

Richard M. Cieri  
M. Natasha Labovitz  
Craig A. Bruens  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, NY 10022-4611  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

David J. Zott, P.C.  
Alyssa A. Qualls  
KIRKLAND & ELLIS LLP  
300 North LaSalle Street  
Chicago, IL 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

Counsel to the Debtors and Debtors in Possession

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

---

In re:	)	
	)	Chapter 11
CHEMTURA CORPORATION, <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 09-11233 (REG)
Debtors.	)	
	)	Jointly Administered

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: Chemtura Corporation (3153); A&M Cleaning Products, LLC (4712); Aqua Clear Industries, LLC (1394); ASCK, Inc. (4489); ASEPSIS, Inc. (6270); BioLab Company Store, LLC (0131); BioLab Franchise Company, LLC (6709); Bio-Lab, Inc. (8754); BioLab Textile Additives, LLC (4348); CNK Chemical Realty Corporation (5340); Crompton Colors Incorporated (3341); Crompton Holding Corporation (3342); Crompton Monochem, Inc. (3574); GLCC Laurel, LLC (5687); Great Lakes Chemical Corporation (5035); Great Lakes Chemical Global, Inc. (4486); GT Seed Treatment, Inc. (5292); HomeCare Labs, Inc. (5038); ISCI, Inc. (7696); Kem Manufacturing Corporation (0603); Laurel Industries Holdings, Inc. (3635); Monochem, Inc. (5612); Naugatuck Treatment Company (2035); Recreational Water Products, Inc. (8754); Uniroyal Chemical Company Limited (Delaware) (9910); Weber City Road LLC (4381); and WRL of Indiana, Inc. (9136).



091123310012000000000009



## **FIRST AMENDED COMPLAINT**

Plaintiff Chemtura Corporation (“**Chemtura**”) and certain of its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), by and through their attorneys, Kirkland & Ellis LLP, for their First Amended Complaint against Defendant United States of America (the “**United States**”) and the State Defendants (as defined below) (collectively, the “**Defendants**”) allege as follows:

### **The Parties**

1. Plaintiff Chemtura is a Delaware corporation having its principal place of business at 199 Benson Road, Middlebury, Connecticut 06749. On March 18, 2009 (the “**Petition Date**”), Chemtura and each of the other Debtors filed with this Court a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are continuing to operate their businesses and manage their property as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. Plaintiff Great Lakes Chemical Corporation (“**GLCC**”), a debtor in the above-captioned chapter 11 cases, is a Delaware corporation having its principal place of business at 2226 Haynesville Highway, El Dorado, Arkansas 71730.

3. Plaintiff ISCI, Inc. (“**ISCI**”), a debtor in the above-captioned chapter 11 cases, is an Indiana corporation having its principal place of business at 251 East Ohio Street, Suite 500, Indianapolis, Indiana.

4. Plaintiff Kem Manufacturing Corporation (“**Kem**”), a debtor in the above-captioned chapter 11 cases, is a Georgia corporation having its principal place of business at 40 Technology Parkway South, #300, Norcross, Georgia 30092.

5. Plaintiff Naugatuck Treatment Company (“**Naugatuck**”), a debtor in the above-captioned chapter 11 cases, is a Connecticut corporation having its principal place of business at 500 Cherry Street, Naugatuck, Connecticut 06770.

6. Defendant United States, including and on behalf of its affiliated federal governmental units and regulatory agencies including the United States Environmental Protection Agency (“**EPA**”), have issued or may issue environmental remediation orders, consent decrees, notices of liability, or otherwise claim authority to impose liabilities or obligations upon the Debtors with respect to environmental, health, and safety matters.

7. The states and respective state agencies listed below (collectively, the “**State Defendants**”), have issued or may issue environmental remediation orders, consent decrees, notices of liability, or otherwise claim authority to impose liabilities or obligations upon the Debtors with respect to environmental, health, and safety matters:

- (a) The California Department of Toxic Substances Control (“**DTSC**”), the California State Water Resources Control Board (“**CSWRCB**”) and the Santa Ana Regional Water Quality Control Board (“**SARWQCB**”);
- (b) State of Connecticut and the Connecticut Commissioner of Environmental Protection (“**CDEP**”);
- (c) State of Florida and the Florida Department of Environmental Protection (“**FDEP**”);
- (d) State of New Jersey, the New Jersey Department of Environmental Protection (“**NJDEP**”) and the Administrator of New Jersey Spill Compensation Fund (“**ANJSCF**”);
- (e) State of New York and the New York State Department of Environmental Conservation (“**NYDEC**”);
- (f) State of North Carolina, the North Carolina Department of Environment and Natural Resources (“**NCDENR**”) and the North Carolina Division of Waste Management (“**NCDWM**”); and
- (g) Commonwealth of Pennsylvania and the Pennsylvania Department of Environmental Protection (“**PaDEP**”).

## **Jurisdiction and Venue**

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b).

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

10. Declaratory relief is appropriate pursuant to Federal Rule of Bankruptcy Procedure 7001 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

## **Background**

### **I. Introduction**

11. The Debtors are globally diversified manufacturers and marketers of specialty chemicals products, most of which are sold to industrial manufacturing customers for use as additives, ingredients or intermediates that add value to their end products. As specialty chemical manufacturers, the Debtors have an operating history of more than 100 years. Specifically, Chemtura is the successor to Crompton & Knowles Corporation, which was incorporated in 1900 and first engaged in the manufacture and sale of specialty chemicals beginning in 1954. Chemtura and its affiliates and subsidiaries are the product of expansion through both organic growth and numerous acquisitions and mergers, including the 1996 acquisition of Uniroyal Chemical Company, Inc., the 1999 merger with Witco Corporation (“**Witco**”) and the 2005 acquisition of Great Lakes Chemical Corporation. As a result of those and other mergers and acquisitions, as well as sales of certain business lines, the Debtors are burdened by a variety of “legacy” liabilities.

12. The Debtors face potentially significant environmental liabilities and obligations at numerous “legacy” sites that are not currently part of the Debtors’ bankruptcy estates, which arose largely as a result of the lengthy industrial history of the Debtors’ predecessors. These

sites include previously owned or operated sites that are no longer owned or operated by the Debtors and third-party sites that have never been owned by the Debtors to which the Debtors or their predecessors are alleged to have sent waste or other materials (*see* ¶¶ 15-20 *infra* for a further description of such sites).

13. The Debtors are allegedly subject to environmental orders, consent decrees, notices of liability, claims, demands, statutory or regulatory requirements, and other actual or contingent obligations and liabilities, including injunctive obligations to perform response actions with respect to actual or potential releases and threats of releases of hazardous substances or other contaminants, that the Defendants have asserted or could assert in connection with the ten sites described below in paragraphs 15 to 20 and related Exhibits attached hereto (collectively, the “**Environmental Orders and Obligations**”). Each of these sites is covered by one or more Proofs of Claim that the Defendants have filed against Debtors. The Debtors now seek a declaratory judgment that the Environmental Orders and Obligations are dischargeable as prepetition, general, unsecured claims in the Debtors’ chapter 11 cases.

14. The Debtors currently own or operate numerous other facilities and properties which are part of the Debtors’ estates (“**Debtor Owned Sites**”). In this Complaint, the Debtors do not seek any relief with respect to the Debtor Owned Sites.

## **II. Former Sites**

15. The Debtors or their predecessors formerly owned or conducted operations at seven properties or facilities, among others, in seven states including Alabama, California, Florida, New Jersey, New York, North Carolina and Pennsylvania (collectively, the “**Former Sites**”). Specifically, these Former Sites include the following properties:

## **United States and EPA**

- (a) In Le Moyne, Alabama, Witco, a predecessor of Chemtura, leased a property located at US Hwy 43, Axis, AL 36505. Witco ceased operations at the property in 1979. In March 2001, CK Witco Corporation, also a predecessor of Chemtura, entered into a consent decree with the EPA and Akzo Nobel Chemicals, Inc. related to the Le Moyne property, known as the “Stauffer Chemical Co. (LeMoyne Plant) Superfund Site.” (Attached hereto as Ex. 1.) The United States filed a “protective” proof of claim relating to the Le Moyne, Alabama site contending that the Debtors’ injunctive obligations relating to the site are not dischargeable, while estimating \$2 million in future remedial costs for the site. (Proof of Claim 11672, attached hereto as Ex. 2.)

## **California, CSWRCB and SARWQCB**

- (b) In Irvine, California, GLCC owned a property located at 17461 Derian Avenue, Irvine, CA 92614. GLCC sold the property in 2000. In April 1997, the SARWQCB issued Cleanup and Abatement Order No. 97-38 to GLCC. (Attached hereto as Ex. 3.) CSWRCB and SARWQCB filed “protective” proofs of claim relating to the Irvine, California site contending that the Debtors’ investigation and remedial obligations relating to the site are not dischargeable, while seeking \$1,636.87 (as of March 18, 2009) in unreimbursed past oversight costs and administrative expense priority payment for post-petition oversight costs for the site. (Proofs of Claim 11700 and 11726, attached hereto as Ex. 4.)

## **Florida and FDEP**

- (c) In Tampa, Florida, CNK Disposition Corp. (“**CNK Disposition**”), a predecessor to Chemtura, owned a property located at 5414 North 56th Street, Tampa, FL 33610. CNK Disposition sold the property in 2001. In February 1986, the Florida Department of Environmental Regulation, a predecessor to FDEP, issued Consent Order 84-0613. (Attached hereto as Ex. 5.) In July 2005, Uniroyal Chemical Company, Inc., also a predecessor to Chemtura, and the FDEP entered into the 2005 Brownfield Site Rehabilitation Agreement. (Attached hereto as Ex. 6.) FDEP, on behalf of the State of Florida, filed a “protective” proof of claim relating to sites in Florida formerly owned or operated by the Debtors, including but not limited to the Tampa, Florida site, contending that any of the Debtors’ obligations relating to such sites are not dischargeable, while also estimating \$2 million in future remedial costs for such sites and seeking administrative expense priority payment for certain costs associated with such sites. (Proof of Claim 11046, attached hereto as Ex. 7.)

### **New Jersey and NJDEP**

- (d) In Brainards, New Jersey, Witco, a Chemtura predecessor, owned a property located at 2555 River Road, Harmony Township, NJ 08865. Witco sold the property in 1997 to Harmony Township. In September 1997, Witco entered into a Remediation Agreement with NJDEP (Attached hereto as Ex. 8.) NJDEP and ANJSCF filed a “protective” proof of claim relating to the Brainards, New Jersey site contending that the Debtors’ injunctive obligations relating to the site are not dischargeable, while seeking \$232,587 in past oversight costs and \$535,452.39 in natural resource damages for the site. (Proof of Claim 10718, attached hereto as Ex. 9.)

### **New York and NYDEC**

- (e) In Brooklyn, New York, Witco, a Chemtura predecessor, owned a property located at 688-700 Court Street, Brooklyn, NY 11231. Chemtura sold the property in 2004. In May 2002, the Order on Consent (Case No.: R2-0346-98-01) was entered between Crompton Corporation, a Chemtura predecessor, and NYDEC. (Attached hereto as Ex. 10.) NYDEC filed a “protective” proof of claim relating to the 688-700 Court Street site contending that the Debtors’ injunctive obligations relating to the site are not dischargeable, while estimating \$4,321,000 in future remedial costs for the site. (Proof of Claim 11495, attached hereto as Ex. 11.)

### **North Carolina and NCDENR**

- (f) In Lowell, North Carolina, Crompton, a Chemtura predecessor, owned and operated a property located at 1602 N. Main Street, Lowell, NC, between 1978 and 1999. NCDWM of the NCDENR filed a “protective” proof of claim relating to the Lowell, North Carolina site contending that the Debtors have injunctive cleanup obligations relating to the site that are not dischargeable, while estimating \$34-37 million in future remedial costs. (Proofs of Claim 10963 and 11682, attached hereto as Ex. 12.)

### **Pennsylvania and PaDEP**

- (g) In Bradford, Pennsylvania, Witco, a Chemtura predecessor, owned a property located at 77 North Kendall Ave., Bradford, PA 16701. Witco sold the property in 1997 to American Refining Group (“ARG”). In June 2004, Crompton, ARG, and PaDEP entered into a Consent Order and Agreement concerning the Bradford, Pennsylvania site. (Attached hereto as Ex. 13.) PaDEP filed a “protective” proof of claim relating to the Bradford, Pennsylvania site contending that the Debtors’ cleanup obligations relating to the site are not dischargeable. (Proof of Claim 11903, attached hereto as Ex. 14.)



16. The Former Sites consist only of sites previously owned or operated by the Debtors or their predecessors that were not owned or operated by the Debtors since the Petition Date, such that the Former Sites are not part of the Debtors' estates pursuant to section 541 of the Bankruptcy Code.

17. The Defendants contend or may contend that the Debtors are liable for or subject to Environmental Orders and Obligations with respect to the Former Sites and that such Environmental Orders and Obligations may not be discharged as general unsecured claims in these chapter 11 cases.

### **III. Third-Party Sites**

18. The Debtors have identified three sites, among others, that are and have always been owned by unaffiliated third parties with respect to which the Debtors may be subject to Environmental Orders and Obligations associated with the disposal of wastes or other materials allegedly generated by the Debtors or their predecessors (collectively, the "**Third-Party Sites**") in California, Connecticut and New York. Specifically, these Third-Party Sites include the following properties:

#### **United States and EPA**

- (a) At the Gowanus Canal site, which is located in Brooklyn, New York, the EPA issued a Notice of Potential Liability and Request for Information Pursuant to CERCLA, dated July 10, 2009, to Chemtura. (Attached hereto as Ex. 15). The United States filed a "protective" proof of claim relating to the Gowanus Canal site contending that the Debtors' injunctive obligations relating to the site are not dischargeable, while estimating more than \$1 billion in future remedial costs and \$137,581.62 in unreimbursed past EPA response costs. (Proof of Claim 11672, attached hereto as Ex. 2.)

## **United States, EPA, Connecticut and CDEP**

- (b) At the Laurel Park, Inc. Superfund Site site, which is located in Naugatuck, Connecticut, the United States, on behalf of EPA, and Connecticut entered into a Consent Decree with Uniroyal Chemical Company, a Chemtura predecessor, pursuant to CERCLA on August 13, 1992. (Attached hereto as Ex. 16). The United States filed “protective” proofs of claim relating to the Laurel Park, Inc. Superfund Site against Chemtura and Naugatuck, contending that Debtors’ obligations relating to the site are not dischargeable, while estimating more than \$19,326,478 in future remedial costs. (Proofs of Claim 11993 and 11672, attached hereto as Exs. 2 and 17.) The Connecticut Commissioner of Environmental Protection filed “protective” proofs of claim relating to the Laurel Park, Inc. Superfund Site against Chemtura and Naugatuck, contending that Debtors’ obligations relating to the site are not dischargeable, while estimating more than \$8,251,196 in future remedial costs. (Proofs of Claim 11513 and 11569, attached hereto as Ex. 18.)

## **California and DTSC**

- (c) With respect to the San Joaquin Drum Company Site in San Joaquin, California, Chemtura entered into an Agreement with DTSC, dated March 12, 2008, requiring Chemtura to conduct certain remedial activities at the site. (Attached hereto as Ex. 19.) DTSC filed a proof of claim relating to the San Joaquin site seeking \$1,250,000 in past and future costs for the site and reserving rights to amend the claim and take enforcement action against Chemtura relating to the site. (Proof of Claim 305 attached hereto as Ex. 20.)

19. The Third-Party Sites have never been owned by the Debtors and are not a part of the Debtors’ bankruptcy estates pursuant to section 541 of the Bankruptcy Code. The Third-Party Sites consist only of sites to which the Debtors or their predecessors are alleged to have sent waste or other materials.

20. The Defendants contend or may contend that the Debtors are liable for or subject to Environmental Orders and Obligations with respect to the Third-Party Sites and that such Environmental Orders and Obligations may not be discharged as general unsecured claims in these chapter 11 cases.

#### **IV. The Debtors' Approach to Addressing Environmental Orders and Obligations and the Need for Declaratory Relief**

21. Since the commencement of these chapter 11 cases, the Debtors have been engaged in a concerted effort to negotiate with state and federal agencies, including the United States Department of Justice on behalf of the EPA and several of the State Defendants, including the States of California, Florida, New Jersey, New York and Pennsylvania, in an attempt to achieve consensual resolution of the dischargeability of the Environmental Orders and Obligations relating to the Former Sites and the Third-Party Sites in the Debtors' chapter 11 cases. During these negotiations, the Debtors continued to perform remediation obligations at certain sites under a full reservation of rights.

22. The Debtors' negotiations with the governmental agencies have not resulted in mutually acceptable terms of settlement with such governmental agencies. The Debtors cannot afford to have their reorganization and emergence delayed by their inability to achieve a consensual resolution with the Defendants. Debtors believe that a ruling from this Court on the threshold legal issue of whether environmental obligations relating to Former Sites and Third-Party Sites are dischargeable claims will materially advance negotiations with Defendants.

23. Notwithstanding the filing of this Complaint, the Debtors wish to make clear that they intend to continue their efforts to work cooperatively with the federal and state agencies to reach mutually acceptable terms regarding the dischargeability of the Environmental Orders and Obligations.

24. While the Debtors may ultimately dispute their liability for Environmental Orders and Obligations for the Former Sites and Third-Party Sites and the factual predicate for that asserted liability, such dispute is not the subject of this Complaint. The sole issue raised in this Complaint is the legal question whether any liability for Environmental Orders and Obligations

that exists with respect to the Former Sites and Third-Party Sites is a “claim” under the Bankruptcy Code.

25. This Court’s determination that the Environmental Orders and Obligations constitute general, unsecured, and dischargeable prepetition claims, for which the Defendants may receive only limited recoveries depending on the treatment of general unsecured claims for the applicable Debtors under a chapter 11 plan of reorganization, will likely facilitate a consensual resolution of disputes concerning the Environmental Orders and Obligations, thus enabling the Debtors’ estates to avoid needless, protracted, and expensive litigation.

26. Additionally, such a determination will assist the Debtors in developing a plan of reorganization because it will address the priority and dischargeability of what are likely substantial claims in the Debtors’ chapter 11 cases.

**COUNT ONE**  
**(Declaratory Judgment)**

27. Plaintiffs hereby reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 27 as if fully restated herein.

28. As of the Petition Date, neither the Debtors nor any affiliated entities owned any real property or conducted any business activities at any of the Former Sites or Third-Party Sites.

29. The Environmental Orders and Obligations that are or may be asserted against the Debtors by the Defendants with respect to the Former Sites or Third-Party Sites arise exclusively from alleged prepetition conduct of the Debtors and/or their purported predecessors.

30. The Environmental Orders and Obligations that are or may be asserted against the Debtors by the Defendants with respect to the Former Sites or Third-Party Sites are “claims” within the meaning of section 101(5) of the Bankruptcy Code that arose before the Petition Date, and accordingly, are subject to discharge under section 1141(d) of the Bankruptcy Code in

accordance with the terms of any plan of reorganization proposed by the Debtors that is confirmed by this Court and becomes effective.

31. Declaratory relief is appropriate in this case pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. An actual controversy, within the meaning of 28 U.S.C. § 2201, exists with respect to the Bankruptcy Code's treatment of the Environmental Orders and Obligations.

### **PRAYER FOR RELIEF**

**WHEREFORE**, the Debtors pray the Court to enter an order and judgment declaring that:

(1) The Environmental Orders and Obligations that are or may be asserted against the Debtors by the Defendants with respect to the Former Sites and Third-Party Sites are general unsecured "claims" under the Bankruptcy Code that are dischargeable upon confirmation of a chapter 11 plan pursuant to section 1141(d) of the Bankruptcy Code; and

(2) Such other and further relief as deemed appropriate by the Court.

New York, New York  
Dated: January 19, 2010

/s/ David J. Zott, P.C.

Richard M. Cieri  
M. Natasha Labovitz  
Craig A. Bruens  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, New York 10022-4611  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

David J. Zott, P.C.  
Alyssa A. Qualls  
KIRKLAND & ELLIS LLP  
300 North LaSalle Street  
Chicago, IL 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

Counsel to Debtors and Debtors-in-Possession