

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

Vanderbilt Minerals, LLC.,

Case No. 26-60110-5 (WAK)
Chapter 11

Debtor.

**UNITED STATES TRUSTEE’S OBJECTION TO DEBTOR’S MOTION
FOR AN ORDER (I) AUTHORIZING THE DEBTOR TO (A) OBTAIN POST PETITION
FINANCING, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS, (III) MODIFYING THE AUTOMATIC STAY,
(IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

TO: THE HONORABLE WENDY A. KINSELLA, UNITED STATES CHIEF
BANKRUPTCY JUDGE:

William K. Harrington, the United States Trustee for Region 2 (hereinafter “United States Trustee”), in furtherance of his duties and responsibilities pursuant to 28 U.S.C. § 586, submits this objection to the Debtor’s Motion (“Motion” or “DIP Motion”) as follows:

BACKGROUND

1. On February 16, 2026, (“Petition Date”), Vanderbilt Minerals, LLC. (the “Debtor”), filed a voluntary chapter 11 petitions for relief under Title 11 of the United States Code (“Bankruptcy Code”).
2. On the Petition Date, the Debtor filed various motions seeking relief on an emergency interim basis. (collectively, “First Day Motions”).
3. The First Day Motions included the DIP Motion with an attached budget (“DIP Budget”) (ECF 50).

4. In addition, the Debtor filed a Motion to Sell Property Free and Clear of Liens under Section § 363(f) (“Sale Motion”) (ECF 16) and a Motion to Settle, seeking approval of settlements between the Debtor and its affiliates (“Settlement Motion”) (ECF 22). The Sale Motion and Settlement Motion are returnable March 4, 2026.

5. On February 17, 2026, the Court conducted hearings on the First Day Motions. With respect to the DIP Motion, the Court approved relief sought on an emergency basis, and entered an interim order on February 18th (the “Interim DIP Order”). A second hearing to consider further relief under the DIP Motion is scheduled for December 19, 2024.

6. No Official Committee of Unsecured Creditors has been appointed yet in this case.

7. For the reasons stated below, the United States Trustee requests that the Court deny the Motion.

SUMMARY OF THE ARGUMENT

8. The United States Trustee objects to the Motion for several reasons. First, the Debtor has failed to meet its evidentiary burden under the statute and applicable law in demonstrating that senior secured priming postpetition financing is appropriate, including evidentiary support for the Debtor’s inability to sustain operations without such financing. Next, because the DIP Motion is intertwined with Debtor’s Sale Motion and 9019 Settlement Motion, and the fact that financing will be provided by Commodore Material Funding, LLC (“DIP Lender”), who is also the Stalking Horse in the Debtor’s Sale Motion, the DIP Motion should be subjected to heightened scrutiny.

AUTHORITY

9. To obtain post-petition financing under section 364(d) of the Bankruptcy Code, the Debtors must prove that (i) they are unable to obtain unsecured credit; (ii) the proposed credit is necessary to preserve estate assets; and (iii) the terms of the financing are fair, reasonable and adequate. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990). Post-petition financing should only be approved to the extent it is “in the best interests of the general creditor body.” *In re Roblin Indus.*, 52 B.R. 241, 244 (Bankr. W.D.N.Y. 1985).

10. Before approving debtor in possession financing, a court must consider whether the terms of proposed financing are fair, reasonable and adequate. *See In re Los Angeles Dodgers LLC*, 457 B.R. 308, 312-13 (Bankr. D. Del. 2011).

In this respect, courts routinely consider the following factors:

- (1) That the proposed financing is an exercise of sound and reasonable business judgment;
- (2) That the financing is in the best interests of the estate and its creditors;
- (3) That the credit transaction is necessary to preserve the assets of the estate, and is necessary, essential, and appropriate for the continued operation of the Debtor's businesses;
- (4) That the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender; and
- (5) That the financing agreement was negotiated in good faith and at arm's length between the Debtors, on the one hand, and . . . the Lenders, on the other hand.

See In re Sterling Mining Co., No. 09-20178-TLM, 2009 Bankr. LEXIS 2341, at *8 (Bankr. D. Idaho Aug. 14, 2009), citing *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003).

11. Financing should not be approved if its primary purpose is to benefit or improve the position of a secured lender. *See In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991) (stating, “credit should not be approved when it is sought for the primary benefit of a party other than the debtor”); *Ames*, 115 B.R. at 39 (stating, “a proposed financing will not be approved where it is apparent that the purpose of the financing is to benefit a creditor rather than the estate”).

12. Financing provisions that “tilt the conduct of the bankruptcy case” or “prejudice, at the early stage, the powers and rights that the Bankruptcy Code confers for the benefit of all creditors” are disfavored. *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 37-38 (Bankr. S.D.N.Y. 1990) (recognizing that “debtors-in-possession generally enjoy little negotiating power with a proposed lender, particularly where the lender has a pre-petition lien on cash collateral.”); and the terms of the DIP Motion must demonstrate that the DIP Facility is “in the best interest of creditors generally.” *In re Roblin Indus., Inc.*, 52 B.R. at 244 (citing *In re Vanguard Diversified, Inc.*, 31 B.R. 364, 366 (Bankr. E.D.N.Y. 1983)).

13. Courts recognize that debtors in possession “generally enjoy little negotiating power with a proposed lender.... As a result, lenders often exact favorable terms that harm the estate and creditors.” *See In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992). “[B]ankruptcy courts do not allow terms in financing arrangements that convert the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the post-petition lender.... Thus, courts look to whether the proposed terms would prejudice the powers and rights that the Code confers for the benefit of all creditors and leverage the Chapter 11 process by granting the lender excessive control over the debtor or its assets as to unduly prejudice the rights of other parties in interest.” *Id.* (internal citations

omitted). Bankruptcy courts have not approved financing arrangements that convert the bankruptcy process from one designed to benefit all creditors to one designed for the sole (or primary) benefit of a post-petition lender *See, e.g., Ames Dep't Stores, Inc.*, 115 B.R. 34, 38-39 (Bankr. S.D.N.Y. 1990) (citing *In re Tenney Village Co.*, 104 B.R. 562, 568 (Bankr. D.N.H. 1989) (holding that the terms of a post-petition financing facility must not “pervert the reorganizational process from one designed to accommodate all classes of creditors . . . to one specially crafted for the benefit” of one creditor)) *See also In re Berry Good, LLC*, 400 B.R. 741, 747 (Bankr. Arizona 2008).

DIP Financing is not necessary and unfairly benefits the DIP Lender

14. Here, the DIP Lender is significantly advantaged over all other creditors. If DIP Financing is permitted for the entire amount of the DIP Facility, as a senior secured priming postpetition lender, with the right to credit bid, the bankruptcy case is skewed to the favor of the DIP Lender.

15. Accordingly, without sufficient information relative to the Debtor's assets and potential recovery for unsecured creditors, the terms of DIP Motion should be closely scrutinized. The Debtor's creditors are tort claimants asserting talc-related personal injury claims. These are not ordinary trade creditors; they are individuals with claims against the Debtor for serious physical injuries. Any effort to incur secured postpetition debt that effectively shapes the outcome of this case must account for their interests and afford them a meaningful opportunity to be heard.

16. The record before the Court does not demonstrate a genuine need for postpetition financing to sustain operations. To the contrary, the record reflects that the Debtor was cash-flow positive prior to the Petition Date, with its financial deterioration driven primarily by the

escalating costs of talc-related litigation. But the chapter 11 filing was intended to halt that litigation and its associated defense costs. It therefore calls into serious question a postpetition budget that projects operating deficits after the very expense allegedly necessitating bankruptcy has been stayed. Absent a clear and credible explanation reconciling this inconsistency, the projected shortfall appears speculative and unsupported.

17. The DIP Budget presents a forward looking financial picture with no context. Without historical figures for income and expenses, it is impossible to know what may have changed. As noted above, the Debtor acknowledged that it was cash flow positive prior to filing, but the DIP Budget shows negative cash flow. The Debtor did not present any evidence that income decreased or that expenses increased (other than costs related to talc litigation).

18. Specifically, the DIP Budget shows \$1.175 million in “restructuring expense,” followed by at least half a million each week thereafter. The total shown in the DIP Budget for restructuring expense is \$7,532,000. The nature and details of these expenses should be disclosed. In addition, the DIP Budget shows capital expenditures of \$350,000 in weeks of 3/13/2026 and 4/10/2026 for a total of \$700,000. It is unclear why the Debtor would be making capital expenditures the intention is to sell its assets. The “restructuring expense” and “capital expenditures” comprise more than half of the proposed DIP financing.

19. The DIP Budget provides payments to Debtor’s affiliates, Vanderbilt Chemicals, Vanderbilt Global Services, and RTVH for goods, services, and expenses, respectively. It is unclear from the record whether these payments are for goods, services and/or expenses of operation or are they related to inter-company agreements.

20. Moreover, the proposed DIP financing appears to be directed toward funding professional fees and case administration costs rather than preserving going-concern value or

maintaining ordinary operations. Section 364 does not authorize the incurrence of secured debt merely to underwrite costs of a bankruptcy strategy where no operational necessity has been established.

21. Encumbering estate assets under these circumstances, through a financing structure that operates in tandem with the Debtor's Sale Motion and 9019 Settlement Motion, risks consolidating control over the estate for the benefit of the DIP Lender.

22. Again, the Debtor's principal creditors are individuals with claims for personal injury against the Debtor. Before approving relief under the DIP Motion, the Court must ensure not only that the Debtor has satisfied its burden under § 364, but also that the interests of these claimants are adequately protected.

23. The United States Trustee objects to any order that provides the Lender with liens on the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code. All chapter 5 causes of action must be preserved for the benefit of the estate and all creditors. The United States Trustee submits that these provisions should be stricken on a final basis.

The Debtor Has Not Met Its Burden

24. A court should approve a proposed debtor-in-possession financing only if such financing "is in the best interests of the general creditor body." *In re Roblin Indus., Inc.*, 52 B.R. 241, 244 (Bankr. W.D.N.Y. 1985) (internal citations omitted); see also *In re Tenney Vill. Co., Inc.*, 104 B.R. 562, 569 (Bankr. D.N.H. 1989) ("The debtor's pervading obligation is to the bankruptcy estate and, derivatively, to the creditors who are its principal beneficiaries."). In short, the financing's terms must not "pervert the reorganizational process from one designed to accommodate all classes of creditors and equity interests to one specially crafted for the benefit" of a secured creditor. *Tenney Vill.*, 104 B.R. at 568.

25. The Debtor has not its burden to show that (a) the proposed financing is an exercise of sound and reasonable business judgment; (b) the financing is in the best interests of the estate and its creditors; (c) the transaction is necessary to preserve the assets of the estate, and is necessary, essential, and appropriate for the continued operation of the debtor's business; (d) the terms of the transaction are fair, reasonable, and adequate given the circumstances of the debtor-borrower and proposed lender; and (e) the financing was negotiated in good faith and at arm's length by the debtor, on the one hand, and the lender, on the other hand. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 879-80 (Bankr. W.D. Mo. 2003). *See also In re Mid-State Raceway, Inc.*, 323 B.R. 40, 60 (Bankr. N.D.N.Y. 2005) (looking at several factors in considering whether to approve post-petition secured financing, including whether financing is necessary to preserve the assets of the estate).

26. The United States Trustee objects to any relief under the terms of the DIP Motion beyond that which is strictly necessary to prevent immediate and irreparable harm to the Debtor's estate. And any relief provided on an interim basis should preserve the rights of the United States Trustee, any official committee, and any other party in interest with standing, the opportunity to object at a final hearing, or in the case of an official committee, after one has been appointed and provided a reasonable time period to carry out an investigation.

27. Given the expedited consideration of the First Day Motions, the United States Trustee reserves the right to raise additional objections and arguments at any hearing on the DIP Motion and to supplement this objection in writing at a later date.

WHEREFORE the United States Trustee requests that the Court deny the Motion,
together with any other and further relief the Court may deem just and necessary.

Dated: February 24, 2026
Syracuse, New York

Respectfully submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE FOR REGION 2

By: /s/ Erin P. Champion
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