

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

Case No. 09-11233

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In the Matter of:

CHEMTURA CORPORATION, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court  
One Bowling Green  
New York, New York

May 5, 2009

10:25 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

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Hearing re: Debtors' Motion to Reject Toll Manufacturing and Sales Agreement By and Between Great Lakes Chemical Corporation and Spartech Polycom, Inc.

Hearing re: Motion by Bandag, Incorporated k/n/a Bridgestone Bandag, LLC for Relief from the Automatic Stay to Permit Completion of an Already-Tried Arbitration Proceeding

Hearing re: Debtors' Motion for Entry of an Order Establishing Notification of Hearing Procedures for Transfers of Certain Common Stock and for Related Relief

Hearing re: Debtors' Application for Entry of Interim and Final Orders Authorizing the Employment and Retention of Lazard Frères & Co. LLC as Investment Banker for the Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date

Hearing re: Application of the Debtors for an Order Authorizing the Employment and Retention of The Genetelli Consulting Group as Tax Services Provider for the Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date

Hearing re: Application of the Debtors for an Order Authorizing the Employment and Retention of Great American

1 Group Machinery & Equipment, LLC as Appraisers for the Debtors  
2 and Debtors in Possession Nunc Pro Tunc to the Petition Date

3  
4 Hearing re: Debtors' Application for Entry an Order  
5 Authorizing the Employment and Retention of Allen & Overy LLP  
6 as Special Litigation Counsel for the Debtors and Debtors in  
7 Possession Nunc Pro Tunc to the Petition Date

8  
9 Hearing re: Debtors' Application for Entry of an Order  
10 Authorizing the Employment and Retention of DLA Piper LLP (US)  
11 as Special Counsel for the Debtors and Debtors in Possession  
12 Nunc Pro Tunc to the Petition Date

13  
14 Hearing re: Debtors' Application for Entry of an Order  
15 Authorizing the Employment and Retention of Katten Muchin  
16 Rosenman LLP as Special Counsel for the Debtors and Debtors in  
17 Possession Nunc Pro Tunc to the Petition Date

18  
19 Hearing re: Debtors' Application for Entry of an Order  
20 Authorizing the Employment and Retention of Duane Morris LLP to  
21 Provide Conflicts and Other Counsel to the Debtors, Nunc Pro  
22 Tunc to April 13, 2009

23  
24 Transcribed by: Hana Copperman

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

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BY: PETER SIDDIQUI, ESQ. (BY TELEPHONE)

1 THE COURT: Chemtura. Of course. I think I know  
2 most of you, but what I would like people to do is when you  
3 first speak identify yourselves on the record, and after we're  
4 done, if you want to be noted as having appeared even though  
5 you didn't speak, to contact the ECRO reporter. Will that work  
6 for you?

7 THE REPORTER: And to leave their cards.

8 THE COURT: Sure. And to provide your cards. I'm  
9 not as good on those things as I am on trying to decide issues.  
10 Ms. Labovitz, are you going to take the lead today?

11 MS. LABOVITZ: I'll do it. I'll come to the podium,  
12 Judge. Judge, I appreciate you're letting me appear before you  
13 three times in seven days. We have an uncontested docket this  
14 morning in Chemtura, so hopefully things can move relatively  
15 quickly.

16 Your Honor, the first item on our agenda is a motion  
17 to reject a contract with Spartech Polycom. This is a  
18 rejection of a toll manufacturing and sales agreement related  
19 to the debtors' antioxidants business. It's a contract between  
20 Great Lakes Chemical Corporation and Spartech Polycom. The  
21 contract has a fairly contentious history among the parties.  
22 There is litigation associated with it in the context of that  
23 relationship and certain allegations of failure of delivery of  
24 product, etcetera. Judge, the debtors have determined that  
25 keeping the contract in place is not beneficial to their

1 business, that they would be better off rejecting the contract  
2 and contracting for a supply of goods elsewhere. The motion,  
3 Judge, is consensual, based on the debtors' inclusion of a  
4 reservation of rights in the order noting that Spartech Polycom  
5 does not agree with all of the factual contentions in the  
6 motion. In addition, Judge, the debtors have conferred with  
7 the creditors' committee and have responded to certain  
8 questions regarding the business judgment underlying the  
9 rejection. With that, Judge, I believe there are no objections  
10 to the requested relief.

11 THE COURT: All right. Let me just pause for a  
12 second, Ms. Labovitz, to make sure that I understand what is  
13 agreed on and what is not.

14 MS. LABOVITZ: Yes.

15 THE COURT: Things you've said they don't agree on  
16 and, presumably, want a reservation of rights or they want the  
17 record to note that they don't agree with them, but on the  
18 underlying entitlement to the rejection they agree that you're  
19 entitled to it.

20 MS. LABOVITZ: They do, Your Honor. And there has  
21 been language agreed between the parties and that will be  
22 included in the order that we submit to chambers.

23 THE COURT: Sure. Okay. That sounds fine to me. So  
24 you'll make it happen, and go onto your next.

25 MS. LABOVITZ: Thank you, Judge. The next motion is

1 not the debtors' motion. It's a motion by Bandag, Inc. for  
2 relief from the stay.

3 THE COURT: Come up, please. Do you want to be heard  
4 at the main or --

5 MS. LABOVITZ: I --

6 THE COURT: Who's going to --

7 MS. LABOVITZ: I'm happy to present it, Judge.

8 THE COURT: -- present it?

9 MS. LABOVITZ: It's okay.

10 MR. BRENNER: Your Honor, we've come to an --

11 THE COURT: Please.

12 MR. BRENNER: -- agreement on certain --

13 THE COURT: Just remember we don't have a court  
14 reporter anymore. You've got to come to a microphone and tell  
15 us who you are or tell whoever is going to make a transcript  
16 who you are.

17 MR. BRENNER: Lawrence Brenner of Crowell & Moring  
18 for Bandag, Inc.

19 THE COURT: Yes, sir.

20 THE COURT: Well, Bandag has moved to list the  
21 automatic stay in this case so as to liquidate its claim and  
22 file a proof of claim. The parties have been in discussion and  
23 have come to a stipulation which will be submitted to this  
24 Court later today on that.

25 THE COURT: Sure. Okay. Ms. Labovitz, do you want

1 to supplement what Mr. Brenner told me in any way?

2 MS. LABOVITZ: Very briefly, Judge. This motion  
3 relates to previous antitrust violations of Chemtura that date  
4 back to the period before 2001. I mention this because this  
5 may not be the only matter that ultimately comes before the  
6 Court related to those past antitrust violations. But this is  
7 an isolated litigation related to a private right of action  
8 under the antitrust laws. Some plaintiffs have opted out of a  
9 federal class action, including Bandag.

10 The debtors initially did not consent to the request  
11 for relief from the automatic stay to allow an arbitration to  
12 go forward. The request was made on the first day of these  
13 cases. We thought it prudent to wait for a creditors'  
14 committee to be formed and to analyze the relief requested.

15 But, ultimately, in discussions with the creditors'  
16 committee and with Bandag, the debtors, after thinking very  
17 carefully about the cost associated with allowing litigation to  
18 proceed outside the bankruptcy court, decided that on these  
19 specific maps, Judge, stay relief is appropriate. And I'll lay  
20 out the four reasons why we believe the stay relief is  
21 appropriate. First, there's a prepetition arbitration  
22 agreement. Second, that this case is literally at the very end  
23 of the resolution process, and arbitration had been completed,  
24 and the parties were two weeks into a thirty day post-  
25 arbitration briefing period when these cases were filed. The

1 debtors looked at that and thought everyone might be prejudiced  
2 if the post-arbitration submissions were not completed now.

3 THE COURT: In other words, all the evidence was in  
4 and it was posttrial briefs or the arbitration equivalent?

5 MS. LABOVITZ: Exactly. The debtors believe, for  
6 various reasons, that this case is unlikely to settle at any  
7 time, and the dollar amounts involved are substantial enough  
8 that it would be helpful to have them resolved pre-emergence.  
9 So for those reasons, and, Judge, I wanted to lay those out,  
10 because we do view this as a very isolated instance, for those  
11 reasons the debtors are comfortable with consenting to the  
12 relief from the automatic stay.

13 One other point I'd like to note in the consensual  
14 order, Judge, just to continue our practice of laying things  
15 before you when we think there's something a little unusual,  
16 the order does provide for the payment of 26,000 dollars that  
17 is outstanding to the arbitrators, to allow the arbitration to  
18 proceed. Arguably, that is a prepetition obligation, but the  
19 order does permit its payment.

20 THE COURT: Okay. Creditors' committee, want to  
21 weigh in on this in any way?

22 MS. LAHAIE: Good morning, Your Honor. Meredith --

23 THE COURT: I'm sorry. I was looking in the wrong  
24 direction. Forgive me.

25 MS. LAHAIE: We switched sides. Good morning, Your

1 Honor. Meredith Lahaie, Akin Gump, proposed counsel to the  
2 official committee of unsecured creditors. Your Honor, based  
3 on the limited nature of the relief sought in the lift stay  
4 motion and given the fact that the committee's comments to the  
5 proposed stipulation were taken by both the debtors and Bandag,  
6 the committee has no objection to lifting the stay for this  
7 limited purpose.

8 THE COURT: Fair enough. Okay. It's approved.

9 MS. LABOVITZ: Thank you, Judge. The next item on  
10 the agenda is final approval of the debtors' motion to  
11 establish procedures for stock transfers to protect their NOLs.  
12 Judge, by the terms of the interim order, which was entered  
13 about a month ago, that order actually became final before this  
14 hearing because no objections were received by the objection  
15 deadline. However, to avoid any confusion caused by having an  
16 interim order appear on the docket and no final order, we'd  
17 like, if the Court is amenable, to submit an order entitled  
18 final order after this hearing.

19 THE COURT: Okay. Not a problem.

20 MS. LABOVITZ: Thank you, Judge. The remaining items  
21 on the agenda are all professional retentions. I will move  
22 quickly through them, but I am happy to answer any questions  
23 that the Court has. I'll note at the outset that the U.S.  
24 trustee has vetted all of these retentions. Certain additional  
25 disclosures have been made at the U.S. trustee's request, and I

1 believe the forms of the order and the terms of the retention  
2 for each of these professionals is acceptable to the United  
3 States trustee.

4           The first retention is that of Lazard Frères. Lazard  
5 is the company's investment banker and was particularly  
6 critical, Judge, in reaching the agreement on the financing  
7 that we presented to the Court last week. Judge, this is an  
8 interim retention. It will become final after notice to all  
9 creditors of the terms of Lazard's proposed success fee. And  
10 on that note, Judge, we would ask that the Court set a hearing  
11 date for a final hearing on the proposed retention so that we  
12 may include that in the notice that goes to creditors.

13           THE COURT: Okay. Now is a good time, Ms. Golden.

14           MS. GOLDEN: Thank you, Your Honor. Susan Golden on  
15 behalf of the United States trustee. That is correct. Our  
16 office has vetted all of the retention applications that are in  
17 the agenda for today. We are satisfied with the additional  
18 disclosures and the amended order that will be submitted by  
19 Lazard Frères.

20           THE COURT: Okay. And success fee is going to be  
21 revisited at the time of the final hearing?

22           MS. LABOVITZ: At the time of the final hearing, yes,  
23 Judge.

24           THE COURT: Okay.

25           MS. LABOVITZ: And then their request at that time

1 would be that it is approved under Section 328 of the  
2 Bankruptcy Code and not subject to further review after that.

3 THE COURT: Well, recent Second Circuit authority  
4 makes it useful to do a full stop, look and listen at the  
5 final.

6 MS. LABOVITZ: Yes. I understand, Judge.

7 THE COURT: Fair enough. Okay. That's approved.

8 MS. LABOVITZ: Thank you, Your Honor, and should we  
9 coordinate with chambers regarding a hearing date?

10 THE COURT: Yes.

11 MS. LABOVITZ: Thank you, Judge. The next item on  
12 the agenda is the retention of The Genetelli Consulting Group.  
13 Genetelli is an ordinary course tax provider that provides  
14 state and local tax services to the debtors. They represented  
15 the debtors long prepetition and will continue to do so post-  
16 petition. I believe there were no questions or objections  
17 regarding this retention.

18 THE COURT: Okay. It's approved.

19 MS. LABOVITZ: Next on the list, Judge, is the  
20 application to retain Great American Group Machinery &  
21 Equipment as appraisers for the debtors. Judge, Great American  
22 will be retained as appraisers in connection with post-closing  
23 requirements for the debtors' financing and valuation that  
24 ultimately will underlie some of the planned discussions in  
25 these cases. The only unusual thing about this retention,

1 Judge, is that Great American has requested that they be  
2 permitted to file an interim and final fee application at the  
3 time that their appraisals are concluded. They expect that to  
4 be concluded relatively early in the cases.

5 THE COURT: Well, the interim is no problem. For  
6 lawyers, accountants and financial advisors I've historically  
7 been reluctant to have expedited finals, but your point  
8 implicitly is that these people are doing their work so early,  
9 and it's so unrelated to the need to incentivize them or to  
10 make them await the success of a case that it just isn't fair?

11 MS. LABOVITZ: That's exactly correct, Judge. They  
12 will be done long before the rest of us even get into the meat  
13 of the cases.

14 THE COURT: Okay. And that understanding was fully  
15 vetted with people when there were no objections?

16 MS. LABOVITZ: Yes, Your Honor.

17 THE COURT: Okay. It's all right with me.

18 MS. LABOVITZ: Thank you, Judge. The next, the  
19 remaining four retention applications are for law firms. I  
20 don't believe there are any unusual terms for these so I'll go  
21 through them as a group. The first is to retain Allen & Overy  
22 LLP as special litigation counsel. Judge, Allen & Overy  
23 represents the company in connection with certain pending  
24 antitrust actions in Europe. The next is to retain DLA Piper  
25 as special counsel. DLA is responsible for litigation and

1 claims resolution related to certain product liability claims,  
2 environmental claims. They also perform labor work for the  
3 debtors, trademark work and franchising work. The next is for  
4 the retention of Katten Muchin Rosenman LLP. Judge, Katten  
5 Muchin is the debtors' historic IP counsel. And, finally,  
6 Judge, the debtors seek to retain Duane Morris LLP as conflict  
7 counsel in connection with these Chapter 11 cases. And I'll  
8 pause for one moment here to say that on the first day of these  
9 cases we filed a motion to retain WolfBlock. WolfBlock  
10 subsequently announced that they would dissolve as a firm, and  
11 the very helpful advice of Mr. Gerard Catalanello has now  
12 transferred itself to Duane Morris and the debtors seek to  
13 retain him there.

14 THE COURT: Yes. Mr. Catalanello, I apologize for  
15 looking your way before. It shows a different level of  
16 preparation on disputed matters and undisputed matters.  
17 Welcome to the case. And if I thought you were at Aiken Gump I  
18 guess it wouldn't have been the end of the world. Fair enough.  
19 They're all approved, Ms. Labovitz. I do think it's important  
20 that the debtor have capable conflicts counsel in this case and  
21 that on close matters you hand off to conflicts counsel rather  
22 than doing them yourself. Mr. Catalanello and his colleagues  
23 more than meet my needs in that regard.

24 MS. LABOVITZ: And ours, Judge. Thank you. They've  
25 already been very helpful.

1 MS. LABOVITZ: Okay.

2 MR. CATALANELLO: Thank you, Your Honor.

3 THE COURT: Thank you. To what extent do we have  
4 anything else, Ms. Labovitz?

5 MS. LABOVITZ: That's all I've got today.

6 THE COURT: Okay. Thank you, folks. Have a good  
7 day. We're adjourned.

8 MS. LABOVITZ: Thank you, Judge.

9 MS. LAHAIE: Thank you, Judge.

10 (Proceedings concluded at 10:39 a.m.)

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RULINGS

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Motion to Reject Toll

Manufacturing and Sales

Agreement By and Between

Great Lakes Chemical

Corporation and Spartech

Polycom, Inc.

Granting of Motion by                      13              8

Bandag for Relief from

the Automatic Stay to

Permit Completion of an

Already-Tried

Arbitration Proceeding

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Approval of Retention      17      19  
Orders for Allen & Overy  
LLP, DLA Piper LLP (US),  
Katten Muchin Rosenman  
LLP and Duane Morris LLP

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C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a true and accurate record of the proceedings.

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HANA COPPERMAN

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Date: May 6, 2009