

Hearing Date and Time: June 13, 2019 at 10:00 a.m. (ET)  
Objection Date: June 6, 2019 at 4:00 p.m. (ET)  
Re: Docket No. 1120

**McELROY, DEUTSCH, MULVANEY  
& CARPENTER, LLP**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

MIAMI METALS I, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-13359 (SHL)

(Jointly Administered)

**MIDWEST REFINERIES, LLC'S RESPONSE TO THE DEBTORS'  
FIRST OMNIBUS OBJECTION TO CLAIMS ASSERTED PURSUANT TO  
11 U.S.C. §503(b)(9) (INCONSISTENT WITH DEBTORS' BOOKS AND RECORDS)**

Midwest Refineries, LLC ("Midwest"), by its counsel, states its Response to the *Debtors'*  
*First Omnibus Objection to Claims Asserted Pursuant to 11 U.S.C. §503(b)(9) (Inconsistent with  
Debtors' Books and Records)* as follows:

1. The Debtors filed their chapter 11 cases on November 2, 2018 (the "Petition Date"). Certain additional Debtors filed their chapter 11 cases on November 21, 2018. Pursuant

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Miami Metals I, Inc. (f/k/a Republic Metals Refining Corporation), 15 West 47<sup>th</sup> Street, Suites 206 and 209, New York, NY 10036 (3194); Miami Metals II, Inc. (f/k/a Republic Metals Corporation), 12900 NW 38<sup>th</sup> Avenue, Miami, FL 33054 (4378); Miami Metals III LLC (f/k/a Republic Carbon Company, LLC), 5295 Northwest 163<sup>rd</sup> Street, Miami Gardens, FL 33014 (5833); Miami Metals IV LLC (f/k/a J & L Republic LLC, 12900 NW 38<sup>th</sup> Avenue, Miami, FL 33054 (7604); Miami Metals V LLC (f/k/a R & R Metals, LLC), 12900 NW 38<sup>th</sup> Avenue, Miami FL 33054 (7848); Miami Metals VI (f/k/a RMC Diamonds, LLC), 12900 NW 38<sup>th</sup> Avenue, Miami, FL 33054 (1507); Miami Metals VII (f/k/a RMC2, LLC), 12900 NW 38<sup>th</sup> Avenue, Miami, FL 33054 (4696); Miami Metals VIII (f/k/a Republic High Tech Metals, LLC), 13001 NW 38<sup>th</sup> Avenue, Miami, FL 33054 (6102); 12900 NW 38<sup>th</sup> Avenue, Miami, FL 33054 (1507); Republic Metals Trading (Shanghai) Co., Ltd., 276 Ningbo Road, Huangpu District, Shanghai, P.R. 200001 China (1639); and Republic Trans Mexico Metals, S.R.L., Francisco I. Madero No. 55 Piso 5, Local 409, Centro Joyero Edificio Central, Delegacion Cuauhtemoc, Mexico DF 6000 (2942).

to the *Order Directing Joint Administration of Related Chapter 11 Cases* [Doc. No. 44], these cases are being jointly administered.

2. Pursuant to 11 U.S.C. §§1107 and 1108, the Debtors continue to operate their businesses as debtors-in-possession. No trustee or examiner has been appointed in these cases.

3. On May 23, 2019, the Debtors filed their *First Omnibus Objection to Claims Asserted Pursuant to 11 U.S.C. §503(b)(9) (Inconsistent with Debtors' Books and Records)* (the "Objection") [Docket No. 1120].

4. The Objection requests that this Court enter an order disallowing and expunging certain 503(b)(9) Claims.<sup>2</sup> The basis for the objection is that the 503(b)(9) Claims are inconsistent with the Debtors' books and records.

### **Background**

5. As this Court is aware, the dominant issue throughout these proceedings is the ownership of certain precious metal ("Disputed Metal") and the proceeds thereof. Ownership of the Disputed Metal is being addressed pursuant to certain procedures established by the *Order Approving Uniform Procedures for Resolution of Ownership Disputes* [Docket No. 395] and *First Amended Order Approving Uniform Procedures for Resolution of Ownership Disputes* [Docket No. 913] (collectively, the "Ownership Dispute Order").

6. The procedures set forth in the Ownership Dispute Order are currently ongoing. The Debtors, the Lenders, and certain Customers have fully briefed issues relating to whether a certain sub-set of Customers' ownership claims in the Disputed Metal may be summarily disposed of. A hearing is scheduled for June 10, 2019. In addition, discovery relating to the Debtors', Lenders', and Customers' claims is ongoing, with the Debtors providing documents on a rolling basis, and depositions scheduled throughout the month of June 2019.

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<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Objection.

7. The Ownership Dispute Procedures required that Customers file Customer Statements, which were to provide, among other things, a description of all the Customers' claims and interests with respect to the Disputed Metal, including claims in the alternative arising under Sections 503(b)(9) and 502 of the Bankruptcy Code. The Ownership Dispute Procedures made clear that such alternative claims are non-binding, subject to modification, and may be supplemented.

8. In accordance with the Ownership Dispute Order, Midwest filed its *Customer Statement* on January 18, 2019 (the "Customer Statement") [Docket No. 449]. The Customer Statement set forth Midwest's position with respect to its ownership of a total of 240,481.038 t oz (troy ounces) of silver (the "Silver") that was held in a pool account.

9. The Customer Statement not only asserted ownership in the Silver, but asserted a 503(b)(9) Claim and Reclamation Claim based on Midwest's attempt to place a "sell order" with the Debtors in late October 2018. As set forth in the Customer Statement, the 503(b)(9) and Reclamation Claims were asserted solely in the alternative to Midwest's ownership claim in the Silver. Midwest's position has always been that it owns the Silver, and that a sale of that Silver never occurred. Indeed, the Customer Statement states that at the time that Midwest requested that its pool account be liquidated (late October 2018), the Debtors responded that no sale requests would be processed for a period of time, which caused Midwest to immediately rescind the sale order and demand an immediate return of all of the Silver in the pool account. See Customer Statement, Docket No. 449, pg. 2 of 15; see also paragraphs 7 through 11 of the *Declaration of Candice Frenkel in Support of Midwest Refineries, LLC's Response to the Debtors' First Omnibus Objection to Claims Asserted Pursuant to 11 U.S.C. § 503(b)(9)*

(*Inconsistent with Debtors' Books and Records*) ("Frenkel Declaration"), attached hereto as **Exhibit 1**.

10. In furtherance (in part) of maintaining its alternative arguments in these proceedings, and to comply with approaching proof of claim deadlines, Midwest filed 503(b)(9) proofs of claims against Debtor Republic Metals Corporation n/k/a Miami Metals II, Inc. ("RMC") and Debtor RMC2 LLC, n/k/a Miami Metals VII, LLC ("RMC2").

### Response

11. Midwest's 503(b)(9) Claim ("Claim No. 206") is amongst the 503(b)(9) Claims included in the Objection. Claim No. 206 is in the amount of \$3,594,519.00, and filed against RMC.

12. Claim No. 206 is broken down as follows:

a. \$3,551,904.93, which was the apparent purchase price of the Silver held in Midwest's pool account pursuant to Debtor's Purchase Invoice # MAJ3834, dated November 2, 2018, a copy of which is attached to Claim No. 206.<sup>3</sup>

b. \$42,613.87, which represents the Precious Metals sold to Debtor pursuant to various Reports and Settlement Statements which are attached to Claim No. 206.

13. The Debtor's *Notice of Filing Corrected Schedules to Correct Claim Numbers* [Docket No. 1135] states that Claim No. 206 was asserted against RMC2. However, as stated above, Claim No. 206 was asserted against RMC, not RMC2. The Debtors have confused the individual Debtor against whom Claim No. 206 is asserted. Because Claim No. 206 was asserted against RMC, the operative petition date for purposes of a Section 503(b)(9) Claim is the First Petition Date.

14. Claim No. 206 was filed against RMC based on the fact that (i) it was never clear

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<sup>3</sup> Midwest only learned that the Debtors had generated an invoice relating to the rescinded sale when the Debtors began producing internal documents pursuant to the Ownership Dispute Procedures.

to Midwest which Debtor it was doing business with, RMC or RMC2<sup>4</sup>, and (ii) amounts due to Midwest were listed on RMC's bankruptcy schedules.

15. In any event, the \$3,551,904.93 portion of Claim No. 206 is with respect to the Silver contained in the pool account and was asserted as a 503(b)(9) Claim solely in the alternative to Midwest's claim that it owns the Silver up to and through the petition dates. To the extent that this Court determines that the Customers, including Midwest, do not own the Disputed Metals, in accordance with the procedures set forth in the Ownership Dispute Order, Midwest maintains that the Silver was delivered to the Debtors within 20 days of the petition dates and is therefore entitled to treatment as a 503(b)(9) Claim. However, if the Debtors stipulate that Midwest owns the Silver, then Midwest will agree to withdraw the \$3,551,904.93 portion of Claim No. 206.

16. With respect to the remaining \$42,613.87 of Claim No. 206, Midwest does not dispute that those metals were sold to the Debtors, and asserts that such metals were delivered to the Debtors within 20 days of the First Petition Date. The documents attached to Claim No. 206 are clear in establishing this fact despite the Debtors' claim that their books and records might indicate otherwise. Therefore, with respect to the \$42,613.87 portion of Claim No. 206, Midwest asserts that it is entitled to a 503(b)(9) Claim in that amount and will not, and does not, agree to its disallowance and expungement.

WHEREFORE, based on the foregoing, Midwest Refineries, LLC respectfully requests that this Court deny the *Debtors' First Omnibus Objection to Claims Asserted Pursuant to 11 U.S.C. §503(b)(9) (Inconsistent with Debtors' Books and Records)* with respect to Claim No.

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<sup>4</sup> See Frenkel Declaration, paragraph 5.

206, and grant such other and further relief as is deemed necessary.

Dated: June 6, 2019

Respectfully submitted,

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