

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

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**IN RE:**

**UNITED GILSONITE LABORATORIES,  
A PENNSYLVANIA CORPORATION<sup>1</sup>**

**DEBTOR.**  
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Chapter 11

Case No. 11-02032 (RNO)

**MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER (I) AUTHORIZING THE  
DEBTOR TO ENTER INTO FIRST AMENDMENT TO DIP CREDIT AGREEMENT  
NUNC PRO TUNC TO MARCH 23, 2013; AND (II) AMENDING THE FINAL ORDER**

United Gilsonite Laboratories, a Pennsylvania corporation, the above-captioned debtor and debtor in possession (“**UGL**” or the “**Debtor**”) in the above-captioned case (the “**Case**”), hereby moves (the “**DIP Credit Extension Motion**”) this Court for the entry of an order (i) authorizing the Debtor to enter into the First Amendment to the DIP Credit Agreement<sup>2</sup> (the “**DIP Credit Agreement Amendment**”) *nunc pro tunc* to and effective as of March 23, 2013 and (ii) amending the Order (A) Authorizing Debtor to Obtain Final Post-Petition Financing and Granting Security Interests and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 105, 364(C), 364(D), and 507(B); (B) Authorizing the Use of Cash Collateral; (C) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362; and (D) Granting Other Relief [D.I. 115] (the “**Final Order**”). By the DIP Credit Extension Motion, the Debtor seeks authority to enter into the DIP Credit Agreement Amendment, which will (i) extend the DIP Facility *nunc pro tunc* to and effective as of March 23, 2013 through March 23, 2014 or the earlier of plan confirmation and the Debtor’s exit from Chapter 11 among other things; (ii) authorize the

<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 7530.

<sup>2</sup> Capitalized terms used but not herein defined shall have the meanings ascribed to such terms in the Final Order (as defined herein).

payment of certain fees to PNC Bank, National Association, in its capacity as agent (the “**Agent**”); (iii) waive certain defaults; and (iv) modify certain covenants. Additionally, by the DIP Credit Extension Motion, the Debtor seeks to amend Section 2.3 of the Final Order to include an additional carve-out for the payment of professional fees and expenses related to the appointment by an order entered on June 30, 2011 of James L. Patton as the representative of the future asbestos claimants (the “**FCR**”). In support of the DIP Credit Extension Motion, the Debtor respectfully represents as follows:

### **JURISDICTION**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Referral of Bankruptcy Matters of the United States District Court for the Middle District of Pennsylvania dated July 26, 1984, Misc. No. 84-0203. This is a core proceeding under 28 U.S.C. § 157(b)(2).

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

### **BACKGROUND**

#### **A. THE CHAPTER 11 CASE AND PROCEDURAL HISTORY**

3. On March 23, 2011 (the “**Petition Date**”), UGL commenced its bankruptcy case by a filing of a voluntary petition for relief under chapter 11, title 11, United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”). The Debtor continues to operate its business and manage its properties pursuant to sections 1107(a) and 1108 of the Bankruptcy Code as a debtor in possession.

4. On April 1, 2011, the Debtor filed its *Motion for Entry of Interim and Final Orders Pursuant to Bankruptcy Code Sections 105(a), 361, 362, 363, and 364, (I) Approving a DIP Credit Agreement, (II) Authorizing the Use of Cash Collateral, (III) Granting Superpriority*

*Claims and Liens to Postpetition Lender, and (IV) Scheduling a Final Hearing* (the “**DIP Financing Motion**”) [D.I. 57].

5. The Court granted the DIP Financing Motion on an interim basis on April 8, 2011 [D.I. 80], and entered the Final Order granting the DIP Financing Motion on May 3, 2011.<sup>3</sup>

6. The Final Order approved the Debtor’s postpetition credit facility provided by the Agent for itself and the other financial institutions from time to time party to the DIP Credit Agreement as lenders in an aggregate principal amount not to exceed \$8,200,000 (the “**DIP Facility**”), and authorized the Debtor to enter into the DIP Credit Agreement reflecting the material terms and conditions of the Final Order. The Debtor and the Agent executed the DIP Credit Agreement on April 11, 2011, providing the Debtor with access to \$8.2 million in postpetition financing via the DIP Facility until its expiration by its own terms on March 23, 2013.

7. The Debtor filed a Plan of Reorganization on September 21, 2012 (the “**Plan**”) [D.I. 847] while continuing to negotiate with the Official Committee of Unsecured Creditors (the “**Creditors’ Committee**”) and the FCR. The Debtor expects to file an amended Plan and Disclosure Statement following the conclusion of negotiations.

#### **RELIEF REQUESTED**

8. By this DIP Credit Extension Motion, the Debtor seeks entry of an order, substantially in the form annexed hereto as Exhibit A (the “**DIP Credit Extension Order**”), (i) authorizing the Debtor to enter into the DIP Credit Agreement Amendment *nunc pro tunc* to and effective as of March 23, 2013 and (ii) amending the Final Order. A copy of the DIP Credit Agreement Amendment is annexed hereto as Exhibit B.

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<sup>3</sup> Both the DIP Financing Motion and the Final Order are incorporated herein by reference. A copy of the DIP Credit Agreement was attached to the DIP Financing Motion as Exhibit 1. The DIP Financing Motion contains a summary of the essential terms of the DIP Credit Agreement as required by Local Rule 4001-3(d).

9. The existing DIP Facility expired on March 23, 2013 by its own terms. Prior to its expiration, the Debtor did not need to draw any funds from the DIP Facility. The Debtor, however, requires access to its credit line under the DIP Facility to ensure its ability to operate through the pendency of this Case. Without obtaining a postpetition credit facility prior to the approval of the Plan and the Debtor's exit from bankruptcy, the Debtor is concerned that its cash on hand and operating revenues may not provide sufficient liquidity to satisfy its operating and administrative expenses during the pendency of this Case. Accordingly, the Debtor needs access to the line of postpetition financing provided by the DIP Facility to conclude this Case in a manner that will maximize the value of the Debtor's estate for the benefit of its creditors.

10. The DIP Credit Agreement Amendment provides for the extension of the DIP Credit Agreement through March 23, 2014. In addition, the DIP Credit Agreement Amendment provides for (i) the waiver of certain defaults pertaining to, among other things, the dates by which the Debtor was required to provide certain financial documents to the Agent and (ii) the modification of certain covenants. The DIP Credit Agreement Amendment does not materially alter the terms of the DIP Credit Agreement and provides for a one-year extension of the DIP Facility in exchange for an Amendment Fee (as defined in the DIP Credit Agreement Amendment) of \$40,000. *See* DIP Credit Agreement Amendment § 4. The Debtor is hopeful it will have reached agreement with the Creditors Committee and the FCR and that its amended Plan will be confirmed within that extended period.

11. The Debtor believes the terms of the DIP Credit Agreement Amendment are reasonable and its entry into the DIP Credit Agreement Amendment is an exercise of its sound business judgment. The relief sought herein is in the best interest of the Debtor, its creditors, its

equity holders and all parties in interest and should be granted *nunc pro tunc* and effective as of March 23, 2013.

12. The Debtor also seeks to amend the professionals fees carve-out provision contained in Section 2.3 of the Final Order because the FCR was not appointed as such until an order of the Court was entered on June 30, 2011, *nunc pro tunc* to June 7, 2011. Therefore, the FCR and his professionals were not included in the carve-out provision of the Final Order entered on May 3, 2011. Accordingly, Section 2.3(ii)(x) should be modified to include the FCR and his professionals within said carve-out provisions. Specifically, Section 2.3(ii)(x) of the Final Order should be deleted in its entirety and replaced with the following language:

(x) allowed and unpaid professional fees and disbursements incurred by (1) the Debtor and the Committee accruing after the date of the Carve-Out Trigger Notice for any professionals retained by either of them by final order of the Court (which order has not been reversed, vacated or stayed unless such stay is no longer effective) under Sections 327 or 1103(a) of the Bankruptcy Code and (2) James L. Patton, Jr., or any professionals retained by James L. Patton, Jr. in his capacity as the legal representative appointed to protect the right of persons who may, subsequent to the confirmation of the Debtor's plan of reorganization, assert "demands" as defined by Section 524(g) of the Bankruptcy Code, for personal injury and wrongful death from alleged exposure to asbestos and asbestos-containing products against the Debtor (collectively, the "**Case Professionals**"), to the extent allowed and payable by the Debtor, the Committee, or James L. Patton, Jr. pursuant to an order of the Court (which order has not been reversed, vacated or stayed unless such stay is no longer effective) ("**Professional Fees**") under Sections 328, 330 and/or 331 of the Bankruptcy Code and any interim compensation procedures order, and

#### **BASIS FOR RELIEF REQUESTED**

13. For the reasons set forth above, in the DIP Financing Motion, and in the Final Order, the Court should authorize the Debtor to enter into the DIP Credit Agreement Amendment *nunc pro tunc* to and effective as of March 23, 2013, so that the DIP Facility can be extended. Additionally, the Final Order should be amended to provide for a fee carve-out for the FCR and his professionals.

### **NOTICE**

14. No trustee or examiner has been appointed in this chapter 11 case. A copy of this Motion is being served by CM/ECF upon (i) the Office of the United States Trustee for Region Three; (ii) Counsel for the Agent; (iii) Counsel for the Creditors' Committee; and (iv) Counsel for the FCR; and (v) all parties who have formally requested notices in this case pursuant to Fed. R. Bankr. P. 2002 and Local Rule 2002-1(b). Notice hereof and any order entered hereon will be served in accordance with Local Rule 9013-1(c). In light of the nature of the relief requested herein, the Debtor submits that no other or further notice of hearing is required and such additional notice be excused under the circumstances.

### **NO PRIOR REQUEST**

15. With the exception of the DIP Financing Motion, no previous motion for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests that the Court enter the DIP Credit Extension Order attached hereto as Exhibit A: (i) authorizing the Debtor to enter into the DIP Credit Agreement Amendment extending the DIP Facility *nunc pro tunc* to and effective as of March 23, 2013; (ii) amending Section 2.3(ii)(x) as requested herein; and (iii) granting such other relief as the Court deems just and proper.

May 10, 2013

**GIBBONS P.C.**

By: /s/ Mark B. Conlan

Mark B. Conlan, Esq. (PA No. 86559)

Karen A. Giannelli, Esq. (admitted *pro hac vice*)

Frank J. Vecchione, Esq. (admitted *pro hac vice*)

One Gateway Center

Newark, NJ 07102-5310

Tel. 973-596-4500

Fax. 973-596-0545

E-mail: [mconlan@gibbonslaw.com](mailto:mconlan@gibbonslaw.com)  
[kgiannelli@gibbonslaw.com](mailto:kgiannelli@gibbonslaw.com)  
[fvecchione@gibbonslaw.com](mailto:fvecchione@gibbonslaw.com)

*Attorneys for the Debtor and  
Debtor-in-Possession*