

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

U.S. Bankruptcy Court
One Bowling Green
New York, New York

June 23, 2009
9:49 a.m.

B E F O R E:

HON. ROBERT E. GERBER
U.S. BANKRUPTCY JUDGE

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HEARING re Chemtura Corporation's Motion for a Temporary Restraining Order and Preliminary Injunction Staying the Diacetyl Litigation and Future Diacetyl Actions Against Chemtura Canada Corporation and Citrus & Allied Essences, Ltd.

HEARING re Motion by Irma Ortiz, Victor Mancilla and Ricardo Corona for Relief from the Automatic Stay to Allow the Continued Pursuit of an Insured Personal Injury Action

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

HEARING re Debtors' Motion for an Order Approving Entry into a Consulting Agreement with Biggins Lacy Shapiro & Company, LLC

HEARING re Debtors' Motion to Reject Certain Unexpired Lease of Non-Residential Real Property Located in Conyers, Georgia Pursuant to Section 365(a) of the Bankruptcy Code

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HEARING re Application of the Official Committee of Unsecured
Creditors of Chemtura Corporation, et al. to Retain and Employ
Houlihan Lokey Howard & Zukin Capital, Inc. as Financial
Advisor to the Official Committee of Unsecured Creditors Nunc
Pro Tunc to March 30, 2009

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

1
2 THE COURT: Please be seated. All right. We're here
3 on Chemtura. First, I want to deal with the matters other than
4 the Diacetyl actions. And then I'll take appearances on the
5 TRO and motions for relief from the stay. And I'll want you to
6 sit down while I have some preliminary comments.

7 I want to take the preliminary matters first.

8 MR. BRUENS: Thank you, Your Honor. Craig Bruens from
9 Kirkland & Ellis on behalf of the debtors. Your Honor, we
10 filed the agenda last night and we have four uncontested
11 matters on the agenda. We also, in working with chambers and
12 understanding the Court's schedule, we have ten adjourned
13 matters on the agenda. And we've been trying to reach
14 consensual resolution on those adjourned matters. Several of
15 the adjourned matters, we'll also be handing up stipulations
16 after the hearing to reflect the adjournment. With respect to
17 one of the adjourned matters -- actually, two -- VanDeMark
18 motion to compel and the debtor's motion to hold VanDeMark in
19 civil contempt, we actually filed on presentment last Friday a
20 stipulation that will result in the withdrawal of both of those
21 motions. And that's on for presentment tomorrow. So with
22 regard to the adjourned matters, we're hoping to arrive at
23 consensual by the next hearing. Obviously, there's no
24 guarantees but we'll continue to try to reach a consensual
25 resolution on those matters.

1 For the uncontested matters, Your Honor, the first
2 uncontested matter is the debtor's application to retain Lazard
3 as their investment banker during these cases. Your Honor,
4 this application was granted on an interim basis by order dated
5 May 15th in accordance with protocol in the Southern District
6 of New York, we served the order and the notice on all
7 creditors of the debtors. No objections have been received and
8 we would request entry of a final order approving Lazard's
9 retention.

10 THE COURT: Yes. Granted.

11 MR. BRUENS: Thank you, Your Honor. And I assume
12 we'll hand up orders to chambers directly after the hearing.

13 THE COURT: Not hand them up.

14 MR. BRUENS: Or turn them over to --

15 THE COURT: Drop them off across the hall.

16 MR. BRUENS: Across the hall. Yes, Your Honor. Your
17 Honor, the second uncontested matter is the motion to approve
18 the consulting agreement with Biggins Lacy Shapiro & Company,
19 LLC. Your Honor, as set forth in the motion, BLC, as we refer
20 to them, is a consultant specializing in site selection and
21 incentive advisory services. The debtors are engaging this
22 consultant in relation to their review of their headquarters
23 lease and the decision on whether to assume or reject that
24 lease. The services are detailed in the motion. Fees are on
25 an hourly basis and were negotiated beforehand. There's a

1 maximum amount of fees which was negotiated beforehand with the
2 creditors' committee and the secured lenders. The debtors
3 believe that BLS' services will be beneficial in helping them
4 make their assumption and rejection decisions. And once again,
5 no objections were filed and we would request entry of an order
6 approving that motion.

7 THE COURT: Granted.

8 MR. BRUENS: Thank you, Your Honor. The last of the
9 debtors' uncontested matters is a motion to reject a warehouse
10 lease in Conyers, Georgia. That is referred to as the Vantage
11 II Warehouse Lease. It was previously used to house obsolete
12 goods and raw materials of the debtors. The debtors have
13 sufficient space elsewhere and are no longer in need of that
14 warehouse space. The lease runs through 2014 and the debtors
15 anticipate saving approximately 2.3 in administrative rent
16 during the term.

17 Again, no objections have been filed and we would
18 request entry of an order approving that rejection.

19 THE COURT: Granted.

20 MR. BRUENS: Thank you, Your Honor. The last of the
21 uncontested matters is the committee's application to retain
22 Houlihan which I will let Mr. Dublin address.

23 THE COURT: Sure. Mr. Dublin?

24 MR. BRUENS: Before I do so, I wonder if I could just
25 preview one other thing with the Court?

1 THE COURT: Yes.

2 MR. BRUENS: In addition to the adjourned matters, the
3 debtors are in the process of finalizing an amendment to the
4 debtor-in-possession financing agreement. And we realize that
5 our next scheduled hearing is July 28. And we're recognizing
6 that the Court is under incredible case load. We have a
7 situation where there's going to be a pressing need, though,
8 for the amendment because one of the things that the amendment
9 is designed to address is an EBITDA covenant in the DIP
10 agreement which, if not adjusted to reflect changes in exchange
11 rate fluctuations, there's the possibility that with the filing
12 of the next monthly operating report in July, there may be a
13 default under the DIP.

14 THE COURT: You'd fall out of covenant compliance by
15 reason of exchange rate fluctuations?

16 MR. BRUENS: It would affect the way EBITDA is
17 calculated and we would fall out of covenant compliance. And
18 there's the possibility of default. So we're negotiating an
19 amendment to address that situation as well as some other
20 changes to the DIP agreement. We're hoping that we can work
21 with chambers to schedule a hearing before July 15th which is
22 when we'd anticipate filing the next monthly operating report.
23 And we're trying to -- we'd love for the amendment to be
24 consensual in which case we'd only need a fifteen minute
25 hearing and we'd be more than happy to squeeze in to Your

1 Honor's calendar whenever you can make available time for us.
2 At this point, we don't know if the amendment is consensual and
3 we're awaiting feedback from the committee and they may have
4 some comments on the amendment as well.

5 I just want to preview that for Your Honor. We
6 anticipate getting lender approval -- or we hope to get lender
7 approval within the next few days and then we'll contact
8 chambers immediately.

9 THE COURT: When do you need to get it resolved by?

10 MR. BRUENS: By July 15th.

11 THE COURT: If it's consensual then it will be no
12 problem. If it isn't consensual, I'm not going to allow any
13 case on my watch to die for lack of failure of attention. But
14 you guys may have to be in here at 7:00 in the morning.

15 MR. BRUENS: Your Honor, our schedule -- we will work
16 with your schedule so that would be fine with us. And,
17 obviously, we'll try to make it consensual.

18 THE COURT: That would be wise. All right.

19 MR. BRUENS: Okay. Thank you, Your Honor.

20 THE COURT: Mr. Dublin?

21 MR. DUBLIN: Good morning, Your Honor. Phil Dublin,
22 Akin Gump on behalf of the committee. Just quickly before I
23 get to the Houlihan application which, like the others that you
24 heard this morning, is not contested -- quickly on the DIP
25 amendment, we received a draft of it on Friday. We are going

1 through it very carefully. It is a comprehensive amendment.
2 It takes into account a number of the issues that were
3 discussed at the final DIP hearing. The one issue that has the
4 committee's focus right now is a contemplated capital
5 contribution to a foreign subsidiary. And if you recall, Your
6 Honor, part of the collateral for the pre-petition lenders are
7 liens on the first tier subsidiaries of Chemtura Corporation
8 including foreign --

9 THE COURT: Liens of their stock --

10 MR. DUBLIN: Yes, sir.

11 THE COURT: -- as best I recall.

12 MR. DUBLIN: Yes. Liens on their stock including two-
13 thirds of the foreign subs and we were analyzing what a capital
14 contribution to a foreign sub would result in impact with
15 respect to the claims and liens of the banks.

16 THE COURT: I understand the issue.

17 MR. DUBLIN: Okay. Again -- the next item on the
18 agenda is the committee's application to retain Houlihan Lokey
19 as its financial advisor nunc pro tunc to March 30th. We filed
20 the application on May 18th. Before filing the application, we
21 provided a draft to the Office of the United States Trustee as
22 well as the debtors to address any concerns they may have.

23 Subsequent to the filing, we did receive some comments
24 to the order from the Office of the United States Trustee. We
25 have worked those out so there are no objections to the

1 application.

2 The fee structure contemplated by the application
3 which is being sought under Section 328 and 1103 of the
4 Bankruptcy Code contemplates 250,000 dollars a month for the
5 first three months and 25,000 dollars a month thereafter.
6 There is a deferred fee of three millions payable upon the
7 effective date of a plan in the Chapter 11 cases with after ten
8 months fifty percent of the monthly fee being credited against
9 the deferred fee.

10 As standard in this jurisdiction --

11 THE COURT: Pause, please, Mr. Dublin. We're making
12 due with the jury-rigged amplification system which is
13 unfortunately working too well. Could you step one step
14 backward from the microphone and continue your remarks and
15 maybe then we won't get so much ringing in the Court.

16 MR. DUBLIN: I'm sorry, Your Honor. I was actually --

17 THE COURT: That's perfect just as you're doing.

18 MR. DUBLIN: It was hard to actually hear that
19 standing from this position. The last thing -- do you want me
20 to repeat the fee structure again for Your Honor?

21 THE COURT: No. Go right ahead. I'm with you.

22 MR. DUBLIN: Okay. The proposed order, as you'll see
23 when we turn it over to chambers after the hearing if the
24 application is granted, contains the standard procedure in this
25 district for a 328 retention but for the opportunity for the

1 U.S. trustee's office to review the application under 330. And
2 to the extent the U.S. trustee has an objection for the Court
3 to consider the fees under 330 at the time that they would be
4 contemplated to be paid.

5 Again, Your Honor, we have received no objections to
6 the application and request that it be granted.

7 THE COURT: It is --

8 MR. DUBLIN: Thank you.

9 THE COURT: -- granted. All right. Are we now up to
10 the tort litigation matters? All right. Let me get
11 appearances on this TRO application. And then, as I said, I
12 want you guys to sit down.

13 MR. ZOTT: Your Honor, the --

14 THE COURT: You want to rise, please, when you speak
15 to me?

16 MR. ZOTT: Okay. I'm sorry.

17 THE COURT: Your name?

18 MR. ZOTT: David Zott, ZOTT, with Kirkland & Ellis and
19 I represent the debtors.

20 THE COURT: All right, Mr. Zott.

21 MR. MOLTON: Your Honor, David Molton with Brown
22 Rudnick.

23 THE COURT: Now, here I have the opposite problem.
24 Those microphones don't work. Again, so could you speak
25 louder, please?

1 MR. MOLTON: Yes, Your Honor. David Molton with Brown
2 Rudnick representing Francisco Horrera and also an ad hoc group
3 of tort claimants, approximately twelve plaintiffs constituting
4 four of the actions, Your Honor.

5 THE COURT: All right. Is your 2019 on file?

6 MR. MOLTON: Your Honor, we filed yesterday the notice
7 of appearance which actually named the claimants and we're
8 going to get the 2019 on file today.

9 THE COURT: All right.

10 MR. MOLTON: Your Honor, I have with me Tiffany Chu
11 (ph.) and Matthew Heiner (ph.) who are summer associates with
12 Brown Rudnick and I've asked them to join me here today.

13 THE COURT: Sure, of course.

14 MR. HENIN: Thank you. Good morning, Your Honor.
15 Larry Henin of Edwards Angell Palmer & Dodge on behalf of
16 Citrus & Allied Essence, Ltd. in connection with the TRO motion
17 as well as in connection with Citrus' motion for relief from
18 the stay.

19 THE COURT: Right. You've got Citrus, okay.

20 MR. WOLK: Good morning, Your Honor. Michael Wolk
21 appearing today on behalf of Irma Ortiz, Victor Mancilla and
22 Ricardo Corona for three of the state court Diacetyl claimants.
23 We are appearing today in opposition to the debtors' motion for
24 injunctive relief and in support of our own motion for lift
25 stay. I have with me today, Your Honor, Edmund F. Wolk,

1 Esquire, from my office. And I believe we also have by phone
2 through prior arrangement with chambers both Ryan Sullivan from
3 Delaware who's assisting on this bankruptcy case for our
4 clients and Raphael Metzger who is the state court counsel for
5 our clients in the state court Diacetyl litigation.

6 THE COURT: Okay. Mr. Sullivan, can you hear me?

7 MR. SULLIVAN (TELEPHONICALLY): Good morning, Your
8 Honor. Thank you for the telephonic appearance.

9 THE COURT: Sure.

10 MR. LIESEMER: Good morning, Your Honor. Jeffrey
11 Liesemer of Caplin & Drysdale, Chartered, appearing on behalf
12 of defendant, Karen Smith, and twenty-six other individual
13 Diacetyl claimants. Your Honor, my firm was engaged in this
14 matter less than twenty-four hours ago. A colleague of mine is
15 filing a motion for me to appear pro hac vice as I speak right
16 now. And we intend to file a 2019 statement shortly but I
17 would ask the Court's indulgence to allow me to appear on an
18 interim basis pro hac as the paperwork is being processed.

19 THE COURT: Of course. Granted.

20 MS. LAHAIE: Good morning, Your Honor. Meredith
21 Lahaie, Akin Gump, on behalf of the official committee.

22 THE COURT: All right, Mr. Lahaie.

23 MS. SCOTT: Good morning. Courtney Scott from
24 Tressler Soderstrom for --

25 THE COURT: Come to a microphone. Remember that in

1 this system we don't have a live court reporter. The
2 microphones record your voice.

3 MS. SCOTT: Courtney Scott from Tressler Soderstrom
4 for Ungerer & Company, a defendant in the adversary proceeding.

5 THE COURT: Okay. All right, folks. I read the
6 papers that were provided to me. And let me tell you how I
7 think we need to proceed. The motion that's before me is a
8 TRO. At least one of the responding parties commented on its
9 inability to respond more fully, its inability to get discovery
10 that it thinks might be appropriate and the like. It seems to
11 me, subject to your rights to be heard, that the one and only
12 matter that should be on for me today is the application for
13 the TRO that as a noticed motion for a TRO, it's not subject to
14 the ten-day limitation and that whatever I do today should be
15 only the first step in a mechanism that sets up a date for a
16 preliminary hearing that would address the debtors' requests
17 beyond the TRO period. And that those who don't believe that
18 the injunction should continue should have the full opportunity
19 to do everything that's appropriate for a preliminary
20 injunction hearing including discovery and, if there are
21 material dispute issues of fact, an evidentiary hearing.

22 Now, I have problems with both of your positions.
23 From the debtors' perspective, Mr. Zott, perhaps you can tell
24 me why, as at least one of your opponents pointed out, this
25 problem has been festering for weeks or months and you suddenly

1 had to apply for an emergency TRO. I don't know if I can or
2 should penalize the creditors of this -- sit down. I'll give
3 you a chance.

4 MR. ZOTT: Okay.

5 THE COURT: I don't know whether I can or should
6 penalize the creditors for the failure to act more promptly.
7 But I can well understand why your opponents are ballistic when
8 you wait weeks and weeks for making the request and then you
9 expect them to respond in five days or whatever the time period
10 has been.

11 Now, your opponents also pointed out that you had
12 failed to submit a fact affidavit as compared to a 9077-1
13 affidavit which is something that I would think every second
14 year associate would normally do when asking for a TRO. Of
15 course, I noticed that there was a verified complaint and not
16 just a raw complaint. That's certainly not a model for young
17 lawyers to emulate. But you cured that and you did have a
18 verification on the original complaint. So I am inclined,
19 subject to parties' right to be heard, to regard that as cure
20 is now satisfactory unless people think there's some reason why
21 I have to close my eyes to that on that TRO application.

22 The opponents of the TRO cite my recent decision in
23 Lyondell Chemical, the Air Products one, one which I would have
24 thought that the Chemtura folks would have also addressed. But
25 when the opponents -- Mr. Wolk, you'll have your chance to

1 speak. I think you need to focus on the similarities but
2 especially the distinctions between this situation and
3 Lyondell/Air Products. In Lyondell, the underlying obligation
4 that was being sued upon was a contractual obligation, not a
5 tort obligation, in which the debtors' liability for the
6 contractual obligation was both undisputed and as the debtor
7 pointed out in its opposition, where the counterparties should
8 have been looking for their money fund.

9 Now, subject to people's rights to be heard, it is my
10 understanding that Chemtura isn't acknowledging its liability
11 to anybody on anything. And, of course, this is at tort
12 liability, not a contractual one, where I have a piece of paper
13 that says the debtor is on the hook. That's a huge difference.

14 Now, I want both parties to address the fact on the
15 362 prong that at least seemingly, we have two and perhaps
16 three separate categories of exposures that the estate may
17 have. Some but less than all of the tort litigants are suing
18 Chemtura. Some are suing Chemtura Canada and I need both
19 parties to address the extent to which a claim against Chemtura
20 Canada would result in claims against Chemtura itself. And
21 subject to your rights to be heard and the papers are a little
22 vague on this, or maybe I just didn't understand them
23 satisfactorily when I read them, but it appears to me that
24 there is some actions in which Citrus alone is being sued as
25 contrasted to either Chemtura or Chemtura Canada. And if we

1 have cases in that category then, at least seemingly, Citrus
2 would have the right to claim over against Chemtura and that
3 would result in an additional liability for Chemtura as
4 compared and contrasted to a situation in which Chemtura is
5 already a defendant and has its own exposure.

6 Now, if my factual understandings from my review of
7 the papers are wrong, of course, I would ask that you folks
8 help me.

9 Now, it seems to me that because of the three
10 categories of different types of exposure, the debtors' 362
11 matters and bases for relief are a matter for fair debate.
12 When the opponents of the TRO are heard, I need you to address
13 the debtors' threshold showing on the interference with the
14 reorganization of the estate because this case seems to be a
15 poster child for what I normally do in these things which is
16 granting -- well, certainly a TRO. The real fight would be on
17 the preliminary injunction. But what I've done on preliminary
18 injunction requests of that character is I grant a stay for a
19 relatively limited duration, three months, six months, but not
20 more than that, and either do a stop-look-and-listen at that
21 point or simply say that the litigation will then be allowed to
22 recommence unless the debtor shows that it's got the continuing
23 interference with its reorganization efforts.

24 All right. I'll have other questions as we go along.
25 But before you're done, I want you to focus on that. Remember,

1 I'm not an appellate court. So all I need for you to do is to
2 have addressed those points by the time you're done. You don't
3 have to do them right upfront.

4 Mr. Zott, now I'll hear from you. Main lectern,
5 please.

6 MR. ZOTT: Thank you, Your Honor. Let me begin with
7 your question which is why we waited three months to bring this
8 motion. And the answer is partly probably we shouldn't have
9 waited three months so I'll say that upfront, although there
10 were certainly reasons. We were focused on first trying to get
11 a DIP loan in this extremely difficult environment, getting
12 interim and final approval for the DIP loan, getting interim
13 and final approval for the other first day motions. We had
14 terrible supply chain issues, terrible vendor issues. We were
15 focused on trying to stabilize those. Clearly, at the same
16 time, this litigation, while it was always pressing, has become
17 more pressing over the three month period. We had two motions
18 to lift the stay that were filed. And those motions were both
19 set for hearing today. We knew, of course, we were going to
20 impose the lift stay. We also know that other parties are also
21 interested in lifting the stay. So what we had is a growing
22 problem, motions that are pending before the Court to lift the
23 stay. Our motion is really the flip side of the very same
24 issues, although in broader terms, that the lift stay motions
25 address.

1 So the combination of those factors has what has taken
2 us from a festering problem to a problem that now is immediate
3 for us. And, you know, again, candidly, if we could have done
4 this earlier, I certainly would have preferred to do that.

5 In terms of Your Honor -- I won't debate the affidavit
6 at all, Your Honor. I hope we cured it and I apologize if that
7 was for any mistake we made in regard to that.

8 I would like to address what is really, I think, the
9 central issue. I know Your Honor has read the papers. I'm not
10 going to spend a lot of time on the facts. And then I'll try
11 to address the two issues you raised. Your Honor, knows that
12 this Diacetyl -- and I think I've heard it pronounced it both
13 ways so you may be right --

14 THE COURT: I haven't taken organic chemistry in forty
15 years. So I'll go with whatever pronunciation you suggest.

16 MR. ZOTT: Well, that's the only one that I know,
17 [die-AH-ce-tuhl], but I heard you say it, and I've heard it
18 your way as well, Your Honor. So I'll stick with what I know,
19 which is [die-AH-ce-tuhl]. It's a food flavoring that was
20 manufactured by Chemtura Canada for about a twenty-three year
21 period. Chemtura was an intermediary in that process from '98
22 to 2005. Beginning in 2005, lawsuits began to be filed.
23 There's 300 lawsuits nationwide. There's fourteen -- actually,
24 fifteen now. Between the time we filed our paper and the time
25 that we filed the affidavit, another claim has been brought

1 against the company. So we now have fifteen cases involving
2 fifty claimants. These are both direct, as you noted, where
3 it's a direct cause of action against Chemtura or Chemtura
4 Canada or Citrus, and then we have basically indemnification
5 claims from an existing defendant, Citrus, against Chemtura
6 Canada or Chemtura.

7 We anticipate, to a virtual certainty, that there will
8 be more claims in the future, without a doubt, particularly
9 when we get to the issue of the bar date and when bar date
10 notices go out. These are big claims. The verdicts, as we
11 noted, range from 2.7 million to 20 million per claim, per
12 claimant, and we have 50. The settlements have run generally,
13 for other defendants, based on our knowledge, being in joint
14 defendant groups, in the range of two million or so, sometimes
15 a little less, sometimes a little more. So, easily with 50
16 claims, however you apply the math, that's easily a potential
17 value of 100 million to 500 million or more. So they're
18 significant claims.

19 The claims, whether they're against Chemtura, whether
20 they're against Canada or against Citrus, all involve exactly
21 identical legal issues, factual issues, the same experts, the
22 same witnesses, many of the same documents, because it all
23 arises from the Diacetyl that Chemtura Canada manufactured; the
24 same issues of causation. We'll have the same Daubert expert
25 issues that we would have to brief and argue. We have the same

1 defenses.

2 So it's in that context that we come to this Court
3 asking for a temporary relief. And I will say we agree
4 completely with Your Honor that the appropriate approach here,
5 given the timing, is, if we can persuade the Court to grant
6 temporary relief, to just to stay and stop everything for now
7 until we can have a more fulsome treatment at a preliminary
8 injunction hearing.

9 We have requested -- both under 362(a) and under
10 105(a) as well the issues, I think, Your Honor, are somewhat
11 similar, although the standards are a little different. But
12 under 362(a), the Courts look to whether there would be an
13 immediate adverse impact on the estate from allowing the
14 litigation to go forward, or whether there's a close identity
15 of interests between the debtor and the nondebtor.

16 THE COURT: Well, Mr. Zott, maybe some Courts may have
17 articulated it that way, but in my published decisions and in
18 my stated analysis I've looked to the underlying premise of
19 362, which is its implementation of an automatic stay, and
20 looked to the extent to which, as articulated in A.H. Robbins
21 and similar cases, the claims that are not technically naming
22 the debtor are, in substance, against the debtor. And then I'd
23 look separately at 105(a) to see whether the litigation's
24 interfering with the reorganization.

25 In this case, I think you have to slice and dice the

1 particular claims to see whether they are, in substance,
2 against the debtor, because obviously there's an
3 interrelationship, but I don't think that's enough to invoke
4 362, unless you can show me a case that says that my
5 understanding's incorrect.

6 MR. ZOTT: Well, no, I wouldn't do that, Your Honor.
7 I know that the Queenie Second Circuit case did talk in terms
8 of -- and I can check it to make sure, but I believe the Court
9 talked in terms of the identity-of-interests standard and
10 whether or not that case specifically referred to adverse
11 impact -- immediate adverse impact on the estate. I know
12 there's been many, many cases out of the -- bankruptcy cases
13 out of the Southern District that articulated exactly that
14 standard, including -- I actually -- I believe one of your
15 decisions in Lyondell had that in a footnote. I know the
16 Calpine -- all those decisions, both at the district court and
17 at the bankruptcy court level, referred to immediate adverse
18 impact on the estate.

19 THE COURT: Yeah, well, my Lyondell -- I think two of
20 the decisions did in fact say that, but they also denied 362
21 relief and granted it to the extent I granted it under 105(a).

22 MR. ZOTT: They did, Your Honor, and we -- I do agree
23 that 105(a), as Your Honor has noted in your decisions, is
24 broader, and it certainly can capture a wider range of harms
25 than would exist under 362(a). We reviewed the case, and it

1 may be necessary to slice and dice, but what we see is really
2 four principal harms that would occur to the debtor in the
3 debtor's reorganization if the case proceeds. And that's true
4 under both 362(a) or 105(a), which is clearly of a broader
5 standard.

6 First, because the claims, whether they're against
7 Chemtura Canada, Chemtura or Citrus, are really identical
8 claims, and so the debtor would be -- it would be incumbent
9 upon the debtor to have to engage in the active defense of
10 those claims, both to actually form the legal defenses and the
11 factual defenses. And we've submitted the affidavit of our
12 general counsel, Billy Flaherty, who is here today in the
13 courtroom, Your Honor. And she would be the one, and her
14 staff, that would have to actively prepare that defense to the
15 litigation.

16 We also have discovery that would need to be responded
17 to. Citrus, as you know, is seeking discovery against us
18 today. They would like you to lift the stay and allow twenty
19 depositions to proceed. They also would like discovery of
20 insurance policies.

21 We have two pending 30(b)(6) depositions that have
22 been noticed in other cases of two of our senior officers.
23 Both of them -- as Your Honor knows, to prepare a 30(b)(6)
24 deposition, it's on the knowledge of the company. So the
25 entire company -- you know, we would have to spend a lot of

1 time to prepare those witnesses if those depositions were
2 allowed to go forward as well.

3 So what we've got is a situation where, if the
4 litigation proceeded against either Chemtura or against Citrus,
5 we would have to really step in and take an active role. And
6 there are several courts from this circuit, the two Calpine
7 decisions: One was Judge Scheindlin who affirmed the
8 automatic -- or the extension of the stay there; the other was
9 Judge Castel. Both of them noticed that where a debtor is
10 threatened with the type of potential effects -- and I'll go
11 through the effects -- that exist here, such as collateral
12 estoppel, risk of indemnification, it's -- really, a prudent
13 debtor would have to step in and take an active participation
14 in that litigation. And so, as a matter of prudence, we would
15 need to do that, and that's what we said in the affidavit.

16 So we've got this diversion of resources, which is the
17 one big overarching harm. Second, we've got the fact that
18 Chemtura and Chemtura Canada share insurance. And, for
19 example, under 362(a)(3), we think that would be a very clear
20 extension of the stay because that, as the Court knows, doesn't
21 apply just to debtors; that's to any party that would seek to
22 control assets of the estate.

23 THE COURT: You didn't make a distinction between
24 owning the insurance policy and the entitlement to the proceeds
25 of the policy, a distinction that's normally been made in

1 connection with insurance policies. Was that intentional?

2 MR. ZOTT: Have we not made that distinction, Your
3 Honor?

4 THE COURT: Well, you kept talking --

5 MR. ZOTT: You said --

6 THE COURT: -- you owned the insurance. Of course the
7 debtor owns the policy. But in most instances in which we
8 analyze insurance in this context, we slice and dice between
9 ownership of the insurance policies and establishing an
10 entitlement to the proceeds of the policies.

11 MR. ZOTT: Right, well, the issue for us here is that
12 both Chemtura Canada and Chemtura are named insureds on the
13 policies. So any judgment against Chemtura Canada would reduce
14 the amount of insurance available to the estate and to
15 creditors of the estate. And that's true -- the policies are
16 very complicated. There's three basic towers of policies.
17 There are also self-insured retentions that are very
18 substantial under each policy that would have to be paid before
19 we could ever get to the insurance. In some cases, that's
20 millions of dollars. Now, that is disputed as well with the
21 insurance companies, but depending upon whether those self-
22 insured retentions are occurrence-based or not occurrence-based
23 means more money that the debtor would have to pay potentially
24 to even access that insurance. And then the insurance would
25 kick in on top of that.

1 The other thing I should point out here is insurance
2 companies -- while we think it's clear we have insurance, it's
3 clear that Chemtura Canada has insurance. They've disputed
4 that as well. So it's not a situation where we have an
5 unlimited --

6 THE COURT: They've disputed coverage, or they've
7 disputed the duty to advance, say, defense costs, or they
8 disputed applicability of policies to particular claims?

9 MR. ZOTT: They've -- well, they've disputed coverage,
10 and they've sent long letters on numerous defenses. They have
11 been covering the costs of defense for Chemtura so far, but
12 they have not been covering the cost of defense for Chemtura
13 Canada. And the -- if you wanted to have more specifics on all
14 of the rationale, I wouldn't be able to give that for all of
15 the various defenses on the insurance. But they've sent
16 twenty-five page letters saying for all these reasons we're not
17 obligated to cover. We think, at the end of the day, we're
18 going to prevail on that, but that's an issue that actually I
19 think needs to get resolved here at some point in time.

20 So the bottom line is that any recovery against
21 Chemtura Canada will deplete an asset of the estate, which are
22 these insurance policies.

23 The third issue is the indemnification claims that
24 Citrus has already made against Chemtura Canada and against
25 Chemtura. They've made them in, I think, eight cases so far.

1 But whether they make them now or they make them later, they're
2 coming. And they've made it very clear that they believe that,
3 to the extent they're held liable, the debtor is liable for
4 that, for anything they're held liable for.

5 And as I mentioned earlier, a prerequisite for the
6 very same legal and factual issues under which Citrus would be
7 found liable are, in turn, a necessary predicate for them to
8 assert liability against us. So if Citrus were found liable,
9 it would mean there would have to be a finding of product
10 defect, causation, damages. That would then be the
11 prerequisites for them asserting a liability against us.
12 That's why we couldn't just sit back and let Citrus defend a
13 claim knowing that all that's doing is perfecting an
14 indemnification claim back against us without taking an active
15 role. It just would be an imprudent thing to do. And that
16 then gets us into -- basically we have to prepare and litigate
17 that case as though it is against the debtor.

18 The last point is this collateral estoppel. And
19 whether we call it collateral estoppel, evidentiary prejudice
20 or stare decisis, I actually think there's -- and, again, let
21 me preface this. When this is read a year or two from now by
22 tort plaintiffs -- we will, of course, vigorously oppose
23 collateral estoppel, but certainly there's a risk here that a
24 judgment --

25 THE COURT: Not before a competent judge.

1 MR. ZOTT: Well, that's part of our strategy.

2 THE COURT: Stare decisis I understand. The practical
3 problems that you're faced with, short of collateral estoppel,
4 I understand.

5 MR. ZOTT: Yeah, evident --

6 THE COURT: But has any case from any competent judge
7 ever held that when you're not a party in the action you're
8 bound by collateral estoppel?

9 MR. ZOTT: Well, we've taken a look at that, Your
10 Honor, because I also am generally of your view on that. And
11 the standard is privity, if you're in privity. And then the
12 question becomes what does privity mean? And privity looks to
13 whether there's a sufficient identity of legal interests
14 between the party in the litigation and the party sought to be
15 bound. That sounds scary to me. It gets awfully close to a
16 set of arguments that when it's your wholly-owned subsidiary,
17 when it's the exact same product, when it's the same facts,
18 when it's the same law, when it's the same experts, you have
19 privity. And I could hear the exact same arguments from
20 Citrus.

21 So while we would oppose it and say that no competent
22 judge should ever do that, the standard is privity and it's not
23 a black-and-white standard.

24 So -- but leaving aside collateral estoppel, obviously
25 you've got clear evidentiary -- you know, I mean, take the

1 Daubert issues. Those are always a huge issue in tort cases,
2 whether the plaintiff's experts can qualify to testify, whether
3 their methodology is sound. Once that's decided in one of
4 these cases, it gets so much harder to try to defeat that in a
5 later case. So you've got clearly the stare decisis and the
6 evidentiary prejudice. And I think we've got the other -- at
7 least the risk of collateral estoppel. The argument will
8 certainly be made.

9 The question, then, Your Honor, I think, is -- the two
10 issues I would like to address before I sit down, and let's
11 make sure I've hit your points, is why now? Why do you need --
12 why is it an emergency now? And I acknowledge that this has
13 been a growing problem, but right now we've got a case set for
14 trial: the Campbell case August 31st, which is about less than
15 two months -- little over two months from now -- or less than
16 two months from now.

17 I should also say, Your Honor, that part of the reason
18 that we're here today is I know that the Court had -- we have
19 only one other date this summer. As I understand it, we have a
20 date before the Court July 28th. And we didn't think that we
21 could wait till then, obviously, to raise the issues that we're
22 raising today.

23 Anyway, there's a trial date on August 31st. Campbell
24 is suing Citrus directly. Citrus has asserted an
25 indemnification claim already against Chemtura. And they've

1 also sued Chemtura of Canada.

2 So for all the reasons I've described earlier, we
3 really have no choice. But if the case is not stayed, we need
4 to get actively involved in defending Citrus and becoming
5 involved in that litigation for the reasons I've already
6 described.

7 In addition, Chemtura Canada has asserted the defense
8 of personal jurisdiction; that was going to be heard today.
9 It's been kicked back a couple of days because of this hearing.
10 To the extent that Chemtura Canada loses those jurisdictional
11 arguments, and while I, again, wouldn't want to handicap them,
12 there certainly is a substantial risk that they'll lose those.
13 They will -- the floodgates of discovery against Chemtura
14 Canada will be open, and at the end of the day that's discovery
15 against the debtor because it's really the same legal step,
16 that we'll have to respond to a good bit of that discovery.

17 I should also point out, Your Honor, on the emergency
18 issue, we did ask all of the claimants that we sued in the
19 adversary complaint if they would agree to temporarily stay,
20 just a stand-down, until we could get to a preliminary
21 injunction and have this heard, because we were hoping to avoid
22 today, frankly, and we know that the Court's calendar is so
23 incredibly busy. But they refused to do it. No one --
24 Ungerer, I should say -- on balance, one of the parties
25 accepted; the rest of the parties refused. Herrera, you saw

1 their pleading. Even though they're not going to trial until
2 2010, they filed a pleading and said they filed -- you know,
3 that they opposed any -- even a TRO. Ortiz, you saw their
4 papers as well; they would like to lift the stay and seek
5 discovery immediately against the debtors.

6 I just want to then address the last point. And I'm
7 really on 105 now. I think -- you know, I'm not going to spend
8 time on the likelihood of reorganization, likelihood of
9 success. I think that's pretty clear under the standards Your
10 Honor's articulated. I've addressed the harm to the debtors.

11 In terms of the balancing of the harms and the public
12 interest, just a couple points I want to make here. Two
13 parties have filed today, and I'm sure there'll be more. But
14 Herrera is the one party that's filed. They don't articulate
15 any harm from a TRO. They basically say that they voluntarily
16 dismissed Chemtura Canada, they're not seeking discovery as to
17 Citrus at this point, and they don't have a trial date. So in
18 terms of the kind of relief you're talking about, some period
19 of time so we can get you a preliminary injunction hearing,
20 they haven't articulated any harm.

21 The Ortiz claimants, their point is that they say they
22 need compensation as soon as possible because of medical issues
23 there. And while no doubt that is true, that doesn't mean that
24 they've met -- you know, in terms of balancing of the harms.
25 Ortiz has sued fourteen other companies by my count -- it could

1 be off by one or two -- including at least four other
2 defendants on Diacetyl claims, Advanced Biotech, Burle, Pentiff
3 (ph.), Polarome, from their complaint which they've attached to
4 their papers. So they're suing other companies for Diacetyl.

5 THE COURT: First I thought you said they'd said
6 fourteen others, and then I thought you said they sued four
7 others.

8 MR. ZOTT: Well, they're suing -- what they're saying
9 is that there were a number of chemicals that caused the harm
10 to the plaintiffs. One of them is Diacetyl, which is the
11 chemical that we manufacture. But they say other chemicals as
12 well contributed to the harm, and those chemicals they sued
13 other companies on, so that they've sued four other companies
14 on Diacetyl, but then they've also sued different companies for
15 other chemicals that they say their clients inhaled or
16 otherwise ingested and led to these injuries.

17 So the point is that they've got -- they still have
18 viable defendants that they can sue, and they can move forward.
19 The case has been pending for two and a half years. There
20 isn't a trial date. And in terms of their desire to lift the
21 stay against Chemtura and proceed with that litigation, they're
22 not going to realistically be compensated any time soon from
23 Chemtura regardless.

24 So the other point, in terms of balancing of the
25 harms, is what we're trying to do is to follow a coordinated

1 strategy of first getting the cases stayed, which is why I'm
2 here today, and then, secondly, removing the cases that are
3 piecemealed across the country, transferring them to the
4 district court here, the Southern District of New York, for an
5 effort to try to get them resolved in a coordinated fashion.

6 One of the purposes of the automatic stay is to
7 actually promote the centralization and efficient resolution
8 and fair resolution of disputes. We are -- that is what we are
9 trying to do. We've already begun to remove and transfer at
10 least those cases. So our goal would be to get them all here
11 and to get them into the Southern District of New York where we
12 hopefully can resolve them in a way that's fair to all parties.

13 And so ultimately it could, in the end of the day, not
14 impede the progress of these cases but advance the progress of
15 the cases by giving us the breathing room, the time to have a
16 temporary stay while we pursue that strategy.

17 Your Honor, the last point, the Lyondell decision. I
18 think you said it was really more for the other side to
19 address, but we, of course --

20 THE COURT: There were three of them. I take it
21 you're talking about Air Products?

22 MR. ZOTT: Yes, Your Honor, the June 10th decision,
23 correct. And on that one, I had exactly the same reaction,
24 which there the Court -- there was a settlement agreement, and
25 the debtor had paid fifty million of the settlement agreement.

1 There's another twenty-nine million, I think, that needed to be
2 paid, and Your Honor -- which they asserted the affiliate was
3 required to pay. And the Court said look, the liability is
4 undisputed here, I mean, as to the debtor, so it's not going to
5 increase the debtor's liability by going to the third party.
6 Well, here we absolutely dispute our liability on these tort
7 claims. And if those claims are litigated against Citrus or
8 against Chemtura Canada, it will clearly and materially impact
9 our liability, which is really the opposite of the situation
10 you're dealing with in Lyondell.

11 Your Honor, I have no further comments at this point,
12 subject -- I hope I answered your questions, and I thank you
13 for your time.

14 THE COURT: Sure.

15 Okay, who wants to be heard next? It's Mr. Wolk, if
16 I'm not mistaken?

17 MR. WOLK: Yeah. Thank you. Good morning, Your
18 Honor.

19 THE COURT: Good morning.

20 MR. WOLK: Michael Wolk for three of the Diacetyl
21 claimants in connection with the California state court case,
22 Irma Ortiz, Ricardo Corona and Victor Mancilla (ph.). Your
23 Honor, you broke down the litigation categories into three
24 different situations: one where there are nonbankruptcy claims
25 that were asserted prepetition against the debtor; one where

1 nonbankruptcy claims in which the debtors' nondebtor affiliate,
2 Chemtura Canada, was sued; and I believe that Your Honor
3 characterized the third category as one in which Citrus,
4 nondebtor Citrus, were sued initially and then they impleaded
5 and brought in either the debtor or their nondebtor affiliate.

6 With respect to our clients, we believe there's a
7 fourth category, if you will, in slicing and dicing this. In
8 our situation, our clients sued the debtor, and we sued Citrus.
9 We had not sued Chemtura Canada. Now -- although I will say
10 that, based upon some disclosures in the papers over the last
11 few days and today, that we sued Chemtura on the notion that we
12 believe that Chemtura, the debtor, was the entity that
13 manufactured the Diacetyl at issue in our client's case. And
14 if it turns out, as some of the papers recently filed indicate,
15 that it was not the debtor that manufactured the Diacetyl at
16 issue but a nondebtor from Canada that manufactured the
17 Diacetyl that injured our clients, we may very well be
18 taking -- depending upon whether this Court stays the
19 litigation, we may be taking steps to include that nondebtor
20 entity as well.

21 With respect to what we already have, though, as of
22 right now --

23 THE COURT: Pause, please, Mr. Wolk. Would you be
24 running into a statute of limitations issue that could be
25 affected by the TRO? Normally I would think that any amended

1 complaint would either relate back, or that you couldn't be
2 penalized for the delay in amending the complaint, or that if I
3 granted a stay I could give you limited relief from the stay to
4 file whatever piece of paper you need to protect yourself
5 against a statute of limitations running against you. Or did
6 you bring such a timely suit that it's not an issue?

7 MR. WOLK: Your Honor, on that issue, I would
8 respectfully defer to Raphael Metzger, who's on today at this
9 hearing by telephone, to speak about the statute of limitation
10 issue in the state court case involving Chemtura Canada, if I
11 may.

12 THE COURT: Yeah. You want to do it now?

13 MR. WOLK: Yes.

14 THE COURT: Sure.

15 MR. WOLK: Mr. Metzger?

16 MR. METZGER (TELEPHONICALLY): Good morning, Your
17 Honor.

18 THE COURT: Could you speak a little louder, please,
19 Mr. Metzger?

20 MR. METZGER: Yes. Good morning, Your Honor. Can you
21 hear me now?

22 THE COURT: Yeah, try to do better, but yes.

23 MR. METZGER: I'm shouting.

24 THE COURT: Okay.

25 (Pause)

1 THE COURT: Wait, I think -- just a minute, please.
2 Could you pause, please?

3 (Pause)

4 THE COURT: Can you try again?

5 MR. METZGER: Yes, Your Honor. Can you hear me now?

6 THE COURT: Now I can.

7 MR. METZGER: Oh, very good. In our case we have a
8 three-year statute in which to identify unknown defendants and
9 bring them into the case. We are coming up on that deadline,
10 so we would like at some point, now that we have learned,
11 contrary to what was represented by Chemtura, that Chemtura
12 Canada actually manufactured the product -- I would be remiss
13 if I did not bring Chemtura Canada into the case. And we would
14 like permission at least to do that, even if you're going to
15 say it.

16 THE COURT: I understand. Go on. I think I can go
17 back to you now, Mr. Wolk.

18 MR. WOLK: Okay. Thank you, Your Honor. The fourth
19 category that I'm seeking to identify as we slice and dice is
20 that in our state court case we believe that Citrus is liable
21 for the same amount that we believe that the debtor whom we
22 originally sued, and perhaps now Chemtura Canada, is liable.
23 And so, in our view, it's a very different situation from
24 whether or not the stay should be lifted regarding the debtor
25 or where that litigation should be, in state court or federal

1 court. But with respect to nondebtor Citrus, who is not -- who
2 is obviously a nondebtor and not an affiliate of the debtor, we
3 think that the analysis as to whether or not a stay should be
4 extended to include them is a -- involves an analysis that is
5 not -- is nuanced and different as to whether or not Chemtura
6 Canada should be involved.

7 For example, there appears to be no issue that any
8 alleged insurance proceeds would be depleted if we were to
9 recover against Citrus. If we were to sue Citrus, we would be
10 seeking to be paid out of Citrus's pocket or Citrus's carriers,
11 nothing involving the debtor or perhaps shared insurance
12 involving the debtor and its nondebtor affiliate. We think
13 that's a material distinction in that fourth category.

14 Also, if we were to recover against Citrus, Citrus
15 presumably would bring over an indemnity claim, as they've done
16 in other litigations, not ours yet, in other litigations. And
17 we would respectfully submit that that is a situation that is
18 encompassed by an overriding principle in Your Honor's Air
19 Products entities case. Although we're asserting an
20 unliquidated tort claim as opposed to a previously established
21 contractual claim, we believe the portion of Your Honor's
22 decision that we do hone in on, that if our relief against a
23 nondebtor doesn't result in an increase in the debtor's
24 liabilities and would only result because they're not sharing
25 insurance with the debtor, it would only result at worst in a

1 substitution of creditors against the debtor. Instead of the
2 debtor being exposed to us right now in the pre-bankruptcy
3 situation, them being exposed to another nondebtor on an
4 indemnification claim, at the end of the day the same
5 underlying amount would be asserted against the debtor.

6 THE COURT: If the liability of the debtor were
7 undisputed, I would understand your point. That was, in fact,
8 the case in Lyondell/Air Products. But if Chemtura disputes
9 liability, either because it believes or contends that the
10 elements of causation, all of the wrongful conduct in the first
11 place, due care, any of the things that any tort defendant's
12 lawyer would raise, haven't been satisfied, then it's easy for
13 me to understand, at least as a theoretical matter, that the
14 exposure of the debtor as compared and contrasted to Citrus is
15 not a done deal and a satisfactory premise upon which I can
16 rule.

17 Now, it may well be -- in fact I would expect that
18 Citrus, being represented by counsel, competent counsel, would
19 make many of the same points -- that Citrus would be defending
20 on all of those various fronts as well, but doesn't that go
21 back to Mr. Zott's point that that's exactly why the debtor
22 feels that it's between the rock and the hard place, between
23 sitting by to allow Citrus to carry the ball on those issues or
24 diverting its management from their needs to run the Chapter 11
25 case?

1 MR. WOLK: Two points in response to that, Your Honor.
2 First, and I've been meaning to raise this beforehand, I think
3 that in Your Honor's prior comments you indicated that some of
4 the objectants, of which we are one, have asserted claims
5 against Citrus for damages that do not -- are not alleged to
6 arise out of Diacetyl. So in our case we're asserting
7 Diacetyl-related injuries that involve the debtor as originally
8 sued, perhaps now Chemtura Canada, and Citrus. And then we
9 also have separate and independent claims for non-Diacetyl
10 injuries involving other chemicals.

11 Now, one thing we would respectfully submit that is
12 independent of what the Court may or may not do regarding a
13 TRO application or a later preliminary injunction, we would
14 respectfully submit that to the extent that our clients' claims
15 are non-Diacetyl claims involving Citrus and other nondebtors
16 that have nothing to do with Chemtura or Chemtura Canada, that
17 those non-Diacetyl claims would not be the proper subject of a
18 stay under 105(a) or otherwise, and that if we are going to be
19 stayed that it should only be with respect to Diacetyl-based
20 claims that involve the debtor and/or Chemtura Canada and/or
21 Citrus. And we would respectfully ask for a limitation of any
22 possible stay in that regard.

23 Now, going back to our Diacetyl-related claims
24 involving the debtor and others, at the end of the day, and
25 pursuant to the Southern District's rulings in the two Calpine

1 Corporation appeals and the way Your Honor assessed the matter
2 in Your Honor's recent bench ruling decision, the standard
3 appears to be, at least in the 105 context, and at least on the
4 element as to whether or not there's a threat to the debtor's
5 reorganization prospects, is that threat (1) imminent, (2)
6 substantial and (3) irreparable? If it's not all three things,
7 then the element of a threat to the debtor's reorganization
8 prospects, that element is not satisfied, as opposed to a
9 likelihood of success of the reorganization in general and the
10 balancing elements of harm to the private parties and the
11 public interest.

12 Now, on the second point as to harm to the debtor's
13 reorganization prospect, it would seem to me, and we're not in
14 a position to deal with it today, that in determining whether
15 there's imminent harm and whether it's substantial and whether
16 it's irreparable, we're going to need discovery. For example,
17 on the insurance issue, we really don't know today if the
18 debtor's insurance coverage is going to be, quote, unquote,
19 "depleted" or reduced or adversely affected, and if so on what
20 amount? In a minor way? In an insubstantial way? A
21 substantial way? We don't know. We do know that in the
22 schedule of assets filed by the debtor earlier in this case,
23 there are lots and lots and lots of policies. And I'm sure
24 this is a very involved issue. We also don't know to what
25 extent any self-insured retention amounts, if applicable, have

1 already been exhausted or partially exhausted.

2 These are the types of things that we think we need to
3 delve into in order to determine whether or not there would be
4 imminent and substantial and irreparable harm to the debtor
5 from having to respond in some way to litigation requests
6 against nondebtors on the assets of related claims.

7 So that's on the economic harm issue. Now, on the
8 operational prejudice issue, we're glad that we received
9 finally a fact witness affidavit at 11:30 last night from the
10 debtor's general counsel asserting that there would be
11 operational prejudice. The problem, however, is we don't know
12 which individuals, other than just general claims of, you know,
13 I'm supervising various things, we don't know which individuals
14 are going to have to spend -- are they going to have to spend
15 part of each and every day? Are they going to have to spend
16 one day a week focusing on litigations as opposed to the
17 reorganization? We think there would need to be a far more
18 detailed evidentiary showing by the debtor that, in fact, the,
19 quote, "key people", the indispensable people without which
20 reorganization cannot proceed, have no time left over in any
21 meaningful way to do anything other than reorganization. That,
22 to me, would be the standard. Perhaps the debtor can meet that
23 standard, perhaps not, but we would respectfully submit not, on
24 the nature of the evidence that they've submitted so far.

25 And we would also submit that in the event that the

1 Court does issue a stay at any point, it should also be, as
2 Your Honor indicated, calibrated. Perhaps there will be an
3 indispensable overlap between pushing this reorganization and
4 dealing with the nonbankruptcy litigations, but perhaps that
5 situation will only last for thirty days or sixty days as
6 opposed to an all-encompassing stay that's requested at present
7 in the debtor's papers.

8 So at the end of the day, Your Honor, we would
9 respectfully submit as follows: number one, that any possible
10 stay, whether it's a TRO or later a preliminary injunction, not
11 cover our clients' non-Diacetyl claims against Citrus and other
12 nondebtors, as a threshold matter; number two, that we need to
13 drill down, if you will, on insurance discovery and other
14 indispensable operational personnel discovery and/or in
15 connection with an evidentiary hearing; and number three, Your
16 Honor, which is what I want to conclude with, subject to Your
17 Honor's questions, we are the first -- we believe that we are
18 the first nonbankruptcy case in which the debtor has filed a
19 notice of removal to the federal district court in which the
20 state court case is located. This was recently done in our
21 case, in the Ortiz case. And we understand that the debtor has
22 a right to file a notice of removal with respect to our
23 clients' claims against the debtor to that district court, and
24 that's where it would stay unless the district court were to
25 remand, et cetera. However, the reason I'm bringing this up is

1 that the debtor didn't limit itself to a unilateral removal on
2 claims against it. The debtor also purports to remove our
3 clients' claims, nondebtor claims, against Citrus to the
4 district court in which the Court sits.

5 Now, although any party can remove a claim to the
6 federal district court, Citrus hasn't filed a notice of
7 removal. So, in effect, what the debtor has done in
8 California, without leave of any court of any competent
9 jurisdiction, is file a document taking the position that our
10 clients' nondebtor claims against nondebtor Citrus are now
11 before the federal district court in California, even though
12 that has been done without the consent or similar filing by
13 Citrus, and even though there are nuances, as I've indicated,
14 regarding non-Diacetyl claims. And I would respectfully submit
15 that that is not something that the bankruptcy removal statute
16 encompasses. Although it may encompass a debtor removing
17 claims against it, it doesn't encompass a debtor removing
18 nondebtor claims without the consent of that nondebtor.

19 The nondebtor Citrus has not filed a notice of
20 removal, because the bankruptcy removal statute also provides
21 that once a claim is removed, further proceedings in the state
22 court case are, in effect, stayed pending a decision by the
23 district --

24 THE COURT: Well, not in effect. They're
25 automatically stayed --

1 MR. WOLK: They are automatically stayed.

2 THE COURT: -- until a motion for remand has been
3 determined.

4 MR. WOLK: You're absolutely right, Your Honor. And
5 if the debtor were allowed to remove claims against nondebtors
6 without the consent of the nondebtors, thereby resulting in an
7 automatic stay, that would, in effect, obviate the need
8 theoretically for the debtor to run into this court seeking to
9 extend the bankruptcy stay to nondebtors, such that we don't
10 think the bankruptcy removal statute was intended to operate in
11 that unilateral way. We think that only an order from a court
12 of competent jurisdiction can extend a stay of litigation
13 against a nondebtor where that nondebtor has not filed a notice
14 of removal.

15 THE COURT: Well, Mr. Wolk, am I correct that that
16 issue would seemingly be one for a district judge in the
17 Central District of California? Or whichever district you're
18 in in California would be deciding both the issues as to
19 whether nonobjection to a removal is sufficient as contrasted
20 to issuing one's own petition for removal, the distinction you
21 made in the Citrus situation, and, secondly, the extent to
22 which either 1334 or anything else would be relevant to the
23 breadth of the claims that the Article III judge in California
24 could entertain?

25 MR. WOLK: We agree with Your Honor that, in the

1 absence of a stipulated resolution of that issue, the proper
2 venue for our application would be the federal court in
3 California on that issue. Perhaps one thing that might be
4 worked out here is that if a TRO were to be issued, pending
5 July 28th, perhaps it could be issued on conditions, and one of
6 the conditions being that the debtor withdraws without
7 prejudice or there's some sort of standstill or some sort of
8 intermeasure affecting the removal of claims to the federal
9 court against nondebtor Citrus without nondebtor Citrus'
10 consent, or perhaps not, as Your Honor deems appropriate. Or
11 perhaps the parties could negotiate a situation where we all
12 agree to an interim TRO, pending July 28th, relieving Your
13 Honor having to make a decision on all of this until that time,
14 on such conditions. It's just an issue that I wanted to bring
15 out to the attention of the Court because it plays into the
16 overall situation.

17 THE COURT: All right. Thank you, Mr. Wolk.

18 MR. WOLK: Thank you.

19 MR. MOLTON: Good morning, Judge. David Molton of
20 Brown Rudnick for Francisco Herrera and, as I mentioned, for
21 eleven other Diacetyl claimants.

22 Your Honor, we were retained in connection with the
23 eleven other claimants only yesterday afternoon. And they have
24 not put in formal papers. But to the extent that any of the
25 issues today in opposition to the TRO are generally applicable

1 to all the claimants, generally, we would ask that, Your Honor,
2 that they join in those objections, Your Honor.

3 I'm going to address, Your Honor, the issues Your
4 Honor asked the opponents of the TRO first. What I think both
5 set of claimants' papers filed over the past two days, Sunday
6 and today, make clear is that on this request for extraordinary
7 relief, there's been a failure of proof. I understand that my
8 friend for the debtor talked about Francisco Horrera in his
9 situation and the alleged harm that he would not suffer by this
10 TRO. But we contend, Your Honor, that that's the last element
11 that's addressed only after Your Honor finds competent
12 evidentiary proof to warrant the elements granting the TRO. We
13 don't believe they exist here, we don't believe they've been
14 offered here.

15 And, Your Honor, we do acknowledge that at the time of
16 the preliminary injunction hearing there will be time to
17 address the evidentiary issues, have discovery on them, and we
18 join in Mr. Wolk's request for that discovery. But, clearly,
19 at this point in time, and I'll get to it in a minute, all we
20 have are generalizations and conclusions, not the sort of proof
21 that leads a judge in this Court or any other Court to grant
22 the extraordinary relief requested.

23 Your Honor, vis-a-vis the 362 prong asked the
24 opponents to address certain situations. And I think it's
25 important to try to drill down, both on the indemnification

1 issue and the insurance issue, which are two, as I think the
2 material issues that my friends for the debtors rely on in
3 seeking to sustain their request for the injunctive relief
4 here.

5 Your Honor mentioned that some of the cases involved
6 some, but not all, are suing Chemtura Canada and what is -- I
7 think I'm paraphrasing, Your Honor, what's the plan at. Well,
8 I don't believe there's been any allegation made, contention,
9 argument, whatsoever, and it defies common sense I would argue,
10 that under the stream of commerce proffer that we've heard from
11 the debtor whereby Chemtura Canada manufacturers, sends it, at
12 least recently, to Chemtura the debtors as basically a middle
13 person for the point of putting it in the stream of commerce.
14 And Chemtura sends it to ultimate sellers, such as Citrus. I
15 don't think there's any indemnity issue there whatsoever, Your
16 Honor. Because I don't know how Chemtura Canada would have an
17 indemnity claim and none has been alleged against Chemtura
18 under the circumstances that we've now been told exist.

19 So the only issue, Your Honor, in connection with that
20 situation is insurance. And I've heard a lot about insurance
21 today, my friend Mr. Wolk noted it in the schedules -- the
22 debtors' schedules. My friends from the creditors' committee
23 have said that they now have possession of the insurance.
24 Which by the way, the whole insurance discovery issue which my
25 friend for the debtors raised as one of the burdens that they

1 would have to do in all these litigations they're doing now,
2 and they're going to have to do in connection with the
3 preliminary injunction motion. So I think, Your Honor, that's
4 a red herring.

5 In any event, the creditors' committee, at this point
6 in time, can't make sense of the insurance, although they say
7 they have it. And the party that could have made sense of it,
8 and given articulation of it to the Court, so Your Honor can
9 make an informed decision based on the conclusory allegations
10 as to depletion is the debtor. And they've had an opportunity
11 to do so; they chose not to do so, Your Honor. It's not our
12 burden to put that forward to Your Honor.

13 So we have an allegation that there is depletion vis-
14 a-vis claims against Chemtura Canada, but we've got no proof of
15 it, none whatsoever other than the say so first of a verified
16 complaint, and then basically the identical verified complaint
17 with a signature of an affiant. Because that's what happened.
18 They took the factual components to the verified complaint and
19 they made it into an affidavit.

20 So with respect to Your Honor's focus on that aspect
21 of the 362 prong, I'd submit that there's nothing in the record
22 that would substantiate an extension of 362 to Chemtura Canada
23 under those situations, other than the say so -- the
24 generalized say so, which is something that we could develop
25 going forward, but clearly doesn't -- at least from my

1 perspective, Your Honor, give Your Honor evidentiary grounds to
2 order a TRO today.

3 Your Honor mentioned as the third component, clearly
4 the issue when Chemtura sued, the issues are clear. But then
5 Your Honor -- the third issue was when Citrus is only being
6 sued. And this creates additional liability to Chemtura. And
7 I know that my friend Mr. Wolk spend some time on Your Honor's
8 Lyondell opinion. But, Your Honor, from our analysis we
9 believe -- and from drilling down on the little information
10 that was put in front of Your Honor and the Second Circuit case
11 law, we believe that the implied indemnification claims that
12 are being made by Citrus, which are the only evidence of an
13 indemnification claim that I've seen in its papers, and I refer
14 to their stay motion -- their lift stay motion. I think its
15 Exhibits B and D, which is the claim over against Chemtura and
16 then Chemtura's answer to the third-party complaint.

17 There's no absolute indemnification. I know from
18 dealing with other mass tort bankruptcies that there are
19 sellers or retailers that demand when a manufacturer sells
20 product. Whether it be a pharmaceutical, whether it be a
21 supplement that there's a written on the bill of lading,
22 written on the purchase agreement, there's an absolute
23 unequivocal indemnification obligation back. That doesn't
24 exist --

25 THE COURT: Mr. Molton, aren't indemnification cross

1 claims so common in mass tort suits, that in some asbestos
2 cases, by way of example, the state judges managing them even
3 by case management order have deemed cross claims by one
4 defendant against the other, so that people don't even have to
5 file the indemnification cross claims?

6 MR. MOLTON: Judge, I know that that's happened in
7 other litigations, I'm unaware that it's happened here. And I
8 know that with respect to Mr. Horrera, it hasn't happened. So,
9 clearly, yes, Your Honor, that's occurred before and that's
10 occurred in the context of mass tort litigations. Not
11 involving hundreds or even thousands, but tens of thousands of
12 tort claims in the context of case management and consolidated
13 proceedings. And I'm not just referring to consolidated
14 proceedings in the context of a bankruptcy, but often times NDL
15 consolidated proceedings or individual State Court NDLS, what
16 they call consolidated proceedings, which we have here in New
17 York, and they have out in California as well.

18 I would refer back, Your Honor, to -- the fact is that
19 these are not hard indemnification claims, these are soft ones.
20 These are implied common law claims. And I would refer Your
21 Honor back to the case law in this circuit that says potential
22 indemnification rights only support an extension of the
23 automatic stay, where the right is absolute, and there is no
24 dispute as to the debtors' entitlement to indemnification. And
25 I think we've raised those issues in our papers that we filed

1 on Sunday. There's no proof here, Your Honor, of any clear
2 indemnification right. All we have are what I call soft
3 claims, common law claims. Indeed, if you read Citrus'
4 indemnification claim, that's in the broad record, meaning it's
5 filed on the docket of the Court, it is an implied right -- an
6 implied claim right. And I do note that my friends, the
7 debtors', have denied it. They don't concede it. So --

8 THE COURT: Have denied liability on the cross-claim
9 you mean?

10 MR. MOLTON: Yes, Your Honor. And I refer Your Honor
11 to Exhibit D, I think, of the Citrus pleading. Where on the
12 two occasions that were raised, both in the context of a
13 negligence claim and a strict products liability claim, the
14 debtor has denied liability on the implied indemnification
15 claim.

16 I would suggest, Your Honor, that under the law in
17 this circuit that -- and this, again, goes away from the issue
18 Your Honor raised vis-a-vis Lyondell, because of a wholly
19 different situation. But I would argue the fact that it's not
20 Lyondell. The fact that it's not a hard contractual absolute
21 indemnity, that it's a soft indemnity.

22 The case law here establishes that that in and of
23 itself doesn't give or satisfy the grounds to extend the
24 automatic stay in connection with the fact that there are open
25 indemnification issues. And they're clearly here and we're not

1 going to run away from them. They're clearly here. But we
2 don't believe that under the context of the present motion,
3 there's sufficient.

4 Your Honor, then, asked us to consider the 362 basis
5 in terms of the threshold of the showing of the interference
6 with the debtors' estate. And then Your Honor's practice to
7 put a short leash on the stays that are, in fact, granted. And
8 I'll do the latter first. Because we agree with Mr. Wolk and
9 I'm sure the debtors might agree, too, that in the event that
10 Your Honor does find that there's sufficient grounds to, both
11 grant a TRO and then extend it to a preliminary injunction, we
12 believe that doing so -- putting a short leash, and the short
13 leash that comes from Judge Rakoff in the federal litigation,
14 where he managed the NDL and withdrew the reference partially,
15 and worked closely with Judge Blackshear and Judge Drain in
16 coming together with a global tort claim settlement for all the
17 federal bankruptcies, that was quite successful. But he,
18 himself, used that term in granting such stays for the purpose,
19 not only, having the parties come back and talk to the judge
20 about where they were. But, also, for the purpose of
21 facilitating the statement of global resolution that the debtor
22 has introduced in its papers. Clearly, having very close judge
23 supervision of a continuing stay of third-party non-debtor
24 litigation. And having that judge closely scrutinize what's
25 happening in the bankruptcies and in resolution of creditor

1 claims in connection therewith, can have a very, very good
2 affect on reaching the ultimate goal of global resolution. But
3 that's besides the point, Your Honor.

4 Going on the threshold of showing of interference with
5 the debtors' estate, again, I don't want to repeat myself, but
6 I don't think they've shown it. They may have alleged it, they
7 may have raised the issue, but they clearly haven't proved it
8 for the purpose of today's hearing. And that's because if you
9 even go to the affidavit that was signed and submitted
10 yesterday, Your Honor, you just look at the words they use.
11 First of all, we don't have a trial that's starting next week,
12 we don't have a trial that's starting even next month. We have
13 a trial in two months. Clearly, enough time for this Court to
14 consider preliminary injunction for all the parties to gather
15 the evidence they need. There's no imminent emergent, a
16 material risk of significant liability there.

17 And then they talk about that the document discovery
18 of Chemtura Canada hasn't been all encompassing. But on
19 paragraph 19, they say it's been limited to resolving of
20 questions of personal jurisdiction in the mass tort litigation.

21 So, clearly, according to what's going on now, you
22 don't have this all encompassing discovery. They say, though,
23 and they make the allegation in paragraph 20, that they
24 anticipate that full merits, discovery in some suits remain
25 lightly, if not, imminent.

1 Then they say in paragraph 21, counsel for Chemtura
2 anticipates, and I use the term anticipates again, that such
3 discovery could -- underscore could, be expensive. And would
4 necessarily implicate the time and reasons of the resources of
5 the debtor for the reasons they explain.

6 Paragraph 22, even if Canada's jurisdictional motion
7 is granted, the debtor anticipates expending significant time
8 and resources in its defense.

9 Again, Your Honor, going through and drilling down on
10 the allegations, the proof actually submitted, we get nowhere
11 close to Your Honor's own elements of showing interference with
12 the debtors' estate, at this time. Or based on their affidavit
13 in the likely future. Accordingly, Your Honor, dealing with
14 that second element that you mentioned, we don't believe that
15 they've proved up their case.

16 Your Honor mentioned, or the debtor had mentioned that
17 the claim are -- and I just want to very, very quickly go
18 through this. The claims are identical against all parties.
19 Well, that's not true. They even say -- one's a manufacturer
20 one's a de minimis redistributor, the other is the ultimate
21 distributor. And there are various issues, both in negligence
22 and strict products and other various tort claims that arise
23 from that, that have different implications. So the claims are
24 not identical against all debtor and non-debtors.

25 Discovery would need to be responded to. Again, I

1 think I've dealt with that by focusing on the affidavit. The
2 insurance issue I've dealt with. And the indemnity issue, Your
3 Honor dealt with. As to collateral estoppel, I think it's
4 clear that that in and of itself are the risks that there may
5 be decisions in cases that they're not involved or not
6 participating at the moment, that may make it a little harder
7 in the future. Well, that's generally true, no matter what,
8 with or without a bankruptcy, Your Honor.

9 The bottom line is vis-a-vis cases that are going
10 forward in various states against Citrus, alone. There are
11 going to be Daubert like hearings held in those, where Chemtura
12 is not participating. And needless to say, the results of
13 those decisions by the various judges, some of which may not
14 all be alike, depending on the state laws dealing with gating
15 issues on those concerns. Is something that the company would
16 have to deal with notwithstanding the administration of the
17 estate.

18 Your Honor, going to my friend, the debtors, last
19 statement vis-a-vis Mr. Horrera in particular, he said we've
20 had no articulation of harm. But I think he puts it on his
21 head, because what we've shown is that there's no harm
22 whatsoever in his particularized case to the debtor. And
23 Chemtura Canada is out of the case. Chemtura stayed. We've
24 got an action against Citrus, there's been no indemnification
25 claim made. And according to the affidavit submitted by local

1 counsel, the time has passed for doing so. So you don't even
2 get to the balancing and hardships that my friend from the
3 debtor seems to point to, vis-a-vis, my client, in terms of
4 denying or granting the TRO relief.

5 The fact that we've got a scheduled trial date in next
6 year, which I think -- I think spring of next year, which comes
7 up very quickly and may be impacted by a state. These would be
8 all non-debtor litigation. That mere fact, alone, can't
9 eviscerate the arguments I've made against denying the TRO. I
10 think it turns the standards on it's head.

11 And, finally, Your Honor, I want to make one final
12 word. I know my friend, Mr. Wolk, has talked about what he
13 would ask in terms of a TRO that might be granted. One of the
14 things that I did see, and they're not present anywhere here,
15 Your Honor, I don't represent them, but nobody does because
16 they're future claimants. I think that there's been a request
17 to stay -- stay the extended to prevent future claimants from
18 commencing suits. And I would contend to the Court that that
19 would -- might be something that Your Honor should consider as
20 denying, at least for the purpose of commencement, because
21 statute of limitation issues, which may be coming due, and with
22 respect to general due process and notice issues. These people
23 aren't here, Your Honor, these people haven't been noticed for
24 this hearing. And, clearly, the all encompassing nature of
25 that relief would seek to do. I'm not saying that

1 deliberately. But, in effect, great prejudice to those harmed
2 parties who have rights to sue. Any of these various
3 individuals, debtors or non-debtors, within the prescribed
4 statute of limitations.

5 If Your Honor has no questions, I'll take a seat.

6 THE COURT: Thank you. No, I don't have any further
7 ones. Next. I'll take any non-repetitive points you wish to
8 make.

9 MR. LIESEMER: Thank you, Your Honor. For the record,
10 again, Jeffrey Liesemer of Kaplan Drysdale, on behalf of
11 defendant Karen Smith and twenty-six other individual Diacetyl
12 claimants. We have claims pending in the underlying tort
13 litigation.

14 Your Honor, I think one aspect of this case that you
15 haven't heard yet that makes my client's situation unique is
16 certain of my clients have trial dates set. There is the
17 Campbell case that has a trial date set on August 31st. And
18 there's a second case with a trial date that's the Solis case,
19 that has a trial date of November 16, 2009. And, of course,
20 there's a third trial date that's scheduled for next year.

21 But let's talk about the first two. And what I heard
22 Your Honor say this morning, is that Your Honor is looking to
23 have an orderly process for discovery and a briefing on the
24 merits of the preliminary injunction, and we are all for that.
25 We think a lot of the factual issues need to be flushed out.

1 So the question here today is the TRO. And from my client's
2 perspective, and I think also before the Court, I think the
3 issue is what needs to happen between now and the first trial
4 date on August 30th that would provide for an orderly
5 consideration and discovery for the preliminary injunction?
6 And the answer is nothing; there is no necessity for this TRO;
7 there's no emergency. And the debtors who have the burden of
8 proof haven't submitted any evidence that would suggest an
9 emergency.

10 Let me give the Court some examples. The first
11 example is the insurance. Obviously, there's concern because
12 insurance can be property of the estate. And there's the
13 assertion that the insurance is shared among Chemtura Canada
14 and Chemtura Corporation, the debtor. Well, as a matter of
15 fact, we dispute that, we don't know how many policies are out
16 there, although there's been a representation in one of the
17 papers that there's hundreds of excess policies. We don't know
18 the policy limits, we don't know which policies have been
19 expended.

20 THE COURT: How do you dispute it if you don't know?
21 I can see an argument similar to the one Mr. Wolk made where he
22 said I can't get my arms around the insurance issue, I don't
23 know. But how do you dispute something premised on things that
24 you don't know, Mr. Liesemer?

25 MR. LIESEMER: Let me frame it another way then. We

1 would like the benefit of discovery regarding the insurance.
2 But assuming, arguendo, that there is shared insurance out
3 there, there's no evidence before this Court that that
4 insurance would be tapped. The first trial is scheduled to
5 take place on August 31st. There's going to be no judgment
6 entered in that case until, at the earliest, August 31st, but
7 that's probably not going to happen. That would enable these
8 claimants to have a direct action against the insureds. So for
9 purposes of today and the TRO, there's no emergency with
10 respect to the insurance.

11 With respect to the potential contribution and
12 indemnification claims, that's been addressed quite a bit. But
13 let me say this. The best evidence that we have right now
14 before this Court with respect to the TRO, is these are
15 contingent. So to the extent that Citrus might prevail it
16 wouldn't have an indemnification claim. If no judgment is
17 entered against Citrus there's going to be no liquidation of
18 any contribution or indemnification claim. So --

19 THE COURT: Mr. Liesemer, forgive me. Hasn't the
20 Bankruptcy Code, at least since 1979, recognized contingent
21 claims as claims against the debtor?

22 MR. LIESEMER: Absolutely. But we're talking about
23 what needs to happen between now and August 31st for an orderly
24 process and whether a TRO is necessary on that. And there's no
25 danger because even though there's procedures, including in the

1 Bankruptcy Code, that allow contingent creditors to avail
2 themselves to certain rights within the bankruptcy, and, also,
3 in the underlying tort litigation, there's going to be no
4 liquidation of those claims until August 31st at the earliest.

5 Let's talk about discovery burden and distraction.
6 The debtor has identified three individuals who would be
7 potentially distracted from being able to devote themselves to
8 this reorganization. In particular, it's been mentioned Ms.
9 Billie Flaherty, who's the general counsel. But we have no
10 evidence with respect to the amount of in-house staff that Ms.
11 Flaherty can avail herself to in order to address these suits
12 as well as the reorganization. Of course, there are outside
13 law firms, undoubtedly, that we haven't heard about who are
14 handling this tort litigation throughout the United States.
15 And in case the Court hasn't -- the Court has read the papers,
16 obviously, but in case it hasn't looked at Exhibit A, I would
17 commend Exhibit A of the verified complaint to the Court,
18 because it's very interesting. When I looked at all those
19 fifteen lawsuits that are pending against various parties,
20 including Chemtura and Chemtura Canada, seven of those fourteen
21 cases there was no discovery pending or served. In the other
22 seven, discovery had been given over in a lot of cases. The
23 debtor had responded to document requests and interrogatories.
24 So between now and the end of August, we don't see any evidence
25 of a mass of discovery burden that would put this

1 reorganization in jeopardy.

2 Interestingly, the debtor, Chemtura, also mentions the
3 toxicologist, Dr. Mark Thompson, who is essential to the
4 reorganization because he's working on a number of regulatory
5 matters with regard to the EU. Well, again, at the preliminary
6 injunction stage, we'd like to test that. It's not clear to us
7 immediately from the offset that EU regulatory issues are an
8 essential feature of this reorganization. But I'll let that
9 pass for the moment.

10 As for the arguments with respect to collateral
11 estoppel and the so-called record taint, or evidentiary
12 prejudice, that has been addressed. If Chemtura is severed
13 from these cases, we don't see how collateral estoppel could
14 happen. And with respect to --

15 THE COURT: Are you prepared to waive on behalf of all
16 of your clients the privity argument that Mr. Zott articulated
17 as a matter of concern for him?

18 MR. LIESEMER: In other words, Chemtura would not
19 be -- if there was a judgment entered against Canada, Chemtura
20 would not be subject to offensive non-mutual collateral
21 estoppel.

22 THE COURT: All right. Do you have authority to speak
23 for all the other tort litigants in the country in that regard?

24 MR. LIESEMER: No.

25 THE COURT: All right.

1 MR. LIESEMER: With respect to record taint, we heard
2 about the experts in the Daubert motions. But, Your Honor, in
3 some cases those motions have already been briefed and argued
4 with respect to those experts involved in the litigation. And
5 I'm thinking, in particular, there's a lawsuit in Sioux City
6 where those issues were flushed out. So in many cases, a lot
7 of this has already happened, that the debtor's expressing
8 concern about. And at the end of the day in terms of the TRO,
9 I'm not aware of any case that has said that potential
10 evidentiary prejudice or record taint is the basis for
11 extraordinary injunctive relief.

12 So let's talk about the balance of the hardships. In
13 terms of the evidence that's before this Court, the discovery
14 in these cases does not appear to be at a stage that is even
15 close to overwhelming, in terms of how do we get to August
16 31st. There is no evidence that a judgment will be entered
17 tomorrow or the next day that would put the so-called shared
18 insurance in jeopardy.

19 And, of course, there's the aspect that the debtors
20 have -- these suits have been pending since the petition date.
21 They were filed before the petition date, but the debtor's only
22 waited until now to declare the situation an emergency.

23 Now, with respect to the hardships on the plaintiffs,
24 let me say this. I'm prepared to call to the witness stand
25 today Mr. Kenneth McLean, who represents -- who is an attorney

1 who represents these tort litigations, who are my clients in
2 the underlying tort litigation. So he can testify as to the
3 burden that they would face in the event that they were
4 enjoined. But in order to cut through some of this and sort of
5 expedite things, I'm willing, with the Court's permission, make
6 a proffer as to what Mr. McLean would testify to.

7 THE COURT: Go ahead with the proffer. My case
8 management order says we don't take proffers when we have
9 alternative methods. The way to have done that would have
10 been -- and would be on a preliminary injunction, by an
11 affidavit subject to cross. But go ahead with the proffer, and
12 let's hear what it has to say.

13 Normally with proffers what we do after the proffer is
14 made, we then inquire to the party against whom the proffer h
15 as been made to see whether there is a desire to cross on the
16 proffer or to hear it live. But I think the best procedure
17 here would be to take the proffer first.

18 MR. LIESEMER: Thank you, Your Honor. If Mr. McLean
19 were called to the witness stand to testify in this case he
20 would testify as to one of his clients, Charles Campbell, who
21 is the named litigant in the lawsuit as set for trial on August
22 31, 2009.

23 He would testify among other things, that Mr. Campbell
24 suffers from severe lung disease, he has trouble breathing. In
25 fact, Mr. Campbell cannot go outside from his house without the

1 use of an oxygen tank. And, Mr. Campbell cannot afford an
2 oxygen tank, so he's relegated to the indoors.

3 Mr. McLean would testify that Mr. Campbell's medical
4 condition is severe, that he is close to death, and that if
5 this Court were to stay and postpone the trial in his case,
6 that he would -- there is a likelihood that he would die before
7 the trial could be resumed and completed.

8 In the event that were to occur, Mr. McLean would
9 testify that under Illinois law, a decedent's estate loses its
10 claim for punitive damages. So there is a loss of a claim that
11 would be faced here in the event that this case would be
12 postponed.

13 Mr. McLean would also testify if he were called to the
14 stand that the judge who is presiding over the trial in the
15 State Court in the Campbell case is close to retirement. If
16 the Campbell case were postponed for a period of time as a
17 result of the stay, a new judge would have to be called -- a
18 replacement judge would have to be called to preside over the
19 trial in the event that the trial were to be rescheduled an
20 unable to happen. In which case, the new judge would have to
21 get up to speed on the issues and this would cause even more
22 delay for these claimants.

23 With respect to Mr. Solis, who is the named litigant
24 for the lawsuit that is scheduled to be heard on November 16,
25 2009, Mr. Solis, the Court would here, if Mr. McLean were

1 called to testify that Mr. Solis suffers from a severe lung
2 disease that is alleged to have been caused by Diacetyl. Mr.
3 Solis needs a lung transplant. If Mr. McLean were called to
4 testify he would testify that Mr. Solis cannot afford a lung
5 transplant and, therefore, any compensation that he would
6 receive in the event his suit were allowed to go forward, would
7 be the most likely source in order to obtain that lung
8 transplant.

9 Mr. McLean would also testify as to a number of
10 foundational issues with regard to Diacetyl claims that I will
11 not trouble the Court with at this time. But we do reserve the
12 right to present that testimony.

13 But I think it is fair to say that what is before the
14 Court are real serious medical issues, in real human beings,
15 who would be harmed in the event that this case were stayed.
16 And since we are -- since the Court is deciding this TRO
17 there's very little harm that's going to occur to the debtor
18 between now and August 31st. There is going to be harm that
19 would be caused to individuals, such as Mr. Solis and Mr.
20 Campbell in the even that they're not allowed to continue to
21 have their counsel get ready for trial.

22 The public interest. I have reviewed the Court's --
23 I've read the Court's opinions regarding the power of the Court
24 to protect the assets of the bankruptcy estate in order to
25 preserve the reorganization efforts. But this is not that case

1 today. And at the end of the day no matter how the issue is
2 cut, injunctive relief is extraordinary, it shouldn't be the
3 rule, and that non-debtors should not be given the benefits of
4 the bankrupt without incurring its burdens. And that's an
5 important public interest to uphold, absent exceptional
6 circumstances which aren't here today.

7 On the other side, the claimants, of course, are
8 entitled to continue their suits at least in the short interim
9 for the Court to hear the preliminary injunction in their
10 effort to seek adequate compensation in the torts system.

11 And there was an argument that was made to this Court
12 today that well, there's other defendants out there so there's
13 other courses of compensation. Well, Citrus is one of those
14 other sources. And we believe it's nexus with the debtor is
15 tenuous at best, and certainly not enough to be awarded
16 injunctive relief. And I think this is important because the
17 debtor's been talking in terms of Citrus and Chemtura Canada.
18 Let's put Chemtura Canada aside for a second. Citrus, it's
19 connection is very tenuous. And, in fact, it's alleged
20 liability is, as we might say in the asbestos world in 524(g)
21 cases, it's an independent liability, it's not derivative of
22 Chemtura.

23 So given that tenuous nexus there's no basis for
24 Citrus to receive a TRO today.

25 With respect to Chemtura Canada, obviously the nexus

1 is greater because it's a wholly-owned subsidiary. But for the
2 reasons I've just stated, including the fact that there's no
3 evidence that the insurance would be in jeopardy between the
4 next sixty days between now and August 31st, we don't believe
5 that Chemtura Canada is entitled to a TRO either.

6 Thank you, Your Honor.

7 THE COURT: All right, thank you. Reply? First,
8 before reply, is there anybody else who has non-repetitive
9 points to make?

10 Come on up, behind Mr. Zott. I've heard argument to
11 positioned to the TRO for about an hour/hour and a half. I'll
12 hear what you have to say but try to avoid repetition.

13 MR. HENIN: Larry Henin on behalf of Citrus, Your
14 Honor. I am not speaking in opposition to the TRO.

15 THE COURT: Sure, Mr. Henin, I understand. Go ahead.

16 MR. HENIN: But I just want Your Honor to understand
17 our position here. We're faced with an August 31st trial date
18 in which significant claims have been asserted against Citrus.
19 We have thus far been prevented from obtaining discovery from
20 Chemtura, and to some extent from Chemtura Canada. And this is
21 information that we need in order to properly defend ourselves
22 in connection with that Campbell case which was just discussed
23 a few moments ago.

24 Certainly, the outcome of that case, Your Honor, in
25 addition to having significant outcome to Citrus, as we also

1 believe as the debtors have indicated this morning, could have
2 a significant outcome on the estate as well.

3 So right now, Your Honor, we have one hand tied behind
4 our back, in that we're being compelled at this point in time
5 to go to trial without the requisite information and discovery
6 that we need from the debtors that we're entitled to in order
7 to properly defend ourselves in connection with that case.

8 Your Honor, that relief, obviously, becomes less
9 important if a TRO is granted, and a mechanism is developed
10 that all these claims could be addressed in one forum where
11 everyone could be at counsel's table, but hopefully even
12 better, that there could be a consensual resolution reached
13 with all of these claims, which is still a possibility, Your
14 Honor. And I think that's probably the goal, ultimately, of
15 the debtors in this case. But our problem, Your Honor, is that
16 we currently have one hand tied behind our back in connection
17 with defending ourselves in the Campbell litigation.

18 The Campbell litigation, Your Honor, obviously
19 precipitated the events of this morning. We only filed for
20 relief in that case, Your Honor, because of the fact of the
21 impending trial. But, ultimately, if no TRO is granted, there
22 will be some future motions made by us as well as other
23 parties, as well. We believe, Your Honor, that there is a
24 close nexus between Citrus and the debtors. The debtors
25 manufactured the goods, Your Honor, the chemical. It was

1 placed in a box and shipped off, Your Honor. So, clearly, it
2 would Citrus' view, Your Honor, that any exposure that Citrus
3 has certainly would fall upon the debtor as well.

4 And as indicated before, Your Honor, we also believe
5 that concepts of evidentiary issues and stare decisis and
6 perhaps even collateral estoppel could be at issue here. And
7 it would be particular difficult, Your Honor, if we were
8 compelled to go forward in the Campbell case at the end of
9 August without the benefit of discovery that could be a
10 significant detriment, not only to Citrus, Your Honor, but to
11 the debtor, as well. Because the debtor, obviously, is going
12 to feel the effects of any judgment that is entered against
13 Citrus in that litigation.

14 We believe, Your Honor, that one way or the other we
15 believe we either need the relief of the TRO or relief from the
16 stay so that we could get to discovery and continue the action
17 in the Campbell case. We believe, Your Honor, that the debtor
18 has made sufficient findings, at least, under Section 105 of
19 the Bankruptcy Code, Your Honor, which is clearly a much
20 broader standard than Section 362. We believe that there's law
21 to support it. And, certainly, Your Honor, we would favor the
22 relief that the debtor has asked this morning. If Your Honor
23 were to decline to enter that relief, Your Honor, then
24 certainly we would request that this Court, at a minimum, grant
25 relief -- grant Citrus relief from the stay so that we could

1 get imminent discovery from the debtor so that we could proceed
2 in the Campbell litigation.

3 THE COURT: Thank you. All right, Mr. Zott, reply.

4 MR. ZOTT: Thank you, Your Honor, and I'll be brief,
5 we've been at it for a long time.

6 I think the issue comes down to for purposes of a TRO,
7 which is all we're talking about today, temporary stay
8 proceedings, whether we've made a sufficient showing. And
9 counsel argued the need for irreparable harm. Your Honor noted
10 in the Lyondell decision, for example, 402 Bankruptcy 571, that
11 decision, that irreparable harm is actually not quite the
12 standard when we're talking about a bankrupt entity, an
13 insolvent entity, that it's a modified standard. The case law
14 is clear that where there's a threat to the reorganization
15 process, or where it's necessary to preserve property of the
16 estate, that those are valid grounds and those establish
17 irreparable harm. We have made that showing today for purposes
18 of a temporary restraining order.

19 Now, I must say I'm a little surprised at the
20 arguments that twelve-page affidavit we submitted, as well as
21 the verified complaint, by the general counsel, who's the
22 person with the most knowledge on this issue, was not
23 sufficient to make that showing. The facts that she asserts in
24 there on her knowledge, they're detailed, she lays it out at
25 length. She's here today, as well, if she's needed to testify.

1 So I think those facts are there.

2 And, specifically, the diversion of resources she lays
3 out in considerable detail. Why, first, we would have to turn
4 our attention to immediately defend these cases, I'm not going
5 to repeat those arguments. Your Honor put it best, we're
6 between a rock and a hard place. If we don't defend -- for
7 example, if we don't defend Citrus then the exact same
8 causation, the same damages, the same product defect issues
9 will be litigated as to Citrus without the benefit of our
10 knowledge, our expertise, the documents that we have, the
11 witnesses that we have. And what it would do is it would make
12 it much more likely that they would lose. And then they would
13 turn right around and send us the bill. And that's the problem
14 in cases like this.

15 So she lays out why we need to get involved in these
16 cases. She specifies exactly what her responsibilities are in
17 the reorganization and the time commitment that that's been,
18 which, Your Honor, when we call her at the preliminary
19 injunction, I can give you a preview. They said the standard
20 is 100 percent. I'm not sure if the standard is you have to be
21 100 percent occupied before you're able to get the automatic
22 stay extended for diversion of resources. But she's probably
23 150 percent occupied on the reorganization right now, it is
24 more than a fulltime job.

25 She also identifies to other specific senior witnesses

1 that would have to divert their resources and become actively
2 involved. So we've got setting up the defenses, we've got --
3 we've just heard from Citrus that they would like you to lift
4 the stay and allow twenty depositions of the defendant of
5 Chemtura to go forward. It's these kinds of threats that we're
6 going to see again, and again, and again.

7 In terms of the -- by the way, we'd have to prepare
8 experts and work with Citrus to prepare experts, which would
9 have to all happen over the next month and a half to two
10 months. We would have to make our witnesses available at trial
11 if they're going to have a realistic chance to succeed in that
12 case. All of this stuff is going to burden the debtor
13 immensely.

14 Second point was the insurance. And I'm not going to
15 spend a lot of time on it. And the declaration -- and I agree,
16 we have not laid out every policy in detail and the amounts.
17 But what we have said and what is and what will remain
18 undisputed, is that Chemtura Canada and Chemtura are both
19 covered by those policies. And that if Chemtura Canada has any
20 judgment entered against it that will reduce the amount of
21 those policies. We also have very substantial retentions under
22 those policies. That's established by the Flaherty
23 declaration.

24 In terms of indemnification. Clearly, as Your Honor
25 noted, Citrus is asserting the right to indemnification.

1 They've done it in eight cases, they'll do it in all the cases
2 before we're done. The only argument there is that the
3 indemnification right is not absolute. And the issue here is
4 we're not relying on any one ground. We're not saying that
5 because of a contingent indemnification, for that reason alone,
6 you need to enter a TRO. We're saying there are multiple bases
7 that together require -- or entitle us to TRO.

8 But we do cite a case, it's this Sudbury case, it's
9 not out of this district, it's the Ohio Bankruptcy Court, 140
10 Bankr. 461. Where the argument was also made there that the
11 indemnification was not absolute. It was an officer and
12 director indemnity. And there were arguments that those
13 indemnities may not be valid. And the court noted that that
14 was an issue, the enforceability of the indemnities was an
15 issue. The Court went on to say, "That these distinctions
16 missed the fundamental similarities between this case," that is
17 the debtors' case, "and those cases that would proceed.
18 Plaintiff's actions are based upon their pre-petition
19 transactions with the debtor, and the debtor would be compelled
20 to defend them because of legitimate indemnity and collateral
21 estoppel concerns, as fully as if they were named defendant."
22 That's the fundamental issue, and that's true whether the
23 indemnity is contingent or whether it's absolute. A prudent
24 debtor just can't sit back and let those kind of cases proceed.

25 In terms of collateral estoppel, I'm glad to hear that

1 one set of litigants, at least, purported to waive. I'm not
2 sure legally whether you can waive on behalf of a client
3 without consulting with the client. And I doubt that they
4 consulted since the question came up today. But there are
5 certainly many other litigants that haven't waived. Beyond
6 that, we've got the whole issue of stare decisis and
7 evidentiary prejudice which are also grounds that are noted in
8 these cases, including the Calpine cases, among others.

9 Clearly, when Courts start to rule on key issues like
10 Daubert issues, that's a train that will become hard to stop.

11 The issue, Your Honor, very briefly, on Horrera --
12 Horrera makes an argument that you should sort of look at each
13 case one at a time. And that their particular case there isn't
14 an emergency today. But that certainly hasn't been the
15 approach that the Courts have taken to other large or mass tort
16 situations. The point is we have a monolithic set of claims
17 throughout the country. They all involve the same exact facts,
18 legal theories, et cetera. And as a whole they post a
19 substantial threat to the estate. Whether one case taken, in
20 and of itself, may not pose a threat, that's not what we're
21 dealing with here. We're dealing with a massive litigation
22 that will only grown over time.

23 I will address the last point, which is the harm to
24 the particular litigants. And I will say that, obviously,
25 that's a hard issue. And we're not in any way insensitive to

1 that issue. Just a couple of points. Most of the cases here
2 there are multiple other defendants. And these litigants are
3 free to proceed against solvent entities and to recovery
4 against those entities if they so desire. They mention Solis,
5 there are seven other defendants in that case. They mentioned
6 Ortiz, there are numerous other defendants in that case,
7 including four other defendants that were sued for Diacetyl.

8 I will also note, that that argument has to be true of
9 all the mass tort cases that are staged, such as Robins,
10 Mansville and others. Clearly, it's an issue in every case,
11 and yet the courts have entered stays.

12 Lastly, I'll say that we're not trying to shirk our
13 responsibilities here. We're trying to come up with a process
14 in an organized, efficient and fair way, get these claims
15 before a single court and try to get them resolved. So while
16 there may be for the time being we have a stay, our long-term
17 goal is to get these resolved more quickly rather than more
18 slowly. Not to drag them out but to get them resolved and move
19 on and get this behind us.

20 Your Honor, I thank you very much for your time, and I
21 know how busy you are, and I appreciate it.

22 THE COURT: All right, thank you. All right, folks,
23 we're going to take a recess. You're going to see other
24 lawyers coming in for a 12:00 TRO hearing in another matter I
25 have. They will wait. I need you all back here by noon, and

1 then I'll issue a decision.

2 (Recess from 11:44 a.m. until 12:26 p.m.)

3 THE COURT: Sit down everybody. All right. In these
4 jointly considered proceedings in an adversary proceeding under
5 the umbrella of the Chemtura Chapter 11 cases and the contested
6 matter that appears in those cases, I have before me matters of
7 two types.

8 The first is a motion for a relief from the stay filed
9 by Irma Rose Ortiz, et al. and, though the matter may be mooted
10 out, another motion for relief from the stay by Citrus. I also
11 have a motion for a TRO from Chemtura in the adversary
12 proceeding of Chemtura vs. Smith, staying a certain Diacetyl
13 litigation against Citrus in the debtors'/nondebtors' affiliate
14 Chemtura Canada.

15 I will be granting the requested TRO with some carve
16 outs from those which were originally requested and I am
17 denying the motions for relief from the stay in each case
18 pending consideration of the preliminary injunction motion that
19 will follow. The following are my findings of fact,
20 conclusions of law and bases for the exercise of my discretion
21 in that regard.

22 The facts, at least at this juncture, are not in
23 material dispute so I'll take the facts in the declaration,
24 Billie Flaherty, Chemtura's general counsel, as true. The
25 relevant facts are as follows.

1 Chemtura Canada, the nondebtor in this case,
2 manufactured and sold Diacetyl in the U.S. from 1982 to 2005.
3 Diacetyl is a butter flavoring agent that had been widely used
4 in the food industry before 2005. Citrus was Chemtura Canada's
5 primary customer and exclusive retailer -- reseller in the U.S.
6 From 1982 to 1998, Chemtura Canada sold Diacetyl directly to
7 Citrus. After 1998, Chemtura Corporation, the debtor here,
8 acted as an intermediary in connection with those sales.

9 Beginning in 2004, food industry factory workers began
10 asserting claims based on exposure to Diacetyl alleging that it
11 caused respiratory illness leading to a considerable number of
12 product liability actions. About 300 of such actions are
13 currently pending. Thirteen of which involve Chemtura and
14 twelve of which involve Chemtura Canada, amounting to a total
15 of fourteen Diacetyl lawsuits against Chemtura, Chemtura Canada
16 or both. Seven additional actions have been resolved. Citrus
17 has also been named in a number of these lawsuits.

18 Some of these lawsuits are what the debtors refer to
19 as "direct actions", meaning that the plaintiffs have named
20 Chemtura or Chemtura Canada or both as defendants. Chemtura is
21 a named defendant in ten direct actions and Chemtura Canada is
22 a defendant in five. Citrus is a named direct defendant in all
23 of these actions.

24 Other pending Diacetyl actions are what the debtors
25 call "indirect actions". Meaning that Citrus, and in one case

1 Unger & Company, have brought indemnification and contribution
2 claims as a third or fourth party defendant against Chemtura,
3 Chemtura Canada or both.

4 Of the fourteen pending suits against Chemtura and
5 Chemtura Canada, three have trial dates. They're said to begin
6 on August 31, 2009 and November 16, 2009 and September 20,
7 2010. The remaining actions are currently in the discovery
8 case.

9 The debtors' bankruptcy filing has stayed all actions
10 against Chemtura. The debtors now ask me to issue a TRO
11 staying the Diacetyl actions against Chemtura Canada and
12 against Citrus. It's clear that I have subject matter
13 jurisdiction to rule on this matter. It arises under Section
14 1334 of the code and my decision in Lyondell Chemical vs.
15 CenterPoint 402 B.R. 571. See that decision for its more
16 extensive discussion of the jurisdiction on prejudice.

17 The debtors argue alternatively that I should issue
18 this TRO pursuant to Section 362 of the code and that I should
19 also issue it under Section 105(a). I'll now talk to my
20 conclusions of law and bases for the exercise of discretion in
21 connection with those requests.

22 As to lengthy argument we had directed principally at
23 the 362 prong made clear. The Section 362 issues are complex.
24 They may vary from tort litigation to tort litigation depending
25 on exactly who was sued in that case and what the insurance

1 posture may be. And they may require further evidentiary
2 development as to which the tort litigants have had, up to this
3 point in time, essentially no opportunity to explore. But the
4 105(a) issues are, at least on the state of this record, much
5 clearer and they justify the issuance of a TRO, though, as I
6 indicated, limited in some respects.

7 At least for the purposes of the presently requested
8 TRO, the debtors have made a sufficient showing, by affidavit,
9 of the burdens that would be imposed on the debtors at the
10 expense of their reorganization if the Diacetyl litigation were
11 permitted to continue on its course right now. For the
12 purposes of the present TRO request, I take the facts in the
13 Billie Flaherty declaration as true though subject to
14 reconsideration, and when I considered the preliminary
15 injunction, if anyone wishes to cross-examine her at the
16 preliminary injunction hearing. Specifically, I find that for
17 reasons set forth in more detail on her declaration, litigation
18 against Citrus or Chemtura Canada will divert key debtor
19 personnel from the task of restructuring the debtors. That
20 task, and that task alone, should be occupying the great bulk
21 of the time of those key personnel, right now and in the near
22 future, if not also substantially all of it.

23 The Diacetyl actions deal with both factual and legal
24 issues. The debtors have proven that their key personnel,
25 especially including Chemtura's general counsel, Billie

1 Flaherty, will be distracted by continuing Diacetyl litigation
2 against Chemtura Canada or Citrus. Ms. Flaherty is responsible
3 for overseeing Chemtura's defense of the Diacetyl litigations
4 and she is also overseeing the debtors' reorganization. She
5 can't be expected, at least on this state of the record, to
6 perform effectively both of those responsibilities in the time
7 frame with which we're now presented. Ms. Flaherty, along with
8 Mr. Sean O'Connor and Dr. Mark Thompson, among others, are
9 critical to the reorganization of the debtors.

10 Because of Chemtura's potential liability arising from
11 the litigation against Chemtura Canada or against Citrus, the
12 burdens on the debtors, at least on this state of the record,
13 will be more than minimum. And while I continue to believe
14 that no competent judge would impose collateral estoppel on a
15 party that wasn't there and subject to reconsideration ab
16 initio at the preliminary injunction hearing, I think a
17 sufficient showing has now been made that where the debtors'
18 personnel know most of the relevant facts and they could be so
19 dramatically effected by what could happen in the tort
20 litigation, as a practical matter, they could not sit idly by
21 and allow the litigations to proceed without debtor
22 participation. Key personnel will be deposed and the debtors'
23 staff and counsel will be burdened with document discovery
24 along with motion practice, monitoring of the cases and the
25 dozens of other tasks that parties are charged with in

1 litigation of this magnitude, not to mention more extensive
2 participation should it be necessary to protect potential --
3 protect the debtors from potential prejudice. See Judge Kevin
4 Castel's decision in Hawaii Structural Ironworkers Pension
5 Trust Fund vs. Calpine, 2006 WL 3755175 at page 5 and Judge
6 Lifland's decision in Calpine 354 B.R. at 50.

7 Under the relevant authorities, prejudice to the
8 reorganization effort substitutes for irreparable injury of
9 other types. Here, while a judgment against any of the
10 defendants involved isn't imminent, the need to suffer the
11 burdens I just discussed is, and drawing the debtors'
12 management away from their task of concentrating on this
13 reorganization results in an injury that's irreparable, in its
14 own respect certainly serious and imminent. Other requirements
15 for a TRO have likewise been satisfied.

16 For the duration of the requested TRO, even though I
17 recognize that because it was issued on notice it wouldn't be
18 limited to ten or twenty days, there will be no material
19 prejudice to tort litigants save only for, arguably, one;
20 litigant Campbell, whose trial is scheduled for August 31. And
21 in his case, which I'm prepared to consider at greater length
22 at the preliminary injunction hearing which will take place
23 prior to August 31, we will still have to consider his ability
24 to proceed against other defendants and how strong the
25 likelihood would be that he would get paid quickly enough to

1 help him even if he were allowed to proceed on his litigation
2 on August 31st and were to prevail in it.

3 A showing has been made that the debtors are on track
4 for a successful reorganization which is all that the
5 likelihood of success prong requires. See my decision in
6 Lyondell CenterPoint. And protecting the debtors' ability to
7 reorganize and thereby save thousands of creditors and
8 employees, or at least assist them, is very much in the public
9 interest and at least for the duration of the TRO there is no
10 countervail and public interest concern in any other direction.

11 With that said, I will permit some carve outs which
12 will result in no material prejudice to the debtors for their
13 creditors. Tort plaintiffs will be permitted to file
14 complaints or amended complaints sufficient to main parties and
15 otherwise stop the clock on the running of applicable statutes
16 of limitations so long as no defendant, debtor or otherwise
17 need do anything to respond. And I'll permit the prosecution
18 of claims where there is no basis for concern as to claims
19 being asserted against the debtor. That seems to be the case,
20 vis-a-vis the claims asserted against Citrus that have nothing
21 to do with Diacetyl.

22 I'll also do what I can right up front to see whether
23 there is anything that can be done to help plaintiff Campbell,
24 although I can't say that I have any great degree of optimism
25 that much can be done for him. I will require the debtors and

1 counsel for Campbell to confer with each other to see if there
2 is any way to help him by a consensual settlement or resolution
3 before his trial. I won't order any agreement, but I will ask
4 the debtors -- require the debtors to focus on whether there is
5 something that can be done in light of his immediate needs and
6 circumstances. Frankly, if the litigation proceeded on August
7 31st, having been a litigator for thirty years before I showed
8 up to do my present job, I know that starting a trial is very
9 different than putting the money into a plaintiff's pocket.
10 And there are a host of uncertainties that would impair or
11 delay his ability to be helped by a litigation trial, even if
12 he were to begin it on August 31st. I'll direct the debtors to
13 focus on the possibility of a least bit considering his needs
14 and concerns and working out something with his counsel to
15 resolve it. But that's it on the carve outs from the TRO,
16 folks.

17 Now, on the motion -- motions for relief from the
18 stay, my disposition here moots out the Citrus request. Vis-a-
19 vis the Ortiz request, I'm going to hold, on this date of the
20 record, that for all of the same reasons I'm denying the
21 motions to lift the stay, to permit that litigation to proceed
22 against Chemtura. The Sonnax factors overwhelming tip in favor
23 of denying relief here. Lifting the stay would not result in a
24 complete resolution of the issues. It would interfere with the
25 debtors' reorganization efforts, particularly by reason of

1 flood gates consequences. There is no specialized tribunal.
2 By reason of significant retained limits on insurance, we can't
3 dump this litigation on the insurers. Interest of judicial
4 economy weigh in favor of coordinated resolution of the cases
5 of this character. None of the cases has a trial date within
6 the duration of the requested TRO and only one or two of the
7 cases now appear to have close enough trial dates within the
8 zone of times for which I presently could contemplate making
9 any preliminary injunction or further stay last. For the
10 reasons I've noted, the balance of harms tips dramatically in
11 the debtors' favor for the duration of the TRO and the
12 codefendant or third party plaintiff of Citrus does not object
13 to the TRO.

14 Any burdens on Chemtura in litigation against the
15 nondebtors, Chemtura Canada or Citrus would be only more
16 pronounced in litigation against Chemtura itself. And for all
17 of those reasons, parties seeking relief from the stay have
18 thus failed to show cause for relief from the stay.

19 That denial is without prejudice to renewal once the
20 other Diacetyl plaintiffs are permitted to continue litigation
21 against Chemtura Canada and Citrus, but I don't need to decide
22 that issue today.

23 All right. I'm going to so order the record and
24 direct counsel for Chemtura to prepare a modified TRO
25 consistent with this decision. The parties are stayed as of

1 right now in accordance with the requested TRO. The TRO is
2 merely to state that for the reason set forth on the record,
3 the parties are enjoined and it's not to attempt to capture all
4 of the discussion or any nuances in my decision, but it is to
5 specifically mention the carve outs that I articulated.

6 All right. Not by way of reargument, are there any
7 open issues? Hearing none, we're adjourned. We're going to
8 have a five minute recess and then I'll take the next TRO
9 application. Mr. Zott.

10 MR. ZOTT: We need a date for the -- do we want to
11 work that out or how should we work out a date for the
12 preliminary injunction?

13 THE COURT: You're to caucus with anybody who might
14 wish to be heard on the preliminary injunction, including, of
15 course, everybody who has spoken in this room to find out what
16 each of the parties needs to get ready for the preliminary
17 injunction. If I'm going to be getting proof at the
18 preliminary injunction, and if there is not agreement on all of
19 the relevant facts, pointed differently if there are any
20 disputes as to material fact, or a desire to cross-examine
21 witnesses, then you're going to have to allow for time for that
22 and give me the party's joint recommendations for the amount of
23 trial time that I have to reserve. You're to resolve the
24 amount of time that you need to do a party's discovery request.
25 And then when you have your arms around how much time you need

1 to have that preliminary injunction or before the preliminary
2 injunction, you're to jointly contact my courtroom deputy to
3 get a trial date.

4 MR. ZOTT: Very well.

5 THE COURT: I can tell you now that there is no
6 reasonable expectation that the preliminary injunction hearing
7 could be held before July 14. I don't know if you can get
8 everything done -- ready between now and then anyhow. As some
9 of you recognized, I have a number of things on my docket and I
10 have to triage my matters.

11 MR. ZOTT: Understood.

12 THE COURT: All right. We're adjourned.

13 ALL: Thank you Your Honor.

14 (Whereupon these proceedings were concluded at 12:47 p.m.)
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I N D E X

R U L I N G S

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Citrus & Allied motion for relief from stay denied without prejudice to renewal once Diacetyl plaintiffs are permitted to continue litigation against Chemtura Canada and Citrus	90	22

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

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

LISA BAR-LEIB (CET**D-486)
AAERT Electronic Certified Transcriber

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