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HEARING DATE:

June 9, 2009, at 11:00 AM (ET)

OBJECTION DEADLINE:

June 2, 2009, at 4:00 PM (ET)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN RE:

Chapter 11

TRONOX INCORPORATED, *et al.*,

Case No. 09-10156 (ALG)

Debtors.

Jointly Administered

----- x

TRONOX INCORPORATED, TRONOX
WORLDWIDE LLC f/k/a Kerr-McGee
Chemical Worldwide LLC, and TRONOX
LLC f/k/a Kerr-McGee Chemical LLC,

Plaintiffs,

- against -

Adv. Proc. No. 09-01198 (ALG)

ANADARKO PETROLEUM
CORPORATION and KERR-MCGEE
CORPORATION,

Defendants.

----- x

**NOTICE OF THE UNITED STATES OF AMERICA'S
MOTION TO INTERVENE**

PLEASE TAKE NOTICE that the United States of America, by its attorney

Lev L. Dassin, Acting United States Attorney for the Southern District of New York, will move this Court, pursuant to Rule 7024 of the Federal Rules of Bankruptcy Procedure, incorporating Rule 24 of the Federal Rules of Civil Procedure, for an order in the form attached as Exhibit A to the Motion permitting the United States to intervene in the above-captioned adversary proceeding, to file the complaint-in-intervention attached as Exhibit B to the Motion, and for such other relief as the Court deems just and proper (the "Motion").

PLEASE TAKE FURTHER NOTICE that a hearing on the United States' Motion will be held before the Honorable Allan L. Gropper, United States Bankruptcy Judge, in Courtroom 617, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, on **June 9, 2009, at 11:00 AM (Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that responses or objections, if any, to the Motion must comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of this Court, must be set forth in a writing describing the basis therefore, and must be filed with the Bankruptcy Court electronically in accordance with General Order M-242, as amended by General Order M-269, by registered users of the Court's electronic case filing system (the User's Manual for the Electronic Case Filing System can be found at www.nysb.uscourts.gov the official website for the Bankruptcy Court) and, by all other parties in interest, on a 3-1/2 inch disk, preferably in Portable Document Format (PDF), Wordperfect, or any other Windows-based word processing format (with a hard copy delivered

directly to Chambers) and served upon each of the following: (a) the United States Attorney's Office for the Southern District of New York, 86 Chambers Street, Third Floor, New York, New York 10007, Attn: Matthew L. Schwartz & Tomoko Onozawa, Assistant United States Attorneys; (b) counsel to the Debtors, Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, New York 10022, Attn: Jonathan S. Henes and Colin M. Adams; (c) counsel to the Official Committee of Unsecured Creditors, Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 1285 Avenue of the Americas, New York, New York 10019-6064, Attn: Alan W. Kornberg and Brian S. Hermann; (d) counsel to the Official Committee of Equity Security Holders, Pillsbury Winthrop Shaw Pittman LLP, 1540 Broadway, New York, New York 10036, Attn: Craig A. Barbarosh and David A. Crichlow; (e) counsel to the agent for the Debtors' prepetition secured lenders and postpetition secured lenders, Cravath, Swaine & Moore LLP, 825 Eighth Avenue, New York, New York 10019, Attn: Robert Trust; (f) counsel to Anadarko Petroleum Corporation and Kerr-McGee Corporation, Weil, Gotshall & Manges LLP, 700 Louisiana, Suite 1600, Houston, Texas 77002, Attn: Lydia Protopapas and Jason Billeck; and (g) the 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 Golden, so as to be received not later than **4:00 PM (Eastern Time) on June 2, 2009**. Only those responses that are timely filed, served, and received will be considered at the hearing. Failure to file a timely objection may result in entry of a final order granting the United States' Motion.

Dated: May 21, 2009
New York, New York

Respectfully submitted,

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WORLDWIDE LLC f/k/a Kerr-McGee
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Plaintiffs,

- against -

ANADARKO PETROLEUM
CORPORATION and KERR-MCGEE
CORPORATION,

Defendants.

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Adv. Proc. No. 09-01198 (ALG)

THE UNITED STATES OF AMERICA'S MOTION TO INTERVENE

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The United States of America (the “Government”), by its attorney Lev L. Dassin, Acting United States Attorney for the Southern District of New York, respectfully moves for an order pursuant to Rule 24(a) and/or Rule 24(b) of the Federal Rules of Civil Procedure, as incorporated by Federal Rule of Bankruptcy Procedure 7024, authorizing the United States to intervene in the above-captioned adversary proceeding, and to file its complaint-in-intervention.

PRELIMINARY STATEMENT

1. From literally the first day of these chapter 11 cases, the Debtors¹ have maintained that they were forced into bankruptcy in large part by crippling environmental liabilities at dozens, if not hundreds, of sites throughout the country. *See* Declaration of Gary Barton, Senior Director at Alvarez & Marsal North America LLC, In Support of First Day Motions (“Barton Declaration”) ¶ 44. Debtors have been equally adamant that those liabilities “are almost entirely unrelated” to their ongoing operations, *id.* at ¶ 42, and have foreshadowed a fraudulent conveyance action against their former parent, Kerr-McGee Corporation (“Kerr-McGee”), as well as Anadarko Petroleum Corporation (“Anadarko”), which acquired Kerr-McGee almost immediately after the Debtors — along with all of Kerr-McGee’s environmental liabilities — were spun off.

2. Likewise, the United States has maintained from the start that it has

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.

a unique statutory cause of action against Anadarko and Kerr-McGee under the Federal Debt Collection Procedures Act (“FDCPA”), 28 U.S.C. § 3301, *et seq.*, to the extent that those parties fraudulently avoided debts to the United States of America. *See* United States of America’s Objections to the Motion of the Debtors for Entry of a Final Order (A) Authorizing the Debtors to Obtain Superpriority Postpetition Secured Financing and Utilize Cash Collateral; (B) Authorizing the Debtors to Repay Their Receivable Securitization Facility; and (C) Granting Adequate Protection to Prepetition Secured Lenders (“DIP Objections”) ¶¶ 8-14, 27-33.

3. On May 12, 2009, the Debtors filed their adversary complaint — a compelling account of corporate greed in which Kerr-McGee sought to “jettison [its] toxic legacy” by spinning off Tronox, so that Kerr-McGee could be acquired by Anadarko for \$18 billion, paying rich bonuses to its senior management in the process. *See* Adversary Complaint (“Complaint”) ¶ 3. According to the Complaint, the defendants’ “need to evade the Legacy Liabilities was underscored when the U.S. Environmental Protection Agency . . . notified Old Kerr-McGee that it was allegedly responsible for hundreds of millions of dollars in cleanup costs at a former wood treatment plant in Manville, New Jersey. Old Kerr-McGee knew that Manville was just the tip of the iceberg and that it would face similar potential liability at numerous other sites like Manville.” *Id.*

4. Now that the suit against Anadarko and Kerr-McGee is on file, the United States seeks to intervene to protect its interests. As the largest creditor in

these cases, the Government is obviously a party-in-interest within the meaning of 11 U.S.C. § 1109(b), and so has an “unconditional right to intervene” in this adversary proceeding under the Second Circuit’s decision in *In re Caldor Corp.*, 303 F.3d 161 (2d Cir. 2002). Moreover, given that the United States has a unique statutory cause of action to the extent that the defendants fraudulently avoided debts to the United States — which the complaint makes plain was the case — the Government must be permitted to assert those claims under the FDCPA.

5. Indeed, the Government and the Debtors have already reached an agreement permitting the United States to file its complaint-in-intervention and defining the Government’s role in the litigation of this action in such a way that will enhance the Debtors’ efforts to efficiently and effectively litigate this case, while also protecting the Government’s interests. The Official Committee of Unsecured Creditors, the Official Committee of Equity Security Holders, and the Debtors’ pre-petition Agent and DIP Agent likewise consent to the Government’s intervention in this case.

JURISDICTION

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The basis for the relief requested in this motion is 11 U.S.C. § 1109(b), and Federal Rule of Civil Procedure 24, as made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7024.

BACKGROUND

A. The Debtors' Bankruptcy

8. On January 12, 2009, Debtors filed voluntary petitions for relief under Chapter 11, Title 11 of the United States Code, 11 U.S.C. § 1101 *et seq.*, as amended (the “Bankruptcy Code”). On the same day, this Court granted the Debtors’ motion for joint administration.

9. Debtors’ first-day papers outline its extensive corporate history, dating back to the 1920s. The Barton Declaration details the manner in which Kerr-McGee, through “Project Focus,” isolated its legacy environmental and other liabilities in what became the Tronox line of entities — regardless of the source of those liabilities — and then spun Tronox off as an independent company. The Barton Declaration likewise describes Kerr-McGee’s stripping of valuable assets out of the Tronox entities prior to the spin-off, including \$537.1 million in net proceeds from debt that was parked in Tronox. Finally, the Barton Declaration goes through Kerr-McGee’s aborted attempts to sell Tronox to a third-party buyer — including offering hundreds of millions of dollars in environmental indemnities — before Tronox was spun off in an initial public offering, the proceeds of which (along with almost 23 million class B shares in Tronox) naturally went to Kerr-McGee. *See* Barton Declaration ¶¶ 24-39. According to the Barton Declaration, less than five months after the spin-off, Anadarko acquired Kerr-McGee for \$18 billion. *Id.* ¶ 40.

B. The Government’s Environmental Claims

10. Although the Government is still in the process of collecting

claim-related information, it is clear that Debtors are liable for environmental and related costs at literally dozens of sites throughout the country, in addition to their many on-going (injunctive) remediation obligations. The first-day papers illustrate the magnitude of the Debtors' environmental liabilities. In addition to its future environmental responsibilities, Debtors have already performed remediation work at various sites, spending approximately \$148 million pre-petition. *See* Barton Declaration ¶ 48.

11. Kerr-McGee's ill-fated attempts to find a buyer for Tronox and its liabilities also gives some sense of the magnitude of the environmental liabilities. One "prospective purchaser conveyed a \$1.2 billion bid if the Legacy Liabilities were not included, but only a \$300 million bid if they were included. This prospective purchaser viewed the inclusion of the Legacy Liabilities as a \$900 million swing, and refused to go further in any discussions." Complaint ¶ 61. Another potential purchaser was offered "more than \$400 million in environmental indemnities if [it] would accept the Legacy Liabilities as part of a sale transaction," but refused to consummate any sale that included those liabilities. Barton Declaration ¶¶ 29-30; *see also* Complaint ¶ 73-75 (alleging that that buyer offered \$1.6 billion for the company without the Legacy Liabilities, and that Kerr-McGee offered \$400 million in indemnities).

12. Indeed, the entire series of fraudulent transfers that gave rise to the claims against Anadarko and Kerr-McGee seems to have been precipitated, or at least accelerated, by one environmental claim in particular. In 1999, the EPA first

notified Kerr-McGee that it was a potentially responsible person (“PRP”) at the Federal Creosote Superfund Site in Manville, New Jersey. This notice allegedly convinced Kerr-McGee that its legacy liabilities were “simply too big” to carry. Complaint ¶ 29. At that time, EPA allegedly estimated the cost of the remedy at only \$59 million. *See id.* ¶ 32. By 2005, EPA informed Kerr-McGee that it was liable for at least \$179 million in clean-up costs relating to creosote contamination in Manville. *See* Barton Declaration ¶ 28. And as of June 2008, the United States had incurred in excess of \$280 million in unreimbursed response costs at the Federal Creosote Superfund Site, which is the subject of litigation filed by the Government in the District of New Jersey. *See United States of America v. Tronox, LLC*, No. 08-cv-4368 (FLW) (D.N.J. filed Aug. 29, 2008).

13. According to the Debtors’ Complaint, this \$280 million debt was “simply the tip of the iceberg. Old Kerr-McGee knew that it was associated with numerous other previously undisclosed wood treatment and agricultural chemical sites that, like Manville, posed the specter of substantial environmental and tort liabilities.” Complaint ¶ 34.

C. The Government’s Objections to the DIP Order, and the Parties’ Reservation of Rights

14. Shortly after this case was filed, the Debtors sought this Court’s approval to obtain DIP financing. The Government objected to the terms of the financing, arguing that the lenders should not be permitted to encumber avoidance actions, observing that, “[i]n the Government’s view, the most promising source of

assets likely to be available to unsecured creditors — especially given any replacement liens given to the DIP Lenders on extant estate property — lies in potential fraudulent conveyance claims [against Anadarko and Kerr-McGee].” DIP Objections ¶ 8.

15. In particular, the Government argued that Congress created a federal statutory fraudulent conveyance claim, under the FDCPA, that gives the Government enhanced rights when a debtor transfers property specifically to avoid a debt to the Government.² *See id.* ¶ 27. As noted in the DIP Objections:

The relief accorded by the FDCPA is limited. . . . It only makes a transfer fraudulent “as to a debt to the United States.” 28 U.S.C. §§ 3304(a) & (b). By its express terms, the FDCPA therefore creates a sort of constructive trust or equitable lien in favor of the United States from the proceeds of any fraudulent conveyance avoided under that statute. Indeed, unlike avoidance actions under sections 544 or 548 of the Code, which must ordinarily be brought by a trustee or debtor in possession, the United States retains its right to avoid fraudulent conveyances under the FDCPA even in bankruptcy. *See, e.g., In re Hampton*, Nos. 95-50743, 95-5043, 96-5002, 1997 WL 714905, at *8-9 (Bankr. W.D. La. Aug. 13, 1997) (permitting United States to assert FDCPA claim with respect to transactions allegedly made to avoid tax debt, but denying that claim on its merits). That result squares with the notion that the proceeds of FDCPA actions inure solely to the benefit of the United States, and not for the estate generally.

Because the statute creates a property interest unique to the United States in the proceeds of FDCPA actions, the DIP Motion cannot grant the lenders a superior interest than that of the

² As noted in the DIP Objections, nothing in this motion should be read to imply that actions under the FDCPA constitute “Avoidance Actions” as defined in the DIP Motion and DIP Documents, or that the proceeds of FDCPA actions are in any sense property of the estate. The Government specifically reserves its rights with respect to those issues.

United States in those funds. Indeed, the doctrine of sovereign immunity bars it. *See, e.g., Department of Army v. Blue Fox, Inc.*, 525 U.S. 255, 263-64 (1999) (subcontractor’s attempt to “seize or attach money in the hands of the Government” barred by sovereign immunity).

DIP Objections ¶¶ 31-32 (footnote omitted).

16. Ultimately, the Government’s DIP Objections were resolved with the Debtors and the DIP Lenders by including a full reservation of rights for any claims under the FDCPA. The Corrected Final Order (I) Authorizing Debtors (A) To Obtain Postpetition Financing Under 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) And 364(e), (B) To Utilize Cash Collateral Under 11 U.S.C. § 363 And (C) To Use Postpetition Financing To Purchase Receivables Portfolio And (II) Granting Adequate Protection To Prepetition Secured Lenders Under 11 U.S.C. §§ 361, 362, 363 and 364 (the “Final DIP Order”) provides:

The United States of America objects to any provision in this Final Order or the DIP Documents providing for any liens (including replacement liens) or superpriority claims with respect to actions, claims or settlements brought under or relying upon the Federal Debt Collection Procedures Act, or the proceeds of such actions, claims or settlements, and this Final Order is without prejudice to all rights of the United States with respect to such objection, or the rights of the Debtors, any Statutory Committee, the DIP Agents, the DIP Lenders, the Prepetition Agent, the Prepetition Lenders or any other party in interest to challenge or otherwise contest such objection, and all rights of such parties are hereby fully preserved.

Final DIP Order ¶ 26. At the DIP Agent’s request, the Final DIP Order also contains restrictions on the Debtors’ use of the DIP Financing or Cash Collateral (as those terms are defined in the Final DIP Order) to prosecute certain claims. *See id.*

¶ 27.

D. The Complaint Against Anadarko and Kerr-McGee, and the Parties' Discussions Regarding the Government's Role in the Adversary Proceeding

17. On May 12, 2009, the Debtors filed their action against Kerr-McGee and Anadarko. The Debtors' Complaint fleshes out and expands upon the facts set out by the Debtors in the Barton Declaration and by the Government in its DIP Objections, and asserts eleven claims, as follows:

- i. Actual fraudulent transfer, under 11 U.S.C. § 544(b) and Oklahoma's Uniform Fraudulent Transfer Act;
- ii. Constructive fraudulent transfer, under the same authorities;
- iii. Constructive fraudulent transfer regarding payments made for Anadarko's or Kerr-McGee's benefit during the two years preceding Debtors' bankruptcy, under 11 U.S.C. § 548;
- iv. Civil conspiracy;
- v. Aiding and abetting fraudulent conveyance;
- vi. Breach of fiduciary duty as a promotor;
- vii. Unjust enrichment;
- viii. Equitable Subordination, under 11 U.S.C. § 510(c);
- ix. Equitable Disallowance;
- x. Disallowance, under 11 U.S.C. § 502(d); and
- xi. Disallowance of Contingent Indemnity Claims, under 11 U.S.C. § 502(e)(1)(B).

18. The Complaint does not assert any claims under the FDCPA.

19. Long before Debtors filed their Complaint, they were aware that the Government had been investigating fraudulent conveyance claims against Kerr-McGee and Anadarko for some time, and were considering filing an action under the FDCPA in United States District Court. In an attempt to avoid unnecessary litigation among them, and to join forces against Anadarko and Kerr-McGee, the

Government and the Debtors began to negotiate a way to reconcile the estates' claims under the Bankruptcy Code with the Government's claims under the FDCPA.

20. To that end, the Government and Debtors have reached an agreement that would give the Government the right to litigate its fraudulent conveyance claims alongside the Debtors, while continuing to reserve the more novel issues surrounding the interplay of the FDCPA and the Bankruptcy Code.

21. The essential elements of the deal struck by the Debtors and the Government are:

- i. The Government, as a party in interest, may participate in the litigation of the case, including during discovery;
- ii. The Debtors retain the ability to settle the estate's claims in the adversary proceeding under existing precedent, subject to the Government's ability to fully contest the Debtors' ability to settle fraudulent conveyances of federal debts;
- iii. All arguments concerning the allocation of proceeds of the adversary proceeding as between the United States and other creditor constituencies are reserved;
- iv. The Government may file a complaint-in-intervention in the adversary proceeding, asserting its claims under the FDCPA. The Debtors reserve their rights to challenge the Government's complaint on any grounds, but agree not to do so at the outset.

22. The Debtors and the Government are in the process of obtaining the consent of the other relevant stakeholders to this agreement, which we anticipate presenting as a stipulation for the Court's endorsement, so as to avoid placing unnecessary disputes before the Court. In the meanwhile, the Government respectfully makes this motion so that it may intervene in the adversary proceeding

and file its complaint-in-intervention, so as not to delay in any way the prosecution of the parties' various claims against Anadarko and Kerr-McGee.

RELIEF REQUESTED

23. In this motion, the Government respectfully requests that it be permitted to intervene in the above-captioned adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7024 and Federal Rule of Civil Procedure 24, and to file its complaint-in-intervention pursuant to Federal Rule of Civil Procedure 24(c).

24. A proposed order granting the relief requested in this motion is attached hereto as Exhibit A, and the Government's proposed complaint-in-intervention is attached as Exhibit B.

25. As noted, based on the terms of the stipulation that the parties are finalizing, the Debtors, the Official Committee of Unsecured Creditors, the Official Committee of Equity Security Holders, the Debtors' pre-petition agent, and the DIP Agent all consent to the relief requested in this motion.

BASIS FOR RELIEF

26. Federal Rule of Civil Procedure 24 (made applicable to this action through Federal Rule of Bankruptcy Procedure 7024) provides:

- (a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:
 - (1) is given an unconditional right to intervene by a federal statute; or
 - (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a

practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) Permissive Intervention.

(1) In General. On timely motion, the court may permit anyone to intervene who:

* * *

(B) has a claim or defense that shares with the main action a common question of law or fact.

27. Rule 24 therefore identifies at least three circumstances (two mandatory and one permissive) in which a party is a proper intervenor. The Government is entitled to, or should be allowed to, intervene in the above-captioned adversary proceeding under each and every one of those tests.

A. THE GOVERNMENT HAS AN “UNCONDITIONAL RIGHT TO INTERVENE” IN THE ADVERSARY PROCEEDING

28. Under the Second Circuit's decision in *Caldor*, any entity that is a party-in-interest in the umbrella bankruptcy case within the meaning of 11 U.S.C. § 1109(b) *automatically* meets the criteria for intervention in any adversary proceeding, under Rule 24. *See Caldor*, 303 F.3d 161.

29. Pursuant to Rule 24, “the court *must* permit anyone to intervene who . . . is given an unconditional right to intervene by a federal statute.” Fed. R. Civ. P. 24(a)(1) (emphasis supplied). The Bankruptcy Code — specifically, section 1109(b) — is just such a federal statute. According to the Second Circuit, “the plain text of the statute [*i.e.*, 11 U.S.C. § 1109(b)] indicates Congress intended to grant” “an unconditional statutory right for parties in interest to intervene in adversary proceedings that occur in connection with a Chapter 11 bankruptcy case.” *Caldor*,

303 F.3d at 162-62.

30. There is no question that the United States is a party-in-interest in these cases. Indeed, section 1109(b) defines “party in interest” to include “the debtor, a creditors’ committee, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee.” 11 U.S.C. § 1109(b). As not only *a* creditor of these estates, but from all appearances the single largest creditor in these cases, the Government is plainly a party-in-interest, as the Debtors agree. *See, e.g., In re Refco Inc.*, 505 F.3d 109, 116-18 (2d Cir. 2007) (defining “party in interest” under section 1109(b) to include all creditors, when vindicating their own rights and interests).

31. Simply put, “*Caldor* interpreted 11 U.S.C. § 1109(b) to provide parties in interest — such as the Committee or *any creditor* — an ‘unconditional right to intervene in adversary proceedings.’” *In re Sunbeam Corp.*, 287 B.R. 861, 862 (S.D.N.Y. 2003) (emphasis supplied; quoting *Caldor*, 303 F.3d at 166). As a creditor of these estates, and therefore a party in interest in these cases, the Government therefore has an “unconditional right to intervene” in this adversary proceeding. *See Caldor*, 303 F.3d at 162-62.

B. THE GOVERNMENT IS ENTITLED TO INTERVENE AS OF RIGHT

32. Even if the Court were inclined to go through the more traditional Rule 24 analysis, the Government would still be entitled to intervene in the adversary proceeding as a matter of right. Rule 24(a)(2) of the Federal Rules of

Civil Procedure provides that a party is entitled to intervene as a matter of right when it “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.”

33. The Second Circuit has identified four criteria that a movant must satisfy in order to intervene as of right under Rule 24(a)(2): (1) the application to intervene must be timely; (2) the movant must have an interest in the action; (3) the movant must be so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and (4) the movant’s interest must not be adequately represented by the existing parties to the suit. *Brennan v. N.Y.C. Bd. of Educ.*, 260 F.3d 123, 128-29 (2nd Cir. 2001) (citing *New York News, Inc. v. Kheel*, 972 F.2d 482, 485 (2d Cir. 1992)).

34. The Government easily meets that test, here. *First*, the intervention motion is timely because it comes within days of the Debtors’ initiation of this action, before the defendants’ answer is due, and before the initial case conference scheduled for July 7, 2009.

35. *Second*, the United States has an interest in the action because it alleges that the defendants fraudulently avoided debts to, among others, the Government. Indeed, the Government has an interest in the action simply by virtue of being a creditor of these estates, since the proceeds of any judgment or settlement of the estates’ claims will run to the benefit of its creditors. Under the

Bankruptcy Code, avoidance actions must be maintained “for the benefit of the estate.” 11 U.S.C. § 550(a). And under the “benefit of the estate” standard, “what matters is whether creditors will receive some benefit.” *In re Kennedy Inn Associates*, 221 B.R. 704, 715 (Bankr. S.D.N.Y. 1998) (internal quotation marks omitted). *See generally Reich v. ABC/York-Estes Corp.*, 64 F.3d 316, 322 (7th Cir. 1995) (“In ascertaining a potential intervenor’s interest in a case, our cases focus on the issues to be resolved by the litigation and whether the potential intervenor has an interest in those issues.”).

36. *Third*, the disposition of the adversary proceeding may prejudice the Government’s interests, insofar as the estate’s claims overlap with the Government’s claims under the FDCPA.

37. And *fourth*, the Government’s interests are not adequately represented by the current parties to the suit because they cannot assert FDCPA claims on behalf of the United States as a matter of law, and in any event, under the restrictions imposed by the Final DIP Order, the Debtors may be unable to prosecute FDCPA claims even if they were able and inclined to do so. If nothing else, the Debtors have elected not to bring such claims as part of their Complaint. *See Lake Investors Dev. Group, Inc. v. Egidi Dev. Group*, 715 F.2d 1256, 1261 (7th Cir. 1983) (adequate representation requirement of Rule 24(a)(2) is satisfied if “the applicant shows that representation of his interest “may be” inadequate; and the burden of making that showing should be treated as minimal.” (quoting *Trbovich v.*

United Mine Workers of Am., 404 U.S. 528, 538 n.10 (1972)); *SEC. v. Dresser Indus.*, 628 F.2d 1368, 1390 (D.C. Cir. 1980) (stating that an applicant “need only show that the representation of his interest may be inadequate; the burden of proof rests on those resisting intervention”).

38. Without intervening, it is also not clear that the Government would have standing to appeal an adverse decision in the adversary proceeding, even ones particular to the Government’s interests under the FDCPA. *See Marino v. Ortiz*, 484 U.S. 301, 302 (1988) (noting that because “only parties to a law suit, or those that properly become parties, may appeal an adverse judgment,” it is the “better practice” for non-parties who are affected by a court’s judgment “to seek intervention for purposes of participating in any appeal”).

C. THE GOVERNMENT SHOULD BE PERMITTED TO INTERVENE

39. In the alternative, the Government should be permitted to intervene pursuant to Rule 24(b), which provides: “On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). The Government’s claims under the FDCPA arise under almost precisely the same facts as the Debtors’, and rest on analogous legal theories. The Government should therefore be permitted to intervene under Rule 24(b).

CONCLUSION

40. For the foregoing reasons, the Government is entitled to, or alternatively should be permitted to, intervene in this adversary proceeding. Pursuant to Federal Rule of Civil Procedure 24(c), a proposed Complaint-in-Intervention is attached as Exhibit B, which the Government seeks leave to file upon the Court's granting of this motion. *See* Fed. R. Civ. P. 24(c) ("A motion to intervene must . . . be accompanied by a pleading that sets out the claim or defense for which intervention is sought."). A proposed order is attached as Exhibit A.

41. As these objections include citations to the applicable legal authorities, the Government respectfully requests that the Court waive the requirement contained in Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York that the Government file a separate memorandum of law.

42. The Government has provided notice of this motion to the parties to the adversary proceeding (*i.e.*, the Debtors, Kerr-McGee, and Anadarko), as well as the Office of the United States Trustee, counsel to the Official Committee of Unsecured Creditors, counsel to the Official Committee of Equity Security Holders, counsel to the DIP Agent, as well as, by ECF, all parties that have appeared in these cases pursuant to Federal Rule of Bankruptcy Procedure 2002.

43. The Government has not previously sought the relief requested by this motion.

Dated: May 21, 2009
New York, New York

Respectfully submitted,

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Acting United States Attorney for the
Southern District of New York

By: /s/ Matthew L. Schwartz
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

----- x
IN RE:

Chapter 11

TRONOX INCORPORATED, *et al.*,

Debtors.

Case No. 09-10156 (ALG)

Jointly Administered

----- x
TRONOX INCORPORATED, TRONOX
WORLDWIDE LLC f/k/a Kerr-McGee
Chemical Worldwide LLC, and TRONOX
LLC f/k/a Kerr-McGee Chemical LLC,

Plaintiffs,

- against -

Adv. Proc. No. 09-01198 (ALG)

ANADARKO PETROLEUM
CORPORATION and KERR-MCGEE
CORPORATION,

Defendants.
----- x

**ORDER GRANTING THE UNITED STATES OF AMERICA'S
MOTION TO INTERVENE**

Upon the motion of the United States of America to intervene in the above-captioned adversary proceeding, and upon the hearing on that motion conducted on June 9, 2009, IT IS HEREBY ORDERED THAT:

1. The United States of America's motion to intervene is granted.
2. The United States of America is authorized to file its complaint-in-intervention in this adversary proceeding, in the form attached as Exhibit B to the motion.
3. The Clerk of Court is directed to amend the caption of this adversary

proceeding. The new caption shall read:

----- x

TRONOX INCORPORATED, TRONOX
WORLDWIDE LLC f/k/a Kerr-McGee
Chemical Worldwide LLC, and TRONOX
LLC f/k/a Kerr-McGee Chemical LLC,

Plaintiffs,

- against -

Adv. Proc. No. 09-01198 (ALG)

ANADARKO PETROLEUM
CORPORATION and KERR-MCGEE
CORPORATION,

Defendants.

----- x

THE UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

- against -

TRONOX, INC., TRONOX WORLDWIDE LLC,
TRONOX LLC, KERR-McGEE
CORPORATION, and ANADARKO
PETROLEUM CORPORATION,

Defendants

----- x

SO ORDERED:

Dated: New York, New York
_____, 2009

HON. ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE

LEV L. DASSIN
Acting United States Attorney for the
Southern District of New York
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

----- x
IN RE:

Chapter 11

TRONOX INCORPORATED, *et al.*,

Case No. 09-10156 (ALG)

Debtors.

Jointly Administered

----- x
TRONOX INCORPORATED, *et al.*,

Plaintiffs,

- against -

Adv. Proc. No. 09-01198 (ALG)

ANADARKO PETROLEUM
CORPORATION, *et ano.*,

Defendants.

----- x
THE UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

- against -

TRONOX, INC., TRONOX WORLDWIDE LLC,
TRONOX LLC, KERR-McGEE
CORPORATION, and ANADARKO
PETROLEUM CORPORATION,

Defendants

----- x

COMPLAINT IN INTERVENTION

The United States of America (“United States”), by its attorney Lev L. Dassin, Acting United States Attorney for the Southern District of New York, by authority of the Attorney General of the United States, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), for its complaint-in-intervention alleges as follows

NATURE OF THE ACTION

1. This is an adversary proceeding brought by the United States pursuant to Sections 3304 and 3306 of the Federal Debt Collection Procedures Act (“FDCPA”), 28 U.S.C. §§ 3304 and 3306, relating to fraudulent transfers by Defendants against the United States. Defendants Tronox, Inc., Tronox Worldwide LLC, and Tronox, LLC (collectively “Tronox”) owe a debt to the United States because they are liable for past response costs for environmental cleanups at numerous sites around the country pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 6701(a), *et seq.*, as well as for other environmental liabilities to various federal agencies. Various defendants and their predecessors conveyed assets and liabilities without receiving reasonably equivalent value. *See* 28 U.S.C. § 3304(b)(1)(B). Defendant Kerr-McGee Corporation (“Kerr-McGee”) engaged in a corporate restructuring beginning in 2000 with the actual intent to hinder, delay, or defraud the United States by shifting liabilities from Kerr-McGee and certain of its subsidiaries to other Kerr-McGee subsidiaries, which eventually

became the Debtors in these cases.^{1/} 28 U.S.C. § 3304(b)(1)(A). Kerr-McGee also removed assets from Tronox and retained those assets for itself. Kerr-McGee then caused Tronox to be separated from valuable assets related to the liabilities assumed by Tronox by spinning Tronox and its subsidiaries off as an independent company. As a part of the spin off, Kerr-McGee caused Tronox to convey assets and incur obligations without receiving reasonably equivalent value. *See* 28 U.S.C. § 3304(b)(1)(B). Defendant Anadarko Petroleum Corporation (“Anadarko”) is the successor to Kerr-McGee.

2. In this action, the United States seeks: (1) a judgment against Anadarko, pursuant to Section 3306(b) of the FDCPA, 28 U.S.C. § 3306(b), in an amount equal to Kerr-McGee’s fraudulently transferred liabilities to Tronox; (2) an order, pursuant to Section 3306(a) of the FDCPA, 28 U.S.C. § 3306(a), voiding as fraudulent transfers of assets from Tronox to Kerr-McGee; and (3) an order that the assets fraudulently conveyed be applied to satisfy Debtors’ liabilities to the United States.

^{1/} The Debtors in this case include: Tronox Luxembourg S.ar.L; Tronox Incorporated; Cimarron Corporation; Southwest 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.

JURISDICTION AND VENUE

3. On January 12, 2009, Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”). Tronox continues to operate its business and manage its property as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

4. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1331, 1334(b), and 1345.

5. Pursuant to 28 U.S.C. § 157 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 10, 1984 (Ward, Acting C.J.), this Court may exercise subject matter jurisdiction.

DEFENDANTS

6. Defendant Tronox, Inc. is a Delaware corporation with its principal place of business located at One Leadership Square, Suite 300, 211 N. Robinson Avenue in Oklahoma City, Oklahoma.

7. Tronox, Inc. was created on May 17, 2005.

8. Tronox, Inc. is an “insider” within the meaning of 28 U.S.C. § 3301(5)(B) with respect to Tronox Worldwide LLC, Tronox LLC, and Kerr-McGee Corporation.

9. Defendant Tronox, LLC, formerly known as Kerr-McGee Chemical LLC, is a Delaware corporation with its principal place of business located at One

Leadership Square, Suite 300, 211 N. Robinson Avenue in Oklahoma City, Oklahoma.

10. Tronox, LLC is an “insider” within the meaning of 28 U.S.C. § 3301(5)(B) with respect to Tronox, Inc., Tronox Worldwide LLC, and Kerr-McGee Corporation.

11. Defendant Tronox Worldwide LLC, Inc., formerly known as Kerr-McGee Chemical Worldwide, LLC, is a Delaware corporation with its principal place of business located at One Leadership Square, Suite 300, 211 N. Robinson Avenue in Oklahoma City, Oklahoma.

12. Tronox Worldwide LLC is an “insider” within the meaning of 28 U.S.C. § 3301(5)(B) with respect to Tronox, Inc., Tronox LLC, and Kerr-McGee Corporation.

13. Tronox, Inc. was a wholly-owned indirect subsidiary of Defendant Kerr-McGee Corporation.

14. Tronox, Inc. was formed to hold Kerr-McGee Corporation’s chemical businesses.

15. Defendant Kerr-McGee Corporation was the indirect parent of Kerr-McGee Chemical Worldwide, LLC and Kerr-McGee Chemical, LLC.

16. Defendant Kerr-McGee Corporation is an “insider” within the meaning of 28 U.S.C. § 3301(5)(B) with respect to Tronox, Inc., Tronox LLC, and Tronox Worldwide LLC.

17. Defendant Kerr-McGee Corporation is a wholly owned subsidiary of

Defendant Anadarko Petroleum Corporation.

18. Defendant Anadarko Petroleum Corporation is a Delaware Corporation with its principal place of business at 1201 Lake Robbins Drive in The Woodlands, Texas.

19. Upon information and belief, Anadarko Petroleum Corporation is a successor in interest to Kerr-McGee Corporation.

GENERAL ALLEGATIONS

Kerr-McGee Corporate History

20. The original Kerr-McGee Corporation (“Old Kerr-McGee”) was founded in 1929 as an oil and gas exploration company.

21. Between 1945 and the 1970s, Old Kerr-McGee acquired various businesses in the oil and gas, mining, forest products, nuclear, and chemical industries.

22. Upon information and belief, by 2000, Old Kerr-McGee had discontinued many of its historic operations, including forest products, uranium exploration, mining and processing, and coal mining (“Legacy Businesses”), and had two main operating businesses: the oil and gas exploration and production business (“Oil & Gas Business”) and the chemicals business (“Chemical Business”).

23. Upon information and belief, Old Kerr-McGee remained responsible for significant residual environmental, tort, workers’ compensation, and post-employment pension, medical and other benefit liabilities related to the Legacy Businesses (“legacy liabilities”).

24. On July 6, 1999, EPA sent Old Kerr-McGee and Kerr-McGee Chemical Corporation LLC a Notice of Potential Liability for the Federal Creosote Superfund Site in Manville, New Jersey (“Manville Site”).

25. On October 18, 1999, EPA sent Old Kerr-McGee and Kerr-McGee Chemical Corporation LLC an invitation to voluntarily finance or perform the cleanup at the Manville Site. The letter informed Old Kerr-McGee and Kerr-McGee Chemical LLC that the remedial work for the first phase of the cleanup at the Manville Site was estimated as \$59,100,000.

27. EPA sent another letter to Old Kerr-McGee on October 26, 2000 informing the company that a remedy had been selected for the second phase of cleanup at the Manville Site at an estimated cost of \$28,500,000.

28. In 2001, Old Kerr-McGee began implementation of a corporate reorganization called “Project Focus.”

29. Upon information and belief, Old Kerr-McGee engaged in a series of internal mergers, stock and asset transfers, and corporate name changes that resulted in Old Kerr-McGee becoming a subsidiary of a new parent that was named “Kerr-McGee Corporation.”

30. Upon information and belief, Old Kerr-McGee retained the Legacy Businesses along with any and all liabilities of those businesses.

31. On August 1, 2001 Old Kerr-McGee changed its name to “Kerr-McGee Operating Company” (“KMOC”).

32. On August 1, 2001, an entity affiliated with KMOC named “Kerr-

McGee Holdco, Inc.,” changed its name to “Kerr-McGee Corporation,” hereinafter “Kerr-McGee.”

33. Kerr-McGee directly owned 100% of the stock of KMOC as of August 1, 2001.

34. As of August 1, 2001, Kerr-McGee indirectly owned all of KMOC’s subsidiaries, including Kerr-McGee Chemical LLC.

35. Upon information and belief, in 2002, Kerr-McGee Chemical Worldwide (“KMC Worldwide”) was a subsidiary of KMOC.

36. On December 31, 2002, KMOC merged into KMC Worldwide.

37. Upon information and belief, Kerr-McGee Chemical LLC remained a subsidiary of KMC Worldwide.

38. KMC Worldwide and Kerr-McGee Oil & Gas Corporation entered into an Assignment, Assumption, and Indemnity Agreement (“AAI Agreement”), effective as of December 31, 2002.

39. Under the AAI Agreement, KMC Worldwide was the “Assignor,” and Kerr-McGee Oil & Gas Corporation was the “Assignee.”

40. The AAI Agreement acknowledges that “as a result of various mergers, acquisitions, internal asset transfers and corporate reorganizations, Assignor may have primary, secondary or residual liabilities and obligations arising out of the oil and gas exploration, production and development business currently conducted by Assignee (the “E&P Business”).”

41. Upon information and belief, “E&P Business” refers to Old Kerr-McGee’s

historic oil and gas exploration and production businesses.

42. The stated purpose of the AAI Agreement was the Assignor's (KMC Worldwide's) desire "to assign and Assignee[s] desire to assume those liabilities and obligations that arise out of the E&P Business."

43. The AAI Agreement specifically excluded the "Assumed Liabilities." The "Assumed Liabilities" were defined in the AAI Agreement as "(i) the matters identified on Schedule 1 hereto and (ii) all obligations, liabilities and commitments of Oryx Energy Company ("Oryx") or any affiliates immediately prior to the effective time of Oryx's merger with Kerr-McGee Corporation, which later came to be known as Kerr-McGee Operating Corporation and was subsequently merged into Assignor."

44. The "Schedule 1" matters include sixty-five "non-litigation liabilities" that include remediation of various oil and gas wells and gas plants. The "Schedule 1" matters also include twenty one various "litigations" without further description.

45. The AAI Agreement further states that "E&P Business" does not include the "contract drilling business or the crude oil and associate feed stock refining and petroleum manufacturing and marketing business previously conducted by Assignor, its Affiliates, or predecessors."

46. The AAI Agreement defines the "contract drilling business" as "the contract drilling operations and activities conducted by Assignor, its Affiliates or predecessors as an offshore drilling contractor, including, without limitation, the activities of Transworld Drilling Company, Transworld Perfuracoas Maritimas

Limitada, Transworld Drilling Company (Nigeria) Limited, Transocean Drilling Company, Limited, and affiliated companies of each that performed the services of an offshore drilling contractor.”

47. The AAI Agreement defines the “refining and petroleum product manufacturing and marketing businesses” as including “the refining, manufacturing, and marketing activities and operations conducted by Assignor, its Affiliates, or predecessors, including, without limitation, Kerr-McGee Refining Corporation, and affiliated companies, Southwestern Refining Company, Inc., Triangle Refineries, Inc. and affiliated companies, Cato Oil & Grease Company and affiliated companies, Triple S, Inc. and affiliated companies, and including, without limitation, the activities and operations conducted at the facilities known as Dubach, Louisiana, and Calhoun, Louisiana processing plants.”

48. The effect of the AAI Agreement was to ensure that the liabilities associated with certain oil and gas operations remained with KMC Worldwide when the merger described below in Paragraph 49 occurred.

49. As stated above, on December 31, 2002, KMOC was merged into its subsidiary, KMC Worldwide. The effect of this merger was to leave KMC Worldwide with the liabilities of Old Kerr-McGee’s Legacy Businesses, many of which appear to have little to do with chemical operations.

50. At the conclusion of Project Focus, Kerr-McGee Oil and Gas and KMC Worldwide became subsidiaries of the newly-created parent, Kerr-McGee Corporation.

51. Upon information and belief, Kerr-McGee continued to fund and manage the liabilities related to the Legacy Businesses at the parent company level because assets that generated the cash flow needed to support the liabilities from the Legacy Businesses were transferred to other subsidiaries of Kerr-McGee. The Chemical Business lacked sufficient independent cash flow to service the liabilities of the Legacy Businesses.

52. Upon information and belief, between approximately 2002 and 2005, Kerr-McGee continued to extract cash from the Chemical Business, including selling assets of the Legacy Businesses and retaining the proceeds rather than giving the proceeds to the Chemical Business to service the legacy liabilities.

Tronox Spin Off

53. Tronox, Inc. was created on May 17, 2005, in preparation for the transfer of certain Kerr-McGee entities which included almost all of the Chemical Business.

54. In 2005, Kerr-McGee was exploring either a sale of the Chemical Business or spinning the Chemical Business off as an independent company ("Spin Off").

55. On April 15, 2005, Kerr-McGee and Kerr-McGee Chemical LLC received a letter from EPA demanding \$179 million in reimbursement costs for the cleanup at the Manville Site.

56. Prior to the Spin Off, the Chemical Business participated in Kerr-McGee's centralized cash management system and relied on Kerr-McGee to provide

necessary cash financing.

57. Kerr-McGee solicited bids for the Chemical Business during 2005.

58. Kerr-McGee required assumption of the liabilities from the Legacy Businesses as a term of any acquisition of the Chemical Business. Many potential purchasers appear to have been unwilling to assume the Legacy Business liabilities.

59. At least one company, Apollo Investment Corporation, Inc. (“Apollo”) did negotiate with Kerr-McGee for the purchase of the Chemical Business throughout 2005.

60. Apollo conducted extensive due diligence to determine the extent of the Chemical Business liabilities, including liabilities from the Legacy Businesses.

61. Upon information and belief, Kerr-McGee offered Apollo \$400 million in environmental indemnities if Apollo agreed to assume the liabilities of the Legacy Businesses.

62. Ultimately, Kerr-McGee decided to Spin Off the Chemical Business rather than sell it to Apollo.

63. “New-Co Chemical, Inc.” was incorporated on May 17, 2005.

64. New-Co Chemical, Inc. was formed in preparation for the contribution and transfer by Kerr-McGee of substantially all of its chemical businesses.

65. On September 12, 2005, New-Co Chemical, Inc. changed its name to “Tronox Incorporated.”

66. The Spin Off of Tronox, Inc. from Kerr-McGee was accomplished in two steps. First, Tronox’s Class A stock was offered at an initial public offering (“IPO”)

where approximately 17.5 million shares of Tronox Inc. Class A shares were offered to the public. The IPO was completed on November 28, 2005. Second, the remaining Class B shares, approximately 22.9 million, that were held by Kerr-McGee were distributed to Kerr-McGee stockholders in March 2006.

67. The terms of the Spin Off were governed by the Master Separation Agreement (“MSA”) between Tronox and Kerr-McGee.

68. Upon information and belief, the terms of the MSA were primarily dictated by Kerr-McGee.

69. The net proceeds from the IPO of approximately \$224.7 million were distributed to Kerr-McGee per the terms of the MSA.

70. Tronox, through its wholly owned subsidiaries, issued \$350 million in aggregate principal amount of 9.5% senior unsecured notes due in 2012 and borrowed \$200 million under a six year senior secured credit facility.

71. Pursuant to the terms of the MSA, Tronox distributed the net proceeds of the debt described in Paragraph 70 in the amount of approximately \$537.1 million to Kerr-McGee.

72. At the time of the Spin Off, Tronox had “environmental reserves” set aside for certain sites to pay for environmental remediation costs.

73. Pursuant to the terms of the MSA, Kerr-McGee agreed to reimburse Tronox for a portion of environmental remediation costs that Tronox incurred or will incur for seven years after the IPO.

74. Under the MSA, Kerr-McGee’s reimbursement obligation extends both

to sites where Tronox established a reserve, and those sites where it had not.

75. For sites where a reserve had been established, Kerr-McGee was only required to reimburse Tronox for 50% of the remediation costs incurred and paid in excess of the reserve amount after meeting a threshold amount of \$200,000.

76. For sites where no reserve had been established, 50% of the amount of remediation costs incurred and paid, minus a \$200,000 minimum threshold amount, are reimbursable to Tronox, net of any amounts recovered or estimated to be recovered from third parties.

77. Under the terms of the MSA, Kerr-McGee's aggregate reimbursement obligation to Tronox cannot exceed \$100 million, and Kerr-McGee is not obligated to reimburse Tronox for expenditures made after November 28, 2012.

78. On August 28, 2008, the United States sued Tronox, LLC for reimbursement of approximately \$283 million plus interest in costs incurred by EPA at the Manville Site in the U.S. District Court for the District of New Jersey, Civil Action No. 3:08-cv-04368.

79. Tronox filed for bankruptcy on January 12, 2009.

80. In its First Day Motions, Tronox included the Declaration of Gary Barton, then Senior Director at Alvarez & Marshall, restructuring consultants hired by Tronox in July 2008, and presently Tronox's Chief Restructuring Officer.

81. In his Declaration, Mr. Barton cites the financial burden of the liabilities from the Legacy Businesses as a contributing factor in Tronox's financial decline and ultimate insolvency.

Federal Debt Collection Procedures Act

82. 28 U.S.C. Ch. 176 — Federal Debt Collection Procedure, 28 U.S.C. § 3001, *et seq.*, includes Subchapter D — Fraudulent Transfers, at 28 U.S.C. § 3301, *et seq.*

83. 28 U.S.C. § 3304(b)(1) provides that:

a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States, whether such debt arises before or after the transfer is made or the obligation is incurred, if the debtor makes the transfer or incurs the obligation —

(A) with actual intent to hinder, delay, or defraud a creditor, or

(B) without receiving a reasonably equivalent value in exchange for the transfer or obligation if the debtor —

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that [the debtor] would incur, debts beyond [its] his ability to pay as they became due.

84. A “debtor” means, as provided by 28 U.S.C. § 3002(4), “a person who is liable for a debt or against whom there is a claim for a debt.”

85. A “debt” means, as provided by 28 U.S.C. § 3002(3) in pertinent part, “an amount that is owing to the United States on account of a . . . penalty, restitution, damages, interest . . . reimbursement, recovery of a cost incurred by the United States, or other source of indebtedness to the United States.”

86. A “person,” as provided by 28 U.S.C. § 3002(10), means a natural person, corporation, partnership, association, trust, or estate.

87. A “creditor” is defined by 28 U.S.C. § 3301(4) as a “person who has a claim.”

88. A “claim” is defined by 28 U.S.C. § 3301(3) as “a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.”

89. The remedies available to the United States against a fraudulent transfer are set forth in 28 U.S.C. § 3306, and include an avoidance of the transfer, a direct remedy against the transferred asset or any substitute assets of the transferee, or any other relief as the circumstances may require.

90. The United States has claims for environmental liabilities for various sites of environmental contamination around the country on behalf of the EPA, the Department of Interior, the U.S. Forest Service, the National Oceanic and Atmospheric Administration, and the Nuclear Regulatory Commission.

**FIRST CLAIM FOR RELIEF
(Declaratory Judgment Claim Re: Automatic Stay)**

91. Paragraphs 1 through 90 are realleged and incorporated herein.

92. Sections 363(a)(1) of the Bankruptcy Code provides that the filing of a petition in bankruptcy operates as a stay of:

(1) the commencement or continuation . . . of a judicial proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

11 U.S.C. § 362(a)(1).

93. Section 362(b)(4) of the Bankruptcy Code specifies that the automatic stay does not apply to the “commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit’s . . . police or regulatory power, including the enforcement of a judgment other than a money judgment.” 11 U.S.C. § 362(b)(4).

94. The United States’ enforcement of laws enacted to prohibit fraudulent transfers that hinder, delay or defraud the United States in its efforts to collect a debt owed to it is a classic exercise of police and regulatory authority. Likewise, the United States’ enforcement of environmental laws enacted to protect public health and safety is a classic exercise of police and regulatory power. In this action, the United States seeks to recover those assets and void those transfers that were undertaken to impede the United States’ enforcement of the environmental laws in relation to environmental cleanups at various sites around the country.

95. The United States has the statutory authority to seek recovery of costs incurred for environmental response actions pursuant to Section 107 of CERCLA, 42 U.S.C. §9607(a).

96. The United States seeks a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201(a), and a judicial order that the police and regulatory exception to the automatic stay in Section 362(b)(4) of the Bankruptcy Code, 11 U.S.C. § 362(b)(4), applies to the United States’ enforcement authority to recover any and all fraudulently transferred assets as well as any other

fraudulent transfers pursuant to the FDCPA, 28 U.S.C. § 3306.

SECOND CLAIM FOR RELIEF
(FDCPA: Fraudulent Transfers Pursuant to 28 U.S.C. § 3304(b)(1)(A))

97. Paragraphs 1 through 96 are realleged and incorporated herein by reference.

98. At the time of Defendant Kerr-McGee's corporate restructuring, known as "Project Focus," Defendant Kerr-McGee and/or its subsidiaries were liable to the United States for environmental liabilities at the sites of former and then-present operations. As a direct result of that restructuring, federal agencies, including EPA, have incurred and will continue to incur costs to address those liabilities.

99. Through the corporate restructuring, known as "Project Focus," and/or subsequent transfers among and between Defendant Kerr-McGee and its subsidiaries, Defendant Kerr-McGee isolated in the Chemical Business the liabilities for which it or its predecessors, or other non-chemical subsidiaries, or their predecessors ("legacy liabilities"), were liable.

100. Upon information and belief, Defendant Kerr-McGee sold or retained assets which had been held by the Legacy Businesses, Tronox and its subsidiaries, or their predecessors, depriving the Chemical Business of those assets.

101. Defendant Kerr-McGee spun off Tronox and its subsidiaries, which had been created to hold Kerr-McGee's Chemical Business with assets and resources that were grossly inadequate to service the legacy liabilities and the liabilities of the Chemical Business.

102. To the best of the United States' knowledge, information, and belief, based on a reasonable inquiry under the circumstances, Defendant Kerr-McGee made the transfers described in Paragraphs 28 through 76 "with actual intent to hinder, delay, or defraud a creditor," within the meaning of 28 U.S.C. § 3304(b)(1)(A).

103. The transfers described in Paragraphs 28 through 76 were "fraudulent as to a debt to the United States" pursuant to 28 U.S.C. § 3304(b)(1)(A).

104. Accordingly, the transfers at issue should be set aside and declared void to the extent necessary to satisfy Tronox's debt to the United States.

THIRD CLAIM FOR RELIEF
(FDCPA: Fraudulent Transfers Pursuant to 28 U.S.C. § 3304(b)(1)(B))

105. Paragraphs 1 through 104 are realleged and incorporated herein by reference.

106. Upon information and belief, Tronox and its subsidiaries and/or predecessors received less than a reasonably equivalent value in exchange for the obligations incurred by assuming the liabilities of the Legacy Businesses, and (i) was engaged, or was about to engage, in a business or a transaction for which Tronox's remaining assets were unreasonably small in relation to the business or transaction; or (ii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond Tronox's ability to pay as they became due.

107. Upon information and belief, Tronox and its subsidiaries and/or predecessors received less than a reasonably equivalent value in exchange for the

obligations incurred by assuming the liabilities of the Chemical Business, and (i) was engaged, or was about to engage, in a business or a transaction for which Tronox's remaining assets were unreasonably small in relation to the business or transaction; or (ii) intended to incur, or believed or reasonably should have believed that it would incur, debts beyond Tronox's ability to pay as they became due.

108. The transfers described in Paragraphs 28 through 76 were "fraudulent as to a debt to the United States" pursuant to 28 U.S.C. § 3304(b)(1)(B) because such transfers required Tronox and its subsidiaries, and their predecessors to incur liabilities and debts that left Tronox and its subsidiaries unable to pay their debts to the United States. | | | | |

109. Accordingly, the transfers at issue should be set aside and declared void to the extent necessary to satisfy Debtors' debt to the United States.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

1. Enter a judgment declaring that the filing of this complaint does not violate 11 U.S.C. § 363(a)(1);
2. Enter a judgment declaring that the transfers described in Paragraphs 28 to 76 were fraudulent as to debts to the United States pursuant to 28 U.S.C. §§ 3304(b)(1)(A) and/or 3304(b)(1)(B);
3. Enter a judgment voiding the transfers described in Paragraphs 28 to 76 to the extent necessary to satisfy any debt to the United States pursuant to 28

U.S.C. § 3306(a)(1);

4. Enter a judgment granting any other remedies under the FDCPA, including, *inter alia*, attachment, receivership, and/or sequestration of any fraudulently conveyed property pursuant to 28 U.S.C. § 3306(a)(2); and

5. Grant any other relief the circumstances may require, pursuant to 28 U.S.C. § 3306(a)(3), or as the Court deems appropriate.

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Dated: New York, New York
May 21, 2009

Respectfully submitted,

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