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

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In re: : Chapter 11
CHEMTURA CORPORATION, *et al.* : Case No. 09-11233 (REG)
Debtors. : (Jointly Administered)
-----X

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF CHEMTURA CORPORATION, *ET AL.* TO THE MOTION OF
KAREN SMITH AND CERTAIN OTHER DIACETYL CLAIMANTS (1) FOR
APPOINTMENT OF AN OFFICIAL COMMITTEE OF DIACETYL CLAIMANTS,
OR ALTERNATIVELY, (2) FOR APPOINTMENT OF A DIACETYL CLAIMANTS'
SUBCOMMITTEE OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

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TO THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE:

The Official Committee of Unsecured Creditors (the “*Creditors’ Committee*”) of Chemtura Corporation, *et al.* (collectively, the “*Debtors*”), by and through its undersigned counsel, Akin Gump Strauss Hauer & Feld LLP (“*Akin Gump*”), hereby submits this objection (the “*Objection*”) to the Motion of Karen Smith and Certain Other Diacetyl Claimants (the “*Smith Claimants*”) (1) For Appointment of an Official Committee of Diacetyl Claimants, or Alternatively, (2) For Appointment of a Diacetyl Claimants’ Subcommittee of the Official Committee of Unsecured Creditors (the “*Motion*”). In support of this Objection, the Creditors’ Committee respectfully submits as follows:

PRELIMINARY STATEMENT

1. By the Motion, the Smith Claimants seek the appointment of an official diacetyl claimants’ committee or, in the alternative, the establishment of a Court-ordered subcommittee of the Creditors’ Committee consisting solely of diacetyl claimants.¹ The Smith Claimants seek these forms of extraordinary relief (i) on the blanket assertion that the interests of the diacetyl claimants are not adequately represented by the Creditors’ Committee and (ii) for the “limited” purpose of requiring the Debtors’ estates or, more accurately, the Debtors’ unsecured creditors to fund the diacetyl claimants’ efforts in connection with the estimation of their claims (the “*Estimation Proceeding*”) and formulation/confirmation of a plan of reorganization.

2. The Creditors’ Committee is sympathetic to all individuals that have suffered injury as a result of exposure to diacetyl. The Creditors’ Committee, through its participation in the Estimation Proceeding and insurance-related litigation, is seeking to ensure that appropriate

¹ The arguments contained herein apply with equal force to the Smith Claimants’ request for alternative relief, i.e. to have a subcommittee to the Creditors’ Committee appointed which would represent only diacetyl claimants and be permitted to retain its own professionals paid from the Debtors’ estates.

reserves are established and sources of recovery made available to satisfy valid diacetyl-related claims against the Debtors' estates. However, the Creditors' Committee does not support the Smith Claimants' efforts to transfer the costs of their participation in the Estimation Proceeding and plan process to all unsecured creditors under the guise of procuring adequate representation for diacetyl claimants. Indeed, the Smith Claimants have alleged no valid basis upon which the Court could reasonably conclude that the Creditors' Committee is so crippled by conflict as to be unable to function, or that the diacetyl claimants cannot participate in these chapter 11 cases without official committee status.

3. At the heart of the Motion is the Smith Claimants' assertion that fairness dictates that the Debtors' estates fund the diacetyl claimants' participation in the Estimation Proceeding and plan process. In support of this position, the Smith Claimants posit that, while the Debtors, Creditors' Committee and Equity Committee will be funded by the estates, "there is no particular party or law firm ... that can represent all of the diacetyl claimants in the [E]stimation [P]roceeding" and "[t]he interests of the diacetyl claimants therefore hinge on a handful of law firms that may or may not have enough resources or a sufficient stake in this process to participate." Motion at 3. The Smith Claimants thus argue that "[t]he burden of carrying the claimants' side of the case should not be shouldered by a few law firms that may have a sufficient number of claims at stake in the process, but do not represent all the claimants." *Id.* What the Smith Claimants (purposely) fail to advise the Court, however, is that of the approximately 375 non-duplicative diacetyl-related proofs of claim filed in these cases, 346 or approximately 92% of such claims were filed by the law firm Humphrey, Farrington & McClain, P.C. ("**Humphrey Farrington**"), co-counsel with Caplin & Drydsale, Chartered ("**Caplin & Drysdale**") to the Smith Claimants. The Smith Claimants also fail to note that of the remaining

29 non-duplicative claims, ten were filed by counsel that also represent diacetyl claimants that are nominally serving on the Creditors' Committee.² The Motion must be seen for what it is -- a thinly veiled attempt to have the Debtors' estates finance a limited number of law firms' commercial tort practices. This conduct should not be countenanced by this Court.

4. As troubling as Caplin & Drysdale's transparent attempt to have the Debtors finance their contingency fee practice is the assertion that the Creditors' Committee (including its professionals) is not adequately and appropriately acquitting its fiduciary obligations to all unsecured creditors. Since its formation on March 26, 2009, the Creditors' Committee has been an active participant in all aspects of these chapter 11 cases consistent with its role as a fiduciary for all unsecured creditors. From negotiating material modifications to the Debtors' initial DIP financing facility to challenging the allowability of a \$9 billion claim asserted in the public interest by the Council for Education and Research on Toxics ("*CERT*"), every action taken by the Creditors' Committee has been in furtherance of its efforts to maximize unsecured creditor recoveries. The Creditors' Committee's objective is to ensure that each unsecured creditor with an allowed claim recovers exactly what it is entitled to receive under applicable law -- no more, no less. In furtherance of this goal, the Creditors' Committee has sought to maximize recoveries not solely, as is suggested in the Motion, for the benefit of commercial creditors, but for the benefit of all those who hold valid unsecured claims against the Debtors' estates, including diacetyl claimants.

5. Moreover, contrary to the Smith Claimants' assertions, the current constitution of the Creditors' Committee is an appropriate cross-section of the Debtors' unsecured creditor

² In addition, seven of the remaining 29 diacetyl claimants are corporations who are co-defendants with the Debtors in several diacetyl related litigations (the "*Corporate Claimants*"). Unlike the individual diacetyl claimants, the Corporate Claimants are seeking contribution and/or indemnification from the Debtors in connection with the various diacetyl-related litigations.

constituency. As stated in the Declaration of Philip C. Dublin, Esq., annexed hereto as Exhibit A, the Creditors' Committee consists of the Pension Benefit Guaranty Corporation ("**PBGC**"), two noteholders, three indenture trustees, one trade creditor and, importantly, three diacetyl claimants. The diacetyl claimants that serve on the Creditors' Committee are represented solely by their respective counsel, (including Caplin & Drysdale) and none of the individual diacetyl claimants have participated in a single Creditors' Committee meeting or conference call. However, Caplin & Drysdale, as co-counsel to Creditors' Committee member Gerardo Solis, has been only a limited participant on the Creditors' Committee. As of the date of this Objection, Caplin & Drysdale has attended only four of the 28 conference calls and none of the in-person meetings that have been held since it was designated a Creditors' Committee-member representative. Had Caplin & Drysdale been a more active participant, it would have an appreciation for the efforts made by the Creditors' Committee to balance the need to ensure adequate representation of all unsecured creditors with the need to safeguard the integrity of the chapter 11 process -- efforts that have been undertaken, at all times, in accord with the Creditors' Committee's fiduciary obligations.

6. The Creditors' Committee strikes this balance by recusing members of the Creditors' Committee from matters directly impacting their claims. The Creditors' Committee bylaws dictate that when issues of conflict arise between the fiduciary obligations of the Creditors' Committee, as a whole, and the pecuniary interests of individual Creditors' Committee members, such members are prohibited from receiving applicable legal and business analysis and participating in Creditors' Committee deliberations on such issues. Therefore, it was in accordance with the bylaws, which were approved by two of the three diacetyl claimant representatives (including Caplin & Drysdale), which mandated that Creditors' Committee

counsel not distribute to the diacetyl claimant Creditors' Committee members a legal analysis related to the estimation of diacetyl claims. Moreover, despite Caplin & Drysdale's protestations that it was unaware that the analysis existed until Akin Gump filed a fee application, the memorandum was circulated to the Creditors' Committee at an in-person meeting on December 15, 2009 at which Caplin & Drysdale's co-counsel, Humphrey Farrington, was present and advised why it was not receiving such analysis. Akin Gump's refusal to provide the diacetyl claimants with the estimation analysis, and its refusal to permit Caplin & Drysdale to, in essence, voir dire the Creditors' Committee's expert for the Estimation Proceeding, were consistent with not only the Creditors' Committee's bylaws, but with counsel's ethical obligations.

7. For the reasons set forth above and elaborated upon herein, the Smith Claimants cannot demonstrate that *any* of the elements commonly considered by courts when determining whether to appoint an additional official committee weigh in their favor. Accordingly, the Motion should be denied.

BACKGROUND

8. On March 18, 2009 (the "*Petition Date*"), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b).

9. Pursuant to Bankruptcy Code sections 1107(a) and 1108, the Debtors are authorized to operate their businesses and manage their properties as debtors in possession.

10. On March 26, 2009, pursuant to Bankruptcy Code section 1102(a), the Office of the United States Trustee for the Southern District of New York (the “*U.S. Trustee*”) appointed the Creditors’ Committee. The Creditors’ Committee currently consists of ten members.³

11. On December 29, 2009, the U.S. Trustee appointed the Official Committee of Equity Security Holders (the “*Equity Committee*”).

The Diacetyl Claimants’ Requests for an Official Committee

12. By letters dated (i) June 30, 2009 by Francisco Herrera, Erik Marin, Samuel Berry, Charles Norrington, John Landolfi and Steven Landolfi (collectively the “*Herrera Claimants*”), and (ii) July 6, 2009 by the Smith Claimants (together with the Herrera Claimants, the “*Initial Requesting Diacetyl Claimants*”), the Initial Requesting Diacetyl Claimants petitioned the U.S. Trustee to appoint an official committee of tort claimants. By letters dated July 20, 2009, the Debtors and the Creditors’ Committee opposed the Initial Requesting Diacetyl Claimants’ request for the appointment of a tort claimants’ committee.

13. On August 10, 2009, the U.S. Trustee denied the Initial Requesting Diacetyl Claimants’ request for the appointment of a tort claimants’ committee and, instead, appointed three individual diacetyl claimants to the Creditors’ Committee: Francisco Herrera; Irma Rosa Ortiz; and Gerardo Solis. *See* Amended Notice of Appointment of Official Committee of Unsecured Creditors, No. 09-11233 (Docket No. 895, Aug. 10, 2009).

14. By letters dated (i) March 30, 2010 from the Smith Claimants, (ii) April 1, 2010 from Irma Mancilla (formerly Ortiz), Victor Mancilla and Ricardo Corona, (collectively, the

³ The Creditors’ Committee is comprised of the following entities: The Bank of New York Mellon Trust Company, N.A., as indenture trustee; Entergy Arkansas, Inc.; Federated Investment Management Company; Manufacturing & Traders Trust Co., as indenture trustee; Pension Benefit Guaranty Corporation; RiverSource Investments LLC; U.S. Bank, National Association, as indenture trustee; Francisco Herrera; Gerardo Solis; and Irma Rosa Ortiz (the last three constituting diacetyl claimants).

“*Mancilla Claimants*”) and (iii) April 2, 2010 from the Herrera Claimants, the U.S. Trustee was again petitioned to appoint a diacetyl claimants’ committee.

15. By letters dated April 5, 2010, the Debtors, the Creditors’ Committee and the Equity Committee opposed the renewed requests seeking appointment of a diacetyl claimants’ committee. On April 14, 2010, the U.S. Trustee issued a letter declining to appoint an official diacetyl claimants’ committee. Accordingly, on May 3, 2010 the Smith Claimants filed the instant Motion.

OBJECTION

16. The Smith Claimants, relying on flawed assertions and legally and factually inadequate evidence, have failed to satisfy their burden for the appointment of a separate committee for diacetyl claimants. The Motion erroneously posits that a separate diacetyl claimants’ committee is necessary because: (i) the Creditors’ Committee does not adequately represent the interests of diacetyl claimants and (ii) the Creditors’ Committee has failed to fulfill its fiduciary obligations to diacetyl claimants through its support of the Debtors’ efforts to estimate the extent of the Debtors’ diacetyl-related liability. The Smith Claimants’ allegations are false, misleading and/or legally insufficient to warrant the extraordinary remedy of the appointment of a separate committee for diacetyl claimants.

I. The Smith Claimants Have Failed to Satisfy Their Burden for the Appointment of a Separate Diacetyl Claimants’ Committee

17. Bankruptcy Code section 1102(a)(2), which governs the appointment an additional official committee, provides in pertinent part that:

On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States trustee shall appoint any such committee.

11 U.S.C. § 1102(a).

18. The formation of a single creditors' committee in a chapter 11 case is the norm, and the formation of additional committees is rare. See *In re General Motors Corp.*, No. 09-50026 (REG), TRO Hr'g Tr. 63:9-12 (Bankr. S.D.N.Y., June 23, 2009) (attached hereto as Exhibit B) ("In most cases only one committee of unsecured creditors is appointed which committee generally represents the best compromise of adequate representation, efficiency and economy."); *In re Trans World Airlines*, No. 92-115 (HSB), 1992 WL 168152, at *3 (Bankr. D. Del. Mar. 20, 1992) ("The reconciliation of differing interests of creditors within a single committee is the norm."); *In re Sharon Steel Corp.*, 100 B.R. 767, 778 (Bankr. W.D. Pa. 1989) (noting that the reconciliation of differing creditors interests within a single committee is the norm); *In re Grant Broad. of Philadelphia, Inc.*, 71 B.R. 655, 661 (Bankr. E.D. Pa. 1987) ("[A]ppointment of multiple Creditors' Committees should be the rare exception").

19. The appointment of an additional creditors' committee "is considered 'extraordinary relief'" that should rarely be granted. *In re Dana Corp.*, 344 B.R. 35, 38 (Bankr. S.D.N.Y. 2006); see also *In re Enron Corp.*, 279 B.R. 671, 685 (Bankr. S.D.N.Y. 2002); *In re Sharon Steel Corp.*, 100 B.R. at 778 (noting that "the appointment of a separate committee is an extraordinary remedy"). The burden lies with the party requesting appointment of an additional committee to demonstrate that the existing committee does not adequately represent their interests. *In re Dana Corp.*, 344 B.R. at 38; *In re Enron Corp.*, 279 B.R. at 685. Bankruptcy courts must examine the circumstances surrounding the request to appoint an additional committee on a case-by-case basis to determine whether the movant has met its burden. *In re Enron Corp.*, 279 B.R. at 685; see also *In re Beker Indus. Corp.*, 55 B.R. 945, 648 (Bankr. S.D.N.Y. 1985); *Albero v. Johns-Manville Corp.*, (*In re Johns-Manville Corp.*), 68 B.R. 155, 159 (Bankr. S.D.N.Y. 1986).

20. The Bankruptcy Code is silent as to how courts should analyze whether extraordinary circumstances exist that would necessitate the appointment of multiple creditors' committees. Accordingly, courts in the Southern District of New York have established the following seven-factor test to frame their analysis: (i) the ability of the existing committee to function; (ii) the nature of the case; (iii) the standing and desires of the various constituencies; (iv) the ability of creditors to participate in the case without an official committee and the potential to recover expenses pursuant to Bankruptcy Code section 503(b); (v) the delay and additional cost that would result if the court grants the motion; (vi) the tasks that the proposed committee is to perform; and (vii) other factors relevant to the adequate representation issue. *See In re General Motors Corp.*, TRO Hr'g Tr. 62-64; *In re Dana Corp.*, 344 B.R. at 38. The above factors must be considered as a whole in light of the circumstances of each particular case, and no one factor is outcome determinative. *See Id.* The Smith Claimants have not satisfied the foregoing factors.

II. The Creditors' Committee is Functioning Effectively and in Accordance with Its Fiduciary Duties

21. The first *Dana* factor – whether the Creditors' Committee is able to function properly – weighs heavily against the formation of a separate diacetyl claimants' committee. As contemplated by the Bankruptcy Code and applicable case law, a creditors' committee owes a fiduciary obligation to its constituency. *Mirant Americas Energy Marketing, L.P. v. Official Comm. of Unsecured Creditors of Enron Corp.*, (*In re Enron Corp.*), No. 02-6774 (GBD), 2003 WL 22327118 at *4 (S.D.N.Y. Oct. 10, 2003) citing *Shaw & Levine v. Gulf & W. Indust., Inc.* (*In the matter of Bohack Corp.*), 607 F.2d 258, 262 n.4 (2d Cir. 1979). The Smith Claimants maintain that the Creditors' Committee cannot acquit its fiduciary duty to represent the interests of all unsecured creditors because it has taken positions in the Debtors' chapter 11 cases which

are adverse to the diacetyl claimants and calculated to discriminate against the diacetyl claimants. Each of the Smith Claimants' assertions is either factually inaccurate or an insufficient basis for the appointment of a separate diacetyl claimants' committee.

A. The Existence of a Conflict Does Not Necessitate the Formation of an Additional Committee

22. Creditors' committees are typically comprised of creditors with disparate and, in some instances, conflicting interests. *See In re Dana Corp.*, 344 B.R. at 38 (“[C]reditor committees often contain creditors having a variety of [heterogeneous] viewpoints; however, these differing views do not require a separate homogeneous committee unless they impair the committee’s ability to reach a consensus.”) citing *In re McLean Indus. Inc.*, 70 B.R. 852 at 861 (Bankr. S.D.N.Y. 1987). The mere existence of a potential conflict between committee members does not “equate to a basis for the conclusion that creditors or creditors of a different class [are not] being properly represented nor does it dictate the appointment of different committees to fund the articulation of the differing views.” *See In re General Motors Corp.*, TRO Hr’g Tr. 65-66; *see also In re Enron Corp.*, 279 B.R. at 686, citing *In re Dow Corning, Corp.*, 194 B.R. 121, 142 (Bankr. E.D.Mich. 1996) *rev’d on other grounds*, 212 B.R. 258 (E.D. Mich. 1997) (to determine whether appointment of an additional committee is warranted, courts examine whether conflicts of interest on a committee effectively disenfranchise particular groups of creditors). Indeed, several courts have held that intra-committee conflict is inherent, and that it can facilitate negotiations between parties. *In re Dow Corning Corp.*, 194 B.R. at 146; *In re Hills Stores Co.*, 137 B.R. 4, 7 (Bankr. S.D.N.Y. 1992). Inversely, the formation of a separate committee has been recognized by at least one court as counterproductive to a consensual chapter 11 process:

[I]t is the responsibility of all members to act as fiduciaries for all creditors represented by the Official Committee ... this case will succeed or fail to the extent members of the Official Committee can adjust their differences within the framework of the existing Official Committee. The formation of a separate

committee will not eliminate the inherent tensions; indeed, it will only weaken the impetus to compromise.

In re Sharon Steel Corp., 100 B.R. at 779.

23. The Smith Claimants argue that the existing conflict between the diacetyl claimants and the “commercial creditors” who serve on the Creditors’ Committee prevents the Creditors’ Committee from fulfilling its role as a fiduciary for all unsecured creditors. As an initial matter, the existence of a conflict does not, without more, justify the additional expense of appointing a separate claimants’ committee particularly where the committee in questions has shown itself more than capable of acting effectively and expeditiously. Although the Smith Claimants attempt to characterize the Creditors’ Committee’s deliberations as divided and contentious, the Creditors’ Committee has worked generally cohesively throughout these chapter 11 cases with all participating members acting in full awareness of their fiduciary duties. In fact, the Creditors’ Committee has acted unanimously in substantially all committee business. *See e.g. In re Enron Corp.*, 279 B.R. at 686 citing *In re Sharon Steel*, 100 B.R. at 778 (denying motion to appoint additional committee where movant asserted no facts showing that committee has not reached a consensus on all important issues before it).

24. Moreover, contrary to the arguments espoused by the Smith Claimants, the diacetyl claimants are not uniquely situated in these chapter 11 cases. While it may be true that every dollar reserved for the diacetyl claimants is a dollar that will not be available for distribution to other unsecured creditors, the same can be said for every dollar distributed to any unsecured creditor. Collectively, all unsecured creditors have a limited pool of assets to look to for the satisfaction of their claims, and in this regard all unsecured creditors are to some extent in conflict with each other. This inherent tension could not form the basis of a court’s decision to

appoint an additional creditors' committee without jeopardizing the efficient administration of virtually every chapter 11 case.

25. Further, the Smith Claimants' assertion that the Creditors' Committee is dominated by commercial creditors who have actively aligned themselves against the diacetyl claimants is a mischaracterization of the Creditors' Committee's composition and dynamic. The Creditors' Committee is currently comprised of the following entities: (i) U.S. Bank National Association ("**US Bank**"), as indenture trustee for the 2016 Notes (as defined below); (ii) The Bank of New York Mellon Trust Company ("**BONY**"), as indenture trustee for the 2009 Notes (as defined below); (iii) Manufacturers & Traders Trust Company, as indenture trustee for the 2026 Notes (as defined below); (iv) the PBGC; (v) RiverSource Investments, LLC ("**RiverSource**"), a noteholder; (vi) Federated Investment Management Company ("**Federated**"), a noteholder; (vii) Entergy Arkansas, Inc., a trade creditor ("**Entergy**"); (viii) Francisco Herrera, a diacetyl claimant; (ix) Irma Rosa Ortiz, a diacetyl claimant; and (x) Gerardo Solis, a diacetyl claimant.⁴ The Smith Claimants erroneously conclude that, because seven members of the Creditors' Committee are institutions as opposed to individuals, the Creditors' Committee has been bifurcated into commercial creditors on one side (whose interests are presumably all aligned) and the diacetyl claimants on the other. This is not the case.

26. While it is true that five of the Creditors' Committee's members are bondholders or indenture trustees for the Debtors' various bond issuances, the bondholders and trustees have disparate interests from each other that are in many ways no different than the conflicts identified by the Smith Claimants. For example, Chemtura Corporation's ("**Chemtura**") 6.875%

⁴ The Smith Claimants also list W.S. Packaging as a member of the Creditors' Committee. The initial appointment of the Creditors' Committee included three trade creditors, Entergy, W.S. Packaging, and Occidental Chemical Corporation. W.S. Packaging and Occidental Chemical Corporation, however, voluntarily resigned from the Creditors' Committee effective October 29, 2009 and June 9, 2009, respectively.

unsecured notes due 2016 (the “**2016 Notes**”) are guaranteed by, among other Debtors, Bio-Lab, Inc. and Great Lakes Chemical Corporation (“**Great Lakes**”), whereas Chemtura’s 6.875% debentures due 2026 (the “**2026 Notes**”) have no guarantor -- a distinction that will result in greater recoveries for holders of the 2016 Notes as compared to the 2026 Notes. Similarly, Great Lake’s unsecured notes due 2009 (the “**2009 Notes**”) are guaranteed by Chemtura, thus providing the holders of the 2009 Notes with more sources of recovery than the holders of 2026 Notes as well. Indeed, the constituency most aligned with the 2016 noteholders would appear to be the PBGC, which would have claims at all of the Debtor entities in the event the Debtors were to terminate their pension plans. However, since the Debtors have not, at this time, sought to terminate such plans, the PBGC has only a contingent, unliquidated claim. Indeed, if the Debtors were to terminate one or more of their pension plans, the PBGC’s unliquidated claims would be the subject of litigation similar to the diacetyl claimants and the Creditors’ Committee would participate in that litigation in a manner potentially adverse to the PBGC. There is, therefore, no “controlling constituency” on the Creditors’ Committee, nor has any effort been made to block the diacetyl claimant Creditors’ Committee members from participating on the Creditors’ Committee in accordance with the Creditors’ Committee’s bylaws.

27. Most of the limitations that have been placed on the diacetyl claimants’ participation on the Creditors’ Committee have been self-imposed. Of the three diacetyl claimants appointed to the Creditors’ Committee by the U.S. Trustee, only two have thus far agreed to abide by the Creditors’ Committee’s bylaws and are therefore eligible to participate in Creditors’ Committee business and receive Creditors’ Committee communications.⁵ Humphrey

⁵ The third diacetyl claimant on the Creditors’ Committee, Irma Rosa Ortiz, is represented by Raphael Metzger. Mr. Metzger also represents CERT in these chapter 11 cases. As the Court may recall, on April 7, 2010, the Court directed Mr. Metzger to file a verified statement to comply with the requirements of Bankruptcy Rule 2019 because

Farrington and Caplin & Drysdale, the firms who represent the Smith Claimants in these chapter 11 proceedings, also represent Creditors' Committee member Gerardo Solis and serve as his representatives on the Creditors' Committee. Indeed, pursuant to the terms of the Creditors' Committee's bylaws, the diacetyl claimant members of the Creditors' Committee have designated only their counsel, including Caplin & Drysdale, and not themselves to be Creditors' Committee participants. Although Caplin & Drysdale asserts that the Creditors' Committee's actions to date reflect its inability to represent the diacetyl claimants effectively, Caplin & Drysdale and Humphrey Farrington have collectively participated on only twelve of the thirty Creditors' Committee calls held since the appointment of the diacetyl claimants to the Creditors' Committee in August 2009. It is difficult, therefore, for Caplin & Drysdale to substantiate its allegation that the diacetyl claimants have effectively been blocked from participating on the Creditors' Committee when they themselves have attended only four calls and neither of two in-person meetings held since the Creditors' Committee was reconstituted to include diacetyl claimants.

B. The Creditors' Committee Has Uniformly Applied the Conflict Provisions of Its Bylaws to All Creditors' Committee Members

28. Much of the Smith Claimants' argument that the diacetyl claimants have been precluded from participating on and are not adequately represented by the Creditors' Committee is predicated on conflicts procedures contained in the Bylaws of the Official Committee of Unsecured Creditors of Chemtura Corporation, *et al.* (the "**Bylaws**") which were ratified by the Creditors' Committee on April 21, 2009 and agreed to by Caplin & Drysdale upon Mr. Solis's

Mr. Metzger purported to represent multiple creditors in these cases. On May 3, 2010, Mr. Metzger filed a 2019 statement (Docket No. 2613) which statement lists several diacetyl claimants but does not list CERT or any of its members as being represented by Mr. Metzger.

appointment to the Creditors' Committee. Article VII of the Bylaws governs conflicts of interest and provides in relevant part: "[t]he [Creditors' Committee member] having a conflict of interest shall not have access to summaries, analyses, reports or work product prepared by the professionals of the [Creditors'] Committee with respect to the matter in which the conflict of interest exists, except to the extent determined to be appropriate under the circumstances in the discretion of the [Creditors'] Committee."⁶ Caplin & Drysdale, in its capacity as counsel to Creditors' Committee member Gerardo Solis, does not dispute the Creditors' Committee's determination that a conflict exists with respect to the receipt by Caplin & Drysdale of information relating to the estimation of diacetyl claims.

29. The mere fact that Caplin & Drysdale has been conflicted from receiving certain analyses and memoranda concerning the estimation of diacetyl claims does not preclude the Creditors' Committee from functioning effectively, nor are the diacetyl claimants being treated differently than any other Creditors' Committee member when matters of conflict arise. Akin Gump has on prior occasions produced detailed memoranda that certain members of the Creditors' Committee were conflicted from receiving and taken positions before this Court on matters directly adverse to its members and will continue such practices in furtherance of its fiduciary duties on a go-forward basis. For example:

- On a March 30, 2009, the Creditors' Committee participated in a call to discuss among other things, matters scheduled to be heard at the April 1, 2009 hearing. The Creditors' Committee discussed the Debtors' Motion for Entry of an Order Determining Adequate Assurance of Payment for Future Utility Services (the "*Utilities Motion*"). Entergy was directly affected by the Utilities Motion and had objected to the Utilities Motion on March 27, 2009, accordingly, Entergy was excused from the Creditors' Committee's deliberations regarding the Utilities Motion.

⁶ A copy of Article VII of the Bylaws is attached hereto as Exhibit C.

- On October 24, 2009, Akin Gump distributed a memorandum analyzing the Debtors’ ability to terminate their pension plans (the “*Pension Memorandum*”). The Pension Memorandum was not distributed to the Pension Benefit Guaranty Corporation or its advisors.
- In addition, Akin Gump is in the process of preparing an analysis regarding the enforceability of certain prepayment provisions related to the 2016 Notes and the 2026 Notes (the “*Make-Whole Memorandum*”). The Make-Whole Memorandum will not be distributed to Creditors’ Committee members who hold or represent the 2016 Notes or the 2026 Notes or any of the foregoing members’ respective advisors.

30. As demonstrated by the foregoing, the Creditors’ Committee’s conduct has been at all times entirely consistent with the conflict provisions contained in the Bylaws. Moreover, the Bylaws expressly preserve the right of any Creditors’ Committee member to seek “to enforce or protect any of its rights as an individual creditor or other party in interest,” a provision that the *Dana* Court cited as evidence that a creditors’ committee with diverse interests can still function effectively. *In re Dana Corp.*, 344 B.R. at 389, n.4.

III. The Balance of the *Dana* Factors Weigh Against the Appointment of a Diacetyl Claimants’ Committee

A. The Nature of the Debtors’ Chapter 11 Cases Mitigates Against Appointing a Diacetyl Claimants’ Committee

31. When applying the second *Dana* factor, courts consider the circumstances surrounding a debtor’s bankruptcy filing and the size and complexity of a debtor’s case.

32. Although the estimation of diacetyl claims has become an important issue in these chapter 11 cases, the Debtors were not driven into bankruptcy by pending tort liability. *See In re Dana Corp.*, 344 B.R. at 39 (taking into account that the debtor’s economic plight was not asbestos driven in denying request to appoint an official committee of asbestos claimants). The Debtors’ bankruptcy filing, as set forth in the first day declaration of Stephen Forsyth, was precipitated by a combination of adverse market conditions, pending debt maturities, and environmental and pension liabilities. Declaration of Stephen Forsyth, Executive Vice President

and Chief Financial Officer of Chemtura Corporation, in Support of First Day Pleadings, No. 09-11233 (Docket No. 3, Mar. 18, 2009). The Debtors' chapter 11 cases are, therefore, fundamentally distinguishable from the cases cited by the Smith Claimants in which tort claimants' committees were appointed. The string of cases cited by the Smith Claimants, including *In re Federal-Mogul Global, Inc.*,⁷ and *In re Owens Corning et al.*,⁸ all involved hundreds of thousands of tort plaintiffs, whereas here the Debtors face only 375 non-duplicative individual and corporate diacetyl claims. Moreover, in virtually all of the cases cited by the Smith Claimants in support of their contention that tort claimants' committees are appointed as a matter of course when a debtor's tort liabilities are the subject of an estimation proceeding, such committees were appointed within the first few weeks of the case. By contrast, in cases that involve but are not controlled by tort liability, courts typically permit debtors to reorganize and address their tort liabilities without the appointment of an official tort committee. *See e.g., In re Wellman, Inc.*, No. 08-10595 (Bankr. S.D.N.Y.); *In re Dana Corp.*, No. 06-10354 (Bankr. S.D.N.Y.); *In re Solutia, Inc.*, No. 03-17949 (Bankr. S.D.N.Y.).

33. In addition, while the Debtors' cases are large and complex, this factor is not determinative on the issue of whether an additional committee should be appointed. *See In re General Motors Corp.*, TRO Hr'g Tr. 62-64; *In re Dana Corp.*, 344 B.R. at 39 (citing *In re McLean Indus. Inc.*, 70 B.R. at 861). Indeed, courts have denied requests for the appointment of additional committees in cases larger and more complex than the Debtors' cases. *See In re Dana Corp.*, 344 B.R. at 39 (denying a request for appointment of asbestos claimants' committee where the debtors had total assets of approximately \$7.5 billion and total liabilities of

⁷ 330 B.R. 133 (Bankr. D. Del. 2005).

⁸ 322 B.R. 719 (Bankr. D. Del. 2005).

approximately \$7.9 billion); *In re Enron Corp.*, 279 B.R. at 688 (finding the size and complexity of the debtors' bankruptcy cases did not warrant appointment of an additional committee); *In re Worldcom, Inc., et al.*, No. 02-13533, Order Denying Motion of HSBC Bank USA, As Indenture Trustee, for Entry of an Order Directing the Appointment of an Official Committee of Creditors for MCI Communications Corporation and its Subsidiaries (May 30, 2003) (Docket No 6183) (attached hereto as Exhibit D) (denying request for a second official committee of unsecured creditors).

B. The Smith Claimants Have Not Demonstrated that the Creditors' Committee's Desires Differ Materially from Their Own

34. As stated in the Motion, the Smith Claimants were motivated to seek the appointment of a diacetyl claimants' committee because they believe that (i) the Creditors' Committee cannot act fairly vis-a-vis diacetyl claimants in the Estimation Proceeding, (ii) to effectively participate in the Debtors' Insurance Adversary Proceeding (defined below) the diacetyl claimants require their own special insurance counsel, and (iii) it is unfair that the diacetyl claimants' fees are not being paid by the Debtors' estates.

35. The Smith Claimants allege that the Creditors' Committee is incapable of formulating a fair and reasonable estimate of the Debtors' diacetyl liability. The Smith Claimants provide no justification, however, for their assertion that the Creditors' Committee will act in violation of its fiduciary duties and intentionally advocate for the diacetyl claimants to receive less than that to which the Creditors' Committee believes they are entitled.

36. The Creditors' Committee has an obligation to maximize recoveries for all unsecured creditors, which in this instance requires the Creditors' Committee to ensure that the diacetyl claims are fairly and accurately valued for plan distribution purposes. *See e.g., In re Enron Corp.*, 279 B.R. at 689 citing Lawrence P. King, COLLIER ON BANKRUPTCY, §

1103.05[1][a] at 1103-22 (15th ed. Rev. 2002) (“The primary purpose of a committee ... is to maximize the return to the constituency represented by the committee and all actions undertaken by the committee should be with that goal in mind.”); *In re Adelpia Commcn’s Corp.*, 638 B.R. 140, 247-248 (Bankr. S.D.N.Y. 2007) (noting that the creditors’ committee as a fiduciary is responsible for maximizing value). While the Smith Claimants are correct in stating that the Debtors, the Creditors’ Committee and the Equity Committee share a joint interest privilege for matters related to the Estimation Proceeding, the privilege was established for the primary purpose of minimizing costs and ensuring that the estate-retained professionals work collaboratively to the extent possible. Nothing in this Court’s ruling or the case management order governing the Estimation Proceeding limits the Creditors’ Committee’s ability to diverge from the positions advocated by the Debtors or the Equity Committee to the extent deemed appropriate by the Creditors’ Committee. See *In re Chemtura Corporation, et al.*, No. 09-11233 (REG), TRO Hr’g Tr. 79:3-18 (Bankr. S.D.N.Y., Apr. 7, 2010) (attached hereto as Exhibit E). The Creditors’ Committee remains committed to working with all parties involved, including the Smith Claimants and their counsel, to establish a fair and appropriate reserve for diacetyl claims. In this regard, the Creditors’ Committee is wholly aligned with the diacetyl claimants.

37. The Creditors’ Committee also shares the same desires as the diacetyl claimants with respect to the outcome of the Debtors’ adversary proceeding captioned *Chemtura Corp., et al. v. AIU Ins. Corp., et al.*, No. 10-2881 (Bankr. S.D.N.Y.) (the “**Insurance Adversary Proceeding**”). By the Insurance Adversary Proceeding, the Debtors seek a declaration that certain of their insurance providers are obligated to indemnify in full the Debtors’ potential diacetyl liability. Prior to the commencement of the Insurance Adversary Proceeding, the Creditors’ Committee reviewed and analyzed the Debtors’ relevant insurance policies and

participated in numerous conferences with the Debtors related to the Debtors' insurance coverage for diacetyl claims. Moreover, since the start of the Insurance Adversary Proceeding, the Creditors' Committee has continued to be in constant communication with the Debtors regarding substantive and procedural issues related to the Insurance Adversary Proceeding. In addition, to ensure that the maximum amount of insurance is available to satisfy diacetyl claims, which will ultimately increase recoveries for the diacetyl claimants and all of the Debtors' unsecured creditors, the Creditors' Committee is actively participating in the Insurance Adversary Proceeding as evidenced by its recently filed statement of Intervention and letter in support of the Debtors' motion for summary judgment. *See* Statement of Intervention of the Official Committee of Unsecured Creditors of Chemtura Corporation, et al. (Apr. 23, 2010, Docket No. 24); Letter Dated April 23, 2010 by Ann V. Kramer on Behalf of the Creditors' Committee Joining in the Debtors' April 22, 2010 Letter Request Seeking Leave to File a Summary Judgment Motion (April 23, 2010, Docket No. 25).

38. Lastly, the Smith Claimants' desire to have their fees paid by the Debtors' estates has nothing to do with determining whether the diacetyl claimants are being adequately represented by the Creditors' Committee. The Smith Claimants essentially argue that creditors who are represented by lawyers, whose fees are not being paid out of estate funds, are handicapped compared to estate paid professionals and, therefore, are not adequately represented. As Caplin & Drysdale, Humphrey Farrington and other diacetyl claimants' counsel have demonstrated in the Debtors' cases thus far (and as further explained below), the diacetyl claimants have effectively participated in the Debtors' cases notwithstanding the fact that their fees are not currently paid by the Debtors' estates.

C. The Smith Claimants will not be Precluded from Participating in these Chapter 11 Cases if Their Request for a Separate Committee is Denied

39. Courts in this district have repeatedly recognized that tort claimants have standing to file pleadings and appear at court hearings in chapter 11 cases without the formation of an official tort claimants' committee. *See In re Dana Corp.*, 344 B.R. at 40 (internal citations omitted) (noting that the voices of asbestos claimants already had been and would likely continue to be heard in the debtors' cases without the appointment of an additional committee). This Court has expressly recognized that the views of all stakeholders who come before it will be considered, regardless of whether such views are articulated by an official committee. *In re General Motors Corp.*, TRO Hr'g. Tr. 66-67 (holding that an ad hoc bondholders' committee was free to continue participating in the debtors' chapter 11 cases despite the court's refusal to appoint an additional official committee, and noting that the court will continue to consider the ad hoc bondholder committee's views just as it considers the views of every stakeholder in the case). The views and interests of diacetyl claimants have thus far been effectively represented in these chapter 11 cases both through such claimants' membership on the Creditors' Committee and through the active involvement of, among others, the Smith Claimants.

40. The Smith Claimants are represented by Caplin & Drysdale and Humphrey Farrington, competent counsel with a wealth of experience in litigating mass tort claims. *See In re Dana Corp.*, 244 B.R. at 40 (noting that representation by experienced counsel assured that asbestos claimants were adequately represented notwithstanding the technical complexity of the claims). To date, the Smith Claimants have appeared in their individual capacities at numerous hearings and have filed pleadings in connection with a myriad of issues, including: (i) the establishment of a bar date; (ii) the approval of claims objection procedures; (iii) the Debtors' application for diacetyl-related discovery under Bankruptcy Rule 2004; and (iv) the approval of

estimation procedures. Without exception, this Court has recognized the rights of the Smith Claimants and afforded their counsel an opportunity to be heard on all relevant issues. The Court has given no indication that it intends to alter this practice, and in fact has expressly noted that it will continue to permit the diacetyl claimants to appear and be heard in their individual capacities. *See In re Chemtura Corporation, et al.*, TRO Hr'g Tr. 82:7-9 ("[The diacetyl claimants] have the ability to appear and be heard whether or not the estate pays your bills"). Moreover, the Debtors have advised the Court on multiple occasions that they have worked cooperatively with Humphrey Farrington on numerous matters impacting the diacetyl claimants. The Smith Claimants have thus shown themselves more than capable of participating in these chapter 11 cases, and they may continue to do so without the formation of an additional committee. *See, e.g., In re Enron Corp.*, 279 B.R. at 687-688 (denying request to appoint additional committees where there was evidence that the movants had a meaningful voice in the cases absent such appointment).

41. To the extent that the Smith Claimants make a substantial contribution to the Debtors' chapter 11 cases, the Smith Claimants can submit an application under Bankruptcy Code section 503(b) for the reimbursement of reasonable fees and expenses. 11 U.S.C. § 503(b); *In re Hills Stores Co.*, 137 B.R. at 8 (noting that to the extent a group of creditors believe that "the cases would be advanced by their taking a more active role, they are not precluded from forming an unofficial committee, retaining counsel and a financial advisor and seeking reimbursement of their expenses to the extent that they make a substantial contribution to the case, as permitted and even envisioned by § 503(b) of the Code"). The Smith Claimants cannot, however, evade the requirement that a substantial contribution be made under Bankruptcy Code

section 503 simply by seeking the appointment of an official committee. *In re Sharon Steel Corp.*, 100 B.R. at 781.

D. The Smith Claimants are Already Active Participants in the Estimation Proceeding and Plan Process

42. Consideration of the tasks the proposed diacetyl claimants' committee would assume is the sixth *Dana* factor. *In re Dana Corp.*, 344 B.R. at 38. While the Smith Claimants allege that a diacetyl claimants' committee would "fill in the gaps" where the Creditors' Committee has become adverse to the diacetyl claimants, the Smith Claimants are already actively involved in both the Estimation Proceeding and plan negotiations and, thus, do not need a diacetyl claimants' committee to make their voices heard. Motion at 20. In addition, forming yet another official committee at this stage in the proceedings would not foster consensus among the various constituencies and could exacerbate perceived conflicts in connection with plan negotiations. *Mirant Americas Energy Marketing, L.P. v. The Official Comm. of Unsecured Creditors of Enron Corp., (In re Enron Corp.)* No. 02-6774, 2003 WL 22327118 at *8 ("[B]ecause creditors would be balkanized into several independent committees, each furthering interests of only certain groups, the consultation and balancing of interests necessary for successful negotiation of a reorganization plan would be severely hampered, leading to increased costs and delays.").

E. The Additional Costs to be Borne by the Debtors' Estates Cannot be Justified

43. The additional costs imposed on a debtor's estate by the formation of an additional creditors' committee should be permitted only in extraordinary circumstances. *In re General Motors Corp.*, TRO Hr'g. Tr. 67-68. A movant's desire to have its fees and expenses paid by the estate does not constitute an "extraordinary circumstance," and thus does not justify the establishment of a separate creditors' committee. *In re Sharon Steel Corp.*, 100 B.R. 767

(holding that an ad hoc group's request for separate legal representation "boiled down to" a request to retain professionals at the expense of the estate, which was not a valid basis for the appointment of a separate committee of debenture holders). This is particularly true where the payment of fees and expenses by an estate is the only component that distinguishes the participation of an informal or ad hoc group from an official creditors' committee. *In re Enron Corp.*, 279 B.R. at 694.

44. Although the fees and expenses of an official committee are paid in the first instance by the debtor's estate, in actuality "the fees [would] have to be absorbed by other creditors." *In re General Motors Corp.*, TRO Hr'g. Tr. at 67. This Court has also observed that creditors often improperly attempt to litigate their own pecuniary interests "on someone else's dime," and that "spending restraint seems to go out the window" when professional fees and expenses are covered by a debtor's estate. *Id.* at 68-69.

45. By their own admission, the Smith Claimants are seeking the formation of an official diacetyl claimants' committee to defray the costs and expenses that they will incur in connection with the Estimation Proceeding. Motion at 3, 22. Even the alternative relief sought by the Smith Claimants seeks authorization to retain professionals at the expense of the Debtors' estates. As discussed above, the Smith Claimants have not been foreclosed from participating in any aspect of these chapter 11 proceedings, and have been actively involved in the litigation of diacetyl-related matters at every juncture. As in *Enron*, the only advantage to be gained by the Smith Claimants by the formation of an official committee is the payment of their fees and expenses by the Debtors' estates. In addition, the Smith Claimants have already indicated that they would seek authorization to retain counsel and additional professionals upon the formation of an official diacetyl claimants' committee or sub-committee of the Creditors' Committee,

making the additional costs to be incurred a fact certain rather than merely speculative. *In re General Motors Corp.*, TRO Hr'g. Tr. 68 (“the cost of one or more additional committees can be substantial since the appointment is closely followed by applications to retain attorneys and accountants”). Accordingly, the Smith Claimants have failed to demonstrate that they meet the high threshold necessary to establish that the additional cost of an official diacetyl claimants’ committee is justified.

CONCLUSION

46. For the reasons set forth above, the Creditors' Committee respectfully request that the Court (i) enter an order denying the relief requested in the Motion and (ii) grant the Creditors' Committee such other relief as is just, fair and equitable.

Dated: New York, New York
May 11, 2010

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Philip C. Dublin

Daniel H. Golden

Philip C. Dublin

Meredith A. Lahaie

AKIN GUMP STRAUSS HAUER & FELD LLP

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New York, New York 10036

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Counsel to the Official Committee of Unsecured
Creditors of Chemtura Corporation, et al.

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
: In re: : Chapter 11
: :
: Chemtura Corporation, *et al.*, : Case No. 09-11233 (REG)
: :
: Debtors. : (Jointly Administered)
-----X

**DECLARATION OF PHILIP C. DUBLIN IN SUPPORT OF OBJECTION
OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF CHEMTURA
CORPORATION, *ET AL.* TO THE MOTION OF
KAREN SMITH AND CERTAIN OTHER DIACETYL CLAIMANTS (1) FOR
APPOINTMENT OF AN OFFICIAL COMMITTEE OF DIACETYL CLAIMANTS,
OR ALTERNATIVELY, (2) FOR APPOINTMENT OF A DIACETYL CLAIMANTS'
SUBCOMMITTEE OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

PHILIP C. DUBLIN respectfully declares:

1. I am a member of the firm of Akin Gump Strauss Hauer & Feld LLP (“*Akin Gump*”), which firm maintains offices for the practice of law at One Bryant Park, New York, New York 10036. Akin Gump has acted as counsel to and has rendered professional services on behalf of the Official Committee of Unsecured Creditors (the “*Creditors’ Committee*”) of Chemtura Corporation, *et al.* (collectively, the “*Debtors*”) since March 26, 2009.

2. I submit this Declaration in support of the Objection (the “*Objection*”) of the Official Committee of Unsecured Creditors of Chemtura Corporation, *et al.* to the Motion of Karen Smith and Certain Other Diacetyl Claimants (the “*Smith Claimants*”) (1) For Appointment of an Official Committee of Diacetyl Claimants, or Alternatively, (2) For Appointment of a Diacetyl Claimants’ Subcommittee of the Official Committee of Unsecured Creditors (the “*Motion*”).

3. The Creditors’ Committee is currently comprised of the following entities: (i) U.S. Bank National Association, as indenture trustee for Chemtura Corporations’ 6.875% unsecured notes due 2016 (the “*2016 Notes*”); (ii) The Bank of New York Mellon Trust

Company, as indenture trustee for Great Lake Chemical Corporations' unsecured notes due 2009; (iii) Manufacturers & Traders Trust Company, as indenture trustee for Chemtura Corporations' 6.875% debentures due 2026 (the "**2026 Notes**"); (iv) the Pension Benefit Guaranty Corporation ("**PBGC**"); (v) RiverSource Investments, LLC, a noteholder; (vi) Federated Investment Management Company, a noteholder; (vii) Entergy Arkansas, Inc., a trade creditor ("**Entergy**"); (viii) Francisco Herrera, a diacetyl claimant; (ix) Irma Rosa Ortiz, a diacetyl claimant; and (x) Gerardo Solis, a diacetyl claimant. As originally constituted, the Creditors' Committee included two trade creditors – Occidental Chemical Corporation and W.S. Packaging. Occidental Chemical Corporation and W.S. Packaging voluntarily resigned from the Creditors' Committee on June 9, 2009 and October 29, 2009, respectively.

4. The Creditors' Committee ratified the Bylaws of the Official Committee of Unsecured Creditors of Chemtura Corporation, *et al.* (the "**Bylaws**") on April 21, 2009. Pursuant to the terms of the Bylaws, the diacetyl claimant members of the Creditors' Committee have designated only their counsel, including Caplin & Drysdale, Chartered ("**Caplin & Drysdale**"), and not themselves to be Creditors' Committee participants. Article VII of the Bylaws governs conflicts of interest and provides in relevant part: "[t]he [Creditors' Committee member] having a conflict of interest shall not have access to summaries, analyses, reports or work product prepared by the professionals of the [Creditors'] Committee with respect to the matter in which the conflict of interest exists, except to the extent determined to be appropriate under the circumstances in the discretion of the [Creditors'] Committee."¹

5. Pursuant to the Bylaws, Akin Gump has on prior occasions produced detailed memoranda that certain members of the Creditors' Committee were conflicted from receiving. For example:

¹ A copy of Article VII of the Bylaws is attached hereto as Exhibit C.

- On a March 30, 2009, the Creditors' Committee participated in a call to discuss among other things, matters scheduled to be heard at the April 1, 2009 hearing. The Creditors' Committee discussed the Debtors' Motion for Entry of an Order Determining Adequate Assurance of Payment for Future Utility Services (the "*Utilities Motion*"). Entergy was directly affected by the Utilities Motion and had objected to the Utilities Motion on March 27, 2009, accordingly, Entergy was excused from the Creditors' Committee's deliberations regarding the Utilities Motion.
- On October 24, 2009, Akin Gump distributed a memorandum analyzing the Debtors' ability to terminate their pension plans (the "*Pension Memorandum*"). The Pension Memorandum was not distributed to the PBGC or its advisors.

6. In addition, Akin Gump is in the process of preparing an analysis regarding the enforceability of certain prepayment provisions related to the 2016 Notes and the 2026 Notes (the "Make-Whole Memorandum"). The Make-Whole Memorandum will not be distributed to Creditors' Committee members who hold or represent the 2016 Notes or the 2026 Notes or any of the foregoing members' respective advisors.

7. In addition, the memorandum referenced by Caplin & Drysdale in the Motion was distributed to the Creditors' Committee at an in-person meeting on December 15, 2009 at which Caplin & Drysdale's co-counsel, Humphrey, Farrington & McClain, P.C. ("*Humphrey Farrington*"), was present and advised why it was not receiving such analysis.

8. As of the date of the Objection, Caplin & Drysdale and Humphrey Farrington have collectively participated on twelve of the twenty-eight Creditors' Committee calls held since the appointment of the diacetyl claimants to the Creditors' Committee in August 2009. Caplin & Drysdale has participated in four of the twenty-eight Creditors' Committee calls. Caplin & Drysdale has not participated in either of the two in-person Creditors' Committee meetings and Humphrey Farrington participated in both.

Philip C. Dublin

Dated: New York, New York
May 11, 2010

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

- - - - -x

In the Matter of:

GENERAL MOTORS CORPORATION,

Debtor.

- - - - -x

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

June 23, 2009
2:08 PM

B E F O R E:

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

1 Court, my colleague Judge Lifland in 2006. And as I noted, the
2 issue is within the discretion of the Bankruptcy Court.

3 Now we had some colloquy with respect to how I should
4 make that discretionary determination, especially after
5 Mr. Richman's clarifications, I think we now all agree that
6 while we bankruptcy judges start with the words of the statute,
7 as I've just done, we also make determinations based upon
8 applicable case law that imposes requirements, standards or
9 factors to consider beyond those that emerge beyond the bare
10 words of the statute. That's especially true where decisions
11 are discretionary and courts have articulated factors for other
12 courts to consider.

13 Those factors aren't always exclusive, in fact they
14 typically aren't but we judges routinely apply the factors that
15 have been applied in cases before us. Examples -- by way of
16 examples and there are many of them include the Sonax factors
17 for relief from the stay. Here the case law, much of it in
18 this district, whereas I've stated in writing before,
19 consistency is very important, lays out many underlying
20 standards and factors for courts deciding motions of this
21 character to apply. Specifically, in requesting an additional
22 committee the applicant has the burden of proving that the
23 appointment of an additional committee is necessary to insure
24 adequate representation of the moving party. See Enron 279
25 B.R. 685; In re Dow Corning Corp. 194 B.R. 121 decision of the

1 Bankruptcy Court in the Eastern District of Michigan, 1996,
2 reversed on other grounds 212 B.R. 258, District Court decision
3 out of the Eastern District of Michigan in 1997.

4 Likewise, the party seeking the appointment of an
5 additional committee bears the burden of demonstrating that its
6 interests are not adequately represented. See *In re Winn-Dixie*
7 *Stores, Inc.* 325 B.R. 853 p. 857, decision of the
8 (Bankr. MD Fl) in Jacksonville, as best I recall, in 2005.

9 In most cases only one committee of unsecured
10 creditors is appointed which committee generally represents the
11 best compromise of adequate representation, efficiency and
12 economy. See, for example, *In re Sharon Steel Corp.*, 100 B.R.
13 767, (Bankr. WD Pa, 1989).

14 As all parties, including the movants, seem largely to
15 agree, the determinative factors in considering the adequacy of
16 representation by an official committee of unsecured creditors
17 have included (1) the ability of the committee to function; (2)
18 the nature of the case; (3) the standing and desires of the
19 various constituencies; (4) the ability for creditors to
20 participate in the case even without an official committee and
21 the potential to recover expenses pursuant to Section 503(b)(3)
22 of the code; (5) whether different classes may be treated
23 differently under a plan and thus need representation; (6) the
24 motivation of the movants; (7) the cost that would result if
25 the Court grants the motion and (8) the task that a committee

1 or separate committee is to perform. See, for example, Enron,
2 Winn-Dixie, Dana.

3 This has been held to be a non-exclusive list, thus a
4 court may consider other factors in exercising its discretion
5 as well. See, for example, Dana 344 B.R. 38. No one factor is
6 dispositive and the amount of due consideration given to each
7 depends on the circumstances of the particular Chapter 11 case.
8 See, for example, Dana 344. B.R. 38.

9 Turning now to those factors, the first is the ability
10 of the committee to function. There has been no showing that
11 this creditors' committee can't function. There has been no
12 proof or any other indication by way of example, that the
13 committee has been deadlocked, has been unable to gather up a
14 quorum or has had so much discord that it couldn't do its job.
15 And it includes, amongst its members, two highly experienced
16 indentured trustees who have confirmed that they know their
17 fiduciary responsibilities and will comply with them.

18 The second factor is the nature of the case. The ad
19 hoc committee asserts that the large size of this case warrants
20 the appointment of an additional committee of unsecured
21 creditors, and that's simply not so. A similar argument was
22 made and rejected in Dana, see 344 B.R. 39. And in Adelphia,
23 for example, on my watch which involved about seventeen billion
24 dollars in debt and where there was significant interdebtor and
25 intercreditor disputes, we still had one creditors' committee.

1 Of course, individual creditor groups have different
2 perspectives and believe me I heard about them but we still had
3 only one committee.

4 In Dana the Court rejected the argument made by the
5 moving party that because it had only one representative on the
6 Dana committee the other members of that committee would be
7 dominant and would overpower their representative. The Dana
8 court reminded parties that the different interests of the
9 membership of a statutory committee need not be aligned and
10 that the presence of potential conflicts among the different
11 interests of committee members does not necessitate the
12 appointment of additional creditors' committees to provide
13 adequate representation.

14 In fact, a point that was made to me in argument is
15 both correct and noteworthy. It's not uncommon in Chapter 11
16 cases, particularly large ones, for individual creditors or ad
17 hoc committees of creditors to differ with the official
18 creditors committee as to the desirability of future courses of
19 action.

20 In fact, I can think of very few cases, among those on
21 my watch, where there wasn't a disagreement of that character.
22 But that doesn't equate to a basis for the conclusion that
23 creditors or creditors of a different class aren't being
24 properly represented nor does it dictate the appointment of
25 different committees to fund the articulation of the differing

1 views.

2 Mr. Richman, recognizing that general rule said that
3 this case was special but I cannot agree because creditors'
4 committees, by their nature and by the efforts of U.S. Trustees
5 doing their jobs, reflect different perspectives by design,
6 individual creditors will have different perspectives than the
7 official committee in many, if not the majority, of Chapter 11
8 cases. But in the absence of much more that has not been
9 regarded as a basis for appointment of additional committees.

10 The issue is whether the official committee is
11 representative of the different kinds of unsecured creditor
12 claims involved in the Chapter 11 cases. We plainly have that
13 here. It's well established that the membership of an official
14 committee need not be an exact replica of the creditor body.
15 See, for example, Dana 344 B.R. 39; Enron 279 B.R. 690 and
16 Hills Stores 137 B.R. 4, p. 7, another decision in this
17 district, 1992.

18 The next factor is the standing and desires of the
19 constituencies. Of course the ad hoc committee has standing to
20 be heard, that's a right it has under Section 1109 of the Code.
21 And the ad hoc committee doesn't need to be appointed as an
22 official committee to achieve that end. And it doesn't need
23 the appointment of others to put forward its views as it's free
24 to assert them itself.

25 Then turning to a movant's desires, of course they

1 can't be determinative because everyone wants to fight their
2 fights using someone else's money. And while the ad hoc
3 committee's desires may be different than those of many of the
4 other bondholders, perhaps the majority though the number at
5 this point doesn't matter, bondholders still hold the same
6 bonds and there's no showing that the indentured trustees lack
7 the intention or ability to do their jobs.

8 The next factor is the ability to continue
9 participating and recover costs. Well, we've already discussed
10 the ability of the ad hoc committee to continue participating
11 in this case and as we've all seen, the ad hoc committee is
12 represented by competent counsel and it hasn't hesitated to
13 participate in this case. It's free to continue to do so as it
14 considers appropriate. If it does, I'll be considering its
15 views, just as I did today, as I'll be considering the views of
16 every other stakeholder in this case. Likewise, if at the end
17 of the case the members of the ad hoc committee believe they've
18 made a substantial contribution, they'll be free to file a
19 request under 503(b).

20 As the debtors have argued, the ad hoc committee's
21 request is, in substance if not also in every respect, an
22 effort to make someone else pay their fees. But when requests
23 of that nature are made and people say that the fees will thus
24 have to be absorbed by the debtors, what they're really saying
25 is that the fees will have to be absorbed by other creditors.

1 Unfortunately, we bankruptcy judges not infrequently see
2 efforts by creditors to litigate on someone else's dime. But
3 as the many cases I've noted above hold, we permit that only in
4 extraordinary circumstances. Here the cost of one or more
5 additional committees can be substantial since the appointment
6 is closely followed by applications to retain attorneys and
7 accountants, see Dow Corning 194 B.R. 143. The additional cost
8 that would result from this request cannot here be justified.

9 The next factor is whether different classes may be
10 treated differently. This factor, too, dictates against the
11 formation of a separate committee. I've seen no indication
12 that the debtors propose to treat different groups of
13 bondholders differently.

14 The next factor is the motivation of the movants.
15 Well, that seems to be pretty clear. The movants seemingly
16 want two things, more money paid out on their claims and they
17 want the estate, that is other creditors, to pay their legal
18 fees. Neither of these is unusual in Chapter 11 cases but
19 neither is a satisfactory basis for appointing another official
20 committee.

21 The next factor is the costs incurred by the
22 appointment of additional committees, and I've already talked
23 about this. While I'd agree that costs here wouldn't be as
24 great if they would be -- if anyone contemplated a Chapter 11
25 case that would go on for many months or years, I still require

1 costs, as a meaningful concern, and this is nevertheless an
2 incremental cost. And history has told us that when somebody
3 else is paying the expenses, spending restraint seems to go out
4 the window. Once more, we don't give out the power to run up
5 such expenses except in extraordinary circumstances.

6 The last factor that's been identified in the case law
7 is other considerations. But given that all of the factors
8 I've addressed so far so overwhelmingly weigh against forming
9 another official committee, I don't need to consider the
10 additional point that the debtors made, that the appointment of
11 another official committee would slow down a case which some,
12 perhaps many, parties in this case wish to move very quickly.

13 For the foregoing reasons, the motion is decided today
14 and is denied on the merits. Mr. Masumoto you or your office
15 is to prepare an order in accordance with the foregoing -- to
16 settle an order, two days notice.

17 Am I correct that we have no further business for
18 today?

19 MR. MILLER: Correct, Your Honor.

20 THE COURT: We're adjourned. Have a good day.

21 MR. MILLER: Thank you, Your Honor.

22 MR. RICHMAN: Thank you, Your Honor.

23 (Proceedings Concluded at 4:35 p.m.)
24
25

EXHIBIT C

VII. CONFLICTS OF INTEREST

If any matter under consideration by the Committee appears to involve a conflict of interest with any Member(s), Committee counsel shall provide its recommendation as to whether such a potential conflict exists and whether the Member(s) with the potential conflict of interest must abstain from voting on the matter or be excused from the meeting at which such matter is being considered. Additionally, under such circumstances, the Member(s) with the potentially conflicting interest shall: (i) disclose to the Committee the existence of any potential conflict of which it has knowledge and (ii) abstain from voting on the matter being considered by the Committee if (a) the Member(s) with the conflicting interest or (b) a majority of the Members present at such meeting, other than the Member(s) with the potential conflict issue, determine that such abstention is appropriate. Once a matter has been identified that may involve a conflict of interest with any Member(s), a majority of the Members present at any meeting, other than the Member(s) with the potential conflict issue, may excuse any such Member(s) from any meeting or consideration of any matter at any appropriate time. Any Member subject to an alleged conflict of interest shall be provided with a reasonable opportunity to be heard and to provide other Members with additional information and/or refute any allegations of its alleged conflict of interest prior to any Committee vote regarding such Member's alleged conflict of interest. Whether a conflict of interest exists as to a particular Member or group of Members will be determined on an individual basis and each Member shall have the opportunity to be heard and have the Committee vote in connection with its alleged conflict of interest. The existence of a conflict of interest shall be determined definitively by the affirmative vote of a majority of the Members present at a meeting (other than the Member(s) having the potential conflict of interest and any other Member who appears to be, in the judgment of a majority of the remaining

Members or Committee counsel, subject to the same conflict of interest). Consistent with the foregoing, the Member having a conflict of interest shall not have access to summaries, analyses, reports or work product prepared by the professionals of the Committee with respect to the matter in which the conflict of interest exists, except to the extent determined to be appropriate under the circumstances in the discretion of the Committee. Nothing contained in these Bylaws shall, subject to the Confidentiality and Conflict of Interest provisions herein (a) prevent any Member from exercising or seeking (or omitting to seek) to enforce or protect any of its rights as an individual creditor or other party-in-interest, or (b) otherwise affect the ability of any Member to act in its capacity as an individual creditor or other party-in-interest as it may deem appropriate – whether or not such actions are opposed by the Committee. Each Member of the Committee retains the right to appear in the chapter 11 cases of the Debtors in respect of its own interests and to take a position different from that of the Committee, provided, however, that no Member shall purport to represent or speak for the Committee in connection therewith.

EXHIBIT D

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

-----X
In re :
 : **Chapter 11 Case No.**
WORLDCOM, INC., et al., : **02-13533 (AJG)**
 :
 : **(Jointly Administered)**
 :
Debtors. :
-----X

**ORDER DENYING MOTION OF HSBC BANK USA, AS INDENTURE
TRUSTEE, FOR ENTRY OF AN ORDER DIRECTING THE
APPOINTMENT OF AN OFFICIAL COMMITTEE OF CREDITORS
FOR MCI COMMUNICATIONS CORPORATION AND ITS SUBSIDIARIES**

A hearing having been held on May 28, 2003 (the "Hearing") to consider the motion, dated April 30, 2003, of HSBC Bank USA, as indenture trustee, for entry of an order directing the appointment of an official committee of creditors for MCI Communications Corporation ("MCIC") and its subsidiaries (together with MCIC, "MCI"), dated April 30, 2003, 2003 (the "HSBC Motion"); and joinders in the HSBC Motion, dated May 21, 2003, May 22, 2003, and May 27, 2003 having been filed with the Court by Wilmington Trust Company, as property trustee and guarantee trustee, Aerotel LTD., and the Dissenting MCI Bondholders, respectively (the "Joinders," and together with the HSBC Motion, the "Motion"); and the affidavit of Tina Niehold Moss, dated May 23, 2003, in Support of the HSBC Motion (the "Moss Affidavit"), having been filed with the Court; and the memorandum of law in support of the HSBC Motion, dated May 23, 2003 (the "HSBC Memorandum") having been filed with the Court; and the objections to the Motion, dated May 22, 2003, May 23, 2003, and May 26, 2003 of the United States Trustee, WorldCom, Inc. and its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), and the Statutory Committee of

Unsecured Creditors, respectively (collectively, the “Objections”) having been filed with the Court; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the appearances of all interested parties having been noted in the record of the Hearing; and the Court having considered the HSBC Motion, the Joinders, the Moss Affidavit, the HSBC Memorandum, the Objections, and the evidence adduced and arguments of counsel at the Hearing; and upon the HSBC Motion, the Joinders, the Moss Affidavit, the HSBC Memorandum, the Objections, and the record of the Hearing; and the Court having made findings of fact and conclusions of law as set forth in the record of the Hearing; and the Court having found and determined that the representation of the creditors of MCI by the extant Statutory Committee of Unsecured Creditors is adequate as required by section 1102 of title 11, United States Code (the “Bankruptcy Code”) and that the appointment of an additional committee pursuant to section 1102 of the Bankruptcy Code is not necessary to assure adequate representation of creditors of MCI; and for the additional reasons set forth in the record of the Hearing, it is therefor hereby

ORDERED that the Motion is denied.

Dated: New York, New York
May 30, 2003

s/Arthur J. Gonzalez
United States Bankruptcy Judge

EXHIBIT E

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 09-11233(REG)

- - - - -x

In the Matter of:

CHEMTURA CORPORATION, et al.

Debtors.

- - - - -x

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

April 7, 2010
9:50 AM

B E F O R E:
HON. ROBERT E. GERBER
U.S. BANKRUPTCY JUDGE

CHEMTURA CORPORATION, et al.

1 settled, that the equity committee wanted except as the debtors
2 agree that such stuff is useful.

3 Parties who have joint interest, which for the most
4 part will be a bundle of the debtors, the creditors' committee
5 and the equity committee on the one hand, and diacetyl
6 claimants on the other, will be entitled to a joint interest
7 privilege on any matters as to which their needs and concerns
8 coincide. That should hopefully facilitate their ability to
9 caucus in advance and to minimize the number of submissions to
10 me to avoid duplication. If, of course, any party believes
11 that it has a need to put in its own submission my ruling's
12 without prejudice to that. I think that when -- if there is
13 such a perception the party should put the other parties on
14 notice saying listen, we think our interests are diverging at
15 this point and we better pull the plug or limit the nature of
16 our joint interest privilege. But in the first instance, I
17 want you guys to try to work together to accede the extent to
18 which you see things the same way.

19 I wasn't as close to this in Lyondell Chemical as it
20 might be necessary to have an informed view on this, but it's
21 my impression that parties that had technically different but
22 generally aligned interests were very successful in coming up
23 with joint submissions, and I want people to try to do that
24 here wherever possible.

25 One of the points that Mr. Liesemer made that got my

CHEMTURA CORPORATION, et al.

1 have a congruence of views on that subject after the U.S.
2 Trustee's office has done its thing.

3 Anything else? Hearing none --

4 MR. BERISH: Just the timing of that from the U.S.
5 Trustee's perspective, I mean, we're starting to get going on
6 this, we were hoping a committee could be appointed.

7 THE COURT: Well, no, with respect, you guys have the
8 ability to appear and be heard whether or not the estate pays
9 your bills. This was one of the points that I articulated in
10 General Motors. You can do your thing and whether the estate
11 or precisely the other creditors in the case, pay your bills is
12 not going to affect your ability to appear and be heard in this
13 case.

14 Now, I am aware of no authority under which I would be
15 authorized to subject the U.S. Trustee's office to a deadline.
16 I assume the U.S. Trustee's office will act expeditiously on
17 it. And if anybody believes that I should be issuing what
18 amounts to an order of mandamus to the U.S. Trustee's office to
19 decide the matter, if you think the U.S. Trustee's office
20 hasn't acted diligently you've got a reservation of rights on
21 that issue.

22 Now, it's another issue if we ever got to it, is
23 whether a diacetyl claimant that isn't an injured party, but
24 which is an alleged tortfeasor, itself; like Citrus and Unger,
25 would belong on any such committee in any event, is a matter