

Hearing date: July 28, 2009 at 9:45 A.M. (ET)  
Objection deadline: July 24, 2009 at 4:00 P.M. (ET)

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**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

**AMENDED MOTION OF THE OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS OF CHEMTURA CORPORATION, ET AL.,  
PURSUANT TO 11 U.S.C. §§ 105(a), 1103(c) AND 1109(b),  
FOR ENTRY OF AN ORDER GRANTING LEAVE, STANDING  
AND AUTHORITY TO PROSECUTE AND, IF APPROPRIATE,  
SETTLE CAUSES OF ACTION ON BEHALF OF THE DEBTORS' ESTATES**

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The Official Committee of Unsecured Creditors (the “Committee”) of Chemtura Corporation, *et al.* (collectively, the “Debtors”), by and through its undersigned counsel, hereby files this motion (the “Motion”) for entry of an order, pursuant to sections 105(a), 1103(c) and 1109(b) of title 11 of the United States Code (the “Bankruptcy Code”), authorizing the Committee to pursue and, if appropriate, settle certain causes of action against Citibank, N.A., as administrative agent under the Debtors’ prepetition credit facility (the “Prepetition Agent”), on behalf of the Debtors’ estates. In support of this Motion, the Committee respectfully submits as follows:

### **PRELIMINARY STATEMENT**

By this Motion, the Committee seeks authority to pursue certain causes of action to avoid transfers made by the Debtors to the Prepetition Agent during the ninety days prior to the commencement of the Debtors’ chapter 11 cases (the “Preference Claims”).<sup>1</sup> Specifically, the Committee seeks to avoid the following transfers as preferences under Bankruptcy Code section 547: (i) liens and security interests granted by the Debtors to the Prepetition Agent in all of the Debtors’ inventory (the “Inventory Liens”); (ii) the lien allegedly granted by Chemtura Corporation (“Chemtura”) to the Prepetition Agent in Chemtura’s ownership interests in non-Debtor Chemtura Receivables LLC (the “SPV Equity Lien”<sup>2</sup> and, together with

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<sup>1</sup> If the Committee is granted derivative standing, the Committee intends to file a complaint (the “Complaint”) substantially in the form attached as Exhibit A to the Declaration of Philip C. Dublin in Support of the Motion of the Official Committee of Unsecured Creditors of Chemtura Corporation, *et al.*, Pursuant to 11 U.S.C. §§ 105(a), 1103(c) and 1109(b), for Entry of an Order Granting Leave, Standing and Authority to Prosecute and, if Appropriate, Settle Causes of Action on Behalf of the Debtors’ Estates (the “Dublin Declaration”).

<sup>2</sup> As of the date hereof, the Committee has been unable to confirm that the SPV Equity Lien was actually granted and perfected. Indeed, despite repeated requests, the Debtors have failed to produce any documents evidencing the existence of such lien. As a result of the deadline for the Committee to pursue Lender Claims (as defined in the Final DIP Order [D.E. #281]), however, the Committee seeks to avoid the SPV Equity Lien to the extent that it exists. Accordingly, all references to the SPV Equity Lien in this Motion and the annexed Complaint should not be deemed an admission regarding the existence of such lien.

the Inventory Liens, the “Preferential Liens”); and (iii) at least \$6 million in cash payments made by the Debtors to the Prepetition Agent (the “Cash Payments” and, collectively with the Preferential Liens, the “Preferential Transfers”).

2. Avoidance of the Preferential Transfers will benefit the Debtors’ estates and their unsecured creditors by, among other things, (i) stripping the purported liens on the Debtors’ inventory and the capital stock of Chemtura Receivables LLC, (ii) unwinding the \$86.5 million of rolled-up prepetition debt pursuant to the Final DIP Order (as defined below) and (iii) recovering at least \$6 million in cash.

3. At the onset of these cases, the Debtors waived any ability to investigate, assert and/or prosecute any claims in respect of the Prepetition Credit Facility (as defined below). *See* Final DIP Order [D.E. #281] at ¶ 28. Therefore, the Debtors are unable to pursue the Preference Claims. The Debtors have consented, however, to the Committee’s standing to pursue the Preference Claims on behalf of the Debtors’ estates.<sup>3</sup>

4. As discussed more fully below, all of the legal requirements for granting the Committee derivative standing to pursue the Preference Claims, on behalf of the Debtors’ estates, have been satisfied. Prosecution of the Preference Claims is critical in these cases because the benefits therefrom will include, among other things, (a) avoidance of liens granted to the Prepetition Agent during the ninety days prior to March 18, 2009 (the “Petition Date”), (b) the unwinding of all or a portion of the Roll-Up (as defined below), (c) disgorgement of significant amounts of money to the Debtors’ estates, (d) greater flexibility in formulating a chapter 11 plan of reorganization, (e) creation of an additional substantial recovery source for

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<sup>3</sup> The Debtors’ conditioned their consent to the Committee’s standing to pursue the Preference Claims on the Debtors’ retention of the right to propose settlements thereof. The Committee does not object to the Debtors retaining this right.

unsecured creditors and (f) *pari passu* treatment of the claims of certain unsecured creditors with the claims of the Debtors' prepetition lenders. Given the Debtors' inability to prosecute the Preference Claims, the Committee is the only party-in-interest qualified and sufficiently vested to pursue such claims on behalf of the Debtors' estates. Accordingly, the Committee seeks (i) authority to prosecute the claims referenced herein against the Prepetition Agent, on behalf of the Debtors' estates, and (ii) authority to propose settlements in connection therewith.

5. The Committee also intends to include claims for declaratory relief in its Complaint. Specifically, and as set forth in greater detail in the Complaint, the Committee intends to pursue declarations that, among other things, (a) the Prepetition Credit Facility constitutes a single undersecured credit facility and not, as the Prepetition Agent contends, two separate credit facilities – one that is fully secured by stock of Chemtura's first tier domestic and foreign subsidiaries (and potentially all or a portion of the Preferential Liens, to the extent not avoided) and another that is completely unsecured; (b) the amount of the Prepetition Credit Facility Debt (as defined below) that is entitled to the benefit of collateral is capped at \$46.1 million, not \$139.2 million as asserted by the Debtors in the DIP Motion (as defined below); and (c) the collateral securing the Prepetition Credit Facility Debt must be allocated among the letters of credit and revolver borrowings outstanding as of the date the Secured Obligation Cap (as defined below) is measured (collectively, the "Declaratory Relief Claims"). The Committee respectfully submits that leave of the Court is not required for the Committee to pursue the Declaratory Relief Claims.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This is a

core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 1103(c), and 1109(b).

## **BACKGROUND**

### **A. The Debtors' Prepetition Capital Structure**

#### ***1. The Prepetition Credit Facility***

7. The Debtors are party to the Amended and Restated Credit Agreement, dated as of July 1, 2005 among Chemtura, as borrower, the Prepetition Agent and the lenders party thereto (collectively, the "Prepetition Lenders") (as further amended and restated, the "Prepetition Credit Agreement"). *See* Declaration of Stephen Forsyth in Support of First Day Pleadings (the "Forsyth Declaration") at ¶ 32; Prepetition Credit Agreement at 1.<sup>4</sup> Pursuant to the Prepetition Credit Agreement, Chemtura obtained access to a revolving credit and letter of credit facility (the "Prepetition Credit Facility") which, initially, provided up to \$600 million in financing. *See* Prepetition Credit Agreement at 1. Certain of Chemtura's wholly-owned subsidiaries executed guarantees in connection with the Prepetition Credit Facility, making each subsidiary jointly and severally liable for the full amount of debt outstanding under the Prepetition Credit Facility (the "Subsidiary Guarantors" and, together with Chemtura, the "Credit Agreement Obligors").<sup>5</sup> *See* Forsyth Declaration at ¶ 32. As of the Petition Date, approximately \$272 million was outstanding under the Prepetition Credit Facility (the "Prepetition Credit Facility Debt"), consisting of \$90 million in letters of credit and approximately \$182 million in revolver borrowings. *See id.* at ¶ 29.

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<sup>4</sup> The Prepetition Credit Agreement is attached as Exhibit B to the Dublin Declaration.

<sup>5</sup> All of the Credit Agreement Obligors are Debtors in these chapter 11 cases.

8. Although the Prepetition Credit Facility was originally unsecured, in May 2007, the downgrade of Chemtura's long-term unsecured debt triggered a provision under the Prepetition Credit Agreement entitling the Prepetition Agent to receive collateral to secure a portion of the Prepetition Credit Facility Debt. *See id.* at ¶ 33. Specifically, pursuant to the Prepetition Credit Agreement, if, at any time, Chemtura's non-credit enhanced long-term senior unsecured debt was rated at or lower than BB+ by Standard and Poor's or Ba2 by Moody's Investors Services, the Prepetition Credit Facility Debt would be secured. *See id.*

9. Following the May 2007 downgrade, the Credit Agreement Obligors and the Prepetition Agent entered into the Pledge Agreement dated as of June 14, 2007, which was amended on July 31, 2007 (the "Amended Pledge Agreement"), pursuant to which (i) the Credit Agreement Obligors granted the Prepetition Agent a security interest in 100% of the capital stock of their first-tier domestic subsidiaries (the "Domestic Stock Pledge") and (ii) Chemtura granted the Prepetition Agent a security interest in 66-2/3% of the capital stock of Chemtura's first-tier foreign subsidiaries (the "Foreign Stock Pledge" and, together with the Domestic Stock Pledge, the "Equity Collateral").<sup>6</sup>

10. As discussed in more detail below, the amount of Prepetition Credit Facility Debt that could obtain the benefit of the Equity Collateral was limited because certain provisions in the indentures governing the Debtors' unsecured notes restricted the Debtors' ability to incur or maintain secured debt without triggering equal and ratable liens for the benefit of the holders of the notes. In an attempt to prevent triggering the Debtors' obligations to equally and ratably secure the Notes, the security agreement for the Prepetition Credit Facility limits the amount of

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<sup>6</sup> The Pledge Agreement and the Amended Pledge Agreement are attached as Exhibits C and D respectively to the Dublin Declaration.

Prepetition Credit Facility Debt that can be secured to no more than 10% of the Debtors' tangible consolidated net assets (the "Secured Obligation Cap"). *See* Forsyth Declaration at ¶ 35; Amended Pledge Agreement at 5, 6; Second Amended Pledge Agreement (as defined below) at 4; 2026 Indenture (as defined below) § 1010.

## **2. The Notes**

11. As of the Petition Date, in addition to the Prepetition Credit Facility, the Debtors had the following funded debt obligations: (i) \$370 million in respect of certain 7% unsecured notes due 2009 issued by Great Lakes Chemical Corporation and guaranteed by Chemtura (the "2009 Notes"); (ii) \$500 million in respect of certain 6.875% unsecured notes due 2016 issued by Chemtura and guaranteed by all or substantially all of the other Debtors (the "2016 Notes"); and (iii) \$150 million in certain 6.875% debentures due 2026 issued by Chemtura (the "2026 Notes" and, together with the 2009 Notes and 2016 Notes, the "Notes"). *See* Forsyth Declaration at ¶ 28.

### **B. The Debtors' Financial Distress in 2008 and the Granting of the Inventory Lien**

12. During 2008, due to, among other things, poor market conditions, upcoming debt maturities and significant leverage, the Debtors' financial performance began to deteriorate drastically and they were faced with significant liquidity and covenant concerns. *See id.* at ¶¶ 56-58. Indeed, during the fourth-quarter of 2008, Chemtura was unable to comply with the leverage and interest coverage covenants under the Prepetition Credit Facility and was the subject of a going concern qualification by its auditors. *See* Chemtura Form 10K, for period ending December 31, 2008, at 38;<sup>7</sup> Forsyth Declaration at ¶ 79.

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<sup>7</sup> The Chemtura Form 10K, for period ending December 31, 2008 is attached as Exhibit E to the Dublin Declaration.

13. On December 30, 2008 – well within the preference period – the Debtors granted the Inventory Liens to the Prepetition Agent pursuant to the Second Amended and Restated Pledge and Security Agreement (the “Second Amended Pledge Agreement”).<sup>8</sup> *See* Forsyth Declaration at ¶¶ 36, 39. In return, the Prepetition Agent agreed to waive Chemtura’s compliance with certain financial covenants and events of default under the Prepetition Credit Agreement for the period from December 30, 2008 through March 30, 2009, pursuant to the Waiver and Second Amendment to the Amended and Restated Credit Agreement (the “Waiver”).<sup>9</sup> *See id.* at ¶ 36.

14. In addition to providing the Inventory Liens, the Waiver reduced the size of the Prepetition Credit Facility to \$500 million,<sup>10</sup> limited outstanding revolver advances under the Prepetition Credit Facility to \$190 million from February 1, 2009 to March 30, 2009, and limited outstanding letters of credit to \$97 million. *See id.* at ¶ 37. The Waiver also restricted the Debtors’ ability to take certain actions during the waiver period, including incurring certain debt and granting liens, disposing of certain assets, making certain investments, paying cash dividends and repurchasing equity. *See id.*

### **C. Secured Obligation Cap**

15. As noted, the amount of Prepetition Credit Facility Debt that can be secured is capped to avoid triggering provisions in the indentures requiring the grant of equal and ratable liens in favor of the Notes. *See id.* at ¶ 48, 49.

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<sup>8</sup> The Second Amended Pledge Agreement is attached as Exhibit F to the Dublin Declaration.

<sup>9</sup> The Waiver is attached as Exhibit G to the Dublin Declaration.

<sup>10</sup> As discussed further below, the Prepetition Credit Facility was reduced further to \$350 million in connection with certain Debtors’ entry into the New Receivables Facility (as defined below). *See* Chemtura Form 10K, for period ending December 31, 2008 at 36, 84.

16. Specifically, the Second Amended Pledge Agreement provides that the Prepetition Credit Facility Debt will be secured, but only to the extent that the aggregate amount of such secured debt does not exceed the amount “permitted to be incurred and secured (at the time of incurrence) by the [Debtors] pursuant to Section 1010 of the 2026 Indenture without the requirement to equally and ratably secure any of the notes issued pursuant to the 2026 Indenture.” *See* Second Amended Pledge Agreement at 4.

17. Section 1010 of the 2026 Indenture, in turn, provides that “the Company and its Subsidiaries may ... secure obligations or Indebtedness...if after giving effect to any such security arrangements ... the sum of ... the aggregate amount of all such obligations and Indebtedness then outstanding ... does not at any such time exceed 10% of Consolidated Net Tangible Assets.”<sup>11</sup> The Debtors have asserted that the Secured Obligation Cap applicable to the Prepetition Credit Facility Debt is \$139.2 million.<sup>12</sup> *See* Forsyth Declaration at ¶51.

#### **D. The Debtors’ Liquidity Crisis and the Establishment of the New Receivables Facility**

18. The Waiver required that the amount of debt outstanding under the Prepetition Credit Facility could be no more than \$287 million by December 31, 2008. As of such date, Chemtura already had borrowed a total of \$272 million – \$182 million in revolving debt and \$90 million in letters of credit. *See* Forsyth Declaration at ¶¶ 29, 37. Thus, Chemtura only had

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<sup>11</sup> “Consolidated Net Tangible Assets” is defined in the 2026 Indenture to mean “total consolidated assets of [the Debtors], less the following: (1) current liabilities of the [Debtors]; (2) all depreciation and valuation reserves and all other reserves (except (a) reserves for contingencies which have not been allocated to any particular purpose, and (b) deferred credits, including deferred federal and foreign income taxes and deferred investment tax credits) of the [Debtors]; (3) the net book amount of all intangible assets of the [Debtors], including, but without limitation, the unamortized portions of such items as good will, trademarks, trade names, patents and debt discount and expense less debt premium; and (4) appropriate adjustments on account of minority interests of other Persons holding stock in Subsidiaries.” A copy of the 2026 Indenture is attached as Exhibit H to the Dublin Declaration.

<sup>12</sup> As set forth in the Complaint, the Committee seeks a declaration that the Secured Obligation Cap should be, at most, \$46.1 million.

approximately \$15 million in potential available liquidity under the Prepetition Credit Facility through March 30, 2009.

19. Another consequence of the Debtors' deteriorating financial condition was the Debtors' inability to utilize fully an existing receivables securitization facility (the "Old Receivables Facility"). *See id.* at ¶ 78. Consequently, as a condition of the Waiver and in order to obtain access to additional liquidity, the Debtors obtained financing through a new receivables facility (the "New Receivables Facility"). *See id.* at ¶ 52. The New Receivables Facility was established pursuant to (i) the Receivables Sale Agreement, dated as of January 23, 2009 among Chemtura, Great Lakes, GLCC Laurel LLC, and Biolab, Inc., as sellers (collectively, the "Receivables Facility Sellers"), and the Receivables SPV, as buyer (the "Receivables Sale Agreement") and (ii) the Receivables Purchase Agreement, dated as of January 23, 2009, among the Receivables SPV, as seller, Chemtura, as the servicers, Citicorp USA, Inc. as agent, Citigroup Global Markets Inc., as arranger, and certain purchasers<sup>13</sup> (the "Receivables Purchase Agreement").<sup>14</sup> *See id.*

20. Pursuant to the New Receivables Facility, the Receivables Facility Sellers sold receivables to the Receivables SPV, which in turn, sold fractional ownership interests in the receivables to participating purchasers who were also granted a security interest in all of the receivables owned by the Receivables SPV. *See id.* at 53. The maximum amount of

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<sup>13</sup> In addition to Citicorp USA, Inc., as agent, the following banks were purchasers under the New Receivables Facility: Citicorp USA, Inc., Bank of America, Wachovia, Credit Suisse (Cayman Islands Branch), Royal Bank of Scotland, Sumitomo Mitsui Banking Corp., ING Capital LLC, Calyon (New York Branch), The Bank of Tokyo – Mitsubishi UFJ Ltd., and The Northern Trust Company (collectively, the "Receivables Facility Lenders"). All of the Receivables Facility Lenders were also Prepetition Lenders under the Prepetition Credit Facility.

<sup>14</sup> The Receivables Purchase Agreement is attached as Exhibit I to the Dublin Declaration. The Receivables Sale Agreement is attached as Exhibit J to the Dublin Declaration. The Receivables SPV was incorporated on December 18, 2008, and prior to its wind-down was a special purpose, bankruptcy remote affiliate of the Debtors.

availability under the New Receivables Facility was \$150 million. *See* Receivables Purchase Agreement at 25. Upon the establishment of the New Receivables Facility, the Prepetition Credit Facility was further reduced from \$500 million to \$350 million – a dollar for dollar reduction. *See* Chemtura Form 10K, for period ending December 31, 2008 at 36, 84.

21. The Receivables Facility Sellers obtained funds through the New Receivables Facility by selling their receivables to the Receivables SPV at a discount, which, upon information and belief, was set at least semiannually based on prevailing costs of funds, recent performance history of the receivables being sold, and other costs of ownership. *See* Receivables Sale Agreement at § 2.01(d). Upon information and belief, and pursuant to the terms of the New Receivables Facility, the Receivables SPV purchased the receivables from the Receivables Facility Sellers for cash but was permitted to part of the purchase price in the form of a subordinated note (each, a “SPV Subordinated Note”) if the Receivables SPV lacked adequate cash on hand for the purchase (the “Deferred Payment Option”). *See* Receivables Sale Agreement § 2.02(b).

22. As of March 6, 2009, the sale price for the undivided interest in the receivables purchased by the Receivables Facility Lenders from the Receivables SPV was just over \$117 million, but the face amount of the receivables sold by the Receivables Facility Sellers to the Receivables SPV was approximately \$232 million. *See* Forsyth Declaration at ¶ 54. Accordingly, the Receivables Facility Lenders were paying approximately 50% of the face value for their interests in the receivables. Indeed, the Debtors have represented that, prior to being unwound pursuant to the terms of the Final DIP Order, “the repurchase price for the receivables sold pursuant to the new receivables facility was \$117,388,411.52, and the face value of those receivables was approximately \$232 million.” *See id.*

23. As noted above, pursuant to the terms of the Receivables Sale Agreement, the Receivables SPV purchased receivables from the Prepetition Receivables Sellers at a discount, and, upon information and belief, the Receivables SPV also collected more money for the receivables than was required to repay the Receivables Facility Lenders. Moreover, upon information and belief, the Receivables SPV exercised the Deferred Payment Option in connection with its purchase of receivables from the Receivables Facility Sellers until the Petition Date. None of the Receivables Facility Sellers, however, have SPV Subordinated Notes listed as assets in their respective Schedules of Assets and Liabilities filed with this Court on June 11, 2009. *See* Debtors' Schedules of Assets and Liabilities (June 11, 2009) [D.E.# 536, 551, 561, 563].<sup>15</sup> Thus, the Receivables SPV, as opposed to being a pass-through, special purpose vehicle, appears to have accumulated equity value and operated in essence as a revenue generating entity. The value accumulated at the Receivables SPV was ostensibly owned by Chemtura, on account of Chemtura's 100% ownership interest in the Receivables SPV. *See* Forsyth Declaration at ¶ 53.

24. The Second Amended Pledge Agreement provided that Chemtura was to grant the Prepetition Agent a security interest in Chemtura's 100% ownership of the Receivables SPV. *See* Second Amended Pledge Agreement at 6. The Prepetition Agent has asserted that the SPV Equity Lien was granted as collateral to secure a portion of the Prepetition Credit Facility Debt.<sup>16</sup>

### **E. The Cash Payments**

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<sup>15</sup> The failure of the Debtors to schedule SPV Subordinated Notes as assets of the applicable Debtors should not be deemed an admission or acknowledgment by the Committee that such notes do not exist.

<sup>16</sup> As noted above, to date, the Committee has been unable to confirm that the SPV Equity Lien was actually granted and properly perfected.

25. During the ninety days prior to the Petition Date, the Debtors made payments to the Prepetition Agent on account of Prepetition Credit Facility Debt (including principal paydowns) of at least \$6 million. *See* Chemtura Corporation's Statement of Financial Affairs (3b) at 9 [D.E.# 535]. Upon information and belief, these Cash Payments were not scheduled payments of principal or interest.

#### **F. Chapter 11 Filings and Final DIP Order**

26. On the Petition Date, the Debtors filed a motion (the "DIP Motion") for authority to obtain postpetition financing from the Prepetition Lenders (the "DIP Facility"). The DIP Facility consists of (i) a \$250 million term loan; (ii) a \$63.5 million revolving credit facility; and (iii) an \$86.5 million revolving credit facility. On April 29, 2009, this Court entered a final order authorizing the Debtors to enter into the DIP Facility (the "Final DIP Order"). Proceeds of the DIP Facility have been used to, among other things, (i) unwind the New Receivables Facility and (ii) conditionally repay \$86.5 million of Prepetition Credit Facility Debt (the "Roll-Up").

27. The Final DIP Order established, among other things, June 24, 2009 (the "Challenge Period") as the deadline for any party in interest to file a complaint contesting the validity of any lien granted in connection with the Prepetition Credit Facility. The Final DIP Order further provided that the "Debtors are deemed to have irrevocably waived and relinquished all Lender Claims as of the date of entry of this Order." Final DIP Order at ¶ 29(a). Thus, by the express terms of the Final DIP Order, the Debtors have waived their collective rights to contest the validity of the claims and liens of the Prepetition Agent and the Prepetition Lenders. The Prepetition Agent has agreed to extend the Challenge Period to July 29, 2009 (the "Extended Challenge Period"). *See* Stipulation and Agreed Order Among the

Committee and the Prepetition Agent to Extend the Deadline for the Committee to Challenge Prepetition Obligations Under the Final DIP Order [DE# 629].

28. By letters dated June 10, 2009 and July 1, 2009, (the “Demand Letters”), the Committee formally demanded that the Debtors consent to the Committee’s standing to commence and prosecute claims and causes available to the Debtors’ chapter 11 estates against the Prepetition Agent and/or Prepetition Lenders.<sup>17</sup> By letters dated June 16, 2009 and July 7, 2009 (the “Consent Letters”), the Debtors indicated their consent to the Committee’s standing to pursue such claims on behalf of the Debtors’ estates.<sup>18</sup>

### **RELIEF REQUESTED**

29. The Committee hereby requests that this Court grant the Committee leave, standing, and authority to prosecute Claims and, if appropriate, propose settlements in respect of the foregoing, on behalf of the Debtors’ estates.

### **BASIS FOR RELIEF**

#### **A. Standard for Derivative Standing**

30. As noted above, the Extended Challenge Period will expire on July 29, 2009.<sup>19</sup> Accordingly, the Committee seeks the relief requested herein to pursue the Preference Claims in a timely manner. Although the Bankruptcy Code does not expressly authorize a creditors’

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<sup>17</sup> Copies of the Demand Letters are attached as Exhibit K to the Dublin Declaration.

<sup>18</sup> Copies of the Consent Letters are attached as Exhibit L to the Dublin Declaration.

<sup>19</sup> The Final DIP Order permits further extensions of the Extended Challenge Period with the consent of the Prepetition Agent or by order of the Court if the Debtors have failed to respond to the Committee’s requests for information. See Final DIP Order at ¶ 29(a). While the Committee believes it has sufficient information to assert colorable claims, the Committee has outstanding information requests to the Debtors. Accordingly, in the event the Motion is contested and the Court does not have sufficient availability to hear a contested matter on July 28, 2009, the Committee respectfully submits that grounds exist for the Court to further extend the Extended Challenge Period unilaterally.

committee to initiate an adversary proceeding to avoid liens, guarantee obligations, security interests and/or pursue other causes of action typically brought by the trustee or the debtor in possession, the Bankruptcy Code establishes a creditors' committee for the express purpose of protecting the rights of its constituents and similarly situated creditors. *See* H.R. Rep. No. 95-595, 95th Cong., 1st Sess. (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5787. In furtherance of this purpose, Bankruptcy Code section 1103(c), which enumerates the statutory functions of a creditors' committee, authorizes creditors' committees to "perform such other services as are in the interest of those represented." 11 U.S.C. § 1103(c)(5).

31. To that end, Bankruptcy Code section 1109(b) provides, in pertinent part, that:

[A] party in interest, including the debtor, the trustee, [or] a creditors' committee ... may raise and may appear and be heard on any issue in a case under this chapter.

11 U.S.C. § 1109(b). This general right to be heard would be rendered meaningless with respect to creditors' committees unless such committees are also given the right to act, on behalf of the estate, if a debtor in possession or trustee, who is explicitly granted the right to act, unjustifiably fails to act. *See Unsecured Creditors Comm. of Debtor STN Enters., Inc. v. Noyes (In re STN Enters.)*, 779 F.2d 901, 904-05 (2d Cir. 1985) (recognizing an "implied, but qualified" right under 11 U.S.C. §§ 1103(c)(5) and 1109(b) for an unsecured creditors' committee, with court approval, to assert claims where the trustee or debtor-in-possession unjustifiably failed to bring suit or abused its discretion in not suing on colorable claims likely to benefit the reorganization estate."); *see also Official Comm. of Unsecured Creditors of Joyanna Holitogs, Inc. v. I. Hyman Corp. (In re Joyanna Holitogs, Inc.)*, 21 B.R. 323, 326 (Bankr. S.D.N.Y. 1982) (holding that the general right to be heard would be an empty grant unless coupled with the right to sue, in the event that the trustee or debtor in possession so refuses); *Adelphia Commc'ns Corp. v. Bank of America, N.A. (In re Adelphia Commc'ns Corp.)*, 330 B.R. 364, 373 (Bankr. S.D.N.Y. 2005)

(“The practice of authorizing the prosecution of actions on behalf of an estate by committees ... is one of long standing, and nearly universally recognized.”).

32. Creditor committees have routinely litigated causes of action on behalf of debtor estates to avoid fraudulent or preferential transfers before courts in the Second Circuit. *See e.g., In re Refco Inc.*, 505 F.3d 109 (2d Cir. 2007); *Official Comm. of Unsecured Creditors of Enron Corp. v. Whalen (In re Enron Corp.)*, 357 B.R. 32 (Bankr. S.D.N.Y. 2006); *Official Comm. of Unsecured Creditors of Norstan Apparel Shops, Inc. v. Lattman (In re Norstan Apparel Shops, Inc.)*, 367 B.R. 68 (Bankr. E.D.N.Y. 2007).

33. The practice of conferring standing upon creditors’ committees to pursue actions on behalf of a bankruptcy estate is widely followed and accepted in other jurisdictions as well. *See, e.g., Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003) (holding that “the ability to confer derivative standing upon creditors’ committees is a straightforward application of bankruptcy courts’ equitable powers”); *La. World Exposition, Inc. v. Fed. Ins. Co. (In re La. World Exposition, Inc.)*, 832 F.2d 1391, 1397 (5th Cir. 1987) (stating that “[a] number of bankruptcy courts have held that in some circumstances, a creditors’ committee has standing under 11 U.S.C. § 1103(c)(5) and/or § 1109(b) to file suit on behalf of the debtor-in-possession ... or the trustee.”). Moreover, courts in other jurisdictions, like here, routinely hold that creditors’ committees can prosecute preferential transfer actions. *See Official Comm. of Unsecured Creditors of Grand Eagle Cos., Inc. v. ASEA Brown Boveri, Inc.*, 313 B.R. 219, 222 (Bankr. N.D. Ohio 2004) (unsecured creditors’ committee had derivative standing to pursue its preference claims against prepetition lenders to recover loan payments made during preference period); *Official Comm. of Unsecured Creditors v. Cablevision Sys. Corp. (In re Valley Media, Inc.)*, No. 01-11353, 2003 WL

21956410 at \*1-3 (Bankr. D. Del. Aug. 14, 2003) (official committee of unsecured creditors was proper party to bring preferential transfer claim).

34. A creditors' committee's right to bring an action on behalf of the estate is not, however, unqualified. Courts in the Second Circuit have established that, subject to certain exceptions, several requirements must be satisfied before a committee can pursue claims on behalf of a debtor's estate: (a) there must have been a colorable claim or claims for relief that on appropriate proof would support a recovery; (b) the debtor must have unjustifiably refused to bring suit upon a demand made to them to bring such action; and (c) the court must determine whether an action asserting such claim(s) is likely to benefit the reorganization estate. *See In re STN Enterps.*, 779 F.2d at 905.

**B. The Committee Clearly Satisfies the Test for Derivative Standing With Respect to the Preference Claims**

***1. The Preference Claims Are Colorable***

35. The first element of the derivative standing test outlined above requires the Committee to demonstrate that colorable claims exist against the Prepetition Agent. The case law construing the requirement for "colorable" claims provides that the requisite showing is a relatively low threshold to satisfy. *See, e.g., In re Adelpia Commc'ns Corp.*, 330 B.R. at 376 (holding that the requisite standard for presenting a "colorable" claim is relatively easy to meet); *Official Comm. of Unsecured Creditors of America's Hobby Ctr., Inc. v. Hudson United Bank (In re America's Hobby Ctr., Inc.)*, 223 B.R. 275, 288 (Bankr. S.D.N.Y. 1998) (observing that only if the claim is "facially defective" should standing be denied); *In re Colfor, Inc.*, No. 96-60306, 1998 WL 70718, \*2 (Bankr. N.D. Ohio Jan. 5, 1998) (stating that consistent with the common meaning of "colorable," that the claims to be asserted need only be "plausible" or "not without some merit"). Courts have held that, in determining whether a colorable claim exists,

the court must engage in an inquiry “much the same as that undertaken when a defendant moves to dismiss a complaint for failure to state a claim.” *In re iPCS, Inc.*, 297 B.R. 283, 291 (Bankr. N.D. Ga. 2003) (quoting *In re America’s Hobby Ctr., Inc.*, 223 B.R. at 282); *see also In re Valley Park, Inc.*, 217 B.R. 864, 869 n.4 (Bankr. D. Mont. 1998) (holding that the committee “does not have to satisfy the quantum of proof necessary for a judgment in order to show a colorable claim”).

36. In determining whether a claim is colorable, the Court is not required to conduct a mini-trial. Instead, the Court may “weigh the ‘probability of success and financial recovery,’ as well as the anticipated costs of litigation, as part of a cost/benefit analysis” to determine whether the prosecution of claims is likely to benefit the estate. *In re iPCS*, 297 B.R. at 291 (citations omitted). Thus, the Committee is only required to establish to the Court the existence of a plausible claim. At the very most, the Committee need only come forward with minimal evidence demonstrating that its contentions are not frivolous. *See id.* (“It is clear that, if the claims lack any merit whatsoever, allowing another party to pursue the claims at the expense of the bankruptcy estate would neither be in the best interests of the estate nor necessary and beneficial to the efficient resolution of the bankruptcy proceedings.”).

37. Courts within the Second Circuit and other jurisdictions have held that security interests or liens granted within the 90-day preference period can be avoided as preferential transfers if the elements of section 547(b) are satisfied. *See Rubin Bros. Footwear, Inc. v. Chemical Bank (In re Rubin Bros. Footwear, Inc.)*, 73 B.R. 346, 355 (Bankr. S.D.N.Y. 1987) (grant of security interest is a transfer within the definition of section 547); *In re Aerco Metals*, 60 B.R. 77, 79 (Bankr. N.D. Tex. 1985) (security interest in inventory, accounts, and contract rights constituted a transfer for purposes of § 547(b)).

38. Pursuant to Bankruptcy Code section 547(b), a transfer of an interest in the property of a debtor may be avoided if such transfer (i) was made to or for the benefit of a creditor; (ii) was for or on account of an antecedent debt owed by the debtor before such transfer was made; (iii) was made while the debtor was insolvent;<sup>20</sup> (iv) was made on or within 90 days before the commencement of the bankruptcy case; and (v) enables the creditor to receive more than such creditor would have received if (x) the case was a case under chapter 7 of the Bankruptcy Code, (y) the transfer had not been made, and (z) such creditor received payment of such debt to the extent provided by the provisions of the Bankruptcy Code. *See* 11 U.S.C. § 547(b).

39. By applying the foregoing standards, the Committee has set forth colorable Preference Claims. There is no factual dispute that the first four elements of section 547(b) have been satisfied: the granting of the Preferential Liens and the payment of the Cash Payments to the Prepetition Agent (i) were to or for the benefit of the Prepetition Lenders, (ii) were on account of antecedent debts owed under the Prepetition Credit Facility prior to the Petition Date, (iii) were made while the Debtors were insolvent, and (iv) were made on or within 90 days of the Petition Date. With respect to the fifth and final element, the Committee can clearly meet its burden of presenting a colorable claim that the Prepetition Agent received more from the grant of the Preferential Liens as well as the Cash Payments than it would have received in a hypothetical chapter 7 liquidation had these liens not been granted and Cash Payments had not been made.

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<sup>20</sup> Bankruptcy Code section 547(f) provides that, for the 90 days immediately preceding the date of the filing of the petition, the debtor is presumed to have been insolvent. 11 U.S.C. § 547(f); *Lawson v. Ford Motor Co. (In re Roblin Indus., Inc.)*, 78 F.3d 30, 34 (2d Cir. 1996).

40. While providing a lien to a fully secured creditor would not be a preferential transfer because the creditor would receive payment up to the full value of the creditor's collateral in a chapter 7 liquidation (*see Goldberg v. Such (In re Keplinger)*, 284 B.R. 344, 347 (Bankr. N.D.N.Y. 2002) *citing Batlan v. TransAmerica Commercial Fin. Co. (In re Smith's Home Furnishings, Inc.)*, 265 F.3d 959, 964 (9th Cir. 2001)), transferring a lien to an unsecured or undersecured creditor would enable such creditor to receive more than it would have had the estate been liquidated and the disputed transfer not been made. *See Porter v. Yukon Nat'l Bank*, 866 F.2d 355, 359 (10th Cir. 1989) (“[T]he effect of the transfer was the change of the status of the Bank from that of a partially unsecured creditor to that of a fully secured creditor. Since the evidence indicates no unsecured creditor would receive full payment on liquidation, this change in status is sufficient to establish the last element of a preferential transfer.”); *Harris v. Penesi (In re Harris)*, No. 01-10365, 2003 WL 25795591 at \*4 (Bankr. N.D.N.Y. Mar. 11, 2003).

41. As the Debtors have acknowledged and the Secured Obligation Cap mandates, the Prepetition Credit Facility Debt was not fully secured as of the Petition Date. Moreover, upon information and belief, as of the Petition Date, to the extent the Debtors would have filed for chapter 7, the value of the Equity Collateral – the only collateral securing the Prepetition Credit Facility Debt other than the voidable Preferential Liens – would have been less than the amount of the Secured Obligation Cap (whether the Secured Obligation Cap was \$46.1 million or \$139.2 million). Indeed, pursuant to Bankruptcy Code section 547(f), the Debtors were presumptively insolvent as of the applicable transfer dates. Thus, the Domestic Stock Pledge, pursuant to which the Prepetition Agent was granted a security interest in the stock of Chemtura's first tier domestic subsidiaries, should be presumed to be worthless.

42. Similarly, the Foreign Stock Pledge would, in a hypothetical liquidation of the Debtors, have little value as most, if not all, of Chemtura's foreign, non-debtor subsidiaries would have been rendered insolvent upon the commencement of chapter 7 cases by the Debtors by virtue of, among other things, (i) the loss of synergies with the Debtors, (ii) the negligible value that would be ascribed to the inter-company claims of the foreign non-Debtors against the Debtors (which claims, upon information and belief, constitute a significant portion of the foreign subsidiaries assets), (iii) the maturation of significant pension liabilities, and (iv) the loss of funding and capital contributions from the Debtors.

43. The Inventory Liens and SPV Equity Lien therefore provided the Prepetition Agent, on behalf of the Prepetition Lenders, with more than they would have received had the Debtors filed for chapter 7 on the Petition Date and such liens not been granted. *See Porter*, 866 F.2d at 359. The same holds true for the Cash Payments.

44. Accordingly, the Committee has established that the Preference Claims are colorable.

## **2. Demand and the Debtors' Consent to Assert the Preference Claims.**

45. The second element of the derivative standing test requires that (a) the Committee make a demand on the Debtors to assert the Preference Claims, and (b) the Debtors unjustifiably refuse the Committee's demand.

46. As set forth in the Demand Letters, the Committee made formal demands on June 10, 2009 and July 1, 2009 that the Debtors consent to the Committee's prosecution of the Preference Claims and the Declaratory Relief Claims. As noted above, pursuant to the Consent

Letters, the Debtors have consented to the Committee's standing and do not object to the Committee's prosecution of these claims on behalf of the Debtors' estates.<sup>21</sup>

**3. *The Committee is Seeking Prior Court Approval to Prosecute the Preference Claims.***

47. Finally, the requirement that the Committee should obtain court approval prior to asserting claims on behalf of the estate is satisfied by the relief sought herein.

**C. Additional Considerations**

48. Granting the Committee standing to prosecute the Preference Claims is also salient to the Committee's proper discharge of its fiduciary duty to "maximize their recovery of the [e]state's assets." *Motorola, Inc. v. Official Comm. of Unsecured Creditors and JP Morgan Chase Bank, N.A. (In re Iridium Operating LLC)*, 478 F.3d 452, 466 (2d Cir. 2007); *see also Pan Am Corp. v. Delta Air Lines, Inc.*, 175 B.R. 438, 514 (Bankr. S.D.N.Y. 1994) (an official creditors' committee has the responsibility to aid, assist, and monitor the debtor to ensure that the unsecured creditors' views are heard and their interests promoted and protected). Courts have found that committees should be given some latitude in executing these duties, allowing a committee to "pursu[e] whatever lawful course best serves the interests of the class of creditors represented." *Official Unsecured Creditors' Comm. v. Stern (In re SPM Mfg. Corp.)*, 984 F.2d 1305, 1315 (1st Cir. 1993).

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<sup>21</sup> The Committee did not formally demand that the Debtors themselves prosecute the Preference Claims because the Committee believes that such a demand would be futile given the Debtors' waivers and stipulations in the Final DIP Order. *See* Final DIP Order at ¶ 29(a). Case law makes clear that a committee is not required to demand formally that a debtor take action where it is "plain from the record that no action on the part of the debtor would have been forthcoming." *See, e.g., Official Comm. of Unsecured Creditors of Nat'l Forge Co. v. Clark (In re Nat'l Forge Co.)*, 326 B.R. 532, 544 (Bankr. W.D. Pa. 2005) (affirming the bankruptcy court's excusal of the committee's failure to petition the debtor when it waived all rights to contest the lenders' claims in connection with final DIP order making such request futile).

49. In order to discharge its fiduciary duties properly, and due to the Debtors' inability to pursue the Preference Claims, the Committee is now seeking standing to prosecute such claims on behalf of the Debtors' estates. As one influential treatise notes, there is no difference for standing purposes between a committee participating in a proceeding versus a committee initiating a proceeding if such proceeding is essential to the exercise of the committee's fiduciary duties:

[V]irtually every bankruptcy proceeding necessarily arises within the context of a bankruptcy case, and, conversely, it is only through discrete proceedings that the case is administered and that issues may be raised and determined by the court . . . . Because every issue in a case may be raised and adjudicated only in the context of a proceeding of some kind, it is apparent that reference in section 1109(b) to 'any issue in a case' subsumes issues in a proceeding. Any other conclusion would render section 1109(b) meaningless because there is no such thing as an issue that arises exclusively in a 'case' and not in a proceeding.

7 COLLIER ON BANKRUPTCY ¶ 1109.04[1][a][ii] at 1109-25, 1109-26 (15th ed. rev. 2008).

50. The Committee is the appropriate party to prosecute the Preference Claims because its very purpose is to defend the interest of the estates and to ensure that the assets of the estates are maximized. *See, In re Iridium Operating LLC*, 478 F.3d at 466. The unsecured creditors whom the Committee represents have a significant stake in the outcome of the litigation and, thus, the Committee is more likely to pursue the litigation vigorously than any other party.

51. The Committee believes that avoiding the Preferential Liens will, among other things, (i) result in the unwinding of the Roll-Up, (ii) result in the disgorgement of fees and expenses paid as adequate protection to a portion of the Prepetition Credit Facility Debt and (iii) free up a substantial pool of assets that may be used to satisfy the estates' liabilities to unsecured creditors. Moreover, the Committee does not expect that the costs and expenses to be incurred in connection with prosecuting the Preference Claims will be excessive in relation

to the potential recovery for the estates. Although litigation costs are a factor to consider, the Committee must only provide the Court with the comfort that prosecution of the Preference Claims represents a sensible expenditure of the estates' resources. *See In re Adelpia Commc'ns Corp.*, 330 B.R. at 386. Here, where the potential benefits to the Debtors' estates and their unsecured creditors exceed tens of millions of dollars, if not more, the benefits of prosecuting the Preference Claims clearly outweigh any costs incurred in connection therewith.

#### **RESERVATION OF RIGHTS**

52. The Committee reserves its right to seek authority to commence and prosecute other claims and/or causes of action in respect of the Prepetition Credit Facility on behalf of the Debtors' estates.

#### **NOTICE**

53. This Motion has been served on (i) the Office of the United States Trustee for the Southern District of New York; (ii) the Debtors and their counsel; (iii) counsel to the Prepetition Agent; and (iv) all entities that have filed a request for service of filings pursuant to Bankruptcy Rule 2002.

#### **NO PRIOR REQUEST**

54. No prior application for the relief sought in this Motion has been made to this or any other court in connection with these chapter 11 cases.

**WHEREFORE**, the Committee requests that the Court enter an order, substantially in the form annexed hereto as Exhibit M (i) granting the Committee leave, standing and authority to commence and prosecute the Preference Claims, on behalf of the Debtors' estates, (ii) providing the Committee with authority to propose settlements of the Preference Claims, and (iii) granting the Committee such other and further relief as the Court may deem just, proper and equitable.

Dated: New York, New York  
July 20, 2009

AKIN GUMP STRAUSS HAUER & FELD LLP

By: /s/ Daniel H. Golden

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**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

**AMENDED MOTION OF THE OFFICIAL COMMITTEE  
OF UNSECURED  
CREDITORS OF CHEMTURA CORPORATION, ET AL.,  
PURSUANT TO 11 U.S.C. §§ 105(a), 1103(c) AND 1109(b),  
FOR ENTRY OF AN ORDER GRANTING LEAVE, STANDING  
AND AUTHORITY TO PROSECUTE AND, IF APPROPRIATE,  
SETTLE CAUSES OF ACTION ON BEHALF OF THE DEBTORS' ESTATES**

The Official Committee of Unsecured Creditors (the “Committee”) of Chemtura Corporation, et al. (collectively, the “Debtors”), by and through its undersigned counsel, hereby files this motion (the “Motion”) for entry of an order, pursuant to sections 105(a), 1103(c) and 1109(b) of title 11 of the United States Code (the “Bankruptcy Code”), authorizing the Committee to pursue and, if appropriate, settle certain causes of action against Citibank, N.A., as administrative agent under the Debtors’ prepetition credit facility (the “Prepetition Agent”), on behalf of the Debtors’ estates. In support of this Motion, the Committee respectfully submits as follows:

### **PRELIMINARY STATEMENT**

1. By this Motion, the Committee seeks authority to pursue certain causes of action to avoid transfers made by the Debtors to the Prepetition Agent during the ninety days prior to the commencement of the Debtors’ chapter 11 cases (the “Preference Claims”).<sup>1</sup> Specifically, the Committee seeks to avoid the following transfers as preferences under Bankruptcy Code section 547: (i) liens and security interests granted by the Debtors to the Prepetition Agent in all of the Debtors’ inventory (the “Inventory Liens”); (ii) the lien allegedly granted by Chemtura Corporation (“Chemtura”) to the Prepetition Agent in Chemtura’s ownership interests in non-Debtor Chemtura Receivables LLC (the “SPV Equity Lien”)<sup>2</sup> and, together with

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<sup>1</sup> If the Committee is granted derivative standing, the Committee intends to file a complaint (the “Complaint”) substantially in the form attached as Exhibit A to the Declaration of Philip C. Dublin in Support of the Motion of the Official Committee of Unsecured Creditors of Chemtura Corporation, *et al.*, Pursuant to 11 U.S.C. §§ 105(a), 1103(c) and 1109(b), for Entry of an Order Granting Leave, Standing and Authority to Prosecute and, if Appropriate, Settle Causes of Action on Behalf of the Debtors’ Estates (the “Dublin Declaration”).

<sup>2</sup> *As of the date hereof, the Committee has been unable to confirm that the SPV Equity Lien was actually granted and perfected. Indeed, despite repeated requests, the Debtors have failed to produce any documents evidencing the existence of such lien. As a result of the deadline for the Committee to pursue Lender Claims (as defined in the Final DIP Order [D.E. #281]), however, the Committee seeks to avoid the SPV Equity Lien to the extent that it exists. Accordingly, all references to the SPV Equity Lien in this Motion and the annexed Complaint should not be deemed an admission regarding the existence of such lien.*

the Inventory Liens, the “Preferential Liens”); and (iii) at least \$6 million in cash payments made by the Debtors to the Prepetition Agent (the “Cash Payments” and, collectively with the Preferential Liens, the “Preferential Transfers”).

2. Avoidance of the Preferential Transfers will benefit the Debtors’ estates and their unsecured creditors by, among other things, (i) stripping the purported liens on the Debtors’ inventory and the capital stock of Chemtura Receivables LLC, (ii) unwinding the \$86.5 million of rolled-up prepetition debt pursuant to the Final DIP Order (as defined below) and (iii) recovering at least \$6 million in cash.

3. At the onset of these cases, the Debtors waived any ability to investigate, assert and/or prosecute any claims in respect of the Prepetition Credit Facility (as defined below). *See* Final DIP Order [D.E. #281] at ¶ 28. Therefore, the Debtors are unable to pursue the Preference Claims. The Debtors have consented, however, to the Committee’s standing to pursue the Preference Claims on behalf of the Debtors’ estates.<sup>3</sup>

4. As discussed more fully below, all of the legal requirements for granting the Committee derivative standing to pursue the Preference Claims, on behalf of the Debtors’ estates, have been satisfied. Prosecution of the Preference Claims is critical in these cases because the benefits therefrom will include, among other things, (a) avoidance of liens granted to the Prepetition Agent during the ninety days prior to March 18, 2009 (the “Petition Date”), (b) the unwinding of all or a portion of the Roll-Up (as defined below), (c) disgorgement of significant amounts of money to the Debtors’ estates, (d) greater flexibility in formulating a chapter 11 plan of reorganization, (e) creation of an additional substantial recovery source for

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<sup>3</sup> The Debtors’ conditioned their consent to the Committee’s standing to pursue the Preference Claims on the Debtors’ retention of the right to propose settlements thereof. The Committee does not object to the Debtors retaining this right.

unsecured creditors and (f) *pari passu* treatment of the claims of certain unsecured creditors with the claims of the Debtors' prepetition lenders. Given the Debtors' inability to prosecute the Preference Claims, the Committee is the only party-in-interest qualified and sufficiently vested to pursue such claims on behalf of the Debtors' estates. Accordingly, the Committee seeks (i) authority to prosecute the claims referenced herein against the Prepetition Agent, on behalf of the Debtors' estates, and (ii) authority to propose settlements in connection therewith.

5. The Committee also intends to include claims for declaratory relief in its Complaint. Specifically, and as set forth in greater detail in the Complaint, the Committee intends to pursue declarations that, among other things, (a) the Prepetition Credit Facility constitutes a single undersecured credit facility and not, as the Prepetition Agent contends, two separate credit facilities – one that is fully secured by stock of Chemtura's first tier domestic and foreign subsidiaries (and potentially all or a portion of the Preferential Liens, to the extent not avoided) and another that is completely unsecured; (b) the amount of the Prepetition Credit Facility Debt (as defined below) that is entitled to the benefit of collateral is capped at \$46.1 million, not \$139.2 million as asserted by the Debtors in the DIP Motion (as defined below); and (c) the collateral securing the Prepetition Credit Facility Debt must be allocated among the letters of credit and revolver borrowings outstanding as of the date the Secured Obligation Cap (as defined below) is measured (collectively, the "Declaratory Relief Claims"). The Committee respectfully submits that leave of the Court is not required for the Committee to pursue the Declaratory Relief Claims.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This is a

core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 1103(c), and 1109(b).

## **BACKGROUND**

### **A. The Debtors' Prepetition Capital Structure**

#### ***1. The Prepetition Credit Facility***

7. The Debtors are party to the Amended and Restated Credit Agreement, dated as of July 1, 2005 among Chemtura, as borrower, the Prepetition Agent and the lenders party thereto (collectively, the "Prepetition Lenders") (as further amended and restated, the "Prepetition Credit Agreement"). *See* Declaration of Stephen Forsyth in Support of First Day Pleadings (the "Forsyth Declaration") at ¶ 32; Prepetition Credit Agreement at 1.<sup>4</sup> Pursuant to the Prepetition Credit Agreement, Chemtura obtained access to a revolving credit and letter of credit facility (the "Prepetition Credit Facility") which, initially, provided up to \$600 million in financing. *See* Prepetition Credit Agreement at 1. Certain of Chemtura's wholly-owned subsidiaries executed guarantees in connection with the Prepetition Credit Facility, making each subsidiary jointly and severally liable for the full amount of debt outstanding under the Prepetition Credit Facility (the "Subsidiary Guarantors" and, together with Chemtura, the "Credit Agreement Obligors").<sup>5</sup> *See* Forsyth Declaration at ¶ 32. As of the Petition Date, approximately \$272 million was outstanding under the Prepetition Credit Facility (the "Prepetition Credit Facility Debt"), consisting of \$90 million in letters of credit and approximately \$182 million in revolver borrowings. *See id.* at ¶ 29.

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<sup>4</sup> The Prepetition Credit Agreement is attached as Exhibit B to the Dublin Declaration.

<sup>5</sup> All of the Credit Agreement Obligors are Debtors in these chapter 11 cases.

8. Although the Prepetition Credit Facility was originally unsecured, in May 2007, the downgrade of Chemtura's long-term unsecured debt triggered a provision under the Prepetition Credit Agreement entitling the Prepetition Agent to receive collateral to secure a portion of the Prepetition Credit Facility Debt. *See id.* at ¶ 33. Specifically, pursuant to the Prepetition Credit Agreement, if, at any time, Chemtura's non-credit enhanced long-term senior unsecured debt was rated at or lower than BB+ by Standard and Poor's or Ba2 by Moody's Investors Services, the Prepetition Credit Facility Debt would be secured. *See id.*

9. Following the May 2007 downgrade, ~~Chemtura~~[the Credit Agreement Obligors](#) and the Prepetition Agent entered into the Pledge Agreement dated as of June 14, 2007, which was amended on July 31, 2007 (the "Amended Pledge Agreement"), pursuant to which ~~Chemtura~~[\(i\) the Credit Agreement Obligors](#) granted the Prepetition Agent a security interest in 100% of the capital stock of ~~Chemtura's~~[their](#) first-tier domestic subsidiaries (the "Domestic Stock Pledge") and [\(ii\) Chemtura granted the Prepetition Agent a security interest in](#) 66-2/3% of the capital stock of Chemtura's first-tier foreign subsidiaries (the "Foreign Stock Pledge") and, together with the Domestic Stock Pledge, the "Equity Collateral").<sup>6</sup>

10. As discussed in more detail below, the amount of Prepetition Credit Facility Debt that could obtain the benefit of the Equity Collateral was limited because certain provisions in the indentures governing the Debtors' unsecured notes restricted the Debtors' ability to incur or maintain secured debt without triggering equal and ratable liens for the benefit of the holders of the notes. In an attempt to prevent triggering the Debtors' obligations to equally and ratably secure the Notes, the security agreement for the Prepetition Credit Facility limits the amount of

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<sup>6</sup> The Pledge Agreement and the Amended Pledge Agreement are attached as Exhibits C and D respectively to the Dublin Declaration.

Prepetition Credit Facility Debt that can be secured to no more than 10% of the Debtors' tangible consolidated net assets (the "Secured Obligation Cap"). See Forsyth Declaration at ¶ 35; Amended Pledge Agreement at 5, 6; Second Amended Pledge Agreement (as defined below) at 4; 2026 Indenture (as defined below) § 1010.

## 2. *The Notes*

11. As of the Petition Date, in addition to the Prepetition Credit Facility, the Debtors had the following funded debt obligations: (i) \$370 million in respect of certain 7% unsecured notes due 2009 issued by Great Lakes Chemical Corporation and guaranteed by Chemtura (the "2009 Notes"); (ii) \$500 million in respect of certain 6.875% unsecured notes due 2016 issued by Chemtura and guaranteed by all or substantially all of the other Debtors (the "2016 Notes"); and (iii) \$150 million in certain 6.875% debentures due 2026 issued by Chemtura (the "2026 Notes" and, together with the 2009 Notes and 2016 Notes, the "Notes"). See Forsyth Declaration at ¶ 28.

### **B. The Debtors' Financial Distress in 2008 and the Granting of the Inventory Lien**

12. During 2008, due to, among other things, poor market conditions, upcoming debt maturities and significant leverage, the Debtors' financial performance began to deteriorate drastically and they were faced with significant liquidity and covenant concerns. See *id.* at ¶¶ 56-58. Indeed, during the fourth-quarter of 2008, Chemtura was unable to comply with the leverage and interest coverage covenants under the Prepetition Credit Facility and was the subject of a going concern qualification by its auditors. See Chemtura Form 10K, for period ending December 31, 2008, at 38;<sup>7</sup> Forsyth Declaration at ¶ 79.

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<sup>7</sup> The Chemtura Form 10K, for period ending December 31, 2008 is attached as Exhibit E to the Dublin Declaration.

13. On December 30, 2008 – well within the preference period – the Debtors granted the Inventory Liens to the Prepetition Agent pursuant to the Second Amended and Restated Pledge and Security Agreement (the “Second Amended Pledge Agreement”).<sup>8</sup> *See* Forsyth Declaration at ¶¶ 36, 39. In return, the Prepetition Agent agreed to waive Chemtura’s compliance with certain financial covenants and events of default under the Prepetition Credit Agreement for the period from December 30, 2008 through March 30, 2009, pursuant to the Waiver and Second Amendment to the Amended and Restated Credit Agreement (the “Waiver”).<sup>9</sup> *See id.* at ¶ 36.

14. In addition to providing the Inventory Liens, the Waiver reduced the size of the Prepetition Credit Facility to \$500 million,<sup>10</sup> limited outstanding revolver advances under the Prepetition Credit Facility to \$190 million from February 1, 2009 to March 30, 2009, and limited outstanding letters of credit to \$97 million. *See id.* at ¶ 37. The Waiver also restricted the Debtors’ ability to take certain actions during the waiver period, including incurring certain debt and granting liens, disposing of certain assets, making certain investments, paying cash dividends and repurchasing equity. *See id.*

### **C. Secured Obligation Cap**

15. As noted, the amount of Prepetition Credit Facility Debt that can be secured is capped to avoid triggering provisions in the indentures requiring the grant of equal and ratable liens in favor of the Notes. *See id.* at ¶ 48, 49.

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<sup>8</sup> The Second Amended Pledge Agreement is attached as Exhibit F to the Dublin Declaration.

<sup>9</sup> The Waiver is attached as Exhibit G to the Dublin Declaration.

<sup>10</sup> As discussed further below, the Prepetition Credit Facility was reduced further to \$350 million in connection with certain Debtors’ entry into the New Receivables Facility (as defined below). *See* Chemtura Form 10K, for period ending December 31, 2008 at 36, 84.

16. Specifically, the Second Amended Pledge Agreement provides that the Prepetition Credit Facility Debt will be secured, but only to the extent that the aggregate amount of such secured debt does not exceed the amount “permitted to be incurred and secured (at the time of incurrence) by the [Debtors] pursuant to Section 1010 of the 2026 Indenture without the requirement to equally and ratably secure any of the notes issued pursuant to the 2026 Indenture.” *See* Second Amended Pledge Agreement at 4.

17. Section 1010 of the 2026 Indenture, in turn, provides that “the Company and its Subsidiaries may ... secure obligations or Indebtedness...if after giving effect to any such security arrangements ... the sum of ... the aggregate amount of all such obligations and Indebtedness then outstanding ... does not at any such time exceed 10% of Consolidated Net Tangible Assets.”<sup>11</sup> The Debtors have asserted that the Secured Obligation Cap applicable to the Prepetition Credit Facility Debt is \$139.2 million.<sup>12</sup> *See* Forsyth Declaration at ¶51.

#### **D. The Debtors’ Liquidity Crisis and the Establishment of the New Receivables Facility**

18. The Waiver required that the amount of debt outstanding under the Prepetition Credit Facility could be no more than \$287 million by December 31, 2008. As of such date, Chemtura already had borrowed a total of \$272 million – \$182 million in revolving debt and \$90 million in letters of credit. *See* Forsyth Declaration at ¶¶ 29, 37. Thus, Chemtura only had

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<sup>11</sup> “Consolidated Net Tangible Assets” is defined in the 2026 Indenture to mean “total consolidated assets of [the Debtors], less the following: (1) current liabilities of the [Debtors]; (2) all depreciation and valuation reserves and all other reserves (except (a) reserves for contingencies which have not been allocated to any particular purpose, and (b) deferred credits, including deferred federal and foreign income taxes and deferred investment tax credits) of the [Debtors]; (3) the net book amount of all intangible assets of the [Debtors], including, but without limitation, the unamortized portions of such items as good will, trademarks, trade names, patents and debt discount and expense less debt premium; and (4) appropriate adjustments on account of minority interests of other Persons holding stock in Subsidiaries.” A copy of the 2026 Indenture is attached as Exhibit H to the Dublin Declaration.

<sup>12</sup> As set forth in the Complaint, the Committee seeks a declaration that the Secured Obligation Cap should be, at most, \$46.1 million.

approximately \$15 million in potential available liquidity under the Prepetition Credit Facility through March 30, 2009.

19. Another consequence of the Debtors' deteriorating financial condition was the Debtors' inability to utilize fully an existing receivables securitization facility (the "Old Receivables Facility"). *See id.* at ¶ 78. Consequently, as a condition of the Waiver and in order to obtain access to additional liquidity, the Debtors obtained financing through a new receivables facility (the "New Receivables Facility"). *See id.* at ¶ 52. The New Receivables Facility was established pursuant to (i) the Receivables Sale Agreement, dated as of January 23, 2009 among Chemtura, Great Lakes, GLCC Laurel LLC, and Biolab, Inc., as sellers (collectively, the "Receivables Facility Sellers"), and the Receivables SPV, as buyer (the "Receivables Sale Agreement") and (ii) the Receivables Purchase Agreement, dated as of January 23, 2009, among the Receivables SPV, as seller, Chemtura, as the servicers, Citicorp USA, Inc. as agent, Citigroup Global Markets Inc., as arranger, and certain purchasers<sup>13</sup> (the "Receivables Purchase Agreement").<sup>14</sup> *See id.*

20. Pursuant to the New Receivables Facility, the Receivables Facility Sellers sold receivables to the Receivables SPV, which in turn, sold fractional ownership interests in the receivables to participating purchasers who were also granted a security interest in all of the receivables owned by the Receivables SPV. *See id.* at 53. The maximum amount of

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<sup>13</sup> In addition to Citicorp USA, Inc., as agent, the following banks were purchasers under the New Receivables Facility: Citicorp USA, Inc., Bank of America, Wachovia, Credit Suisse (Cayman Islands Branch), Royal Bank of Scotland, Sumitomo Mitsui Banking Corp., ING Capital LLC, Calyon (New York Branch), The Bank of Tokyo – Mitsubishi UFJ Ltd., and The Northern Trust Company (collectively, the "Receivables Facility Lenders"). All of the Receivables Facility Lenders were also Prepetition Lenders under the Prepetition Credit Facility.

<sup>14</sup> The Receivables Purchase Agreement is attached as Exhibit I to the Dublin Declaration. The Receivables Sale Agreement is attached as Exhibit J to the Dublin Declaration. The Receivables SPV was incorporated on December 18, 2008, and prior to its wind-down was a special purpose, bankruptcy remote affiliate of the Debtors.

availability under the New Receivables Facility was \$150 million. *See* Receivables Purchase Agreement at 25. Upon the establishment of the New Receivables Facility, the Prepetition Credit Facility was further reduced from \$500 million to \$350 million – a dollar for dollar reduction. *See* Chemtura Form 10K, for period ending December 31, 2008 at 36, 84.

21. The Receivables Facility Sellers obtained funds through the New Receivables Facility by selling their receivables to the Receivables SPV at a discount, which, upon information and belief, was set at least semiannually based on prevailing costs of funds, recent performance history of the receivables being sold, and other costs of ownership. *See* Receivables Sale Agreement at § 2.01(d). Upon information and belief, and pursuant to the terms of the New Receivables Facility, the Receivables SPV purchased the receivables from the Receivables Facility Sellers for cash but was permitted to part of the purchase price in the form of a subordinated note (each, a “SPV Subordinated Note”) if the Receivables SPV lacked adequate cash on hand for the purchase (the “Deferred Payment Option”). *See* Receivables Sale Agreement § 2.02(b).

22. As of March 6, 2009, the sale price for the undivided interest in the receivables purchased by the Receivables Facility Lenders from the Receivables SPV was just over \$117 million, but the face amount of the receivables sold by the Receivables Facility Sellers to the Receivables SPV was approximately \$232 million. *See* Forsyth Declaration at ¶ 54. Accordingly, the Receivables Facility Lenders were paying approximately 50% of the face value for their interests in the receivables. Indeed, the Debtors have represented that, prior to being unwound pursuant to the terms of the Final DIP Order, “the repurchase price for the receivables sold pursuant to the new receivables facility was \$117,388,411.52, and the face value of those receivables was approximately \$232 million.” *See id.*

23. As noted above, pursuant to the terms of the Receivables Sale Agreement, the Receivables SPV purchased receivables from the Prepetition Receivables Sellers at a discount, and, upon information and belief, the Receivables SPV also collected more money for the receivables than was required to repay the Receivables Facility Lenders. Moreover, upon information and belief, the Receivables SPV exercised the Deferred Payment Option in connection with its purchase of receivables from the Receivables Facility Sellers until the Petition Date. None of the Receivables Facility Sellers, however, have SPV Subordinated Notes listed as assets in their respective Schedules of Assets and Liabilities filed with this Court on June 11, 2009. *See* Debtors' Schedules of Assets and Liabilities (June 11, 2009) [D.E.# 536, 551, 561, 563].<sup>15</sup> Thus, the Receivables SPV, as opposed to being a pass-through, special purpose vehicle, appears to have accumulated equity value and operated in essence as a revenue generating entity. The value accumulated at the Receivables SPV was ostensibly owned by Chemtura, on account of Chemtura's 100% ownership interest in the Receivables SPV. *See* Forsyth Declaration at ¶ 53.

24. The Second Amended Pledge Agreement provided that Chemtura was to grant the Prepetition Agent a security interest in Chemtura's 100% ownership of the Receivables SPV. *See* Second Amended Pledge Agreement at 6. The Prepetition Agent has asserted that the SPV Equity Lien was granted as collateral to secure a portion of the Prepetition Credit Facility Debt.<sup>16</sup>

### **E. The Cash Payments**

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<sup>15</sup> The failure of the Debtors to schedule SPV Subordinated Notes as assets of the applicable Debtors should not be deemed an admission or acknowledgment by the Committee that such notes do not exist.

<sup>16</sup> As noted above, to date, the Committee has been unable to confirm that the SPV Equity Lien was actually granted and properly perfected.

25. During the ninety days prior to the Petition Date, the Debtors made payments to the Prepetition Agent on account of Prepetition Credit Facility Debt (including principal paydowns) of at least \$6 million. *See* Chemtura Corporation's Statement of Financial Affairs (3b) at 9 [D.E.# 535]. Upon information and belief, these Cash Payments were not scheduled payments of principal or interest.

**F. Chapter 11 Filings and Final DIP Order**

26. On the Petition Date, the Debtors filed a motion (the "DIP Motion") for authority to obtain postpetition financing from the Prepetition Lenders (the "DIP Facility"). The DIP Facility consists of (i) a \$250 million term loan; (ii) a \$63.5 million revolving credit facility; and (iii) an \$86.5 million revolving credit facility. On April 29, 2009, this Court entered a final order authorizing the Debtors to enter into the DIP Facility (the "Final DIP Order"). Proceeds of the DIP Facility have been used to, among other things, (i) unwind the New Receivables Facility and (ii) conditionally repay \$86.5 million of Prepetition Credit Facility Debt (the "Roll-Up").

27. The Final DIP Order established, among other things, June 24, 2009 (the "Challenge Period") as the deadline for any party in interest to file a complaint contesting the validity of any lien granted in connection with the Prepetition Credit Facility. The Final DIP Order further provided that the "Debtors are deemed to have irrevocably waived and relinquished all Lender Claims as of the date of entry of this Order." Final DIP Order at ¶ 29(a). Thus, by the express terms of the Final DIP Order, the Debtors have waived their collective rights to contest the validity of the claims and liens of the Prepetition Agent and the Prepetition Lenders. The Prepetition Agent has agreed to extend the Challenge Period to July 29, 2009 (the "Extended Challenge Period"). *See* Stipulation and Agreed Order Among the

Committee and the Prepetition Agent to Extend the Deadline for the Committee to Challenge Prepetition Obligations Under the Final DIP Order [DE# 629].

28. By letters dated June 10, 2009 and July 1, 2009, (the “Demand Letters”), the Committee formally demanded that the Debtors consent to the Committee’s standing to commence and prosecute claims and causes available to the Debtors’ chapter 11 estates against the Prepetition Agent and/or Prepetition Lenders.<sup>17</sup> By letters dated June 16, 2009 and July 7, 2009 (the “Consent Letters”), the Debtors indicated their consent to the Committee’s standing to pursue such claims on behalf of the Debtors’ estates.<sup>18</sup>

### **RELIEF REQUESTED**

29. The Committee hereby requests that this Court grant the Committee leave, standing, and authority to prosecute Claims and, if appropriate, propose settlements in respect of the foregoing, on behalf of the Debtors’ estates.

### **BASIS FOR RELIEF**

#### **A. Standard for Derivative Standing**

30. As noted above, the Extended Challenge Period will expire on July 29, 2009.<sup>19</sup> Accordingly, the Committee seeks the relief requested herein to pursue the Preference Claims in a timely manner. Although the Bankruptcy Code does not expressly authorize a creditors’

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<sup>17</sup> Copies of the Demand Letters are attached as Exhibit K to the Dublin Declaration.

<sup>18</sup> Copies of the Consent Letters are attached as Exhibit L to the Dublin Declaration.

<sup>19</sup> The Final DIP Order permits further extensions of the Extended Challenge Period with the consent of the Prepetition Agent or by order of the Court if the Debtors have failed to respond to the Committee’s requests for information. *See* Final DIP Order at ¶ 29(a). While the Committee believes it has sufficient information to assert colorable claims, the Committee has outstanding information requests to the Debtors. Accordingly, in the event the Motion is contested and the Court does not have sufficient availability to hear a contested matter on July 28, 2009, the Committee respectfully submits that grounds exist for the Court to further extend the Extended Challenge Period unilaterally.

committee to initiate an adversary proceeding to avoid liens, guarantee obligations, security interests and/or pursue other causes of action typically brought by the trustee or the debtor in possession, the Bankruptcy Code establishes a creditors' committee for the express purpose of protecting the rights of its constituents and similarly situated creditors. *See* H.R. Rep. No. 95-595, 95th Cong., 1st Sess. (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5787. In furtherance of this purpose, Bankruptcy Code section 1103(c), which enumerates the statutory functions of a creditors' committee, authorizes creditors' committees to "perform such other services as are in the interest of those represented." 11 U.S.C § 1103(c)(5).

31. To that end, Bankruptcy Code section 1109(b) provides, in pertinent part, that:

[A] party in interest, including the debtor, the trustee, [or] a creditors' committee ... may raise and may appear and be heard on any issue in a case under this chapter.

11 U.S.C. § 1109(b). This general right to be heard would be rendered meaningless with respect to creditors' committees unless such committees are also given the right to act, on behalf of the estate, if a debtor in possession or trustee, who is explicitly granted the right to act, unjustifiably fails to act. *See Unsecured Creditors Comm. of Debtor STN Enters., Inc. v. Noyes (In re STN Enters.)*, 779 F.2d 901, 904-05 (2d Cir. 1985) (recognizing an "implied, but qualified" right under 11 U.S.C. §§ 1103(c)(5) and 1109(b) for an unsecured creditors' committee, with court approval, to assert claims where the trustee or debtor-in-possession unjustifiably failed to bring suit or abused its discretion in not suing on colorable claims likely to benefit the reorganization estate."); *see also Official Comm. of Unsecured Creditors of Joyanna Holitogs, Inc. v. I. Hyman Corp. (In re Joyanna Holitogs, Inc.)*, 21 B.R. 323, 326 (Bankr. S.D.N.Y. 1982) (holding that the general right to be heard would be an empty grant unless coupled with the right to sue, in the event that the trustee or debtor in possession so refuses); *Adelphia Commc'ns Corp. v. Bank of America, N.A. (In re Adelphia Commc'ns Corp.)*, 330 B.R. 364, 373 (Bankr. S.D.N.Y. 2005)

(“The practice of authorizing the prosecution of actions on behalf of an estate by committees ... is one of long standing, and nearly universally recognized.”).

32. Creditor committees have routinely litigated causes of action on behalf of debtor estates to avoid fraudulent or preferential transfers before courts in the Second Circuit. *See e.g., In re Refco Inc.*, 505 F.3d 109 (2d Cir. 2007); *Official Comm. of Unsecured Creditors of Enron Corp. v. Whalen (In re Enron Corp.)*, 357 B.R. 32 (Bankr. S.D.N.Y. 2006); *Official Comm. of Unsecured Creditors of Norstan Apparel Shops, Inc. v. Lattman (In re Norstan Apparel Shops, Inc.)*, 367 B.R. 68 (Bankr. E.D.N.Y. 2007).

33. The practice of conferring standing upon creditors’ committees to pursue actions on behalf of a bankruptcy estate is widely followed and accepted in other jurisdictions as well. *See, e.g., Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003) (holding that “the ability to confer derivative standing upon creditors’ committees is a straightforward application of bankruptcy courts’ equitable powers”); *La. World Exposition, Inc. v. Fed. Ins. Co. (In re La. World Exposition, Inc.)*, 832 F.2d 1391, 1397 (5th Cir. 1987) (stating that “[a] number of bankruptcy courts have held that in some circumstances, a creditors’ committee has standing under 11 U.S.C. § 1103(c)(5) and/or § 1109(b) to file suit on behalf of the debtor-in-possession ... or the trustee.”). Moreover, courts in other jurisdictions, like here, routinely hold that creditors’ committees can prosecute preferential transfer actions. *See Official Comm. of Unsecured Creditors of Grand Eagle Cos., Inc. v. ASEA Brown Boveri, Inc.*, 313 B.R. 219, 222 (Bankr. N.D. Ohio 2004) (unsecured creditors’ committee had derivative standing to pursue its preference claims against prepetition lenders to recover loan payments made during preference period); *Official Comm. of Unsecured Creditors v. Cablevision Sys. Corp. (In re Valley Media, Inc.)*, No. 01-11353, 2003 WL

21956410 at \*1-3 (Bankr. D. Del. Aug. 14, 2003) (official committee of unsecured creditors was proper party to bring preferential transfer claim).

34. A creditors' committee's right to bring an action on behalf of the estate is not, however, unqualified. Courts in the Second Circuit have established that, subject to certain exceptions, several requirements must be satisfied before a committee can pursue claims on behalf of a debtor's estate: (a) there must have been a colorable claim or claims for relief that on appropriate proof would support a recovery; (b) the debtor must have unjustifiably refused to bring suit upon a demand made to them to bring such action; and (c) the court must determine whether an action asserting such claim(s) is likely to benefit the reorganization estate. *See In re STN Enterps.*, 779 F.2d at 905.

**B. The Committee Clearly Satisfies the Test for Derivative Standing With Respect to the Preference Claims**

***1. The Preference Claims Are Colorable***

35. The first element of the derivative standing test outlined above requires the Committee to demonstrate that colorable claims exist against the Prepetition Agent. The case law construing the requirement for "colorable" claims provides that the requisite showing is a relatively low threshold to satisfy. *See, e.g., In re Adelpia Commc'ns Corp.*, 330 B.R. at 376 (holding that the requisite standard for presenting a "colorable" claim is relatively easy to meet); *Official Comm. of Unsecured Creditors of America's Hobby Ctr., Inc. v. Hudson United Bank (In re America's Hobby Ctr., Inc.)*, 223 B.R. 275, 288 (Bankr. S.D.N.Y. 1998) (observing that only if the claim is "facially defective" should standing be denied); *In re Colfor, Inc.*, No. 96-60306, 1998 WL 70718, \*2 (Bankr. N.D. Ohio Jan. 5, 1998) (stating that consistent with the common meaning of "colorable," that the claims to be asserted need only be "plausible" or "not without some merit"). Courts have held that, in determining whether a colorable claim exists,

the court must engage in an inquiry “much the same as that undertaken when a defendant moves to dismiss a complaint for failure to state a claim.” *In re iPCS, Inc.*, 297 B.R. 283, 291 (Bankr. N.D. Ga. 2003) (quoting *In re America’s Hobby Ctr., Inc.*, 223 B.R. at 282); *see also In re Valley Park, Inc.*, 217 B.R. 864, 869 n.4 (Bankr. D. Mont. 1998) (holding that the committee “does not have to satisfy the quantum of proof necessary for a judgment in order to show a colorable claim”).

36. In determining whether a claim is colorable, the Court is not required to conduct a mini-trial. Instead, the Court may “weigh the ‘probability of success and financial recovery,’ as well as the anticipated costs of litigation, as part of a cost/benefit analysis” to determine whether the prosecution of claims is likely to benefit the estate. *In re iPCS*, 297 B.R. at 291 (citations omitted). Thus, the Committee is only required to establish to the Court the existence of a plausible claim. At the very most, the Committee need only come forward with minimal evidence demonstrating that its contentions are not frivolous. *See id.* (“It is clear that, if the claims lack any merit whatsoever, allowing another party to pursue the claims at the expense of the bankruptcy estate would neither be in the best interests of the estate nor necessary and beneficial to the efficient resolution of the bankruptcy proceedings.”).

37. Courts within the Second Circuit and other jurisdictions have held that security interests or liens granted within the 90-day preference period can be avoided as preferential transfers if the elements of section 547(b) are satisfied. *See Rubin Bros. Footwear, Inc. v. Chemical Bank (In re Rubin Bros. Footwear, Inc.)*, 73 B.R. 346, 355 (Bankr. S.D.N.Y. 1987) (grant of security interest is a transfer within the definition of section 547); *In re Aerco Metals*, 60 B.R. 77, 79 (Bankr. N.D. Tex. 1985) (security interest in inventory, accounts, and contract rights constituted a transfer for purposes of § 547(b)).

38. Pursuant to Bankruptcy Code section 547(b), a transfer of an interest in the property of a debtor may be avoided if such transfer (i) was made to or for the benefit of a creditor; (ii) was for or on account of an antecedent debt owed by the debtor before such transfer was made; (iii) was made while the debtor was insolvent;<sup>20</sup> (iv) was made on or within 90 days before the commencement of the bankruptcy case; and (v) enables the creditor to receive more than such creditor would have received if (x) the case was a case under chapter 7 of the Bankruptcy Code, (y) the transfer had not been made, and (z) such creditor received payment of such debt to the extent provided by the provisions of the Bankruptcy Code. *See* 11 U.S.C. § 547(b).

39. By applying the foregoing standards, the Committee has set forth colorable Preference Claims. There is no factual dispute that the first four elements of section 547(b) have been satisfied: the granting of the Preferential Liens and the payment of the Cash Payments to the Prepetition Agent (i) were to or for the benefit of the Prepetition Lenders, (ii) were on account of antecedent debts owed under the Prepetition Credit Facility prior to the Petition Date, (iii) were made while the Debtors were insolvent, and (iv) were made on or within 90 days of the Petition Date. With respect to the fifth and final element, the Committee can clearly meet its burden of presenting a colorable claim that the Prepetition Agent received more from the grant of the Preferential Liens as well as the Cash Payments than it would have received in a hypothetical chapter 7 liquidation had these liens not been granted and Cash Payments had not been made.

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<sup>20</sup> Bankruptcy Code section 547(f) provides that, for the 90 days immediately preceding the date of the filing of the petition, the debtor is presumed to have been insolvent. 11 U.S.C. § 547(f); *Lawson v. Ford Motor Co. (In re Roblin Indus., Inc.)*, 78 F.3d 30, 34 (2d Cir. 1996).

40. While providing a lien to a fully secured creditor would not be a preferential transfer because the creditor would receive payment up to the full value of the creditor's collateral in a chapter 7 liquidation (*see Goldberg v. Such (In re Keplinger)*, 284 B.R. 344, 347 (Bankr. N.D.N.Y. 2002) *citing Batlan v. TransAmerica Commercial Fin. Co. (In re Smith's Home Furnishings, Inc.)*, 265 F.3d 959, 964 (9th Cir. 2001)), transferring a lien to an unsecured or undersecured creditor would enable such creditor to receive more than it would have had the estate been liquidated and the disputed transfer not been made. *See Porter v. Yukon Nat'l Bank*, 866 F.2d 355, 359 (10th Cir. 1989) (“[T]he effect of the transfer was the change of the status of the Bank from that of a partially unsecured creditor to that of a fully secured creditor. Since the evidence indicates no unsecured creditor would receive full payment on liquidation, this change in status is sufficient to establish the last element of a preferential transfer.”); *Harris v. Penesi (In re Harris)*, No. 01-10365, 2003 WL 25795591 at \*4 (Bankr. N.D.N.Y. Mar. 11, 2003).

41. As the Debtors have acknowledged and the Secured Obligation Cap mandates, the Prepetition Credit Facility Debt was not fully secured as of the Petition Date. Moreover, upon information and belief, as of the Petition Date, to the extent the Debtors would have filed for chapter 7, the value of the Equity Collateral – the only collateral securing the Prepetition Credit Facility Debt other than the voidable Preferential Liens – would have been less than the amount of the Secured Obligation Cap (whether the Secured Obligation Cap was \$46.1 million or \$139.2 million). Indeed, pursuant to Bankruptcy Code section 547(f), the Debtors were presumptively insolvent as of the applicable transfer dates. Thus, the Domestic Stock Pledge, pursuant to which the Prepetition Agent was granted a security interest in the stock of Chemtura's first tier domestic subsidiaries, should be presumed to be worthless.

42. Similarly, the Foreign Stock Pledge would, in a hypothetical liquidation of the Debtors, have little value as most, if not all, of Chemtura's foreign, non-debtor subsidiaries would have been rendered insolvent upon the commencement of chapter 7 cases by the Debtors by virtue of, among other things, (i) the loss of synergies with the Debtors, (ii) the negligible value that would be ascribed to the inter-company claims of the foreign non-Debtors against the Debtors (which claims, upon information and belief, constitute a significant portion of the foreign subsidiaries assets), (iii) the maturation of significant pension liabilities, and (iv) the loss of funding and capital contributions from the Debtors.

43. The Inventory Liens and SPV Equity Lien therefore provided the Prepetition Agent, on behalf of the Prepetition Lenders, with more than they would have received had the Debtors filed for chapter 7 on the Petition Date and such liens not been granted. *See Porter*, 866 F.2d at 359. The same holds true for the Cash Payments.

44. Accordingly, the Committee has established that the Preference Claims are colorable.

**2. *Demand and the Debtors' Consent to Assert the Preference Claims.***

45. The second element of the derivative standing test requires that (a) the Committee make a demand on the Debtors to assert the Preference Claims, and (b) the Debtors unjustifiably refuse the Committee's demand.

46. As set forth in the Demand Letters, the Committee made formal demands on June 10, 2009 and July 1, 2009 that the Debtors consent to the Committee's prosecution of the Preference Claims and the Declaratory Relief Claims. As noted above, pursuant to the Consent

Letters, the Debtors have consented to the Committee's standing and do not object to the Committee's prosecution of these claims on behalf of the Debtors' estates.<sup>21</sup>

3. ***The Committee is Seeking Prior Court Approval to Prosecute the Preference Claims.***

47. Finally, the requirement that the Committee should obtain court approval prior to asserting claims on behalf of the estate is satisfied by the relief sought herein.

**C. Additional Considerations**

48. Granting the Committee standing to prosecute the Preference Claims is also salient to the Committee's proper discharge of its fiduciary duty to "maximize their recovery of the [e]state's assets." *Motorola, Inc. v. Official Comm. of Unsecured Creditors and JP Morgan Chase Bank, N.A. (In re Iridium Operating LLC)*, 478 F.3d 452, 466 (2d Cir. 2007); *see also Pan Am Corp. v. Delta Air Lines, Inc.*, 175 B.R. 438, 514 (Bankr. S.D.N.Y. 1994) (an official creditors' committee has the responsibility to aid, assist, and monitor the debtor to ensure that the unsecured creditors' views are heard and their interests promoted and protected). Courts have found that committees should be given some latitude in executing these duties, allowing a committee to "pursu[e] whatever lawful course best serves the interests of the class of creditors represented." *Official Unsecured Creditors' Comm. v. Stern (In re SPM Mfg. Corp.)*, 984 F.2d 1305, 1315 (1st Cir. 1993).

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<sup>21</sup> The Committee did not formally demand that the Debtors themselves prosecute the Preference Claims because the Committee believes that such a demand would be futile given the Debtors' waivers and stipulations in the Final DIP Order. *See* Final DIP Order at ¶ 29(a). Case law makes clear that a committee is not required to demand formally that a debtor take action where it is "plain from the record that no action on the part of the debtor would have been forthcoming." *See, e.g., Official Comm. of Unsecured Creditors of Nat'l Forge Co. v. Clark (In re Nat'l Forge Co.)*, 326 B.R. 532, 544 (Bankr. W.D. Pa. 2005) (affirming the bankruptcy court's excusal of the committee's failure to petition the debtor when it waived all rights to contest the lenders' claims in connection with final DIP order making such request futile).

49. In order to discharge its fiduciary duties properly, and due to the Debtors' inability to pursue the Preference Claims, the Committee is now seeking standing to prosecute such claims on behalf of the Debtors' estates. As one influential treatise notes, there is no difference for standing purposes between a committee participating in a proceeding versus a committee initiating a proceeding if such proceeding is essential to the exercise of the committee's fiduciary duties:

[V]irtually every bankruptcy proceeding necessarily arises within the context of a bankruptcy case, and, conversely, it is only through discrete proceedings that the case is administered and that issues may be raised and determined by the court . . . . Because every issue in a case may be raised and adjudicated only in the context of a proceeding of some kind, it is apparent that reference in section 1109(b) to 'any issue in a case' subsumes issues in a proceeding. Any other conclusion would render section 1109(b) meaningless because there is no such thing as an issue that arises exclusively in a 'case' and not in a proceeding.

7 COLLIER ON BANKRUPTCY ¶ 1109.04[1][a][ii] at 1109-25, 1109-26 (15th ed. rev. 2008).

50. The Committee is the appropriate party to prosecute the Preference Claims because its very purpose is to defend the interest of the estates and to ensure that the assets of the estates are maximized. *See, In re Iridium Operating LLC*, 478 F.3d at 466. The unsecured creditors whom the Committee represents have a significant stake in the outcome of the litigation and, thus, the Committee is more likely to pursue the litigation vigorously than any other party.

51. The Committee believes that avoiding the Preferential Liens will, among other things, (i) result in the unwinding of the Roll-Up, (ii) result in the disgorgement of fees and expenses paid as adequate protection to a portion of the Prepetition Credit Facility Debt and (iii) free up a substantial pool of assets that may be used to satisfy the estates' liabilities to unsecured creditors. Moreover, the Committee does not expect that the costs and expenses to be incurred in connection with prosecuting the Preference Claims will be excessive in relation

to the potential recovery for the estates. Although litigation costs are a factor to consider, the Committee must only provide the Court with the comfort that prosecution of the Preference Claims represents a sensible expenditure of the estates' resources. *See In re Adelpia Commc'ns Corp.*, 330 B.R. at 386. Here, where the potential benefits to the Debtors' estates and their unsecured creditors exceed tens of millions of dollars, if not more, the benefits of prosecuting the Preference Claims clearly outweigh any costs incurred in connection therewith.

#### **RESERVATION OF RIGHTS**

52. The Committee reserves its right to seek authority to commence and prosecute other claims and/or causes of action in respect of the Prepetition Credit Facility on behalf of the Debtors' estates.

#### **NOTICE**

53. This Motion has been served on (i) the Office of the United States Trustee for the Southern District of New York; (ii) the Debtors and their counsel; (iii) counsel to the Prepetition Agent; and (iv) all entities that have filed a request for service of filings pursuant to Bankruptcy Rule 2002.

#### **NO PRIOR REQUEST**

54. No prior application for the relief sought in this Motion has been made to this or any other court in connection with these chapter 11 cases.

**WHEREFORE**, the Committee requests that the Court enter an order, substantially in the form annexed hereto as Exhibit M (i) granting the Committee leave, standing and authority to commence and prosecute the Preference Claims, on behalf of the Debtors' estates, (ii) providing the Committee with authority to propose settlements of the Preference Claims, and (iii) granting the Committee such other and further relief as the Court may deem just, proper and equitable.

Dated: New York, New York  
July ~~16~~, 20, 2009

AKIN GUMP STRAUSS HAUER & FELD LLP

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

-----X	
In re:	: Chapter 11
	: :
Chemtura Corporation, <i>et al.</i> ,	: Case No. 09-11233 (REG)
	: :
Debtors.	: Jointly Administered
-----X	
Official Committee of Unsecured Creditors	: :
of Chemtura Corporation, <i>et al.</i> ,	: :
Plaintiff,	: :
	: :
-vs.-	: Adversary No. _____
	: :
Citibank, N.A.,	: :
	: :
Defendant.	: :
-----X	

**ADVERSARY COMPLAINT**

Plaintiff, the Official Committee of Unsecured Creditors (the “Committee”) of Chemtura Corporation (“Chemtura”) and its affiliated debtors and debtors in possession (collectively, the “Debtors”), by and through its undersigned counsel, on behalf of and as the representative of the bankruptcy estates of the Debtors, as and for its adversary complaint (the “Complaint”) pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) alleges as follows:

**NATURE OF THE ACTION**

1. By its Complaint, the Committee seeks to avoid various preferential transfers (the “Preference Claims”) and seeks declarations from the Court regarding the nature and extent of the collateral securing the Prepetition Credit Facility (as defined below) (the “Declaratory Relief Claims” and, together with the Preference Claims, the “Claims”).

2. In particular, the Committee seeks to avoid the following transfers under Bankruptcy Code section 547:

- (i) *Inventory liens.* The liens and security interests granted by the Debtors to the Prepetition Agent (as defined below) on or around December 30, 2008 in all of the Debtors’ inventory (the “Inventory Liens”);
- (ii) *Receivables SPV equity lien.* The lien allegedly granted by Chemtura Corporation (“Chemtura”) to the Prepetition Agent during the ninety days prior to the Petition Date (as defined below) in Chemtura’s ownership interests in non-Debtor Chemtura Receivables LLC (the “SPV Equity Lien” and, together with the Inventory Liens, the “Preferential Liens”);<sup>1</sup> and
- (iii) *Cash transfers.* At least \$6 million in cash payments made by the Debtors to the Prepetition Agent during the preference period (the “Cash Payments” and, collectively with the Preferential Liens, the “Preferential Transfers”).

3. Avoidance of the Preferential Transfers will benefit the Debtors’ estates and their unsecured creditors by, among other things: (i) stripping the purported liens on (a) the Debtors’ inventory and (b) the capital stock of Chemtura Receivables LLC; (ii) unwinding the \$86.5 million of rolled-up prepetition debt pursuant to the Final DIP Order (as defined below); and (iii) recovering at least \$6 million in cash.

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<sup>1</sup> Counsel for the Prepetition Agent has alleged the existence of the SPV Equity Lien, but the Committee has not yet been provided with any documentary or other evidence that the SPV Equity Lien was granted and perfected. Accordingly, the Committee seeks to avoid the SPV Equity Lien to the extent it exists, and all references to the SPV Equity Lien herein should not be deemed in any way as a concession regarding the existence of such lien.

4. In addition, pursuant to Bankruptcy Rule 7001(9) and 28 U.S.C. §§ 2201 and 2202, the Committee asks the Court to declare that (i) the Prepetition Credit Facility constitutes a single undersecured credit facility and not, as the Prepetition Agent contends, two separate credit facilities – one that is fully secured by stock of Chemtura’s first tier domestic and foreign subsidiaries (and potentially all or a portion of the Preferential Liens, to the extent not avoided) and another that is completely unsecured; (ii) the amount of the Prepetition Credit Facility Debt (as defined below) that is entitled to the benefit of collateral is capped at \$46.1 million; and (iii) the collateral securing the Prepetition Credit Facility must be allocated among the letters of credit and revolver borrowings outstanding as of the date the Secured Obligation Cap (as defined below) is measured and cannot be reallocated to subsequent borrowings.

5. The requested declarations will benefit the estates by, among other things, providing alternative or additional bases of recovery by requiring: (i) the disgorgement of putative “adequate protection” payments made to the Prepetition Agent; (ii) the unwinding of the roll-up of Prepetition Credit Facility Debt and the disgorgement of interest, fees and expenses associated therewith; and (iii) the freeing of tens of millions of dollars of value for distribution to unsecured creditors.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (F), and (O).

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

8. The statutory predicates for the relief requested herein are sections 105(a), 502, 506, 507, 547, and 550 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rule 7001 and 28 U.S.C. §§ 2201 and 2202.

**THE PARTIES**

9. Collectively, the Debtors and their non-Debtor affiliates, constitute one of the largest publicly-traded specialty chemical enterprises in the United States, dedicated to manufacturing and marketing specialty chemicals, crop protection products and pool, spa and home care products. On March 18, 2009 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

10. Plaintiff Committee was appointed by the Office of the United States Trustee for the Southern District of New York pursuant to Bankruptcy Code section 1102 on March 26, 2009. The Committee brings the Preference Claims on behalf of and for the benefit of the Debtors’ estates, and the Declaratory Relief Claims for the declarations sought herein.

11. Defendant Citibank, N.A. (“Citibank”) is the administrative agent (the “Prepetition Agent”) under the Prepetition Credit Facility, the holder of the Inventory Liens and the SPV Equity Lien, and the recipient of the Cash Payments. Citibank is an initial transferee of the Preferential Transfers within the meaning of Bankruptcy Code section 550(a).

**FACTUAL ALLEGATIONS**

**A. The Debtors’ Prepetition Capital Structure**

***1. The Prepetition Credit Facility***

12. The Debtors are party to the Amended and Restated Credit Agreement, dated as of July 1, 2005 among Chemtura, as borrower, the Prepetition Agent and the lenders party thereto (collectively, the “Prepetition Lenders”) (as further amended and restated, the “Prepetition Credit Agreement”).

13. Pursuant to the Prepetition Credit Agreement, Chemtura obtained access to a revolving credit and letter of credit facility (the “Prepetition Credit Facility”) which, initially,

provided up to \$600 million in financing. Certain of Chemtura's wholly-owned subsidiaries executed guarantees in connection with the Prepetition Credit Facility, making each subsidiary jointly and severally liable for the full amount of debt outstanding under the Prepetition Credit Facility (the "Subsidiary Guarantors" and, together with Chemtura, the "Credit Agreement Obligors").<sup>2</sup> As of the Petition Date, approximately \$272 million was outstanding under the Prepetition Credit Facility (the "Prepetition Credit Facility Debt"), consisting of \$90 million in letters of credit and approximately \$182 million in revolver borrowings.

14. Although the Prepetition Credit Facility was originally unsecured, in May 2007, the downgrade of Chemtura's long-term unsecured debt triggered a provision under the Prepetition Credit Agreement entitling the Prepetition Agent to receive collateral to secure a portion of the Prepetition Credit Facility Debt. Specifically, pursuant to the Prepetition Credit Agreement, if, at any time, Chemtura's non-credit enhanced long-term senior unsecured debt was rated at or lower than BB+ by Standard and Poor's or Ba2 by Moody's Investors Services, the Prepetition Credit Facility Debt would be secured.

15. Following the May 2007 downgrade, the Credit Agreement Obligors and the Prepetition Agent entered into the Pledge Agreement dated as of June 14, 2007 pursuant to which (i) the Credit Agreement Obligors granted the Prepetition Agent a security interest in 100% of the capital stock of their first-tier domestic subsidiaries (the "Domestic Stock Pledge") and (ii) Chemtura granted the Prepetition Agent a security interest in 66-2/3% of the capital stock of Chemtura's first-tier foreign subsidiaries (the "Foreign Stock Pledge" and, together with the Domestic Stock Pledge, the "Equity Collateral"). The Pledge Agreement was amended on July 31, 2007 (the "First Amended Pledge Agreement") to, among other things, limit the amount of

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<sup>2</sup> All of the Credit Agreement Obligors are Debtors in these chapter 11 cases.

secured Prepetition Credit Facility Debt in a manner consistent with restrictions in the indentures for the Debtors' unsecured notes.

**2. *The Unsecured Notes***

16. As of the Petition Date, in addition to the Prepetition Credit Facility, the Debtors had the following funded debt obligations: (i) \$370 million in respect of certain 7% unsecured notes due 2009 issued by Great Lakes Chemical Corporation and guaranteed by Chemtura (the "2009 Notes"); (ii) \$500 million in respect of certain 6.875% unsecured notes due 2016 issued by Chemtura and guaranteed by all or substantially all of the other Debtors (the "2016 Notes"); and (iii) \$150 million in certain 6.875% debentures due 2026 issued by Chemtura (the "2026 Notes" and, together with the 2009 Notes and 2016 Notes, the "Notes").

17. As discussed in more detail below, provisions in the indentures governing the Debtors' unsecured notes restricted the Debtors' ability to secure obligations or other indebtedness without triggering equal and ratable liens for the benefit of the holders of the Notes. In an attempt to prevent triggering the Debtors' obligations to equally and ratably secure the Notes, the Debtors' First Amended Pledge Agreement, and later, the Second Amended Pledge Agreement (as defined below) limited the amount of secured Prepetition Credit Facility Debt to the amount permissible under the most restrictive Note indenture without requiring the granting of equal and ratable liens (the "Secured Obligation Cap"). The most restrictive Note indenture, in turn, limits such permissible secured obligations to 10% of Consolidated Net Tangible Assets (as defined below).

**B. *The Preferential Transfers of the Inventory Liens***

18. During 2008, the Debtors' financial performance began to deteriorate drastically and they were faced with significant liquidity and covenant concerns. Indeed, during the fourth-

quarter of 2008, Chemtura was unable to comply with the leverage and interest coverage covenants under the Prepetition Credit Facility and was the subject of a going concern qualification by its auditors. The Debtors sought the Prepetition Lenders' forbearance from declaring events of default and exercising available remedies based on these covenant violations.

19. Towards that end, on December 30, 2008 – well within the preference period – the Debtors granted the Inventory Liens to the Prepetition Agent in the Second Amended and Restated Pledge and Security Agreement (the “Second Amended Pledge Agreement”). In return, the Prepetition Lenders agreed to waive Chemtura's compliance with certain financial covenants and events of default under the Prepetition Credit Agreement for the period from December 30, 2008 through March 30, 2009, pursuant to the Waiver and Second Amendment to the Amended and Restated Credit Agreement (the “Waiver”).

20. Upon information and belief, the Prepetition Lenders sought the grant of the Inventory Liens because the value of the Equity Collateral pledged in July, 2007 had deteriorated significantly in the interim, and would be insufficient to fund even a fraction of the then-outstanding secured obligations under the Prepetition Credit Facility. The transfer of the Inventory Liens must therefore be avoided as a preference, since the Prepetition Lenders would receive more than they would in a hypothetical chapter 7 proceeding had the transfer not been made.

### **C. The Preferential Transfer of the SPV Equity Lien**

21. The Waiver required that the amount of debt outstanding under the Prepetition Credit Facility could be no more than \$287 million by December 31, 2008. As of such date, Chemtura already had borrowed a total of \$272 million – \$182 million in revolving debt and \$90 million in letters of credit. Thus, Chemtura only had approximately \$15 million in potential available liquidity under the Prepetition Credit Facility through March 30, 2009.

22. Another consequence of the Debtors' deteriorating financial condition was the Debtors' inability to utilize fully an existing receivables securitization facility (the "Old Receivables Facility"). Consequently, as a condition of the Waiver and in order to obtain access to additional liquidity, the Debtors obtained financing through a new receivables facility (the "New Receivables Facility").

23. The New Receivables Facility was established pursuant to (i) the Receivables Sale Agreement, dated as of January 23, 2009 among Chemtura, Great Lakes, GLCC Laurel LLC, and Biolab, Inc., as sellers (collectively, the "Receivables Facility Sellers"), and the Receivables SPV, as buyer (the "Receivables Sale Agreement") and (ii) the Receivables Purchase Agreement, dated as of January 23, 2009, among the Receivables SPV, as seller, Chemtura, as the servicers, Citicorp USA, Inc. as agent, and Citigroup Global Markets Inc., as arranger, and certain purchasers<sup>3</sup> (the "Receivables Purchase Agreement").<sup>4</sup>

24. Pursuant to the New Receivables Facility, the Receivables Facility Sellers sold receivables to the Receivables SPV, which in turn, sold fractional ownership interests in the receivables to participating purchasers who were also granted a security interest in all of the receivables owned by the Receivables SPV. The maximum amount of availability under the New Receivables Facility was \$150 million. Upon the establishment of the New Receivables Facility, the Prepetition Credit Facility was further reduced from \$500 million to \$350 million – a dollar for dollar reduction.

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<sup>3</sup> In addition to Citicorp USA, Inc., as agent, the following banks were purchasers under the New Receivables Facility: Citicorp USA, Inc., Bank of America, Wachovia, Credit Suisse (Cayman Islands Branch), Royal Bank of Scotland, Sumitomo Mitsui Banking Corp., ING Capital LLC, Calyon (New York Branch), The Bank of Tokyo – Mitsubishi UFJ Ltd., and The Northern Trust Company (collectively, the "Receivables Facility Lenders"). All of the Prepetition Receivables Facility Lenders were also Prepetition Lenders under the Prepetition Credit Facility.

<sup>4</sup> The Receivables SPV was incorporated on December 18, 2008, and prior to its wind-down was a special purpose, bankruptcy remote affiliate of the Debtors.

25. The Receivables Facility Sellers obtained funds through the New Receivables Facility by selling their receivables to the Receivables SPV at a discount, which, upon information and belief, was set at least semiannually based on prevailing costs of funds, recent performance history of the receivables being sold, and other costs of ownership. Upon information and belief, and pursuant to the terms of the New Receivables Facility, the Receivables SPV purchased the receivables from the Receivables Facility Sellers for cash but was permitted to pay 50% of the purchase price in the form of a subordinated note (each, a “SPV Subordinated Note”) if the Receivables SPV lacked adequate cash on hand for the purchase (the “Deferred Payment Option”).

26. As of March 6, 2009, the sale price for the undivided interest in the receivables purchased by the Receivables Facility Lenders from the Receivables SPV was just over \$117 million, but the face amount of the receivables sold by the Receivables Facility Sellers to the Receivables SPV was approximately \$232 million. Accordingly, the Receivables Facility Lenders were paying approximately 50% of the face value for their interests in the receivables. Indeed, the Debtors have represented that, prior to being unwound pursuant to the Final DIP Order, “the repurchase price for the receivables sold pursuant to the new receivables facility was \$117,388,411.52, and the face value of those receivables was approximately \$232 million.”

27. As noted above, pursuant to the terms of the Receivables Sale Agreement, the Receivables SPV purchased receivables from the Prepetition Receivables Sellers at a discount, and, upon information and belief, the Receivables SPV also collected more money for the receivables than was required to repay the Receivables Facility Lenders. Moreover, upon information and belief, the Receivables SPV exercised the Deferred Payment Option in connection with its purchase of receivables from the Receivables Facility Sellers until the

Petition Date. None of the Receivables Facility Sellers, however, have SPV Subordinated Notes listed as assets in their respective Schedules of Assets and Liabilities filed with this Court on June 11, 2009. Thus, the Receivables SPV, as opposed to being a pass-through, special purpose vehicle, accumulated equity value and operated in essence as a revenue generating entity. The value accumulated at the Receivables SPV was owned by Chemtura, on account of Chemtura's 100% ownership interest in the Receivables SPV.

28. The Second Amended Pledge Agreement provided that Chemtura was to grant the Prepetition Agent a security interest in Chemtura's 100% ownership of the Receivables SPV. The Prepetition Agent has asserted that the SPV Equity Lien was granted during the preference period.<sup>5</sup> If so, upon information and belief, SPV Equity Lien should be avoided, since it undoubtedly would provide a superior recovery to the Prepetition Lenders than they would have received based on the previous pledge of the Equity Collateral.

**D. The Preferential Cash Payments**

29. During the ninety days prior to the Petition Date, the Debtors made payments to the Prepetition Agent on account of Prepetition Credit Facility Debt (including principal paydowns) aggregating in excess of \$28 million, at least \$6 million of which constituted, upon information and belief, unscheduled payments of principal or interest. These payments are classic preferences which must be avoided.

**E. Chapter 11 Filings and Final DIP Order**

30. On the Petition Date, the Debtors filed a motion (the "DIP Motion") for authority to obtain postpetition financing from the Prepetition Lenders (the "DIP Facility"). The DIP

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<sup>5</sup> As noted above, to date, the Committee has been unable to confirm that the SPV Equity Lien was actually granted and perfected.

Facility consists of (i) a \$250 million term loan; (ii) a \$63.5 million revolving credit facility; and (iii) an \$86.5 million revolving credit facility. On April 29, 2009, this Court entered a final order authorizing the Debtors to enter into the DIP Facility (the “Final DIP Order”). Proceeds of the DIP Facility have been used to, among other things, (i) unwind the New Receivables Facility and (ii) conditionally repay \$86.5 million of Prepetition Credit Facility Debt (the “Roll-Up”).

31. Among other things, the Final DIP Order established June 24, 2009 (the “Challenge Period”) as the deadline for any party in interest to file a complaint contesting the validity of any lien granted in connection with the Prepetition Credit Facility. The Final DIP Order further provided that the “Debtors are deemed to have irrevocably waived and relinquished all Lender Claims as of the date of entry of this Order.” Thus, by the express terms of the Final DIP Order, the Debtors have waived their collective rights to contest the validity of the claims and liens of the Prepetition Agent and the Prepetition Lenders. The Prepetition Agent has agreed to extend the Challenge Period to July 29, 2009 (the “Extended Challenge Period”).

## COUNT I

### **FOR AVOIDANCE OF PREFERENTIAL TRANSFER OF INVENTORY LIENS**

32. The Committee restates and realleges the foregoing paragraphs, which are incorporated by reference as if set forth fully herein.

33. As alleged in more detail above, the transfer of the Inventory Liens was made:

- (a) at a time when the Prepetition Lenders were “creditors” within the meaning of Bankruptcy Code section 101(10);
- (b) to or for the benefit of the Prepetition Lenders;
- (c) for or on account of an antecedent debt owed by the Debtors to the Prepetition Lenders before the date on which such transfer was made;
- (d) while the Debtors were insolvent;
- (e) on or within 90 days before the Petition Date; and

- (f) will enable the Prepetition Lenders to receive more than they would receive had the Debtors' chapter 11 cases been chapter 7 liquidation cases and the Prepetition Agent not received the Inventory Liens.

34. As a result of the foregoing, the Committee is entitled to a judgment pursuant to Bankruptcy Code sections 547(b) and 551 avoiding the Inventory Liens and preserving the Inventory Liens for the benefit of the Debtors' estates.

## **COUNT II**

### **FOR THE AVOIDANCE OF PREFERENTIAL TRANSFER OF SPV EQUITY LIEN**

35. The Committee restates and realleges the foregoing paragraphs, which are incorporated by reference as if set forth fully herein.

36. As alleged in more detail above, the transfer of the SPV Equity Lien was made:

- (a) at a time when the Prepetition Lenders were "creditors" within the meaning of Bankruptcy Code section 101(10);
- (b) to or for the benefit of the Prepetition Lenders;
- (c) for or on account of an antecedent debt owed by the Debtors to the Prepetition Lenders before the date on which such transfer was made;
- (d) while the Debtors were insolvent;
- (e) on or within 90 days before the Petition Date; and
- (f) will enable the Prepetition Lenders to receive more than they would receive had the Debtors' chapter 11 cases been chapter 7 liquidation cases and the Prepetition Agent not received the SPV Equity Lien.

37. As a result of the foregoing, the Committee is entitled to a judgment pursuant to Bankruptcy Code sections 547(b) and 551 avoiding the SPV Equity Lien and preserving the SPV Equity Lien for the benefit of the Debtors' estates.

**COUNT III**

**TO AVOID AND RECOVER PREFERENTIAL TRANSFERS OF CASH PAYMENTS**

38. The Committee restates and realleges the foregoing paragraphs, which are incorporated by reference as if set forth fully herein.

39. As alleged in more detail above, the transfers of the Cash Payments were made:

- (a) at a time when the Prepetition Lenders were “creditors” within the meaning of Bankruptcy Code Section 101(10);
- (b) to or for the benefit of the Prepetition Lenders;
- (c) for or on account of an antecedent debt owed by the Debtors to the Prepetition Lenders before the date on which such transfer was made;
- (d) while the Debtors were insolvent;
- (e) on or within 90 days before the Petition Date; and
- (f) will enable the Prepetition Lenders to receive more than they would receive had the Debtors’ chapter 11 cases been chapter 7 liquidation cases and the Prepetition Agent not received the Cash Payments.

40. As a result of the foregoing, the Committee is entitled to a judgment pursuant to Bankruptcy Code sections 547(b), 550, 551 (a) avoiding and preserving the transfers of the Cash Payments, and (b) recovering the transfers of the Cash Payments, or the value thereof, for the benefit of the Debtors’ estates.

**COUNT IV**

**FOR A DECLARATION LIMITING SECURED CLAIMS UNDER THE PREPETITION CREDIT FACILITY TO NO MORE THAN \$46.1 MILLION**

41. The Committee restates and realleges the foregoing paragraphs, which are incorporated by reference as if set forth fully herein.

42. As noted elsewhere, \$272 million in Prepetition Credit Facility Debt was outstanding as of the Petition Date. According to the Prepetition Agent and Debtors, the Secured

Obligation Cap limits the secured portion of that debt to \$139.2 million. According to the plain terms of the relevant agreements, however, the amount of secured Prepetition Credit Facility Debt cannot exceed \$46.1 million.

43. The Second Amended Pledge Agreement provides that the Prepetition Credit Facility Debt will be secured, but only to the extent that the aggregate amount of such debt does not exceed the amount “permitted to be incurred and secured (at the time of incurrence) by the [Debtors] pursuant to Section 1010 of the 2026 Indenture without the requirement to equally and ratably secure any of the notes issued pursuant to the 2026 Indenture.”

44. Section 1010 of the 2026 Indenture, in turn, provides that “the Company and its Subsidiaries may...secure obligations or Indebtedness [without equally and ratably securing the Notes]...if after giving effect to any such security arrangements...the sum of . . . the aggregate amount of all such obligations and Indebtedness then outstanding . . . does not at any such time exceed 10% of Consolidated Net Tangible Assets.”<sup>6</sup>

45. In their submissions in connection with the DIP Motion, the Prepetition Agent and Debtors assumed that September 30, 2008 was the relevant date for determining the value of Consolidated Net Tangible Assets, and thus the Secured Obligation Cap. In fact, the relevant date for determining the Secured Obligation Cap is December 30, 2008, the date the Inventory Liens were granted.

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<sup>6</sup> “Consolidated Net Tangible Assets” is defined in the 2026 Indenture to mean “total consolidated assets of [the Debtors], less the following: (1) current liabilities of the [Debtors]; (2) all depreciation and valuation reserves and all other reserves (except (a) reserves for contingencies which have not been allocated to any particular purpose, and (b) deferred credits, including deferred federal and foreign income taxes and deferred investment tax credits) of the [Debtors]; (3) the net book amount of all intangible assets of the [Debtors], including, but without limitation, the unamortized portions of such items as good will, trademarks, trade names, patents and debt discount and expense less debt premium; and (4) appropriate adjustments on account of minority interests of other Persons holding stock in Subsidiaries.”

46. On that day, Consolidated Net Tangible Assets were worth approximately \$462 million, according to the Debtors. Thus, the aggregate amount of outstanding secured obligations permissible under the Second Amended Pledge Agreement was 10% of that amount, or \$46.1 million. The value of Consolidated Net Tangible Assets only declined between the date the Inventory Liens were granted and the Petition Date.

47. Accordingly, the Committee is entitled to a declaration, pursuant to 28 U.S.C. § 2201 and Bankruptcy Rule 7001(9), that the maximum aggregate amount of Prepetition Credit Facility Debt that can be secured under the Second Amended Pledge Agreement is \$46.1 million and an order, pursuant to 28 U.S.C. § 2202, granting such further relief that may be proper based on the Court's declaration.

## **COUNT V**

### **FOR A DECLARATION THAT THE PREPETITION CREDIT FACILITY IS A SINGLE UNDERSECURED OBLIGATION**

48. The Committee restates and realleges the foregoing paragraphs, which are incorporated by reference as if set forth fully herein.

49. The Prepetition Agent contends that the Prepetition Credit Facility is actually two obligations, one fully secured and one wholly unsecured, and that the Prepetition Agent and Prepetition Lenders therefore are entitled to certain protections provided under the Bankruptcy Code to fully secured lenders.

50. In fact, there is a single Prepetition Credit Facility that has limited collateral by virtue of the Secured Obligation Cap, and is therefore undersecured. Accordingly, the Committee seeks a declaration that, regardless of the success or failure of the Preference Claims, the Prepetition Credit Facility constitutes a single undersecured credit facility.

51. Nowhere in the Prepetition Credit Agreement is the Prepetition Credit Facility Debt divided into secured and unsecured obligations. Rather, Prepetition Credit Facility Debt is treated as a unitary obligation of the Credit Agreement Obligors, subject to the same terms and conditions, such as maturity and interest rate.

52. The term “secured obligations” in the Second Amended Pledge Agreement does not denote a separate tranche of debt under the Prepetition Credit Facility that is fully secured and distinct from unsecured obligations. Instead, the term “secured obligations” was defined in the Second Amended Pledge Agreement as limiting that portion of the Prepetition Credit Facility Debt that could be partially secured without “exceeding the Lowest Indenture Basket.”

53. As the Prepetition Credit Facility Debt was approximately \$272 million on the Petition Date and the Secured Obligation Cap was \$46.1 million (or, at most \$139.2 million), by definition the Prepetition Credit Facility was undersecured. Because the Prepetition Credit Facility is undersecured, neither the Prepetition Agent nor the Prepetition Lenders are entitled to postpetition payments in respect of the Prepetition Credit Facility Debt, whether in the form of interest, fees, expenses or otherwise.

54. The Committee is entitled to a declaration, pursuant to 28 U.S.C. § 2201 and Bankruptcy Rule 7001(9), that the Prepetition Credit Facility is a single, undersecured obligation, and an order, pursuant to 28 U.S.C. § 2202, granting such further relief that may be proper based on the Court’s declaration.

## **COUNT VI**

### **FOR A DECLARATION REGARDING ALLOCATION OF PRE-PETITION COLLATERAL**

55. The Committee restates and realleges the foregoing paragraphs, which are incorporated by reference as if set forth fully herein.

56. Finally, the Committee seeks a declaration that regardless of the date the Secured Obligation Cap is determined, the obligations secured pursuant to the Second Amended Pledge Agreement must be those letters of credit outstanding and revolver borrowings outstanding as of the date the Secured Obligation Cap is measured. In other words, the pledged collateral cannot be reallocated to borrowings made subsequent to the date the Secured Obligation Cap is measured.

57. Thus, if September 30, 2008 is the Secured Obligation Cap determination date, the Committee seeks a declaration that the \$139.2 million in collateral securing the Prepetition Credit Facility Debt must be allocated exclusively to the \$92 million in letters of credit and approximately \$70 million in revolver borrowings that were outstanding under the Prepetition Credit Facility as of such date. The Prepetition Agent cannot reallocate the \$92 million in letter of credit collateral to revolver borrowings made after September 30, 2009, as it has tried to do, merely because the letters of credit have not been drawn upon.

58. The same logic applies with respect to allocation if the Secured Obligation Cap determination date is December 30, 2008 or later. The \$46.1 million in available collateral must be apportioned among the actual debt obligations then outstanding, and cannot be reallocated to subsequent borrowings.

59. If the Court grants the requested declaratory relief, only a limited amount in prepetition revolver borrowings would be entitled to the benefit of the collateral securing the Prepetition Credit Facility Debt and all other revolver borrowings would be rendered prepetition unsecured obligations of the Debtors' estates.

60. Moreover, if the letters of credit entitled to the benefit of the collateral are never drawn, additional previously encumbered property will be available to satisfy the claims of the Debtors' unsecured creditors.

61. Accordingly, pursuant to 28 U.S.C. § 2201 and Bankruptcy Rule 7001(9), the Committee requests that this Court declare that, regardless of the date the Secured Obligation Cap is set, the obligations secured pursuant to the Second Amended Pledge Agreement must be those letters of credit outstanding and revolver borrowings outstanding as of the date the Secured Obligation Cap is measured and an order, pursuant to 28 U.S.C. § 2202, granting such further relief that may be proper based on the Court's declaration.

**RESERVATION OF RIGHTS**

62. The Committee believes that additional claims in favor of one or more of the Debtors' estates against the Defendants and/or other parties may exist. The Committee reserves any and all rights to bring such claims to the extent authorized by the Court and/or applicable law.

**PRAYER FOR RELIEF**

WHEREFORE, by reason of the foregoing, Plaintiff requests that the Court enter judgment against the Prepetition Agent:

1. Avoiding the Inventory Liens and preserving such liens for the benefit of the Debtors' estates under Bankruptcy Code section 551;
2. Avoiding the SPV Equity Lien and preserving such lien for the benefit of the Debtors' estates under Bankruptcy Code section 551;

3. Avoiding and preserving the transfers of the Cash Payments, and recovering the transfers of the Cash Payments, or the value thereof, for the benefit of the Debtors' estates;
4. Declaring that the maximum aggregate amount of Prepetition Credit Facility Debt that can be secured under the Second Amended Pledge Agreement is no more than \$46.1 million;
5. Declaring that the Prepetition Credit Facility constitutes a single, undersecured credit facility;
6. Declaring that, regardless of the date the Secured Obligation Cap is measured, the obligations secured pursuant to the Second Amended Pledge Agreement must be those letters of credit outstanding and revolver borrowings outstanding as of the date the Secured Obligation Cap is measured;
7. Unwinding the Roll-Up and any amounts paid in connection therewith (including interest, fees, expenses and other costs) based on the amount of permitted secured obligations on the Petition Date and the value of any non-avoided liens securing such obligations as of the Petition Date;
8. Recovering for the benefit of the Debtors' estates any amounts paid as "adequate protection" or otherwise (including interest, expenses, fees and other costs) in connection with the Prepetition Credit Facility Debt based on the amount of permitted secured obligations on the Petition Date and the value of any non-avoided liens securing such obligations as of the Petition Date; and

9. Granting such other and further relief as the Court deems just, proper and equitable, including the fees, costs, interest, and expenses of this action.

Dated: New York, New York  
\_\_\_\_\_, 2009

**THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF  
CHEMTURA CORPORATION, ET AL.**

By: DRAFT\_\_\_\_\_

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

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In re:	: Chapter 11
	: :
Chemtura Corporation, <i>et al.</i> ,	: Case No. 09-11233 (REG)
	: :
Debtors.	: Jointly Administered
-----X	
Official Committee of Unsecured Creditors	: :
of Chemtura Corporation, <i>et al.</i> ,	: :
Plaintiff,	: :
	: :
-vs.-	: Adversary No. _____
	: :
Citibank, N.A.,	: :
	: :
Defendant.	: :
-----X	

**ADVERSARY COMPLAINT**

Plaintiff, the Official Committee of Unsecured Creditors (the “Committee”) of Chemtura Corporation (“Chemtura”) and its affiliated debtors and debtors in possession (collectively, the “Debtors”), by and through its undersigned counsel, on behalf of and as the representative of the bankruptcy estates of the Debtors, as and for its adversary complaint (the “Complaint”) pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) alleges as follows:

**NATURE OF THE ACTION**

1. By its Complaint, the Committee seeks to avoid various preferential transfers (the “Preference Claims”) and seeks declarations from the Court regarding the nature and extent of the collateral securing the Prepetition Credit Facility (as defined below) (the “Declaratory Relief Claims”) and, together with the Preference Claims, the “Claims”).

2. In particular, the Committee seeks to avoid the following transfers under Bankruptcy Code section 547:

- (i) *Inventory liens.* The liens and security interests granted by the Debtors to the Prepetition Agent (as defined below) on or around December 30, 2008 in all of the Debtors’ inventory (the “Inventory Liens”);
- (ii) *Receivables SPV equity lien.* The lien allegedly granted by Chemtura Corporation (“Chemtura”) to the Prepetition Agent during the ninety days prior to the Petition Date (as defined below) in Chemtura’s ownership interests in non-Debtor Chemtura Receivables LLC (the “SPV Equity Lien”) and, together with the Inventory Liens, the “Preferential Liens”);<sup>1</sup> and
- (iii) *Cash transfers.* At least \$6 million in cash payments made by the Debtors to the Prepetition Agent during the preference period (the “Cash Payments”) and, collectively with the Preferential Liens, the “Preferential Transfers”).

3. Avoidance of the Preferential Transfers will benefit the Debtors’ estates and their unsecured creditors by, among other things: (i) stripping the purported liens on (a) the Debtors’ inventory and (b) the capital stock of Chemtura Receivables LLC; (ii) unwinding the \$86.5 million of rolled-up prepetition debt pursuant to the Final DIP Order (as defined below); and (iii) recovering at least \$6 million in cash.

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<sup>1</sup> Counsel for the Prepetition Agent has alleged the existence of the SPV Equity Lien, but the Committee has not yet been provided with any documentary or other evidence that the SPV Equity Lien was granted and perfected. Accordingly, the Committee seeks to avoid the SPV Equity Lien to the extent it exists, and all references to the SPV Equity Lien herein should not be deemed in any way as a concession regarding the existence of such lien.

4. In addition, pursuant to Bankruptcy Rule 7001(9) and 28 U.S.C. §§ 2201 and 2202, the Committee asks the Court to declare that (i) the Prepetition Credit Facility constitutes a single undersecured credit facility and not, as the Prepetition Agent contends, two separate credit facilities – one that is fully secured by stock of Chemtura’s first tier domestic and foreign subsidiaries (and potentially all or a portion of the Preferential Liens, to the extent not avoided) and another that is completely unsecured; (ii) the amount of the Prepetition Credit Facility Debt (as defined below) that is entitled to the benefit of collateral is capped at \$46.1 million; and (iii) the collateral securing the Prepetition Credit Facility must be allocated among the letters of credit and revolver borrowings outstanding as of the date the Secured Obligation Cap (as defined below) is measured and cannot be reallocated to subsequent borrowings.

5. The requested declarations will benefit the estates by, among other things, providing alternative or additional bases of recovery by requiring: (i) the disgorgement of putative “adequate protection” payments made to the Prepetition Agent; (ii) the unwinding of the roll-up of Prepetition Credit Facility Debt and the disgorgement of interest, fees and expenses associated therewith; and (iii) the freeing of tens of millions of dollars of value for distribution to unsecured creditors.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (F), and (O).

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

8. The statutory predicates for the relief requested herein are sections 105(a), 502, 506, 507, 547, and 550 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rule 7001 and 28 U.S.C. §§ 2201 and 2202.

## **THE PARTIES**

9. Collectively, the Debtors and their non-Debtor affiliates, constitute one of the largest publicly-traded specialty chemical enterprises in the United States, dedicated to manufacturing and marketing specialty chemicals, crop protection products and pool, spa and home care products. On March 18, 2009 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

10. Plaintiff Committee was appointed by the Office of the United States Trustee for the Southern District of New York pursuant to Bankruptcy Code section 1102 on March 26, 2009. The Committee brings the Preference Claims on behalf of and for the benefit of the Debtors’ estates, and the Declaratory Relief Claims for the declarations sought herein.

11. Defendant Citibank, N.A. (“Citibank”) is the administrative agent (the “Prepetition Agent”) under the Prepetition Credit Facility, the holder of the Inventory Liens and the SPV Equity Lien, and the recipient of the Cash Payments. Citibank is an initial transferee of the Preferential Transfers within the meaning of Bankruptcy Code section 550(a).

## **FACTUAL ALLEGATIONS**

### **A. The Debtors’ Prepetition Capital Structure**

#### ***1. The Prepetition Credit Facility***

12. The Debtors are party to the Amended and Restated Credit Agreement, dated as of July 1, 2005 among Chemtura, as borrower, the Prepetition Agent and the lenders party thereto (collectively, the “Prepetition Lenders”) (as further amended and restated, the “Prepetition Credit Agreement”).

13. Pursuant to the Prepetition Credit Agreement, Chemtura obtained access to a revolving credit and letter of credit facility (the “Prepetition Credit Facility”) which, initially,

provided up to \$600 million in financing. Certain of Chemtura's wholly-owned subsidiaries executed guarantees in connection with the Prepetition Credit Facility, making each subsidiary jointly and severally liable for the full amount of debt outstanding under the Prepetition Credit Facility (the "Subsidiary Guarantors" and, together with Chemtura, the "Credit Agreement Obligors").<sup>2</sup> As of the Petition Date, approximately \$272 million was outstanding under the Prepetition Credit Facility (the "Prepetition Credit Facility Debt"), consisting of \$90 million in letters of credit and approximately \$182 million in revolver borrowings.

14. Although the Prepetition Credit Facility was originally unsecured, in May 2007, the downgrade of Chemtura's long-term unsecured debt triggered a provision under the Prepetition Credit Agreement entitling the Prepetition Agent to receive collateral to secure a portion of the Prepetition Credit Facility Debt. Specifically, pursuant to the Prepetition Credit Agreement, if, at any time, Chemtura's non-credit enhanced long-term senior unsecured debt was rated at or lower than BB+ by Standard and Poor's or Ba2 by Moody's Investors Services, the Prepetition Credit Facility Debt would be secured.

15. Following the May 2007 downgrade, ~~Chemtura~~the Credit Agreement Obligors and the Prepetition Agent entered into the Pledge Agreement dated as of June 14, 2007 pursuant to which ~~Chemtura~~(i) the Credit Agreement Obligors granted the Prepetition Agent a security interest in 100% of the capital stock of ~~Chemtura's~~their first-tier domestic subsidiaries (the "Domestic Stock Pledge") and (ii) Chemtura granted the Prepetition Agent a security interest in 66-2/3% of the capital stock of Chemtura's first-tier foreign subsidiaries (the "Foreign Stock Pledge" and, together with the Domestic Stock Pledge, the "Equity Collateral"). The Pledge Agreement was amended on July 31, 2007 (the "First Amended Pledge Agreement") to, among

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<sup>2</sup> All of the Credit Agreement Obligors are Debtors in these chapter 11 cases.

other things, limit the amount of secured Prepetition Credit Facility Debt in a manner consistent with restrictions in the indentures for the Debtors' unsecured notes.

**2. *The Unsecured Notes***

16. As of the Petition Date, in addition to the Prepetition Credit Facility, the Debtors had the following funded debt obligations: (i) \$370 million in respect of certain 7% unsecured notes due 2009 issued by Great Lakes Chemical Corporation and guaranteed by Chemtura (the "2009 Notes"); (ii) \$500 million in respect of certain 6.875% unsecured notes due 2016 issued by Chemtura and guaranteed by all or substantially all of the other Debtors (the "2016 Notes"); and (iii) \$150 million in certain 6.875% debentures due 2026 issued by Chemtura (the "2026 Notes" and, together with the 2009 Notes and 2016 Notes, the "Notes").

17. As discussed in more detail below, provisions in the indentures governing the Debtors' unsecured notes restricted the Debtors' ability to secure obligations or other indebtedness without triggering equal and ratable liens for the benefit of the holders of the Notes. In an attempt to prevent triggering the Debtors' obligations to equally and ratably secure the Notes, the Debtors' First Amended Pledge Agreement, and later, the Second Amended Pledge Agreement (as defined below) limited the amount of secured Prepetition Credit Facility Debt to the amount permissible under the most restrictive Note indenture without requiring the granting of equal and ratable liens (the "Secured Obligation Cap"). The most restrictive Note indenture, in turn, limits such permissible secured obligations to 10% of Consolidated Net Tangible Assets (as defined below).

**B. *The Preferential Transfers of the Inventory Liens***

18. During 2008, the Debtors' financial performance began to deteriorate drastically and they were faced with significant liquidity and covenant concerns. Indeed, during the fourth-

quarter of 2008, Chemtura was unable to comply with the leverage and interest coverage covenants under the Prepetition Credit Facility and was the subject of a going concern qualification by its auditors. The Debtors sought the Prepetition Lenders' forbearance from declaring events of default and exercising available remedies based on these covenant violations.

19. Towards that end, on December 30, 2008 – well within the preference period – the Debtors granted the Inventory Liens to the Prepetition Agent in the Second Amended and Restated Pledge and Security Agreement (the “Second Amended Pledge Agreement”). In return, the Prepetition Lenders agreed to waive Chemtura's compliance with certain financial covenants and events of default under the Prepetition Credit Agreement for the period from December 30, 2008 through March 30, 2009, pursuant to the Waiver and Second Amendment to the Amended and Restated Credit Agreement (the “Waiver”).

20. Upon information and belief, the Prepetition Lenders sought the grant of the Inventory Liens because the value of the Equity Collateral pledged in July, 2007 had deteriorated significantly in the interim, and would be insufficient to fund even a fraction of the then-outstanding secured obligations under the Prepetition Credit Facility. The transfer of the Inventory Liens must therefore be avoided as a preference, since the Prepetition Lenders would receive more than they would in a hypothetical chapter 7 proceeding had the transfer not been made.

### **C. The Preferential Transfer of the SPV Equity Lien**

21. The Waiver required that the amount of debt outstanding under the Prepetition Credit Facility could be no more than \$287 million by December 31, 2008. As of such date, Chemtura already had borrowed a total of \$272 million – \$182 million in revolving debt and \$90 million in letters of credit. Thus, Chemtura only had approximately \$15 million in potential available liquidity under the Prepetition Credit Facility through March 30, 2009.

22. Another consequence of the Debtors' deteriorating financial condition was the Debtors' inability to utilize fully an existing receivables securitization facility (the "Old Receivables Facility"). Consequently, as a condition of the Waiver and in order to obtain access to additional liquidity, the Debtors obtained financing through a new receivables facility (the "New Receivables Facility").

23. The New Receivables Facility was established pursuant to (i) the Receivables Sale Agreement, dated as of January 23, 2009 among Chemtura, Great Lakes, GLCC Laurel LLC, and Biolab, Inc., as sellers (collectively, the "Receivables Facility Sellers"), and the Receivables SPV, as buyer (the "Receivables Sale Agreement") and (ii) the Receivables Purchase Agreement, dated as of January 23, 2009, among the Receivables SPV, as seller, Chemtura, as the servicers, Citicorp USA, Inc. as agent, and Citigroup Global Markets Inc., as arranger, and certain purchasers<sup>3</sup> (the "Receivables Purchase Agreement").<sup>4</sup>

24. Pursuant to the New Receivables Facility, the Receivables Facility Sellers sold receivables to the Receivables SPV, which in turn, sold fractional ownership interests in the receivables to participating purchasers who were also granted a security interest in all of the receivables owned by the Receivables SPV. The maximum amount of availability under the New Receivables Facility was \$150 million. Upon the establishment of the New Receivables Facility, the Prepetition Credit Facility was further reduced from \$500 million to \$350 million – a dollar for dollar reduction.

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<sup>3</sup> In addition to Citicorp USA, Inc., as agent, the following banks were purchasers under the New Receivables Facility: Citicorp USA, Inc., Bank of America, Wachovia, Credit Suisse (Cayman Islands Branch), Royal Bank of Scotland, Sumitomo Mitsui Banking Corp., ING Capital LLC, Calyon (New York Branch), The Bank of Tokyo – Mitsubishi UFJ Ltd., and The Northern Trust Company (collectively, the "Receivables Facility Lenders"). All of the Prepetition Receivables Facility Lenders were also Prepetition Lenders under the Prepetition Credit Facility.

<sup>4</sup> The Receivables SPV was incorporated on December 18, 2008, and prior to its wind-down was a special purpose, bankruptcy remote affiliate of the Debtors.

25. The Receivables Facility Sellers obtained funds through the New Receivables Facility by selling their receivables to the Receivables SPV at a discount, which, upon information and belief, was set at least semiannually based on prevailing costs of funds, recent performance history of the receivables being sold, and other costs of ownership. Upon information and belief, and pursuant to the terms of the New Receivables Facility, the Receivables SPV purchased the receivables from the Receivables Facility Sellers for cash but was permitted to pay 50% of the purchase price in the form of a subordinated note (each, a “SPV Subordinated Note”) if the Receivables SPV lacked adequate cash on hand for the purchase (the “Deferred Payment Option”).

26. As of March 6, 2009, the sale price for the undivided interest in the receivables purchased by the Receivables Facility Lenders from the Receivables SPV was just over \$117 million, but the face amount of the receivables sold by the Receivables Facility Sellers to the Receivables SPV was approximately \$232 million. Accordingly, the Receivables Facility Lenders were paying approximately 50% of the face value for their interests in the receivables. Indeed, the Debtors have represented that, prior to being unwound pursuant to the Final DIP Order, “the repurchase price for the receivables sold pursuant to the new receivables facility was \$117,388,411.52, and the face value of those receivables was approximately \$232 million.”

27. As noted above, pursuant to the terms of the Receivables Sale Agreement, the Receivables SPV purchased receivables from the Prepetition Receivables Sellers at a discount, and, upon information and belief, the Receivables SPV also collected more money for the receivables than was required to repay the Receivables Facility Lenders. Moreover, upon information and belief, the Receivables SPV exercised the Deferred Payment Option in connection with its purchase of receivables from the Receivables Facility Sellers until the

Petition Date. None of the Receivables Facility Sellers, however, have SPV Subordinated Notes listed as assets in their respective Schedules of Assets and Liabilities filed with this Court on June 11, 2009. Thus, the Receivables SPV, as opposed to being a pass-through, special purpose vehicle, accumulated equity value and operated in essence as a revenue generating entity. The value accumulated at the Receivables SPV was owned by Chemtura, on account of Chemtura's 100% ownership interest in the Receivables SPV.

28. The Second Amended Pledge Agreement provided that Chemtura was to grant the Prepetition Agent a security interest in Chemtura's 100% ownership of the Receivables SPV. The Prepetition Agent has asserted that the SPV Equity Lien was granted during the preference period.<sup>5</sup> If so, upon information and belief, SPV Equity Lien should be avoided, since it undoubtedly would provide a superior recovery to the Prepetition Lenders than they would have received based on the previous pledge of the Equity Collateral.

**D. The Preferential Cash Payments**

29. During the ninety days prior to the Petition Date, the Debtors made payments to the Prepetition Agent on account of Prepetition Credit Facility Debt (including principal paydowns) aggregating in excess of \$28 million, at least \$6 million of which constituted, upon information and belief, unscheduled payments of principal or interest. These payments are classic preferences which must be avoided.

**E. Chapter 11 Filings and Final DIP Order**

30. On the Petition Date, the Debtors filed a motion (the "DIP Motion") for authority to obtain postpetition financing from the Prepetition Lenders (the "DIP Facility"). The DIP

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<sup>5</sup> As noted above, to date, the Committee has been unable to confirm that the SPV Equity Lien was actually granted and perfected.

Facility consists of (i) a \$250 million term loan; (ii) a \$63.5 million revolving credit facility; and (iii) an \$86.5 million revolving credit facility. On April 29, 2009, this Court entered a final order authorizing the Debtors to enter into the DIP Facility (the “Final DIP Order”). Proceeds of the DIP Facility have been used to, among other things, (i) unwind the New Receivables Facility and (ii) conditionally repay \$86.5 million of Prepetition Credit Facility Debt (the “Roll-Up”).

31. Among other things, the Final DIP Order established June 24, 2009 (the “Challenge Period”) as the deadline for any party in interest to file a complaint contesting the validity of any lien granted in connection with the Prepetition Credit Facility. The Final DIP Order further provided that the “Debtors are deemed to have irrevocably waived and relinquished all Lender Claims as of the date of entry of this Order.” Thus, by the express terms of the Final DIP Order, the Debtors have waived their collective rights to contest the validity of the claims and liens of the Prepetition Agent and the Prepetition Lenders. The Prepetition Agent has agreed to extend the Challenge Period to July 29, 2009 (the “Extended Challenge Period”).

## COUNT I

### **FOR AVOIDANCE OF PREFERENTIAL TRANSFER OF INVENTORY LIENS**

32. The Committee restates and realleges the foregoing paragraphs, which are incorporated by reference as if set forth fully herein.

33. As alleged in more detail above, the transfer of the Inventory Liens was made:

- (a) at a time when the Prepetition Lenders were “creditors” within the meaning of Bankruptcy Code section 101(10);
- (b) to or for the benefit of the Prepetition Lenders;
- (c) for or on account of an antecedent debt owed by the Debtors to the Prepetition Lenders before the date on which such transfer was made;
- (d) while the Debtors were insolvent;
- (e) on or within 90 days before the Petition Date; and

- (f) will enable the Prepetition Lenders to receive more than they would receive had the Debtors' chapter 11 cases been chapter 7 liquidation cases and the Prepetition Agent not received the Inventory Liens.

34. As a result of the foregoing, the Committee is entitled to a judgment pursuant to Bankruptcy Code sections 547(b) and 551 avoiding the Inventory Liens and preserving the Inventory Liens for the benefit of the Debtors' estates.

## **COUNT II**

### **FOR THE AVOIDANCE OF PREFERENTIAL TRANSFER OF SPV EQUITY LIEN**

35. The Committee restates and realleges the foregoing paragraphs, which are incorporated by reference as if set forth fully herein.

36. As alleged in more detail above, the transfer of the SPV Equity Lien was made:

- (a) at a time when the Prepetition Lenders were "creditors" within the meaning of Bankruptcy Code section 101(10);
- (b) to or for the benefit of the Prepetition Lenders;
- (c) for or on account of an antecedent debt owed by the Debtors to the Prepetition Lenders before the date on which such transfer was made;
- (d) while the Debtors were insolvent;
- (e) on or within 90 days before the Petition Date; and
- (f) will enable the Prepetition Lenders to receive more than they would receive had the Debtors' chapter 11 cases been chapter 7 liquidation cases and the Prepetition Agent not received the SPV Equity Lien.

37. As a result of the foregoing, the Committee is entitled to a judgment pursuant to Bankruptcy Code sections 547(b) and 551 avoiding the SPV Equity Lien and preserving the SPV Equity Lien for the benefit of the Debtors' estates.

**COUNT III**

**TO AVOID AND RECOVER PREFERENTIAL TRANSFERS OF CASH PAYMENTS**

38. The Committee restates and realleges the foregoing paragraphs, which are incorporated by reference as if set forth fully herein.

39. As alleged in more detail above, the transfers of the Cash Payments were made:

- (a) at a time when the Prepetition Lenders were “creditors” within the meaning of Bankruptcy Code Section 101(10);
- (b) to or for the benefit of the Prepetition Lenders;
- (c) for or on account of an antecedent debt owed by the Debtors to the Prepetition Lenders before the date on which such transfer was made;
- (d) while the Debtors were insolvent;
- (e) on or within 90 days before the Petition Date; and
- (f) will enable the Prepetition Lenders to receive more than they would receive had the Debtors’ chapter 11 cases been chapter 7 liquidation cases and the Prepetition Agent not received the Cash Payments.

40. As a result of the foregoing, the Committee is entitled to a judgment pursuant to Bankruptcy Code sections 547(b), 550, 551 (a) avoiding and preserving the transfers of the Cash Payments, and (b) recovering the transfers of the Cash Payments, or the value thereof, for the benefit of the Debtors’ estates.

**COUNT IV**

**FOR A DECLARATION LIMITING SECURED CLAIMS UNDER THE PREPETITION CREDIT FACILITY TO NO MORE THAN \$46.1 MILLION**

41. The Committee restates and realleges the foregoing paragraphs, which are incorporated by reference as if set forth fully herein.

42. As noted elsewhere, \$272 million in Prepetition Credit Facility Debt was outstanding as of the Petition Date. According to the Prepetition Agent and Debtors, the Secured

Obligation Cap limits the secured portion of that debt to \$139.2 million. According to the plain terms of the relevant agreements, however, the amount of secured Prepetition Credit Facility Debt cannot exceed \$46.1 million.

43. The Second Amended Pledge Agreement provides that the Prepetition Credit Facility Debt will be secured, but only to the extent that the aggregate amount of such debt does not exceed the amount “permitted to be incurred and secured (at the time of incurrence) by the [Debtors] pursuant to Section 1010 of the 2026 Indenture without the requirement to equally and ratably secure any of the notes issued pursuant to the 2026 Indenture.”

44. Section 1010 of the 2026 Indenture, in turn, provides that “the Company and its Subsidiaries may...secure obligations or Indebtedness [without equally and ratably securing the Notes]...if after giving effect to any such security arrangements...the sum of . . . the aggregate amount of all such obligations and Indebtedness then outstanding . . . does not at any such time exceed 10% of Consolidated Net Tangible Assets.”<sup>6</sup>

45. In their submissions in connection with the DIP Motion, the Prepetition Agent and Debtors assumed that September 30, 2008 was the relevant date for determining the value of Consolidated Net Tangible Assets, and thus the Secured Obligation Cap. In fact, the relevant date for determining the Secured Obligation Cap is December 30, 2008, the date the Inventory Liens were granted.

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<sup>6</sup> “Consolidated Net Tangible Assets” is defined in the 2026 Indenture to mean “total consolidated assets of [the Debtors], less the following: (1) current liabilities of the [Debtors]; (2) all depreciation and valuation reserves and all other reserves (except (a) reserves for contingencies which have not been allocated to any particular purpose, and (b) deferred credits, including deferred federal and foreign income taxes and deferred investment tax credits) of the [Debtors]; (3) the net book amount of all intangible assets of the [Debtors], including, but without limitation, the unamortized portions of such items as good will, trademarks, trade names, patents and debt discount and expense less debt premium; and (4) appropriate adjustments on account of minority interests of other Persons holding stock in Subsidiaries.”

46. On that day, Consolidated Net Tangible Assets were worth approximately \$462 million, according to the Debtors. Thus, the aggregate amount of outstanding secured obligations permissible under the Second Amended Pledge Agreement was 10% of that amount, or \$46.1 million. The value of Consolidated Net Tangible Assets only declined between the date the Inventory Liens were granted and the Petition Date.

47. Accordingly, the Committee is entitled to a declaration, pursuant to 28 U.S.C. § 2201 and Bankruptcy Rule 7001(9), that the maximum aggregate amount of Prepetition Credit Facility Debt that can be secured under the Second Amended Pledge Agreement is \$46.1 million and an order, pursuant to 28 U.S.C. § 2202, granting such further relief that may be proper based on the Court's declaration.

## COUNT V

### **FOR A DECLARATION THAT THE PREPETITION CREDIT FACILITY IS A SINGLE UNDERSECURED OBLIGATION**

48. The Committee restates and realleges the foregoing paragraphs, which are incorporated by reference as if set forth fully herein.

49. The Prepetition Agent contends that the Prepetition Credit Facility is actually two obligations, one fully secured and one wholly unsecured, and that the Prepetition Agent and Prepetition Lenders therefore are entitled to certain protections provided under the Bankruptcy Code to fully secured lenders.

50. In fact, there is a single Prepetition Credit Facility that has limited collateral by virtue of the Secured Obligation Cap, and is therefore undersecured. Accordingly, the Committee seeks a declaration that, regardless of the success or failure of the Preference Claims, the Prepetition Credit Facility constitutes a single undersecured credit facility.

51. Nowhere in the Prepetition Credit Agreement is the Prepetition Credit Facility Debt divided into secured and unsecured obligations. Rather, Prepetition Credit Facility Debt is treated as a unitary obligation of the Credit Agreement Obligors, subject to the same terms and conditions, such as maturity and interest rate.

52. The term “secured obligations” in the Second Amended Pledge Agreement does not denote a separate tranche of debt under the Prepetition Credit Facility that is fully secured and distinct from unsecured obligations. Instead, the term “secured obligations” was defined in the Second Amended Pledge Agreement as limiting that portion of the Prepetition Credit Facility Debt that could be partially secured without “exceeding the Lowest Indenture Basket.”

53. As the Prepetition Credit Facility Debt was approximately \$272 million on the Petition Date and the Secured Obligation Cap was \$46.1 million (or, at most \$139.2 million), by definition the Prepetition Credit Facility was undersecured. Because the Prepetition Credit Facility is undersecured, neither the Prepetition Agent nor the Prepetition Lenders are entitled to postpetition payments in respect of the Prepetition Credit Facility Debt, whether in the form of interest, fees, expenses or otherwise.

54. The Committee is entitled to a declaration, pursuant to 28 U.S.C. § 2201 and Bankruptcy Rule 7001(9), that the Prepetition Credit Facility is a single, undersecured obligation, and an order, pursuant to 28 U.S.C. § 2202, granting such further relief that may be proper based on the Court’s declaration.

## **COUNT VI**

### **FOR A DECLARATION REGARDING ALLOCATION OF PRE-PETITION COLLATERAL**

55. The Committee restates and realleges the foregoing paragraphs, which are incorporated by reference as if set forth fully herein.

56. Finally, the Committee seeks a declaration that regardless of the date the Secured Obligation Cap is determined, the obligations secured pursuant to the Second Amended Pledge Agreement must be those letters of credit outstanding and revolver borrowings outstanding as of the date the Secured Obligation Cap is measured. In other words, the pledged collateral cannot be reallocated to borrowings made subsequent to the date the Secured Obligation Cap is measured.

57. Thus, if September 30, 2008 is the Secured Obligation Cap determination date, the Committee seeks a declaration that the \$139.2 million in collateral securing the Prepetition Credit Facility Debt must be allocated exclusively to the \$92 million in letters of credit and approximately \$70 million in revolver borrowings that were outstanding under the Prepetition Credit Facility as of such date. The Prepetition Agent cannot reallocate the \$92 million in letter of credit collateral to revolver borrowings made after September 30, 2009, as it has tried to do, merely because the letters of credit have not been drawn upon.

58. The same logic applies with respect to allocation if the Secured Obligation Cap determination date is December 30, 2008 or later. The \$46.1 million in available collateral must be apportioned among the actual debt obligations then outstanding, and cannot be reallocated to subsequent borrowings.

59. If the Court grants the requested declaratory relief, only a limited amount in prepetition revolver borrowings would be entitled to the benefit of the collateral securing the Prepetition Credit Facility Debt and all other revolver borrowings would be rendered prepetition unsecured obligations of the Debtors' estates.

60. Moreover, if the letters of credit entitled to the benefit of the collateral are never drawn, additional previously encumbered property will be available to satisfy the claims of the Debtors' unsecured creditors.

61. Accordingly, pursuant to 28 U.S.C. § 2201 and Bankruptcy Rule 7001(9), the Committee requests that this Court declare that, regardless of the date the Secured Obligation Cap is set, the obligations secured pursuant to the Second Amended Pledge Agreement must be those letters of credit outstanding and revolver borrowings outstanding as of the date the Secured Obligation Cap is measured and an order, pursuant to 28 U.S.C. § 2202, granting such further relief that may be proper based on the Court's declaration.

**RESERVATION OF RIGHTS**

62. The Committee believes that additional claims in favor of one or more of the Debtors' estates against the Defendants and/or other parties may exist. The Committee reserves any and all rights to bring such claims to the extent authorized by the Court and/or applicable law.

**PRAYER FOR RELIEF**

WHEREFORE, by reason of the foregoing, Plaintiff requests that the Court enter judgment against the Prepetition Agent:

1. Avoiding the Inventory Liens and preserving such liens for the benefit of the Debtors' estates under Bankruptcy Code section 551;
2. Avoiding the SPV Equity Lien and preserving such lien for the benefit of the Debtors' estates under Bankruptcy Code section 551;

3. Avoiding and preserving the transfers of the Cash Payments, and recovering the transfers of the Cash Payments, or the value thereof, for the benefit of the Debtors' estates;
4. Declaring that the maximum aggregate amount of Prepetition Credit Facility Debt that can be secured under the Second Amended Pledge Agreement is no more than \$46.1 million;
5. Declaring that the Prepetition Credit Facility constitutes a single, undersecured credit facility;
6. Declaring that, regardless of the date the Secured Obligation Cap is measured, the obligations secured pursuant to the Second Amended Pledge Agreement must be those letters of credit outstanding and revolver borrowings outstanding as of the date the Secured Obligation Cap is measured;
7. Unwinding the Roll-Up and any amounts paid in connection therewith (including interest, fees, expenses and other costs) based on the amount of permitted secured obligations on the Petition Date and the value of any non-avoided liens securing such obligations as of the Petition Date;
8. Recovering for the benefit of the Debtors' estates any amounts paid as "adequate protection" or otherwise (including interest, expenses, fees and other costs) in connection with the Prepetition Credit Facility Debt based on the amount of permitted secured obligations on the Petition Date and the value of any non-avoided liens securing such obligations as of the Petition Date; and

9. Granting such other and further relief as the Court deems just, proper and equitable, including the fees, costs, interest, and expenses of this action.

Dated: New York, New York  
\_\_\_\_\_, 2009

**THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF  
CHEMTURA CORPORATION, ET AL.**

By: DRAFT\_\_\_\_\_

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