applicable law; and (c) Reorganized Tronox shall, and is authorized to, enter into and perform and to execute and deliver an Accession and Novation Agreement (as defined in the Replacement DIP Agreement) and such other agreements, instruments or documents reasonably requested by the Replacement DIP Agent (in form and substance acceptable to the Replacement DIP Agent) to evidence or effectuate the conversion of the Replacement DIP Facility to all or part of the Exit Financing in accordance with the terms of the Replacement DIP Documents. Without limiting the foregoing, Reorganized Tronox shall pay, as and when due, all fees and expenses and other amounts provided under the Exit Credit Documents.

To the extent Reorganized Tronox obtains Exit Financing in lieu of, or in addition to, the conversion of all or any portion of the Replacement DIP Facility into the Exit Financing, then, on the Effective Date and without further notice to or order or other approval of the Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization or approval of any person or entity (including the boards of directors of the Tronox Debtors), except for the Confirmation Order and as otherwise required by the applicable Exit Credit Documents, Reorganized Tronox shall, and is authorized to, enter into and perform and to execute and deliver one or more Exit Credit Agreements and other Exit Credit Documents with respect to such Exit Financing and shall complete such Exit Financing (on terms and conditions reasonably satisfactory to the Creditors' Committee and the Required Backstop Parties) to fund the repayment of all Replacement DIP Facility Claims that are not converted into Exit Financing in accordance with the terms of the Replacement DIP Documents, the distributions under the Plan, ongoing business operations and working capital needs. Without limiting the foregoing, Reorganized Tronox shall pay, as and when due, all fees and expenses and other amounts provided under the Exit Credit Documents relating to such Exit Financing.

Confirmation of the Plan shall be deemed (a) approval of the Exit Financing (and if, applicable, approval of the conversion of the Replacement DIP Facility into all or a portion of the Exit Financing), and all transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by Reorganized Tronox in connection therewith, including the payment of all fees, indemnities and expenses provided for by the Exit Credit Documents (including, if applicable, all Replacement DIP Documents comprising the Exit Credit Documents), and (b) authorization to enter into and perform under the Exit Credit Documents. The Exit Credit Documents shall constitute legal, valid, binding and authorized obligations of Reorganized Tronox, enforceable in accordance with their terms. The financial accommodations to be extended pursuant to the Exit Credit Documents are being extended, and shall be deemed to have been extended, in good faith, for legitimate business purposes, are reasonable, shall not be subject to avoidance, recharacterization or subordination (including equitable subordination) for any purposes whatsoever, and shall not constitute preferential transfers, fraudulent conveyances or other voidable transfers under the Bankruptcy Code or any other applicable non-bankruptcy law. On the Effective Date, all of the Liens and security interests to be granted in accordance with the Exit Credit Documents (w) shall be deemed to be approved, (x) shall be legal, binding and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Credit Documents, (y) shall be deemed perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the Exit Credit Documents, and (z) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law. Reorganized Tronox and the persons and entities granted such Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such liens and security interests under the provisions of the applicable state, provincial, federal or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order, or in the case of Liens and security interests granted pursuant to the Replacement DIP Documents, by virtue of the interim and final orders of the Court approving same, and any such filings, recordings, approvals and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties. To the extent that any Holder of a Secured Claim that has been satisfied or discharged in full pursuant to the Plan, or any agent for such Holder, has filed or recorded publicly any Liens and/or security interests to secure such Holder's Secured Claim, then as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any

and all steps requested by Tronox, Reorganized Tronox or any administrative agent under the Exit Credit Documents that are necessary to cancel and/or extinguish such publicly-filed Liens and/or security interests, in each case all costs and expenses in connection therewith to be paid by Tronox or Reorganized Tronox.

On the Effective Date, all Existing Letters of Credit shall be terminated, cash collateralized, replaced or reinstated in accordance with their terms and the terms of the Replacement DIP Agreement and any other applicable Exit Credit Documents.

Notwithstanding anything to the contrary in this Plan, the Court shall have no jurisdiction over any matters first arising under the Exit Credit Documents after the Effective Date.

2. The Rights Offering.

Tronox shall conduct the Rights Offering in accordance with the Rights Offering Procedures attached hereto as Exhibit 1. The Rights Offering consists of an offering of New Common Stock for $185 million in Cash, which shall be open to all Eligible Holders. Eligible Holders will be given "Rights" to purchase shares of New Common Stock on a Pro Rata basis, based on a 17.6% discount to the Plan total enterprise value of Reorganized Tronox of $1,063 million, in exchange for an aggregate of up to 45.5% of the New Common Stock issued on the Effective Date, subject to dilution by shares issued in connection with the Management Equity Plan and exercise of the New Warrants. ***Eligible Holders will receive separate documentation for the purpose of being able to exercise their Rights.***

The Backstop Parties have agreed to backstop the rights offering for consideration of 8% of the $185 million equity commitment, payable in the form of additional equity to the Backstop Parties (approximately 3.6% of the New Common Stock issued on the Effective Date, subject to dilution by shares issued in connection with the Management Equity Plan and exercise of the New Warrants).

E. Sources of Consideration for Plan Distributions.

1. Cash Consideration.

Tronox shall fund Distributions under the Plan in part with Cash on hand, including Cash from operations and the proceeds of the Exit Financing and the Rights Offering. Payments to Holders of Convenience Claims shall be funded by the Backstop Parties through the purchase of the shares of New Common Stock to which the Holders of Convenience Claims would otherwise have been entitled, in lieu of receiving a distribution of New Common Stock.

Tronox and Reorganized Tronox will be entitled to transfer funds between and among themselves as they determine to be necessary or appropriate to enable Reorganized Tronox to satisfy its obligations under the Plan. Except as set forth herein, any changes in intercompany account balances resulting from such transfers will be accounted for and settled in accordance with Tronox's historical intercompany account settlement practices and will not violate the terms of the Plan.

From and after the Effective Date, Reorganized Tronox, subject to any applicable limitations set forth in any post-Effective Date financing arrangement, shall have the right and authority without further order of the Bankruptcy Court to raise additional or replacement capital and obtain additional or replacement financing as the boards of directors of the applicable Reorganized Tronox Debtor deems appropriate.

2. Equity Interests in Reorganized Tronox Incorporated.

(a) Issuance of New Common Stock

The issuance of the New Common Stock by Reorganized Tronox Incorporated, including pursuant to the Rights Offering, and options, restricted stock or other equity awards reserved for the Management Equity Plan, is authorized without the need for any further corporate action or without any further action by the Holders of Claims.

On the Effective Date, 6,819,857 shares of New Common Stock shall be issued pursuant to the Rights Offering Procedures and 7,634,554 shares of New Common Stock shall be issued to the GUC Pool for Distribution as described in Article III.B.3 above.

All of the shares of New Common Stock issued pursuant to the Plan shall be duly authorized, validly issued, fully paid and non-assessable. Each Distribution and issuance referred to in Article VI shall be governed by the terms and conditions set forth in the Plan applicable to such Distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such Distribution or issuance, which terms and conditions shall bind each Entity receiving such Distribution or issuance.

Tronox will use commercially reasonable efforts to list the shares of New Common Stock on the New York Stock Exchange or the NASDAQ Stock Market as soon as reasonably practical after the Effective Date. It is anticipated that if and when listed on the New York Stock Exchange or the NASDAQ Stock Market, the shares of New Common Stock will be freely tradable by the holders thereof.

(b) Issuance of New Warrants

On the Effective Date, Reorganized Tronox Incorporated will issue the New Warrants Pro Rata to Holders of Equity Interests in Tronox Incorporated. The form of agreement governing the New Warrants will be included in the Plan Supplement.

(d) Registration Rights Agreement

The Backstop Parties shall be entitled to registration rights pursuant to the Registration Rights Agreement, which shall be in substantially the form attached as Exhibit F to the Equity Commitment Agreement, which form of agreement will also be filed with the Bankruptcy Court as part of the Plan Supplement. On the Effective Date, Reorganized Tronox and the Backstop Parties will execute the final form of Registration Rights Agreement (which shall be reasonably acceptable to Tronox, the Required Backstop Parties and the Creditors' Committee).

F. Exemption from Registration.

The issuance of the New Common Stock (including pursuant to the Rights Offering) and the New Warrants distributed pursuant to the Plan to Holders of Claims or Equity Interests shall be exempt from registration under the Securities Act under section 1145 of the Bankruptcy Code as of the Effective Date without further act or action by any person, unless required by provision of applicable law, regulation, order or rule.

Any securities issued to the Backstop Parties as consideration for their commitment to backstop the Rights Offering will be issued without registration in reliance upon the exemption set forth in Section 4(2) of the Securities Act and will be "restricted securities."

G. Cancellation of Existing Agreements, Unsecured Notes and Equity Interests.

On the Effective Date, except as otherwise specifically provided for in the Plan: (1) the obligations of the Tronox Debtors under the Indenture, and any other Certificate, Equity Security, share, note, bond, indenture, purchase right, option, warrant or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Tronox Debtors or giving rise to any Claim or Equity Interest (except such Certificates, notes or other instruments or documents evidencing indebtedness or obligation of or ownership interest in the Tronox Debtors that are Reinstated pursuant to the Plan), shall be cancelled solely as to the Tronox Debtors and their affiliates, and Reorganized Tronox shall not have any continuing obligations thereunder, except that, to the extent all or any portion of the Replacement DIP Facility is converted into all or any portion of the Exit Financing in accordance with the terms of the Replacement DIP Documents, the converted Replacement DIP Facility Claims, and the guarantees of and the Liens securing such Replacement DIP Facility Claims shall not be cancelled, released or discharged, and such guarantees and Liens shall continue to guarantee or secure, as the case may be, such Replacement DIP Facility Claims in accordance with the terms of the applicable

Exit Credit Documents; and (2) the obligations of the Tronox Debtors and their affiliates pursuant, relating or pertaining to any agreements, indentures, certificates of designation, bylaws or certificate or articles of incorporation or similar documents governing the shares, Certificates, notes, bonds, indentures, purchase rights, options, warrants or other instruments or documents evidencing or creating any indebtedness or obligation of or ownership interest in the Tronox Debtors (except such agreements, Certificates, notes, or other instruments evidencing indebtedness or obligation of or ownership interest in the Tronox Debtors that are specifically Reinstated pursuant to the Plan) shall be released and discharged, except that, to the extent all or any portion of the Replacement DIP Facility is converted into all or any portion of the Exit Financing in accordance with the terms of the Replacement DIP Documents, the converted Replacement DIP Facility Claims, and the guarantees of and the Liens securing such Replacement DIP Facility Claims shall not be cancelled, released or discharged, and such guarantees and Liens shall continue to guarantee or secure, as the case may be, such Replacement DIP Facility Claims in accordance with the terms of the applicable Exit Credit Documents; provided, however, that notwithstanding Confirmation or Consummation, any such indenture or agreement that governs the rights of the Holder of a Claim, including the Indenture, shall continue in effect solely for purposes of allowing Holders to receive Distributions under the Plan; and, to the extent that the Indenture Trustee Fee Claim is not paid in full by Reorganized Tronox, of allowing the Indenture Trustee to exercise its Indenture Charging Lien, provided, further, however, that the preceding provision shall not affect the discharge of Claims or Equity Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan, or result in any expense or liability to Reorganized Tronox; provided, further, however, that the foregoing shall not effect the cancellation of shares issued pursuant to the Plan nor any other shares held by one Tronox Debtor in the capital of another Tronox Debtor; and provided, further, however, that to the extent provided in the Exit Credit Agreement, the guarantees of and Liens securing obligations under the Replacement DIP Agreement shall not be cancelled and shall guarantee or secure obligations under the Exit Credit Agreement, as applicable, and only such obligations.

H. Restructuring Transactions.

On the Effective Date or as soon as reasonably practicable thereafter, Reorganized Tronox intends to simplify and rationalize its corporate structure by eliminating certain entities that are deemed no longer essential to Reorganized Tronox and may take all actions as may be necessary or appropriate to effect such transactions, including any transaction described in, approved by, contemplated by or necessary to effectuate the Plan, including: (1) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution or liquidation containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of applicable law and any other terms to which the applicable Entities may agree; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, debt or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (3) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion or dissolution pursuant to applicable state law; and (4) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law. To the extent deemed helpful or appropriate to Reorganized Tronox, the elimination of certain of these entities may be effected pursuant to Sections 368 and 381 of the Internal Revenue Code of 1986, as amended (the "IRC"), to preserve for Reorganized Tronox the tax attributes of such entities. Prior to the Effective Date, Tronox will consult with the Creditors' Committee with respect to the restructuring transactions.

I. Corporate Existence.

Subject to any restructuring transactions permitted under this Article IV or as otherwise expressly provided herein or in the Plan Supplement, each of the Tronox Debtors, as Reorganized, shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership or other form, as the case may be, pursuant to applicable law in the jurisdiction in which each applicable Tronox Debtor is incorporated or formed.

Notwithstanding anything to the contrary herein, none of the entities comprising Reorganized Tronox (i) shall be deemed to be a legal successor, alter ego or continuation of, or have merged with, Tronox, Kerr-McGee Corporation, Anadarko Petroleum Corporation or any of their respective affiliates, subsidiaries and predecessors, and (ii) shall have any liability whatsoever based on any theory of successor or vicarious liability of any kind or

character, or based upon any theory or legal principle under or relating to antitrust, environmental, tort, successor or transferee liability law.

J. Vesting of the Retained Assets in Reorganized Tronox.

Except as otherwise provided herein or in any agreement, instrument or other document relating thereto, on or after the Effective Date, the Retained Assets and all Causes of Action (excluding the Anadarko Litigation and any claim or cause of action of Tronox related thereto) shall vest in Reorganized Tronox, free and clear of all liens, Claims, charges, or other encumbrances or interests (except for Liens securing the Exit Financing, including the Liens securing any portion of the Replacement DIP Facility that is converted into the Exit Financing in accordance with the terms of the Replacement DIP Documents). On and after the Effective Date, except as otherwise provided in the Plan, Reorganized Tronox may operate its business and may use, acquire or dispose of property and compromise or settle any Claims or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

K. Organizational Documents.

The certificates of incorporation and bylaws (or other formation documents relating to limited liability companies) of the Tronox Debtors shall be amended as may be required to be consistent with the provisions of the Plan and the Bankruptcy Code, in a form reasonably acceptable to the Creditors' Committee and the Required Backstop Parties.

On or as soon as reasonably practicable after the Effective Date, any of the Tronox Debtors that is Reorganized shall file new certificates of incorporation with the secretary of state (or equivalent state officer or entity) of the state under which each such Tronox Debtor is or is to be incorporated, which, as required by section 1123(a)(6) of the Bankruptcy Code, shall prohibit the issuance of non-voting securities. The Certificate of Incorporation of Reorganized Tronox Incorporated shall include appropriate super-majority provisions with respect to certain material actions (subject to customary carve-outs and limitations), such as issuance and redemption of equity securities and options, amendments to the charter documents, changes to the number of directors, sales or transfers of all or substantially all assets of Reorganized Tronox, recapitalizations and reorganizations, and affiliate transactions. Such super-majority provisions shall cease to be effective on the date Reorganized Tronox Incorporated becomes a public reporting company. After the Effective Date, each such Tronox Debtor may file a new, or amend and restate its existing, certificate of incorporation, charter and other constituent documents as permitted by the relevant state corporate law.

To protect Reorganized Tronox's ability to continue to utilize its NOLs (and any built-in losses) in the future, Reorganized Tronox Incorporated intends to include in its Certificate of Incorporation certain provisions designed to permit the New Board to adopt trading restrictions with respect to the New Common Stock. The terms of such restrictions would generally provide that the New Board could adopt such restrictions in the future only if events had occurred that placed the Reorganized Tronox's ability to utilize its NOLs at risk because of a possible ownership change with respect to such stock. The terms of the provisions to be included in the Certificate of Incorporation remain subject to negotiation with the Creditors' Committee and the Required Backstop Parties, as well as court approval.

As of the Effective Date, each Tronox Debtor's bylaws shall provide for the indemnification, defense, reimbursement, exculpation and/or limitation of liability of, and advancement of fees and expenses to, directors, officers, employees or agents who were directors, officers, employees or agents of such Tronox Debtor as of July 7, 2010, at least to the same extent as the bylaws of each of the respective Tronox Debtors on the Petition Date, against any claims or Causes of Action whether direct or derivative, liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, and none of Reorganized Tronox shall amend and/or restate its certificate of incorporation or bylaws before or after the Effective Date to terminate or materially adversely affect any of Reorganized Tronox's obligations or such directors', officers', employees' or agents' rights; provided, however, that for the avoidance of doubt, nothing in the Plan, the Plan Supplement or any document related thereto shall in any way indemnify or release any individuals

who were former directors or officers of the Tronox Debtors or their subsidiaries and also were or currently are directors or officers of Kerr-McGee Corporation and/or Anadarko Petroleum Corporation.

L. Directors and Officers of Reorganized Tronox.

On and after the Effective Date (a) the existing officers of Tronox shall remain in place in their current capacities as officers of Reorganized Tronox, subject to the ordinary rights and powers of the board of directors to remove or replace them in accordance with Tronox's organizational documents and the terms of the New Management Agreements, and (b) the term of the current members of the board of directors of Tronox Incorporated shall expire. The New Board shall consist of seven (7) directors and shall include (a) the Chief Executive Officer of Reorganized Tronox Incorporated and (b) six other directors who each shall be an "independent director" within the meaning of the rules of the New York Stock Exchange. The members of the New Board shall be selected by the Backstop Parties in consultation with Tronox and the Creditors' Committee, and subject to background checks reasonably satisfactory to Tronox and the Creditors' Committee; provided that the Creditors' Committee shall have unconditional veto rights with respect to the selection of two of the directors.

To the extent known, the identity of the members of the New Board of Reorganized Tronox Incorporated and the nature and compensation for any member of the New Board who is an "insider" under section 101(31) of the Bankruptcy Code will be identified in the Plan Supplement but, in any event, shall be disclosed at or before the Confirmation Hearing.

M. Effectuating Documents; Further Transactions.

On and after the Effective Date, Reorganized Tronox, and any officers, members or directors thereof, are authorized to and may issue, execute, deliver, file or record such contracts, Securities, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the Securities issued pursuant to the Plan in the name of and on behalf of Reorganized Tronox, without the need for any approvals, authorization or consents except for those expressly required pursuant to the Plan.

N. Section 1146 Exemption from Certain Transfer Taxes and Recording Fees.

Pursuant to, and to the fullest extent permitted by, section 1146(a) of the Bankruptcy Code, any transfers (whether from Tronox to Reorganized Tronox or to any other Person) pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (i) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in Tronox or Reorganized Tronox; (ii) the creation, modification, consolidation, assumption, termination, refinancing and/or recording of any mortgage, deed of trust or other security interest, or the securing of additional indebtedness by such or other means; (iii) the making, assignment or recording of any lease or sublease; (iv) the grant of collateral as security for any or all of the Exit Financing; or (v) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local government officials or agents shall, and shall be directed to, forgo the collection of any such tax, recordation fee or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee or government assessment. The Bankruptcy Court shall retain specific jurisdiction with respect to these matters.

O. Preservation of Causes of Action.

In accordance with section 1123(b) of the Bankruptcy Code, but subject to Article VIII hereof and the terms of the Environmental Claims Settlement Agreement, Reorganized Tronox shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the

Petition Date, including any actions specifically enumerated in the Plan Supplement (but excluding the Anadarko Litigation, which will be transferred to the Anadarko Litigation Trust), and Reorganized Tronox's rights to commence, prosecute or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. Reorganized Tronox may pursue such Causes of Action, as appropriate, in accordance with the best interests of Reorganized Tronox. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement or the Disclosure Statement to any Cause of Action against them as any indication that Reorganized Tronox will not pursue any and all available Causes of Action against them. Reorganized Tronox expressly reserves all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Bankruptcy Court order, Reorganized Tronox expressly reserves all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action upon, after or as a consequence of the Confirmation or Consummation.

Reorganized Tronox reserves and shall retain the Causes of Action (except for the Anadarko Litigation) notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Tronox Debtor may hold against any Entity shall vest in Reorganized Tronox. Reorganized Tronox, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. Reorganized Tronox shall have the exclusive right, authority and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order or approval of the Bankruptcy Court.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS, UNEXPIRED LEASES, EMPLOYEE BENEFITS AND INSURANCE POLICIES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases.

On the Effective Date, except as otherwise provided herein, all Executory Contracts or Unexpired Leases not previously assumed or rejected pursuant to an order of the Bankruptcy Court will be deemed rejected, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, other than those Executory Contracts or Unexpired Leases that (1) are identified on the Assumed Executory Contract and Unexpired Lease List to be assumed pursuant to this Plan or (2) are the subject of a motion to reject Executory Contracts or Unexpired Leases that is pending on the Effective Date. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejections and the assumption, to the extent not previously assumed, of the Executory Contracts or Unexpired Leases listed on the Assumed Executory Contract and Unexpired Lease List pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Any motions to assume Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order. Each Executory Contract and Unexpired Lease assumed pursuant to this Article V.A or by any order of the Bankruptcy Court, which has not been assigned to a third party on or prior to the Effective Date, shall vest in and be fully enforceable by Reorganized Tronox in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for its assumption under applicable federal law.

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.

All proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases pursuant to the Plan or the Confirmation Order, if any, must be filed with the Bankruptcy Court within 30 days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion and shall not be enforceable against Tronox, Reorganized Tronox or the property of any of them, without the need for any objection by Reorganized Tronox or further notice to, or action, order or approval of the Bankruptcy Court. All Allowed

Claims arising from the rejection of Tronox's Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article III.B.3 of the Plan.

C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the Effective Date, subject to the limitation described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the amount of any payments to cure such a default, (2) the ability of Reorganized Tronox or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption. At least 14 days prior to the Voting Deadline, to the extent not previously filed with the Bankruptcy Court and served on affected counterparties, Tronox shall provide for notices of proposed assumption and proposed cure amounts to be sent to applicable contract and lease counterparties, together with procedures for objecting thereto and resolution of disputes by the Bankruptcy Court. Any objection by a contract or lease counterparty to a proposed assumption or related cure amount must be filed, served and actually received by Tronox prior to the Confirmation Hearing (or such other date as may be provided in the applicable assumption notice). Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or cure amount will be deemed to have assented to such assumption or cure amount.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. Any Proofs of Claim filed with respect to an Executory Contract or Unexpired Lease that has been assumed shall be deemed disallowed and expunged without further notice to or action, order or approval of the Bankruptcy Court.

D. Modifications, Amendments, Supplements, Restatements or Other Agreements.

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed or rejected shall include all modifications, amendments, supplements, restatements or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by Tronox during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority or amount of any Claims that may arise in connection therewith.

E. Reservation of Rights.

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Assumed Executory Contract and Unexpired Lease List, nor anything contained in the Plan, shall constitute an admission by Tronox that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that Reorganized Tronox has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, Tronox or Reorganized Tronox, as applicable, shall have 30 days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

F. Nonoccurrence of Effective Date.

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

G. Contracts and Leases Entered into after the Petition Date.

Contracts and leases entered into after the Petition Date by any Tronox Debtor, including any Executory Contracts and Unexpired Leases assumed by such Tronox Debtor, will be performed by the Tronox Debtor liable thereunder in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

H. Assumption of Indemnification Provisions

Tronox shall assume all of the Indemnification Provisions in place on and before the Effective Date for Indemnified Parties for Claims related to or in connection with any actions, omissions or transactions occurring before the Effective Date; provided, however, that nothing in the Plan, the Plan Supplement or any document related thereto shall in any way release or provide indemnification for any claim against or liability of the following parties, who are not Indemnified Parties: Lehman Brothers Holdings, Inc., Ernst & Young LLP, Kerr-McGee Corporation and Anadarko Petroleum Corporation and their officers, directors, employees, advisors, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives (including their respective officers, directors, employees, members, and professionals), whether such claims or liabilities be direct or indirect, fixed or contingent, including the claims asserted in the Anadarko Litigation; provided further, however, that for the avoidance of doubt, nothing in the Plan, the Plan Supplement or any document related thereto shall in any way release or indemnify any individuals who were former directors or officers of the Tronox Debtors or their subsidiaries and also were or currently are directors or officers of Kerr-McGee Corporation and/or Anadarko Petroleum Corporation.

I. Employee and Retiree Benefits

1. Continuation of Retiree Benefits and Pension Plan

Pursuant to section 1129(a)(13) of the Bankruptcy Code, on and after the Effective Date, all retiree benefits (as that term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with the terms of the Plan, the underlying employee benefit plan documents (as may be amended or terminated at the discretion of Reorganized Tronox) and applicable law.

Pursuant to the Plan, Tronox shall assume the Pension Plan. The Pension Plan shall be continued in accordance with its terms, and Reorganized Tronox shall satisfy the minimum funding standards pursuant to 26 U.S.C. §§ 412 and 430 and 29 U.S.C. §§ 1082 and 1083, be liable for the payment of PBGC premiums in accordance with Title IV of ERISA, subject to any and all applicable rights and defenses of the Tronox Debtors, and administer the Pension Plan in accordance with the provisions of ERISA and the Internal Revenue Code. Notwithstanding any provision of the Plan or the Confirmation Order to the contrary, the Pension Plan shall be continued and administered in accordance with ERISA and the Internal Revenue Code.

Pursuant to the Plan, Tronox shall continue to provide employees with a defined contribution (401(k)) Savings Investment Plan ("SIP") into which employees' contributions and matching company contributions are paid. Tronox matches 75% of the first 6% of an employee's contributed compensation (as defined in the SIP). As part of its ongoing efforts to reduce costs, Tronox suspended its SIP matching contribution effective July 1, 2008. Following Bankruptcy Court approval (and subsequent consent of the Creditors' Committee), Tronox reinstated the company match effective April 1, 2010. It is Tronox's intention to provide the current match and augment it with an additional contribution of approximately 4.5% to make up for the difference in the loss of a defined benefit (pension) plan for employee retirement.

Notwithstanding the foregoing, Tronox will terminate the Tronox Incorporated Defined Benefit Restoration Plan and associated trust prior to the Effective Date. The Tronox Incorporated Defined Contribution Savings Restoration Plan will continue in effect.

Reorganized Tronox reserves the right to amend or terminate any of its employee benefit plans at any time and for any reason.

2. Workers' Compensation Programs

As of the Effective Date, except as set forth herein or in the Plan Supplement, Tronox and Reorganized Tronox shall continue to honor their obligations under: (i) all applicable federal and state workers' compensation laws; and (ii) Tronox's written contracts, agreements, agreements of indemnity, self-insurer workers' compensation bonds, policies, programs and plans for workers' compensation and workers' compensation insurance.

All Proofs of Claims on account of workers' compensation claims shall be deemed withdrawn automatically and without any further notice to or action, order or approval of the Bankruptcy Court; provided, however, that nothing in the Plan shall limit, diminish, or otherwise alter Tronox's or Reorganized Tronox's defenses, Causes of Action or other rights under applicable non-bankruptcy law with respect to any such contracts, agreements, policies, programs and plans; provided, further, that nothing herein shall be deemed to impose any obligations on Tronox in addition to what is provided for under applicable state law.

3. Management 2010 Bonus Plan

Subject only to the occurrence of the Effective Date, the Management 2010 Bonus Plan, in the form to be included in the Plan Supplement, shall become effective without any further action by Reorganized Tronox.

4. Management Equity Plan

On the Effective Date, Reorganized Tronox shall adopt the Management Equity Plan. The terms of the Management Equity Plan shall be reasonably acceptable to the Creditors' Committee and the Required Backstop Parties and shall be set forth in the Plan Supplement.

5. New Management Agreements

On the Effective Date, Reorganized Tronox shall enter into the New Management Agreements with those persons to be identified in the Plan Supplement substantially in the form to be included in the Plan Supplement, which agreements shall be deemed authorized without any further approval of the New Board or Reorganized Tronox and automatically shall become effective on the Effective Date.

6. Employee Benefits Generally

Except as otherwise provided herein, on and after the Effective Date, the Reorganized Debtors may honor, in the ordinary course of business, any prepetition contracts, agreements, policies, programs and plans for, among other things, compensation (other than prepetition equity based compensation), health care benefits, disability benefits, deferred compensation benefits, travel benefits, vacation benefits, savings plans, severance benefits, retirement benefits, welfare benefits, pension benefits, life insurance and accidental death and dismemberment insurance for the directors, officers and employees of any of the Tronox Debtors who served in such capacity at any time; provided, however, that Tronox's or Reorganized Tronox's performance under any employment agreement will not entitle any person to any benefit or alleged entitlement under any contract, agreement, policy, program or plan that has expired or been terminated before the Effective Date, or restore, reinstate or revive any such benefit or alleged entitlement under any such contract, agreement, policy, program or plan. Nothing herein shall limit, diminish or otherwise alter Reorganized Tronox's defenses, claims, Causes of Action or other rights with respect to any such contracts, agreements, policies, programs and plans, including Reorganized Tronox's rights to modify unvested benefits pursuant to their terms.

Notwithstanding anything to the contrary herein, Tronox shall not assume any employment agreements for employees or officers of the Tronox Debtors employed in the United States.

J. Insurance Policies.

1. Insurance Policies Generally

Tronox does not believe that the Insurance Policies constitute Executory Contracts. To the extent the Insurance Policies are considered to be Executory Contracts, then, notwithstanding anything to the contrary herein, on the Effective Date, Tronox shall be deemed to have assumed the Insurance Policies (including the D&O Liability Policies) and any agreements, documents and instruments relating thereto pursuant to sections 365 and 1123 of the Bankruptcy Code; provided, however, that (1) the Tort Claims Insurance Assets shall be assigned to the Tort Claims Trust and the Tort Claims Trust shall be substituted for the applicable Tronox Debtor as the insured thereunder with respect to all benefits and obligations related thereto and (2) the Environmental Insurance Assets shall be assigned to the Environmental Response Trusts and the Environmental Response Trusts shall assume any liabilities thereunder. For the avoidance of doubt, any payments made by Chartis under any of the Chartis Policies on account of reimbursement claims made by Tronox for expenditures incurred before the Effective Date shall be excluded from the Environmental Insurance Assets and shall remain property of Reorganized Tronox.

Nothing contained herein, in the Disclosure Statement, the Plan Supplement, the Confirmation Order or otherwise shall in any way operate to, or have the effect of, altering or impairing in any respect the legal, equitable or contractual rights and defenses of the insureds or insurers under any policy of insurance and related agreements. The rights and obligations of the parties and others under any policy of insurance and related agreements shall be determined under such policies and related agreements, including the terms, conditions, limitations, exclusions and endorsements thereof, which shall remain in full force and effect, and under any applicable non-bankruptcy law.

Nothing contained in this section shall constitute or be deemed a waiver of any Cause of Action that Tronox may hold against any Entity, including the insurer, under any of Tronox's insurance policies.

On the Effective Date, any and all unliquidated or contingent Claims arising from or related to an Insurance Policy that is assumed by Tronox in connection with the Plan shall be deemed expunged.

2. Director and Officer Insurance Policies

Notwithstanding anything to the contrary contained in the Plan, confirmation of the Plan shall not discharge, impair or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by Tronox under the Plan as to which no Proof of Claim need be filed.

In addition, on or before the Effective Date, Reorganized Tronox shall obtain reasonably sufficient tail coverage (*i.e.*, D&O insurance coverage that extends beyond the end of the policy period) under a directors and officers' liability insurance policy for the current (as of July 7, 2010) directors, officers and managers for a period of five years, and placed with such insurers, the terms of which shall be set forth in the Plan Supplement. After the Effective Date, Reorganized Tronox shall not terminate or otherwise reduce the coverage under any D&O Liability Policies (including any "tail policy") in effect on the Petition Date, with respect to conduct occurring prior thereto, and all directors and officers of Tronox who served in such capacity as of the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy regardless of whether such directors and officers remain in such positions after the Effective Date; provided, however, that for the avoidance of doubt, nothing in the Plan, the Plan Supplement or any document related thereto shall in any way be construed to benefit, indemnify or release any individuals who were former directors or officers of the Tronox Debtors or their subsidiaries and also were or currently are directors or officers of Kerr-McGee Corporation and/or Anadarko Petroleum Corporation.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Timing and Calculation of Amounts to Be Distributed.

Unless otherwise provided in the Plan, on the Effective Date (or if a Claim or Equity Interest is not Allowed on the Effective Date, on the date that such Claim or Equity Interest becomes Allowed, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against Tronox, or the Tort Claims Trust, as the case may be, shall receive the full amount of the Distributions that the Plan provides for Allowed Claims and Equity Interests in the applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims or Equity Interests, Distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions set forth in Article VII of the Plan. In the event there are Disputed Claims or Equity Interests requiring adjudication and resolution after the Effective Date, Reorganized Tronox shall establish appropriate reserves for potential Distributions on account of such Disputed Claims or Equity Interests in the event that such Disputed Claims or Equity Interests become Allowed.

Except as otherwise provided in the Plan, Holders of Claims shall not be entitled to interest, dividends or accruals on the Distributions provided for in the Plan, regardless of whether such Distributions are delivered on or at any time after the Effective Date.

B. Disbursing Agent.

All Distributions under the Plan shall be made by the Disbursing Agent on or as soon as is practicable after the Effective Date. Tronox shall not be required to give any bond or surety or other security for the performance of its duties as Disbursing Agent unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Disbursing Agent is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by Reorganized Tronox.

C. Rights and Powers of Disbursing Agent.

1. Powers of the Disbursing Agent.

The Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan; (b) make all Distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

2. Expenses Incurred On or After the Effective Date.

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Disbursing Agent on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement claims (including reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in Cash by Reorganized Tronox.

D. Delivery of Distributions and Undeliverable or Unclaimed Distributions.

1. Delivery of Distributions in General.

Except as otherwise provided herein, Reorganized Tronox shall make Distributions to Holders of Allowed Claims or Equity Interests on the Distribution Record Date at the address for each such Holder as indicated Tronox's records as of the date of any such Distribution; provided, however, that the manner of such Distributions shall be

determined at the discretion of Reorganized Tronox; provided further, however, that the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim filed by that Holder.

2. Delivery of Distributions to Holders of Unsecured Notes Claims.

The Indenture Trustee shall be deemed to be the Holder of the Unsecured Notes Claim for purposes of Distributions to be made hereunder, and all Distributions on account of such Unsecured Notes Claim shall be made to or on behalf of the Indenture Trustee. The Indenture Trustee shall hold or direct such Distributions for the benefit of the Holders of the Unsecured Notes, as applicable. As soon as practicable following compliance with the requirements set forth in Article XII of the Plan, the Indenture Trustee shall (a) arrange to deliver such Distributions to or on behalf of such Holders of Unsecured Notes, (b) exercise its Indenture Charging Lien against any such Distributions to the extent the Indenture Trustee Fee claim is not paid in full by Tronox as provided in and subject to the limitations of Article XII, and (c) seek and receive compensation and reimbursement from Tronox for any fees and expenses incurred in making such Distributions as provided herein.

3. Delivery of Distributions to Holders of Tort Claims.

Distributions to Holders of Tort Claims shall be made from the Tort Claims Trust pursuant to the Tort Claims Trust Distribution Procedures. The amount of each Tort Claim shall be fixed pursuant to the Tort Claims Trust Distribution Procedures. The Distribution Record Date shall not apply to Holders of Tort Claims.

4. Minimum Distributions.

No fractional shares of New Common Stock shall be distributed and no Cash shall be distributed in lieu of such fractional amounts. When any Distribution pursuant to the Plan on account of an Allowed Claim or Equity Interest would otherwise result in the issuance of a number of shares of New Common Stock that is not a whole number, the actual Distribution of shares of New Common Stock shall be rounded as follows: (a) fractions of one-half (½) or greater shall be rounded to the next higher whole number and (b) fractions of less than one-half (½) shall be rounded to the next lower whole number with no further payment therefor. The total number of authorized shares of New Common Stock to be distributed to Holders of Allowed Claims or Equity Interests shall be adjusted as necessary to account for the foregoing rounding.

5. Undeliverable Distributions and Unclaimed Property.

In the event that any Distribution to any Holder is returned as undeliverable, no Distribution to such Holder shall be made unless and until the Disbursing Agent has determined the then-current address of such Holder, at which time such Distribution shall be made to such Holder without interest; provided, however, that such Distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one year from the Effective Date. After such date, all unclaimed property or interests in property shall revert to Reorganized Tronox automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial or state escheat, abandoned or unclaimed property laws to the contrary), and the Claim of any Holder to such property or Equity Interest in property shall be discharged and forever barred.

E. Manner of Payment.

1. All Distributions of New Common Stock to the Holders of Claims or Equity Interests under the Plan shall be made by the Disbursing Agent on behalf of Reorganized Tronox.

2. All Distributions of Cash under the Plan shall be made by the Disbursing Agent on behalf of the applicable Tronox Debtor.

3. At the option of the Disbursing Agent, any Cash payment to be made hereunder may be made by check or wire transfer or as otherwise required or provided in applicable agreements.

F. Compliance with Tax Requirements.

In connection with the Plan, to the extent applicable, Reorganized Tronox shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all Distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, Reorganized Tronox and the Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the Distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding Distributions pending receipt of information necessary to facilitate such Distributions or establishing any other mechanisms they believe are reasonable and appropriate. Reorganized Tronox reserves the right to allocate all Distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support and other spousal awards, liens and encumbrances.

G. Allocations.

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

H. No Postpetition Interest on Claims.

Unless otherwise specifically provided for in the Plan or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims against Tronox, and no Holder of a Claim against Tronox shall be entitled to interest accruing on or after the Petition Date on any such Claim.

I. Setoffs and Recoupment.

Tronox may, but shall not be required to, setoff against or recoup from any Claims of any nature whatsoever that Tronox may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by Tronox or Reorganized Tronox of any such Claim it may have against the Holder of such Claim.

J. Claims Paid or Payable by Third Parties.

1. Claims Paid by Third Parties.

Tronox or Reorganized Tronox, as applicable, shall reduce in full a Claim, and such Claim shall be disallowed without an objection having to be filed and without any further notice to or action, order or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Tronox Debtor or Reorganized Tronox. Subject to the last sentence of this paragraph, to the extent a Holder of a Claim receives a Distribution on account of such Claim and receives payment from a party that is not a Tronox Debtor or Reorganized Tronox on account of such Claim, such Holder shall, within two weeks of receipt thereof, repay or return the Distribution to Reorganized Tronox, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such Distribution under the Plan. The failure of such Holder to timely repay or return such Distribution shall result in the Holder owing Reorganized Tronox annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the two-week grace period specified above until the amount is repaid.

2. Claims Payable by Third Parties.

Except as to insurance policies and the proceeds thereof assigned to the Environmental Response Trusts or the Tort Claims Trust, which policies shall be assigned and proceeds shall be paid as set forth herein, no Distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of Tronox's insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of Tronox's insurers agrees to satisfy in full or in part a Claim (if

and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without an objection having to be filed and without any further notice to or action, order or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies.

Except as otherwise provided in the Plan, Distributions to Holders of Allowed Claims shall be made in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that Tronox or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Allowance of Claims.

After the Effective Date, Reorganized Tronox shall have and retain any and all rights and defenses Tronox had with respect to any Claim or Interest immediately prior to the Effective Date, except with respect to any Claim deemed Allowed under the Plan. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases prior to the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order (including the Confirmation Order) in the Chapter 11 Cases allowing such Claim. All settled Claims approved prior to the Effective Date pursuant to a Final Order of the Bankruptcy Court pursuant to Bankruptcy Rule 9019 or otherwise shall be binding on all parties.

B. Disputed Reserve.

On the Effective Date (or as soon thereafter as is reasonably practicable), Reorganized Tronox shall deposit in the Disputed Reserve the amount of Cash, New Common Stock and/or New Warrants that would have been distributed to the Holders of all Disputed Claims or Equity Interests as if such Disputed Claims or Equity Interests had been Allowed on the Effective Date, with the amount of such Allowed Claims or Equity Interests to be determined, solely for the purposes of establishing reserves and for maximum distribution purposes, to be the lesser of (a) the asserted amount of the Disputed Claim filed with the Bankruptcy Court, or (if no proof of such Claim was filed) listed by Tronox in the Schedules, (b) the amount, if any, estimated by the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code or (c) the amount otherwise agreed to by Tronox, the Creditors' Committee and the Holder of such Disputed Claim or Equity Interest for reserve purposes.

C. Claims Administration Responsibilities.

Except as otherwise specifically provided in the Plan, after the Effective Date, Reorganized Tronox shall have the sole authority: (1) to File, withdraw or litigate to judgment any objections to Claims or Equity Interests; (2) to settle or compromise any Disputed Claim or Equity Interest without any further notice to or action, order or approval by the Bankruptcy Court; and (3) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order or approval by the Bankruptcy Court.

D. Estimation of Claim and Equity Interests.

Before or after the Effective Date, Tronox or Reorganized Tronox, as applicable, may (but is not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim or Equity Interest that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim or Equity Interest, including during the litigation of any objection to any Claim or Equity Interest or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim or Equity Interest that has been expunged from the

Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim or Equity Interest, that estimated amount shall constitute a maximum limitation on such Claim or Equity Interest for all purposes under the Plan (including for purposes of Distributions), and Reorganized Tronox may elect to pursue any supplemental proceedings to object to any ultimate Distribution on such Claim or Equity Interest.

E. Adjustment to Claims without Objection.

Any Claim or Equity Interest that has been paid or satisfied, or any Claim or Equity Interest that has been amended or superseded, may be adjusted or expunged on the Claims Register by Reorganized Tronox without a Claims objection having to be filed and without any further notice to or action, order or approval of the Bankruptcy Court.

F. Time to File Objections to Claims.

Any objections to Claims shall be filed on or before the Claims Objection Bar Date.

G. Disallowance of Claims or Equity Interests.

Any Claims held by Entities from which property is recoverable under section 542, 543, 550 or 553 of the Bankruptcy Code, or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any Distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to Tronox by that Entity have been turned over or paid to Reorganized Tronox (or if such sums due are proceeds from the Anadarko Litigation, then to the Anadarko Litigation Trust). All Claims filed on account of an indemnification obligation to a director, officer or employee shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to or action, order or approval of the Bankruptcy Court. All Claims filed on account of an employee benefit shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent Reorganized Tronox elects to honor such employee benefit, without any further notice to or action, order or approval of the Bankruptcy Court.

EXCEPT AS PROVIDED HEREIN, IN AN ORDER OF THE BANKRUPTCY COURT OR OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE CLAIMS BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS AT OR PRIOR TO THE CONFIRMATION HEARING SUCH LATE CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

H. Amendments to Claims.

On or after the Effective Date, a Claim may not be filed or amended without the prior authorization of the Bankruptcy Court or Reorganized Tronox, and any such new or amended Claim filed without such prior authorization shall be deemed disallowed in full and expunged without any further action.

I. No Distributions Pending Allowance.

If an objection to a Claim or portion thereof is filed as set forth in Article VII, no payment or Distribution provided under the Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim.

J. Distributions after Allowance.

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, Distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim the Distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest to be paid on account of such Claim unless required under applicable bankruptcy law.

ARTICLE VIII.
SETTLEMENT, RELEASE, INJUNCTION AND RELATED PROVISIONS

A. Discharge of Claims and Termination of Equity Interests.

Pursuant to and to the fullest extent permitted by section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, in the Exit Credit Documents or in any contract, instrument or other agreement or document created pursuant to the Plan, the Distributions, rights and treatment that are provided in the Plan shall be in complete satisfaction, discharge and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by Reorganized Tronox), Equity Interests and causes of action of any nature whatsoever, including any interest accrued on Claims or Equity Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Equity Interests in, the Tronox Debtors, Reorganized Tronox or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Equity Interests, including demands, liabilities and causes of action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Equity Interests relate to services performed by employees of Tronox prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or Equity Interest based upon such debt, right or Equity Interest is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Equity Interest based upon such debt, right or Equity Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Equity Interest has accepted the Plan. Any default by Tronox or its Affiliates with respect to any Claim or Equity Interest that existed immediately prior to or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Equity Interests subject to the Effective Date occurring.

Notwithstanding anything to the contrary in the Plan, all Replacement DIP Facility Claims that are converted into the Exit Financing in accordance with the terms of the Replacement DIP Documents shall be governed exclusively by the applicable Exit Credit Documents, and shall not be discharged, released or otherwise terminated pursuant to the Plan, section 1141(d) of the Bankruptcy Code or otherwise.

B. Release of Liens.

Except as otherwise provided in the Plan, in the Exit Credit Documents or in any contract, instrument, release or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title and interest of any Holder of such mortgages, deeds of trust, Liens, pledges or other security interests shall revert to Reorganized Tronox and its successors and assigns.

C. Releases by Tronox.

Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, for good and valuable consideration, including the service of the Released Parties to facilitate the

expeditious reorganization of Tronox and the implementation of the restructuring contemplated by the Plan, on and after the Effective Date, the Released Parties are deemed released and discharged by Tronox, Reorganized Tronox and the Estates from any and all Claims, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any derivative Claims asserted or assertable on behalf of the Tronox Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that Tronox, Reorganized Tronox, the Estates or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Equity Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, Tronox, the Chapter 11 Cases, Tronox's restructuring, the purchase, sale or rescission of the purchase or sale of any Security of Tronox or Reorganized Tronox, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between Tronox and any Released Party, the restructuring of Claims and Equity Interests prior to or in the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Plan Supplement, the Disclosure Statement, the Replacement DIP Documents, the Exit Credit Documents or related agreements, instruments or other documents, upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Confirmation Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, breach of fiduciary duty or a criminal act to the extent such act or omission is determined by a Final Order to have constituted willful misconduct, gross negligence, breach of fiduciary duty or a criminal act.

The foregoing release shall not apply to any express contractual or financial obligations or any right or obligations arising under or that is part of the Plan or any agreements entered into pursuant to, in connection with or contemplated by the Plan.

D. Releases by Holders of Claims and Equity Interests.

As of the Effective Date, to the fullest extent permitted by applicable law, each Holder of a Claim or an Equity Interest (including, for the avoidance of doubt, all shareholders of Tronox Incorporated) shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever released and discharged Tronox, Reorganized Tronox and the Released Parties from any and all Claims, Equity Interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any derivative Claims asserted on behalf of a debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, Tronox, Tronox's restructuring, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any Security of Tronox or Reorganized Tronox, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between Tronox and any Released Party, the restructuring of Claims and Equity Interests prior to or during the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, the Replacement DIP Documents, the Exit Credit Documents or related agreements, instruments or other documents, upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Confirmation Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, breach of fiduciary duty or a criminal act to the extent such act or omission is determined by a Final Order to have constituted willful misconduct, gross negligence, breach of fiduciary duty or a criminal act.

Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any party under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan. No Person shall be discharged, released or relieved from any liability with respect to the Pension Plan as a result of the Chapter 11 Cases or the Plan, nor shall the PBGC, the Pension Plan or any other Person be enjoined or precluded from enforcing any liability with respect to the Pension Plan as a result of the Chapter 11 Cases, the Plan's provisions or the Plan's Confirmation. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release the personal liability of any of the aforementioned Released

Parties in this Article VIII for any statutory violation of applicable tax laws or bar any right of action asserted by a governmental taxing authority against the aforementioned Released Parties for any statutory violation of applicable tax laws.

E. Injunction.

Except as otherwise expressly provided in the Plan or the Exit Credit Documents or for obligations issued pursuant to the Plan, all Entities who have held, hold or may hold Claims or Equity Interests that have been released pursuant to Article VIII.C or Article VIII.D, discharged pursuant to Article VIII.A or exculpated pursuant to Article VIII.F, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, Tronox, Reorganized Tronox or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of, in connection with or with respect to any such Claims or Equity Interests; (2) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against Tronox, Reorganized Tronox or the Released Parties on account of or in connection with or with respect to any such Claims or Equity Interests; (3) creating, perfecting or enforcing any encumbrance of any kind against Tronox, Reorganized Tronox or the Released Parties or the property or estates of Tronox, Reorganized Tronox or the Released Parties on account of or in connection with or with respect to any such Claims or Equity Interests; (4) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from Tronox, Reorganized Tronox or the Released Parties or against the property or Estates of Tronox, Reorganized Tronox or the Released Parties on account of or in connection with or with respect to any such Claims or Equity Interests unless such Holder has filed a motion requesting the right to perform such setoff on or before the Confirmation Date, and notwithstanding an indication in a Proof of Claim or Equity Interest or otherwise that such Holder asserts, has or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of, in connection with or with respect to any such Claims or Equity Interests released or settled pursuant to the Plan.

F. Exculpation.

Upon and effective as of the Effective Date, Tronox and its directors, officers, employees, attorneys, investment bankers, financial advisors, restructuring consultants and other professional advisors and agents together with the Exculpated Parties will all be deemed to have solicited acceptances of this Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including section 1125(e) of the Bankruptcy Code.

Except with respect to any acts or omissions expressly set forth in and preserved by the Plan, the Plan Supplement or related documents, the Exculpated Parties shall neither have nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with, or arising from or relating in any way to, the Chapter 11 Cases, including the operation of Tronox's businesses during the pendency of the Chapter 11 Cases; formulating, negotiating, preparing, disseminating, implementing and/or effecting the Plan Support Agreement, the Equity Commitment Agreement, the Original DIP Facility, the Replacement DIP Documents, the Exit Credit Documents, the Rights Offering, the Rights Offering Procedures, the Disclosure Statement and the Plan (including the Plan Supplement and any related contract, instrument, release or other agreement or document created or entered into in connection therewith); the solicitation of votes for the Plan and the pursuit of Confirmation and Consummation of the Plan; the administration of the Plan and/or the property to be distributed under the Plan; the offer and issuance of any securities under the Plan; and any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of Tronox. In all respects, each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her or its respective duties under, pursuant to or in connection with the Plan.

Notwithstanding anything herein to the contrary, nothing in the foregoing "Exculpation" shall (1) exculpate any Person or Entity from any liability resulting from any act or omission constituting fraud, willful misconduct, gross negligence, criminal conduct, malpractice, misuse of confidential information that

causes damages or ultra vires act as determined by a Final Order or (2) limit the liability of the professionals of the Exculpated Parties to their respective clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8 Rule 1.8(h)(1) (2009).

G. Liabilities to, and Right of, Governmental Units and Nevada Parties

Notwithstanding anything to the contrary in the Plan or this Article VIII, except insofar as any release or discharge is expressly provided in the Environmental Claims Settlement Agreement, the Plan does not release or discharge (i) any criminal liability, (ii) any liability to any Governmental Unit that is not a claim within the meaning of section 101(5) of the Bankruptcy Code, (iii) any claim of any Governmental Unit or the Nevada Parties that arises after the Effective Date, (iv) any liability of a non-debtor to any Governmental Unit or the Nevada Parties, or (v) any liabilities to which Reorganized Tronox may be subject under applicable laws to a Governmental Unit or the Nevada Parties as the owner or operator of the Retained Assets after the Effective Date.

H. Rights of Internal Revenue Service.

Notwithstanding any provision to the contrary in the Plan, the Confirmation Order or the implementing Plan documents: (1) the rights of the Internal Revenue Service to setoff and recoupment shall be preserved; and (2) nothing in Article VIII.D shall constitute a release of the Internal Revenue Service's claims, if any, against the Released Parties and nothing shall affect the ability of the Internal Revenue Service to pursue, to the extent allowed by non-bankruptcy law, any non-debtors for any liabilities that may be related to any federal tax liabilities owed by Tronox or Reorganized Tronox.

ARTICLE IX.
CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN

A. Conditions Precedent to Confirmation.

It shall be a condition to Confirmation of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.C hereof:

1. The Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable to Tronox, the Replacement DIP Agent, the Creditors' Committee, the Required Backstop Parties and the United States (upon consultation with the Nevada Parties);

2. The Confirmation Order shall, among other things:

(a) authorize Tronox and Reorganized Tronox to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures and other agreements or documents created in connection with the Plan;

(b) decree that the provisions of the Confirmation Order and the Plan are nonseverable and mutually dependent;

(c) authorize Reorganized Tronox to (a) issue the New Common Stock and the New Warrants, as applicable, pursuant to the exemption from registration under the Securities Act provided by section 1145 of the Bankruptcy Code or other exemption from such registration as applicable and (b) enter into the agreements contained in the Plan Supplement;

(d) decree that the Confirmation Order shall supersede any Bankruptcy Court orders issued prior to the Confirmation Date that may be inconsistent with the Confirmation Order;

(e) authorize the implementation of the Plan in accordance with its terms; and

(f) provide that, pursuant to section 1146 of the Bankruptcy Code, the assignment or surrender of any lease or sublease, and the delivery of any deed or other instrument or transfer order, in furtherance of or in connection with the plan of reorganization, including any deeds, bills of sale or assignments executed in connection with any disposition or transfer of assets contemplated by the plan, shall not be subject to any stamp, real estate transfer, mortgage recording or other similar tax (including any mortgages or security interest filing to be recorded or filed in connection with the Exit Financing).

3. The Plan, the Environmental Claims Settlement Agreement, the Environmental Response Trust Agreements and the Anadarko Litigation Trust Agreement shall be in form and substance reasonably acceptable to Tronox, the Replacement DIP Agent, the United States, the Nevada Parties, the Required Backstop Parties and the Creditors' Committee.

B. Conditions Precedent to the Effective Date.

It shall be a condition to the Effective Date of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.C hereof:

1. The Confirmation Order shall (a) have been entered in a form and substance reasonably satisfactory to Tronox, the Replacement DIP Agent, the Creditors' Committee, the Required Backstop Parties and the United States (in consultation with the Nevada Parties) and (b) shall have become a Final Order;

2. The final version of the Plan Supplement and all of the schedules, documents and exhibits contained therein shall have been filed in form and substance reasonably acceptable to Tronox, the Replacement DIP Agent, the Creditors' Committee, the Required Backstop Parties and the United States (in consultation with the Nevada Parties);

3. All actions, documents, certificates and agreements necessary to implement the Plan, including documents contained in the Plan Supplement, shall have been effected or executed and delivered, as the case may be, to the required parties and, to the extent required, filed with the applicable Governmental Units in accordance with applicable laws; provided, however, that each document, instrument and agreement must be reasonably acceptable to Tronox, the Backstop Parties and the Creditors' Committee;

4. (a) On the Effective Date, immediately prior to giving effect to the transactions contemplated hereby (including the payment in full of all Allowed Administrative Claims and Allowed Priority Claims), Tronox shall have Available Cash equal to or greater than the amounts set forth on Schedule 8(b)(viii) to the Equity Commitment Agreement as the "Cash Balance," as applicable to the Effective Date, or such other lower amount as shall be agreed to by the Required Backstop Parties. To the extent the Effective Date occurs after December 31, 2010, Tronox shall provide an updated schedule setting forth the projected Cash Balance reasonably acceptable to the Required Backstop Parties; (b) on the Effective Date, the amount of capital expenditures made by Tronox for the Kwinana Investment (as defined in the Credit Agreement) shall not exceed amounts set forth on Schedule 8(b)(viii) to the Equity Commitment Agreement; (c) Financing Fees, Allowed Administrative Claims, Priority Claims and Cure Claims paid on the Effective Date shall not exceed $32,500,000; it being agreed that Financing Fees shall include fees payable to potential lenders in conjunction with the Exit Financing.; and (d) Settlement Escrow Account and Cash Collateralized Letters of Credit (each as defined in the Replacement DIP Agreement) released prior to or on the Effective Date shall in the aggregate equal or exceed $58,000,000;

5. The aggregate amount of (a) Allowed General Unsecured Claims (excluding the Unsecured Notes Claim) and (b) Allowed Indirect Environmental Claims shall not exceed $160 million.

6. The terms of the Management Equity Plan and the New Management Agreements shall be reasonably acceptable to Tronox, the Creditors' Committee and the Required Backstop Parties;

7. All authorizations, consents, regulatory approvals, rulings or documents that are necessary to implement and effectuate the Plan shall have been received, waived or otherwise resolved;

8. Reorganized Tronox and any non-debtor parties thereto shall have entered into the Exit Credit Documents, and all conditions precedent to the consummation or effectiveness of the Exit Financing shall have been waived or satisfied in accordance with the terms thereof, and any funding contemplated to be made on the Effective Date shall have been made in accordance with the applicable Exit Credit Documents; and

9. The New Board shall have been appointed.

C. Waiver of Conditions.

The conditions to Confirmation of the Plan and to Consummation of the Plan set forth in this Article IX may be waived only by consent of Tronox, the Replacement DIP Agent, the Creditors' Committee, the Required Backstop Parties, and, to the extent applicable, the United States and the Nevada Parties, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate the Plan.

D. Effect of Failure of Conditions.

If the Consummation of the Plan does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by Tronox or the Holders of any Claims or Equity Interests; (2) prejudice in any manner the rights of Tronox, any Holders or any other Entity; or (3) constitute an admission, acknowledgment, offer or undertaking by Tronox, any Holders or any other Entity in any respect.

ARTICLE X.
MODIFICATION, REVOCATION OR WITHDRAWAL OF THE PLAN

A. Modification and Amendments.

Except as otherwise specifically provided in the Plan, Tronox, with the reasonable consent of the Replacement DIP Agent, the Creditors' Committee, the Required Backstop Parties and the United States (in consultation with the Nevada Parties), reserves the right to modify the Plan, whether such modification is material or immaterial, and seek Confirmation consistent with the Bankruptcy Code. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, each of the Tronox Debtors expressly reserves its respective rights to revoke or withdraw, or, with the reasonable consent of the Replacement DIP Agent, the Creditors' Committee, the Backstop Parties and the United States, to alter, amend or modify the Plan with respect to such Debtor, one or more times, after Confirmation, and, to the extent necessary may initiate proceedings in the Bankruptcy Court to so alter, amend or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with this Article X.

B. Effect of Confirmation on Modifications.

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation of votes on the Plan and prior to entry of the Confirmation Order are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of Plan.

Tronox reserves the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent plans of reorganization. If Tronox revokes or withdraws the Plan, or if Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Equity Interest or Class of Claims or Equity Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan and

any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Equity Interests; (b) prejudice in any manner the rights of any Tronox Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by any Tronox Debtor or any other Entity.

ARTICLE XI.
RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of or related to the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate or establish the priority, Secured or unsecured status or amount of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount or allowance of Claims or Equity Interests;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized to be paid by the Tronox Debtors' estates pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to: (a) the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which a Tronox Debtor is party or with respect to which a Tronox Debtor may be liable and to hear, determine and, if necessary, liquidate, any Claims arising therefrom, including Cure Claims pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) Reorganized Tronox amending, modifying or supplementing after the Effective Date, pursuant to Article V, the Assumed Executory Contract and Unexpired Lease List; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure that Distributions to Holders of Allowed Claims and Equity Interests are accomplished pursuant to the provisions of the Plan;

5. adjudicate, decide or resolve any motions, adversary proceedings (including the Anadarko Litigation), contested or litigated matters, Causes of Action and any other matters, and grant or deny any applications involving a Tronox Debtor that may be pending on the Effective Date;

6. adjudicate, decide or resolve any and all matters related to section 1141 of the Bankruptcy Code;

7. enter and implement such orders as may be necessary or appropriate to execute, implement or consummate the provisions of the Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan or the Disclosure Statement;

8. enter and enforce any order for the sale of property pursuant to sections 363, 1123 or 1146(a) of the Bankruptcy Code;

9. resolve any cases, controversies, suits, disputes or Causes of Action that may arise in connection with the Consummation, interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

10. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

11. resolve any cases, controversies, suits, disputes or Causes of Action with respect to the releases, injunctions and other provisions contained in Article VIII and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

12. resolve any cases, controversies, suits, disputes or causes of action with respect to the repayment or return of Distributions and the recovery of additional amounts owed by the Holder of a Claim or Equity Interest for amounts not timely repaid pursuant to Article VI.J.1;

13. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

14. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan or the Disclosure Statement;

15. enter an order or Final Decree concluding or closing the Chapter 11 Cases;

16. adjudicate any and all disputes arising from or relating to Distributions under the Plan;

17. consider any modifications of the Plan, to cure any defect or omission or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

18. determine requests for the payment of Claims and Equity Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;

19. hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents or instruments executed in connection with the Plan;

20. hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

21. hear and determine all disputes involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions and releases granted in the Plan, including under Article VIII, regardless of whether such termination occurred prior to or after the Effective Date;

22. enforce all orders previously entered by the Bankruptcy Court; and

23. hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect.

Subject to Article IX.B and notwithstanding Bankruptcy Rules 3020(e), 6004(h) and 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon Tronox, Reorganized Tronox and any and all Holders of Claims or Equity Interests (irrespective of whether such Claims or Equity Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges and injunctions described in the Plan, each Entity acquiring property under the Plan and any and all non-debtor parties to Executory Contracts and Unexpired Leases with the Tronox Debtors.

B. Additional Documents.

On or before the Effective Date, Tronox may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. Tronox or Reorganized Tronox, as applicable, and all Holders of Claims or Equity Interests receiving Distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

C. Statutory Committees and Cessation of Fee and Expense Payment.

On the Effective Date, any statutory committee appointed in the Chapter 11 Cases shall dissolve and members thereof shall be released and discharged from all rights and duties from or related to the Chapter 11 Cases. Tronox shall not be responsible for paying any fees or expenses incurred by the members of or advisors to the Creditors' Committee or the Equity Committee after the Effective Date, except with respect to pending fee applications and appeals of the Confirmation Order.

D. Payment of Certain Fees and Expenses for Government Environmental Entities.

On the Effective Date, Tronox shall pay the Government Environmental Entities $3,000,000 as an Allowed Administrative Claim. Such amount shall be deemed to satisfy all fees and expenses incurred, directly or indirectly, in connection with the Plan or the Chapter 11 Cases, including, without limitation, (a) all fees and expenses of any legal or financial advisors to the Government Environmental Entities and any consultants or other persons retained or engaged by or on behalf of the Governmental Environmental Entities and (b) any other out of pocket costs and expenses incurred by the Governmental Environmental Entities. No Government Environmental Entity shall attempt to recover additional fees or expenses from Tronox or Reorganized Tronox, including through any requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code.

E. Payment of Certain Fees and Expenses.

Tronox shall pay the fees and expenses of the legal counsel and financial advisors to the Backstop Parties as set forth in the Equity Commitment Agreement. Tronox and the Backstop Parties agree that the transactions contemplated hereby comprise an Alternative Transaction under the Gleacher engagement letter.

Tronox recognizes that Creditors' Committee member Michael E. Carroll contributed substantially to the formulation and development of the Plan and in connection with the support of Holders of Tort Claims for the Plan. Accordingly, Tronox agrees that, on the Effective Date, subject to supporting documentation being provided to counsel to each of Tronox, the Backstop Parties and the Creditors' Committee, Tronox shall pay all reasonable fees and expenses of Mr. Carroll's counsel, Montgomery, McCracken, Walker & Rhoads, LLP, for services rendered and to be rendered in connection therewith up to a maximum of $200,000.

F. Payment of Indenture Trustee Fee Claim.

Notwithstanding anything to the contrary herein, on the Effective Date, Tronox shall pay, as an Allowed Administrative Claim, the reasonable and documented fees and expenses of the Indenture Trustee in full in Cash, in an amount not to exceed $550,000.

Subject to payment in full of the Indenture Trustee Fee Claim in an amount not to exceed $550,000 and the payment of all other fees and expenses (including fees and expenses of counsel) incurred by the Indenture Trustee in administering Distributions to Holders of Unsecured Notes Claims, to the extent payment of the foregoing fees and expenses is permitted by the Indenture, the Indenture Charging Lien of the Indenture Trustee shall be forever released and discharged. Once the Indenture Trustee has completed performance of all of its duties set forth in the Plan or in connection with any Distributions to be made under the Plan, the Indenture Trustee, and its successors and assigns, shall be relieved of all obligations as Indenture Trustee effective as of the Effective Date.

G. Reservation of Rights.

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of the Plan, any statement or provision contained in the Plan or the taking of any action by any Tronox Debtor with respect to the Plan, the Disclosure Statement or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Tronox Debtor with respect to the Holders of Claims or Equity Interests prior to the Effective Date.

H. Successors and Assigns.

The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on and shall inure to the benefit of any heir, executor, administrator, successor or assign, affiliate, officer, director, agent, representative, attorney, beneficiaries or guardian, if any, of each Entity.

I. Notices.

All notices, requests and demands to or upon Tronox to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

1. if to Tronox, to:

Tronox LLC
3301 NW 150th Street
Oklahoma City, Oklahoma 73134
Facsimile: (405) 775-5012
Attention: Michael J. Foster, Esq.
E-mail address: michael.foster@tronox.com

with copies to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Facsimile: (212) 446-4900
Attention: Jonathan S. Henes, Esq., Patrick J. Nash, Jr., Esq. and Nicole L. Greenblatt, Esq.
E-mail addresses: jonathan.henes@kirkland.com, patrick.nash@kirkland.com and nicole.greenblatt@kirkland.com

2. if to the Replacement DIP Agent, to:

Latham & Watkins LLP
233 South Wacker Drive, Suite 5800
Chicago, Illinois 60606
Attention: Richard A. Levy, Esq.
E-mail address: richard.levy@lw.com

3. if to the Creditors' Committee, to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Brian S. Hermann, Esq. and Elizabeth McColm, Esq.
E-mail addresses: bhermann@paulweiss.com and emccolm@paulweiss.com

4. if to the United States, to:

Office of the United States Attorney, Southern District of New York
86 Chambers Street, 3rd Floor
New York, New York 10007
Attention: Robert Yalen Esq. and Tomoko Onozawa, Esq.
Email address: robert.yalen@usdoj.gov and tomoko.onozawa@usdoj.gov

5. if to the Backstop Parties, to:

Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, New York 10005
Attention: Thomas C. Janson, Esq. and Robert C. Shenfeld, Esq.
Email address: tjanson@milbank.com and rshenfeld@milbank.com

6. if to the Equity Committee, to:

Pillsbury Winthrop Shaw Pittman LLP
1540 Broadway
New York, New York 10036
Attn: Craig A. Barbarosh, Esq., David A. Crichlow, Esq. and Karen B. Dine, Esq.
Email addresses: craig.barbarosh@pillsburylaw.com, david.crichlow@pillsburylaw.com and karen.dine@pillsburylaw.com

7. if to the U.S. Trustee, to:

Office of the United States Trustee for the Southern District of New York
33 Whitehall Street, 21st Floor
New York, New York 10004
Attn: Susan D. Golden, Esq.
Email addresses: susan.golden@usdoj.gov

After the Effective Date, Tronox has authority to send a notice to Entities providing that to continue to receive documents pursuant to Bankruptcy Rule 2002, such Entity must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, Tronox is authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have filed such renewed requests.

J. Term of Injunctions or Stays.

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

K. Entire Agreement.

Except as otherwise indicated, the Plan, the Plan Supplement and all exhibits thereto supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations on such subjects, all of which have become merged and integrated into the Plan and the Plan Supplement.

L. Exhibits.

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be available upon written request to Tronox's counsel at the address above or by downloading such exhibits and documents from the website of Tronox's notice and claims agent at http://www.kccllc.net/tronox or the Bankruptcy Court's website at www.nysb.uscourts.gov. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

M. Nonseverability of Plan Provisions.

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without Tronox's and the Creditors' Committee's consent; and (3) nonseverable and mutually dependent. Unless the Bankruptcy Court orders otherwise, any ambiguities or uncertainties with respect to interpretation of the Plan, the Plan Supplement, the Disclosure Statement or any other document related thereto shall be interpreted based on Tronox's or Reorganized Tronox's interpretation thereof.

N. Votes Solicited in Good Faith.

Upon entry of the Confirmation Order, Tronox will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, Tronox and each of its Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer and issuance of Securities Distributed under the Plan and any previous plan, and, therefore, such parties, individuals and Reorganized Tronox will not have any liability for the violation of any applicable law, rule or regulation governing the solicitation of votes on the Plan or the offer and issuance of the Securities offered and Distributed under the Plan and any previous plan.

O. Closing of Chapter 11 Cases.

Tronox shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

P. Waiver or Estoppel.

The Plan provides that each Holder of a Claim or an Equity Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Equity Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with Tronox, its counsel or any other Entity, if such agreement was not disclosed in the Plan, the

Disclosure Statement or papers filed with the Bankruptcy Court prior to the Confirmation Date. For the avoidance of doubt, this provision in the Plan is not intended to limit a creditor's ability to enter into a consensual post-confirmation resolution of its Claim.

Q. Conflicts.

Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement, the Plan Supplement or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control, except that the Environmental Claims Settlement Agreement shall control as to its terms.

New York, New York
Dated: November 5, 2010

TRONOX INCORPORATED, on behalf of itself and all of the other Tronox Debtors

By: /s/ Michael J. Foster
Name: Michael J. Foster
Title: Vice President, Secretary and General Counsel

Richard M. Cieri
Jonathan S. Henes
Nicole L. Greenblatt
Benjamin J. Steele
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

- and -

Patrick J. Nash, Jr.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Attorneys for the Debtors
and Debtors in Possession

Exhibit F

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, NATALIE D. RAMSEY and **LEONARD A. BUSBY**,

Defendants.

No. 2018-4431

ACCEPTANCE OF SERVICE OF COMPLAINT AND NOTICE TO DEFEND AND STIPULATION REGARDING DEADLINES

Daniel Brier hereby accepts service of the **Class Action Complaint and Notice to Defend** in this matter on behalf of all Defendants and certifies that he is authorized to do so.

By agreement and stipulation of the parties, Defendants shall be given until Friday, July 6, 2018, inclusive, to:

1.) Answer, move or otherwise plead in response to the Class Action Complaint;

2.) Respond to any Motions; and

3.) Serve objections and/or responses to the Notices of Deposition, First Request for Production of Documents and First Set of Requests for Admissions and Interrogatories served with the Class Action Complaint.

The Parties reserve all rights and objections.

Dated: May 9, 2018

5/10/18

Daniel T. Brier
Myers, Brier & Kelly, LLP
425 Spruce Street, Suite 200
Scranton, PA 18503
Counsel for Defendants

Scott Michael Hare
The Frick Building
437 Grant Street, Suite 1806
Pittsburgh, PA 15219
Counsel for Plaintiffs

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, NATALIE D. RAMSEY and **LEONARD A. BUSBY**,

Defendants.

No. 2018-4431

MOTION PURSUANT TO RULE 1703 AND LOCAL RULE 4021 TO ASSIGN JUDGE, BRIEF IN SUPPORT AND REQUEST FOR ORAL ARGUMENT

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Scott M. Hare, Esquire
Pa. I.D. No. 63818

1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Tel: 412-338-8632

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated, Plaintiffs, v. **MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP**, **NATALIE D. RAMSEY** and **LEONARD A. BUSBY**, Defendants.	No. 2018-4431

CERTIFICATION PURSUANT TO LOCAL RULE 208.2(d)

I, Scott M. Hare, counsel for the moving party, Plaintiff Stanley Waleski, hereby certify pursuant to Luzerne County Local Rule 208.2(d) that I provided a preliminary copy of the within ***Motion Pursuant to Rule 1703 and Local Rule 4021 to Assign Judge*** to counsel for Defendants prior to filing this Motion, that I conferred with counsel for Defendants, and that I sought the concurrence of Defendants to the relief requested herein.

Defendants do not consent to this Motion, and therefore this Motion is NOT presented as uncontested.

Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, **NATALIE D. RAMSEY** and **LEONARD A. BUSBY**,

Defendants.

No. 2018-4431

REQUEST FOR ORAL ARGUMENT PURSUANT TO LOCAL RULE 208.3(b)(a)(4)

I, Scott M. Hare, counsel for the moving party, Plaintiff Stanley Waleski, hereby request pursuant to Pa. R. Civ. P. 211 and Luzerne County Local Rule 208.3(b)(a)(4) that the Court hear oral argument on the within ***Motion Pursuant to Rule 1703 and Local Rule 4021 to Assign Judge***.

Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated, Plaintiffs, v. **MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, NATALIE D. RAMSEY** and **LEONARD A. BUSBY**, Defendants.	No. 2018-4431

MOTION PURSUANT TO RULE 1703 AND LOCAL RULE 4021 TO ASSIGN JUDGE

Plaintiff Stanley Waleski, by his undersigned counsel, hereby moves this Honorable Court pursuant to Pa. R. Civ. P. 1703 and Luzerne County Local Rule 4021 to assign this case to a designated Judge of this Court for all further proceedings, stating as follows:

1. This lawsuit was filed as a class action pursuant to Pa. R. Civ. P. 1701 *et seq.*, by and on behalf of the approximately 4362 plaintiffs in the case captioned *In Re: Avoca Litigation* filed in the Court of Common Pleas of Luzerne County, Pennsylvania at Civil Action No. 7-2005, whose rights and interests Defendants Montgomery, McCracken, Walker and Rhoads LLP, Natalie D. Ramsey and Leonard A. Busby agreed to represent as creditors in the jointly-administered bankruptcy cases filed by Tronox, Inc. and related entities in the United States Bankruptcy Court for the Southern District of New York at Case No. 09-10156 ("Tronox Bankruptcy"). Class Action Complaint and Jury Demand ¶¶ 1-8, 15-21, *passim*.

2. Rule 1703 of the Pennsylvania Rules of Civil Procedure provides as follows:

Rule 1703. Commencement of Action. Assignment to a Judge

(a) A class action shall be commenced only by the filing of a complaint with the prothonotary.

(b) ***Upon the filing of the complaint the action shall be assigned forthwith to a judge who shall be in charge of it for all purposes.***

Pa. R. Civ. P. 1703 (emphasis added).

3. Rule 4021 of the Luzerne County Local Rules provides as follows:

Rule 4021. Assignment of Judge for Complex Cases or Discovery Proceedings

In an appropriate case, the court, upon its own motion, or, ***upon motion of any party***, may elect to ***designate one judge to direct all discovery proceedings in that case, or assign the entire case to one judge through trial***, to hear and rule upon all motions and petitions relating to that case. Any motion for the assignment of a Judge to a complex case should be presented to the Administrative Judge for the Civil Division. In the event that the motion is granted, the Office of Court Administration shall select the Judge to be assigned according to its procedures.

Luzerne County Local Rule 4021 (emphasis added).

4. Consistent with Rule 1703 and Local Rule 4021, Plaintiff submits that assignment of this matter to a single Judge of this Court for all further proceedings is warranted and proper.

WHEREFORE, Plaintiff Stanley Waleski respectfully requests that this Honorable Court enter an Order pursuant to Pa. R. Civ. P. 1703 and Luzerne County Local Rule 4021 assigning this case to a designated Judge of this Court for all further proceedings.

Plaintiffs demand trial by jury.

Respectfully submitted,

Scott M. Hare, Esquire
Pa. I.D. No. 63818

Scott@ScottLawPGH.com

1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Tel: 412-338-8632

Counsel for Plaintiffs

Date: May 27, 2018

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated, Plaintiffs, v. **MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, NATALIE D. RAMSEY** and **LEONARD A. BUSBY**, Defendants.	No. 2018-4431

BRIEF IN SUPPORT OF MOTION TO ASSIGN

I. PROCEDURAL HISTORY

On April 11, 2018 Plaintiff Stanley Waleski filed a Class Action Complaint and Jury Demand pursuant to Pa. R. Civ. P. 1701 *et seq.* On May 18, 2018 Plaintiff filed an executed Acceptance of Service of Class Action Complaint and Notice to Defend signed by counsel for all parties. Pursuant to the Acceptance of Service, Defendants are given until Friday, July 6, 2018, inclusive, to (i) answer, move or otherwise plead to the Class Action Complaint, (ii) respond to any motions, and (iii) serve objections and/or responses to the Notices of Deposition, First Request for Production of Documents and First Set of Requests for Admissions with Interrogatories served with the Class Action Complaint.

II. STATEMENT OF PERTINENT FACTS

This is a class action lawsuit filed pursuant to Pa. R. Civ. P. 1701 *et seq.* by and on behalf of the approximately 4362 plaintiffs in the case captioned *In Re: Avoca Litigation* filed in the Court of Common Pleas of Luzerne County, Pennsylvania at Civil Action No. 7-2005. This lawsuit seeks

damages and other relief from Defendants Montgomery, McCracken, Walker and Rhoads LLP, Natalie D. Ramsey and Leonard A. Busby, who represented the class members as creditors in the jointly-administered bankruptcy cases filed by Tronox, Inc. and related entities in the United States Bankruptcy Court for the Southern District of New York at Case No. 09-10156 ("Tronox Bankruptcy"). Class Action Complaint and Jury Demand ¶¶ 1-8, 15-21, *passim.*

III. STATEMENT OF QUESTIONS INVOLVED

Whether the Court should assign this case to a designated Judge as required by Rule 1703 of the Pennsylvania Rules of Civil Procedure and as permitted by Rule 4021 of the Luzerne County Local Rules.

SUGGESTED ANSWER: Yes.

IV. ARGUMENT

Plaintiff moves the Court to assign this case to a designated Judge of this Court for all further proceedings pursuant to Pa. R. Civ. P. 1703 and Luzerne County Local Rule 4021. Rule 1703 of the Pennsylvania Rules of Civil Procedure provides as follows:

> **Rule 1703. Commencement of Action. Assignment to a Judge**
>
> (a) A class action shall be commenced only by the filing of a complaint with the prothonotary.
>
> (b) ***Upon the filing of the complaint the action shall be assigned forthwith to a judge who shall be in charge of it for all purposes.***

Pa. R. Civ. P. 1703 (emphasis added). In turn, Rule 4021 of the Luzerne County Local Rules provides as follows:

> **Rule 4021. Assignment of Judge for Complex Cases or Discovery Proceedings**
>
> ***In an appropriate case***, the court, upon its own motion, or, ***upon motion of any party***, may elect to ***designate one judge to direct all discovery proceedings***

> ***in that case, or assign the entire case to one judge through trial***, to hear and rule upon all motions and petitions relating to that case. Any motion for the assignment of a Judge to a complex case should be presented to the Administrative Judge for the Civil Division. In the event that the motion is granted, the Office of Court Administration shall select the Judge to be assigned according to its procedures.

Luzerne County Local Rule 4021 (emphasis added). Consistent with Rule 1703 and Local Rule 4021, Plaintiff submits that assignment of this matter to a single Judge of this Court for all further proceedings is warranted and proper and would serve the efficient administration of justice.

Respectfully submitted,

Scott M. Hare, Esquire
Pa. I.D. No. 63818

Scott@ScottLawPGH.com

1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Tel: 412-338-8632

Counsel for Plaintiffs

Date: May 27, 2018

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated, Plaintiffs, v. **MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP**, **NATALIE D. RAMSEY** and **LEONARD A. BUSBY**, Defendants.	No. 2018-4431

ORDER GRANTING MOTION TO ASSIGN

AND NOW, this _____ day of _____, 2018, upon consideration of Plaintiffs' Motion Pursuant to Rule 1703 and Local Rule 4021 to Assign Judge, it is hereby **ORDERED** that Plaintiff's Motion is **GRANTED**. This case is hereby assigned to Hon. Judge _____ for all further purposes.

BY THE COURT:

_____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Motion Pursuant to Rule 1703 and Local Rule 4021 to Assign Judge** was served upon all parties in this matter on this 27th day of May, 2018, by email and United States first-class mail to the following:

Daniel T. Brier, Esquire
Myers, Brier & Kelly, LLP
425 Spruce Street Suite 200
Scranton PA 18501

dbrier@mbklaw.com

Counsel for Defendants

Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, **NATALIE D. RAMSEY** and **LEONARD A. BUSBY**,

Defendants.

No. 2018-4431

MOTION PURSUANT TO RULE 212.3 TO SET SCHEDULING AND STATUS CONFERENCE, BRIEF IN SUPPORT AND REQUEST FOR ORAL ARGUMENT

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Scott M. Hare, Esquire
Pa. I.D. No. 63818

1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Tel: 412-338-8632

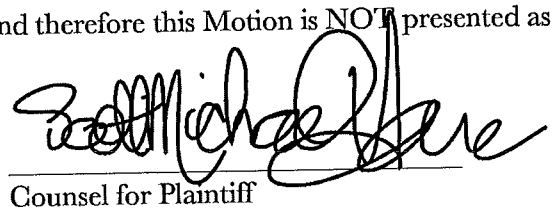
IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated, Plaintiffs, v. **MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP**, **NATALIE D. RAMSEY** and **LEONARD A. BUSBY**, Defendants.	No. 2018-4431

CERTIFICATION PURSUANT TO LOCAL RULE 208.2(d)

I, Scott M. Hare, counsel for the moving party, Plaintiff Stanley Waleski, hereby certify pursuant to Luzerne County Local Rule 208.2(d) that I provided a preliminary copy of the within ***Motion Pursuant to Rule 212.3 to Set Scheduling and Status Conference*** to counsel for Defendants prior to filing this Motion, that I conferred with counsel for Defendants, and that I sought the concurrence of Defendants to the relief requested herein.

Defendants do not consent to this Motion, and therefore this Motion is NOT presented as uncontested.



Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

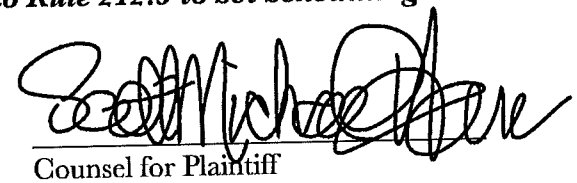
MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, **NATALIE D. RAMSEY** and **LEONARD A. BUSBY**,

Defendants.

No. 2018-4431

REQUEST FOR ORAL ARGUMENT PURSUANT TO LOCAL RULE 208.3(b)(a)(4)

I, Scott M. Hare, counsel for the moving party, Plaintiff Stanley Waleski, hereby request pursuant to Pa. R. Civ. P. 211 and Luzerne County Local Rule 208.3(b)(a)(4) that the Court hear oral argument on the within ***Motion Pursuant to Rule 212.3 to Set Scheduling and Status Conference***.



Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated, Plaintiffs, v. **MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP**, **NATALIE D. RAMSEY** and **LEONARD A. BUSBY**, Defendants.	No. 2018-4431

MOTION PURSUANT TO RULE 212.3
TO SET SCHEDULING AND STATUS CONFERENCE

Plaintiff Stanley Waleski, by his undersigned counsel, hereby moves this Honorable Court pursuant to Pa. R. Civ. P. 212.3 and Luzerne County Local Rule 212.3 to schedule a status conference in this case and thereafter to enter a Case Management and Scheduling Order. In support, Plaintiff states as follows:

1. This lawsuit was filed as a class action pursuant to Pa. R. Civ. P. 1701 *et seq.*, by and on behalf of the approximately 4362 plaintiffs in the case captioned *In Re: Avoca Litigation* filed in the Court of Common Pleas of Luzerne County, Pennsylvania at Civil Action No. 7-2005, whose rights and interests Defendants Montgomery, McCracken, Walker and Rhoads LLP, Natalie D. Ramsey and Leonard A. Busby agreed to represent as creditors in the jointly-administered bankruptcy cases filed by Tronox, Inc. and related entities in the United States Bankruptcy Court for the Southern District of New York at Case No. 09-10156 ("Tronox Bankruptcy"). Class Action Complaint and Jury Demand ¶¶ 1-8, 15-21, *passim*.

2. Rule 212.3 of the Pennsylvania Rules of Civil Procedure provides in relevant part as follows:

> **Rule 212.3. Pre-Trial Conference**
>
> (a) In any action at any time the court, sua sponte or ***on motion of any party***, may direct the attorneys for the parties or any unrepresented party to appear for a conference to consider:
>
> (1) The simplification of the issues;
> (2) **The entry of a scheduling order**;
> (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
> (4) The limitation of the number of expert witnesses;
> (5) Settlement and/or mediation of the case;
> (6) Such other matters as may aid in the disposition of the action.

Pa. R. Civ. P. 212.3 (emphasis added).

3. Rule 212.3 of the Luzerne County Local Rules provides in relevant part as follows:

> **Rule 212.3. Pre-Trial Procedures, Scheduling Conference, Settlement Conference, and Trial Procedures**
>
> (a) In all civil actions, a pre-trial proceeding may be requested by motion at various stages prior to the filing of a certificate of trial readiness for the purpose of holding a scheduling conference or settlement conference before the court.

Luzerne County Local Rule 212.3.

4. As a class action lawsuit filed on behalf of more than 4000 class members, this case will benefit from early and continuing case management and judicial supervision.

5. Further, given the procedural and scheduling considerations unique to class actions filed pursuant to Pa. R. Civ. P. 1701 *et seq.*, the issuance of a Case Management and Scheduling Order will be a benefit to the parties, the Court and the efficient administration of justice.

6. For these reasons, Plaintiff moves this Honorable Court to schedule a status conference in this case and thereafter to issue an appropriate Case Management and Scheduling Order.

WHEREFORE, Plaintiff Stanley Waleski respectfully requests that this Honorable Court enter an Order pursuant to Pa. R. Civ. P. 212.3 and Luzerne County Local Rule 212.3 scheduling this case for a status conference at a time that suits the convenience of the Court.

Plaintiffs demand trial by jury.

Respectfully submitted,

Scott M. Hare, Esquire
Pa. I.D. No. 63818

Scott@ScottLawPGH.com

1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Tel: 412-338-8632

Counsel for Plaintiffs

Date: May 27, 2018

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated, Plaintiffs, v. **MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP**, **NATALIE D. RAMSEY** and **LEONARD A. BUSBY**, Defendants.	No. 2018-4431

BRIEF IN SUPPORT OF MOTION PURSUANT TO RULE 212.3
TO SET SCHEDULING AND STATUS CONFERENCE

I. PROCEDURAL HISTORY

On April 11, 2018 Plaintiff Stanley Waleski filed a Class Action Complaint and Jury Demand pursuant to Pa. R. Civ. P. 1701 *et seq.* On May 18, 2018 Plaintiff filed an executed Acceptance of Service of Class Action Complaint and Notice to Defend signed by counsel for all parties. Pursuant to the Acceptance of Service, Defendants are given until Friday, July 6, 2018, inclusive, to (i) answer, move or otherwise plead to the Class Action Complaint, (ii) respond to any motions, and (iii) serve objections and/or responses to the Notices of Deposition, First Request for Production of Documents and First Set of Requests for Admissions with Interrogatories served with the Class Action Complaint.

II. STATEMENT OF PERTINENT FACTS

This is a class action lawsuit filed pursuant to Pa. R. Civ. P. 1701 *et seq.* by and on behalf of the approximately 4362 plaintiffs in the case captioned *In Re: Avoca Litigation* filed in the Court of Common Pleas of Luzerne County, Pennsylvania at Civil Action No. 7-2005. This lawsuit seeks

damages and other relief from Defendants Montgomery, McCracken, Walker and Rhoads LLP, Natalie D. Ramsey and Leonard A. Busby, who represented the class members as creditors in the jointly-administered bankruptcy cases filed by Tronox, Inc. and related entities in the United States Bankruptcy Court for the Southern District of New York at Case No. 09-10156 ("Tronox Bankruptcy"). Class Action Complaint and Jury Demand ¶¶ 1-8, 15-21, *passim.*

III. STATEMENT OF QUESTIONS INVOLVED

Whether the Court should schedule a status conference and thereafter enter a Case Management and Scheduling Order pursuant to Pa. R. Civ. P. 212.3 and Rule 212.3 of the Luzerne County Local Rules.

SUGGESTED ANSWER: Yes.

IV. ARGUMENT

Plaintiff moves the Court to schedule a status conference and thereafter enter a Case Management and Scheduling Order pursuant to Pa. R. Civ. P. 212.3 and Rule 212.3 of the Luzerne County Local Rules. Rule 212.3 of the Pennsylvania Rules of Civil Procedure provides in relevant part as follows:

> **Rule 212.3. Pre-Trial Conference**
>
> (a) In any action at any time the court, sua sponte or ***on motion of any party***, may direct the attorneys for the parties or any unrepresented party to appear for a conference to consider:
>
> (1) The simplification of the issues;
> (2) **The entry of a scheduling order;**
> (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
> (4) The limitation of the number of expert witnesses;
> (5) Settlement and/or mediation of the case;
> (6) Such other matters as may aid in the disposition of the action.

Pa. R. Civ. P. 212.3 (emphasis added). Echoing the state rule, Rule 212.3 of the Luzerne County Local Rules provides in relevant part as follows:

> **Rule 212.3. Pre-Trial Procedures, Scheduling Conference, Settlement Conference, and Trial Procedures**
>
> (a) In all civil actions, a pre-trial proceeding may be requested by motion at various stages prior to the filing of a certificate of trial readiness for the purpose of holding a scheduling conference or settlement conference before the court.

Luzerne County Local Rule 212.3. As a class action lawsuit filed on behalf of more than 4000 class members, this case will benefit from early and continuing case management and judicial supervision. Further, given the procedural and scheduling considerations unique to class actions filed pursuant to Pa. R. Civ. P. 1701 *et seq.*, the issuance of a Case Management and Scheduling Order will be a benefit to the parties, the Court and the efficient administration of justice.

Respectfully submitted,

Scott M. Hare, Esquire
Pa. I.D. No. 63818

Scott@ScottLawPGH.com

1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Tel: 412-338-8632

Counsel for Plaintiffs

Date: May 27, 2018

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, **NATALIE D. RAMSEY** and **LEONARD A. BUSBY**,

Defendants.

No. 2018-4431

ORDER GRANTING MOTION PURSUANT TO
LOCAL RULE 212.3 TO SET SCHEDULING AND STATUS CONFERENCE

AND NOW, this _____ day of _____, 2018, upon consideration of Plaintiffs' Motion Pursuant to Rule 212.3 to Set Scheduling and Status Conference, it is hereby **ORDERED** that Plaintiff's Motion is **GRANTED**. A Scheduling and Status Conference is hereby set for _____ ___, 2018 at ___:___ __.m. All parties and trial counsel shall personally attend and shall be prepared to discuss the status of the case and agree to case deadlines to be set forth in a Case Management and Scheduling Order. The parties shall additionally be prepared to discuss the possibility of early resolution of this matter. Toward that end, to the extent Defendants have insurance coverage, a representative of all such carrier(s) shall personally attend with settlement authority.

BY THE COURT:

_____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Motion Pursuant to Rule 212.3 to Set Scheduling and Status Conference** was served upon all parties in this matter on this 27th day of May, 2018, by email and United States first-class mail to the following:

Daniel T. Brier, Esquire
Myers, Brier & Kelly, LLP
425 Spruce Street Suite 200
Scranton PA 18501

dbrier@mbklaw.com

Counsel for Defendants

Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, NATALIE D. RAMSEY and **LEONARD A. BUSBY**,

Defendants.

No. 2018-4431

PLAINTIFF'S MOTION PURSUANT TO RULE 1713 TO AUTHORIZE LIMITED PRELIMINARY PUBLICATION OF NOTICE TO MEMBERS OF PUTATIVE PLAINTIFF CLASS, BRIEF IN SUPPORT AND REQUEST FOR ORAL ARGUMENT

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Scott M. Hare, Esquire
Pa. I.D. No. 63818

1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Tel: 412-338-8632

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, **NATALIE D. RAMSEY** and **LEONARD A. BUSBY**,

Defendants.

No. 2018-4431

CERTIFICATION PURSUANT TO LOCAL RULE 208.2(d)

I, Scott M. Hare, counsel for the moving party, Plaintiff Stanley Waleski, hereby certify pursuant to Luzerne County Local Rule 208.2(d) that I provided a preliminary copy of the within ***Motion Pursuant to Rule 1713 to Authorize Limited Preliminary Publication of Notice*** to counsel for Defendants prior to filing this Motion, that I conferred with counsel for Defendants, and that I sought the concurrence of Defendants to the relief requested herein.

Defendants do not consent to this Motion, and therefore this Motion is NOT presented as uncontested.

Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated, Plaintiffs, v. **MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP**, **NATALIE D. RAMSEY** and **LEONARD A. BUSBY**, Defendants.	No. 2018-4431

REQUEST FOR ORAL ARGUMENT PURSUANT TO LOCAL RULE 208.3(b)(a)(4)

I, Scott M. Hare, counsel for the moving party, Plaintiff Stanley Waleski, hereby request pursuant to Pa. R. Civ. P. 211 and Luzerne County Local Rule 208.3(b)(a)(4) that the Court hear oral argument on the within ***Motion Pursuant to Rule 1713 to Authorize Limited Preliminary Publication of Notice.***

Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated, Plaintiffs, v. **MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP**, **NATALIE D. RAMSEY** and **LEONARD A. BUSBY**, Defendants.	No. 2018-4431

PLAINTIFF'S MOTION PURSUANT TO RULE 1713 TO AUTHORIZE LIMITED PRELIMINARY PUBLICATION OF NOTICE TO MEMBERS OF PLAINTIFF CLASS

Plaintiff Stanley Waleski, by his undersigned counsel, hereby moves this Honorable Court pursuant to Pa. R. Civ. P. 1713 to authorize limited preliminary publication of notice regarding these proceedings as described herein, and states the following good cause in support:

1. This lawsuit was filed as a class action pursuant to Pa. R. Civ. P. 1701 *et seq.*, by and on behalf of the approximately 4362 plaintiffs in the case captioned *In Re: Avoca Litigation* filed in the Court of Common Pleas of Luzerne County, Pennsylvania at Civil Action No. 7-2005, whose rights and interests Defendants Montgomery, McCracken, Walker and Rhoads LLP, Natalie D. Ramsey and Leonard A. Busby agreed to represent as creditors in the jointly-administered bankruptcy cases filed by Tronox, Inc. and related entities in the United States Bankruptcy Court for the Southern District of New York at Case No. 09-10156 ("Tronox Bankruptcy").

2. As a result of the extensive prior proceedings before this Court and in the Tronox Bankruptcy, the identity of the members of the Plaintiff class is already known.

3. Likewise, given the extensive prior proceedings, the members of the Plaintiff class are likely to be aware of the existence of this class action lawsuit well before the Court rules on

Plaintiff's Motion to Certify Plaintiff Class and directs class notice pursuant to Pa. R. Civ. P. 1712, and are likely to have a keen interest in following the progress of this action.

4. These circumstances create the likelihood that upwards of 4362 putative class members may seek to contact the Court or Plaintiff's counsel with questions regarding the lawsuit.

5. For these reasons, and to provide meaningful and timely information to the members of the Plaintiff class, Plaintiff seeks permission to provide limited preliminary publication of information under Rule 1713, which provides in relevant part as follows:

> **Rule 1713. Conduct of Actions**
>
> (a) In the conduct of actions to which this rule applies, the court may make appropriate orders
>
> * * *
>
> (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice, other than notice under Rule 1712, be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate;
>
> * * *
>
> (5) taking any action to assure that the representative party adequately represents the class;
>
> (6) dealing with other administrative or procedural matters.

Pa. R. Civ. P. 1713.

6. In particular, Plaintiff seeks permission to establish an Internet website at which Plaintiff will post and make available for downloading all pleadings, motions and other documents filed with this Court (which are public information) and provide other limited information regarding scheduling and the status of the lawsuit.

7. Plaintiff suggests that early publication of basic case information through the simple mechanism of an Internet website will have the wholesome and beneficial effect of efficiently making such information available to interested persons while simultaneously saving the Court and the parties from contact by 4000-plus class members seeking to obtain such information.

8. Plaintiff further suggests that the creation of an Internet website at this stage, and the likely natural propagation of news regarding the existence of that website among the class members, will provide a ready-made platform for Rule 1712 notice when the time for such notice arrives, and will enhance the likelihood that such notice by publication achieves its intended purpose of providing actual notice to as many class members as possible.

WHEREFORE, Plaintiff Stanley Waleski respectfully requests that this Honorable Court enter an Order pursuant to Pa. R. Civ. P. 1713 authorizing Plaintiff, pending the entry of an Order under Rule 1712, to establish an Internet website at which Plaintiff shall be permitted to post all pleadings, motions and other documents filed with this Court and provide other limited information regarding scheduling matters and the status of the lawsuit.

Plaintiffs demand trial by jury.

Respectfully submitted,

Scott M. Hare, Esquire
Pa. I.D. No. 63818

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Counsel for Plaintiffs

Date: May 27, 2018

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated, Plaintiffs, v. **MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP**, **NATALIE D. RAMSEY** and **LEONARD A. BUSBY**, Defendants.	No. 2018-4431

BRIEF IN SUPPORT OF MOTION PURSUANT TO RULE 1713 TO AUTHORIZE LIMITED PRELIMINARY PUBLICATION OF NOTICE TO MEMBERS OF PLAINTIFF CLASS

I. PROCEDURAL HISTORY

On April 11, 2018 Plaintiff Stanley Waleski filed a Class Action Complaint and Jury Demand pursuant to Pa. R. Civ. P. 1701 *et seq.* On May 18, 2018 Plaintiff filed an executed Acceptance of Service of Class Action Complaint and Notice to Defend signed by counsel for all parties. Pursuant to the Acceptance of Service, Defendants are given until Friday, July 6, 2018, inclusive, to (i) answer, move or otherwise plead to the Class Action Complaint, (ii) respond to any motions, and (iii) serve objections and/or responses to the Notices of Deposition, First Request for Production of Documents and First Set of Requests for Admissions with Interrogatories served with the Class Action Complaint.

II. STATEMENT OF PERTINENT FACTS

This is a class action lawsuit filed pursuant to Pa. R. Civ. P. 1701 *et seq.* by and on behalf of the approximately 4362 plaintiffs in the case captioned *In Re: Avoca Litigation* filed in the Court of

Common Pleas of Luzerne County, Pennsylvania at Civil Action No. 7-2005. This lawsuit seeks damages and other relief from Defendants Montgomery, McCracken, Walker and Rhoads LLP, Natalie D. Ramsey and Leonard A. Busby, who represented the class members as creditors in the jointly-administered bankruptcy cases filed by Tronox, Inc. and related entities in the United States Bankruptcy Court for the Southern District of New York at Case No. 09-10156 ("Tronox Bankruptcy"). Class Action Complaint and Jury Demand ¶¶ 1-8, 15-21, *passim.*

III. STATEMENT OF QUESTIONS INVOLVED

Whether the Court should authorize limited preliminary publication of notice regarding these proceedings pursuant to Pa. R. Civ. P. 1713.

SUGGESTED ANSWER: Yes.

IV. ARGUMENT

Plaintiff moves the Court to authorize limited preliminary publication of notice regarding the existence of these proceedings pursuant to Pa. R. Civ. P. 1713, which provides in relevant part as follows:

> **Rule 1713. Conduct of Actions**
>
> (a) In the conduct of actions to which this rule applies, the court may make appropriate orders
>
> * * *
>
> (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice, other than notice under Rule 1712, be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate;
>
> * * *

(5) taking any action to assure that the representative party adequately represents the class;

(6) dealing with other administrative or procedural matters.

Pa. R. Civ. P. 1713. In particular, Plaintiff seeks permission to establish an Internet website at which Plaintiff will post and make available for downloading all pleadings, motions and other documents filed with this Court (which are public information) and provide other limited information regarding scheduling and the status of the lawsuit.

Early, preliminary, limited notice is warranted in this case. First, as a result of the extensive prior proceedings before this Court and in the Tronox Bankruptcy, the identity of the members of the Plaintiff class is already known. Likewise, given the extensive prior proceedings, the members of the Plaintiff class are likely to be aware of the existence of this class action lawsuit well before the Court rules on Plaintiff's Motion to Certify Plaintiff Class and directs class notice pursuant to Pa. R. Civ. P. 1712, and are likely to have a keen interest in following the progress of this action. These circumstances create the likelihood that upwards of 4362 putative class members may seek to contact the Court or Plaintiff's counsel with questions regarding the lawsuit. For these reasons, and to provide meaningful and timely information to the members of the Plaintiff class, Plaintiff believes that early publication of basic case information through the simple mechanism of an Internet website will have the wholesome and beneficial effect of efficiently making such information available to interested persons while simultaneously saving the Court and the parties from contact by 4000-plus class members seeking to obtain such information. Plaintiff further suggests that the creation of an Internet website at this stage, and the likely natural propagation of news regarding the existence of that website among the class members, will provide a ready-made platform for Rule 1712 notice when the time for such notice arrives, and will enhance the likelihood that such

notice by publication achieves its intended purpose of providing actual notice to as many class members as possible.

Respectfully submitted,

Scott M. Hare, Esquire
Pa. I.D. No. 63818

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Counsel for Plaintiffs

Date: May 27, 2018

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated, Plaintiffs, v. **MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP**, **NATALIE D. RAMSEY** and **LEONARD A. BUSBY**, Defendants.	No. 2018-4431

ORDER GRANTING
PLAINTIFF'S MOTION PURSUANT TO RULE 1713 TO AUTHORIZE LIMITED PRELIMINARY PUBLICATION OF NOTICE TO MEMBERS OF PLAINTIFF CLASS

AND NOW, this _____ day of _____, 2018, upon consideration of Plaintiff's Motion pursuant to Pa. R. Civ. P. 1713 to authorize Plaintiff to make limited preliminary publication of information regarding these proceedings pending the entry of an Order under Rule 1712, it is hereby **ORDERED** that Plaintiff's Motion is **GRANTED**. Plaintiff is authorized establish an Internet website at which Plaintiff shall be permitted to post and make available for downloading all pleadings, motions and other documents filed with this Court and provide other limited information regarding scheduling matters and the status of the lawsuit.

BY THE COURT:

_____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Motion Pursuant to Rule 1713 to Authorize Limited Preliminary Publication of Notice** was served upon all parties in this matter on this 27th day of May, 2018, by email and United States first-class mail to the following:

Daniel T. Brier, Esquire
Myers, Brier & Kelly, LLP
425 Spruce Street Suite 200
Scranton PA 18501

dbrier@mbklaw.com

Counsel for Defendants

Counsel for Plaintiff

Exhibit G

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY

STANLEY WALESKI, on his own behalf and on behalf of all others similarly situated,	:	
Plaintiffs,	:	
v.	:	**NO. 2018-4431**
MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP, NATALIE D. RAMSEY and LEONARD A. BUSBY,	:	
Defendants.	:	

NOTICE OF FILING NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, on June 4, 2018, pursuant to 28 U.S.C. §§ 1334, 1441 and 1452, Defendants Montgomery McCracken Walker & Rhoads, LLP, Natalie D. Ramsey and Leonard A. Busby (referred to collectively hereinafter as "MMWR") filed a Notice of Removal of this action from the Court of Common Pleas of Luzerne County, Pennsylvania to the United States District Court for the Middle District of Pennsylvania. Pursuant to 28 U.S.C. § 1446(d), MMWR has provided Plaintiff Stanley Waleski with written notice of the filing of

the Notice of Removal and attaches hereto as Exhibit "A" a true and correct copy of the Notice of Removal as filed.

PLEASE TAKE FURTHER NOTICE that, having timely filed the Notice of Removal with the Clerk of the United States District Court for the Middle District of Pennsylvania and having promptly filed a copy thereof with the Clerk of the Luzerne County Court of Common Pleas, as well as having provided Plaintiff Stanley Waleski with written notice thereof, MMWR has effected removal of this action and, pursuant to 28 U.S.C. § 1446(d), this Court shall proceed no further in this action unless and until the case is remanded.

Respectfully submitted:

/s/ Daniel T. Brier
Daniel T. Brier (PA ID 53248)
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Attorneys for Defendants, Montgomery, McCracken, Walker & Rhoads, LLP, Natalie D. Ramsey, Esquire and Leonard A. Busby, Esquire

Date: June 4, 2018

CERTIFICATE OF SERVICE

I, Daniel T. Brier, hereby certify that a true and correct copy of the foregoing Notice of Filing of Notice of Removal was served upon the following counsel of record via electronic and first-class mail, postage prepaid, on this 4th day of June, 2018:

Scott M. Hare, Esquire
1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219

/s/ Daniel T. Brier
Daniel T. Brier

APPENDIX OF UNPUBLISHED OPINIONS

1. *In re Kaiser Grp. Int'l Inc.*, No. 00-02263-MFW, No. 09-52317-MFW, 2010 WL 3271198 (D. Del. Aug. 17, 2010)

2. *Winstar Holdings v. Blackstone Grp., L.P.*, No. 07 Civ. 4634(GEL), 2007 WL 4323003 (S.D.N.Y. Dec. 10, 2007)

1

2010 WL 3271198
United States Bankruptcy Court, D. Delaware.

In re KAISER GROUP INTERNATIONAL INC., et al., Debtors.
Kaiser Group Holdings, Inc., et al., Plaintiffs,
v.
Squire Sanders & Dempsey LLP, Defendant.

Bankruptcy No. 00–02263–MFW.
|
Adversary No. 09–52317–MFW.
|
Aug. 17, 2010.

Attorneys and Law Firms

Lisa J. Stevenson, Matthew G. Kaiser, Zuckerman Spaeder LLP, Washington, DC, Thomas G. Macauley, Zuckerman and Spaeder LLP, Wilmington, DE, for Plaintiffs.

Alissa T. Gazze, Derek C. Abbott, Morris Nichols Arsht & Tunnell, LLP, Wilmington, DE, John K. Villa, Richard A. Olderman, Sarah E. Citrin, Williams & Connolly LLP, Washington, DC, for Defendant.

MEMORANDUM OPINION [1]

MARY F. WALRATH, United States Bankruptcy Judge.

*1 Before the Court is the Motion of Squire Sanders & Dempsey, LLP (the "Defendant") to dismiss as untimely the malpractice Complaint filed by Kaiser Group International, Inc. ("Old Kaiser"), Kaiser Group Holdings ("New Kaiser"), and certain other individuals and entities who were major shareholders of Old Kaiser [2] (collectively the "Plaintiffs"). For the reasons set forth below, the Court will grant the Defendant's Motion to dismiss the Complaint in its entirety.

I. *BACKGROUND*

Old Kaiser and several of its affiliates (collectively, the "Debtors") filed petitions under chapter 11 of the Bankruptcy Code in this Court on June 9, 2000. The Debtors were authorized by this Court to retain the Defendant as counsel in the bankruptcy case. The Defendant had previously represented Old Kaiser in corporate and litigation matters.

Prior to the bankruptcy filing, ICT Spectrum Constructors, Inc. ("Spectrum") had merged into a subsidiary of Old Kaiser. Under the merger agreement, Spectrum shareholders received 8.519 shares of Old Kaiser stock for each share of stock they held in Spectrum. A separate "fill-up" provision of the merger agreement provided that if Old Kaiser stock was trading for less than $5.36 per share on March 1, 2001, the former Spectrum shareholders would receive additional shares or cash in the amount the shares were below that price. The Defendant had advised Old Kaiser in the negotiation of the merger agreement.

A proof of claim (the "Spectrum Class Claim") was filed against Old Kaiser in the bankruptcy case for enforcement of the fill-up provision and for damages as a result of alleged misrepresentations. The Plaintiffs allege that the Defendant advised them that the Spectrum Class Claim was without merit and would not result in any financial harm to the Plaintiffs.

The Defendant was the principal drafter of the Second Amended Plan of Reorganization (the "Plan") in the bankruptcy case. The Court confirmed the Plan on December 5, 2000, and the Plan became effective on December 18, 2000. Under the Plan, New Kaiser was formed for the purpose of holding the outstanding stock of Old Kaiser and the other Debtors; the stock of New Kaiser was issued to the creditors and shareholders of Old Kaiser and its subsidiaries.

Following the Plan's confirmation, the Spectrum Class filed a motion requesting that the Court decide how many shares of New Kaiser stock should be allocated to the Spectrum Class as part of its recovery pursuant to the Plan. The Spectrum Class asserted that it was entitled to a total of 262,975 shares; the Debtors argued that the Spectrum Class was entitled at most to 31,250 shares. On February 2, 2004, the Court entered an Order granting the motion by the Spectrum Class and determining that it was entitled to a total of 262,975 shares. That decision was later affirmed on appeal on June 25, 2005.

More than three years later, on July 13, 2008, the Plaintiffs commenced a malpractice action against the Defendant in the Superior Court of the District of Columbia. The

Defendant removed the action to the United States Bankruptcy Court for the District of Columbia (the "D.C. Bankruptcy Court") and filed a motion to change venue to this Court. The Plaintiffs filed a motion for remand, or alternatively, abstention. The D.C. Bankruptcy Court denied the Plaintiffs' motion and granted the Defendant's motion, thereby transferring the action to this Court on November 12, 2009.

*2 In their Complaint, the Plaintiffs allege that the Defendant committed professional negligence and breached its fiduciary duty in representing them in the bankruptcy case. The Plaintiffs' claims are primarily based on three instances of alleged malpractice: (1) drafting the Plan and Disclosure Statement in a manner that was not in compliance with the Bankruptcy Code, (2) failing to disclose and explain adequately the risks to Plaintiffs inherent in the various legal positions taken by the Debtors regarding the Spectrum Class Claim, (3) and needlessly increasing legal fees through an aggressive strategy regarding the treatment of the Spectrum Class Claim.

II. *JURISDICTION*

As determined by the D.C. Bankruptcy Court, this adversary proceeding falls within this Court's "arising in" jurisdiction pursuant to 28 U.S.C. § 1334(b). This proceeding is a core matter pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (L), & (O).

III. *DISCUSSION*

A. *Standard of Review*

A motion under Rule 12(b)(6)[3] of the Federal Rules of Civil Procedure serves to test the sufficiency of the factual allegations in the plaintiff's complaint. *Kost v. Kozakiewicz,* 1 F.3d 176, 183 (3d Cir.1993) ("The pleader is required to set forth sufficient information to outline the elements of his claim or to permit inferences to be drawn that these elements exist."). With the Supreme Court's recent decisions in *Bell Atlantic Corp. v. Twombly*[4] and *Ashcroft v. Iqbal,*[5] "pleading standards have seemingly shifted from simple notice pleading to a more heightened form of pleading, requiring a plaintiff to plead more than the possibility of relief to survive a motion to dismiss." *Fowler v. UPMC Shadyside,* 578 F.3d 203, 210 (3d Cir.2009).

A claim is sufficient if it is facially plausible, that is "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal,* 129 S.Ct. at 1949. Determining whether a complaint is "facially plausible" is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 1950. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but not shown—that the pleader is entitled to relief." *Id.*

After *Iqbal,* the Third Circuit has instructed the courts to "conduct a two-part analysis. First the factual and legal elements of a claim should be separated. The [court] must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions." *Fowler,* 578 F.3d at 210–11. *See also Iqbal,* 129 S.Ct. at 1949–50 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.... When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.").

*3 The court "must then determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a plausible claim for relief." *Fowler,* 578 F.3d at 211. "The plaintiff must put some 'meat on the bones' by presenting sufficient factual allegations to explain the basis for its claim." *Buckley v. Merrill Lynch & Co., Inc. (In re DVI, Inc.),* Bankr.No. 03–12656, Adv. No. 08–50248, 2008 WL 4239120, at *4 (Bankr.D.Del. Sept.16, 2008).

B. *The Defendant's Motion to Dismiss*

1. *Statute of Limitations*

The Defendant seeks to dismiss the legal malpractice claim, inter alia,[6] because it is barred by Delaware's three-year statute of limitations. 10 Del. C. § 8106 (2009). *See, e.g., Middlebrook v. Ayres,* 2004 WL 1284207, *4 (Del.Super.Ct.2004) ("It is settled law of this State that legal malpractice actions are governed by the three-year statute of limitations in 10 Del. C. § 8106."), *aff'd,* 867 A.2d 902 (Del.2005).

Under Delaware law, absent concealment or fraud, the statute of limitations begins to run at the time of the

wrongful act, and ignorance of a cause of action does not toll it. *Isaacson, Stolper & Co. v. Artisans' Sav. Bank,* 330 A.2d 130, 132 (Del.1974). The running of the limitations period can be tolled, however, if the injury was "inherently unknowable and the claimant is blamelessly ignorant of the wrongful act and the injury." *Coleman v. PricewaterhouseCoopers, LLC,* 854 A.2d 838, 842–43 (Del.2004). In that instance, the statute of limitations period begins to run upon the discovery of facts "constituting the basis of the cause of action or the existence of facts sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery" of such facts. *Boerger v. Heiman,* 965 A.2d 671, 674 (Del.2009) (*quoting Coleman,* 854 A.2d at 842). Under this theory, "a plaintiff bears the burden of showing that the statute was tolled, and relief from the statute extends only until the plaintiff is put on inquiry notice." *In re Tyson Foods, Inc.,* 919 A.2d 563, 585 (Del.Ch.2007).

The Plaintiffs contend that the Complaint is timely because the District of Columbia statute of limitations is applicable. The statute of limitations for an action alleging legal malpractice or breach of fiduciary duty in the District of Columbia is also three years. D.C.Code § 12–301(8). When applying that statute, however, courts in D.C. recognize the "continuous representation rule," which tolls the statute of limitations until the attorney ceases to represent the client in the matter. *R.D.H. Communications, Ltd. v. Winston,* 700 A.2d 766, 768 (D.C.1997). Applying the continuous representation rule in this case, the Plaintiffs contend that the filing of the Complaint (on July 3, 2008) was timely because they did not terminate the Defendant's representation of them until July 13, 2005.

To determine whether Delaware's or D.C.'s statute of limitations applies, the Court must undergo a choice of law analysis. *See, e.g., In re American Metrocomm Corp.,* 274 B.R. 641, 659 (Bankr.D.Del.2002).

2. *Choice of Law*

a. *Federal or State Choice of Law Rules*

***4** The Defendant urges this Court to apply federal choice of law rules to this dispute, arguing that there is a clear federal policy for using federal choice of law rules. Specifically, the Defendant asserts that the Plaintiffs' claims "arise in" the bankruptcy case, relate to this Court's policing of its fiduciaries, and are partially based on alleged defects in the Plan, which this Court confirmed. In addition, the Defendant argues that principles of uniformity, fairness and equity warrant the application of federal choice of law rules.

Federal courts are divided on whether the federal choice of law rules or the forum state's choice of law rules apply in bankruptcy proceedings. *Compare In re Gaston & Snow,* 243 F.3d 599, 605–606 (2d Cir.2001) (using choice of law rules for forum state) *with In re Lindsay,* 59 F.3d 942, 948 (9th Cir.1995) (using federal choice of law rules). The Defendant notes that the Third Circuit has not expressly considered this issue.

Although an interest in uniformity can justify the creation of federal common law, the Supreme Court has rejected uniformity as a justification for displacing state conflict rules. *Klaxon v. Stentor Elec. Mfg. Co.,* 313 U.S. 487, 496, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941). *See also Gaston,* 243 F.3d at 606. The Supreme Court in *Klaxon* also made clear that federal law may not be applied to questions which arise in federal court but whose determination is not a matter of federal law. *Klaxon,* 313 U.S. at 496. *See also In re Merrit Dredging Co.,* 839 F.2d 203, 206 (4th Cir.1988). The Defendant concedes that state law supplies the framework for the Plaintiffs' claims in this case. Therefore, the Court will apply state choice of law rules because attorney malpractice is based on state law. *Merrit,* 839 F.2d at 206 (applying state choice of law rules to state law questions arising in a bankruptcy case in the absence of a significant federal interest).

b. *Transferor or Transferee State Law*

The Plaintiffs assert that the law of the transferor state, D.C., determines the statute of limitations that governs their claims. *See, e.g., Van Dusen v. Barrack,* 376 U.S. 612, 84 S.Ct. 805, 11 L.Ed.2d 945 (1964) (holding that in a diversity action, when a case is transferred for the convenience of the parties, the transferee court must apply the choice of law rules that the transferor court would have applied). "The rule assures that the 'accident' of federal diversity jurisdiction does not enable a party to utilize a transfer to achieve a result in federal court which could not have been achieved in the court of the State where the action was filed." *Id.* at 638. *See, e.g., In re Litigation Involving Alleged Loss of Cargo from Tug Atlantic Seahorse,* 772 F.Supp. 707, 711 (D.P.R.1991).

The Court concludes that *Van Dusen* is not applicable here because this case is not a diversity case and its presence in federal court is not an 'accident.' As the D.C. Bankruptcy Court found, the proceeding here fits within this Court's "arising in" jurisdiction and by extension within federal question jurisdiction. *In re Kaiser Group Int'l, Inc.*, 421 B.R. 1, 7–8 (Bankr.D.D.C.2009) (finding that the inquiries for jurisdiction "arising in" bankruptcy cases under § 1334(b) and for federal question jurisdiction under § 1331 are identical and thus if the Court has jurisdiction under one, it also has it under the other.)

***5** Further, none of the allegations in the Complaint can be separated from the bankruptcy proceedings or the bankruptcy court's administration of those proceedings. *Kaiser*, 421 B.R. at 8–9. *See, e.g., Baker v. Simpson*, No. 09–3848–BK, 2010 WL 2977329, at * 2 (2d Cir. July 30, 2010) (holding that claims of substandard representation in a bankruptcy case are subject to the bankruptcy court's "arising in" jurisdiction because they implicate the integrity of the bankruptcy process and are inseparable from it); *Capitol Hill Group v. Pillsbury, Winthrop, Shaw, & Pittman, LLC*, 569 F.3d 485, 489–90 (D.C.Cir.2009) ("Malpractice claims against court-appointed professionals stemming from services provided in the bankruptcy proceeding are inseparable from the bankruptcy context.... Such claims therefore fall within the bankruptcy jurisdiction of the federal courts."); *In re Southmark Corp.*, 163 F.3d 925, 928–29 (5th Cir.1999) (same). Accordingly, because the Court has federal bankruptcy as well as federal question jurisdiction over the instant action, the Court concludes that the choice of law rules of the transferee state, Delaware, apply.

c. *Delaware Choice of Law Rules*

To decide which state's law to apply, Delaware courts follow the "most significant relationship" test articulated in the Restatement (Second) of Conflicts of Laws. *Travelers Indem. Co. v. Lake*, 594 A.2d 38, 46–7 (Del.1991) (applying the local law of the state with the most significant relationship to the occurrence and the parties). The "most significant relationship" is defined in section 145(1) of the Restatement as follows: "the rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to the issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6." Restatement (Second) of Conflict of Laws § 145(1) (1971). Section 145(2) provides that:

> Contacts to be taken into account in applying the principles of section 6 to determine the law applicable to an issue include:
>
> (a) the place where the injury occurred,
>
> (b) the place where the conduct causing the injury occurred,
>
> (c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and
>
> (d) the place where the relationship, if any, between the parties is centered.
>
> These contacts are to be evaluated according to their relative importance with respect to the particular issue.

Id. at § 145(2).

Applying these factors, the Court concludes that the state with the most significant contacts to this action is Delaware. Because the bankruptcy case, and the actions giving rise to the alleged attorney malpractice, occurred in Delaware, the Court concludes that Delaware is the place of injury. For example, the drafting, filing and confirmation of the Plan, which is at the center of the Plaintiffs' malpractice claims, occurred in Delaware. In addition, two of the Plaintiffs, Old Kaiser and New Kaiser, were incorporated in Delaware. Finally, the relationship of the parties was centered around this Court in Delaware where Old Kaiser's bankruptcy case was filed, the Plan was confirmed and the Spectrum Class Claim was determined. Indeed, the retention order describing the scope of the relationship of the parties was entered in Delaware by this Court.

***6** Therefore, the Court concludes that under Delaware's choice of law rules, Delaware is the state with the most significant relationship to the malpractice claims articulated in the Plaintiffs' Complaint and its law should be applied.

3. *Application of Delaware's Statute of Limitations*

In this case, the Plaintiffs filed suit on July 3, 2008. Therefore, the issue is whether the injury occurred prior to July 3, 2005, within Delaware's three-year statute of limitations.

The Defendant asserts that the Plaintiffs' claims relating to the drafting of the Plan and Disclosure Statement clearly occurred outside the statute of limitations period because the Plan itself was confirmed by this Court on December 5, 2000. Regarding the Plaintiffs' claims relating to the failure to disclose and explain adequately the risks inherent in the various legal positions the Defendant recommended with respect to the Spectrum Class Claim, the Defendant asserts that the injury became known to the Plaintiffs no later than February 2, 2004, when the Court decided that issue. Therefore, according to the Defendant, all of the Plaintiffs' malpractice claims are barred by Delaware's three-year statute of limitations.

The Plaintiffs assert in general that the Complaint is timely under the Delaware statute of limitations because they were not on inquiry notice of the Defendant's failure to comply with the applicable standard of care, and thus, the statute did not begin to run. (The Plaintiffs do not suggest when the statute of limitations in Delaware began to run.)

The Court concludes that the Plaintiffs' claims are time-barred under the Delaware statute of limitations. In the Complaint, the Plaintiffs allege that the Defendant committed legal malpractice by mishandling the Spectrum Class Claim and in drafting the Plan and Disclosure Statement. The Plaintiffs assert that the Defendant was negligent in drafting the Plan and Disclosure Statement because it improperly classified the Spectrum Class Claim and failed to disclose adequately the potential risks posed by the Spectrum Class Claim to Old Kaiser and its equity holders.[7]

Although the Defendant contends that the malpractice with respect to the drafting of the Plan and Disclosure Statement must have arisen no later than the Plan's confirmation, the Court disagrees. The crux of the Plaintiffs' allegations are that they were misled into believing that they would win the Spectrum Class Claim litigation and that, therefore, that Claim would not be entitled to a distribution under the Plan that diluted the equity holders' claims. The Court concludes that the Plaintiffs could not know the extent of their dilution until the Spectrum Class Claim was determined. However, the Court finds that the Plaintiffs learned the full extent of that dilution on February 2, 2004, the date the Bankruptcy Court granted the motion to resolve the Spectrum Class Claim and determined they were entitled to a total of 262,975 shares. Therefore, the Court concludes that any harm resulting from the Defendant's failure to disclose those risks in the Plan and Disclosure Statement occurred and was known by that date. Similarly, the Plaintiffs' legal malpractice claim for failure to explain the risks inherent in the various legal positions the Defendant recommended that Old Kaiser take regarding the Spectrum Class Claim was known to the Plaintiffs no later than February 2, 2004, the date the Court decided the merits of the Spectrum Class Claim. The Plaintiffs were on notice on that date of the outcome of the litigation strategy pursued by the Defendant (which is alleged in the Complaint to be erroneous and negligent).

*7 The Court also finds that it is inappropriate to toll the statute of limitations in this case. Under Delaware law, tolling is appropriate only if the injury was "inherently unknowable" and the plaintiff was "blamelessly ignorant." *Coleman,* 854 A.2d at 842. Even if the statute was tolled, it would begin to run upon the discovery of facts "constituting the basis of the cause of action or the existence of facts sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery" of such facts. *Id.* Once the Plan became effective and the Spectrum Class Claim was allowed, the other equity holders knew the extent to which their claims were diluted. Thus, all facts were known to the Plaintiffs by February 2, 2004, which should have put them at least on inquiry notice and which, if pursued, would have led to the discovery of the alleged attorney malpractice. *Id. See also Tyson Foods, Inc.,* 919 A.2d at 585 ("No sanctuary from the statute will be offered to the dilatory plaintiff who was not or should not have been fooled.").

Accordingly, the Court concludes that the Plaintiffs had three years from February 2, 2004, to bring their legal malpractice action. The suit was filed July 3, 2008, beyond the Delaware three-year statute of limitations and is, therefore, time-barred. Dismissal of the Complaint in its entirety as untimely is mandated.

IV. *CONCLUSION*

For the reasons set forth above, the Court will grant the Defendant's Motion to dismiss with prejudice.

An appropriate order is attached.

All Citations

Not Reported in B.R., 2010 WL 3271198, 53 Bankr.Ct.Dec. 158

Footnotes

1 In this Memorandum Opinion, the Court makes no findings of fact and conclusions of law. Fed. R. Bankr.P. 7052 (applying Rule 52(a)(3) which provides that "[t]he court is not required to state findings or conclusions when ruling on a motion under Rule 12...."). The facts recited are those alleged in the Complaint or in pleadings filed in the bankruptcy case.

2 The other Plaintiffs include Michael E. Tennenbaum, individually, Michael E. and Suzanne S. Tennenbaum as trustees for two Tennenbaum trusts, and Tennenbaum & Co., LLC.

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure is made applicable to this adversary proceeding pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure.

4 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).

5 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).

6 The Defendant moves to dismiss the Complaint on multiple other grounds, including res judicata and collateral estoppel. Because it is dispositive, the Court will limit its discussion to the statute of limitations argument.

7 Initially, the Plan classified the Spectrum Class Claim as a general unsecured claim, but upon motion by the Debtor, it was subordinated to the general unsecured claims and classified as an equity claim. 11 U.S.C. § 510(b). The Plaintiffs allege that they were damaged because the Spectrum Class Claim should have been separated into two separate claims (one for the stock they owned and one for the fill-up claim) and should not have been classified in the same class as equity claims. They contend that the failure to do so resulted in dilution in value of the stock issued to other holders of equity claims under the Plan.

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Only the Westlaw citation is currently available.
United States District Court,
S.D. New York.

WINSTAR HOLDINGS, LLC
and IDT Corp., Plaintiffs,
v.
The BLACKSTONE GROUP L.P., Impala Partners, LLC, and Citicorp, Defendants.

No. 07 Civ. 4634(GEL).
|
Dec. 10, 2007.

Attorneys and Law Firms

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Stephen L. Saxl (William Wargo, of counsel), Greenberg Traurig, LLP, New York, NY, for defendant Citicorp.

OPINION AND ORDER

GERARD E. LYNCH, District Judge.

***1** The parties to this case agree on one thing: they don't want to be here. They disagree, however, on where they should be. Plaintiffs filed this action in the Supreme Court of the State of New York, where they believe it should remain; accordingly, they have moved to remand the case to the state court. Defendants removed the case to this Court, only in order to move to transfer the case to the United States Bankruptcy Court for the District of Delaware. The plaintiffs' motion will be denied, and defendants' motion granted.

BACKGROUND

Plaintiff IDT Corp. formed plaintiff Winstar Holdings, LLC, in order to acquire the assets of Winstar Communications, Inc. ("Old Winstar"), and related entities. Old Winstar had filed for bankruptcy protection in the Bankruptcy Court in Delaware, and was in the process of liquidation. With the approval of the Bankruptcy Court, Old Winstar retained defendant Blackstone Group, L.P. as its financial advisor, and defendant Impala Partners, LLC ("Impala") as a restructuring advisor. Defendant Citicorp, Old Winstar's largest creditor, played a role in negotiating the terms of the contract between Old Winstar and Impala. Plaintiffs purchased the business assets of Old Winstar from the bankruptcy estate at an auction approved by the Bankruptcy Court for $42.5 million pursuant to an Asset Purchase Agreement ("APA") dated December 18, 2001, which was approved by the Bankruptcy Court the following day. The APA contains a forum selection clause in which the parties agree that the United States Bankruptcy Court for the District of Delaware shall have exclusive jurisdiction to resolve any dispute arising out of or related to the APA. (APA § 9.10, Gold Decl. Ex. 1.) The Bankruptcy Court's order approving the sale similarly provides that that court retains "exclusive jurisdiction" to "resolve any disputes arising under or related to" the APA. (Sale Order ¶ 15, Gold Decl. Ex. 2.)

Plaintiffs allege that they were induced to enter the APA by various misrepresentations made by the defendants and by Old Winstar in an offering statement. Their claims sound solely in New York common law.

DISCUSSION

I. *Plaintiffs' Motion to Remand*

The threshold issue in addressing plaintiffs' remand motion is whether federal jurisdiction over this case exists because it "aris[es] in" a bankruptcy case or "aris[es] under" the bankruptcy code, or merely because it is "related to" a bankruptcy case. Although 28 U.S.C. § 1334(b) provides for federal jurisdiction in either situation, if the case is merely one "related to" the Old Winstar

bankruptcy, and could not otherwise be brought in a federal court, statutory provisions requiring (28 U.S.C. § 1334(c)(2)) or permitting (28 U.S.C. § 1334(c)(1)) the Court to abstain from exercising jurisdiction and deferring to the state courts may apply. If, however, the case is a "core" bankruptcy proceeding that "arises under" the bankruptcy code or "arises in" a bankruptcy case, the mandatory abstention provision by its own terms do not apply and permissive abstention is less likely. Plaintiffs, accordingly, argue that the Court has, at most, "related to" jurisdiction, [1] while defendants contend that the case comes within the "arising in" or "arising under" headings of jurisdiction.

A. *"Arising Under" Jurisdiction*

***2** The most frequently cited explanation of the meaning of "arising under" jurisdiction can be found in the legislative history of the Bankruptcy Reform Act of 1978. The House Report accompanying the bill that became that Act noted that

> The phrase "arising under" has a well defined and broad meaning in the jurisdictional context. By a grant of jurisdiction over all proceedings arising under title 11, the bankruptcy courts will be able to hear any matter under which a claim is made under a provision of title 11. For example, a claim of exemptions under 11 U.S.C. § 522 would be cognizable by the bankruptcy court, as would a claim of discrimination in violation of 11 U.S.C. § 525. Any action by the trustee under an avoiding power would be a proceeding arising under title 11, because the trustee would be claiming based on a right given by one of the sections in subchapter III of chapter 5 of title 11.

H.R.Rep. No. 595, 95th Cong., 1st Sess. 445 (1977). As the leading commentator on bankruptcy law puts it, "What this language seems to mean is that, when a cause of action is one which is created by title 11, then that civil proceeding is one 'arising under title 11.' " 1 Collier on Bankruptcy ¶ 3.01[4][c][i] at 3-21 (15th ed. rev.2007).

The language of the statute is self-consciously patterned on that of the general federal question jurisdiction statute, which provides for federal court jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. *See also* U.S. Const. Art. III § 2, cl. 1 ("The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority."). While the precise meaning of "arising under" in the general federal question context has vexed courts and commentators, *see* 13B Wright, Miller and Cooper, Federal Practice and Procedure § 3562 (2d ed.1984), it has been suggested that an action arises under federal law "if in order for the plaintiff to secure the relief sought he will be obliged to establish both the correctness and the applicability to his case of a proposition of federal law." Bator, Mishkin, Shapiro & Wechsler, Hart & Wechsler's The Federal Courts and the Federal System 889 (2d ed.1973), quoted with approval in *Franchise Tax Bd. v. Construction Laborers Vacation Trust,* 463 U .S. 1, 9 (1983). Moreover, it is well established that a case does not arise under federal law unless "the plaintiff's statement of his own cause of action shows that it is based upon" federal law. *Louisville & Nashville R.R. Co. v. Mottley,* 211 U.S. 149, 152 (1908).

Applying these standards to this case, it is plain that the instant case does not arise under title 11. Simply put, plaintiffs' causes of action are based on state tort law, and rest on familiar common-law principles prohibiting fraud and misrepresentation. No proposition of bankruptcy law must be established for plaintiffs to prevail, and no provision of the bankruptcy code is implicated in their allegations. The causes of action asserted in the complaint are in no sense "created by" title 11 of the United States Code.

***3** Defendants argue that the case nevertheless arises under the bankruptcy code "because it will be necessary for the Delaware Bankruptcy Court to interpret" its own order approving the APA in the course of deciding the case. (D. Remand Mem. 9.) But this argument misconstrues what it means for a case to "arise under" bankruptcy law. It may be that provisions of the APA and of the Bankruptcy Court's order approving it will be relevant to the outcome of the case. However, as the Supreme Court held in *Mottley* in the context of general federal question jurisdiction, "[a]lthough such allegations show that very likely, in the course of the litigation, a

question under [bankruptcy law] would arise, they do not show that the suit, that is, the plaintiff's original cause of action, arises under [title 11]." 211 U.S. at 153.

Accordingly, this is not a case of "arising under" jurisdiction.

B. *"Arising In" Jurisdiction*

The extent of the "arising in" jurisdiction is less clearly defined. The leading bankruptcy treatise refers to it as a "residual category of civil proceedings," that "includes such things as administrative matters, orders to turn over property of the estate and determinations of the validity, extent, or priority of liens." Collier on Bankruptcy, ¶ 3.01[4][c][iv] (15th ed.2004) (internal quotation marks and footnotes omitted). Courts too have stated that

> [t]he meaning of 'arising in' proceedings is less clear, but seems to be a reference to those 'administrative' matters that arise only in bankruptcy cases. In other words, 'arising in' proceedings are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy.

In re Wood, 825 F.2d 90, 96-97 (5th Cir.1987).

Defendants argue that this standard is met, pointing out that had Old Winstar not been in bankruptcy, the sale would never have taken place, the alleged misrepresentations would never have occurred, and so this action would have no existence absent the bankruptcy. (D. Remand Mem. 7-9.) This argument may be somewhat oversimplified. The courts and commentators using the "no existence outside of the bankruptcy" formulation seem to be referring to proceedings that by their nature cannot exist outside of bankruptcy, and not merely to actions that, as a factual matter, have their origins in events occurring during a bankruptcy proceeding. The Bankruptcy Court in this district, for example, in a case relied upon by defendants themselves, puts the matter this way:

> A claim "arises in" bankruptcy if, by its very nature, the claim can only be brought in a bankruptcy action, because it has no existence outside of bankruptcy. *See [In re] Riverside Nursing Home,* 144 B.R. [951,] 955 [S.D.N.Y.1992]; *176-60 Union Turnpike v. Howard Beach Fitness Center,* 209 B.R. 307, 311, n. 2 (S.D.N.Y.1997) (Sprizzo, J.). Matters involving the enforcement or construction of a bankruptcy court order are in this category.

***4** *In re Sterling Optical Corp.,* 302 B.R. 792, 801 (Bankr.S.D.N.Y.2003). Plaintiffs here sue for fraud. Such a claim is not one that *"by its very nature* ... can only be brought in a bankruptcy action." Rather, it is a garden-variety common-law claim that most usually is brought outside of bankruptcy.

The type of administrative matters cited in Collier, and in *Sterling,* as examples of "arising in" jurisdiction are closely tied to the administration of the estate itself. Actions such as motions for contempt of bankruptcy court orders, motions to change the composition of a creditors' committee or appoint or elect trustees or examiners, are matters that, while the cause of action is not created by title 11, could not "have been the subject of a lawsuit absent the filing of a bankruptcy case." Collier, ¶ 3.01[4][c][iv]. The mere fact that the cause of action would never have arisen absent this particular bankruptcy is not enough to confer jurisdiction.

Nevertheless, the claims at issue here are more closely connected to the administration of the bankruptcy than most garden-variety common-law claims. There is persuasive precedent for treating a state-law tort suit regarding the conduct of professionals involved in the administration of the bankruptcy estate as a matter that "arises in" a bankruptcy case. *In re Southmark Corp.,* 163 F.3d 925 (5th Cir.1999), involved a professional malpractice action against an accounting firm that worked for the court-appointed Examiner in a bankruptcy reorganization. When the defendant removed the case to the bankruptcy court that had presided over the reorganization, the plaintiff argued, like plaintiffs here, that mandatory abstention applied because the bankruptcy court's jurisdiction was of the "related to" variety because the matter was not a "core" bankruptcy proceeding. *Id.* at 928-29. Like plaintiffs here, the plaintiff in *Southmark* argued that its claims were simple state common-law tort claims that were not the sort that could

arise only in a bankruptcy action, since "Southmark could have sued any accounting firm that worked for it on similar grounds of disloyalty, non-disclosure and malpractice." *Id.* at 930-31.

The Fifth Circuit rejected the argument, finding that "the professional malpractice claims alleged against [the accounting firm] are inseparable from the bankruptcy context." *Id.* at 931. The court's reasoning is instructive, and is applicable here:

> A *sine qua non* in restructuring the debtor-creditor relationship is the court's ability to police the fiduciaries, whether trustees or debtors-in-possession and other court-appointed professionals, who are responsible for managing the debtor's estate in the best interest of creditors. The bankruptcy court must be able to assure itself and the creditors who rely on the process that court-approved managers of the debtor's estate are performing their work, conscientiously and cost-effectively.

***5** *Id.*

Here, too, plaintiffs' claims go directly to the proper performance of duties by professionals retained by the bankruptcy estate, with the approval of the Bankruptcy Court, to assist it in maximizing the assets of the estate. As the *Southmark* court pointed out, "[s]upervising the court-appointed professionals also bears directly on the distribution of the debtor's estate. If the estate is not marshaled and liquidated or reorganized expeditiously, there will be far less money available to pay creditors' claims." *Id.* Here, of course, the claim is not brought by the bankruptcy estate itself, and the claim is rather that the professionals advising the estate obtained *excessive* compensation by defrauding the purchaser of the estate's assets. But the matter is still intimately related to the administration of the bankruptcy. The Bankruptcy Court has a vital interest in policing the integrity of the bankruptcy process in general, and of the sales of estate assets under the court's supervision in particular.

The Bankruptcy Court itself recognized the importance of the sale to its on-going administration of the case. Its order approving the sale expressly provides that the Delaware Bankruptcy Court retains "exclusive jurisdiction to ... resolve any dispute arising under or related to the Asset Purchase Agreement." (Sale Order ¶ 15, Gold Decl. Ex. 2.) This language is broad, encompassing not merely contract disputes or disputes between the parties to the APA themselves, and at a minimum expresses the Bankruptcy Court's keen interest in the resolution of disputes relating to the sale of Old Winstar's assets. It plainly covers the dispute at hand, which unquestionably is a dispute "related to" the APA.[2]

The Second Circuit has construed the core jurisdiction of the bankruptcy courts "as broadly as possible," because wide bankruptcy jurisdiction is "essential to the efficient administration of bankruptcy proceedings." *Luan Investment S.E. v. Franklin 145 Corp. (In re Petrie Retail, Inc.),* 304 F.3d 223, 229 (2d Cir.2002). Given this jurisdictional sweep, it is clear that this is a case "arising in" the Old Winstar bankruptcy case.

C. *Abstention*

Since this case "aris[es] in" a bankruptcy case and is not merely "related to" a bankruptcy case, mandatory abstention under 28 U.S.C. § 1334(c)(2) by its own terms does not apply. However, this Court may still, in its discretion, abstain from hearing the proceeding "in the interest of justice, or in the interest of comity with State courts or respect for State law." 28 U.S.C. § 1334(c)(1). Such abstention is not appropriate here.

Federal courts should be "sparing" in their exercise of discretionary abstention. *In re Texaco Inc.,* 182 B.R. 937, 946-47 (Bankr.S.D.N.Y.1995), citing *New Orleans Public Serv., Inc. v. Council of the City of New Orleans,* 491 U.S. 350, 358 (1989), *Willcox v. Consolidated Gas Co.,* 212 U.S. 19, 40 (1909), and *Chicot County v. Sherwood,* 148 U.S. 529, 534 (1893). There is little basis to invoke comity to the state courts here, and every reason to invoke the federal jurisdiction. Although plaintiffs' claims are based on state law, the state law claims are straightforward common-law claims that do not involve arcane or idiosyncratic provisions of New York law. As the case was promptly removed, the New York courts have invested no effort in the case.

***6** In contrast, the matter is closely tied to the bankruptcy case. The very sale that is the subject of the

proceedings was a central aspect and basic function of the bankruptcy proceedings. The sale of Old Winstar's assets was pursuant to directives issued by the Bankruptcy Court, and the APA was specifically approved by that court. The conduct of the debtor and its advisors (who were retained with the approval of the Bankruptcy Court) that is the subject of the plaintiffs' claims is post-petition conduct that took place under the Bankruptcy Court's auspices. Although the plaintiffs' claims are asserted as tort claims of fraud in the inducement, the evaluation of those claims will necessarily involve the interpretation of the Bankruptcy Court-approved APA, which contains provisions (including a merger clause, APA § 9.13; two disclaimers of warranties, *id.* §§ 5.10, 9.3; and an "as is" clause, *id.* § 5.10) that are arguably inconsistent with plaintiffs' claims, and of the Bankruptcy Court's own orders and findings (including a finding that the consideration was fair and reasonable and a finding that the APA was negotiated in good faith, Order ¶¶ G, H). Most significantly, both the plaintiffs and the Bankruptcy Court expressly stipulated that the Bankruptcy Court would be the exclusive forum for resolving claims related to the sale.

Under all these circumstances, common sense dictates the conclusion that the Bankruptcy Court is the proper forum for resolving these disputes, and that the Court should exercise its discretion to direct the case to that forum. [3]

II. *Defendants' Motion to Transfer*

In light of the above discussion, little further need be said regarding defendants' motion to transfer the case to the United States District Court for the District of Delaware for referral to its Bankruptcy Court. The *only* reason why this case belongs in federal court is because of its close association to the Old Winstar liquidation proceedings in Delaware. The case "arises in" those proceedings, the Delaware Bankruptcy Court reserved its jurisdiction to deal with matters related to the bankruptcy sale that is the subject of this proceeding, and the defendants are accused of fraud in executing a sale that was ordered and approved by that court.

There is a strong argument that venue must be laid in Delaware under the APA's mandatory choice of forum clause. As the Second Circuit has held, a contract clause electing a forum for all disputes "arising out of or related to" the contract encompasses claims of fraudulent inducement. *Turtur v. Rothschild Registry Int'l.*, 26 F.3d 304, 309-10 (2d Cir.1994). Although defendants are not parties to that clause, plaintiffs are. The plaintiffs agreed to resolve any disputes related to the APA in the Delaware Bankruptcy Court. Moreover, the defendants are sued for wrongdoing that essentially without exception is charged to have been committed jointly with the plaintiffs' counterparty in the APA, Old Winstar. *Weingrad v. Telepathy, Inc.*, No. 05 Civ.2024, 2005 WL 2990645, at *5-6 (S.D.N.Y. Nov. 7, 2005).

***7** But even if transfer is not mandatory pursuant to 28 U.S.C. § 1406, discretionary transfer under § 1404(a) in the interests of justice is clearly appropriate. As noted above, the whole point of federal jurisdiction here is the close connection of the case to the bankruptcy proceedings. There is no plausible rationale for removing the case to federal court in order to decide it in a forum remote from the court where that proceeding is pending. Plaintiffs seek to avoid this obvious point by retreating to a conventional analysis of the factors ordinarily applicable in deciding transfer applications. Even if their convenience arguments did not ring hollow-and they do, where the physical distance between the courts involved is a short train ride and given that in real-world modern litigation the greatest expenditure of litigation effort in most cases takes place away from court-the plain fact is that in entering the APA plaintiffs "irrevocably waive[d]" any objections to venue in the District of Delaware on grounds of inconvenience.

CONCLUSION

For the reasons stated above, plaintiffs' motion to remand is denied and defendants' motion to transfer the case to the United States District Court for the District of Delaware is granted.

SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2007 WL 4323003

Footnotes

1 Plaintiffs argue, in fact, that defendants have not established even "related to" jurisdiction (P. Remand Mem. 10-12), but their arguments in this regard are unpersuasive. Whether an action is "related to" a bankruptcy depends on whether there is "a significant connection" between the action and the underlying bankruptcy. *In re Turner,* 724 F.2d 338, 341 (2d Cir.1983) (citations and internal quotation marks omitted). The "proceeding need not necessarily be against the debtor or against the debtor's property." *In re WorldCom, Inc. Sec. Litig.,* 293 B.R. 308, 317 (S.D.N.Y.2003), quoting *Celotex Corp. v. Edwards,* 514 U.S. 300, 308 n. 6 (1995). In any ordinary sense, the connection between this case and the bankruptcy is obvious: the sale that is the subject of the litigation was an aspect of the bankruptcy proceeding. More importantly, the outcome of the action " 'could alter the debtor's rights, liabilities, options or freedom of action' " and affect " 'the handling and administration of the bankrupt estate.' " *WorldCom,* 293 B.R. at 317, quoting *Celotex,* 514 U.S. at 308 n. 6 (1995). Although plaintiffs have not named Old Winstar as a defendant, Impala allegedly has indemnification rights against Old Winstar. While plaintiffs claim that the indemnification cannot apply to this case because of an exclusion for "willful misconduct," and because (according to plaintiffs) there is no estate left to affect, the bankruptcy proceedings are on-going, as is litigation that could bring assets into the estate. The Court cannot assume the correctness of plaintiffs' assertions, which turn on facts yet to be found or even in some instances to occur. It is unquestionable that the outcome of this case "could" affect the debtor, and that is sufficient to invoke the "related to" jurisdiction. "Related to" jurisdiction exists where "the outcome of [the] proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Pacor, Inc. v. Higgins,* 743 F.2d 984, 994 (3d Cir.1984) (citations and italics omitted); *In re Cuyahoga Equip. Corp.,* 980 F.2d 110, 114 (2d Cir.1992) (A litigation has a "significant connection with a pending bankruptcy proceeding" and "falls within the 'related to' jurisdiction of the bankruptcy court" if the outcome "might have any 'conceivable effect' on the bankrupt estate.") As the courts have recognized, " 'A key word in [the] test is 'conceivable.' Certainty, or even likelihood, is not required. Bankruptcy jurisdiction will exist so long as it is possible' " that the proceeding may affect the debtor's rights or the administration of the estate. *In re Dow Corning Corp.,* 86 F.3d 482, 491 (6th Cir.1996), quoting *In re Marcus Hook Dev. Park Inc.,* 943 F.2d 261, 264 (3d Cir.1991).

2 Plaintiffs cannot be surprised by being asked to litigate a matter relating to the APA in the Delaware Bankruptcy Court, as they themselves agreed in the APA to a choice of forum clause in which they "irrevocably submit to the exclusive jurisdiction" of that court "over any dispute arising out of or relating to this Agreement," and waived any objection to venue in that court. (APA § 9.10, Gold Decl. Ex. 1.) Defendants do not contend that this clause of the APA, to which they were not parties, of itself controls the outcome of this motion. At a minimum, however, it reflects plaintiffs' own understanding that the Delaware Bankruptcy Court is the proper forum for disputes about the sale of Old Winstar.

3 For the same reasons that abstention is inappropriate, the closely-related doctrine of equitable remand, 28 U.S.C. § 1452(b), is also inapplicable here.

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