

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

In re:
LYONDELL CHEMICAL COMPANY, ET AL.,

Debtors.

Chapter 11 Cases
Case No. 09-10023 (REG)
Jointly Administered

REPORT OF THE CHAPTER 11 EXAMINER

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NOVEMBER 30, 2009

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I. INTRODUCTION

A. FILING OF THE BANKRUPTCY CASES

Lyondell Chemical Company (“LCC”) and certain of its subsidiaries and affiliates¹ (collectively, “Lyondell,” the “Debtors,” or “Debtors-in-Possession”) and with their non-debtor affiliates “LyondellBasell”) filed their petitions for relief pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on January 6, 2009 (the “Petition Date”),² in the above captioned cases (the “Bankruptcy Cases”). At the time of its filing, LyondellBasell was one of the largest chemical conglomerates in the world with revenues for the nine months ending September 30, 2008, of \$42.5 billion³ and approximately \$25.0 billion⁴ of prepetition

¹ The Debtor and Debtor affiliates are as follows: Basell Finance USA Inc., Basell Germany Holdings mbH, Basell North America Inc., Basell USA Inc., Circle Steel Corporation, Duke City Lumber Company, Inc., Equistar Chemicals, LP, Equistar Transportation Company, LLC, LyondellBasell Finance Company, Glidco Leasing, Inc., Glidden Latin America Holdings Inc., HOISU Ltd., Houston Refining LP, HPT 28 Inc., HPT 29 Inc., H.W. Loud Co., IMWA Equities II, Co., L.P., ISB Liquidating Company, LBI Acquisition LLC, LBIH LLC, LeMean Property Holdings Corporation, Lyondell (Pelican) Petrochemical L.P. 1, Inc., Lyondell Asia Pacific, Ltd., Lyondell Chemical Company, Lyondell Chemical Delaware Company, Lyondell Chemical Espana Co., Lyondell Chemical Europe, Inc., Lyondell Chemical International Co., Lyondell Chemical Nederland, Ltd., Lyondell Chemical Products Europe, LLC, Lyondell Chemical Properties, L.P., Lyondell Chemical Technology Management, Inc., Lyondell Chemical Technology 1 Inc., Lyondell Chemical Technology, L.P., Lyondell Chimie France LLC, Lyondell-Equistar Holdings Partners, Lyondell Europe Holdings Inc., Lyondell Greater China, Ltd., Lyondell Houston Refinery Inc., Lyondell LP3 GP, LLC, Lyondell LP3 Partners, LP, Lyondell LP4 Inc., Lyondell Petrochemical L.P. Inc., Lyondell Refining Company LLC, Lyondell Refining I LLC, LyondellBasell Advanced Polyolefins USA Inc., MHC Inc., Millennium America Holdings Inc., Millennium America Inc., Millennium Chemicals Inc., Millennium Holdings, LLC, Millennium Petrochemicals GP LLC, Millennium Petrochemicals Inc., Millennium Petrochemicals LP LLC, Millennium Petrochemicals Partners, LP, Millennium Realty Inc., Millennium Specialty Chemicals Inc., Millennium US Op Co LLC, Millennium Worldwide Holdings I Inc., MWH South America LLC, National Distillers & Chemical Corporation, NDCC International II Inc., Nell Acquisition (US) LLC, Penn Export Company, Inc., Penn Navigation Company, Penn Shipping Company, Inc., Penntans Company, PH Burbank Holdings, Inc., Power Liquidating Company, Inc., Quantum Acceptance Corporation, SCM Plants, Inc., Suburban Propane GP, Inc., Tiona, Ltd., UAR Liquidating Inc., USI Chemicals International, Inc., USI Credit Corp., USI Puerto Rico Properties, Inc., Walter Kidde & Company, Inc., Wyatt Industries, Inc.

² Debtors LyondellBasell AFGP S.à.r.l. and LyondellBasell Industries AF S.C.A. subsequently filed their petitions for relief on April 24, 2009. Debtors Basell Capital Corporation; Basell Impact Holding Company, Equistar Bayport, LLC; Equistar Funding Corporation; Equistar Polypropylene, LLC; LPC Partners Inc.; Lyondell Bayport, LLC; Lyondell Chemical Holding Company; Lyondell Chemical Wilmington, Inc.; Lyondell General Methanol Company; Lyondell Intermediate Holding Company; Quantum Pipeline Company; and SCM Chemicals Inc. then filed their petitions for relief on May 8, 2009.

³ “Motion for an Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3); 364(d)(1) and 364(e), (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (C) to Purchase Certain Assets Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c)” (the “Dip Motion”), Bankruptcy Cases Docket No. 7 at 3.

debt. The LyondellBasell entities are ultimately owned by BI S.à.r.l. (“BI”), which, in turn is owned by Leonard Blavatnik and entities controlled by his investment vehicle, Access Industries, Inc. (“Access”) - Nell Limited, NAG Investments LLC and AI Petrochemicals LLC (collectively, the “Access Group”). On or about May 6, 2009, the Access Group transferred its equity investment in LyondellBasell Industries AF, S.C.A. (“LBI”) to ProChemie GmbH (“ProChemie”), a 50/50 joint venture between the Access Group and ProChemie Holdings, Ltd. (“ProChemie Holdings”), an entity owned by Andreas Heeschen.⁵ The stated reason for the transfer was to allow the Access Group increased options in investing in reorganized Lyondell without triggering unfavorable tax consequences.⁶

B. UNSECURED CREDITORS’ LITIGATION

On June 15, 2009, the Official Committee of Unsecured Creditors (the “Committee”) filed its “Motion of the Official Committee of Unsecured Creditors for an Order (I) Authorizing the Committee to Pursue Lender Claims and Other Claims and Causes of Action of the Debtors’ Estates and (II) Granting Related Relief,”⁷ seeking the authorization to file claims against certain of the Debtors’ fiduciaries and lending institutions (the “Defendants”)⁸ arising from the 2007

⁴ *Id.*

⁵ “LyondellBasell ownership to change under new JV,”

<http://www.icis.com/Articles/2009/05/06/9213572/LyondellBasell-ownership-to-change-under-new-JV.html>.

⁶ *Id.*

⁷ Bankruptcy Cases docket number 2018.

⁸ The defendants in this action are: Citibank, N.A., London Branch, Citibank International PLC, Citigroup Global Markets, Inc., Deutsche Bank Trust Company Americas, Goldman Sachs Credit Partners, L.P., Goldman Sachs International, Merrill Lynch, Pierce, Fenner & Smith Inc., Merrill Lynch Capital Corporation, ABN Amro Incorporated, ABN Amro Bank, N.V., UBS Securities LLC, Leonard Blavatnik, AI Chemical Investments LLC, Nell Limited, Access Industries, Inc., Access Industries Holdings LLC, AI International, S.A.R.L., Deutsche Bank Securities, Inc., Perella Weinberg Partners LP, Dan F. Smith, Carol A. Anderson, Susan K. Carter, Stephen I. Chazen, Travis Engen, Paul S. Halata, Danny W. Huff, David J. Lesar, David J.P. Meachin, Daniel J. Murray, William R. Spivey, Morris Gelb, T. Kevin DeNicola, Edward J. Dineen, Kerry A. Galvin, John A. Hollinshead, James W. Bayer, W. Norman Phillips, C. Bart de Jong, Richard Floor, R. Kent Potter, Lincoln Benet, Lynn Coleman, Philip Kassin, Alan S. Bigman, Kevin R. Cadenhead, Charles L. Hall, Francis P. McGrail, Rick Fontenot, Michael P. Mulrooney, Kevin E. Walsh, John Fischer Gray, L. Koehler, Simon Baker, Dawn Shand, Bertrand Duc, and LeverageSource III S.A.R.L.

cash merger of LCC and its subsidiaries by Luxemburg entity Basell AF S.C.A (“Basell”).⁹ After responses and objections of several parties including the Debtors, this Court entered its “Order on Motion of the Official Committee of Unsecured Creditors for an Order (I) Authorizing the Committee to Pursue Lender Claims and Other Claims and Causes of Action of the Debtors’ Estates and (II) Granting Related Relief”¹⁰ on July 7, 2009. On July 22, 2009, the Committee filed its Complaint¹¹ in Adversary Proceeding Number 09-01375 now proceeding in this Court (the “Committee Adversary”). Currently, the unsecured creditors represented by the Committee are “out of the money” and may receive no distribution in the Bankruptcy Cases unless the Committee prevails in the Committee Adversary.

In the Complaint, among other things, the Committee alleges that the Debtors’ inability to fund its operations was entirely foreseeable and the direct consequence of the December 2007 transaction that left the Debtors with unreasonably small capital for the continuation of their businesses, insolvent, and unable to pay their debts as they became due.¹² Resulting from these allegations are claims for relief pursuant to sections 544, 548, and 550 of the Bankruptcy Code, applicable state fraudulent transfer law and Luxembourg law, among other legal theories.¹³ The Complaint consisted of 21 counts, primarily focused on fraudulent conveyance actions, the subordination or avoidance of liens and breach of fiduciary duty.

On September 24, 2009, following discussions and agreements between the parties the Court entered its “Final Case Management Order”¹⁴ (the “CMO”), governing the management of the Committee Adversary. The CMO segregated the timeline for the hearing on the various

⁹ Complaint at 1, ¶ 1.

¹⁰ Bankruptcy Cases Docket No. 2345.

¹¹ Adversary Docket No. 1.

¹² Complaint at 2, ¶ 3.

¹³ *Id.* at 6, ¶ 12.

¹⁴ Adversary Docket No. 124.

counts of the Complaint into three phases: Phase I, allows the Committee to pursue fraudulent conveyance causes of action by measuring solvency of the Debtors on a consolidated basis and the avoidance of certain liens; Phase IA, allows the Committee to pursue fraudulent conveyance causes of actions by measuring insolvency on an individual Debtor subsidiary basis; and Phase II allows the Committee to pursue any other causes of action outlined in the Complaint.¹⁵

The CMO was further modified by the “Stipulation and Order Regarding the Modification of the Final Case Management Order”¹⁶ (“CMO Stipulation”) entered by this Court on October 28, 2009. The CMO Stipulation moved the first day of trial from December 1, 2009, to December 10, 2009. Only the Phase I trial will commence on the dates outlined in the CMO Stipulation, while the scheduling of any proceedings for Phase IA or Phase II will be decided once the Phase I litigation has been concluded.¹⁷ It is expected that the trial will extend from December 10, 2009, through December 24, 2009, with additional potential trial days available the week of December 28, 2009.

C. APPOINTMENT OF AN EXAMINER

1. Motion for the Appointment of an Examiner and Related Filings

On October 2, 2009, the Committee filed its “Motion of the Official Committee of Unsecured Creditors for Appointment of an Examiner Pursuant to Section 1104(c) of the Bankruptcy Code”¹⁸ (“Examiner Motion”), seeking the appointment in the Bankruptcy Cases of an examiner for:

¹⁵ CMO at 3, ¶ 2(b). Phase II litigation includes certain equitable subordination, breach of fiduciary duty, mismanagement and tortuous misconduct under Luxembourg Law, aiding and abetting breach of fiduciary duty, avoidable preferences, breach of contract, and the avoidance of unperfected senior liens and bridge loans.

¹⁶ Adversary Docket No. 177. Adversary Docket No. 178 is a table describing the new dates for each stage of the CMO.

¹⁷ CMO at 2.

¹⁸ Bankruptcy Cases Docket Number 2916.

[the] limited purposes of investigating: (i) the Debtors' selection of a conflicted Rights Offering Sponsor, (ii) the Debtors' refusal to refinance the DIP Facility, and (iii) the Debtors' refusal to formulate a robust plan of reorganization with an appropriate reserve for unsecured creditors pending resolution of the Committee's litigation.¹⁹

On October 16, 2009, the Debtors' filed their "Debtors Objection to the Motion of the Official Committee of Unsecured Creditors for Appointment of an Examiner Pursuant to Section 1104(c) of the Bankruptcy Code"²⁰ (the "Debtors' Response to Examiner Motion") in which the Debtors agreed that the Bankruptcy Code required the appointment of an examiner as a matter of right, but argued that the scope of the examination should be more limited than requested by the Committee.²¹ In their Debtors' Response to Examiner Motion, the Debtors argued that the only question an examiner should investigate is:

[W]hether or not the Debtors and their professionals have used and are using customary and appropriate processes with respect to soliciting equity sponsorship proposals and selecting an equity sponsorship proposal.²²

The Debtors argued that an examiner was unnecessary for the other questions presented by the Committee.²³ Further, the Debtors' sought to restrict the time for the examination to 30 days with a proposed budget of \$100,000. Along with the Debtors, several other parties-in-interest filed objections and/or responses to the Examiner Motion.²⁴

On October 22, 2009, the Committee responded to the objections and responses with the filing of its "Reply in Further Support of Motion of the Official Committee of Unsecured Creditors for Appointment of an Examiner Pursuant to Section 1104(c) of the Bankruptcy

¹⁹ Examiner Motion at 1.

²⁰ Bankruptcy Cases Docket Number 3059.

²¹ Debtors' Response to Examiner Motion at 7, ¶ 8.

²² *Id.* at 1, ¶ 1.

²³ *Id.* at 6, ¶ 6.

²⁴ These parties include the United States Trustee; Access Industries, Inc.; the *Ad Hoc* Group of Senior Secured Lenders; UBS AG; UBS Securities LLC; Stamford Branch; Citibank, N.A.;

Code”²⁵ (the “Committee Reply”), further arguing for a more expansive mandate for an examiner.²⁶ This Court entered its “Order Directing the Appointment of an Examiner and Specifying Scope of Examiner’s Investigation and Duties Pursuant to Sections 1104(c) and 1106(b) of the Bankruptcy Code”²⁷ (the “Examiner Order”), attached as Exhibit 1, directing the United States Trustee to appoint an examiner in the Bankruptcy Cases on October 28, 2009. The United States Trustee filed her “Notice Appointing Prof. Jack F. Williams, JD, CIRA, CDBV”²⁸ along with her “Application for Appointment of Chapter 11 Examiner”²⁹ on October 30, 2009, appointing me as the examiner in the Bankruptcy Cases. This Court entered its order approving my appointment on the same day.³⁰ A copy of my curriculum vitae is attached hereto as Exhibit 2. A list of the documents I considered are listed on Exhibit 3.

To assist me in my investigation, I filed my “Application of Chapter 11 Examiner, Jack F. Williams, for Entry of an Order Authorizing Him to Retain and Employ BDO Seidman, LLP as His Financial Advisor *Nunc Pro Tunc*” on November 11, 2009.”³¹ Furthermore, On November 30, 2009, I filed my “Application of Chapter 11 Examiner, Jack F. Williams, for Entry of an Order Authorizing Retention of Davidoff Malito & Hutcher LLP as his Bankruptcy Counsel, *Nunc Pro Tunc*.” Employees of BDO Seidman, LLP (“BDO”) and the attorneys of Davidoff Malito & Hutcher, LLP (“DMH”) have acted under my supervision to assist me in completing my investigation and preparing my findings in the form of this Report.³²

²⁵ Bankruptcy Cases Docket No. 3093.

²⁶ *Id.* No. 3093 at 16, ¶ 34.

²⁷ *Id.* No. 3148.

²⁸ *Id.* No. 3161.

²⁹ *Id.* No. 3162.

³⁰ *Id.* No. 3165.

³¹ *Id.* No. 3252.

³² As used herein, other than references to my education and experience, “I” and “We” shall mean either I personally or those BDO and DMH personnel under my supervision. Likewise, “My” and “Our” shall also refer to actions taken by me personally or by those BDO and DMH personnel under my supervision.

2. Scope of the Examiner

Through the Examiner Order, this Court directs me to investigate:

[W]hether the Debtors have done anything out of the ordinary in connection with their decisions regarding: (1) the selection of a sponsor of the equity rights offering contemplated by the Debtors as part of their exit financing package required for emergence from chapter 11; (2) whether or not to get new DIP facility financing; and (3) proposing a litigation reserve in the Debtors' proposed plan of reorganization, in each case by reason of a conflict of interest or other breach of fiduciary duty or by acting in bad faith.³³

Further, the Court precluded me from investigating “the Debtors’ business judgment or merits of any party’s plan proposals...”³⁴ While I may comment on whether any party has put undue pressure on the Debtors in connection with any plan proposal, I am not permitted to investigate affirmatively this matter nor may I interfere or delay the confirmation process related to the Debtors’ plan of reorganization.³⁵

3. Examiners’ Report

This Report, which is to be filed under seal, is due within 30 days of the Courts’ entry of an Order approving my appointment (November 30, 2009). Prior to my filing of this Report, the Examiner Order directs me to provide an unredacted copy of this Report to the following parties-in-interest and their professionals, who then have five (5) business days to file their replies:

- i. The United States Trustee;
- ii. The Committee;
- iii. The *Ad Hoc* Group of Senior Secured Lenders;
- iv. Bank of New York Mellon;
- v. Wilmington Trust Company;

³³ Examiner Order at 2, ¶ 3.

³⁴ *Id.* at 2, ¶ 4

³⁵ *Id.* at 2-3, ¶ 5-1, respectively

- vi. Law Debenture Trust Company of New York;
- vii. The DIP Agents (including the administrative agents);
- viii. The Administrative Agent for the Bridge Facility;
- ix. LeverageSource III, S.à.r.l.; and
- x. Access Industries, Inc. and their affiliates.³⁶

³⁶ *Id.* at 3, ¶ 4

II. EXECUTIVE SUMMARY

The three issues that are the subject of my investigation are interconnected and involve the reorganizing Debtors' aggressive course of emerging from bankruptcy within a year and an intercreditor dispute over ownership of the capital structure of these reorganized Debtors. The focus of my investigation turns on the Debtors' selection of a group to serve as the backstop and sponsor of an equity rights offering that, among other things, will fund the reorganization of the Debtors. The group includes three entities, one of which is a related party to the Debtors and a defendant in the Committee Adversary and the other two of which are secured creditors (both as prepetition and as DIP lenders) and Defendants in the Committee Adversary. In addition, my focus includes an examination of the decision-making process regarding an extension or replacement of the DIP financing. Finally, my focus includes the decision to include a litigation reserve in the proposed plan of reorganization as an attempt by the Debtors to accommodate both the best interests of the reorganized Debtors to emerge promptly from chapter 11 in order to preserve value and the best interests of the bankruptcy estates in resolving any intercreditor dispute over ownership of the equity in the reorganized Debtors. Notably, two of the three members of the 'backstop group' insist that any plan that contains a significant litigation reserve pending the outcome of the Committee Adversary is unacceptable to them as secured creditors.

The Debtors present governance structure is sound in theory, but thinly attended in practice. As constructed, there is a seven-member Supervisory Board that serves as the overall authority for traditional board matters. Of those seven members, three members are considered "independent."

The Supervisory Board has created a four-member board-level Restructuring Committee, assigned to focus on matters concerning the reorganization of the Debtors, as well as a three-

member Litigation Committee, responsible for overseeing, monitoring, and possibly settling the Committee Adversary, among other actions. Both committees report to the Supervisory Board. On its surface, the present governance structure is reasonable and consistent with recommended practices. Under further examination, however, to some extent in practice, the governance structure starts to erode.

Notwithstanding the careful balance among interested and independent board members and the assignment of various tasks to the Restructuring and Litigation Committees (as discussed below in detail), so long as Access, Ares, and Apollo are participating in the rights offering bid process, the determination of who will serve as the sponsor of the rights offering is a decision that will be made by a board of one – Stephen Cooper.

A board of one may be functional and efficient, as long as the one director is consulting with both internal and external advisors, keeps meaningfully informed, retains his disinterestedness, and continues to act in good faith. But a board of one is not a good model of governance, particularly in a complex chapter 11 reorganization. The present structure may make conflicting demands on Mr. Cooper as he navigates the Debtors' reorganization both as a fiduciary to the reorganizing debtors and a fiduciary to the bankruptcy estates. It is these conflicting demands, without the opportunity to deliberate with other board members who share the same fiduciary duties, that is of concern. A board of one, even one as talented and experienced as Mr. Cooper, does not lend itself to a deliberative and collective process. This is an unusual Board construct.

During the course of my investigation, I have not uncovered any facts or circumstances that suggest that Mr. Cooper is not meaningfully informed, is no longer disinterested, or is not acting in good faith. However, as the plan process and Committee Adversary progress, in my

experience, it will become more difficult for Mr. Cooper to operate as a Board of one consistent with his fiduciary duties, even with the very experienced internal and external advisors upon whom he now relies. The following is a summary of my most significant observations:

1. Directors and management have been thoroughly instructed by CWT on their fiduciary duties in and out of bankruptcy.
2. Directors and management are aware of those fiduciary duties as they manifest themselves through various issues and decisions.
3. Directors and management are attempting to keep themselves meaningfully informed by the consultation with both internal experts and external experts. Internally, these experts include Mr. Cooper, the CEO, the CRO, and the CFO. Externally, these experts include CWT, Evercore, AlixPartners, and the newly retained Litigation Committee legal counsel and financial advisory experts.
4. Directors and management have created and implemented various protocols and practices regarding the walling off of Access-related directors from rights sponsorship information and issues from the inception of the bidding process.
5. Directors and management have created and implemented various protocols and practices regarding the walling off of all directors that are defendants in the Committee Adversary from information and issues regarding that litigation from the inception of the Committee Adversary.
6. Conceptually, the present governance structure is reasonable with its allocation of responsibilities to the Restructuring Committee and the Litigation Committee, respectively. However, as practiced, the present structure with the relevant protocols and practices results in an unusual situation wherein only one director may participate in the decision-making process regarding the interconnectedness of the precise questions within the scope of my investigation. The director is Mr. Cooper.
7. Presently, I have uncovered no evidence that would suggest that Mr. Cooper as the sole director eligible to address the three interconnected questions has breached any duties or has acted in bad faith in any manner.
8. I find Mr. Cooper to be meaningfully informed, disinterested, and acting in good faith as related to the three questions within the scope of my investigation.
9. Other than the fact that one director is responsible and has sole authority over certain key issues, I have uncovered nothing unusual about the process by which a bidder has been tentatively selected to serve as sponsor and backstop for the equity rights offering.

10. The solicitation and bid process employed, including follow-up, is reasonable and appears designed to increase participation by significant bidders.
11. The bid process remains open notwithstanding the selection of a tentative winning bidder.
12. I have uncovered nothing unusual about the process by which the Debtors have considered the issues related to the DIP Facility, including the possibilities of any extensions or replacements. It is my understanding that the Debtors and DIP Lenders would agree to an extension of the DIP Facility for sound business reasons but not to accommodate the Committee Adversary.
13. Other than the fact that one director is responsible and has sole authority, I have uncovered nothing unusual about the process by which the Debtors will address the continued inclusion or deletion of any litigation reserve in the plan of reorganization. However, since Ares and Apollo (senior secured creditors and part of the DIP Lenders) have stated that they will not agree to a significant litigation reserve pending resolution of the Committee Adversary in any plan of reorganization, it is unclear what the final form a litigation reserve will be, if any. Thus, my findings on this issue should be considered of a preliminary nature.

III. METHODOLOGY

The first step I undertook upon being appointed as the Examiner in the Bankruptcy Cases was to attempt to familiarize myself with the Bankruptcy Cases, the Debtors, the Debtors' businesses, and the steps the Debtors had taken thus far to restructure their business and emerge from Chapter 11. This included discussions with the Debtors' officers, directors, and their professionals at Cadwalader, Wickersham & Taft LLP ("CWT") who were all very cooperative. Next, I assembled a list of persons I determined were relevant to my investigation. Over the course of approximately two weeks, I interviewed more than 20 key participants as follows:³⁷

14. Supervisory Board Members:
 - a. Mr. Leonard Blavatnik, Chair
 - b. Mr. Stephen F. Cooper, Vice-Chair
 - c. Mr. Philip Kassin
 - d. Mr. Richard Floor
 - e. Mr. Lynn Coleman
15. LyondellBasell Executives:
 - a. Mr. James L. Gallogly, Chief Executive Officer
 - b. Mr. C. Kent Potter, Chief Financial Officer and former member of the Supervisory Board
 - c. Mr. Craig Glidden, Executive Vice President and Chief Legal Officer
 - d. Mr. Kevin M. McShea, AlixPartners LLP ("AlixPartners"), Chief Restructuring Officer

³⁷ I interviewed each member of the Supervisory Board identified above individually with CWT, and in some instances, individual counsel present. I also interviewed each executive identified above individually with CWT present. I interviewed the four Evercore personnel as a group with CWT present. My interview of Mr. Kramer took place without CWT or any counsel present. During my interview with Mr. Serota, counsel for Ares and the *Ad Hoc Group* were present on the telephone. During my interview with Mr. Kleinman, counsel for Apollo and the *Ad Hoc Group* of Senior Secured Lenders were present on the telephone. During the interview process, there were no objections by counsel or otherwise to any question presented and each interviewee gave what appeared to be candid answers. Moreover, I requested thousands of documents, including items of a very sensitive nature and which might have been considered privileged material, and all documents requested were produced in an unredacted form.

16. LyondellBassell Professionals
 - a. CWT
 - i. Mr. Mark Ellenberg
 - ii. Mr. George Davis
 - b. Evercore Partners, Evercore Group, L.L.C. (“Evercore”)
 - i. Mr. Daniel A. Celentano
 - ii. Mr. Stephen Schaible
 - iii. Ms. Nancy Bryson
 - iv. Mr. Cecil Brown
17. Committee Professionals (Brown Rudnick)
 - a. Mr. Edward S. Weisfelner
 - b. Mr. Steven D. Pohl
 - c. Mr. John C. Elstad
18. Potential Purchasers – Mr. Michael Kramer – Perella Weinberg Partners representing Reliance Industries
19. Members, *Ad Hoc* Group of Senior Secured Lenders³⁸ and Equity Rights Sponsor Bidders:
 - a. Mr. Jeffrey Serota, Ares Management LLC (“Ares”)
 - b. Mr. Scott Kleinman, Apollo Management, L.P. (“Apollo”)

³⁸ The *Ad Hoc* Group of Senior Secured Lenders (the “Ad Hoc Group”) is made up of ABN AMRO Bank, N.V., Apollo Management VII, L.P., Ares Management LLC, Kohlberg Kravis Roberts & Co. (Fixed Income) LLC, Bank of Scotland Plc, UBS AG (“UBS”), and DZ BANK AG. The *Ad Hoc* Group is represented by Milbank, Tweed, Hadley & McCloy LLP.

IV. BACKGROUND

A. NATURE OF THE DEBTORS' BUSINESS

The international, fully integrated petro-chemical conglomerate known as LyondellBasell refines crude oil, manufactures chemicals and polymers, and develops and licenses polymer technology.³⁹ It holds top market share in the production of polyolefins and propylene oxide. Further, LyondellBasell holds a significant position in the market for the global production of propylene and ethylene.⁴⁰ The end uses of the products LyondellBasell produces are used in a wide variety of industries, including: “transportation fuels, rigid and flexible packaging, containers, plastic pipe, detergents, cosmetics, electronics, appliances, automotive parts, paints and coatings, furnishings, construction and building materials, and many other industrial and consumer goods applications.”⁴¹

LyondellBasell divides its operations into four reporting segments: (i) fuels; (ii) chemicals; (iii) polymers; and (iv) technology and research and development.⁴² LyondellBasell’s operates in diverse geographical locations. When combined with joint ventures, LyondellBasell “operated more than sixty facilities in nineteen countries, selling products in more than one hundred countries, and, at the close of the 2007 Merger, employed approximately 17,000 people worldwide.”⁴³

³⁹ “First Day Affidavit of Alan S. Bigman Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York” (“Bigman Affidavit”), Bankruptcy Cases Docket No. 11 at 7. As of the Petition Date, Mr. Bigman was LyondellBasell’s Chief Financial Officer.

⁴⁰ *Id.* at 7 ¶ 18.

⁴¹ *Id.* at 8. ¶ 18.

⁴² “Disclosure Statement Accompanying Joint Chapter 11 Plan of Reorganization for the LyondellBasell Debtors” (the “Disclosure Statement”), Bankruptcy Cases Docket No. 2740 at 15.

⁴³ Bigman Affidavit on at 8, ¶ 19.

B. ORGANIZATIONAL STRUCTURE

On December 20, 2007, Basell, which was subsequently renamed LBI, pursuant to an agreement and plan of merger, indirectly acquired all of LCC's then-outstanding common shares to form the LyondellBasell conglomerate.⁴⁴ As part of this transaction, some of LCC's non-U.S. subsidiaries were realigned into LyondellBasell's non-U.S. operations via a sale of these entities by LCC to Basell. The purchase price for the LCC common stock and other equity instruments totaled \$20.873 billion, consisting of \$12.371 billion in cash, \$7.506 billion in retained and refinanced debt, and \$996 million in other costs.⁴⁵

Atop the LyondellBasell structure sits non-debtor BI, which along with debtor LyondellBasell AF GP S.à.r.l ("LBAFGP"), a limited liability company organized under the laws of Luxembourg, own debtor LBI, a corporate partnership limited by shares organized under the laws of the Grand Duchy of Luxembourg.⁴⁶ LBI, in turn, owns nondebtor Basell Funding S.à.r.l., a Luxemburg entity that owns three subsidiaries: debtor LyondellBasell Finance Company ("LBF"), which sits atop the North American Operations; nondebtor European holding company, LyondellBasell Industries Holdings B.V. ("Basell Holdings"); and nondebtor BAFB B.V. Neither BAFB B.V. nor Basell Holdings and its direct and indirect subsidiaries (with the sole exception of Basell Germany Holdings GmbH ("Basell Germany"), one of the principal holding companies for Lyondell's operating subsidiaries in Europe), are debtors in the Bankruptcy Cases. Essentially, the Debtors in the Bankruptcy Case encompass LyondellBasell's North American operations plus Basell Germany.⁴⁷

⁴⁴ *Id.* at 6 ¶ 14.

⁴⁵ *Id.* at 6, ¶ 15.

⁴⁶ *Id.* 14, ¶ 37.

⁴⁷ Disclosure Statement at 14.

C. CAPITAL STRUCTURE: POST-ACQUISITION/PRE-FILING

As a result of the merger in 2007, LyondellBasell took on substantial amounts of debt. They entered into several borrowing arrangements with different banks. Understanding these complex lending agreements is essential to understanding how the company was forced to seek protection under Chapter 11 of the Bankruptcy Code. Specifically, LyondellBasell entered into a number of credit agreements in addition to the guarantees already in place prior to the merger.

First, BIL Acquisition Holdings Limited (which merged with and into LCC as part of the 2007 merger), Basell Germany, and certain non-debtor affiliates, as borrowers, entered into a senior secured credit facility on December 20, 2007 (the “Senior Secured Credit Facility”).⁴⁸ This credit agreement had two components: two term loans and a revolver.⁴⁹ One of the term loans had a \$2 billion face amount and matures in 2013, and the other term loan had a \$7.55 billion and €1.3 billion face amount and matures in 2014.⁵⁰ The revolver had a face amount of \$1 billion and matures in 2013.⁵¹ LBI and certain of its worldwide subsidiaries guaranteed these facilities, and granted the lenders first priority liens in substantially all present and after-acquired assets of the borrowers and certain guarantors as security for this facility.⁵² Additionally, there are first priority interests in the equity of certain subsidiaries of the borrowers and guarantors.⁵³ As of the Petition Date, LyondellBasell still owed approximately \$12.2 billion, comprised of approximately \$11.2 billion under the term loans,⁵⁴ and approximately \$989 million under the revolving credit facility (including letters of credit).⁵⁵

⁴⁸ Bigman Affidavit at 9, ¶ 24.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 10 ¶ 27.

⁵⁵ *Id.*

The lenders for the Senior Secured Credit Facility include Citibank, N.A., as primary administrative agent; Citibank International plc, as European administrative agent; Citigroup Global Markets Inc., Goldman Sachs Credit Partners, L.P., Goldman Sachs International, Merrill Lynch, Pierce, Fenner & Smith Inc., Merrill Lynch Capital Corporation, ABN AMRO Inc., ABN AMRO Bank N.V., and UBS Securities LLC, as joint lead arrangers; and other lending institutions.⁵⁶

Second, on December 20 2007, LyondellBasell Chemicals Finance (“LBCF”) entered into an \$8.0 billion bridge loan facility (the “Bridge Loan Facility”) ranking *pari passu* with all of LBCF’s existing and future senior indebtedness.⁵⁷ This loan was then retrenched into: (i) \$3.5 billion of fixed rate second lien loans; (ii) \$2.0 billion of floating rate second lien loans; and (iii) \$2.5 billion of floating rate third lien loans.⁵⁸ LBI, and certain of its subsidiaries, including the other borrowers under the Senior Secured Credit Facility, guaranteed this facility and granted the lenders second priority liens in the same collateral securing the Senior Secured Credit Facility.⁵⁹ As of the Petition Date, approximately \$8.3 billion was outstanding under the Bridge Loan Facility (including unpaid interest and fees).⁶⁰

The lenders for the Bridge Loan Facility include Merrill Lynch Capital Corporation, as administrative agent; Citibank, N.A., as collateral agent; Merrill Lynch, Pierce, Fenner & Smith Inc., Goldman Sachs Credit Partners, L.P., Citigroup Global Markets Inc., ABN AMRO Inc., and UBS Securities LLC, as joint lead arrangers; and the lenders party thereto.⁶¹

⁵⁶ *Id.* at 10, ¶ 25.

⁵⁷ *Id.* at 11, ¶ 28.

⁵⁸ *Id.* at 11, ¶ 28.

⁵⁹ *Id.*

⁶⁰ *Id.* at 11, ¶ 30.

⁶¹ *Id.* at 11, ¶ 29.

Third, LCC, Houston Refining LP (“Houston Refining”), Equistar Chemicals, LP (“Equistar”), and affiliated debtor Basell USA Inc. became borrowers under a senior secured inventory-based revolving credit facility (the “Senior Secured Inventory-Based Credit Facility”) maturing in December 2012.⁶² The principal amount under this loan is the lesser of \$1.6 billion or a borrowing base.⁶³ As of the Petition Date, approximately \$1.03 billion was outstanding under the Senior Secured Inventory-Based Credit Facility (including letters of credit).⁶⁴

The lenders to the Senior Secured Inventory-Based Credit Facility include Citigroup Global Markets Inc., Goldman Sachs Credit Partners L.P., Merrill Lynch Capital Corporation, ABN AMRO Inc., and UBS Securities LLC, as arrangers; Citibank, N.A., JPMorgan Chase Bank N.A., and other banks, as issuers of letters of credit; and Citibank, N.A., as inventory administrative agent.⁶⁵

Fourth, LCC entered into an accounts receivable securitization facility (the “Accounts Receivable Securitization Facility”), maturing in December 2012, with respect to substantially all of the receivables of Lyondell Chemical, Equistar and Houston Refining.⁶⁶ The principle amount on this loan is \$1.15 billion. Counterparties under the Accounts Receivable Securitization Facility include Citigroup Global Markets Inc., Goldman Sachs Credit Partners L.P., Merrill Lynch Capital Corporation, ABN AMRO Inc. and UBS Securities LLC, as arrangers; and Citibank, N.A. or an affiliate as administrative agent.

Fifth, Lyondell Chemical and non-debtor Basell Finance entered into a revolving credit facility with AI international, an affiliate of Access (“Access Revolving Credit Facility”), on

⁶² *Id.* at 11, ¶ 31.

⁶³ *Id.*

⁶⁴ *Id.* at 12, ¶ 32.

⁶⁵ *Id.*

⁶⁶ *Id.* at 12, ¶ 3333.

March 27, 2008.⁶⁷ The principle amount under this loan is \$750 million from AI International, an affiliate of Access Industries.⁶⁸ The Debtors asked AI International for \$300 million on October 15, 2008.⁶⁹ This initial request was honored and repaid on October 16, 17, and 20, 2008.⁷⁰ Prior to the Petition Date, Debtors requested from AI International that they be allowed to draw on that loan, but AI International refused the Debtors' request. Therefore, as of the Petition Date, no amounts were drawn under this facility.⁷¹

The Debtors are issuers or guarantors of several series of secured and unsecured notes, including the following:

- i. LCC assumed certain 10.25% debentures due in 2010. The principle amount due under these loans is \$100 million. LCC is also obligated under certain 9.8% debentures that are due in 2020. The principle amount due under these notes is \$225 million. Both of these notes were assumed in connection with the acquisition of ARCO Chemical Company in January 2000. Although initially unsecured, these notes are now equally and ratably secured by the property that secures the Senior Secured Credit Facility and the Interim Loan Facility.⁷²
- ii. Equistar is obligated under certain 7.55% senior notes due in 2026. The principal amount due under these notes is \$150 million. Although initially unsecured, these notes are now secured by the property that secures the Senior Secured Credit Facility and the Interim Loan Facility. LCC remains obligated under these notes as a guarantor.⁷³

⁶⁷ *Id.* at 13, ¶ 35.

⁶⁸ *Id.*

⁶⁹ Disclosure Statement at 25, ¶ 5.

⁷⁰ *Id.*

⁷¹ Bigman Affidavit at 13, ¶ 35.

⁷² *Id.* at 13, ¶ 36.

⁷³ *Id.*

- iii. Millennium America Inc. is obligated under certain 7.625% senior unsecured notes due in 2026. The principal amount due under these notes is \$241 million. Millennium America's ability to offer collateral for new debt is subject to providing that these notes are equally and ratably secured.⁷⁴
- iv. LCC, along with the other Debtors under the Senior Secured Credit Facility or Interim Loan Facility, has guaranteed certain 8.375% senior notes due in 2015.⁷⁵ These notes were originally issued by LBI in the principal amounts of \$615 million and €500 million. They also guaranteed related 2015 High Yield Proceeds Loan which is secured by a second priority pledge of the proceeds of the issuance of the 2015 Notes from LBI to Basell Holdings and 100% of the shares of non-debtor Basell Funding S.à.r.l.⁷⁶

D. CONDITIONS LEADING TO LYONDELL'S FINANCIAL DISTRESS

Throughout 2008, the Debtors financial condition deteriorated. The crisis did not hit, however, until December 2008 when all liquidity in the Debtors quickly dried up. Oil holdings generally make up the borrowing base for the Debtors' loans. The price of oil had spiked through 2008, and then plummeted in value in December 2008. This marked reduction in the price of oil sharply reduced the borrowing base and, therefore, the amounts available under the Debtors' working capital facilities. In conjunction with this deterioration in financing, the Debtors also experienced a loss in sales, which further deteriorated their available liquidity. In addition, several other factors amplified their liquidity problems.

First, the Debtors' declining financial condition itself, in part, led to their trade creditors tightening credit terms. For example, they carried a significant debt burden from the December

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

2007 merger, which required a significant amount of funding for debt service.⁷⁷ This limited their business prospects and access to additional capital.⁷⁸ In addition, the Debtors faced significant other financial obligations and restrictive loan covenants, which caused their cash position to deteriorate.⁷⁹ Finally, ratings downgrades negatively impacted the availability of trade credit to the Debtors, further reducing the Debtors' available liquidity.⁸⁰

Second, highly volatile commodity prices – specifically the price of crude oil and petroleum products -- presented several obstacles to the Debtors' business model.⁸¹ In the first half of 2008, the price of crude oil rose dramatically, which substantially increased the Debtors' working capital needs.⁸² Apparently, intense competition, because of the weak economic environment, meant that the Debtors could not always pass these increases on to their customers.⁸³ Conversely, the extreme drop in oil and gas prices beginning in November/December 2008, caused the Debtors' securitized borrowing base to shrink, requiring major repayments to remain in compliance with the terms of the Debtors' financing.⁸⁴ Specifically, this triggered a mandatory payment of over \$1.2 billion in the fourth quarter of 2008.⁸⁵ The loss of margins and customers in the first half of 2008 prevented the Debtors from being able to make this \$1.2 billion debt payment and necessitated the commencement of these Bankruptcy Cases.

⁷⁷ *Id.* at 16, ¶ 41.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵“Declaration of Alan S. Bigman in Support of Motion for an Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3); 364(d)(1) and 364(e), (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (C) to Purchase Certain Assets Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c)” (the “Bigman Declaration”), Bankruptcy Cases Docket No. 21 at 2, ¶ 3.

Third, the Debtors have not been immune to the global economic recession.⁸⁶ In November and December 2008, many of their customers postponed orders in an effort to reduce inventories as the economic recession took hold.⁸⁷ According to Mr. Edward J. Dineen, President of the Chemicals Division of LyondellBasell Industries, the U.S. margins of ethylene were down roughly 40-60% in these months, and the fuels business was down over 50%.⁸⁸ Despite efforts to conserve liquidity throughout the 2008 fiscal year, the pace of economic decline in these two months wiped out the Debtors' liquidity position.⁸⁹

Fourth, the 2008 hurricane season, which included Hurricanes Ike and Gustav, and a contractor accident in July 2008 also hampered the Debtors' business.⁹⁰ The Houston refinery was closed for maintenance during the Hurricane season, but when Hurricanes Gustav and Ike hit, the storms forced the plant to close or operate at a suboptimal rate for an extended period of time.⁹¹ The Debtors estimate that earnings before interest, taxes, depreciation and amortization ("EBITDA") decreased by approximately \$360 million.⁹²

E. RESTRUCTURING EFFORTS

In the months leading up to the filing, the Debtors aggressively engaged in various cost cutting efforts to reduce their working capital needs and discretionary spending.⁹³ They temporarily idled three of their chemicals plants as well as idled or reduced substantial polymers capacity and chemical derivatives capacity.⁹⁴ The Debtors also evaluated the possibility of

⁸⁶ Disclosure Statement at 28 ¶ 2(b).

⁸⁷ Bigman Affidavit at 17, ¶ 43.

⁸⁸ Dineen Declaration at 8, ¶ 25.

⁸⁹ *Id.* at 9, ¶ 28.

⁹⁰ Bigman Affidavit at 18, ¶ 44-45.

⁹¹ *Id.*

⁹² Dineen Declaration at 7, ¶ 23.

⁹³ Bigman Affidavit at 18, ¶ 47.

⁹⁴ *Id.* 18, ¶ 48.

selling assets.⁹⁵ In September 2008, they sold the toluene diisocyanate business to specialty chemicals producer Perstorp Group for approximately \$113 million. They also settled various legal disputes, which resulted in an influx of approximately \$300 million.⁹⁶

In furtherance of their restructuring efforts, the Debtors initiated discussions with their significant creditors, including the Senior Secured First Lien Lenders and the Second Lien Prepetition Lenders, in attempts to renegotiate certain terms of their respective credit agreements, and initially obtained some measure of forbearance on repayment of approximately \$281 million in principal, interest, and fees. The Debtors retained AlixPartners to assist in managing the Debtors' control over cash and liquidity-constrained operations, and also retained Evercore to provide strategic advice and assistance in the sale of assets and (ultimately) in obtaining postpetition financing. On December 30, 2008, the Debtors appointed Kevin McShea of AlixPartners as their Chief Restructuring Officer ("CRO").

Despite these steps, the Debtors were unable to reach sustainable solutions with their various lenders to restructure their operations outside of a court process.⁹⁷ Accordingly, the Debtors filed these Bankruptcy Cases to provide them with the opportunity and the tools to achieve both a financial and operational restructuring and, thereby, preserve the value of their businesses.⁹⁸

F. DEBTOR-IN-POSSESSION FINANCING AND ADEQUATE PROTECTION

When the Debtors found themselves in a liquidity crisis and began preparing for a bankruptcy filing, the Debtors' initial thoughts turned to Debtor-in-Possession financing ("DIP Financing"). Negotiating a facility of the necessary size in a credit-strapped market takes time.

⁹⁵ *Id.*

⁹⁶ *Id.* at 18-19, ¶ 48

⁹⁷ *Id.* at 19, ¶ 51.

⁹⁸ *Id.*

Having little or no hope of securing outside financing given the state of the economy, the Debtors went to the prepetition secured lenders to obtain DIP financing. Working through the 2008 holiday season with a group of fourteen prepetition secured lenders, the Debtors were able to negotiate a term sheet for the necessary DIP Financing.⁹⁹

On the Petition Date, the Debtors filed the DIP Motion seeking an interim order to secure DIP financing to maintain liquidity needs on an extremely short term basis as well as a final order. Because the documents for the DIP Financing had not been completed, the Debtors attached the term sheet for the facility (the “DIP Facility”) to their DIP Motion. The proposed DIP Facility had three essential parts:

1. The “DIP Revolver” - \$1.515 billion revolver secured by receivables and inventory;
2. The “DIP Term Loan” - \$3.25 billion in term loans secured by priming liens; and
3. The “DIP Roll-Up”- \$3.25 billion of prepetition senior secured debt secured by priming liens junior to the DIP Term Loan liens.¹⁰⁰

My review of the transcripts of the hearings related to the DIP Facility show that the Court was concerned about the onerous provisions in the DIP Facility, particularly the high costs. However, the Debtors proved that the credit markets were very tight, the size of the DIP Facility was very large, and the costs for this type of loan in this market are extremely high. On January 8, 2009, this Court entered its “Interim Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3); 364(d)(1) and 364(e), (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (C) to Purchase Certain Assets Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364 and (III) Scheduling Final Hearing

⁹⁹ DIP Motion at 5.

¹⁰⁰ *Id.*

Pursuant to Bankruptcy Rules 4001(b) and (c)” (the “Interim DIP Order”). Further, on March 1, 2009, this Court entered its “Final Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3); 364(d)(1) and 364(e), (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (C) to Purchase Certain Assets Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c)” (the Final DIP Order”).

Along with approving the DIP Facility, the Interim DIP Order and the Final DIP Order provided substantial adequate protection payments to the prepetition lenders of the Senior Secured Credit Facility not participating in the DIP Roll-Up (the “Adequate Protection Payments”). While I have not been able to determine an exact amount, both the Committee and the Debtors believe these payments to be in excess of \$40 million a month and constitute a significant portion of the bankruptcy related costs paid by the Debtors. The Committee has asserted that because the business valuations of all parties-in-interest have placed the value of the Debtors at a level rendering the non-DIP Roll-Up Senior Secured Facility lenders undersecured, thus suggesting that they are no longer entitled to receive such adequate protection payments. It is my understanding that negotiations on this matter are presently ongoing.¹⁰¹

¹⁰¹ Developments on this issue could, conceivably, have an impact on some of the matters that were the subject of my investigation.

V. CORPORATE GOVERNANCE AND MANAGEMENT STRUCTURE

A. THE MANAGEMENT BOARD

Under Luxembourg law, a board of managers (the “Management Board”), operates LBAFGP. This structure results in the Management Board effectively managing LBI. As of the Petition Date, the Management Board consisted of seven members of LBI’s executive team: Volker Trautz, Ian Dunn, Edward Dineen, Anton de Vries, Cees Los, Bart de Jong, and Alan Bigman. Because of the changes in management discussed below, the makeup of this board has changed. Further, while minutes of the Supervisory Board discussed below indicate the Management Board has continued to meet, the Management Board’s decisions are not the subject of my investigation.

B. LBI’S SUPERVISORY BOARD

Further, Luxembourg law requires that LBI also be governed by a supervisory board (the “Supervisory Board”), which, as of the Petition Date, included: Leonard Blavatnik, Richard Floor, Kent Potter, Philip Kassin, Lincoln Benet, and Lynn Coleman.¹⁰² A combination of LBI’s articles of association and Luxembourg law distributed management responsibilities between the Management Board and the Supervisory Board. While the Management Board was in charge of day-to-day operations, prior approval from the Supervisory Board was required for certain types of actions including:

- Any material capital expenditure not included in any approved business plan and/or financing plan;
- Any divestment of assets or any acquisition or disposal of an interest in a company or a part thereof pursuant to which the value of such asset or interest exceeds thirty million euro;

¹⁰² Bigman Affidavit at 14, ¶ 38.

- The entry of a credit facility with a term of up to one year and exceeding twenty million euro;
- Any grant of a loan to a company other than a direct or indirect subsidiary of LBI exceeding twenty-five million euro unless the loan had been included in a previously approved business plan and/or financing plan;
- Any grant of security (including the pledging or mortgaging of assets) or guarantees for liabilities of unrelated third parties;
- Entry into or extension or termination of any other agreement with a contract value exceeding one hundred million euro per year;
- Any acquisition or establishment of a new site for the production of polymers, chemicals or fuels;
- The declaration of an interim dividend;
- The adoption of and changes to the [LyondellBasell]’s business principles or health, safety and environmental policies;
- The issuance of any additional shares or other equity securities or of debt securities to unrelated third parties;
- The termination or settlement of any litigation or tax audit dispute exceeding an amount of ten million Euro;
- Any other matter of significant strategic significance; and
- Remuneration of senior management of the [LyondellBasell entities].¹⁰³

The domestically incorporated Debtor entities were operated pursuant to the laws of the relevant state of incorporation (*e.g.*, Delaware law). In the period leading up to the Petition Date, the management bodies of many of the Debtor entities were changed to be made up of similar members for efficiency purposes.¹⁰⁴

¹⁰³ *Id.* at 14-15, ¶ 38.

¹⁰⁴ *Id.* at 15, ¶ 39.

Of the six members of the Supervisory Board as of the Petition Date, Messrs. Floor, Potter, and Coleman were the independent members, with Messrs. Blavatnik, Kassin, and Benet all having connections to Access. During a March 4, 2009 meeting, the Supervisory Board resolved to offer Mr. Stephen F. Cooper an appointment to the Supervisory Board in the role of Vice Chairman and Chairman of the Restructuring Committee.¹⁰⁵ In his “Affidavit of Stephen F. Cooper”¹⁰⁶ dated March 6, 2009 (the “Cooper Affidavit”), filed with this Court, Mr. Cooper disclosed to the Court and the parties-in-interest in the Bankruptcy Cases that he had accepted an appointment to the Supervisory Board, would be compensated at the rate of \$150,000 per month plus expenses for the duration of his appointment, and may be entitled to a bonus upon the emergence of the Debtors.¹⁰⁷ Immediately after joining the Supervisory Board, Mr. Cooper became significantly involved in various aspects of the Supervisory Board’s operations, including the Restructuring Committee which he chaired, and the Litigation Committee which advises the Supervisory Board on the Committee Adversary and any other litigation involving members of the Supervisory Board.

After ownership of LyondellBasell was transferred to ProChemie, Mr. Benet resigned from the Supervisory Board and was replaced by Mr. Andreas Heeschen and Mr. Hanns-Friedrich Begemann, both designees of ProChemie Holdings. Further, as discussed in more detail below, Mr. Potter later resigned from the Supervisory Board in June 2009 to assume the position of Chief Financial Officer of LBI. Because ProChemie Holding became Access’ partner

¹⁰⁵ Joint Board Meeting Minutes of the Supervisory Board of LyondellBasell Industries AF S.C.A. and the Management Board of LyondellBasell Industries AF GP S.à.r.l. on March 4, 2009 (“March 4, 2009 Board Minutes”), at 3-4. Mr. Cooper is one of the founders of Zolfo Cooper, a leading global financial consulting and interim management firm. Mr. Cooper has a wealth of experience in managing distressed businesses.

¹⁰⁶ Bankruptcy Docket No. 1104.

¹⁰⁷ During my interview with Mr. Cooper, Mr. Cooper stated that the amount of that bonus has not been established and will be determined at a later date. He further stated that, in his opinion, given his role in this case, a predetermined “success fee” or “bonus” would be inappropriate.

in ProChemie, the ProChemie Holdings designated members of the Supervisory Board were treated as non-independent members.

C. LBI'S INDEPENDENT DIRECTORS

With the addition of Mr. Cooper, the Supervisory Board consisted of 3 independent directors, Messrs. Coleman, Cooper, and Floor.¹⁰⁸ While Mr. McShea was the day-to-day CRO, Mr. Cooper provided independent oversight into the Debtors' restructuring activities. According to accounts of various members of the Supervisory Board, the Debtors, Debtors' counsel, and Debtors' outside advisors, Mr. Cooper became the *de facto* chairman of the Supervisory Board over this period because Mr. Blavatnik recused himself from any decisions that might suggest a conflict between his role as Chairman of the Supervisory Board and his position as a majority shareholder in LBI. Numerous accounts suggest that Mr. Blavatnik played a less vocal role in the Supervisory Board after Mr. Cooper joined as Vice Chairman. However, Mr. Blavatnik did attend almost all Supervisory Board meetings and most Restructuring Committee meetings. For example, a review of the minutes shows that Mr. Blavatnik attended eighteen of nineteen Supervisory Board meetings, nineteen out of twenty-nine Restructuring Committee meetings, and none of the Litigation Committee or independent Supervisory Board meetings.

D. COMMITTEES OF THE SUPERVISORY BOARD

1. Restructuring Committee

Within the Supervisory Board, certain members were elected into various committees, which included the "Restructuring Committee." I have focused my attention on the dealings of

¹⁰⁸ See Exhibit 4 for the relevant background information relating to Messrs. Coleman and Floor. It should be noted that Messrs. Coleman and Flood had previous dealings with Mr. Blavatnik.

this committee, as it was the governing body most germane to the allegations described by the Committee.¹⁰⁹

The Restructuring Committee, previously known as the Finance & Investment Committee, was comprised of all of the members of the Supervisory Committee, with the exception of Mr. Blavatnik. The primary goal of the Restructuring Committee is to facilitate an orderly exit from Bankruptcy and to leave the Debtors in the greatest position of financial strength post-emergence. As set forth above, Mr. Cooper is the chairman of the Restructuring Committee which also provides guidance to Debtors' management for issues arising out of the bankruptcy process. Despite his non-participation in this committee, Mr. Blavatnik regularly attended the Restructuring Committee meetings, but he either recused himself or was excused when the meetings turned to a topic where his presence would have presented an actual or a perception of a conflict, as did any other Access related Supervisory Board members. For example, in the September 18, 2009, Restructuring Committee meeting, the Access related board members left the meeting before an update by Evercore on the competing equity rights backstop proposals. The Restructuring Committee reported to the Supervisory Board and my interviews of management and the Supervisory Board members indicate that the Supervisory Board adopted in full all recommendations made by the Restructuring Committee.

2. Executive Search Committee

During its March 4, 2009 meeting, the Supervisory Board resolved to form an Executive Search Committee, consisting of Messrs. Floor, Potter, Coleman, Kassin, Benet, and a special advisor, J. Pendro Reinhard.¹¹⁰ This committee was formed principally to find a replacement for LyondellBasell's Chief Executive Officer ("CEO"), Volker Trautz, who elected to retire shortly

¹⁰⁹ See generally, the Examiner Motion.

¹¹⁰ March 4, 2009 Board Minutes at § 4.

after the filing of the Bankruptcy Cases.¹¹¹ After a multi-phased process, the Executive Search Committee recommended and the Supervisory Committee approved the hiring of James L. Gallogly as LyondellBasell's new CEO. Mr. Gallogly has extensive experience not only managing large petrochemical companies, but also in turning around large petrochemical companies. On June 29, 2009, the Debtors filed their "Debtors' Motion for an Order Approving the Employment Agreement of Lyondell Chemical Company and LyondellBasell ARGP S.à.r.l. with James L. Gallogly as Chief Executive Offer,"¹¹² seeking approval of this Court of the proposed employment contract with Mr. Gallogly. After notice and a hearing, this Court entered its Order approving the employment of Mr. Gallogly on July 21, 2009.¹¹³

Additionally, Alan Bigman, LyondellBasell's Chief Financial Officer ("CFO") elected to retire effective August 1, 2009. Because of their previous working relationship, Mr. Gallogly recommended that the Executive Search Committee consider Mr. Potter. Mr. Potter recused himself from the Executive Search Committee, which ultimately recommended Mr. Potter to the Supervisory Committee and agreed with this selection. Mr. Potter agreed to resign from the Supervisory Committee and take the job. On August 18, 2009, the Debtors filed their "Debtors Motion for an Order Approving Compensation Terms with Respect to the Retention of C. Kent Potter as Chief Financial Officer."¹¹⁴ After notice and a hearing, the Court entered its Order approving the employment contract by and between Mr. Potter and LyondellBasell on September 8, 2009.

¹¹¹ Disclosure Statement at 45.

¹¹² Bankruptcy Cases Docket No. 2108.

¹¹³ Bankruptcy Cases Docket No. 2305.

¹¹⁴ Bankruptcy Cases Docket No. 2498.

3. Litigation Committee

Although not an official committee, The Supervisory Board established an *ad hoc* Litigation Committee charged with reviewing the status of all litigation, including the Committee Adversary, and determining the impact of the litigation on Lyondell. Messrs. Cooper, Gallogly, and McShea are the sole members of the Litigation Committee and are charged with overseeing the litigation process and recommending courses of action to the Supervisory Board. Mr. Cooper is the only member of the Supervisory Board to sit on the Litigation Committee, because both independent directors Lynn Coleman and Dick Floor, have been named as defendants in the Committee Adversary. My interviews indicate that as with the Restructuring Committee, all recommendations of the Litigation Committee have been adopted by the Supervisory Board.

E. THE BOARD'S USE OF INDEPENDENT OUTSIDE ADVISORS

The Supervisory Board employed independent outside professionals to provide advice with regard to the restructuring process. Specifically, the Supervisory Board employed the law firm of CWT as corporate and bankruptcy counsel; Evercore as investment bankers and financial advisors; and AlixPartners as CRO and financial advisors. These professionals were responsible for the vetting of numerous decisions and the implementation of a governance structure that brought attention to, and sought to eliminate, actual and perceived, conflicts of interest. These professionals set about negotiating the DIP Financing and preparing the Debtors for the filing of the Bankruptcy Cases. These professionals have also been actively involved in the formulation of, and solicitation of financial sponsors for, the “Debtors’ Joint Chapter 11 Plan of Reorganization for the LyondellBasell Debtors” (the “Plan”).¹¹⁵

¹¹⁵ Bankruptcy Cases Docket No. 2741.

F. MR. BLAVATNIK'S ROLE ON THE SUPERVISORY BOARD

Since his appointment to the Supervisory Board, Mr. Cooper appears to have taken over the administration of the Supervisory Board, even though Mr. Blavatnik is still the chairman of the Supervisory Board and still attends its meetings. Mr. Blavatnik and the other Access-related members of the Supervisory Board were excluded from not only voting on, but also access to information regarding, the selection of the equity rights sponsor. Procedures were also put in place to ensure that the targets of the Committee Adversary had no information about or involvement with the Debtors' position on the Committee Adversary. In addition, it appears that the Litigation Committee has recently retained separate legal and financial advisory professionals to provide advice on the Committee Adversary.

VI. FIDUCIARY DUTIES

A. OUTSIDE BANKRUPTCY

Historically, the law has imposed certain duties and obligations on parties to a relationship where ownership and management of assets are bifurcated. Initially, the law looked at these relationships as a form of entrustment of property by the owner to the manager.¹¹⁶ The law then developed a construct; when one is entrusted with the property of another, one has certain duties that he or she must discharge for the benefit of the owner.

The unique nature of the corporate vehicle is that ownership and management can be, and often are, separated. Applicable nonbankruptcy corporate codes require a corporation's business affairs to be managed or directed by a board of directors. While they are not involved in the daily operations of the corporation, the directors guide and monitor the corporation's senior management, make strategic policy decisions, and promote the corporation's growth. The separation of ownership (by the shareholders) and control (by the board of directors) of the corporation creates a tension between the two constituencies. This tension – between ownership and control – served as the catalyst for the creation and continued development of fiduciary duties. Directors, acting on behalf of and for the benefit of the corporation, are thus fiduciaries of their corporation, which benefits the shareholders as the residual owners. These directors must act with care, loyalty, good faith, and candor when making decisions for the corporation.

¹¹⁶ Andrew D. Shaffer, *Corporate Fiduciary – Insolvent: The Fiduciary Relationship Your Corporate Law Professor (Should Have) Warned You About*, 8 Am. Bankr. Inst. L. Rev. 479, 481 (2000). This is an impressive introduction on the subject of fiduciary duties of directors of insolvent corporations. For an accessible discussion on the history of fiduciary duties, see the excellent work by Susan M. Freeman, a recognized expert in the area of the role of counsel to fiduciaries, *What Are the Fiduciary Duties of DIP Counsel and Committee Counsel?*, 2009 American College of Bankruptcy Induction and Educational Materials 10, 27 [hereinafter “Fiduciary Duties DIP Counsel.”] An expanded version of Ms. Freeman’s article will be published in the upcoming edition of the American Bankruptcy Institute Law Review.

1. Definition of Fiduciary Duties

There is no clear definition of fiduciary duties. Authorities have both grown and pruned the attributes of fiduciary duties driven, in part, by the facts and circumstances of each case. In the landmark case of *Meinhard v. Salmon*, the court observed:

Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.¹¹⁷

Implementing this imperative has confounded many authorities.¹¹⁸ Notably, courts fail to reach agreement on an exclusive list of fiduciary duties in the corporate context. However, there is consensus that, among these duties, one would normally find *the duty of care* and *duty of loyalty*. Authorities have also recognized the *duty of good faith*, *duty of disclosure*, *duty of impartiality*, and, in some circumstances, the *duty of obedience*. Originally, these duties were designed simply to prevent abuse of position. Presently, these duties construct the private regulatory framework for corporate governance and potential liability in the context of corporate responsibilities in and out of bankruptcy.

Generally, applicable nonbankruptcy law (usually state law for U.S. corporations, but with more regularity, the law of foreign nations) vests the responsibility for management of the corporation in a board of directors or a similar body such as the Debtors' Supervisory Board.¹¹⁹ State law generally provides that the directors of a corporation owe a fiduciary duty to the corporation that redounds to the benefit of its shareholders. Outside of contractual provisions

¹¹⁷ 164 N.E. 545, 546 (N.Y. 1928).

¹¹⁸ See, e.g., Balotti & Finkelstein's Del. L. of Corp. & Bus. Org. ch. 4, §§4.14-4.21 (2008)(describing corporate fiduciary duties and devoting over 20 pages to a discussion on the implementation of the duty of care).

¹¹⁹ See Model Bus. Corp. Act §8.01(b).

and specific statutory limitations,¹²⁰ the directors generally do not owe a fiduciary duty to creditors of the corporation.¹²¹

Although the nature of the fiduciary duty is not self-evident, the fundamental components are well understood.¹²² In essence, a fiduciary relationship is one where a fiduciary must act for the benefit of another, the beneficiary.¹²³ There can be no fiduciary without a beneficiary.¹²⁴

2. Types of Fiduciary Duties

Each fiduciary relationship is made up of constituent *fiduciary duties*. These duties, with some notable limitations, are essentially *per se* rules to the contract adopted by the corporation and accepted by its shareholders, directors, and managers. As mentioned above, relevant duties in the corporate fiduciary relationship may include the duty of care, the duty of loyalty, the duty of good faith, the duty of disclosure, the duty of impartiality, and the duty of obedience.¹²⁵

The *duty of care* requires that a director exercises the care that a person in a like position would exercise under similar circumstances.¹²⁶ The duty of care requires that management act in an informed and considered manner. To fulfill the duty of care, directors "have a duty to inform themselves, prior to making a business decision, of all material information reasonably available to them. Having become so informed, they must then act with requisite care in the discharge of

¹²⁰ For example, state fraudulent transfer law imposes statutory duties on the directors of insolvent corporations and also condemns actual fraudulent transfers.

¹²¹ Presumably, all of the interested parties to this report are familiar with recent developments relating to the "zone of insolvency" and any impact it may have on fiduciary duties involving corporate entities.

¹²² See generally *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985); see also Bernard S. Sharfman, *The Enduring Legacy of Smith v. Van Gorkom*, 33 Del. J. Corp. L. 287 (2008).

¹²³ See Robert W. Tuttle, *The Fiduciary's Fiduciary: Legal Ethics in Fiduciary Representation*, 1994 U. ILL. L. REV. 889, 897 (1994).

¹²⁴ See *Guth v. Loft*, 5 A.2d 503 (Del. 1939).

¹²⁵ See Deborah A. DeMott, *Fiduciary Obligation under Intellectual Siege: Contemporary Challenges to the Duty to be Loyal*, 30 Osgoode Hall L. J. 471 (1992).

¹²⁶ See, e.g., *United States v. Aldrich (In re Rigden)*, 795 F.2d 727, 730 (9th Cir. 1986).

their duties."¹²⁷ In short, the duty of care requires that a director act with a reasonable amount of attention and skill, well-informed, and exercising reasonable oversight.¹²⁸

The *duty of loyalty* springs from the central principle of placing the interest of the beneficiary first, thus avoiding self-dealing and conflicts of interest.¹²⁹ In *Guth v. Loft*,¹³⁰ the Delaware Supreme Court offered the classic formulation of the duty of loyalty.

Corporate officers and directors are not permitted to use their position of trust and confidence to further their private interests. While technically not trustees, they stand in a fiduciary relation to the corporation and its stockholders. A public policy, existing through the years, and derived from a profound knowledge of human characteristics and motives, has established a rule that demands of a corporate officer or director, peremptorily and inexorably, the most scrupulous observance of his duty, not only affirmatively to protect the interests of the corporation committed to his charge, but also to refrain from doing anything that would work injury to the corporation, or to deprive it of profit or advantage which his skill and ability might properly bring to it, or to enable it to make in the reasonable and lawful exercise of its powers. The rule that requires an undivided and unselfish loyalty to the corporation demands that there shall be no conflict between duty and self-interest. The occasions for the determination of honesty, good faith and loyal conduct are many and varied, and no hard and fast rule can be formulated. The standard of loyalty is measured by no fixed scale.¹³¹

Directors must put aside personal benefit, subordinating such benefit for the good of the corporation. Directors must also make full disclosure of potential conflicts of interest and may need to abstain from voting and, in most circumstance, from consideration of such matters in their entirety.

Even though corporate directors owe a duty of loyalty to the corporation, “fiduciary management entails taking action in which the decision-makers have personal interests and

¹²⁷ *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 367 (Del. 1993).

¹²⁸ See *Van de Walle v. Unimation, Inc.*, 1991 WL 29303 (Del. Ch. Mar. 7, 1991); see also Daniel B. Bogart, *Liability of Directors of Chapter 11 Debtors in Possession: "Don't Look Back – Something May Be Gaining On You"* 68 AM. BANKR. L.J. 155, 168 (1994);

¹²⁹ See *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 367 (Del. 1993).

¹³⁰ 5 A.2d 503 (Del. 1939)

¹³¹ *Id.* at 510.

conflicts.”¹³² The law does not require that a director serve as a disinterested trustee for a single beneficiary.

The duty of loyalty can still be met in such circumstances through full disclosure and approval or ratification of the decision by disinterested persons. A common example of this rule is the approval of corporate transactions with a board member by a vote of other disinterested board members.¹³³

Thus, corporations, through their directors, address potential conflicts of interest by creating and carefully implementing several constructs, including approval of certain actions by disinterested directors, recusal of interested directors from board discussions or votes, submitting certain proposals to shareholder approval after full disclosure, and ensuring that deliberations are extensive and recorded more fully than otherwise may be the general practice.

The *duty of good faith* is the cornerstone of the relationship between directors and the corporation.¹³⁴ Directors must make "a good faith effort to be informed and to exercise appropriate judgment."¹³⁵ Because of the protection of the business judgment rule, a court may not review the content of a board's decision under a due care analysis, but the court may review the content of a board's decision in determining whether the decision was made in good faith.¹³⁶ Recent court decisions have observed that good faith is intertwined with the duties of care and loyalty.¹³⁷

¹³² Freeman, *Fiduciary Duties DIP Counsel* at 19.

¹³³ *Id.* (citation omitted).

¹³⁴ *Roselink Investors, LLC v. Shenkman*, 386 F. Supp. 2d 209, 221 (S.D.N.Y. 2004)(quoting *Orman v. Cullman*, 794 A.2d 5, 14 (Del. Ch. 2007)..

¹³⁵ *In re Caremark Int'l Derivative Litig.*, 698 A.2d 959, 968 (Del. Ch. 1996).

¹³⁶ *Id.*

¹³⁷ *In re Walt Disney Co. Derivative Litigation*, No. 15452 (Del. Ch. Aug. 9, 2005); see also David H. Cook, *The Emergence of Delaware's Good Faith Fiduciary Duty: In re Emerging Communications, Inc. Shareholders*, 43 Duq. L. Rev. 91 (Fall 2004)(excellent discussion of the directors' duty of good faith, its history, liability for its breach, and its relationship to the duties of care and loyalty).

The *duty of disclosure* requires that directors truthfully and candidly disclose to shareholders all facts material to a transaction involving shareholder approval.¹³⁸ When a board of directors seeks shareholder action, it has a duty "to disclose fully and fairly pertinent information within the board's control."¹³⁹ The board's communications must be unambiguous in order to allow shareholders to make an informed vote.¹⁴⁰ This is the case whether shareholder approval is mandatory or is voluntarily sought by the directors.¹⁴¹

The *duty of impartiality* governs how a fiduciary manages the duty of loyalty among all beneficiaries where the beneficiaries' interests may conflict.¹⁴² "When there are two or more beneficiaries of a trust, the trustee is under a duty to deal impartially with them."¹⁴³ Generally, at least outside of bankruptcy, it appears that directors of a corporation may not have a duty of impartiality. This may be the case because the beneficiary of a director's fiduciary duty is the corporation and not any particular shareholder or shareholder group.¹⁴⁴

The *duty of obedience* is often a forgotten duty, subsumed in the duties of care and loyalty. In the appropriate context, it requires that a director obey the directions of its corporation. Of course, a corporation is a legally recognized bundle of relationships, not itself an actor, and can no more shout instruction or convey direction than any other legal fiction. Thus, corporate law, the charter, articles of incorporation, the bylaws, and shareholder resolutions set out the architecture of obedience. Failure to comply with these governance principles runs afoul of this duty.

¹³⁸ See *Kahn v. Roberts*, 679 A.2d 460 (Del. 1996).

¹³⁹ *Williams v. Geier*, 671 A.2d 1368, 1383 (Del. 1996).

¹⁴⁰ *Id.*

¹⁴¹ *Kahn*, 679 A.2d at 467.

¹⁴² See Freeman, *Fiduciary Duty DIP Counsel* at 20.

¹⁴³ Restatement (Second) of Trusts §183.

¹⁴⁴ See 3 Fletcher Cyclopedia of the Law of Corporations, *Directors and Officers as Fiduciaries or Trustees* §848 (2009).

3. **Business Judgment Rule**

Initially, decisions made by directors are protected by the business judgment rule.¹⁴⁵ The rule is not a description of a standard used to determine whether a breach of duty has occurred; rather, it is a deferential standard of judicial review used in analyzing director conduct. Essentially, the business judgment rule provides that courts will not second-guess corporate decisions made by directors through a proper process however wrong a decision may turn out.¹⁴⁶ The business judgment rule presumes that, in making a business decision, directors were (i) meaningfully informed, (ii) disinterested, and (iii) acted with a good faith belief that the action taken was in the best interests of the corporation.¹⁴⁷ If the predicates are established, courts will not examine the relative merits underlying the decision of the directors. However, a director will lose the protection of the business judgment rule if "the directors individually and the board collectively have failed to inform themselves fully and in a deliberate manner before voting as a board upon a transaction as significant as a proposed merger or sale of the company."¹⁴⁸

B. FIDUCIARY DUTIES IN BANKRUPTCY

In bankruptcy, while corporate governance and the concomitant fiduciary duties discussed above remain intact, additional and shifting fiduciary duties come into play. A chapter 11 debtor has fiduciary duties to its creditors and the "estate" as opposed to, or at least ahead of, its fiduciary duties to shareholders.¹⁴⁹ Moreover, the corporate debtors creditors are not one monolithic body but, rather a diverse and often competing group that may include secured

¹⁴⁵ Dennis J. Block, et al., *The Business Judgment Rule: Fiduciary Duties of Corporate Directors* 4-5, 109, 126 (1998).

¹⁴⁶ *Williams v. Geier*, 671 A.2d 1368, 1378 (Del. 1996) ("Only by demonstrating that the Board breached its fiduciary duties may the presumption of the business judgment rule be rebutted, thereby shifting the burden to the Board to demonstrate that the transaction complained of was entirely fair to the stockholders.")

¹⁴⁷ *Roselink Investors*, 386 F. Supp. 2d at 216.

¹⁴⁸ *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 368 (Del. 1993)

¹⁴⁹ See *Louisiana World Exposition v. Federal Insurance Co.*, 858 F.2d 233, 245-247 (5th Cir. 1988); *G-I Holdings, Inc. v. Those Parties Listed on Exhibit A (In re G-I Holdings, Inc.)*, 313 B.R. 612, 627-629 (Bankr. D.N.J. 2004).

creditors, priority creditors, administrative creditors, favored unsecured creditors (critical vendors, for example), general unsecured creditors, bondholders, and subordinated debt holders.¹⁵⁰

A chapter 11 business debtor “wears two hats” – that of debtor and also that of debtor-in-possession.¹⁵¹ “A debtor and debtor-in-possession are one and the same in a Chapter 11 case, as long as no trustee has been appointed.”¹⁵² Thus, a company that seeks relief under chapter 11 of the Bankruptcy Code is not simply a “debtor” as that term is understood under Section 101(13). Under Sections 1101(1) and 1108, the debtor company remains in possession of the bankruptcy estate. Thus, in the jungle of competing and conflicting claims and interests, courts are consistent in holding that the debtor-in-possession (or the trustee if one has been appointed) owes a duty to the estate that redounds to the benefit of all stakeholders, particularly the unsecured creditors.¹⁵³ “Courts have sometimes described the DIP’s fiduciary duties broadly but vaguely, as an obligation to act not in its own best interest, but rather in the best interest of the entire estate, including the creditors and owners of the estate.”¹⁵⁴ These fiduciary duties initially draw their vitality from applicable nonbankruptcy law and include the duties of care and loyalty, among others.

C. DUTIES IN THE PRESENT BANKRUPTCY CASES

In complex Chapter 11 business cases where the debtor remains in possession, there exists a latent structural tension found in the interaction between applicable nonbankruptcy law

¹⁵⁰ See Freeman, *Fiduciary Duties DIP Counsel* at 15 (citing *In re JLM, Inc.*, 210 B.R. 19, 26 (B.A.P. 2d Cir. 1997)).

¹⁵¹ *Id.* (citing *In re Water’s Edge Ltd. Partnership*, 251 B.R. 1, 6-7 (Bankr. D. Mass. 2000); *In re Rancourt*, 207 B.R. 338, 358 (Bankr. D. N.H. 1997)).

¹⁵² *Id.* (citing 11 U.S.C. § 1101(1)).

¹⁵³ *Commodity Futures Trading Comm’n v. Weintraub*, 471 US 343, 355 (1985).

¹⁵⁴ Freeman, *Fiduciary Duties DIP Counsel* at 6 (citations omitted); see also *In re Microwave Products of America, Inc.*, 102 B.R. 666, 671-673 (Bankr. W.D. Tenn. 1989).

and the Bankruptcy Code as they relate to fiduciary duties. Because the Bankruptcy Code assigns the authority to conduct the business affairs of the company to the debtor as the debtor-in-possession under Sections 1101(1) and 1108 and imposes many of the powers and obligations of a bankruptcy trustee on the debtor-in-possession under Section 1107, a case could present the situation that what may be in the best interest of the reorganized debtor may not be in the best interest of the bankruptcy estate.

For example, the directors may be focused on emerging from bankruptcy as soon as reasonably practicable because of many hard and soft costs incurred while in bankruptcy, including the erosion of going concern value caused by delays in emerging from bankruptcy, and may dismiss or discount intercreditor concerns or disputes over ownership of estate property. In many instances, there is an effective work-around for the potential conflicts between a company's roles as debtor and as debtor-in-possession. These tools include the creation of litigation trusts, liquidating trusts, or specified litigation reserves in a plan. Thus, the debtor may emerge from bankruptcy in an expeditious fashion, eliminating additional bankruptcy costs and stemming the erosion of going concern value, while leaving behind estate assets over which warring creditor factions may engage. These constructs acknowledge that many large chapter 11 cases are rarely concerned with debtor/creditor issues; rather, these cases are contests among creditors. Institutionally, one is loath to allow intercreditor bickering to destroy value by delaying what otherwise is a timely emergence from bankruptcy, especially when one constituency in the battle is "out-of-the-money." However, what is one constituency's obstacle to reorganizational success may be another constituency's statutory safeguard of its entitlements.

This may soon be the situation in these Bankruptcy Cases. The Debtors are focused on emerging from bankruptcy as quickly as reasonably possible. My interviews with the CEO, the

independent directors of the Supervisory Board, and the Supervisory Board's restructuring advisors clearly revealed a concern that the Debtors' best chance of success as a financially viable entity was to emerge from chapter 11 quickly. According to the CEO, CRO, Mr. Cooper, and the Debtors' financial advisors, costs incurred because of the bankruptcy process are about \$100 million per month. This bankruptcy-specific financial drag of \$100 million per month does not include the soft costs incurred through the loss of employees, vendors, and customers, and the erosion of the going concern value of the Debtors. To that end, the Debtors' management team and consultants have set an ambitious and aggressive schedule for emergence and have worked diligently to meet that schedule.

Meanwhile, the Committee, through its attorneys and financial advisors, has asserted itself in the Chapter 11 process as contemplated and encouraged by the Bankruptcy Code. The Committee has requested, and has been granted, the authority to bring, among other things, the Committee Adversary, a fraudulent transfer action under sections 548 and 544(b) that essentially challenges the ownership of the capital structure of the reorganized debtor.¹⁵⁵ In many corporate bankruptcies, ownership over the capital structure of the debtor is an intercreditor dispute. This is no different in these Bankruptcy Cases.

Notably, in the present Bankruptcy Cases, two of the three members of one of the bidders to serve as the backstop in an equity rights offering necessary to ensure a reasonable chance of feasibility upon emergence happen to be (i) prepetition senior secured lenders; (ii) members of the debtors-in-possession lenders; and (iii) defendants in the Committee Adversary. These two members will not agree to serve as the necessary backstop to any equity rights offering unless the Committee Adversary is resolved in some form acceptable to them. At present, both members informed me that they would not agree to any plan that included a substantial reserve. As

¹⁵⁵ See generally, *In re STN Enter.*, 779 F.2d 901 (2d Cir. 1985).

holders of substantial senior secured claims, they may pose an obstacle to any plan confirmation over their objection.

Because the Committee Adversary challenges the ownership of the Debtors, and two members of the potential winning bidder on the sponsorship of the rights offering are defendants in that very action, the classic constructs to work-around the structural tension in the interaction between applicable nonbankruptcy governance law and the Bankruptcy Code's fiduciary embellishment are simply not available. Thus, the Debtors as both Debtors and Debtors-in-Possession must confront the tension head on.

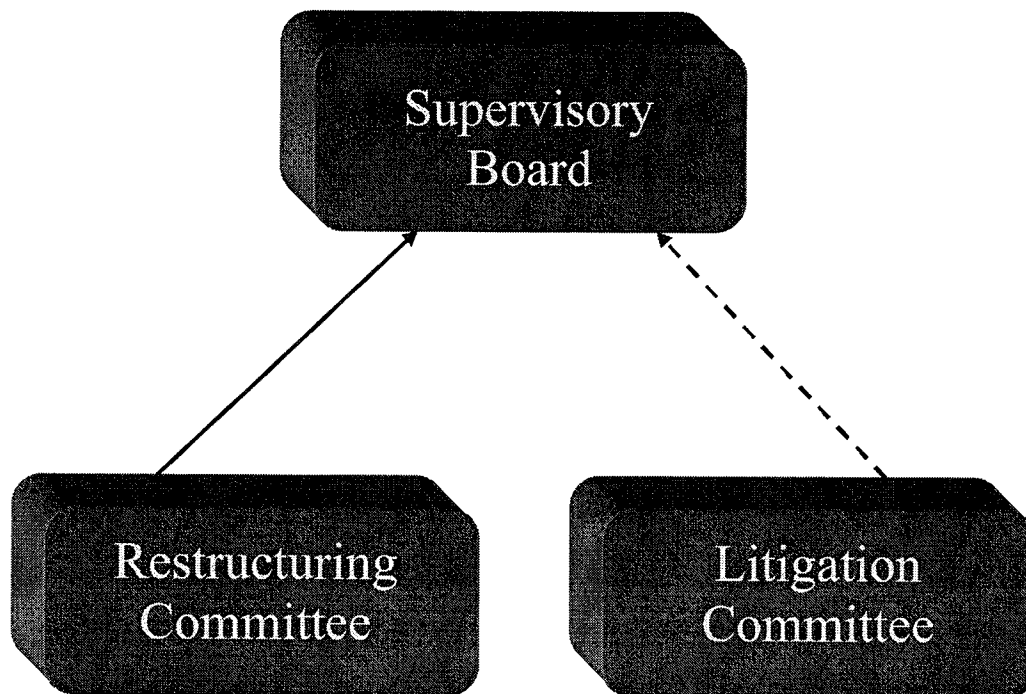
In attempting to anticipate these very structural conflicts, the Debtors created both a Supervisory Board committee tasked with all restructuring duties (the Restructuring Committee) and an *ad hoc* Litigation Committee tasked with overseeing the Committee Adversary. The members of the Restructuring Committee generally report to the Supervisory Board and, in many instances, solely to the independent members of the Supervisory Board. The members of the Restructuring Committee include Richard Floor, Steve Cooper, Phil Kassin, and Lynn Coleman. The members of the Litigation Committee include Jim Gallogly (CEO), Steve Cooper (VC-Supervisory Board), and Kevin McShae (CRO). The Litigation Committee also reports to the independent members of the Supervisory Board. In discussions with the independent members of the Supervisory Board, and after a review of the minutes of Supervisory Board meetings, the Examiner has not uncovered one instance to date where either the Restructuring Committee or the Litigation Committee has made a recommendation that has been rejected by the Supervisory Board.

The governance architecture was designed to address the potential conflict between a Debtor's duty to reorganize in an expeditious manner to preserve or increase going concern value

and the Debtor-in-Possession's duty at the least to do no harm to various stakeholders asserting claims over ownership of estate property. The chair of the Restructuring Committee is Mr. Cooper. Mr. Cooper also serves on the Litigation Committee. The other members of the Litigation Committee include the CRO, Mr. McShea, and the CEO, Mr. Gallogly. All three members of the Litigation Committee are strongly committed to emerging from bankruptcy as soon as reasonably practicable to preserve reorganizational value and jobs. Thus, they have focused on an expeditious process with that goal of near singular importance. To their credit, Mr. Cooper and Mr. McShea, as restructuring experts, do recognize the role of the Creditors Committee and the nature of intercompany disputes in bankruptcy cases. Mr. Gallogly also appeared to understand the tension in the Debtors' competing duties but was focused on his primary role of running a multi-billion dollar company.

The following series of diagrams may help explain the tensions that I have found in my investigation. The Debtors have implemented a corporate governance structure designed to accommodate the latent structural tensions posed by the interconnectedness of state corporate law and the Bankruptcy Code as they relate to the fiduciary duties of the debtor and debtor-in-possession. *See Step 1: Governance Structure.* By assigning restructuring duties to the Restructuring Committee and litigation duties to the Litigation Committee, the Supervisory Board developed the architecture to resolve the situation where the best interest of the reorganized debtor (preservation of value by a prompt exit from bankruptcy) may not coincide with the best interest of the estate (the dispute among stakeholders over which constituency owns that value).

Step 1 – Governance Structure

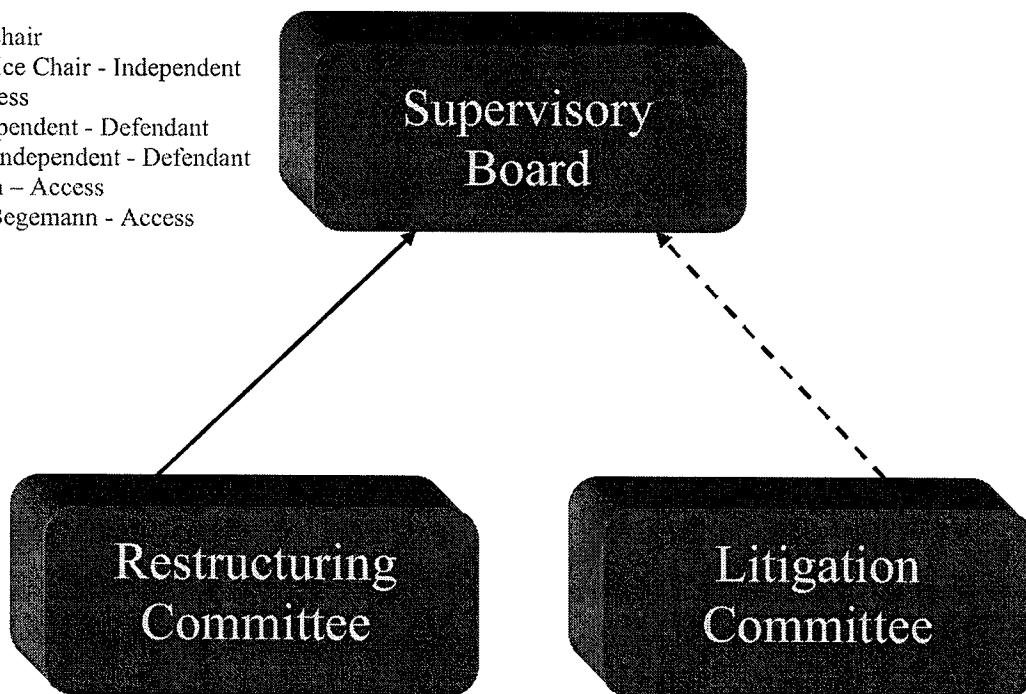


The shareholders (primarily Mr. Blavatnik) populated the Supervisory Board with a number of professionals who brought their own experience and skill set to a collective, collegial, and spirited process, each taking their respective role and concomitant fiduciary duties seriously. These individuals are listed below. Their biographies may be found at [Exhibit 4](#). See Step 2: Governance Structure with Members.

Step 2: Governance Structure with Members

Members:

Len Blavatnik – Chair
Steve Cooper – Vice Chair - Independent
Phil Kassin – Access
Dick Floor – Independent - Defendant
Lynn Coleman – Independent - Defendant
Andreas Heeschen – Access
Hanns-Friedrich Begemann - Access



Members:

Steve Cooper – Chair
Dick Floor – Vice Chair
Phil Kassin -- Access
Lynn Coleman -- Defendant

Members:

Jim Gallogly (CEO) -- Chair
Steve Cooper
Kevin McShae (CRO)

Key:

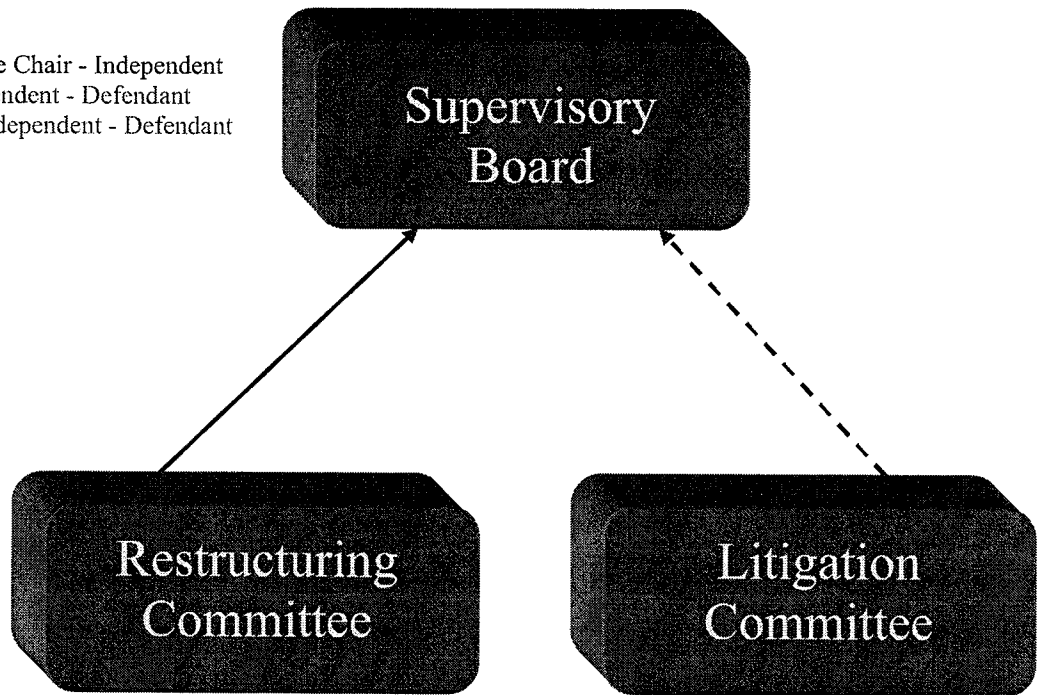
Access designee or designee of an Access Affiliate
Independent defendant in the Committee Adversary
Independent
LyondellBasell Executive

However, because of the involvement of Access as a potential member of a bidder to serve as the backstop and sponsor for an equity rights offering of between \$2.5 billion to \$3.0 billion, several members of the Supervisory Board and the Restructuring Committee do not participate in any discussion or vote on any matter related to the equity rights offering, including any procedures employed or bid selected. *See* Step 3: Governance Structure Showing Only the Non-Access Members.

Step 3: Governance Structure Showing Only the Non-Access Members

Members:

Steve Cooper – Vice Chair - Independent
Dick Floor – Independent - Defendant
Lynn Coleman – Independent - Defendant



Members:

Steve Cooper – Chair
Dick Floor – Vice Chair
Lynn Coleman -- Defendant

Members:

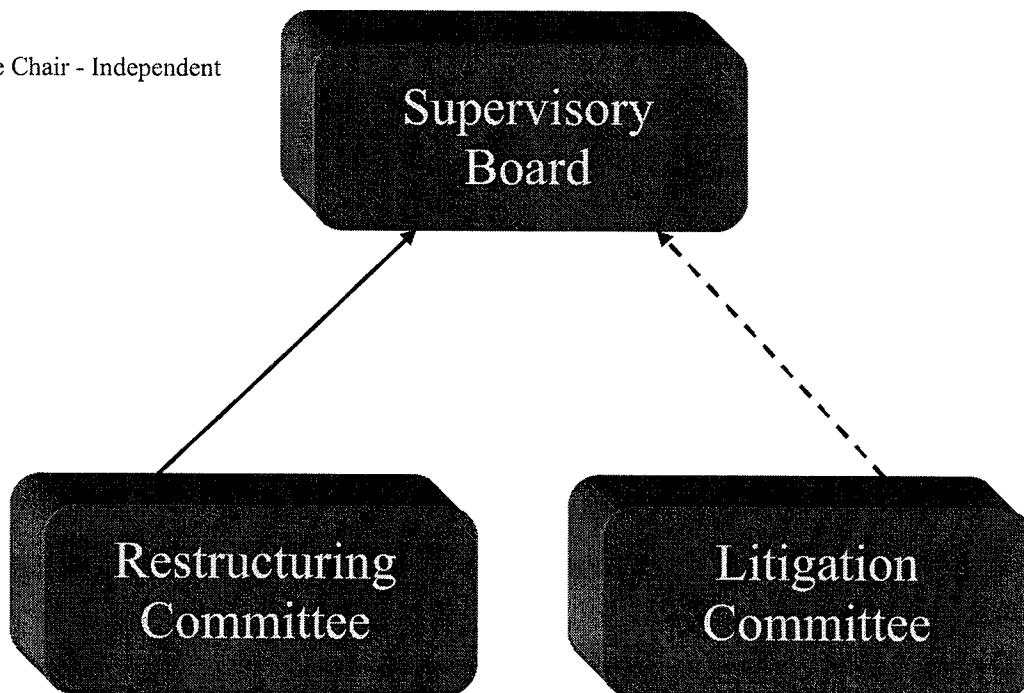
Jim Gallogly (CEO) -- Chair
Steve Cooper
Kevin McShae (CRO)

Because of the interconnectedness between the need of a backstop to an equity issue and the insistence that the Committee Adversary challenge to the ownership of the capital structure of the Reorganized Debtor presents an actual conflict of interest, decisions involving the merits, strategies, and potential range of settlement of the Committee Adversary are made by nondefendant, independent Supervisory Board members with substantial input from nonboard members of the Litigation Committee. *See* Step 4: Governance Structure Showing Only the Non-Access and Nondefendant Members.

Step 4: Governance Structure Showing Only the Non-Access & Nondefendant Members

Members:

Steve Cooper – Vice Chair - Independent



Members:

Steve Cooper – Chair

Members:

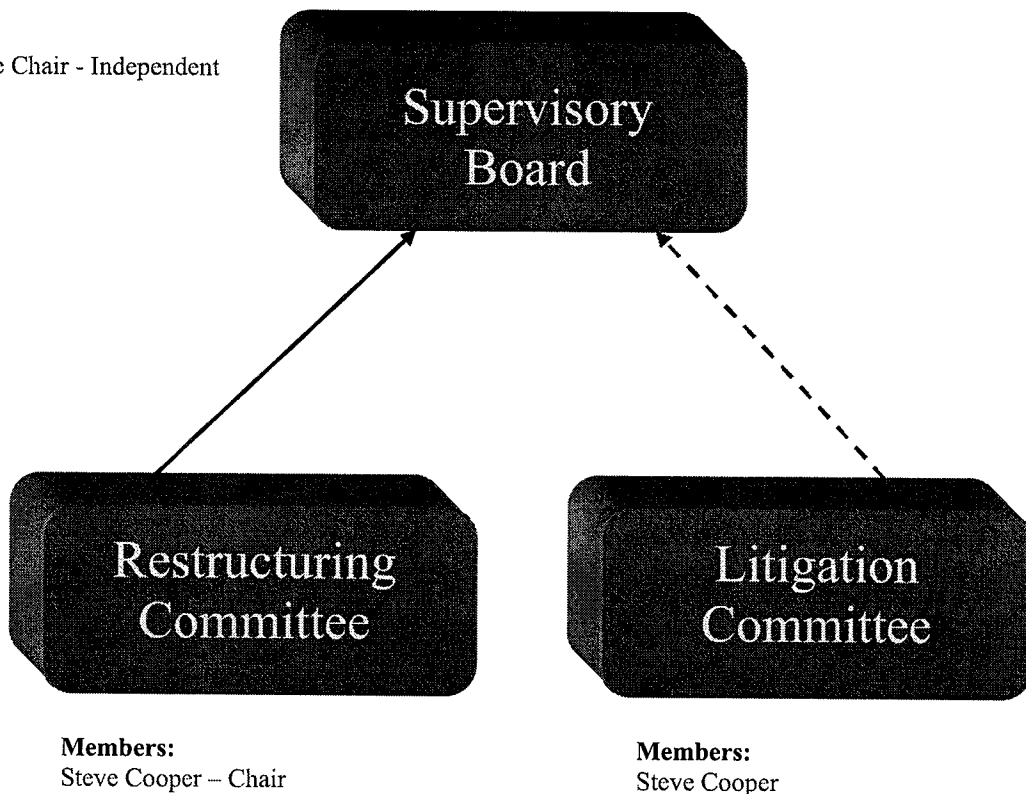
Jim Gallogly (CEO) -- Chair
Steve Cooper
Kevin McShac (CRO)

Further, once one removes the nonindependent, nondefendant Supervisory Board members from the Supervisory Board and their respective positions on the Restructuring Committee and Litigation Committee, only one director remains – Steve Cooper. See Step 5: Governance Structure Showing Only the Non-Access & Non-Defendant Board Members.

STEP 5: Governance Structure Showing Only the Non-Access & Non-Defendant Board Members

Members:

Steve Cooper – Vice Chair - Independent



In the end, in this very large complex business reorganization under Chapter 11, there is a Supervisory Board of one board member and only one board member who has the fiduciary duty to resolve the fundamental tension between what is in the best interest of the reorganized debtor (represented by an expedited exist from Chapter 11 to preserve value, jobs, etc.) and what may be in the best interest of the estate (represented by which constituency will own the value of the reorganized debtor).

VII. OBSERVATIONS RELATED TO DECISION-MAKING PROCESS

A. SELECTION OF THE RIGHTS OFFERING SPONSOR

The Debtors and their financial advisors and industry experts have projected that the downturn in the chemicals industry will last through 2012. This downturn, accompanied by the cyclical nature of the petroleum feedstock market, requires Lyondell to obtain additional equity to fund working capital needs and service its post-emergence debt structure. In reaching this conclusion, the Debtors developed an extensive bottom-up forecast for each of the Debtors' business units, which they then consolidated at a corporate level. A bottom-up budgeting process generally adds credibility to the budget, since the business line and divisional leaders responsible for preparing the forecasts are typically the most qualified to opine on the revenue and cost growth within his or her control.

With the assistance of AlixPartners and Evercore, and guidance from Mr. Cooper, as the head of the Restructuring Committee, the Debtors began their preparation of their five year business planning process to be included in the disclosure statement pursuant to the DIP Facility agreement. However, after joining the firm as the CEO in May 2009, Jim Gallogly sought and received a thirty-day extension on the DIP Facility milestone to deliver a revised plan. Mr. Gallogly then led an aggressive re-budgeting and cost-reduction process that resulted in the current version of Lyondell's post-emergence five-year business plan and fifteen-year extrapolated plan. While Lyondell appears to have understood the need for new money capital on emergence since the Petition Date, it was the completion of this budget that appears to have cemented the need for a new equity infusion. Evercore, the Debtors' retained investment bank and financial advisor, began a search for potential sponsors willing to "backstop" the new money equity issuance ("Equity Rights Sponsors").

During June 2009 through early July 2009, the Evercore team¹⁵⁶ (See Exhibit 4 for the biographies of certain of these professionals), along with the assistance of CWT and the Debtors, began preparing first round bid materials. These materials included the preparation of a confidential information memorandum (“CIM”), the development of the process letter, the structure of the nondisclosure agreement (“NDA”), and the aggregation of data room files. Also during this period, the Evercore team and LBI worked diligently to identify and select potential backstop bidders. The identification process included a requirement that potential backstop bidders commit to a minimum of \$500 million and be able to exercise leadership at the outset. Thirty-nine potential backstop bidders were identified falling in the following five categories: U.S. Private Equity (20), European Private Equity (4), Hedge Fund (5), Strategic (4), and Sovereign Wealth Fund (6).

During July 2009 through early August 2009, the Evercore team contacted the thirty-nine identified potential backstop bidders to gauge interest. Of the thirty-nine potential backstop bidders, sixteen were not interested and, of the twenty-three remaining who were interested, six were only interested in partnering up with another potential backstop provider. Evercore took steps to assist interested parties form syndicates to increase competition. In all, twenty-one NDAs were sent to potential backstop bidders and negotiations, primarily led by CWT, were conducted. Fifteen potential backstop bidders signed NDAs. Of the fifteen, fourteen were sent CIMs and first round bid letters with instructions regarding the multiple bidding scenarios.

1. Sponsor Selection Process

During the first two weeks of August 2009, the first round of due diligence was conducted. This included a review of the CIM and the detailed financial model. This also

¹⁵⁶ The Evercore team includes Dan Celentano, Nancy Bryson, Jane Gladstone, Les Fabuss, David Ying, Ralph Schlosstein, Robert Gillespie, Philippe Camus, Kathy Reiland, Donald Tang, Julian Oakley and Bernard Taylor.

included a management presentation with a question and answer session, a process letter, and follow-up discussions with Evercore and the Debtors surrounding timelines, deadlines, fees, and what potential backstop bidders thought equity should look like. First round bids were due on August 19, 2009. In all, there were three bids received from potential backstop bidders, two of which were groups consisting of multiple parties. An evaluation of first round bids was conducted during the weeks ending August 21, 2009, and August 28, 2009.

All three bidding groups (consisting of six parties) and their advisors/consultants were selected to participate in a second round of due diligence, which began in late August 2009 and concluded by mid-September 2009. The second round of due diligence included two days of business review in Houston. There were extensive data rooms to sift through and many meetings and calls/discussions with LyondellBasell management and Evercore. Also during this period, the preparation and distribution of second round bid letters and an Equity Commitment Agreement (“ECA”) took place. The letters included new instructions regarding multiple bidding scenarios followed by the draft ECA. The letters also discussed percentage of ownership, amount of funding, conditions to closing, and governance requirements. Second round bids were due on September 17, 2009. In all, there were full bids received from two bidding groups (consisting of four parties). This included their proposals plus marked up ECAs.

During September 18, 2009, through September 22, 2009, an evaluation of second round bids was conducted. This included financial and legal analysis of each proposal and clarifications with each of the bidding groups. Negotiations with second round bidding groups began on September 21, 2009, and continue to present. Counter-proposals to both bidding groups have been sent and there have been subsequent lengthy negotiations with one bidding group. Ultimately, the Debtors received two negotiated qualifying bids that were not dissimilar.

2. Conclusion on Equity Rights Sponsor Process

Based on my analysis of the process, it appears that the Debtors' directors and management, as well as their outside advisors, ran a process that is consistent with those commonly undertaken in bankruptcy cases. While the winning Equity Rights Sponsor bid came from a consortium of Access, Apollo, and Ares (collectively, the "AAAs") and was superior in terms of pricing, guarantee and structure, I do believe that the Debtors and their advisors also considered the impact the AAAs would have on the confirmability of a Plan and the compromise and settlement of the Committee Adversary in making a business decision to select the winning bid. In doing so, the Debtors were required to analyze the merits of the Committee Adversary and undertake a risk assessment to determine the ability of either party to prevail in the Committee Adversary. I have not undertaken any meaningful analysis of the risks associated with potential confirmability of any proposed plan without AAA support or associated with the Committee Adversary as both those issues are not within the scope of my investigation. Based on the information that I received and reviewed in connection with my examination, I have not witnessed any undue conflicts of interest, undue pressure, or bad faith in the process of selecting an equity sponsor.

B. DECISION NOT TO EXTEND THE DIP FINANCING

1. Securing a DIP at the Beginning of the Case

From my interviews with representatives of the Debtors, their counsel, and their financial advisors, the terms and conditions of the DIP Facility were hard fought. I reviewed the records of the final DIP Facility hearing held in Court on February 25, 26, and 27, 2009, which outlines the chronology of events leading to the Final DIP Order. While a variety of issues appear to have been contentious, the most pertinent issue for my investigation is the DIP Facility maturity

date. While the covenants, pricing, and changes in management were hotly contested issues in the final DIP Facility hearing, the DIP Facility maturity date appears to be at the core of the Committee assertion the DIP lenders are wielding inappropriate control in the Bankruptcy Cases and, in particular, conjuring up urgency in an effort to unfairly prejudice the Committee in its Committee Adversary.

Based on my discussion with both Ares and Apollo, certain of the Senior Secured Credit Facility lenders ultimately volunteered to backstop the DIP Facility (the “Specified Lenders”) when it was determined that the Debtors would file for bankruptcy in or around December 2008. This group of Specified Lenders was responsible for negotiating the material terms and conditions of the DIP Facility with the Debtors. This lender group later syndicated participation in the DIP Facility to other members of the *Ad Hoc* Group as well as previously unconnected third party institutions. Based on my interview with Jeff Serota of Ares, Ares was not part of the Specified Lender group responsible for negotiating the terms and conditions of the DIP Facility, but only participated once the loans were syndicated to the other members of the *Ad Hoc* Group. Apollo was part of this Specified Lender group, and although they were not the lead arranger or the agent for the DIP Facility, Apollo had a prominent seat at the table for all negotiations because of the size of their investments.

Ultimately, and after three days of testimony, this Court decided that the DIP Facility was negotiated using sound business judgment, that the financing was in the best interest of the estate and the creditors, that the transaction was necessary to preserve the assets and was necessary, essential and appropriate for the continued operations of the Debtor, that the terms of the transaction were fair, reasonable and adequate given the circumstances, and that the financing

was negotiated at arm's-length and in good faith.¹⁵⁷ Further in support of the Court's findings on the Debtors' use of sound business judgment, the Court stated:

But I find as a fact that there was no material management self-interest affecting this financing as analyzed, negotiated, or ultimately agreed to by the debtors.¹⁵⁸

In support of its findings on the Debtors' and the lenders' good faith efforts to negotiate the material terms and conditions of the DIP Facility, the Court stated:

I listened very hard for indications that the lenders had demanded terms that they knew in advance would result in preordained default or that they were looking to do this financing for any ulterior purpose, for example, for reasons other than a good-faith desire to get paid back, to make money on interest and fees, and to protect pre-petition positions, all of which are understandable and acceptable motivations for a DIP lender to do a deal.¹⁵⁹

The Court appeared to share the concerns of the Committee as to the fairness, reasonableness, and the adequacy of the DIP Facility maturity date, but ultimately became satisfied that the term of the financing was hard-fought and responsive to market terms by saying:

I understand the committee's anxieties in this regard which are hardly imagined on their part. They're real, and they've been a matter of concern to me, as well. But the debtors, who don't like it either, agreed to the maturity date and the milestones as a matter of necessity and as a matter of what I've already determined was appropriate business judgment. Now, looking at these provisions under a more of a strict scrutiny style of reasonableness, I find the maturity date, the duration of this facility to be sufficiently reasonable for me not to risk the loss of the facility by disapproving it.¹⁶⁰

¹⁵⁷ See Transcript from February 27, 2009 Final DIP Facility Hearing ("Final DIP Facility Hearing") 732:10 through 745:15.

¹⁵⁸ *Id.* 736:11 to 736:14.

¹⁵⁹ *Id.* at 737:6 to 737:13.

¹⁶⁰ *Id.* at 742:20 to 743:5.

The contemporaneous circumstances surrounding the negotiations of the material terms and conditions of the DIP Facility described in the sworn testimony of numerous bank and Debtors' officers demonstrate a lack of nefarious intention, back dealings, or bad faith. No evidence has come to my attention in the course of this investigation that is contrary to the findings of the Court or that would suggest that the DIP Facility lenders used the DIP Facility as a vehicle to secure an equity rights offering position.

2. Extensions of the DIP Loans

The evidence available to me throughout my investigation suggests that the Debtors have fought hard to meet the original milestones set out in the Final DIP Order. When questioned about the likelihood of a DIP Facility extension being acceptable to the DIP Facility lenders, I was informed by the Debtors that, should additional extensions on the DIP Facility be required to structure or ensure a plan, they would likely obtain such an extension. The Debtors stressed, however, that obtaining such an extension would be expensive for the estate; both in the cash cost of securing an extension and in the increased bankruptcy-related costs, which are estimated to be greater than \$100 million per month.

Because of the progress of the Bankruptcy Cases, the Debtors have sought, and were able to negotiate an extension on the DIP Facility.¹⁶¹ The cost of achieving such an extension however, was close to \$10.6 million¹⁶² and is not an expense that should be incurred without good reason. This cost, however, is minimal when compared to the ongoing costs of the DIP Facility.

¹⁶¹ "Notice of Filing of Form of Amendments to the Debtor In Possession Credit Agreement" ("Proposed DIP Amendment") entered October 14, 2009 at Bankruptcy Cases Docket No. 3043.

¹⁶² Statement of the Official Committee of Unsecured Creditors with Regard to Debtors' Notice of Filing of Form of Amendments to the Debtor In Possession Credit Agreements – Docket No. 3088.

3. Bankruptcy Case Expenses as Impetus to Not Extending the DIP

The Debtors assert that the costs of continuing to operate in bankruptcy are tremendous. While the magnitude of the separate bankruptcy cost components varies between witnesses, the overall costs of the bankruptcy appear to be significantly greater than \$100 million per month. I am led to understand that a significant portion of this approximate \$100 million monthly price tag relates to the Adequate Protection Payments (between 45-60% of total monthly expenses),¹⁶³ interest on DIP Facility (25-30% of total expenses), and professional fees. The Debtors concerns about the burn rate are real. However, the costs of extending the DIP Facility must be weighed against the potential benefits including a further assessment of all sources of value to the Debtors and the bankruptcy estates, and the ownership of that value.

4. Adequate Protection Payment Discussions

In the days leading up to the filing of the Examiners' Report, the Committee and the Debtors have engaged in communications in which the Committee demands that the Debtors move this Court to eliminate the Adequate Protection Payments which, as discussed above, constitute a significant portion of the bankruptcy related expenses. At this time, I do not find it appropriate, nor is it within my limited investigatory scope, to join this argument that would question the extent to which the Senior Secured Credit Facility lenders are sufficiently secured to be entitled to adequate assurance payments including professional fees. In light of the other prospective sources of exit financing that have materialized in the weeks preceding this Report, a thorough analysis of these Adequate Protection Payments should be considered if the Court were to instruct the Debtors to provide for a more careful vetting of any additional bids.

¹⁶³ As mentioned above and further discussed below, the propriety of these Adequate Protection Payments has recently become an issue.

5. Conclusions on DIP Facility

Based on the information gathered through my investigation, I have found no evidence that the DIP Facility lenders or any members of the *Ad Hoc* Group have applied undue pressure on the Debtors, its management, or its directors to not extend the DIP Facility beyond the current maturity date, or that any party-in-interest has used the DIP Facility negotiations to further their agenda as an equity rights backstop sponsor. This conclusion is supported by the Proposed DIP Extension which was requested by the Debtors on October 14, 2009.¹⁶⁴ Further, I have been unable to find any evidence to support the assertion that the Debtors' process in deciding whether to refinance the DIP Facility was influenced by anything other than an interest to eliminate the burdensome costs of the bankruptcy. Given the Debtors' bankruptcy-related cost structure, and in particular the actual cash costs of the Adequate Protection Payments and the ongoing bankruptcy professional fees associated with the Bankruptcy Cases, the Debtors have, so far, chosen to not extend the DIP Facility beyond those dates described in the Proposed DIP Extension. While the DIP Facility timeline and milestones are certainly aggressive in a case of this magnitude, the process underlying that decision does not appear flawed.

Furthermore, my investigation has shown that the directors and management have kept themselves meaningfully informed, with both internal and external advisors, as to the needs of the present DIP Facility, its costs, and the costs of extension or refinancing. My investigation has uncovered no facts that would suggest that the directors or management were acting in bad faith in considering any extension or replacement of the DIP Facility. Finally, my investigation has uncovered no facts that would suggest any conflict of interest or breach of duty of loyalty by the sole director, Mr. Cooper, or management regarding the DIP Facility, including its potential interconnectedness to the other issues within the scope of my investigation.

¹⁶⁴ Bankruptcy Docket No. 3043.

C. PLAN LITIGATION RESERVE

1. The Proposed Plan Litigation Reserve

The Debtors filed their Plan and accompanying Disclosure Statement on September 11, 2009. Among other things, the Plan outlines the establishment of a litigation reserve to hold shares in the new entity pending the final resolution of the Phase I and Phase IA trials (the “Plan Litigation Reserve”). The Debtors’ current Plan gives the Court the discretion to segregate some or all¹⁶⁵ of the common equity¹⁶⁶ of the “New LyondellBasell” into the Plan Litigation Reserve, and is discussed in the Disclosure Statement as follows:

an amount of shares of New Common Stock as determined by the Bankruptcy Court will be authorized and issued on the Effective Date and held in reserve, pending resolution or settlement of the Phase I Trial and Phase IA Trial.¹⁶⁷

The Committee is currently preparing to litigate Phase I of the trial against many of the Debtors’ prepetition secured lenders to avoid certain of their liens and subordinate or disallow certain of their claims. Should the Committee Adversary be successful in avoiding these liens, and/or in avoiding or equitably subordinating such claims, some or all of the unsecured claimants may then become entitled to a significant, but as yet undetermined, distribution. The Committee has requested that the Debtors fund the Plan Litigation Reserve with equity in the amount of up to \$5.0 billion.

2. Response of the Equity Sponsors to a Plan Reserve

This Plan Litigation Reserve component of the Plan met stiff resistance from Apollo and Ares, members of the equity rights sponsor group. Based on information that I gathered in my

¹⁶⁵ “The Litigation Reserved Common Stock could be up to an amount equal in value to all Allowed and Disputed General Unsecured Claims (except for Deficiency Claims against the Obligor Debtors)” –Disclosure Statement, at 7, footnote 6.

¹⁶⁶ Excluding common equity from the Equity Rights Offering

¹⁶⁷ Disclosure Statement at 63.

investigation, Apollo and Ares will not support a plan “that they find unsatisfactory,” and the inclusion of a significant litigation reserve in the Debtors’ Plan would result in such a finding by them. None of the AAAs believes that a Plan Litigation Reserve is an appropriate mechanism for plan distribution. Access has stated publically that they will not require a release from the litigation as a condition to their supporting an equity rights offering. Based on my discussions, Apollo and Ares have not conditioned their individual participation on a technical release from the Committee Adversary. However, Apollo and Ares have stated that they would not support any plan that includes a Plan Litigation Reserve. According to representatives of Apollo and Ares, this is not the way the reorganized Debtors’ assets should be managed and they suggested that having a major percentage of the equity tied up in a trust awaiting the outcome of a litigation would cause a myriad of corporate governance issues, because there would be a contingent ownership of the company which could trigger a high level of uncertainty in the composition of the Supervisory Board of the reorganized Debtors.

3. The Debtors’ Decision Making Process Used to Establish the Plan Reserve

To untangle this quagmire, I reviewed the Debtors’ decisions to date on the litigation reserve component of their Plan. I have not uncovered any facts that suggest any problems with the process by which the Debtors established the Plan Litigation Reserve *in the current Plan*. Based on my discussions with the Debtors’ members of the Supervisory Board, as well as Debtors’ counsel, I was led to understand that the necessity for a Plan Litigation Reserve was to allow for the expedited emergence from bankruptcy without being forced to wait for the conclusion of a lengthy trial process, the precise proposed construct that a reorganizing company may employ to balance its duties as debtor and debtor-in-possession.

In the Committee Reply, the Committee charges that the Debtors informed them that the Plan Litigation Reserve would be eliminated from the next version of the plan.¹⁶⁸ The Debtors, for their part, have argued that the Plan allows for a reserve and that no plan of reorganization to the contrary has been filed.¹⁶⁹ However, the Debtors also state that any plan settling the Committee Adversary would necessarily relieve the need for such a plan provision.¹⁷⁰ The Debtors also contend that such a revised plan would be subject to approval by the Court as well as the Creditors Committee, which could then object to the removal of such a provision.¹⁷¹ While it would not be proper for me to join the speculative argument of whether or not the Debtors were planning to issue a revised plan, and whether or not they were preparing to eliminate the Plan Litigation Reserve provision, the Court may wish for a further examination into the reasoning and motivation behind the elimination of this provision were the Debtors to release such an amended plan.

¹⁶⁸ Committee Reply at 11.

¹⁶⁹ Debtors Response to Examiner Motion at ¶14.

¹⁷⁰ *Id.* at ¶16.

¹⁷¹ *Id.*

VIII. ISSUES FOR FURTHER INVESTIGATION

Although I have completed the investigation as directed by the Court, there may be several additional investigatory and monitoring tasks that may be beneficial to the Bankruptcy Cases.

1. As discussed above, the Debtors and the Debtors' advisors, Evercore, constructed and implemented an effective solicitation and bidding process to identify and tentatively select the Equity Rights Sponsor. At this time, it appears that the Debtors have tentatively selected the AAAs as the Equity Rights Sponsor based on the terms and conditions of their bid. Since the tentative selection of the AAAs, a previous bidder, which had participated through all stages of the bid process, has reportedly begun negotiations to offer a competing bid. Reliance Industries, Ltd. has also publicly expressed interest in the acquisition of the Debtors, has signed an NDA, and is in the process of conducting due diligence in order to prepared its own offer. Before confirming a plan of reorganization, the Debtors and their professionals should ensure a fair, balanced, and transparent bid process open to all serious potential bidders up to plan confirmation. Moreover, before seeking confirmation of a plan of reorganization with the AAAs serving as Equity Rights Sponsor, the Debtors' and their professionals should ensure, after meaningful consultation with the Committee, that the AAAs' offer is superior to other competing offers and that the selection is consistent with their duties to the Debtors and the bankruptcy estates. The Court may order me to monitor and ensure the continuation of a reasonable decision-making process with attributes of fairness, openness, and transparency in the selection of any Equity Rights Sponsor or alternative sales process or general plan process and to ensure that the Committee and any other designated parties-in-interest are kept meaningfully informed by the Debtors.

2. The Court may order me to investigate the payment of adequate protection payments to certain members of the secured creditors in light of the values of the Debtors in these Bankruptcy Cases and the role those payments have played in Bankruptcy Cases.

3. The Court may order me to monitor the Supervisory Board interaction with the Restructuring Committee and the Litigation Committee, especially those areas where only one director is eligible to participate.

4. The Court may order me to evaluate the Debtors' assessment of the litigation risk in the Committee Adversary and the confirmability risk in any proposed plan that does not contain the AAAs as the equity rights sponsor.

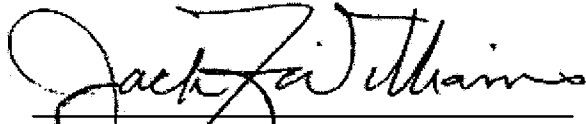
IX. CONCLUSION

Bankruptcy forces a respect for the past and fosters a concern for the future. The Code neither rejects what has gone before nor neglects what lies ahead. These are essential principles embedded throughout the Bankruptcy Code. These principles make up part of the foundation of chapter 11 business bankruptcies, particularly where a debtor corporation seeks to rehabilitate through a plan of reorganization. With its naturally singular focus on an expeditious emergence from chapter 11 to fight another day, debtor's management may almost be excused from viewing the nonessential unsecured creditors as a nuisance at best, an impediment to emergence at worst. In fact, "out of the money" unsecured debt is often marginalized by management in its efforts to reduce bankruptcy costs, preserve going concern value, and emerge from bankruptcy. Attempts by the unsecured creditors, usually through their statutory official committee, are too often easily dismissed as "intercreditor disputes," a rhetorical attempt to cloak them in bankruptcy insignificance.

However, bankruptcy is not the realm for one-eyed prophets whose vision is fixated solely on the future. To be sure, the future is important, especially to the debtor that seeks a successful emergence from chapter 11; not all important. Bankruptcy also casts its eye on the past, assigning the role of fiduciary of the bankruptcy estate and all that has gone before to the debtor-in-possession. Thus, the corporation that seeks relief under chapter 11 must have both eyes wide open, with one eye focused on its future and a successful emergence from chapter 11 and the other on its past determined to resolve disputes involving ownership of the bankruptcy estate. Most often, the two roles are substantially congruous with momentary frictions. Usually, when the heat increases, the debtor will assign many of its statutorily significant roles to the Committee who will then administer identified assets or assert various powers and actions that

otherwise vest in the debtor as the debtor-in-possession. Most often, these assignments involve various causes of action fairly characterized as intercreditor disputes, such as the exercise of avoidance powers. Although of little to no importance to the reorganizing debtor – for example, it may not care if a nonessential trade creditor is sued for a preference – it is nonetheless important to the Bankruptcy Code. To accommodate the situation where what may be in the best interests of the reorganized debtor company in preserving value through a quick emergence and what may be in the best interests of the bankruptcy estate (and its unsecured creditors) through a more deliberate investigatory process, creative bankruptcy practitioners and courts have developed several constructs, including procedural mechanisms by which the committee may bring a designated action, expedited adversary proceeding dockets, liquidating trusts, litigation trusts, creating a reserve in the plan and litigating claims, and, in some instances, designating votes. Nonetheless, there are times when the friction is so intense that it reaches a flash point so that what is in the best interests of the reorganized debtor may not be in the best interests of the bankruptcy estate and no convenient convention to work around the conflict is available. This is where we may soon find ourselves in these Bankruptcy Cases.

Respectfully submitted,



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Glossary

AAA. The equity backstop bidding syndicate consisting of Access, Apollo, and Ares.

Access. Access Industries, Inc.

Access Group. Access Industries, Inc. and its affiliates and subsidiaries holding an equity stake in LyondellBasell.

Access Revolving Credit Facility. a revolving credit facility with AI international, an affiliate of Access. Initial draws were made and repaid. Further requests were denied and nothing was outstanding as of the Petition Date.

Accounts Receivable Securitization Facility. Facility maturing in December 2012, with respect to substantially all of the receivables of Lyondell Chemical, Equistar and Houston Refining.

Ad Hoc Group. The *Ad Hoc* Group of Senior Secured Lenders consisting of ABN AMRO Bank, N.V., Apollo Management VII, L.P., Ares Management LLC, and DZ BANK AG.

Adequate Protection Payments. Payments made to the prepetition lenders of the Senior Secured Credit Facility not participating in the DIP Roll-Up estimated to be in excess of \$40 Million per month.

AlixPartners. AlixPartners, LLP.

Apollo. Apollo Management, L.P..

Ares. Ares Management LLC.

Bankruptcy Cases. Case No. 09-10023 (REG) and all other cases jointly administered thereunder.

Bankruptcy Code. Title 11 of the United States Code

Basell. Basell AF S.C.A

Basell Germany. Basell Germany Holdings GmbH.

Basell Holdings. LyondellBasell Industries Holdings B.V.

BDO. BDO Seidman, LLP.

BI. BI S.à.r.l.

Bigman Declaration. *First Day Affidavit of Alan S. Bigman Pursuant to Rule 1007-2 of the Local Bankruptcy* found at Bankruptcy Docket Number 11.

Bridge Loan. An \$8.0 billion bridge loan facility ranking pari passu with all of LBCF's existing and future senior indebtedness, an \$8.0 billion bridge loan facility ranking pari passu with all of LBCF's existing and future senior indebtedness

CEO. Chief Executive Officer.

CFO. Chief Financial Officer.

CIM. Confidential Information Memorandum.

CMO. Case Management Order dated September 24, 2009.

CMO Stipulation. Stipulation and Order Regarding the Modification of the Final Case Management Order entered on October 28, 2009, and found at Adversary Docket Number 177.

Committee. Official Committee of Unsecured Creditors of Lyondell Chemical Company *et. al.*

Committee Adversary. Adversary Proceeding Number 09-01375 brought by the Unsecured Creditors Committee against various parties relating to the merger of Lyondell Chemical Company into Basell AF S.C.A.

Committee Reply. *Reply in Further Support of Motion of the Official Committee of Unsecured Creditors for Appointment of an Examiner Pursuant to Section 1104(c) of the Bankruptcy Code.*

Compliant. The Complaint in Adversary Proceeding Number 09-01375.

Cooper Affidavit. *Affidavit of Stephen F. Cooper* dated March 6, 2009 and filed with the Court at docket number 1104.

CRO. Chief Restructuring Officer.

CWT. Cadwalader, Wickersham & Taft LLP.

Debtors. Basell Finance USA Inc., Basell Germany Holdings mbH, Basell North America Inc., Basell USA Inc., Circle Steel Corporation, Duke City Lumber Company, Inc., Equistar Chemicals, LP, Equistar Transportation Company, LLC, LyondellBasell Finance Company, Glidco Leasing, Inc., Glidden Latin America Holdings Inc., HOISU Ltd., Houston Refining LP, HPT 28 Inc., HPT 29 Inc., H.W. Loud Co., IMWA Equities II, Co., L.P., ISB Liquidating Company, LBI Acquisition LLC, LBIH LLC, LeMean Property Holdings Corporation, Lyondell (Pelican) Petrochemical L.P. 1, Inc., Lyondell Asia Pacific, Ltd., Lyondell Chemical Company, Lyondell Chemical Delaware Company, Lyondell Chemical Espana Co., Lyondell Chemical Europe, Inc., Lyondell Chemical International Co., Lyondell Chemical Nederland, Ltd., Lyondell Chemical Products Europe, LLC, Lyondell Chemical Properties, L.P., Lyondell Chemical Technology Management, Inc., Lyondell Chemical Technology 1 Inc., Lyondell Chemical Technology, L.P., Lyondell Chimie France LLC, Lyondell-Equistar Holdings Partners, Lyondell Europe Holdings Inc., Lyondell Greater China, Ltd., Lyondell Houston Refinery Inc., Lyondell LP3 GP, LLC, Lyondell LP3 Partners, LP, Lyondell LP4 Inc., Lyondell Petrochemical L.P. Inc., Lyondell Refining Company LLC, Lyondell Refining I LLC, LyondellBasell Advanced Polyolefins USA Inc., MHC Inc., Millennium America Holdings Inc., Millennium America Inc., Millennium Chemicals Inc., Millennium Holdings, LLC, Millennium Petrochemicals GP LLC, Millennium Petrochemicals Inc., Millennium Petrochemicals LP LLC, Millennium Petrochemicals Partners, LP,

Millennium Realty Inc., Millennium Specialty Chemicals Inc., Millennium US Op Co LLC, Millennium Worldwide Holdings I Inc., MWH South America LLC, National Distillers & Chemical Corporation, NDCC International II Inc., Nell Acquisition (US) LLC, Penn Export Company, Inc., Penn Navigation Company, Penn Shipping Company, Inc., Penntans Company, PH Burbank Holdings, Inc., Power Liquidating Company, Inc., Quantum Acceptance Corporation, SCM Plants, Inc., Suburban Propane GP, Inc., Tiona, Ltd., UAR Liquidating Inc., USI Chemicals International, Inc., USI Credit Corp., USI Puerto Rico Properties, Inc., Walter Kidde & Company, Inc., Wyatt Industries, Inc..

Debtors' Response to Examiner Motion.
Debtors Objection to the Motion of the Official Committee of Unsecured Creditors for Appointment of an Examiner Pursuant to Section 1104(c) of the Bankruptcy Code.

Debtors-in-Possession. Basell Finance USA Inc., Basell Germany Holdings mbH, Basell North America Inc., Basell USA Inc., Circle Steel Corporation, Duke City Lumber Company, Inc., Equistar Chemicals, LP, Equistar Transportation Company, LLC, LyondellBasell Finance Company, Glidco Leasing, Inc., Glidden Latin America Holdings Inc., HOISU Ltd., Houston Refining LP, HPT 28 Inc., HPT 29 Inc., H.W. Loud Co., IMWA Equities II, Co., L.P., ISB Liquidating Company, LBI Acquisition LLC, LBIH LLC, LeMean Property Holdings Corporation, Lyondell (Pelican) Petrochemical L.P. 1, Inc., Lyondell Asia Pacific, Ltd., Lyondell Chemical Company, Lyondell Chemical Delaware Company, Lyondell Chemical Espana Co., Lyondell Chemical Europe, Inc., Lyondell Chemical International Co., Lyondell Chemical Nederland, Ltd.,

Lyondell Chemical Products Europe, LLC, Lyondell Chemical Properties, L.P., Lyondell Chemical Technology Management, Inc., Lyondell Chemical Technology 1 Inc., Lyondell Chemical Technology, L.P., Lyondell Chimie France LLC, Lyondell-Equistar Holdings Partners, Lyondell Europe Holdings Inc., Lyondell Greater China, Ltd., Lyondell Houston Refinery Inc., Lyondell LP3 GP, LLC, Lyondell LP3 Partners, LP, Lyondell LP4 Inc., Lyondell Petrochemical L.P. Inc., Lyondell Refining Company LLC, Lyondell Refining I LLC, LyondellBasell Advanced Polyolefins USA Inc., MHC Inc., Millennium America Holdings Inc., Millennium America Inc., Millennium Chemicals Inc., Millennium Holdings, LLC, Millennium Petrochemicals GP LLC, Millennium Petrochemicals Inc., Millennium Petrochemicals LP LLC, Millennium Petrochemicals Partners, LP, Millennium Realty Inc., Millennium Specialty Chemicals Inc., Millennium US Op Co LLC, Millennium Worldwide Holdings I Inc., MWH South America LLC, National Distillers & Chemical Corporation, NDCC International II Inc., Nell Acquisition (US) LLC, Penn Export Company, Inc., Penn Navigation Company, Penn Shipping Company, Inc., Penntrans Company, PH Burbank Holdings, Inc., Power Liquidating Company, Inc., Quantum Acceptance Corporation, SCM Plants, Inc., Suburban Propane GP, Inc., Tiona, Ltd., UAR Liquidating Inc., USI Chemicals International, Inc., USI Credit Corp., USI Puerto Rico Properties, Inc., Walter Kidde & Company, Inc., Wyatt Industries, Inc.

Defendants. The Defendants in the Committee Adversary: Citibank, N.A., London Branch, Citibank International PLC, Citigroup Global Markets, Inc., Deutsche Bank Trust Company Americas,

Goldman Sachs Credit Partners, L.P., Goldman Sachs International, Merrill Lynch, Pierce, Fenner & Smith Inc., Merrill Lynch Capital Corporation, ABN Amro Incorporated, ABN Amro Bank, N.V., UBS Securities LLC, Leonard Blavatnik, AI Chemical Investments LLC, Nell Limited, Access Industries, Inc., Access Industries Holdings LLC, AI International, S.A.R.L., Deutsche Bank Securities, Inc., Perella Weinberg Partners LP, Dan F. Smith, Carol A. Anderson, Susan K. Carter, Stephen I. Chazen, Travis Engen, Paul S. Halata, Danny W. Huff, David J. Lesar, David J.P. Meachin, Daniel J. Murray, William R. Spivey, Morris Gelb, T. Kevin DeNicola, Edward J. Dineen, Kerry A. Galvin, John A. Hollinshead, James W. Bayer, W. Norman Phillips, C. Bart de Jong, Richard Floor, R. Kent Potter, Lincoln Benet, Lynn Coleman, Philip Kassin, Alan S. Bigman, Kevin R. Cadenhead, Charles L. Hall, Francis P. McGrail, Rick Fontenot, Michael P. Mulrooney, Kevin E. Walsh, John Fischer Gray, L. Koehler, Simon Baker, Dawn Shand, Bertrand Duc, and LeverageSource III S.A.R.L..

DIP Facility. The financing facility approved by the Court in the Interim DIP Order and the Final DIP Order.

DIP Financing. Debtor-In-Possession Financing.

Dip Motion. *Motion for an Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3); 364(d)(1) and 364(e), (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (C) to Purchase Certain Assets Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364 and (III) Scheduling Final Hearing Pursuant*

to Bankruptcy Rules 4001(b) and (c) found at Bankruptcy Docket Number 7.

DIP Revolver. \$1.515 billion revolver secured by receivables and inventory.

DIP Roll-Up. \$3.25 billion of prepetition senior secured debt secured by priming liens junior to the DIP Term Loan liens..

DIP Term Loan. \$3.25 billion in term loans secured by priming liens.

Disclosure Statement. *Disclosure Statement Accompanying Joint Chapter 11 Plan of Reorganization for the LyondellBasell Debtors* found at Bankruptcy Docket Number 2740.

EBITDA. Earnings before interest, taxes, depreciation and amortization.

ECA. Equity Commitment Agreement., Equity Commitment Agreement.

Equistar. Equistar Chemicals, LP.

Equity Rights Sponsors. Potential sponsors willing to “backstop” the new money equity issuance for the Debtors' postemergence capital structure.

Evercore. Evercore Partners.

Examiner Motion. Motion of the Official Committee of Unsecured Creditors for Appointment of an Examiner Pursuant to Section 1104(c) of the Bankruptcy Code.

Examiner Order. *Order Directing the Appointment of an Examiner and Specifying Scope of Examiner's Investigation and Duties Pursuant to Sections 1104(c) and 1106(b) of the Bankruptcy Code*

Final DIP Facility Hearing. Transcript from February 27, 2009 Final DIP Facility Hearing.

Final DIP Order. *Final Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3); 364(d)(1) and 364(e), (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (C) to Purchase Certain Assets Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Pre-*

Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) entered on March 1, 2009 found at Bankruptcy Cases Docket No. 1002.

Houston Refining. Houston Refining LP.

Interim DIP Order. *Interim Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3); 364(d)(1) and 364(e), (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (C) to Purchase Certain Assets Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c)* entered on January 8, 2009 found at Bankruptcy Cases Docket No. 79.

LBAFGP. LyondellBasell AF GP S.à.r.l.

LBCF. LyondellBasell Chemicals Finance.

LBF. LyondellBasell Finance Company.

LBI. LyondellBasell Industries AF, S.C.A..

LCC. Lyondell Chemical Company

Lyondell. Lyondell Chemical Company and the affiliated Debtors in the Bankruptcy Cases.

LyondellBasel. LyondellBasell A.F. S.C.A. and all affiliated entities and subsidiaries.

Management Board. Board made up of executives of a company that runs day-to-day operations under the laws of Luxembourg.

March 4, 2009 Board Minutes. Joint Board Meeting Minutes of the Supervisory Board of LyondellBasell Industries AF S.C.A. and the Management Board of LyondellBasell Industries AF GP S.à.r.l. on March 4, 2009.

Mr. McShea. Kevin McShea of AlixPartners.

NDA

Nondisclosure Agreement., 53

New LyondellBasell. The emerged LyondellBasell

Petition Date. January 6, 2009.

Phase I. Hearing on the Committee Adversary regarding insolvency on a consolidated basis.

Phase IA. Presuming the Committee prevails in Phase I, a hearing on the Committee Adversary on an individual entity basis.

Phase II. Presuming the Committee prevails in phases I and IA, a hearing on the other actions detailed in the Committee Adversary.

Plan. *Debtors' Joint Chapter 11 Plan of Reorganization for the LyondellBasell Debtors* dated September 11, 2009. Bankruptcy Docket Number 2741.

Plan Litigation Reserve. The shares of the new entity to be held in reserve pending the final resolution of the Phase I and Phase IA trials pursuant of the Plan.

ProChemie. ProChemie GmbH.

ProChemie Holdings. ProChemie Holdings, Ltd.

Proposed DIP Amendment. *Notice of Filing of Form of Amendments to the Debtor In Possession Credit Agreement* filed October 14, 2009 at Bankruptcy Cases Docket No. 3403.

Restructuring Committee. Subcommittee of the Supervisory Board responsible for overseeing the Debtors restructuring and chaired by Mr. Stephen Cooper.

Senior Secured Credit Facility. Facility dated 12/20/07 with two term loans and a revolver. One of the term loans had a \$2 billion face amount and matures in 2013, and the other term loan had a \$7.55 billion and €1.3 billion face amount and matures in 2014. The revolver had a face amount of \$1 billion and matures in 2013.

Senior Secured Inventory-Based Credit Facility. Maturing in December 2012, the principal amount under this loan is the lesser of \$1.6 billion or a borrowing base. As of the Petition Date, approximately \$1.03 billion was outstanding.

Specified Lenders. Senior Secured Credit Facility lenders participating in the DIP Facility.

Supervisory Board. A board made up of equity holders and independent members responsible for overseeing a company under Luxembourg law. On the Petition Date, this included Messrs. Blavatkik, Floor, Potter, Kassin, Benet, and Coleman.

Exhibit Index

- Exhibit 1 - *Order Directing the Appointment of an Examiner and Specifying Scope of Examiner's Investigation and Duties Pursuant to Sections 1104(c) and 1106(b) of the Bankruptcy Code Dated October 28, 2009. (DE 3148)*
- Exhibit 2 - Curriculum Vitae of Jack F. Williams
- Exhibit 3 - Documents Considered
- Exhibit 4 - Professional Biographies of Parties Interviewed

Exhibit 1

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

-----X	:	
In re:	:	
	:	Chapter 11
	:	
LYONDELL CHEMICAL COMPANY, <u>et al.</u>,	:	Case No. 09-10023 (REG)
	:	
	:	Jointly Administered
Debtors.	:	
	:	
-----X		

**ORDER DIRECTING THE APPOINTMENT OF AN EXAMINER AND SPECIFYING
SCOPE OF EXAMINER’S INVESTIGATION AND DUTIES PURSUANT
TO SECTIONS 1104(c) AND 1106(b) OF THE BANKRUPTCY CODE¹**

Upon the motion (the “Motion”) of the Official Committee of Unsecured Creditors (the “Committee”) for appointment of an examiner pursuant to section 1104(c) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”); and upon the objection (the “Objection”) of the Debtors to the Motion, as well as the response of the United States Trustee, the objection of the Ad Hoc Group of Senior Secured Lenders, the Access Parties’ opposition, the limited joinder of UBS AG, Stamford Branch in the Debtors’ Objection, the statement of UBS Securities LLC, the Committee’s reply in support of the Motion, and the joinder of Bank of New York Mellon to the Committee’s reply; and it appearing that the Court has jurisdiction over this matter and the relief requested in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and due and sufficient notice of the Motion having been provided; and upon all the proceedings before the Court including the record of the hearing held on October 26, 2009; and after due

¹ Terms used but not defined herein have the meaning ascribed to them in the Final DIP Order (March 1, 2009) [Docket No. 1002].

deliberation the Court having directed the United States Trustee to appoint an examiner who is financially sophisticated and has substantial experience in chapter 11 mega-cases, in corporate finance, and has familiarity with the practice in the bankruptcy community in connection with DIP financings, exit financings, and equity rights offerings; it is hereby

ORDERED that, pursuant to section 1104(c) of the Bankruptcy Code and for the reasons set forth on the record at the hearing on the Motion, on or before October 30, 2009, the United States Trustee shall appoint an examiner (the "Examiner") in these jointly administered cases solely to conduct the investigation (the "Investigation") set forth herein and to prepare and transmit a written report thereon (the "Report") under section 1106(b) of the Bankruptcy Code as described herein; and it is further

ORDERED that the scope of the Investigation shall be solely to determine whether the Debtors have done anything out of the ordinary in connection with their decisions regarding: (1) the selection of a sponsor of the equity rights offering contemplated by the Debtors as part of their exit financing package required for emergence from chapter 11; (2) whether or not to get new DIP facility financing; and (3) proposing a litigation reserve in the Debtors' proposed plan of reorganization, in each case solely by reason of a conflict of interest or other breach of fiduciary duty or by acting in bad faith; and it is further

ORDERED that the Examiner shall not investigate on or report on the Debtors' business judgment or merits of any party's plan proposals; and it is further

ORDERED that the Examiner is authorized to comment on, but not to affirmatively investigate, whether and to what extent any party has used leverage in these cases to put pressure on the Debtors in connection with any plan proposal; and it is further

ORDERED that the Examiner shall not interfere with or delay the Debtors' confirmation process; and it is further

ORDERED that, pursuant to Federal Rule of Bankruptcy Procedure 9031, the Examiner is not a "master" and shall not have the powers of a "master" with respect to any matters; and it is further

ORDERED that the Examiner shall complete the Investigation and Report and file the Report under seal with the Court within 30 days of the date of entry of an order of this Court affirming the appointment and identity of the Examiner; and it is further

ORDERED that prior to filing the Report under seal with the Court, the Examiner shall provide a copy of the unredacted Report on a highly confidential basis, not to be distributed to any third parties, simultaneously to the Debtors, their professionals, and to the following parties in interest and their professionals: (i) the United States Trustee; (ii) the Committee; (iii) the Ad Hoc Group of Senior Secured Lenders; (iv) Bank of New York Mellon; (v) Wilmington Trust Company; (vi) Law Debenture Trust Company of New York; (vii) the DIP Agents (including the administrative agents); (viii) the Administrative Agent for the Bridge Facility; (ix) LeverageSource III, S.à.r.l.; and (x) Access Industries, Inc. and their affiliates; provided however that any parties (and their professionals) receiving copies of the report must ensure that any of their trading activity is fully consistent with applicable law and prior orders of this Court; and it is further

ORDERED that the parties receiving the Report as described above shall have 5 Business Days after receipt of the Report to file a reply (collectively, the "Replies") under seal with the Court, with unredacted copies to the other parties who have received the unredacted Report as described above, and that each Reply shall, among other things, address to what extent that party contends that the

Report, with or without redactions, should be made a public document or conversely, could not be made public without damage to the estates' ability to maximize value for all creditors, in each case in accordance with section 107 of the Bankruptcy Code and the caselaw thereunder; and it is further

ORDERED that, after receipt of the Report and any Replies, a hearing or chambers conference shall be held (with appropriate confidentiality restrictions) to address further proceedings that might flow from the substance of the Report; and it is further

ORDERED that the Examiner shall not make any public disclosures concerning the performance of the Investigation or the Examiner's duties; and it is further

ORDERED that the Examiner shall have a budget of up to \$200,000.00 for all fees and costs with which to conduct the Investigation and prepare and file the Report. The Examiner shall file a fee application with the Court and notice and a hearing shall be held upon such application. The Debtors' estates shall pay the Examiner such amounts as are approved by the Court; and it is further

ORDERED that if necessary, the Examiner is permitted to retain professionals to assist in performing the duties described herein, provided that the Examiner's budget shall not be increased for such purpose; and it is further

ORDERED that no materials provided to or produced by the Examiner shall be subject to discovery in any matter unless such documents would be otherwise discoverable; and it is further

ORDERED that the appointment of the Examiner is not based on, and does not represent, a finding by the Court that an examiner is needed because of any wrongdoing or impropriety by the Debtors or any other party, or that there is probable cause of any such wrongdoing or impropriety; and it is further

ORDERED that all parties shall reasonably cooperate with the Examiner in the investigation; and it is further

ORDERED that this Order shall be without prejudice to the right of any party, for cause, to seek or oppose, after the filing of the Report by the Examiner, a further investigation; and it is further

ORDERED that the Court shall retain jurisdiction to determine any disputes with regard to the implementation of this Order.

Dated: New York, New York
October 28, 2009

s/ Robert E. Gerber
HON. ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE

Exhibit 2

PROF. JACK F. WILLIAMS, JD, CIRA, CDBV

140 Decatur Street, 4th Floor
Atlanta, Georgia 30329
GSU: 404.413.9149
Cell: 404.386.8096
jwilliams@gsu.edu

PROFESSIONAL EXPERIENCE

ACADEMIA

TEACHING

PROFESSOR	August 1999 - Present
ASSOCIATE PROFESSOR	August 1994 - August 1999
ASSISTANT PROFESSOR	August 1991 - August 1994
Georgia State University College of Law	
Middle East Institute, Atlanta, Georgia	

Subjects: Admiralty; Advanced Business Reorganization Seminar; Bankruptcy and Insolvency Taxation; Bankruptcy; Civil Procedure I and II; Commercial Law (Lending and Payment Systems); Corporations; Federal and State & Local Income Taxation; Financial Institutions; Islamic Law and Custom; Law & Accounting; Law & Statistics; Mergers and Acquisitions; Insurance; Reorganizations; Sports Law; Science, Technology & Law; Terrorism and Threat Assessment.

Honors: Selected as Professor of the Year (2008-2009). Honored by graduating class as a faculty participant in Hooding Ceremony (Spring 1992, Spring 1993, Fall 1994, Spring 1997, Spring 2007). Selected as one of the Top Ten Bankruptcy Academics in the United States and one of the Top Ten Bankruptcy Accounting & Taxation Specialists in the United States.

INAUGURAL SCHOLAR IN RESIDENCE	March 2004 - Present
Association of Insolvency and Restructuring Advisors	
Medford, Oregon.	

INAUGURAL ROBERT M. ZINMAN	January 2008 – May 2009
SCHOLAR IN RESIDENCE	May 2001 - December 2001
American Bankruptcy Institute, Alexandria, Virginia.	

ADJUNCT LECTURER	JULY 2007 - Present
FEDERAL LAW ENFORCEMENT TRAINING CENTER	

INSTRUCTOR	JULY 2003 - Present
NATIONAL ASSOCIATION OF CREDIT MANAGERS	

VISITING PROFESSOR
New York Law School
LL.M. Program in Taxation
New York, New York

JUNE 2004 – Present

Subjects: Bankruptcy Tax and Accounting, Federal Income Tax Law.

ADJUNCT PROFESSOR
New York University School of Law
New York, New York

September 1992 - Present

Subjects: Basic and Advanced Bankruptcy and Insolvency Taxation, Internal Revenue Service/NYU Continuing Professional Education Program, Washington, D.C. Selected to teach the first Chief Counsel Tax Law Course via the IRS Satellite network to over 250 participants at over forty sites across the country.

SPECIAL ADVISOR, THREAT ASSESSMENT & TERRORISM STUDIES JULY 2004 – MARCH 2009
The MITRE Corporation (contractor, supporting various government agencies)
McLean, Virginia

Intelligence, Terrorism (Domestic and International) and Counter-Terrorism, Radicalization of Religiously-Motivated Terrorist Groups, Homeland Security, Border and Port Protection, Prediction Models, Statistical Modeling, Threat Matrix and Scoring, Tactical and Strategic Threat Assessment, Forensic Accounting and Terrorist Financing, National Security Law.

VISITING PROFESSOR
University of Georgia Law School
Athens, Georgia

2006 – 2008

Subjects: Bankruptcy.

ADJUNCT PROFESSOR
Georgia State University
Graduate Sports Administration Department
College of Education, Atlanta, Georgia.

January 1994 – August 2001

Subjects: Sports Law and Business; Governance and Ethics in Sports.

VISITING PROFESSOR
St. John's University School of Law
LL.M. Program in Bankruptcy
New York, New York

September 1999 - August 2000

Subjects: Advanced Bankruptcy Reorganization; Advanced Partnership Bankruptcy and Taxation; Bankruptcy Accounting; Bankruptcy Ethics, Fraud, and Malpractice; Bankruptcy Theory Seminar; Bankruptcy and Insolvency Taxation; Bankruptcy

and Insolvency Research Seminar; Law and Statistics (Measuring Commercial Damages); Sports Law and Business.

VISITING ASSOCIATE PROFESSOR
Yeshiva University
Benjamin N. Cardozo School of Law
New York, New York

Summer 1995

Subject: Property

ADVISORY AND HONORARY

FELLOW & 11TH CIRCUIT REGENT
AMERICAN COLLEGE OF BANKRUPTCY

March 2004 - Present

ADVISORY BOARD
LL.M Program in Bankruptcy
St. John's University School of Law.

August 1999 - Present

ACADEMIC BOARD
Journal of Corporate Renewal
Turnaround Managers Association
Boston, Massachusetts

November 2001 – Present

ADVISOR
USDLC Board of Directors
Non-Profit Multi-State Educational Consortium
Flowery Branch, Georgia

January 2006 – December 2008

BOARD MEMBER-AT-LARGE
Georgia Governor's Office for Children and Families
(*Gubernatorial Appointee*)
Atlanta, Georgia

May 2005 – December 2008

ADVISORY BOARD
American Bankruptcy Institute Law Review
St. John's University School of Law.

August 1993 – December 2008

EDITORIAL BOARD
Asset Protection Journal
Panel Publishers
New York, New York

August 1993 – December 2002

DEAN OF FACULTY
American Board of Certification
Alexandria, Virginia

January 1998 - December 1999

TAX CONSULTANT/RUSSIAN FEDERATION
Georgia State University Consortium
Georgia State University
Atlanta, Georgia

April 1998 - August 1999

Draft Tax and Regulatory Codes for the Russian Federation with emphasis on Energy and Natural Resource (Electricity, Oil & Gas, Minerals, Timber, and Transportation).

TAX ADVISER
National Bankruptcy Review Commission

February 1997 - October 1997

CHAIRMAN
Tax Advisory Committee
National Bankruptcy Review Commission

February 1997 - October 1997

COMMENTARY

LEGAL COMMENTATOR
American Bar Association Central and Eastern European Bar Initiative

2002 - 2003

Draft Bankruptcy Law for Bulgaria. Served as Official Commentator on Bankruptcy Laws.

LEGAL COMMENTATOR
American Bar Association Central and Eastern European Bar Initiative

1995 - 1996

Draft Bankruptcy Law for the Republic of Croatia. Served as Official Commentator on Bankruptcy Laws.

REPORTER (BANKRUPTCY TAXATION)
American Bankruptcy Institute Bankruptcy Code Review Project.

1994 - 1996

PROFESSIONAL

SOUTHEAST REGIONAL MANAGING DIRECTOR
BDO Consulting, a division of BDO Seidman, LLP, New York

May 1999 - Present

Financial Recovery Services (Business Reorganizations, Accounting, Valuations, and Bankruptcy Fraud), Fraud Investigation and Recovery Services (Financial Fraud, Ponzi Schemes, Fraudulent Transfers, and Money-Laundering), Litigation Support Services, and Bankruptcy and Insolvency Tax Services.

CONSULTANT
Atlanta, Georgia.

August 1991 - May 1999

Counter-Terrorism & Homeland Security, Antiquities & Money Laundering Detection, Forensic Accounting, Bankruptcy Accounting, Litigation Support, Taxation, Fraud Investigation, and Damages and Statistical Modeling.

GRAND JURY CONSULTANT
Georgia Jury Commission
Fulton County, Georgia

April 1998 - August 1999

Provide consultation and recommendations for the selection and qualifications of grand jurors. Constructed a statistical model to explore racial makeup of grand juries.

ARBITRATOR

January 1998 - February 1998
July 1996 - August 1996

United States Olympic Committee Olympic Arbitration Panel

Served as arbitrator in the Winter 1998 Olympics in Nagano, Japan, and in the Summer 1996 Olympics in Atlanta, Georgia.

ASSOCIATE
Hughes & Luce, Dallas, Texas.

November 1987 - August 1991

JUDICIAL LAW CLERK
The Honorable William J. Holloway, Jr.
Chief Judge, United States Court of Appeals for the Tenth Circuit.

August 1985 - September 1987

EDITORIAL ASSISTANT
Food and Drug Law Journal
Washington, D.C.

August 1983 - May 1985

MEDIATOR
National Law Center, George Washington University.
Washington, D.C.

August 1983 - May 1985

HONORS, GRANTS AND AWARDS

Research Funding, Carleton University Critical Infrastructure Protection Center, **Religious Justification for Al Qaida Attacks on Petroleum Related Industries** (2008).

Association of Insolvency and Restructuring Advisors, Certification in Distressed Business Valuations (CDBV).

Association of Insolvency and Restructuring Advisors, Certified Insolvency and Restructuring Advisor (CIRA), **Kroll Zolfo Cooper Randy Waits Award -- Gold Medal**, Highest Grade on 2004 Certification Examination.

Faculty Development Institute, **Connecting Teaching With Technology**, University Systems of Georgia, 1998-1999.

National Housewares Manufacturers Association, **Comparative Analysis of German Insolvency Law**, 1998.

Case Financial, **Empirical Study of Collateral Dispositions under Article 9 of the Uniform Commercial Code**, 1998.

EDUCATION

**School of Archaeology & Ancient History
University of Leicester, Leicester, United Kingdom**

Ph.D Candidate

Dissertation Topic: *Ethics of Archaeologists Embedded In Military Structures During Conflicts*

National Law Center, George Washington University

Juris Doctor with High Honors, May 1985

Class Rank: 9/372

Honors: Order of the Coif

The University of Tulsa College of Law

August 1982-July 1983

Honors: Dean's List Honors

The University of Oklahoma

B.A., Economics, July 1982

Honors: President's Honor Roll

Omicron Delta Epsilon, Int'l Economics Honor Society

The United States Coast Guard Academy

June 1979-May 1981

PUBLICATIONS

WORKS IN PROGRESS

Managing Financial Failure: Lumps and Lessons From the S&L Debacle of the '80's (work in progress).

Means Testing in Bankruptcy (ABI 2009)(with Felicia Turner) (work in progress).

Business Valuations in Bankruptcy (ABI 2009) (work in progress).

Within The Shadow of Islam: The Illegitimacy of Terror Movements in the Name of Islam
(work in progress).

BOOKS AND CHAPTERS

Bankruptcy and The Servicemember Civil Relief Act (ABI 2009)(with Susan H. Seabury).

Business Bankruptcies Essentials (American Bar 2009)(with Hon. Stan Bernstein and Susan Seabury).

Thorny Issues in Consumer Bankruptcies (ABI 2008)(with Susan H. Seabury).

Financial Handbook for Bankruptcy Professionals (West Group Cum. Supp. 2008)(with William K. Lenhart).

McQueen & Williams on Tax Aspects of Bankruptcy Law and Practice (3d ed.) (Two Volumes)(West Group 1997)(with C. Richard McQueen).

Cumulative Supplements 2009 - 1997

Volumes 1 and 2: Kennedy, Countryman, and Williams on Partnerships, Limited Liability Entities, and S Corporations in Bankruptcy (Aspen Law & Business *formerly* Little, Brown & Company) (with Vern Countryman & Frank R. Kennedy).

Cumulative Supplements 2005 - 2001

Terrorist Threat Analysis: Sharpening the Traditional Threat Formula, collected in **Wiley Handbook of Science and Technology for Homeland Security** (John G. Voeller ed. 2009).

Norton Bankruptcy Law and Practice 2nd (contributing author [four chapters] – William L. Norton, III and Hon. William L. Norton, Jr. eds. 2009).

2005 Bankruptcy Revisions: Implications for Business and Financial Advisors (contributing author [three chapters] – Grant Newton ed. 2005).

The Tax Man Cometh: New York Yankees and Taxes, collected in **Courting the Yankees: Legal Essays on the Bronx Bombers** (Ettie Ward ed. 2003).

Tax Aspects of Bankruptcy Law and Practice (2d ed.) (Two Volumes)(Shepard's/McGraw-Hill 1994)(with C. Richard McQueen).

Cumulative Supplements 1997 - 1995

Creditors' Rights and Bankruptcy (Matthew Bender 1993)(with Pamela Williams).

ARTICLES

Manipulating and Hiding Terrorist Content on the Internet: Legal and Tradecraft Issues ____
S.M.U. J. Sci. & Tech. ____ (tent. pub. date 2009)(with Marisa Urgo and Tony Burns).

Restructuring Trends, Financial Distress, and Opportunities, 22 AIRA Journal 5-6 (Oct./Nov. 2008).

Bankruptcy Rule 6003: A Humble Attempt to Slow Down the Chapter 11 Train, 22 AIRA Journal 5-6 (Aug./Sep. 2008).

Morality of Debt Forgiveness, 22 AIRA Journal 4-5 (Jun./July 2008).

Debt, Bankruptcy, Taxes and The Servicemember Civil Relief Act, 2008 Norton Annual Review 441-483 (2008)(with Susan H. Seabury).

Lessons Gleaned From Consumer Bankruptcy Cases, 22 AIRA Journal 5-7 (Apr./May 2008).

A Tribute to Professor Frank R. Kennedy, __ Am. Bankr. Inst. J. __ (March 2008).

Squaring Bankruptcy Valuations with Daubert Demands, 16 Am. Bankr. Inst. L. Rev. 161-265 (2008)(with Hon. Stan Bernstein and Susan H. Seabury).

Understanding Terrorism Risk and Its Possible Impacts, 106 Oil & Gas Journal 18-25 (2008) (with David Weinberg and Glenn Coplon).

The Home Mortgage Meltdown: Some Relief for Borrowers, 22 AIRA Journal 4-5 (Mar./Apr. 2008).

Independent Examiners and Internal Investigations, Director's Monthly 11-12 (Feb. 2008) (with Bill Lenhart).

The Myths of Going Concern Valuations, 22 AIRA Journal 4-5 (Jan./Feb. 2008).

American Classic as a "Classic" on Insolvency and Preferences, 22 AIRA Journal (Oct./Nov. 2007).

Daubert and Financial Expert Testimony in Bankruptcy Courts, 22 AIRA Journal (Aug./Sep. 2007).

The Empowerment of Bankruptcy Courts in Addressing Financial Expert Testimony, 80 Am. Bankr. L.J. 101-190 (2007)(with Hon. Stan Bernstein and Susan H. Seabury).

The Challenges of Limited Liability Companies in Bankruptcy: Part II, 21 AIRA Journal 4-9 (June/July 2007).

The Challenges of Limited Liability Companies in Bankruptcy: Part I, 21 AIRA Journal 4-7 (Apr./May 2007)

Preference Defenses, 21 AIRA Journal 4-5 (Feb./Mar. 2007).

State and Local Tax Issues in Bankruptcy Under BAPCPA, 20 AIRA Journal 4-7 (Aug./Sep. 2006).

Tax Consequences of Postpetition Income as Property of the Estate in an Individual Debtor Chapter 11 Case and Tax Disclosure in Chapter 11, 13 Am. Bankr. Inst. L. Rev. 701-731 (2006)(with Jacob L. Todres)(symposium).

The Coming Revenue Revolution in Sports, 42 Willamette L. Rev. 101-139 (2006)(symposium).

The Case of the Missing Punctuation Mark, 20 AIRA Journal 4-5 (Aug./Sep. 2006).

Director and Officer Liability in the Zone of Insolvency, 14 The Corporate Governance Advisor 28-32 (May/June 2006)(with William K. Lenhart).

Assessing the Liability of Officers, Directors of Corporate Debtors, Dow Jones Daily Bankruptcy Review (October 26, 2005)(with William K. Lenhart).

Aggressive Tactics Required to Combat Fraud: Top Down Commitment is Essential, Journal of Corporate Renewal (August 2005)(with William K. Lenhart)

Managing Preference Claims, National Association of Bankruptcy Trustees Journal (2004).

Caution: You are Now Entering the Zone of Insolvency, J. Turnaround Management 77-80 (Spring 2004)(with William K. Lenhart).

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PRESENTATIONS

Moderator/Panelist, Ponzi Schemes and Fraud (Southeast ABI August 2009).

Lecturer, Reading Bankruptcy Cases (Northern Virginia Bankruptcy Bar Association May 2009).

Lecturer, General Bankruptcy Fundamentals (ABI Annual Meeting April 2009).

Panelist, Case Law Update on Daubert and Business Valuation in Bankruptcy (VALCON University of Texas, AIRA, ABI March 2009).

Lecturer, Ethics in Bankruptcy (ABI Winter Leadership Conference December 2008).

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Lecturer, The State of the Business of Bankruptcy: Keynote Address (AIRA Annual Meeting June 2008).

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Lecturer, Bankruptcy as Civil Remedy (Northern Virginia Bankruptcy Bar Association March 2008).

Lecturer, Chapter 13 and Home Mortgages: Subprime Mortgages Through the Lens of Bankruptcy (Northern Virginia Bankruptcy Bar Association March 2008).

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Presenter, Limited Liability Companies in Bankruptcy (Oklahoma Bankruptcy Bar Association Annual Meeting December 2007).

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Presenter, Human Terrain Assessments: Iraqi and Afghani Cultural Awareness (USCENTCOM November 2007).

Panelist, Hot Button Chapter 13 Issues (National Conference of Bankruptcy Judges – ABI Workshop November 2007).

Moderator, Daubert and Expert Financial Testimony in Bankruptcy (National Conference of Bankruptcy Judges – AIRA Breakfast November 2007).

Moderator, Update on Distressed Business Valuation Cases in Bankruptcy (AIRA – NYC September 2007).

Presenter, Insolvency (BDO Seidman, LLP Advanced Workshop July 2007).

Presenter, Distressed Business Valuations (BDO Seidman, LLP Advanced Workshop July 2007).

Keynote Speaker, Daubert Requirements in Bankruptcy Trials (AIRA Annual Meeting June 2007).

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Presenter, Terrorism Threats to Petroleum Industry: A Strategic Look at the Problem (ConocoPhillips Security Summit June 2007).

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Presenter, *Coming Revenue Revolution in Sports*, Willamette Law Review Sports Law Symposium (2006).

Presenter, *Al-Qai'da and Terror Threat Profiles: A Bayesian Analysis* (CIA 2006).

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Lecturer, *Active Credit Management and Distressed Accounts* (Georgia Credit Managers October 2003).

Lecturer, *Creative Techniques in Assessing Ordinary Course Transactions* (Georgia Credit Managers October 2003).

Lecturer, *Hot Issues in Bankruptcy and Commercial Lending* (Association of Commercial and Finance Attorneys May 2003).

Panelist, *Ethical Issues in the Commercial Lending Practice* (Association of Commercial and Finance Attorneys May 2003).

Panelist, *Excessive Compensation* (Society of Business Editors and Writers April 2003).

Lecturer, *Tax Issues in Bankruptcy* (American Bankruptcy Institute Annual Meeting April 2003).

Panelist, *Consumer Bankruptcy Nuts and Bolts* (American Bankruptcy Institute Annual Meeting April 2003).

Lecturer, *Sovereign Immunity in Bankruptcy* (American Bankruptcy Institute Annual Meeting April 2003).

Lecturer, *Life Just Got Worse: The Interface of Domestic Relations with Bankruptcy Law* (Southeastern Bankruptcy Law Institute March 2003).

Lecturer, *Bankruptcy and Taxes* (Southeastern Bankruptcy Law Institute March 2003).

Lecturer, *Financial Testimony in Bankruptcy After Daubert* (Georgia Bankruptcy Bar Association February 2003).

Panelist, *Sarbanes-Oxley: A Policy Critique* (The Seminar Group February 2003).

Panelist, *Bankruptcy Year in Review – 2002* (Atlanta Bankruptcy Bar Association January 2003).

Lecturer, *Bankruptcy and Taxes: COD Income* (Southeastern Tax Institute December 2002).

Lecturer, *What Did Congress Have in Mind in Enacting Sarbanes-Oxley?* (Federalist Society - Atlanta Lawyers Chapter November 2002).

Lecturer, *The Role of Islamic Law in Terrorism* (Ohio Bankruptcy Bar Association October 2002).

Lecturer and Coordinator, *Homeland Security and Counter Terrorism Symposium* (Georgia State University College of Law, Atlanta, Georgia November 2002)

Lecturer, *America's Response to Islamist Terrorism* (Sixth Circuit – U.S. Court of Appeals Judicial Conference, Cleveland, Ohio June 2002).

Lecturer, *Business Bankruptcy Review* (Association of Insolvency and Restructuring Advisors Annual Convention May 2002).

Lecturer, *Commercial Law Reform: Bankruptcy Taxation and Predatory Lending* (American Bankruptcy Institute Annual Meeting April 2002).

Lecturer, *Islamist Terrorism: Threat and Threat Assessment* (Atlanta Scholars Kolllel, Atlanta, Georgia, April 2002).

Lecturer, *Economic Consequences of Terrorism: A Bankruptcy Lawyer's Response* (Georgia Bar Association January 2002).

Panelist, *Integrating American Indian Law in the Traditional Commercial Law Curriculum* (American Association of Law Schools – Section on American Indians and Indigenous Peoples January 2002).

Panelist, *Bankruptcy Year in Review* (Atlanta Bar Association 2002).

Lecturer, *Tracking the Finances of Islamist Terrorist Organizations* (Oklahoma Bar Association December 2001).

Lecturer, *Georgia's Response to Predatory Lending* (Georgia Federalist Society December 2001).

Lecturer, *The Economic Consequences of Terrorist Attacks* (American Bankruptcy Institute Winter Leadership Conference November 2001).

Lecturer, *An Introduction to Classical Islam and the History of Islamist Terrorism* (Beth Jacob Synagogue Speaker's Series October 2001).

Lecturer, *Al-Qaeda: Its Logistical, Financial and Operational Arms* (Federalist Society – Georgia State University 2001).

Lecturer, *Homeland Security: A Systems Approach* (Federalist Society – Georgia State University 2001).

Presenter, *Project Jericho: The Use of Computer Models to Predict Future Terrorist Activity* (Federalist Society – Georgia State University 2001).

Moderator, *Daubert and Kumho Tire: The Bankruptcy Court's Role in Assessing Expert Financial Testimony* (American Bankruptcy Institute Winter Leadership Conference 2001).

Panelist, *Bankruptcy Tax Provisions in the New Bankruptcy Bill* (ABI Teleseminar 2001).

Lecturer, *Islamist Terrorism: Its Structure, Operations, and Intelligence* (Broken Bow, Oklahoma Kiwanis and Lions Club 2001).

Lecturer, *Islamist Terrorism: How Targets are Defined and Operations Funded* (Billy Mitchell American Legion Post, Arlington, Virginia, 2001).

Lecturer, *A Geo-Political Look at Terrorism in the United States* (Atlanta, Georgia 2001).

Lecturer, *Homeland Defense for the Non-Expert: What Every American Can Do to Aid Her Country* (Atlanta, Georgia 2001).

Lecturer, *Environmental Issues in Business Reorganizations* (U.S. Environmental Protection Agency 2001).

Panelist, *Bankruptcy Tax Provisions in the New Bankruptcy Bill* (ABI Teleseminar 2001).

Panelist, *Bankruptcy Ethics, Disinterestedness, and Indemnifications* (ABI New York Conference 2001).

Lecturer, *Pitfalls and Lessons in the New Bankruptcy Tax Bill* (American Bankruptcy Institute Annual Meeting 2001).

Lecturer, *The Use of Statistical Techniques in Constructing Damages Models* (Georgia State University College of Law – Federalist Society 2001).

Lecturer, *Emerging Issues of Liability of Officers, Directors, And Professionals of Corporate Debtors Operating in the Zone of Insolvency* (Southeastern Bankruptcy Law Institute 2001).

Lecturer, *Current Preference Issues* (Southeastern Bankruptcy Law Institute 2001).

Panelist, *Bankruptcy Year in Review* (Atlanta Bar Association 2001).

Lecturer, *Tax Fraud!* (ABI Southeastern Bankruptcy Institute Workshop 2000).

Lecturer, *The Use of Classification and Regression Tree Analysis to Identify Islamist Terrorists* (Federalist Society – Georgia State University 2000).

Lecturer, *Project Jericho: The Use of Computer Models to Predict Future Terrorist Activity* (Federalist Society – Georgia State University 2000).

Lecturer, *Separate Entity Rules in Bankruptcy: Prebankruptcy Planning in the Consumer Case* (ABI Southeastern Bankruptcy Institute Workshop 2000).

Lecturer, *Financial Analysis of Troubled Companies: What Ratios and Trends Can Tell a Turnaround Manager* (BDO CPE Program 2000).

Lecturer, *Special Accounting Rules Regarding Insolvent or Bankrupt Companies* (BDO CPE Program 2000).

Lecturer, *Insolvency Tax Considerations for Troubled Companies* (BDO CPE Program 2000).

Lecturer, *Management Theories and Duties of Managers of Insolvent Corporations* (BDO CPE Program 2000).

Lecturer, *Law, Duties, and Damages Methodologies in Insolvent Corporation Scenarios* (Long Island Chapter of Turnaround Managers Association 2000).

Lecturer, *Calculating Damages for Breach of Duty Cases in the Context of Insolvent Corporations*, New York State Society of Certified Public Accountants (2000).

Lecturer, *Statistical and Econometric Models in the Law: Proof of Damages*, St. John's University (2000).

Lecturer, *Ethical Duties of the Insolvent Corporation*, St. John's University School of Law (2000).

Lecturer, *Measuring Commercial Damages*, St. John's University School of Law (2000).

Lecturer, *Time Value of Money*, St. John's University School of Law (2000).

Lecturer, *The Morality of Debt Forgiveness*, St. John's University Founder's Day Luncheon (2000).

Lecturer, *Section 382 Limitations with Corporations in Bankruptcy*, BDO Seidman, LLP CPE Program, New York (1999).

Lecturer, *Calculating Insolvency Under the Bankruptcy Code*, New York State Society of Certified Public Accountants (1999).

Lecturer, *S Corporation and COD Income*, BDO Seidman, LLP CPE Program, New York (1999).

Lecturer, *S Corporations in Bankruptcy*, BDO Seidman, LLP CPE Program, New York (1999).

Lecturer, *The Use of Statistical Techniques to Detect Fraud*, (New York State Society of Certified Public Accountants (1999).

Lecturer, *Information Management and Supply Chains*, BDO Seidman, LLP CPE Program, New York (1999).

Lecturer, *Merger and Acquisition Activity in the Food Distribution Sector*, BDO Seidman, LLP CPE Program, New York (1999).

Lecturer, *Ethical Duties of Insolvent Corporation to Creditors*, Georgia Bar and Georgia State University College of Law (1999).

Lecturer, *Food Distribution: Failure of Integration in a Merger Frenzy*, Georgia State University Law and Business Schools (1999).

Lecturer, *Statistical Techniques in the Discovery of Fraud*, St. John's University School of Law (1999).

Lecturer, *Compliance Issues in Bankruptcy: Section 1398 of the IRC and Prompt Determination of Taxes*, BDO Seidman, LLP CPE Program, New York (1999).

Lecturer, *The Dischargeability of Tax Claims Under the Bankruptcy Code*, Association of Recovery and Insolvency Accountants, Los Angeles, California (1999).

Lecturer, *Liquidating Trusts in Bankruptcy*, Association of Recovery and Insolvency Accountants, Los Angeles, California (1999).

Lecturer, *A Collision of Policies: The Bankruptcy Code Meets the Internal Revenue Code*, Nassau and Suffolk County Bar Associations, Long Island, New York (1999).

Lecturer, *S Corporations in Bankruptcy*, BDO Seidman, LLP CPE Program, New York (1999).

Lecturer, *Indian Gaming*, Federalist Society, Georgia State University and Emory University (1999).

Witness, *The Bankruptcy Reform Act of 1999*, Testimony Before the United States Senate and House of Representatives (1999).

Lecturer, *The Enforcement of Arbitration Clauses in Bankruptcy*, American Bar Association Section on Litigation, Atlanta, Georgia (August 1999).

Lecturer, *Personal Bankruptcies and Tax Claims: The Role of the Super-Discharge Under Chapter 13 of the Bankruptcy Code*, American Bar Association Section on Taxation, Atlanta, Georgia (August 1999)

Lecturer, *Electronic Commerce and the Global Economy and Deregulation of the Telecommunications Market*, Israel Bar Association and Goldennet (Zahav-Bezek), Tel Aviv, Israel (February 1999).

Lecturer, *Why Al-Qaeda is not Through with the World Trade Center Just Yet* (Georgia State University College of Law 1998).

Lecturer, *Defenses to Preferences*, Georgia Bar and Georgia State University (1998).

Lecturer, *“But-For” and Other Commercial Damages Calculations*, Georgia State University Law and Business School (1998).

Lecturer, *Proving Insolvency Under the Bankruptcy Code*, Federalist Society, Georgia State University (1998).

Lecturer, *Indian Tribal Customs and Their Influence on Tribal Law: The Choctaw Perspective*, Georgia State University (1998).

Lecturer, *A History of Food Distribution in America*, Federalist Society, Georgia State University (1998).

Lecturer, *Fraud!*, Federalist Society, Georgia State University (1998).

Lecturer, *Defenses to Preferences* (Georgia Bar and Georgia State University 1998).

Lecturer, *Proving Insolvency Under the Bankruptcy Code*, Federalist Society, Georgia State University (1998).

Lecturer, *Rights of Disabled Students in Academic Settings Under the ADA*, Emory University, Atlanta, Georgia (October 1998).

Lecturer, *Salary Discrimination in Major League Baseball*, Federalist Society, Georgia State University, Atlanta, Georgia (April 1998).

Lecturer, *Tax Issues in Bankruptcy*, American Bankruptcy Institute Winter Leadership Conference, Tucson, Arizona (December 1998).

Lecturer, *Intellectual Property Issues in Sports*, Georgia State University College of Law (February 1997).

Lecturer, *Intermodal Transportation and Food Distribution Systems* (Federalist Society, Georgia State University College of Law 1997).

Lecturer, *Law and Statistics* (Georgia State University 1997).

Lecturer, *Government Claims in Bankruptcy: The Empire Strikes Back*, American Bankruptcy Institute Winter Leadership Conference, La Costa, California (December 1997).

Speaker, *Interplay Between Quality of Life Crimes and Inner-City Economic Development*, Greater Atlanta Electric League, Atlanta, Georgia (November 1997).

Lecturer, *National Bankruptcy Review Commission Tax Proposals*, ABA Section of Business Law, Philadelphia, Pennsylvania (October 1997).

Lecturer, *Legal Issues Posed by Emerging Information Technologies*, Georgia Bar Association, Atlanta, Georgia (April 1997).

Lecturer, *The Need for a Uniform Act Regulating Sports Agents*, Georgia State University College of Law (February 1997).

Lecturer, *Regulation of Sports Agents*, Emory University School of Law (January 1997).

Lecturer, *American Indian Tribal Law and Culture*, Atlanta Jewish Community Center Forum (January 1997).

Lecturer, *The Use of Statistics in the Law: A Biostatistical Case Study*, Georgia State University (October 1996).

Lecturer, *Gender Equity and Coaching Salaries*, Georgia Bar Association (October 1996).

Panelist, *World Conference on Women and Sport*, International Olympic Committee, Switzerland (October 1996).

Lecturer, *Gender Equity and Grassroots Support for Women's Sports*, Georgia State University Sports Administration Graduate Program (May 1996).

Lecturer, *Sports Ethics: Shoe Contracts and Team Names*, Georgia State Sports Administration Graduate Program (April 1996).

Lecturer, *Fallacies in the Internal Revenue Code's Treatment of Nonrecourse Debt*, Tau Alpha Chi, Honorary Tax Fraternity at Georgia State (April 1996).

Lecturer, *The Bankruptcy Reform Act of 1994*, State Bar of Georgia Mid-Year Meeting (January 1995).

Lecturer, *Tax Aspects of Bankruptcy Reorganizations and Pitfalls in the Bankruptcy Reform Act of 1994*, Georgia Bankruptcy Bar Section (October 1994).

Lecturer, *Gender Equity in College Sports Programs*, International Conference on World Sports Management, Georgia Institute of Technology (October 1994).

Lecturer, *The Tax Politics of Single-Asset Cases*, University of South Carolina College of Law Bankruptcy Symposium (August 1994).

Lecturer, *A Concise History of Islamic Terrorist Movements and Why That is Important to America* (Emory University 1993).

Lecturer, *Sports Ethics and Governance*, Georgia State University Sports Administration Graduate Program (November 1993).

Lecturer, *Hot Topics in Sports Law*, Georgia State University Sports Administration Graduate Program (November 1993).

Lecturer, *Taxable Abandonment*, Tau Alpha Chi, Honorary Tax Fraternity at Georgia State (November 1993).

Lecturer, *Hot Spots in Bankruptcy and Tax*, American Bankruptcy Institute Annual Meeting, Washington, D.C. (May 1993).

Lecturer, *Intercorporate Guaranties*, American Bar Association Business Bankruptcy Committee Section Meeting, Orlando, FL (April 1992).

Lecturer, *The Economics of Bankruptcy*, Valencia Community College, Orlando, FL (April 1992).

Lecturer, *Intercorporate Guaranties*, American Bar Association Business Bankruptcy Committee Section Meeting, San Francisco, CA (October 1991).

MEDIA APPEARANCES

- Appeared as a Commentator on CNN, NBC Nightly News, ABC Evening News, Dateline, The Today Show, CNBC, MSNBC, C-SPAN, ESPN, NPR, Bloomberg, FoxNews, BBC, and numerous Local News Broadcasts.
- Quoted in over 250 articles in newspapers and magazines of general circulation.

PROFESSIONAL SERVICE

- Testified before House (11) and Senate (6) Committees and Subcommittees on Bankruptcy, Tax, Financial Distress, and Homeland Security Issues.
- Member, Texas Indian Bar Association Indian Gaming Committee
- Member, Texas Indian Bar Association Legislative Committee
- Member (Chair 1992-94), American Bankruptcy Institute Bankruptcy and Taxation Committee
- Participant, Electronic Document Processing Project for the United States Courts under the auspices of the Judicial Conference of the United States (March 1992)

UNIVERSITY SERVICE

COLLEGE

- Co-coordinator, Southeastern Bankruptcy Law Institute (1991-present)
- Chair, Academic Enrichment Committee (2002-present)
- Member, Technology Committee (1998-2003; 2005-present)
- Member (Chair 1998-1999), Continuing Education Committee (1998-2003)
- Member, Faculty Recruitment Committee -- SPS Joint Appt. (1998-1999)
- Member, Faculty Recruitment Committee (1996-1998)
- Chair, Faculty Library Committee (1997-1998)
- Member, Faculty Scholarship Committee (1997-1998)
- Member, Faculty Development Committee (1996-1999)
- Chair, Educational Technology Advisory Committee (1993-1996)
- Member, Admissions Committee (1994-1996)
- Member, Dean Search Committee (1995-1996)
- Member, Ad Hoc Committee on the Order of the Coif (1995-1996)
- Member, Library Committee (1993-1995)
- Member, Ad Hoc Continuing Education Committee (1994-1995)
- Member, Curriculum Committee (1993-1994)
- Member, Ad Hoc Faculty Teaching Committee (1992-1994)
- Member, Ad Hoc Atlanta Project Committee (1993-1994)
- Member, Ad Hoc Academic Assistance Committee (1991-1993)
- Advisor, The Federalist Society
- Advisor, Phi Delta Phi
- Advisor, Sports Law Club

UNIVERSITY

- Faculty Member, Georgia State University Middle East Institute (2008-present)
- Faculty Advisor, Georgia State University Chapter of Theta Chi Fraternity (2007-present)
- Faculty Member, Georgia State University International Law Enforcement Enterprise (2006-present)
- Member, Athletic Department Risk Management Committee (1995-2006)
- Senator, Faculty Senate (1995-1997)
- Member, Faculty Senate Planning and Development Committee (1995-1997)

- Member, Faculty Senate Athletics Committee (1996-1997)
- Member, Faculty Senate Statutes and Bylaws Committee (1996-1997)
- Member, Faculty Senate Research Committee (1995-1996)
- Member, Sports Administration Department Faculty Recruitment Committee (1993-1996)

COMMUNITY SERVICE

- Guest Speaker on Native American customs, language, and folklore at private and public schools in Atlanta.
- Guest Speaker on Islam and Customs in Arab Nations.
- Middle Eastern and Native American Storyteller

AFFILIATIONS

- State Bar of Texas
- American Bar Association/Section of Business Law
- American Bar Association/Section of Science & Technology
- American Bar Association/Section of Taxation
- American Bar Association/Business Bankruptcy Law Committee
- American Bar Association/Forum Committee on the Entertainment & Sports Industries
- Native American Bar Association
- Texas Indian Bar Association
- American Bankruptcy Institute
- Association of Insolvency and Restructuring Advisors
- Association of Certified Fraud Examiners
- American Statistical Association
- National Association of Credit Managers
- Commercial Law League of America
- World Archaeological Conference
- Archaeological Institute of America
- Society for American Baseball Research

BAR MEMBERSHIPS

- State of Texas, 1988
- Commonwealth of Pennsylvania, 1985
- United States Court of Appeals, Tenth Circuit, 1986
- United States Court of Appeals, Fifth Circuit, 1988
- United States District Court, W.D. Oklahoma, 1987
- United States District Court, N.D. Texas, 1988
- United States District Court, E.D. Texas, 1990

Exhibit 3 - Documents Considered

Pleadings in the Bankruptcy Cases and in the Committee Adversary

Supervisory Board, Management Board, Restructuring Committee and Litigation Committee Minutes (January 08, 2009 through October 27, 2009):

1. January 08, 2009 Management Board meeting
2. January 08, 2009 Independent Directors meeting
3. January 08, 2009 Joint Supervisory Board and Management Board meeting
4. January 20, 2009 Joint Supervisory Board and Restructuring Committee
5. January 20, 2009 Independent Directors meeting
6. January 25, 2009 Management Board meeting.
7. January 26, 2009 Independent Directors meeting
8. January 28, 2009 Supervisory Board and Restructuring Committee meeting
9. January 31, 2009 Supervisory Board and Restructuring Committee meeting
10. February 04, 2009 (am) Supervisory Board and Restructuring Committee meeting
11. February 04, 2009 (pm) Supervisory Board and Restructuring Committee meeting
12. February 05, 2009 Supervisory Board and Restructuring Committee meeting
13. February 06, 2009 Joint Supervisory Board and Management Board meeting
14. February 08, 2009 Independent Directors meeting
15. February 08, 2009 Supervisory Board and Restructuring Committee meeting
16. February 10, 2009 Supervisory Board and Restructuring Committee meeting
17. February 12, 2009 Supervisory Board and Restructuring Committee meeting
18. February 20, 2009 Supervisory Board and Restructuring Committee meeting
19. February 20, 2009 Joint Supervisory Board and Management Board meeting
20. February 24, 2009 Supervisory Board and Restructuring Committee meeting
21. March 04, 2009 Joint Supervisory Board and Management Board meeting
22. March 05, 2009 Supervisory Board and Restructuring Committee meeting
23. March 14, 2009 Joint Supervisory Board and Management Board meeting
24. March 30, 2009 Joint Supervisory Board and Management Board meeting
25. April 13, 2009 Supervisory Board and Restructuring Committee meeting
26. April 21, 2009 Supervisory Board and Restructuring Committee meeting
27. April 23, 2009 Joint Supervisory Board and Management Board meeting
28. May 05, 2009 Supervisory Board and Restructuring Committee meeting
29. May 19, 2009 Supervisory Board and Restructuring Committee meeting
30. June 01, 2009 Supervisory Board and Restructuring Committee meeting
31. June 12, 2009 Supervisory Board and Restructuring Committee meeting
32. June 17, 2009 Supervisory Board and Restructuring Committee meeting
33. June 24, 2009 Joint Supervisory Board and Management Board meeting
34. June 24, 2009 Supervisory Board and Restructuring Committee meeting
35. June 29, 2009 Litigation Committee meeting
36. July 01, 2009 Litigation Committee meeting
37. July 06, 2009 Litigation Committee meeting
38. July 07, 2009 Litigation Committee meeting
39. July 10, 2009 Litigation Committee meeting

40. July 13, 2009	Supervisory Board and Restructuring Committee meeting
41. July 13, 2009	Joint Supervisory Board and Management Board meeting
42. July 20, 2009	Supervisory Board and Restructuring Committee meeting
43. July 20, 2009	Litigation Committee meeting
44. July 28, 2009	Supervisory Board and Restructuring Committee meeting
45. August 12, 2009	Supervisory Board and Restructuring Committee meeting
46. August 28, 2009	Joint Supervisory Board and Management Board meeting
47. August 28, 2009	Supervisory Board and Restructuring Committee meeting
48. September 04, 2009	Joint Supervisory Board and Management Board meeting
49. September 04, 2009	Supervisory Board and Restructuring Committee meeting
50. September 11, 2009	Joint Supervisory Board and Management Board meeting
51. September 11, 2009	Supervisory Board and Restructuring Committee meeting
52. September 18, 2009	Joint Supervisory Board and Management Board meeting
53. September 18, 2009	Supervisory Board and Restructuring Committee meeting
54. October 01, 2009	Joint Supervisory Board and Management Board meeting
55. October 01, 2009	Supervisory Board and Restructuring Committee meeting
56. October 07, 2009	Joint Supervisory Board and Management Board meeting
57. October 07, 2009	Supervisory Board and Restructuring Committee meeting
58. October 07, 2009	Litigation Committee meeting
59. October 15, 2009	Litigation Committee and Independent Directors meeting
60. October 23, 2009	Litigation Committee and Independent Directors meeting
61. October 27, 2009	Joint Supervisory Board and Management Board meeting

2009 Public and Private Call Transcripts and Participants:

1. 2009 Public and Private Call Dates
2. Company Advisors
3. Transcript - April 14, 2009 – Preliminary 2008 LyondellBasell Earnings Conference Call (11:30am)
4. April 14, 2009 Public Conference Call Participants (10:30am)
5. April 14, 2009 Private Conference Call Participants (1:00pm)
6. Transcript – May 06, 2009 – Q1 2009 Financial Results Conference Call
7. May 06, 2009 Public Conference Call Participants (11:45am)
8. Transcript – June 03, 2009 – April 2009 Financial Results Conference Call (3:30pm)
9. June 03, 2009 Public Conference Call Participants (10:30am)
10. Transcript – June 30, 2009 – May 2009 Financial Results Conference Call (3:30pm)
11. June 30, 2009 Public Conference Call Participants (10:30am)
12. Transcript – August 07, 2009 – June 2009 Financial Results Conference Call (3:30pm)
13. August 07, 2009 Public Conference Call Participants (10:30am)
14. Transcript – October 06, 2009 – August 2009 Financial Results Conference Call (3:00pm)
15. October 06, 2009 Public Conference Call Participants (10:00am)
16. Transcript – November 03, 2009 – Q3 2009 LyondellBasell Earnings Conference Call (4:00pm)
17. November 03, 2009 Public Conference Call Participants (10:00am)

Equity Financing Documents:

1. 1st Round Bids

REDACTED

2. 2nd Round Bids

REDACTED

3. Bid Comparison

- a. 1st Round Bids
- b. 2nd Round Bids

4. Process

- a. 1st Round Process Letter
- b. 2nd Round Process Letter
- c. CIM
- d. Rights Offering Process & Criteria - July 2009
- e. Equity Commitment Agreements – Original
REDACTED
- g. Equity Commitment Agreements – Ad Hoc
- h. NDA (Original and Final Versions)
- i. Contact Log
- j. Equity Process Timeline
- k. Process Materials Index

5. Strategic buyer Bid

Equity Financing Documents:

1. 1st Round Lender Presentations

REDACTED

2. 2nd Round Lender Presentations

REDACTED

REDACTED

3. DIP Extension Materials
 - a. Barclays
 - b. BofA Merrill Lynch (Timelines, Fee Letter, Work Letter)
4. Presentations
 - a. Imputed Leverage Book - 8/19/09
 - b. Comparison of Debt Proposals - 8/19/09
 - c. Potential Capital Structure Scenarios - 8/21/09
 - d. Potential Lead Arranger Presentation (LBI) - 8/28/09
 - e. Preliminary Leverage and Liquidity Analysis - 8/30/09
 - f. Potential Lead Arranger Presentation (Ad Hoc Group) - 8/31/09
 - g. Imputed Leverage Presentation - 9/2/09
 - h. Preliminary Leverage and Liquidity Analysis - 9/7/09
 - i. Imputed Leverage Presentation - 9/10/09
 - j. Org Book - 9/10/09
 - k. Documentation Roles & Responsibilities - 9/15/09
 - l. Debt Financing Discussion Materials - 9/21/09
 - m. Debt Financing Discussion Materials - 9/23/09
 - n. Comparison of Debt Proposals - 10/2/09
5. Term Sheets (ABL, Term Loan, Secured Notes, Roll-up Notes)
 - a. Sent to potential lenders on 9/14/09
 - b. Sent to Roll-up lenders on 10/30/09
6. Process
 - a. Process Letter
 - b. NDA (Original Version)
 - c. Contact Log
 - d. Debt Process Timeline

Board Presentations:

1. Financing discussion materials - 7/7/09
2. Rights Offering presentations (2) - 7/20/09
3. Review of Potential Lead Arranger/Underwriter Meetings - 8/17/09
4. Exit financing discussion materials - 9/4/09

Other:

1. Imputed Valuation Analysis - October 2009
2. Complete NDA Status Log (CWT)
3. Recovery Analysis

Additional Materials:

1. First round Q&A sessions with management
2. Excel version of LRP

3. Powerpoint presentation of LRP
4. Contact info for Bain and Blackstone
5. Evercore Biographies
6. Latest ECA
7. All other pleadings in these bankruptcy cases..

Exhibit 4 - Professional Biographies¹

I. DEBTORS' SUPERVISORY BOARD MEMBERS

A. LEN BLAVATNIK

Len Blavatnik is a major American industrialist with global interests in three sectors: natural resources and chemicals, media and telecommunications, and real estate. He is the founder and Chairman of Access Industries, a privately-held U.S. industrial group through which he controls his holdings. Incorporated in 1986, Access Industries is today an international industrial concern with strategic investments in the United States, Europe and South America.

Mr. Blavatnik, who was raised in Russia, emigrated to the United States with his family in 1978 and became a U.S. citizen in 1981. He received his Master's degree from Columbia University and his MBA from Harvard Business School.

Mr. Blavatnik serves as a director of numerous companies in the Access portfolio including LyondellBasell Industries (the world's third-largest independent chemical company with major production facilities in Europe and the United States), TNK-BP (a European based vertically integrated oil company) and UC RUSAL (the largest vertically integrated aluminum producer in the world).

Mr. Blavatnik provides financial support to and remains engaged in numerous educational pursuits. In addition to corporate directorships, Mr. Blavatnik sits on academic boards at Cambridge University, Harvard Business School and Tel Aviv University.

An active philanthropist, Mr. Blavatnik and the Blavatnik Family Foundation have been generous supporters of The National Gallery of Art, The Metropolitan Museum of Art, Tate, the National Portrait Gallery, the Royal Academy of Arts, the Prince's Trust and numerous other leading cultural and charity institutions. Mr. Blavatnik also sits on, inter alia, the board of directors of the 92nd Street Y in NY, The White Nights Foundation of America and The Center for Jewish History in New York, and he is a member of the Board of Governors of The New York Academy of Sciences.

B. STEPHEN F. COOPER

Co-founder and former chairman of Zolfo Cooper, Mr. Cooper continues to provide strategic advice on select restructuring matters.

With more than 30 years of experience as a financial advisor, Mr. Cooper is a sought-after interim executive and advisor to companies facing operational and performance issues. In August 2009, Steve was named vice chairman and a member of the office of the CEO of MGM.

¹ Unless otherwise noted, the biographies are pulled from the public profiles each party provides on his/her corporate website.

Earlier in the year, he was appointed an independent member of the supervisory board of LyondellBasell Industries and chairman of its restructuring committee. Steve recently served as the CEO of Hawaiian Telcom and provided management services to American Home Mortgage. Other recent engagements include serving as executive chairman of Blue Bird, a leading bus manufacturer, and chairman of the board of auto supplier Collins & Aikman. In 2005 Steve was CEO of Krispy Kreme Doughnuts; from 2002-2005 he served as CEO and CRO of Enron.

A turnaround industry pioneer, Mr. Cooper has worked on both the creditor and company sides of distressed situations. Through managing more than 300 engagements, Steve has earned an international reputation as a creative problem-solver who can craft constructive business solutions out of complex, contentious situations. His track record includes prominent engagements such as Laidlaw, Washington Group, Morrison Knudsen, Federated Department Stores and numerous others.

Previously, Steve was a financial consulting partner of Touche Ross (now Deloitte & Touche), where he was also a founding partner of that firm's reorganization advisory services group.

He holds a B.A. from Occidental College and an M.B.A. from the University of Pennsylvania's Wharton School. Steve is a member of the American Institute of Certified Public Accountants, the New York State Society of Certified Public Accountants, the Institute of Management Accountants, the Turnaround Management Association and the Association of Insolvency and Restructuring Advisors. He has also been named a fellow of the American Bankruptcy Institute and is a founding member of the International Insolvency Institute. In addition, Steve is a frequent speaker and author on the subjects of leadership and financially troubled companies.

Mr. Cooper was contacted about joining the Supervisory Board by several parties-in-interest, including the Royal Bank of Scotland.

C. LYNN R. COLEMAN

Lynn R. Coleman, has been a member of the Supervisory Board since October 2007. He was a partner in the energy practice of the law firm of Skadden, Arps, Slate, Meagher and Flom LLP from 1981 until his retirement in 2007. Prior to joining Skadden, Mr. Coleman served as the General Counsel of the U.S. Department of Energy and later as Deputy Secretary. In March 2008, Mr. Coleman was appointed to the Supervisory Board of Lyondell Basell Industries, a Luxembourg entity, which is a large chemical company with operations in the U.S. and internationally. He also serves on the board of directors (non-executive chair) of Total Holdings USA, Inc. He holds an LLB degree from the University of Texas and a BA from Abilene Christian College.²

² <http://people.forbes.com/profile/lynn-r-coleman/47201>

D. RICHARD E. FLOOR

Richard Floor, a partner in and co-chair of Goodwin Procter LLP's Corporate Group, concentrates in corporate finance, representing a variety of underwriters, venture capital companies, investment companies and investment advisors.

Mr. Floor is a director of New America High Income Fund, Affiliated Managers Group, Inc. and formerly a director of Altamira Investment Services, Inc. He served as co-chairman of the Reverse Investment Committee of the International Trade Advisory Board of the Commonwealth of Massachusetts. In addition, Mr. Floor serves as chairman of The Harvard Center for Eating Disorders and is a trustee of Regis College. He is listed in *The Best Lawyers in America*.

Mr. Floor taught a seminar in corporate finance for four years at Harvard Business School, including a class attended by Mr. Blavatnik, and has lectured to individual classes at the business schools of Harvard, Stanford and Columbia.

Mr. Floor is admitted to the bars of New York and Massachusetts.

E. PHILLIP KASSIN

Mr. Kassin is an Executive Vice President and Head of M&A and Financing at Access Industries, is a member of the Supervisory Board and the Restructuring Committee of LBI. Prior to that role, he served in various leadership roles at AIG Financial Products, PwC Consulting, Morgan Stanley, and Morgan Guaranty Trust Company. He attended Syracuse University from 1975 to 1979. At Access Industries, he was instrumental in negotiating the merger between Lyondell and Basell.³

II. DEBTOR'S EXECUTIVES

A. JAMES L. GALLOGLY,

Mr. Gallogly has been the Chief Executive Officer of LyondellBasell Industries AF S.C.A. since May 14, 2009. Mr. Gallogly serves as the Chief Executive Officer and President of Chevron Phillips Chemical Company LP. Mr. Gallogly served as an Executive Vice President of Exploration and Production of ConocoPhillips from October 2008 to May 2009. Mr. Gallogly served as an Executive Vice President of Refining, Marketing & Transportation at ConocoPhillips (Phillips Petroleum Company) from April 1, 2006 to October 2008. Mr. Gallogly served as the President and Chief Executive Officer of Chevron Phillips Chemical Company LLC from July 2000 to March 31, 2006. Prior to that, Mr. Gallogly served as Senior Vice President of Chemicals for Phillips Petroleum Company since 1999. From 1998 to 1999, Mr.

³ No public profile was available for Mr. Kassin. This information is pulled from my interview with Mr. Kassin.

Gallogly served as Vice President of Olefins and Polyolefins of Phillips. Mr. Gallogly began his career at Phillips Petroleum Company in 1980, serving in a variety of legal, finance and project management roles including Vice President of North America production since 1995 and Vice President of Plastics since 1997. Beginning in 1990, he served as Manager of Business Services of North America exploration and production, Finance Manager. He served as Manager of Ekofisk II, Norway, in 1993. He serves on the board of directors of the American Petroleum Institute. He served as a Director of the American Chemistry Council, the American Plastics Council and the National Petrochemical and Refiners Association. Mr. Gallogly is a member of the Colorado, Oklahoma and Texas bar associations. He serves on the University of Colorado Department of Chemical and Biological Engineering Advisory Committee. Mr. Gallogly served as a Director of Chevron Phillips Chemical Co. LLC from July 2000 to March 31, 2006. Mr. Gallogly received a Bachelor of Arts from the University of Colorado in 1974 and a law degree from the University of Oklahoma in 1977. Mr. Gallogly completed the Advanced Executive Program at the J. L. Kellogg Graduate School of Management at Northwestern University in 1998.⁴

B. C. KENT POTTER

Kent Potter became LyondellBasell's Chief Financial Officer, effective August 1. Mr. Potter most recently was a consultant in the petrochemicals sector and formerly was the Chief Financial Officer of TNK-BP, Russia's second largest oil company. He was previously Senior Vice President and Chief Financial Officer for Chevron Phillips Chemical Company from 2000 to July 2003 and served as a member of Chevron Phillips Chemical Company's Board of Directors.

Prior to his time with Chevron Phillips, Potter had spent 27 years with Chevron. During this time, he held financial management positions in all areas of Chevron's operations. These included Finance Director for Chevron's North Sea operations, CFO of Chevron's mining company, CFO of Tengizchevroil in Kazakhstan and CFO of Chevron Overseas Petroleum (Chevron's international E&P operations).

Potter served on the Advisory Board of the Haas Graduate School of Business (UC, Berkeley) and formerly was a member of the Supervisory Board of LyondellBasell Industries.⁵

C. CRAIG GLIDDEN

Craig Glidden became LyondellBasell's Executive Vice President and Chief Legal Officer, effective August 15, 2009. Mr. Glidden was most recently senior vice president, general counsel and corporate secretary of Chevron Phillips Chemical Company. Prior to joining Chevron Phillips Chemical, he was in private law practice focusing on the litigation and arbitration of complex commercial disputes.

Mr. Glidden began his legal career in 1983 as an associate with Shackleford, Farrow, Stallings &

⁴ <http://investing.businessweek.com/research/stocks/people/person.asp?personId=1429487&ric=COP>

⁵ <http://www.reuters.com/article/pressRelease/idUS182304+23-Jul-2009+PRN20090723>

Evans in Tampa, Florida. In 1988, he joined Beirne, Maynard & Parsons LLP, where he became a partner specializing in energy and commercial litigation. In 1996, he formed his own law firm, Glidden Partners LLP. He is the author of two multi-volume treatises on commercial litigation in Texas.

Mr. Glidden received a bachelor of arts degree in political science from Tulane University in 1980, graduating magna cum laude and Phi Beta Kappa. He obtained a juris doctor degree with high honors from Florida State University in 1983, where he served as editor-in-chief and managing editor of the Florida State University Law Review. He is licensed to practice in Texas and Florida, and is a member and past Chair of The General Counsel Forum.⁶

D. KEVIN M. MCSHEA, CHIEF RESTRUCTURING OFFICER

Mr. McShea is a Managing Director in AlixPartners LLP's Turnaround and Restructuring practice. He has over 30 years of industry and advisory experience in various industries including consumer products, travel and transportation, and contract manufacturing.

Prior to joining AlixPartners, Mr. McShea was the CRO and Interim CEO of an international media packaging company, where he helped navigate the organization through a strategic and financial restructuring. Prior to this experience, he created a plastic injection molding contract manufacturer operating in the US and Mexico to serve OEMs in the consumer electronics industry (Sony, Hitachi, Sharp, Mitsubishi).

From the period of 1996 through 2000, he was responsible for building a contract manufacturing platform company through acquisitions and "green fielding" facilities across the US, Mexico and Europe, which built high complexity, low to mid volume technology equipment, serving major OEMs including, EMC, Cisco, Sun Microsystems and others. This vertically integrated supplier (metal fabrication, supply chain management, assembly and testing) specialized rapid prototyping, manufacture and assembly of large scale and engineering intensive products. As the CEO of these CMs, Mr. McShea's experience in the industry includes business and organizational strategy, M&A, integration of acquired entities, customer management, sales management, pricing methodologies and supply chain/logistics.

Prior to leading these manufacturing-based companies, Mr. McShea had served in senior financial and information technology officer roles in Fortune 100 companies including Kraft, The Quaker Oats Company and Budget Rent a Car. Early in his career, he spent six years at Arthur Andersen & Co. in Chicago with independent audit responsibilities in the retail and healthcare practice areas.

Mr. McShea holds a bachelor's degree in accounting from Loyola University of Chicago and a Masters in Management from the J. L. Kellogg Graduate School of Management of Northwestern University. Additionally, he is a CPA certified in the state of Illinois. Mr. McShea serves on several independent boards of directors in the manufacturing (buildings and automotive CM) and gas distribution industries.

⁶ http://www.fibre2fashion.com/news/company-news/lyondell-chemical/newsdetails.aspx?news_id=75805

III. DEBTORS' PROFESSIONALS

A. DEBTORS' COUNSEL - CADWALADER, WICKERSHAM & TAFT LLP

1. George A. Davis

George Davis, a senior partner in Cadwalader's Financial Restructuring department, has 20 years of experience representing debtors, secured lenders and agents, unsecured creditor groups and investors in complex corporate reorganizations, debt restructurings and distressed mergers and acquisitions across a wide array of industries, including chemical, real estate, financial, retail, telecommunication, energy, airline, steel and manufacturing.

Publications have consistently lauded Mr. Davis' work "due to his success in building consensus among groups with extremely different viewpoints." He has been regularly recognized as one of the leading restructuring lawyers in the United States by *Chambers USA*, *The Best Lawyers in America*, *Legal 500 (US)*, *Turnarounds and Workouts*, *Corporate Counsel*, and *IFLR 1000*. His representation of JP Morgan Chase as agent and secured lender in the out-of-court restructuring of Centro Properties Group, one of the largest owners and managers of shopping centers in the United States and Australia, received the 2009 Merger Market Turnaround Atlas Award for "Out-of-Court Restructuring of the Year."

Mr. Davis is currently playing a leading role in the chapter 11 and cross-border restructuring of LyondellBasell Industries and affiliates, the world's third-largest independent chemical company. He has played a leading role in the successful restructurings of many other corporate clients, including Saint Vincent's Catholic Medical Centers (healthcare), Portland Trailblazers (sports franchise), IMPATH Inc. (medical services and supplies), Bethlehem Steel Corporation (steel manufacturer), Sunbeam Corporation (consumer products), Carmike Cinemas, Inc. (theatre chain), Marvel Entertainment, Inc. (creator, publisher, distributor of comic books), DIMAC Holdings (warehousing and order fulfillment), McCulloch Corporation (consumer products), and Factory Card & Party Outlet Corporation (specialty store).

Mr. Davis is currently playing or has recently played a leading role on behalf of creditor and investor clients in the following restructurings:

- Merrill Lynch as first lien agent for the first lien lenders in BLB/Twin River Casinos (casino)
- JPMC as agent and secured lender in the out-of-court restructuring of Centro Properties Group (owner and manager of shopping centers)
- Citigroup as clearing broker and financial contract counter-party to Lehman Brothers Holdings, Inc. (investment bank and brokerage)
- Merrill Lynch as primary secured lender to Fred Leighton Holding, Inc. (luxury jeweler)
- Lehman Brothers as agent for the first lien lenders to SunCal Companies (real estate operating companies)

- Chilton Investment Company as a substantial lender to Foamex LP (commodity chemicals)
- Morgan Stanley as equity sponsor of Crescent Resources, LLC (real estate development)
- Ad hoc group of third lien lenders to CalGen Corporation and ad hoc group of unsecured noteholders of Calpine Corporation (independent power producer)
- Ad hoc group of unsecured claims purchasers of Adelphia Communications Corporation (cable and satellite)
- Brencourt Advisors as first lien lender and acquirer of Werner Holding Co. (building products)
- GECAS as primary aircraft lessor to US Airways Group, Inc. and Independence Air, Inc. (airline)
- Ad hoc group of senior noteholders to Kaiser Aluminum & Chemical Corporation (aluminum)
- Lenders to the following chapter 11 companies:
 - Ad hoc group of secured bondholders and roll-up DIP lenders to VeraSun Energy Corporation (producer and marketer of ethanol)
 - GE Capital as DIP lender to Delta Air Lines, Inc. (airline)
 - Merrill Lynch as prepetition secured lender and roll-up DIP lender to Pliant Corporation (commodity chemicals)
 - Goldman Sachs as DIP and exit lender to Eagle Pitcher Corporation (auto parts and equipment)
 - GE Capital as prepetition secured lender and roll-up DIP lender to Galey & Lord Industries, Inc. (textiles)
 - Citibank as proposed exit lender to WCI Steel, Inc. (steel)
- Bidders and purchasers/prospective purchasers of substantially all the assets of the following chapter 11 debtors:
 - Steve & Barry's LLC (apparel retail)
 - New Century Financial Corporation (originator and purchaser of mortgage loans)
 - USA Commercial Mortgage Company (mortgage finance and servicing)
 - Pegasus Satellite Communications, Inc. (cable and satellite)
 - FAO Schwarz, Inc. (retailer)
 - Metalforming Technologies, Inc. (auto parts and equipment)
 - Sterling Jewelers, Inc. (specialty stores)
 - Cable and Wireless plc (telecommunications)
 - TLC Home Health Care, Inc. (healthcare series)
 - Scott Cable Communications, Inc. (cable and satellite)

Beginning Fall 2009, Mr. Davis will become an adjunct professor at Georgetown University Law Center and teach a course in Bankruptcy and Creditors' Rights. He is also a frequent writer and speaker on restructuring topics and an active member of the Committee on Bankruptcy and Corporate Reorganizations of the Association of the Bar of the City of New York, the American Bankruptcy Institute and the Turnaround Management Association.

Hofstra University School of Law J.D., with distinction 1990
 State University of New York – Binghamton B.S., magna cum laude 1986

2. Mark C. Ellenberg

Mark Ellenberg advises debtors and creditors in complex financial restructuring, workout, and bankruptcy matters. He is currently representing LyondellBasell in its Chapter 11 reorganization cases, where he assisted the company in obtaining an \$8,0 billion debtor in possession loan. His diverse experience also includes representation of Northwest Airlines, Geneva Steel, and Zenith Laboratories, Inc. in their chapter 11 reorganization cases. He has also represented a bond holder group that provided debtor-in-possession financing to Verasun, the largest U.S. producer of ethanol, and the official unsecured creditors committees for Grove Worldwide, the leading manufacturer of mobile cranes, for Winstar, a leading broadband services provider, and Jitney Jungle, a supermarket chain with close to 200 stores in the Southern United States.

In the Enron chapter 11 case, Mr. Ellenberg was special counsel to the debtors for issues related to forward contracts, swaps, and other trading contracts. He regularly advised Bear Stearns on bankruptcy issues relating to trading contracts and derivatives, and actively participated in the preparations for a possible bankruptcy filing by that company in March 2008. In addition, he represented a number of creditors in the Lehman bankruptcies, and regularly advises financial institutions on trading contract and derivatives issues.

Mr. Ellenberg represented XL Capital, a global insurance company, with respect to the successful termination of an \$80 billion guaranty of credit default swap and other liabilities of monoline insurance company SCA (now known as Syncora). In the case of Mutual Benefit Life Insurance Company, the largest insurance company failure then on record, Mr. Ellenberg led the legal team drafting a rehabilitation plan for the \$12 billion institution and was lead counsel in the plan confirmation hearing. He played the same role in the rehabilitation of the Confederation Life Insurance Company, U.S. Branch.

Mr. Ellenberg was a principal member of the team representing the official committee of Dalkon Shield claimants in the A. H. Robins bankruptcy, obtaining a \$2.5 billion trust fund to pay for Dalkon Shield injuries and participating in a pioneering estimation proceeding for the 300,000 filed Dalkon Shield claims. He has also advised secured creditors concerning a wide variety of real estate workout and bankruptcy matters, involving such properties as the Aladdin Hotel & Casino, shopping centers, office buildings, and apartment buildings.

Mr. Ellenberg became a fellow of the American College of Bankruptcy in 2004 and is listed in *Who's Who Legal USA* and the *International Who's Who of Insolvency and Restructuring Lawyers*. He has also been recognized as a leading lawyer by several publications, including *Chambers USA*, *Best Lawyers in America*, and *LawDragon*, which named him one of the 500 best lawyers in the United States. In addition, he is an Adjunct Professor at Georgetown University Law Center, teaching bankruptcy and creditors' rights. He was co-editor of *Bankruptcy Law & Practice* Sixth Ed., Cowans 1994.

Mr. Ellenberg is a graduate of Cornell University, where he received a B.S. degree in 1972. He received his J.D. degree from Georgetown University Law Center in 1975 and served as

Research Editor of the Georgetown Law Journal. Following law school, Mr. Ellenberg served as law clerk for The Honorable Thomas A. Flannery, Judge, United States District Court for the District of Columbia.

Mr. Ellenberg is a member of the American Bar Association and the District of Columbia Bar Association. He is admitted to practice in the District of Columbia and before the United States Supreme Court, the District of Columbia, 2d, 3d, 4th, 5th, 6th, 8th, 10th, and Federal Circuits of the United States Courts of Appeals, and the United States District Courts for the Districts of Columbia and Maryland.

Georgetown University Law Center J.D. 1975
Cornell University B.S. 1972

Clerkship: Hon. Thomas A. Flannery United States District Court for the District of Columbia

B. DEBTORS' FINANCIAL ADVISORS – EVERCORE PARTNERS, EVERCORE GROUP L.L.C.

1. Cecil Brown

Cecil Brown is a Vice President and a member of the firm's capital markets advisory and restructuring group. Prior to joining Evercore, Mr. Brown was a Managing Director in the Leveraged Finance group at Bear, Stearns & Co. Inc. focusing on the Chemical, Media, Telecom and Transportation & Logistics sectors. In this role, Mr. Brown had significant experience in originating, structuring, underwriting and marketing transaction in both the leveraged loan and high yield bond markets for large cap and middle market corporates and financial sponsors.

While with Evercore, notable transactions Mr. Brown has been involved with include the ongoing Chapter 11 restructuring of LyondellBasell Industries, advising SiriusXM Radio Inc. on its debt recapitalization strategy and advising Harrah's on its \$2.1 billion debt exchange offer.

Mr. Brown received an M.B.A. in finance from the Kellogg School at Northwestern University where he was a Robert F. Toigo fellow and a B.B.A. in finance from the University of Michigan.

2. Nancy Bryson

Nancy Bryson is a Managing Director of the firm's corporate advisory business. Prior to joining Evercore, Ms. Bryson was a Director in the Mergers & Acquisitions Group of Citigroup Global Markets and an Associate in the advisory practice at Wasserstein Perella. Ms. Bryson has approximately fifteen years of investment banking experience, starting her career at Robertson, Stephens & Company. While at Citigroup, she principally focused on the industrial sector and was the lead M&A partner to the Transportation Group for three years.

Selected transactions include representing CSX in the divestiture of CSX World Terminals to Dubai Ports; Boeing Capital Corporation in maximizing the value of its unsecured claim in Hawaiian Airlines' Chapter 11 proceeding; and Sequa in its sale to The Carlyle Group.

Ms. Bryson received a B.S. in Economics (summa cum laude) from The Wharton School of the University of Pennsylvania and an M.B.A. (with High Honors) from the University of Chicago Graduate School of Business.

3. Daniel A. Celentano

Mr. Celentano is a Senior Managing Director of Evercore Partners. He has advised companies, their stakeholders and acquirors in many of the largest and most complex out of court restructurings and Chapter 11 cases and has chaired creditor committees. Recent clients include General Motors Corporation in connection with the Delphi Corporation Chapter 11 case, Time Warner in its acquisition of the assets of Adelphia Communications in its Chapter 11 case, and Andersen Worldwide in the distressed sale of its consulting business to KPMG Consulting to form Bearing Point. Other restructuring related engagements have included E II Holdings, Interco, Marvel Entertainment, Morrison Knudsen, NVR L.P., Prime Motor Inns, Resorts International, Southmark Corporation, and Zale Corporation.

Prior to joining Evercore, Mr. Celentano was a Senior Managing Director at Bear Stearns. At Bear Mr. Celentano formerly served as Head of its Financial Restructuring Group and was responsible for the management of the approval and underwriting process for all debt and equity financing transactions executed by the Global Investment Banking Division. Mr. Celentano commenced his financial career at Citibank, N.A. in its World Corporation Group.

Mr. Celentano holds an M.B.A. in finance from the Wharton School and a B.A. with Honors from Holy Cross College. Mr. Celentano has served as a member of the Board of the Turnaround Management Association and presently serves as Vice President and Trustee of Hackley School in Tarrytown, New York.

4. Stephen P. Schaible

Stephen Schaible is a Senior Managing Director of the firm's corporate advisory business. Prior to joining Evercore, Mr. Schaible was a Managing Director and head of Global Energy Investment Banking at Citigroup. Previously, he was Citigroup's head of Global Chemicals Investment Banking. Prior to joining Citigroup in early 2001, Mr. Schaible was a Managing Director at J. P. Morgan & Co., where he worked in New York, Tokyo and London, in both mergers and acquisitions and industry coverage roles.

Over the course of his career, Mr. Schaible has advised many clients in the energy, chemicals, industrial and pharmaceutical industries, including ConocoPhillips in its acquisition of Burlington Resources; Lyondell Chemical Company in its acquisitions of ARCO Chemical Company and Millennium Petrochemicals; Crompton Corporation in its acquisition of Great Lakes Chemical Corporation; Dow Chemical in the creation of global joint ventures with Kuwait Petroleum; and Hoechst in the divestiture of its specialty chemicals business to Clariant. Mr. Schaible graduated cum laude from Princeton with a B.A. in History.

IV. COMMITTEE COUNSEL – BROWN RUDNICK, LLP

A. JOHN C. ELSTAD

Mr. Elstad has been actively involved in representing official and ad hoc committees of creditors and equity holders in Chapter 11 bankruptcy cases. Mr. Elstad has also been actively involved in representing secured creditors in loan refinancings out-of-court and in defending their rights in court.

In addition to his law degree, Mr. Elstad has a Masters Degree in Environmental Engineering and, earlier in his career, was the Assistant Director of the Waste Management Policy Branch of the Ontario Ministry of the Environment.

Recent Matters

- Successful opposition to the imposition of claims trading restrictions in the Dana Corp. bankruptcy case in the Southern District of New York on behalf of a significant claimholder.
- Active involvement in the plan confirmation fight in the Oneida bankruptcy case in the Southern District of New York on behalf of the Official Equity Committee.
- Winning recognition of shareholders' right to a recovery in the plan of reorganization in the Owens Corning bankruptcy case in Delaware on behalf of an ad hoc equity committee.
- Obtaining an enhanced recovery for trade creditors in the plan approved in the Internet bankruptcy case in the Eastern District of Michigan on behalf of an ad hoc committee of trade creditors.
- Opposition to a settlement in the United Airlines bankruptcy case in the Northern District of Illinois on behalf of an ad hoc committee of municipal bond holders, resulting in an enhanced recovery for them.
- Successful representation of the Official Creditors' Committee in the Massachusetts bankruptcy proceedings for Boston's premier office building (International Place).
- Prosecution of preference actions for the litigation trust established in the Oakwood Homes bankruptcy case in Delaware

Publications

- Co-author, Official Committee Members: Fiduciary Duty Liability, *The Bankruptcy Strategist*, Volume 21, Number 4, February 2004
- Author, Poverty in Mississippi, 70 Miss. L.J. 1047 (2001)

Bar Admissions & Memberships

- Admitted, Massachusetts Bar
- Admitted, United States Court of Appeals for the Third Circuit, United States District Court for the District of Massachusetts, United States District Court for the Eastern District of Michigan

- Member, American and Boston Bar Associations

Education

University of Mississippi J.D., *summa cum laude*, 2002 (Associate Editor Mississippi Law Review Trial Requirement Co-Chair, Moot Court Board)

University of Toronto M.A.Sc., 1987

McGill University – B.Sc., 1976

B. STEVEN D. POHL

Mr. Pohl concentrates his practice in the commercial and insolvency areas. His practice focuses on the representation of interested parties in bankruptcy proceedings and lending institutions in commercial finance transactions.

Mr. Pohl has extensive experience representing financial institutions, debtors, trustees, creditors' committees and other interested parties in a variety of in-court and out-of-court situations, including bankruptcy reorganizations, asset sales, loan restructurings, receiverships, assignments for the benefit of creditors and commercial loan transactions. This practice includes all aspects of the bankruptcy process, including contested (and competing) plan confirmation hearings, contested relief from stay and cash collateral hearings, and fraudulent conveyance and preference litigation.

Coupling his reorganization practice with experience in mergers and acquisitions and general corporate law, Mr. Pohl also counsels corporations. Prior to practicing law, Mr. Pohl was a certified public accountant with Price Waterhouse, concentrating in the tax area.

Recent Matters

- Represents the Official Committee of Unsecured Creditors in the Herbst Gaming, Inc. Chapter 11 case, following on the representation of an Ad Hoc Committee of Bondholders in earlier out-of-court restructuring negotiations.
- Represents the Official Equity Committee in Chapter 11 proceedings of Pilgrim's Pride Corporation.
- Represents the Steering Committee of secured lenders of Yonkers Raceway Corporation.
- After successfully representing the Ad Hoc Committee of Preferred Shareholders of Hights Cross Communications, Inc., now represents the company in its sale and refinancing efforts.
- Represents the Official Creditors Committee in the bankruptcy proceedings of Lyondell Chemical Company which, together with its non-debtor affiliates in the LyondellBassell group, is the third largest chemical manufacturer in the world.
- Represented the Official Committee of Equity Security Holders in the Global Power Equipment Group, Inc. Chapter 11 cases, which culminated in a successful restructuring supported by an Equity Committee-backed rights offering plan.

- Represented the Ad Hoc Committee of Trade Creditors in the Adelphia Chapter 11 cases, which resulted in the trade creditors getting a 100% recovery plus 8% post-petition interest.
- Represented the Ad Hoc Committee of Trade Creditors in the MCI / WorldCom Chapter 11 cases in the U.S. Bankruptcy Court for the Southern District of New York, successfully increasing our clients' plan recoveries by nearly 50%.
- Represented the Official Committee of Unsecured Creditors in the Global Crossing Chapter 11 cases.
- Represented the Ad Hoc Committee of Bondholders in the Primus Telecommunications Group, Inc. case.
- Represented Ad Hoc Committee of first mortgage noteholders in connection with Hurricane Katrina damage to the Premier Entertainment Hard Rock Hotel and Casino in Biloxi, Mississippi.
- Represented Ad Hoc Committee of Convertible Noteholders in Tower Automotive Chapter 11 cases.
- Represented Ad Hoc Committee of Trade Creditors in Internet Corporation Chapter 11 cases, successfully increasing plan recoveries.
- Represented XO Communications in connection with its acquisition of Allegiance Telecom out of Chapter 11.
- Represented the Official Committee of Unsecured Creditors in the ATX Communications Chapter 11 cases.

Publications

- Boston Business Journal, *Bankruptcies Cast Shadows on Three Embattled Industries*, January 31-February 6, 2003.

Speaking Engagements

- Tenth Annual Conference on Distressed Investing 2003, "Maximizing Profits in the Distressed Debt Market," presented by Renaissance American Management Inc. and Beard Group. Two session roles: panelist, *Substantive Consolidation and Struggle Among the Classes*, and panel moderator, *CLE Ethics Hour*.
- Frequent speaker and lecturer on bankruptcy topics for industry groups, including for the National Association of Credit Managers.

Bar Admissions & Memberships

- Admitted, Massachusetts Bar

- Member, Bar of The Massachusetts Supreme Judicial Court, United States District Court (Massachusetts); specially admitted in federal courts in other Districts

Education

Boston University LLM in Taxation, 2003

Boston University J.D., *cum laude*, 1989 (Member, Annual Review of Banking Law)

University of Pennsylvania, Wharton School of Business and Finance B.S., 1983

C. EDWARD S. WEISFELNER

Mr. Weisfelner is the Chairman of Brown Rudnick's Bankruptcy and Finance Department and the head of its Bankruptcy and Corporate Restructuring Practice Group. He is also a member of the firm's Management Committee. He has over 25 years of experience representing official and *ad hoc* creditors' and equity holders' committees, individual creditors, indenture trustees, equity holders, and other parties in in-court and out-of-court restructurings. Mr. Weisfelner also regularly represents buyers of assets and claims in chapter 11 proceedings and has served as a court appointed mediator and examiner.

Mr. Weisfelner is a frequent lecturer in the areas of bankruptcy and restructuring. He is a five-time recipient of the "Outstanding Restructuring Lawyers" award from *Turnarounds & Workouts*, most recently in 2009. He was included as one of only 67 nationally recognized restructuring attorneys in the Ninth Edition of *The K&A Restructuring Register*, a peer group listing selected by an advisory board of financial advisors, lawyers and private practitioners. He is also recognized by *Chambers USA: America's Leading Lawyers for Business* in the area of bankruptcy law. Additionally, Mr. Weisfelner is recognized as a leading Bankruptcy & Creditor-Debtor Rights lawyer by *New York Magazine* and by Woodward/White's *The Best Lawyers in America*.

Mr. Weisfelner is a member of the American Bankruptcy Institute, the New York and American Bar Associations, and the Turnaround Management Association.

Recent Matters

- Official Creditors' Committee in the chapter 11 proceedings of **Lyondell Chemical Company** which, together with its non-debtor affiliates, is one of the largest petrochemical and refining companies in the world.
- Official Creditors' Committee in the chapter 11 proceedings of **Six Flags, Inc.**, one of the largest amusement park operators in the world.

Other recent significant engagements include:

- Official Equity Committee in the chapter 11 proceedings of **Pilgrim's Pride Corporation**.
- Largest bondholder of **Tropicana Casinos and Resorts** in proceedings before the Bankruptcy Court and before the Casino Control Commission; responsible for the successful prosecution of motion to appoint a trustee which resulted in the resignation of William Yung.

- Official Equity Committee in the chapter 11 proceedings for **Mirant Corporation**, ranked as the 11th largest bankruptcy case in US history.
- Ad Hoc Committee of Trade Creditors in the **MCI/ WorldCom** chapter 11 cases in the U.S. Bankruptcy Court for the Southern District of New York, successfully increasing our clients' plan recoveries by nearly 50%.
- Official Creditors' Committee in the chapter 11 proceedings for **Global Crossing**.
- Official Committee of Equity Security Holders in the **Comdisco** chapter 11 proceedings pending in the Northern District of Illinois.
- Successful plan sponsor in **XO Communications, Inc.'s** chapter 11 case in the Bankruptcy Court for the Southern District of New York.
- Ad Hoc Committee of Trade Creditors in the **Adelphia Communications** chapter 11 case.

Bar Admissions & Memberships

- Admitted, New York Bar
- Admitted, United States Courts of Appeals for the Second, Third and Fifth Circuits; United States District Courts for the Southern and Eastern Districts of New York

Education

Brooklyn Law School J.D., with honors, 1982 (- Senior Editor, *Brooklyn Law Review*)
 New York University Washington College B.A., 1977

V. PURCHASERS/EQUITY BACKSTOP BIDDERS

A. SCOTT M. KLEINMAN – APOLLO MANAGEMENT, LP

Mr. Kleinman is a Partner at Apollo Management LP, where he has worked since February 1996. Prior to that time, Mr. Kleinman was employed by Smith Barney Inc. in its Investment Banking division. Mr. Kleinman is also a Director of Momentive Performance Materials, Inc., Noranda Aluminum Holding Corp., Hexion Specialty Chemicals, Inc., Realogy Corp. and Verso Paper Inc.⁷

B. MICHAEL A. KRAMER – RELIANCE INDUSTRIES

Mr. Kramer is a Partner of Perella Weinberg Partners. Prior to joining Perella Weinberg Partners, Mr. Kramer was Founder and Managing Director of Kramer Capital Partners, an investment banking firm that provided financial advisory services to constituents in a broad

⁷ <http://www.momentive.com/Internet/Corporate/Investor+Relations/Board+of+Directors>

range of restructuring and corporate finance transactions. Prior to founding Kramer Capital Partners, Mr. Kramer was the Head of Financial Restructuring and a member of the Management Committee at Greenhill & Co. Prior to Greenhill, Mr. Kramer was the co-Head of the eastern region of Houlihan Lokey Howard & Zukin and ran the Mergers and Acquisitions and Financial Restructuring businesses. Mr. Kramer received a Bachelor of Science from California State University of Northridge.

C. JEFFREY S. SEROTA – ARES MANAGEMENT LLP

Mr. Serota is a member of our Acquisition Committee. Mr. Serota is a senior partner in the Private Equity Group of Ares Management. Prior to joining Ares Management in 1997, Mr. Serota was a vice president in the Investment Banking Department of Bear, Stearns & Co. where he specialized in providing investment banking services to financial sponsor clients of the firm. Prior to joining Bear Stearns, Mr. Serota was with Dabney/Resnick, Inc., a boutique investment bank. At Dabney/Resnick, Mr. Serota specialized in merchant banking and capital raising activities for middle market companies and had primary responsibility for the firm's bridge financing activities. Mr. Serota also worked at Salomon Brothers Inc. focusing on mergers and acquisitions and merchant banking transactions. Mr. Serota serves on the board of directors of Exco Resources, Inc. and SandRidge Energy, Inc., both publicly-held companies, as well as the boards of directors of several private companies. Mr. Serota graduated magna cum laude with a B.S. in Economics from the University of Pennsylvania's Wharton School of Business and received an M.B.A. from UCLA's Anderson School of Management.

Director
WCA Waste Corporation Houston , TX
EXCO Resources, Inc. Dallas , TX
SandRidge Energy, Inc.⁸

⁸ <http://people.forbes.com/profile/jeffrey-s-serota/31301>