

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

In re:)	Chapter 11
)	
LYONDELL CHEMICAL COMPANY, et al.,)	Case No. 09-10023 (REG)
)	
Debtors.)	(Jointly Administered)
)	
)	
OFFICIAL COMMITTEE OF UNSECURED)	Adversary Proceeding No. 09-01375
CREDITORS, on behalf of the Debtor’s Estates,)	
)	
Plaintiff,)	
)	
vs.)	
)	
CITIBANK, N.A., et al.,)	
)	
Defendants.)	

FINAL CASE MANAGEMENT ORDER

1. Statement of Nature and Basis of Claims. The Complaint filed by the Official Committee of Unsecured Creditors (“Plaintiff”) generally asserts claims for avoidance of fraudulent and preferential transfers, as well as claims for equitable subordination, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, tort, breach of contract, mismanagement, and avoidance of unperfected liens. Derivative standing for Plaintiff to bring this action on behalf of the Debtors’ estates was granted by the Court on July 21, 2009. Plaintiff filed its Complaint on July 23, 2009. All Defendants deny all liability on all Counts of the Complaint.

2. Phase I, Phase I-A and Phase II Trials. Trial of this action will be separated into Phase I, Phase I-A (to the extent necessary or appropriate) and Phase II. A bench trial for Phase I

will commence on December 1, 2009 (the “Phase I Trial”).¹ If the Court concludes that a jury trial is necessary or appropriate, the parties will be heard by On the Record Conference Call as to whether the issues with respect to the D&O Defendant Group should be moved to Phase II. If a party demands a jury trial and the Court makes such an option available or schedules events to accommodate the party’s demand for a jury trial, the party’s election to proceed by jury trial will be irrevocable. A bench trial will be conducted vis-à-vis the issues that must be determined as to all other parties, and in no event shall the stated desires of the D&O Defendant Group, or any of them, to proceed by jury trial slow down or otherwise interfere with needs of the other parties or the Court to address the matters that must be determined in Phase I. Proceedings for Phase I-A (to the extent necessary or appropriate) or Phase II (or any subsequent phases) will be scheduled by the Court following the adjudication of the Phase I Trial. It is recognized that the Phase II proceedings may be conducted in one or more trials or phases, at the Court’s discretion.

(a) At the Phase I Trial, the Court shall try and adjudicate Counts I, II, III, V, VI, VII, XVIII, XIX, XX and XXI of Plaintiff’s Complaint (the “Phase I Counts”), to the extent such Counts have not been consensually resolved by the parties or determined by earlier motion practice. The Phase I Trial will also include the adjudication of all available defenses to any Phase I Count; provided, however, that the judicial determinations at the Phase I Trial of the three financial-condition tests enumerated in § 548(a)(1)(B)(ii)(I)-(III) (or any state law equivalent) and of enterprise valuation will be made only on a consolidated basis; and provided further that any (i) claim, (ii) defense or (iii) issue which bears upon the availability of any remedy for a Phase I Count, and which requires the judicial determination of the financial condition of any individual Debtor(s), the extent of any individual Debtor(s)’ pre-merger or post-merger obligations, or the

¹ This provision is subject to any parties’ right to demand a jury under Federal Rule of Civil Procedure 38 and Federal Rule of Bankruptcy Procedure 9015.

identity of any individual Debtor(s)' creditors (collectively, the "Phase I-A Issues") shall be adjudicated, to the extent necessary or appropriate, in the Phase I-A proceedings. The preceding sentence is not intended to pre-determine any fact or question of law, and will be without prejudice to the substantive rights of any party with respect to the adjudication of any Phase I Count or Phase I-A Issue; rather it is simply intended to sequence the parties' litigation efforts and the Court's determinations. For the avoidance of doubt, "any party" in the foregoing provisions shall include Bank of New York as intervenor in this Adversary Proceeding, provided, however, that Bank of New York shall serve its complaint in intervention no later than October 19, 2009.

(b) During the Phase II or subsequent proceedings, the Court shall try and adjudicate Counts IV, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI and XVII (the "Phase II Counts"), to the extent such Counts have not been consensually resolved by the parties or determined by earlier motion practice.

(c) All fact and expert discovery, as well as motion practice, for the Phase I Trial will be conducted and completed in accordance with the Federal Rules of Civil Procedure and the Bankruptcy Court Rules, this Case Management Order and, to the extent applicable, Case Management Order #2, dated January 27, 2009 and issued in the main bankruptcy proceeding (the "Main Case Management Order"). Deadlines provided for herein are solely for purposes of the Phase I proceedings and the adjudication of the Phase I Counts. All discovery taken for the Phase I proceedings may also be used in or for purposes of the Phase I-A or Phase II (or subsequent) proceedings.

3. Pre-Discovery Disclosures. No disclosures shall be required of any party under Rule 26(a)(1) of the Federal Rules of Civil Procedure.

4. Party Groupings. The parties will be grouped into the following four groups (each a “Party Group”) for purposes of administering certain parts of this Case Management Order for the Phase I Trial, and for no other purpose:

(a) The “Plaintiff Group” includes the Plaintiff or any party who aligns itself, himself or herself with the Plaintiff’s allegations.

(b) The “Financing Party Defendant Group” includes the “Financing Party Defendants” (as that term is defined in the Complaint) and any lender-party (including any lender-party who is granted leave to intervene) that aligns itself, himself or herself with the Financing Party Defendants’ defenses or positions.

(c) The “Access Defendant Group” includes Defendant Access Industries Holdings, LLC and any party (including any party who is granted leave to intervene) that aligns itself, himself or herself with Access Industries Holdings, LLC’s defenses or positions.

(d) The “D&O Defendant Group” includes the Defendants enumerated under the section in the Complaint entitled “Fiduciary Defendants” (on pages 13 through 16 of the Complaint) and any party (including any party who is granted leave to intervene) that aligns itself, himself or herself with these “Fiduciary Defendants” defenses or positions.

5. Class Certification.

(a) All issues regarding the certification of the putative “Shareholder Class” (as that term is defined in the Complaint) will be deferred to either the Phase II (or subsequent) proceedings.

(b) All issues regarding the certification of the putative “Senior Credit Facility Class” (as that term is defined in the Complaint) will be consensually resolved or deferred to either the Phase II (or subsequent) proceedings.

6. Complaint.

(a) All parties named as Defendants to the Phase I Counts and all parties who are granted leave to intervene in the Phase I Trial shall either accept service of the Complaint or shall waive all challenges to service except those based on the claimed absence of personal jurisdiction.

(b) The Complaint filed by Plaintiff on July 22, 2009 is the operative Complaint in this action, and the Committee will proceed on this Complaint unless and until the Court orders otherwise. The Plaintiff may not make any material amendment of the Complaint in the amount sought in the Complaint or in the nature of the claims it asserts, including the addition or deletion of any claims with or without prejudice, without first obtaining a ruling from the Court permitting such amendment. If Plaintiff moves to seek leave to amend the Complaint as described above, and an objection is made to the proposed amendment, then the Court will rule as to whether the proposed amendment is within the scope of the previously granted *STN* authority, or whether the previously granted *STN* authority should be expanded or narrowed, and whether the right to amend is affected by provisions in the final DIP financing order.

7. Motions to Dismiss and Answers.

(a) Before filing a motion to dismiss, a Defendant must submit a letter to the Court, limited in length to three pages, requesting a pre-motion conference and setting forth the issues to be presented in the motion and the grounds for relief. The Plaintiff shall be entitled to respond to such a letter by submitting a letter to the Court, also limited to three pages.

(b) After the pre-motion conference, a Defendant may file and serve a motion to dismiss a Phase I Count, and must do so on or before August 24, 2009. The Court will set a briefing schedule for opposition and reply papers for such motion(s) at that conference. All parties

seeking substantially the same relief pursuant to a motion to dismiss shall coordinate with each other and file a joint motion or adopt and incorporate arguments so that the Court shall not receive duplicative motions to dismiss based upon substantially the same evidence and grounds.

(c) If a Defendant does not move to dismiss any Phase I Counts, then the Defendant must file and serve its Answer on or before August 24, 2009; provided, however, that the Answer need only be in response to at least those Phase I Counts pled against the answering Defendant, and not necessarily to any Phase II Counts; and, provided, further, that those Defendants against whom only Phase II Counts have been alleged may defer their Answer to subsequent proceedings. To the extent a Defendant moves to dismiss some, but not all Phase I Counts, then that Defendant must file and serve an Answer for those Phase I Counts as to which it has not moved to dismiss. No Defendant shall, by virtue of having answered allegations of the Complaint relating to Phase II Counts, be deemed to have waived its right to file a motion to dismiss any Phase II Count at such time as the Court permits the parties to commence litigating the Phase II Counts.

(d) Motions to dismiss a Phase I Count can only be filed in the Phase I proceedings; any motions to dismiss responding to or addressing Phase I-A Issues, and any motions to dismiss Phase II Counts are deferred until entry of a case management order for the Phase I-A or Phase II (or subsequent) proceedings, as applicable, and the dates on which these pleadings must be served and filed will be scheduled following the adjudication of the Phase I Trial.

(e) No party shall be obligated to file any cross-claim, third-party claim, claim for indemnity or contribution or the like as part of the Phase I proceedings, unless such claims need to be adjudicated and resolved for purposes of the formulation and confirmation of a plan of reorganization of the Debtors in the main bankruptcy proceeding. Other than permitted by the

exception in the preceding sentence, any such claims, if any, are reserved for the Phase I-A, Phase II or subsequent proceedings.

8. Fact Discovery for Phase I Counts.

(a) All document and deposition discovery taken by Plaintiff under Rule 2004 before this action was commenced may be used in this case as if such discovery was noticed and taken in this action. All documents produced by any parties to Plaintiff under Rule 2004 before this action was commenced shall be provided to all parties in this action (who heretofore have requested such documents) on an attorneys'-eyes-only basis as soon as possible. The parties shall agree to a Joint Protective and Confidentiality Order governing all discovery in this case by August 12, 2009 or the parties shall, pursuant to the Court's rules, seek a conference with the Court to present the issues in dispute regarding such an order.

(b) Plaintiff shall serve all discovery requests, including non-party subpoenas and interrogatories permitted under Local Rule 7033-1, on or before August 21, 2009. Written objections to Plaintiff's discovery requests shall be made within 10 days of service of the request. Documents and materials responsive to Plaintiff's discovery requests shall be produced on an expedited, good faith rolling basis and their production must be completed within 30 days of service of the request.

(c) Defendants shall serve all initial discovery requests, including non-party subpoenas and interrogatories permitted under Local Rule 7033-1, on or before August 21, 2009, and must serve any supplemental requests by September 4, 2009. Written objections to Defendants' discovery requests shall be made within 10 days of service of the request. Documents and materials responsive to Defendants' discovery requests shall be produced on an expedited,

good faith rolling basis and their production must be completed within 30 days of service of the request.

(d) No party shall be required to produce a privilege log, and no Requests for Admissions shall be permitted. Moreover, Plaintiff agrees to accept service of any discovery requests directed to its constituent members.

(e) The parties shall promptly advise each other of fact depositions each party may seek to take as soon as reasonably practicable, and are directed to confer with each other with respect to the scheduling of such depositions. Fact depositions may commence on September 7, 2009, and any party may notice a fact deposition immediately. All fact discovery, including depositions, shall be completed by October 16, 2009. Each party must ensure that its counsel can be present for fact depositions so that these depositions can take place on any day, including weekends, between September 7 and October 16, 2009, except for September 19, 20 and 28, 2009. All parties acknowledge that multiple deposition tracks may be required.

(f) Each of the Plaintiff Group, the Financing Party Defendant Group, the Access Defendant Group and the D&O Defendant Group is limited to ten fact depositions (including depositions of the Debtors), unless a Party Group obtains leave, for good cause shown, of the Court to take more than ten depositions per Party Group, or all parties consent to depositions of greater number.

(g) The seven-hour limit set forth in Rule 30(d) of the Federal Rules of Civil Procedure is the presumptive rule governing depositions, and, in the absence of an agreement on an enlargement of the time limit, will only be expanded by the Court upon a showing of good cause. Unless otherwise agreed, the party noticing that deposition must reserve at least one-third of the time allotted for any deposition for other parties wishing to question the witness; if other parties do

not use all of the allotted time, the party noticing the deposition may use additional time, up to the total time allotted for the deposition.

(h) In the event of a settlement by any Defendant before any previously-noticed deposition has been completed, deposition notices served on that Defendant before any such settlement is executed by the parties and approved by the Court with respect to witnesses employed by or otherwise under the control of that Defendant will be honored, and the noticed depositions will proceed, as if the settling Defendant remains a party in this proceeding.

(i) In propounding fact discovery, the parties are under a good faith obligation to focus their respective discovery requests on matters relating to the Phase I Counts. Nonetheless, any objections to the relevance of propounded fact discovery shall be addressed to the Complaint as a whole (including all Counts) so that, to the extent any request for discovery is reasonably calculated to lead to evidence relevant to the disposition of any Count of the Complaint, it shall not be a valid objection to such request that it is not reasonably calculated to lead to evidence admissible at the Phase I Trial. Documents shall be produced on an expedited, rolling basis with a goal of completing all basic document discovery as promptly as possible, given the expedited nature of these proceedings.

(j) All discovery disputes must be resolved in accordance with the terms of the Main Case Management Order.

9. The Debtors.

(a) The Debtors are obligated to cooperate with the parties in connection with all aspects of this action. The Debtors are required to produce documents and to make witnesses available for deposition pursuant to this Case Management Order, and to identify witnesses, documents and information (by means of interrogatories permitted under Local Rule 7033-1 or

otherwise). The Debtors, however, are not required to produce any documents already produced to the Plaintiff under Rule 2004 before this action was commenced.

(b) Parties intending to take the deposition of current Debtor employees must notify the Debtors at the earliest practicable time. This requirement shall not apply to former employees of the Debtors. The parties must, in good faith, coordinate their discovery requests to be propounded on the Debtors.

10. Expert Discovery.

(a) Each of the Plaintiff Group, the Financing Party Defendant Group and the Access Defendant Group may offer up to two non-duplicative experts (a “Financial Expert”) on the financial condition or valuation of the Debtors as of the relevant date(s), it being understood that if any Group elects to offer two, rather than one, Financial Experts, all redundancy will be avoided and the scope of each Financial Expert’s report and testimony shall be limited to opinions and issues not addressed by such Group’s other Financial Expert.

(b) With respect to expert testimony concerning issues other than the financial condition of the Debtors, such as testimony regarding the refining and/or petrochemicals industry, each of the Plaintiff Group, the Financing Party Defendant Group and the Access Defendant Group may offer an additional expert witness to submit expert reports and testify at the Phase I Trial (each, an “Industry Expert”).

(c) The Financing Party Defendant Group and/or the Access Defendant Group may, but need not, share their experts with the D&O Defendant Group. If neither the Financing Party Defendant Group nor the Access Defendant Group shares an expert with the D&O Defendant Group, then the D&O Defendant Group may retain a single Financial Expert and a single Industry Expert to the extent that the Plaintiff Group, the Financing Party Defendant Group and the Access

Defendant Group have the right to offer expert witnesses. In addition, to the extent that the Phase I Counts against the Financing Party Defendant Group and/or the Access Defendant Group are dismissed by a ruling of the Court or by agreement among the Plaintiff Group and the Financing Party Defendant Group and/or the Access Defendant Group, then the D&O Defendant Group may retain a single Financial Expert and a single Industry Expert for the remaining proceedings (or retain and proceed to use and rely on any of the experts retained by, as applicable, the Financing Party Defendants and/or the Access Defendant Group in accordance with paragraphs 10(a) and 10(b)).

(d) There shall be a simultaneous exchange of expert reports on October 26, 2009.

(e) There shall be a simultaneous exchange of rebuttal expert reports on November 6, 2009.

(f) Depositions of all parties' experts and rebuttal experts shall begin on November 10, 2009 and be completed by November 20, 2009. Each party must ensure that its counsel can be present for expert depositions so that these depositions can take place on any day, including weekends, between November 10 and November 20, 2009. All parties acknowledge that multiple deposition tracks may be required.

(g) Any expert retained or specially employed to provide expert testimony shall submit an expert report or rebuttal expert report that satisfies the requirements of Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure. By agreement among the parties, no party shall be obligated to produce in discovery any drafts of the expert report or rebuttal expert report (including drafts of any materials, charts, illustrative documents, or exhibits prepared by the expert, any persons working under the expert's supervision, or the party and its counsel that retained the

expert). Except as specifically set forth herein, this provision is without prejudice to the parties rights to seek or object to discovery of relevant information created by or in the possession of any organization with which any expert is associated, including but not limited to industry outlook information produced at times relevant to any of the claims in this proceeding and information produced in connection with the Debtors' bankruptcy cases for purposes other than service as an expert in this proceeding.

11. Summary Judgment Motions.

(a) Any party seeking to file a summary judgment motion shall, before filing such motion and in accordance with Local Rule 7056-1(a), submit a letter to the Court requesting a pre-motion conference and setting forth the issues to be presented in the motion and the grounds for relief. Any party opposing the filing of such a motion may respond by letter to the Court before the conference.

(b) All motions for summary judgment to dismiss any Phase I Counts must be filed and served on or before October 30, 2009. Unless otherwise agreed to among the parties or affixed by the Court, opposition papers must be filed and served within 21 days of service of the motion, and reply papers must be filed and served within 7 days thereafter. The Court shall set the date and time for argument on any summary judgment motions.

(c) All parties seeking substantially the same relief pursuant to a motion for summary judgment shall coordinate with each other and file a joint motion or adopt and incorporate arguments so that the Court shall not receive duplicative summary judgment motions based upon substantially the same evidence and grounds.

12. Pre-Trial Evidentiary Motions.

(a) All pre-trial evidentiary motions (except for *Daubert* motions) shall be filed and served on or before November 10, 2009. Opposition papers must be filed and served within 7 days of service of such motion, and reply papers must be filed and served within 4 days thereafter.

(b) Any *Daubert* motions must be filed and served on or before November 23, 2009; opposition papers must be filed and served within 6 days, and reply papers must be filed and served within 3 days thereafter.

13. Pre-Trial Order and Conference. A joint pre-trial order shall be submitted by the parties to the Court on or before November 25, 2009. The pre-trial order shall include stipulations as to undisputed facts; contentions of fact and law; trial witnesses; trial exhibits; designations of deposition testimony; evidentiary objections; experts; submission of briefs; and estimates of trial time. Parties must work together to submit a jointly prepared pretrial order (which may include portions prepared only by one side or the other, such as statements of contentions), and are not to submit separate pretrial orders, or pretrial order fragments, based on stated difficulties in reaching agreement, “time pressures,” or otherwise. The parties shall exchange drafts of their respective components of the pre-trial order on or before November 18, 2009, and shall meet and confer during the ensuing week regarding preparation of the final version of the pre-trial order. Counsel for the parties shall meet with the Court for a pre-trial conference on November 30, 2009.

14. Phase I Trial.

(a) For the Phase I Trial, and except as otherwise ordered by the Court for good cause shown before the trial, all direct testimony of all fact, non-expert witnesses, who are in the control of the party calling such witnesses to testify, shall be submitted by affidavit, and all cross-examination and subsequent examination shall be taken live. To the extent the direct testimony of

any expert witness is submitted by affidavit, the expert report and rebuttal report must be provided to the Court with the pre-trial order. If a party decides that it wants to put forward an expert's direct testimony live, other than by affidavit, the party may do so, but such party will have to provide the Court with the expert's report (and to the extent applicable, the expert's rebuttal report) no later than ten calendar days before the start of the trial, unless otherwise ordered by the Court.

(b) Plaintiff's and Defendants' witness affidavits will be distributed to all parties on or before November 25, 2009. Defendants reserve the right to amend their witness affidavits in response to evidence elicited at trial, at any time up to 24 hours before the time that the relevant witness is made available for cross-examination. No witness affidavits will be delivered to the Court until such time as the Court requests them or the party providing the affidavit is prepared to tender the witness for cross-examination.

(c) The Debtors will ensure that any employee of the Debtors whose testimony is required at trial by any party will be available to testify at trial and will use reasonable best efforts to ensure that any former employee of the Debtors whose testimony is required at trial by any party will be available to testify at trial. For purposes of paragraph 14(a), such witnesses are not considered to be under the control of any party to this proceeding.

(d) The parties who litigate the Phase I Counts shall be bound by the Court's factual and legal pre-trial, trial or post-trial rulings for the Phase I Trial, and these rulings shall constitute the law of the case for these Defendants and there can be no re-litigation by these Defendants of any issue once it has been decided. This restriction is not intended in any way to narrow or waive any parties' appellate rights.

(e) The parties reserve all rights and defenses (that are not determined during Phase I) with respect to any Phase I Counts, except to the extent that any claimed rights and

defenses with respect to the Phase I-A Issues and the Phase II Counts are affected by operation of *res judicata*, collateral estoppel or other applicable judicial doctrine. All determinations of factual or legal matters made as a result of the Phase I Trial shall be binding, in connection with any subsequent adjudications in this action, on all parties who have appeared in the action with respect to all Counts in Plaintiff's Complaint, only to the extent consistent with the application of *res judicata*, collateral estoppel or other applicable judicial doctrine. The foregoing is without prejudice to or waiver of any party's appellate rights or rights upon a ruling by a higher court vacating, remanding or modifying a ruling of this Court.

15. Court Conferences. Counsel for the parties shall meet with the Court on August ____, and ____, September ____, and ____, October ____, and ____, and November __ and __, 2009.

16. Miscellaneous.

(a) Other than as explicitly set forth herein, the parties' agreement to this schedule shall not be construed as a waiver of any applicable right, privilege, rule or law, including any right to move to compel or preclude discovery (pursuant to the Court's standing rules).

(b) Service of any papers directed or authorized by this Order shall be made via email on each party's counsel of record.

(c) All dates and periods of time set forth in this Case Management Order are calendar, not business, days.

(d) If, at any time before the Phase I Counts are finally adjudicated pursuant to this Case Management Order, Counts I, II, VI, VII, XVIII, XIX, XX, and XXI are dismissed by agreement among the Plaintiff and those Defendants against whom those counts are alleged, then any remaining Defendant named in the Phase I Counts may, at its option, request that the Court

continue the Phase I Trial with respect to that Defendant to a later date, but the Court provides no assurance that such relief will be granted.

(e) This Case Management Order is without prejudice to the parties' ability to work out a mechanism for creating a reserve and litigating the claims, defenses and issues arising from the Complaint on a less expedited basis, but the Court is not ordering the parties to do so.

(f) Upon good cause shown, and on notice to all parties, any party to this action may seek to have this Case Management Order modified by the Court.

So Ordered:

s/ Robert E. Gerber

The Honorable Robert E. Gerber
United States Bankruptcy Judge

September 24, 2009