

Summary of Objections to Debtors' Estimation Motion

Objecting Party	Objection Summary	Debtors' Comments
Humphrey Farrington	Humphrey Farrington requests the appointment of a "Diacetyl Claimants Committee," which would be allowed to participate in any estimation on behalf of their constituency. Humphrey Farrington has already sent a letter to the Trustee regarding this Committee; if the Trustee denies the request, Humphrey Farrington intends to file a motion with this Court. (Limited Opp'n Of Karen Smith And Certain Other Diacetyl Claimants To Debtors' Mot. For Entry Of An Order Authorizing The Estimation Of Diacetyl Claims, Establishing Estimation Procedures, And Granting Certain Related Relief (Corrected Version) [Dkt. No. 2349] at 2-3)	<p>The Debtors respond that whether to appoint a Diacetyl Claimants Committee will be resolved by the Trustee pursuant to Section 1102(a)(1) of the Bankruptcy Code, and the question of committee appointment is not ripe before this Court until after the Trustee's decision has been made. The Debtors will urge the Trustee not to appoint a Diacetyl Claimants Committee.</p> <p>The Debtors respectfully refer the Court to the discussion of this Objection in their Omnibus Reply to the Objections to Debtors Estimation Motion, filed herewith ("Omnibus Reply") at pages 6-8.</p>
Humphrey Farrington	Humphrey Farrington requests that any order approving an estimation of the Debtors' diacetyl liability make clear that any estimate of the Debtors' liability is for the purpose of formulating and confirming a Chapter 11 plan, and shall not have any preclusive or collateral-estoppel effect on any proceedings in which individual diacetyl claims are determined or liquidated, and shall not otherwise affect the determination of the validity or amount of individual diacetyl claims. (<i>Id.</i> at 3)	<p>The Debtors have revised the Order Establishing Procedures For Estimation Of Diacetyl Claims, filed herewith (the "Estimation Order") in response to this Objection.</p> <p>The Estimation Order provides that the purpose of estimation is for purposes of preparing and confirming a plan of reorganization and that the Estimation Proceedings will not have preclusive or estoppel effect as to the determination of value of the Diacetyl Claims. (Estimation Order ¶¶1-2)</p>
Humphrey Farrington	Humphrey Farrington would like the CMO to be modified to make clear that the Debtors and other parties with whom they are aligned in this process are required to submit to discovery and are subject to the same discovery deadlines. (<i>Id.</i> at 4)	<p>The Debtors have modified the Case Management Order (filed herewith as Ex. 1 to the Estimation Order) (the "Proposed CMO") in response to this Objection.</p> <p>The Proposed CMO sets forth schedules for fact and expert discovery and provides that those schedules are applicable to all parties participating in the Estimation Proceedings. (Proposed CMO ¶¶ 4-18)</p>
Humphrey Farrington	Humphrey Farrington would like the CMO to be modified to reflect some limit on what types of documents, interrogatories, and requests for admission that the Debtors or any other party can seek. (<i>Id.</i> at 4-5).	<p>The Debtors have revised the Proposed CMO in response to this Objection.</p> <p>The Proposed CMO lists the scope of discovery and expressly directs the parties to cooperate to avoid duplicative discovery. (Proposed CMO ¶ 7)</p>

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Humphrey Farrington	Humphrey Farrington wishes the Debtors to specify whether and to what extent the estimation will include future diacetyl claims; and if future claims are to be addressed, a future claimants' representative should be appointed. (<i>Id.</i> at 5)	<p>The Debtors do not intend to estimate future diacetyl claims.</p> <p>The Debtors have revised the Estimation Order in response to this Objection by defining "Diacetyl Claims" as "diacetyl-related claims that were required to be filed on or before the bar date[.]" (Estimation Order at 1) The bar date does not apply to future claims.</p>
Humphrey Farrington	Humphrey Farrington would like the secured lenders to be precluded from participating in the estimation hearing, because this is an estimation of the Debtors' unsecured diacetyl liability. (<i>Id.</i> at 5-6)	<p>The Debtors do not see any legal basis for excluding the secured lenders, who are real parties in interest to the Estimation Proceedings.</p> <p>The Debtors respectfully refer the Court to the discussion of this Objection in their Omnibus Reply at page 12.</p>
Humphrey Farrington	The CMO does not give other parties the opportunity to submit rebuttal reports in response to the expert reports tendered by other parties. (<i>Id.</i> at 6)	<p>The Debtors respond that the Proposed CMO provides all parties an opportunity to rebut the report served by the Debtors' expert and allows the Debtors a rebuttal. Allowing the parties a sur-rebuttal, or to rebut each other's reports, would exponentially duplicate that number of expert reports and is unnecessary as all testifying experts will be subject to cross-examination at the Evidentiary Hearing.</p> <p>The Debtors respectfully refer the Court to the discussion of this Objection in their Omnibus Reply at page 13.</p>
Humphrey Farrington	Humphrey Farrington believes that limiting witnesses testifying at the estimation hearing, as provided in the CMO, is "nonsensical and unfair" and would like the CMO to be modified to permit records custodians and fact witnesses to be called. (<i>Id.</i> at 7)	<p>The Debtors respond that testimony from fact witnesses is not relevant to the Estimation Proceedings and admissibility of particular testimony for evidentiary purposes is best addressed on a case-by-case basis.</p> <p>The Debtors respectfully refer the Court to the discussion of this Objection in their Omnibus Reply at page 11.</p>

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Humphrey Farrington	Humphrey Farrington would like deadlines for the following events added to the CMO: 1) exchange of preliminary and final witness lists, with the preliminary lists being exchanged before the exchange of any expert reports; 2) exchange of estimation hearing exhibits, charts, diagrams, and Rule 1006 summaries; 3) objections to trial exhibits, charts, diagrams, and Rule 1006 summaries; 4) exchange of demonstrative exhibits; and 5) filing and service of motions <i>in limine</i> and <i>Daubert</i> motions. (<i>Id.</i> at 7-8)	<p>The Debtors have modified the Proposed CMO in response to this Objection.</p> <p>The Proposed CMO includes deadlines for exchanges of witness and exhibit lists as well the declarations and deposition testimony that will be designated for the hearing. (Proposed CMO ¶¶ 19-20)</p>
Humphrey Farrington	Humphrey Farrington would like 5 to 6 months allotted for estimation discovery and pretrial matters. (<i>Id.</i> 8)	<p>The Proposed CMO allows two additional weeks for fact discovery above what was originally contemplated; however, the Debtors maintain that the additional time requested is unnecessary. (Proposed CMO ¶¶ 8-9)</p> <p>The Debtors respectfully refer the Court to the discussion of this Objection in their Omnibus Reply at pages 10-11.</p>
Humphrey Farrington	Humphrey Farrington would like the CMO to make clear that any and all materials that an expert relies on must be produced simultaneously with the expert's report, and that the CMO should provide that draft expert reports and communications between expert and the attorneys for the party who retained the expert will not be discoverable. (<i>Id.</i> 8)	<p>The Debtors have modified the Proposed CMO in response to this Objection.</p> <p>The Proposed CMO provides for production of documents relied upon by testifying experts and that communications between counsel and experts, as well as draft reports, are not discoverable. (Proposed CMO ¶¶14-17)</p>
Humphrey Farrington	Humphrey Farrington would like ¶ 15 of the Confidentiality Order revised to limit the disclosure of confidential discovery material within Kirkland & Ellis (and other firms), so that the materials are disclosed only to bankruptcy/restructuring counsel and not to product-liability defense attorneys employed by the firm. (<i>Id.</i> 9)	The Debtors intend to continue working with the Claimants and the Committees to reach agreement on the scope of access to the settlement information and anticipate that they will submit a revised Proposed Protective Order in advance of the hearing.

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Ungerer	Ungerer requests the appointment of a “Diacetyl Claimants Committee” formed to represent the cumulative interests of the Diacetyl Claimants in connection with the estimation hearing and the treatment of their claims in connection with any Plan, and to clarify the nature and scope of the estimation hearing. (See Objection Of Ungerer & Company To Debtor[s'] Mot. For Entry Of An Order Authorizing The Estimation Of Diacetyl Claims, Establishing Estimation Procedures, And Granting Certain Related Relief [Dkt. No. 2352] at 5-10)	<p>The Debtors respond that whether to appoint a Diacetyl Claimants Committee will be resolved by the Trustee pursuant to Section 1102(a)(1) of the Bankruptcy Code, and the question of committee appointment is not ripe before this Court until after the Trustee’s decision has been made. The Debtors will urge the Trustee not to appoint a Diacetyl Claimants Committee.</p> <p>The Debtors respectfully refer the Court to the discussion of this Objection in their Omnibus Reply at pages 6-8.</p>
Ungerer	Ungerer objects to the allotment of only one month to conduct fact discovery. (<i>Id.</i> at 11-13)	<p>The Proposed CMO allows two additional weeks for fact discovery above what was originally contemplated; however, the Debtors maintain that the additional time requested is unnecessary. (Proposed CMO ¶¶ 8-9)</p> <p>The Debtors respectfully refer the Court to the discussion of this Objection in their Omnibus Reply at pages 10-11.</p>
Ungerer	Ungerer asks that the order be revised to clarify the nature and/or scope of the estimation hearing; specifically, Ungerer requests that the order specify that the hearing shall not be for the purpose of estimating any particular claim for any purpose, including without limitation: allowance, the legal question of liability to any individual claimant, and/or to fix the value of any individual claim for distribution purposes. (<i>Id.</i> at 11-13)	<p>The Debtors have revised the Estimation Order in response to this Objection.</p> <p>The Estimation Order provides that the purpose of estimation is for purposes of preparing and confirming a plan of reorganization and that the Estimation Proceedings will not have preclusive or estoppel effect as to the determination of value of the Diacetyl Claims. (Estimation Order ¶¶ 1-2)</p>
Ungerer	Ungerer wishes the definitions of “Diacetyl Claimants” and “Claimants” in the CMO, PO and order to be revised to make clear that the terms also apply to Ungerer and other corporate defendants. (<i>Id.</i> at 14-15)	<p>The Debtors have revised the Proposed CMO in response to this Objection by defining “Diacetyl Claimants” as tort claimants who were required to file diacetyl- and/ or acetoin-related proofs of claim. (Proposed CMO ¶ 4)</p>
Ungerer	Ungerer would like the CMO to be modified to make clear that discovery received in response to discovery served upon a non-party shall be served on all other parties. (<i>Id.</i> at 14-15)	<p>The Debtors have revised the Proposed CMO in response to this Objection.</p> <p>The Proposed CMO requires that documents produced by one party be simultaneously served on all other parties. (Proposed CMO ¶ 11)</p>

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Ungerer	Ungerer would like the PO to be modified to permit the Diacetyl Claimants' (including Ungerer's counsel) to see any confidential discovery materials provided to counsel for the Debtors, the committees, and/or the experts. (<i>Id.</i> at 15)	The Debtors intend to continue working with the Claimants and the Committees to reach agreement on the scope of access to the settlement information and anticipate that they will submit a revised Proposed Protective Order in advance of the hearing.
Equity Committee	Equity Committee seeks in discovery certain additional information now in existence. (<i>See</i> Limited Objection Of The Official Committee Of Equity Security Holders To Debtors' Mot. For Entry Of An Order Authorizing Estimation Of Diacetyl Claims, Establishing Estimation Procedures, And Granting Certain Related Relief [Dkt. No. 2281] And Limited Reply To The Limited Objection Of Karen Smith And Certain Other Diacetyl Claimants [Dkt. No. 2351] at 2 n.2.)	The Debtors have revised the Proposed CMO in response to this Objection. The Proposed CMO provides that the scope of discovery includes only documents that are now in existence and that parties may object to producing documents on relevance, and other grounds, pursuant to the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure and Local Rules of this Court. (Proposed CMO ¶ 7)
Equity Committee	The Equity Committee proposes extending the production deadline by a minimum of two additional weeks. (<i>Id.</i> at 3)	The Proposed CMO allows two additional weeks for fact discovery above what was originally contemplated; however, the Debtors maintain that the additional time requested is unnecessary. (Proposed CMO ¶¶ 8-9) The Debtors respectfully refer the Court to the discussion of this Objection in their Omnibus Reply at pages 10-11.
Equity Committee	The Equity Committee proposes that the Debtors and the Equity Committee combine their subpoenas/discovery requests and serve these combined subpoenas/discovery requests on the Diacetyl Claimants. (<i>Id.</i> at 3)	The Debtors have revised the Proposed CMO in response to this Objection. The Proposed CMO provides that the "Parties agree to serve joint Discovery Requests, if possible, in an effort to avoid duplicative discovery, minimize expenses, and promote the efficiency of these proceedings." (Proposed CMO ¶ 7)
Equity Committee	The Equity Committee objects to the Humphrey Farrington objection, to the extent Humphrey Farrington proposes to limit "CHEMTURA BANKRUPTCY ATTORNEY'S EYES ONLY" documents solely to bankruptcy and restructuring attorneys at the representing firms. (<i>Id.</i> at 4-5)	The Debtors intend to continue working with the Claimants and the Committees to reach agreement on the scope of access to the settlement information and anticipate that they will submit a revised Proposed Protective Order in advance of the hearing.

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Citrus	Citrus would like the Debtors to clarify whether, by and through their experts, they intend to value the diacetyl-related claims as to all defendants in the aggregate, or whether they intend to estimate the value of the claims only as to the Debtors and/or as to all defendants individually. (<i>See</i> Resp. Of Citrus & Allied Essences, Ltd. In Connection With Debtors' Mot. Seeking An Order Authorizing The Estimation Of Diacetyl Claims, Establishing Procedures, And Granting Certain Related Relief [Dkt. No. 2366] at 4-5)	<p>The Debtors respond that Citrus's request for information on the method the Debtors intend to use to value the claims is premature.</p> <p>The Debtors respectfully refer the Court to the discussion of this Objection in their Omnibus Reply at pages 12-13.</p>
Citrus	Should the Debtors intend to value the Liquidated Claims at something less than the actual liquidated amount, Citrus wishes to reserve the right to retain its own expert to value these claims. (<i>Id.</i> at 5 n.4)	The Debtors have no objection to Citrus retaining its own valuation expert. The Proposed CMO provides that Citrus, as a Diacetyl Claimant, may prepare and serve an expert report. (Proposed CMO ¶ 15)
Citrus	Citrus would like the definitions of "Diacetyl Claims," "Diacetyl Claimants," and "diacetyl-related claims" to be revised to make it clear that Citrus and/or its claims for contribution and indemnity are included within the meaning of the terms. (<i>Id.</i> at 5-7)	<p>The Debtors have revised the Estimation Order and Proposed CMO in response to this Objection.</p> <p>The Estimation Order defines "Diacetyl Claims" as "diacetyl-related claims that were required to be filed on or before the bar date." (Estimation Order at 1) "Diacetyl Claimants" are defined as tort claimants who were required to file diacetyl- and/or acetoin-related proofs of claim. (Proposed CMO ¶ 4)</p>

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Chartis	<p>Chartis requests that certain “insurance neutrality” terms be included in any order issued by this Court, providing that any estimation of Diacetyl Claims is not binding on the Chartis Insurers for any insurance coverage or any other purpose, and may not be used against the Chartis Insurers by any parties, entities, or individuals. (<i>See</i> Limited Objection And Reservation Of Rights Of The Chartis Insurers To Debtors’ Mot. For Entry Of An Order Authorizing Estimation Of Diacetyl Claims, Establishing Estimation Procedures, And Granting Certain Related Relief at 7)</p>	<p>The Debtors have revised the Estimation Order in response to this Objection.</p> <p>The Estimation Order provides that the Estimation Proceedings shall not determine: “the existence and/or scope of any insurance coverage under any insurance policies...” or “the insurers’ rights, claims, defenses, exclusions, and/or obligations under the Debtors’ Policies, or any insurance policies or related agreements or otherwise regarding the Diacetyl Claims.” (Estimation Order ¶1) The Order further provides that the Estimation Proceedings will not have preclusive or collateral estoppels effect on subsequent actions concerning “the existence and/or scope of any insurance coverage under the Debtors’ Policies” or “insurers’ rights, claims, defenses, exclusions and/or obligations under the Debtors’ Policies.” (<i>Id.</i> ¶2)</p>
Interstate Fire & Casualty Company	<p>Interstate Fire & Casualty Company requests that certain “insurance neutrality” terms be included in any CMO governing estimation proceedings, making clear that any estimation of Diacetyl Claims is not binding on Insurers for any insurance coverage or any other purpose, and is not used against Insurers by any parties, entities, or individuals claiming that findings and/or rulings from such estimation trigger any defense, indemnification, or other coverage obligations on the part of Insurers. (<i>See</i> Limited Objection And Reservation Of Rights Of Certain Insurers To Debtors’ Mot. For Entry Of An Order Authorizing Estimation Of Diacetyl Claims, Establishing Estimation Procedures, And Granting Certain Related Relief [Dkt. No. 2372] at 13)</p>	<p>The Debtors have revised the Estimation Order in response to this Objection.</p> <p>The Estimation Order provides that the Estimation Proceedings shall not determine: “the existence and/or scope of any insurance coverage under any insurance policies...” or “the insurers’ rights, claims, defenses, exclusions, and/or obligations under the Debtors’ Policies, or any insurance policies or related agreements or otherwise regarding the Diacetyl Claims.” (Estimation Order ¶1) The Order further provides that the Estimation Proceedings will not have preclusive or collateral estoppels effect on subsequent actions concerning “the existence and/or scope of any insurance coverage under the Debtors’ Policies” or “insurers’ rights, claims, defenses, exclusions and/or obligations under the Debtors’ Policies.” (<i>Id.</i> ¶2)</p>

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Hartford Accident & Indemnity Company, et al.	Hartford requests that any order include a reservation of rights making clear that estimation of the Diacetyl Claims is neither binding on Hartford nor affects and of Hartford's claims or defenses in any subsequent coverage action. (<i>See</i> Limited Objection To Debtors' Mot. For Entry Of An Order Authorizing Estimation Of Diacetyl Claims, Establishing Estimation Procedures, And Granting Certain Related Relief [Dkt. No.2374] at 4)	<p>The Debtors have revised the Estimation Order in response to this Objection.</p> <p>The Estimation Order provides that the Estimation Proceedings shall not determine: "the existence and/or scope of any insurance coverage under any insurance policies..." or "the insurers' rights, claims, defenses, exclusions, and/or obligations under the Debtors' Policies, or any insurance policies or related agreements or otherwise regarding the Diacetyl Claims." (Estimation Order ¶1) The Order further provides that the Estimation Proceedings will not have preclusive or collateral estoppel effect on subsequent actions concerning "the existence and/or scope of any insurance coverage under the Debtors' Policies" or "insurers' rights, claims, defenses, exclusions and/or obligations under the Debtors' Policies." (<i>Id.</i> ¶2)</p>
ACE Insurers	ACE Insurers request that certain "insurance neutrality" terms be included in any order governing estimation proceedings, making clear that any estimation of Diacetyl Claims is not binding on ACE Insurers for insurance coverage or any other purpose, and is not used against Insurers by any parties, entities, or individuals claiming that findings and/or rulings from such estimation trigger any defense, indemnification, or other coverage obligations on the part of ACE Insurers. (<i>See</i> ACE Insurers Limited Objection And Reservation Of Rights In Response To Debtors' Mot. For Entry Of An Order Authorizing Estimation Of Diacetyl Claims, Establishing Estimation Procedures, And Granting Certain Related Relief [Dkt. No. 2376] at 3)	<p>The Debtors have revised the Estimation Order in response to this Objection.</p> <p>The Estimation Order provides that the Estimation Proceedings shall not determine: "the existence and/or scope of any insurance coverage under any insurance policies..." or "the insurers' rights, claims, defenses, exclusions, and/or obligations under the Debtors' Policies, or any insurance policies or related agreements or otherwise regarding the Diacetyl Claims." (Estimation Order ¶1) The Order further provides that the Estimation Proceedings will not have preclusive or collateral estoppel effect on subsequent actions concerning "the existence and/or scope of any insurance coverage under the Debtors' Policies" or "insurers' rights, claims, defenses, exclusions and/or obligations under the Debtors' Policies." (<i>Id.</i> ¶2)</p>

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Underwriters at Lloyd's, London	<p>The Underwriters at Lloyd's, London joined the objection of Interstate Fire & Casualty Company, specifically seeking that "insurance neutrality" language be included in any order governing Estimation Procedures. (<i>See Joinder to Limited Objection and Reservation of Rights of Certain Insurers to Debtors' Motion for Entry of an Order Authorizing Estimation of Diacetyl Claims, Establishing Estimation Procedures, and Granting Certain Related Relief</i> [Dkt. No. 2380] at 1)</p>	<p>The Debtors have revised the Estimation Order in response to this Objection.</p> <p>The Estimation Order provides that the Estimation Proceedings shall not determine: "the existence and/or scope of any insurance coverage under any insurance policies..." or "the insurers' rights, claims, defenses, exclusions, and/or obligations under the Debtors' Policies, or any insurance policies or related agreements or otherwise regarding the Diacetyl Claims." (Estimation Order ¶1) The Order further provides that the Estimation Proceedings will not have preclusive or collateral estoppels effect on subsequent actions concerning "the existence and/or scope of any insurance coverage under the Debtors' Policies" or "insurers' rights, claims, defenses, exclusions and/or obligations under the Debtors' Policies." (<i>Id.</i> ¶2)</p>