

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
FILED

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CHARLES J. HEDDY  
CLERK

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

MISSISSIPPI CHEMICAL  
CORPORATION, et al.,

Debtors.

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Case No. 03-02984 WEE  
Chapter 11  
Jointly Administered

BY \_\_\_\_\_ DEPUTY

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**MOTION OF HSBC BANK USA, AS INDENTURE TRUSTEE,  
FOR ORDER APPOINTING INDENTURE TRUSTEE  
TO UNSECURED CREDITORS' COMMITTEE**

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**I. Introduction**

HSBC Bank USA, in its capacity as successor indenture trustee (the "Trustee") with respect to the 7 ¼% Senior Notes due 2017 issued by Mississippi Chemical Corporation (the "Debtor") seeks an order of this Court pursuant to 11 U.S.C. § 1102(a)(2) requiring the United States Trustee to appoint the Trustee to the Official Committee of Unsecured Creditors (the "Committee"). As grounds, the Trustee will show that it is the largest single claim holder of the Debtor and, for numerous reasons, should be added to the Committee.

**II. Facts**

1. On November 25, 1997, the Debtor issued \$200,000,000 of its 7 ¼% Senior Notes due November 25, 2017 (the "Notes") pursuant to an Indenture (as supplemented and amended, the "Indenture"). Initially, Harris Trust and Savings Bank was appointed indenture trustee. On or about February 18, 2000, Harris resigned as indenture trustee and Trustmark Bank was appointed successor indenture trustee. Thereafter, BancorpSouth Bank was appointed successor trustee. On June 20, 2003, the Trustee was appointed successor trustee, in which capacity it currently serves.

2. The Indenture provides, among other things, that the Trustee is the holder of the claim under the Notes against the Debtor and has the sole power to enforce such claim. See Indenture at §§ 503 and 507 (Copies of the relevant portions of the Indenture are attached hereto as Exhibit A).<sup>1</sup> The Indenture states, in part, that

No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder [unless certain conditions are met, including a direction by a majority of the Holders]

3. Further, the Trustee is empowered to file a proof of claim in the matter. Id. at §504 and Bankruptcy Rule 3003(c)(5). All distributions made on account of the Notes are paid through the auspices and offices of the Trustee. Id. at §506. The Indenture also requires that the Trustee provide holders of the Notes (“Noteholders”) with periodic notices regarding any defaults in connection with the Notes. Id. at §601.

4. On May 15, 2003, the Debtor failed to make the regularly scheduled interest payment due under the Indenture. On the same day, the Debtor and nine of its subsidiaries and affiliates filed for protection under the Bankruptcy Code in this Court.

5. The Trustee, as holder of a claim in excess of \$200,000,000 is easily the largest single claim holder in the case. The pre-petition secured lender is owed approximately \$160,000,000. No other vendor or bank is thought to be owed an amount approximating these two amounts.

6. The Trustee submitted a questionnaire required by the United States Trustee for consideration to serve on the Committee and has further indicated its willingness to serve on the Committee to the U.S. Trustee on repeated occasions.

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<sup>1</sup> A majority of the Holders may direct “the time, method and place of conducting any remedy available to the Trustee” under the Indenture, provided certain conditions are met. See Indenture at §512, 602. To date, the Trustee has received no such direction.

7. On June 3, 2003 the United States Trustee's Office appointed a three-person Committee. It appears that all three persons are holders of the Debtor's debt. Two are holders of the Notes and the other is thought to be a holder of another bond issue. On the day of the appointment of the Committee, counsel for the Trustee spoke with a representative in the United States Trustee's Office who indicated that the appointment was "interim," and that a "final" Committee would be appointed after the Debtor's statements of affairs and schedules had been filed. The next day, counsel for the Trustee spoke with Ronald H. McAlpin. Mr. McAlpin again indicated that further members would be added to the Committee after the statements and schedules were filed. Mr. McAlpin also indicated that day that, because Noteholders had been appointed to the Committee, it was unlikely that the Trustee would be appointed.

8. On June 12, 2003, the Trustee's counsel wrote a letter to the United States Trustee's Office petitioning its appointment to the Committee. See Letter from John C. Tishler to Ronald H. McAlpin dated June 12, 2003, attached hereto as Exhibit B. The Trustee's counsel has had an additional conversation with Mr. McAlpin regarding the Trustee's request to be appointed to the Committee, but has been informed that the U.S. Trustee does not anticipate including the Trustee in the additional members to be added to the Committee. The Trustee further understands that the U.S. Trustee opposes the present motion.

### **III. Arguments**

#### **A. The Trustee's Position as Largest Single Claimholder in the Case Mandates its Appointment to the Committee.**

9. Section 1102(b)(1) of the Bankruptcy Code provides that

A committee of creditors appointed under subsection (a) of this section shall ordinarily consist of the persons, willing to serve, that hold the seven largest claims against the debtor of the kinds represented on such committee, or of the members of a committee organized by creditors before the commencement of the case under

this chapter, if such committee was fairly chosen and is representative of the different kinds of claims to be represented.

10. As noted above, the Trustee is the person holding the largest claim against the Debtor in this case. Although the Noteholders appointed to the Committee are certainly representative of the beneficiaries of certain parts of such claim, and as such should remain on any Committee, the actual party *holding* the largest claim in this case is the Trustee. Accordingly, Section 1102(b)(1) would indicate that it is proper and, indeed, the preferred approach, to appoint the Trustee to the Committee.

11. Further, the preferable number of creditors on the Committee is seven. At this juncture, there are only three members. Assuming that some number of vendors may be appointed to the Committee, there is certainly room to appoint the Trustee without impairing the positions other creditors may have in the case.

12. Finally, other Courts have found that indenture trustees are good and proper members of a creditors' committee. See In re Value Merchants, Inc., 202 B.R. 280 (E.D. Wis. 1996); In re Charter Company, 42 B.R. 251 (Bankr. M.D. Fla. 1984).

**B. Indenture Trustees are Frequently Appointed to Committees and Serve a Beneficial Purpose on Committees.**

13. It is not unusual for the indenture trustees of public companies' public debt securities to serve on creditors' committees alongside holders of the debt for which they serve as trustee. See, e.g., In re Kmart Corporation (United States Bankruptcy Court for the Northern District of Illinois) (copy of notice of appointment attached) as part of collective Exhibit C; In re Service Merchandise Company, Inc. (United States Bankruptcy Court for the Middle District of Tennessee) (copy of notice of appointment attached) as part of collective Exhibit C. See also 7 Collier on Bankruptcy at ¶1102.02[2][a][iii][B].

14. Indenture trustees serve very useful purposes on creditors' committees. Unlike some individual beneficial holders of debt or claims who may have bought their claims at less than par, the Trustee does not approach this case with any particular point of view. Not infrequently, individual holders may have purchased a debtors' debt securities or trade claims at discounts and may look for a quick return on their investment, thus seeking a quick liquidation on their claims. In other instances, the individual holders of notes or claims may decide to sell their positions and be required to resign from a committee. Unlike individual holders of claims, the Trustee would bring to the Committee no particular investment strategy in mind, and will remain on the Committee for the entirety of the case.

15. If the Trustee is on a committee, it is also beneficial to the holders of the Notes who are not on the Committee. By being on the committee, the Trustee is able to assist the Debtor and the Committee with formulating plan strategies that will involve as many of the holders as possible. The Trustee can facilitate the process of having holders vote on a plan. Being on the Committee will enable the Trustee to understand the nuances of the case and make intelligent decisions about what direction the case should go and what types of public information that it is important holders should know. As a result, placing the Trustee on the Committee will serve the important purpose of having an active member of the Committee who takes seriously its role of being a conduit of information to the creditors.

### **III. Conclusion**

16. For all the reasons set forth in this Motion, the Trustee requests that the Court direct the United States Trustee's Office to place the Trustee on the Committee.

Respectfully submitted:

NEWMAN & NEWMAN

By:   
Walter Newman

539 Trustmark Bank Bldg.  
Jackson, Mississippi  
(601) 948-0586

-and-

WALLER LANSDEN DORTCH & DAVIS  
A Professional Limited Liability Company

John C. Tishler, pro hac vice being filed  
Robert A. Guy, Jr., pro hac vice being filed  
Eric B. Schultenover, pro hac vice being filed

511 Union Street, Suite 2100  
Nashville, TN 37219  
(615) 244-6380

Attorneys for HSBC Bank, as Trustee

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Motion was served by hand delivery on Mississippi counsel and by facsimile and email on out of state counsel, on the following this 27th day of June, 2003:

Counsel for the Debtors

James W. O'Mara and Douglas C. Noble  
Phelps Dunbar LLP  
SkyTel Centre North, Suite 500  
200 South Lamar Street  
Jackson, MS 39201

Counsel for Harris Bank

James E. Spiotto  
Chapman and Cutler  
111 W. Monroe Street  
Chicago, IL 60603

-and-

Stephen W. Rosenblatt  
Butler, Snow, O'Mara, Stevens  
P. O. Box 22567  
Jackson, MS 39225-2567

Counsel for Unofficial Committee of Bondholders

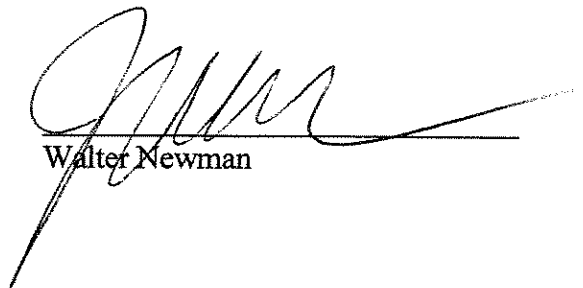
Anthony Princi and Thomas L. Kent  
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666 Fifth Avenue  
New York, NY 10103

-and-

Craig M. Geno  
Harris, Geno & Dunbar, P.A.  
P. O. Box 3919  
Jackson, MS 39207-3919

United States Trustee's Office

Ronald H. McAlpin  
Office of the U.S. Trustee  
Suite 706  
100 W. Capitol Street  
Jackson, MS 39269



Walter Newman

# EXHIBIT A



MISSISSIPPI CHEMICAL CORPORATION

Issuer

Indenture

Dated as of November 25, 1997

HARRIS TRUST AND SAVINGS BANK

Trustee

Debt Securities

*BancorSouth*

(iii) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate or rates borne by or provided for in such Securities, and

(iv) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

(b) all Events of Default with respect to Securities of that series, other than the nonpayment of the principal of (or premium, if any) or interest on Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 511.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

**Section 503. Collection of Indebtedness and Suits for Enforcement by Trustee.** MCC covenants that it:

(a) default is made in the payment of any installment of interest on any Security of any series when such interest becomes due and payable and such default continues for a period of 30 days, or

(b) default is made in the payment of the principal of (or premium, if any) on any Security of any series at its Maturity, then MCC will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities of such series, the whole amount then due and payable on such Securities for principal (and premium, if any) and interest, with interest upon any overdue principal (and premium, if any) and, to the extent that payment of such interest shall be legally enforceable, upon any overdue installments of interest at the rate or rates borne by or provided for in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If MCC fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against MCC or any other obligor upon such Securities of such series and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of MCC or any other obligor upon such Securities of such series, wherever situated.

If an Event of Default with respect to Securities of any series occurs and is continuing the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement

of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

**Section 504. Trustee May File Proofs of Claim.** In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to MCC or any other obligor upon Securities or the property of MCC or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of Securities of any series shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on MCC for the payment of overdue principal, premium, if any, or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise, to:

(a) to file and prove a claim for the whole amount, or such lesser amount as may be provided for in Securities of such series, of principal (and premium, if any) and interest owing and unpaid in respect of Securities and to file such other papers or documents as may be necessary or advisable in order to have the claim of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in said judicial proceeding; and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any creditor, receiver, assignee, trustee, liquidator, sequesteror (or other similar official) in any such judicial proceeding is hereby authorized by each Holder of Securities of such series to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee and any predecessor Trustee, their agents and counsel, and any other amounts due to the Trustee or any predecessor Trustee under Section 506.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Security any plan of reorganization, arrangement, adjustment or composition affecting Securities or the rights of any Holder hereof, or to authorize the Trustee to vote in respect of the claim of any Holder of a Security in any such proceeding; provided, however, that the Trustee may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and may be a member of the creditors' committee or similar committee.

**Section 505. Trustee May Enforce Claims Without Possession of Securities.** All rights of action and claims under this Indenture or any Securities may be prosecuted and enforced by the Trustee without the possession of any Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust; and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee

its agents and counsel, be for the ratable benefit of the Holders of Securities in respect of which such judgment has been recovered.

**Section 506. Application of Money Collected.** Any money collected by the Trustee pursuant to this Article Five shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest upon presentation of Securities, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

**FIRST:** To the payment of all amounts due the Trustee and any predecessor Trustee under Section 606;

**SECOND:** To the payment of the amounts then due and unpaid upon Securities for principal (and premium, if any) and interest payable, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the aggregate amounts due and payable on such Securities for principal (and premium, if any) and interest, respectively; and

**THIRD:** To the payment of the remainder, if any, to MCC.

**Section 507. Limitation on Suits.** No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to Securities of that series;

(b) the Holders of not less than 25% in principal amount of Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of Outstanding Securities of that series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to effect, directly or prejudicially the rights of any other of such Holders, or to obtain or to seek to obtain priority or

preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided, and for the equal and ratable benefit of all such Holders.

**Section 508. Unconditional Right of Holders to Receive Principal, Premium, if any, and Interest.** Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and, subject to Sections 305 and 307, interest on such Security on the respective due dates expressed in such Security (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

**Section 509. Restoration of Rights and Remedies.** If the Trustee or any Holder of a Security has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, MCC, the Trustee and the Holders of Securities shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

**Section 510. Rights and Remedies Cumulative.** Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 306, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Securities is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

**Section 511. Delay or Omission Not Waiver.** No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article Five or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient by the Trustee or by the Holders of Securities.

**Section 512. Control by Holders of Securities.** The Holders of not less than a majority in principal amount of Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to Securities of such series provided that

- (a) such direction shall not be in conflict with any rule of law or with the Indenture;

(b) the Trustee may take any other action deemed proper by the Trustee, which is not inconsistent with such direction, and

(c) the Trustee need not take any action which might involve it in personal liability or be unduly prejudicial to the Holders of Securities of such series not joining therein, it being understood that (subject to Section 602) the Trustee shall have no duty or obligation to determine whether or not such action or forbearance would be prejudicial to such Holders.

**Section 513. Waiver of Past Defaults.** The Holders of not less than a majority in principal amount of Outstanding Securities of any series may on behalf of the Holders of all Securities of such series waive any past default hereunder with respect to such series and its consequences, except a default

(a) in the payment of the principal of (or premium, if any) or interest or payable in respect of any Security of such series, or

(b) in respect of a covenant or provision hereof which under Article Ninth cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

**Section 514. Waiver of Usury, Stay or Extension Laws.** MCC covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim, or take the benefit or advantage of, any usury, stay or extension law whenever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and MCC (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

**Section 515. Undertaking for Costs.** All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of any undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 515 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of Outstanding Securities, or to any

suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Security on or after the respective Stated Maturity expressed on such Security (or, in the case of redemption, on or after the Redemption Date).

## ARTICLE SIX

### THE TRUSTEE

**Section 601. Notice of Defaults.** Within 90 days after the occurrence of any default hereunder with respect to Securities of any series, the Trustee shall transmit to the transferee and to the extent provided in TIA Section 313(c), notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Security of such series, or in the payment of any sinking fund installment with respect to Securities of such series, the Trustee shall be protected in withholding such notice if and so long as Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Holders of Securities of such series; and provided further that in the case of any default or breach of the character specified in Section 501(d) with respect to Securities of such series, no such notice to Holders shall be given until at least 60 days after the occurrence thereof. For the purpose of this Section 601, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

**Section 602. Certain Rights of Trustee.** Subject to the provisions of TIA Section 315(a) through 315(c):

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of MCC mentioned herein shall be sufficiently evidenced by a MCC Request or MCC Order (other than delivery of any Security to the Trustee for authentication and delivery pursuant to Section 503, which shall be sufficiently evidenced as provided therein) and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or causing any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

# EXHIBIT B



## WALLER LANSDEN DORTCH & DAVIS

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June 12, 2003

### VIA FACSIMILE

Ronald H. McAlpin, Esq.  
UNITED STATES TRUSTEE'S OFFICE  
100 W. Capitol Street, Suite 706  
Jackson, MS 39269

Re: *In re Mississippi Chemical Corporation*

Dear Mr. McAlpin:

Thanks for taking the time to talk with me and Skip Jernigan about the referenced Chapter 11 proceeding last week.

This law firm, along with the Watson & Jernigan firm, represents BancorpSouth Bank, the successor indenture trustee (the "Trustee") of the referenced debtor's 7 1/4% Senior Notes due 2017 (the "Notes").

As we discussed, the Trustee wants to become a member of the Official Unsecured Creditors' Committee (the "Committee"). Although the Trustee submitted an application to become a member of the Committee, it was not appointed by your office last week.

Two holders of the Notes (the "Noteholders") were appointed to serve on the Committee. I understand from you that once the Debtor files its statements and schedules, you will consider adding members. I believe that the addition of the Trustee to the Committee would be beneficial and wanted to share with you the reasons.

We firmly believe that there are numerous benefits achieved by appointing the Trustee to the Committee. The role of the official creditors committee in a bankruptcy case is to be an active advocate of its constituents

**WALLER LANSDEN DORTCH & DAVIS**  
A PROFESSIONAL LIMITED LIABILITY COMPANY

Ronald H. McAlpin, Esq.  
June 12, 2003  
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interests. Clearly, the Trustee has no financial "baggage" or agenda. The Indenture and the Trust Indenture Act of 1939, as amended (the "TIA"), place a duty on the Trustee to conduct itself as a reasonably prudent person would under the circumstances. The Trustee intends to pursue a course of action that it believes will result in the highest possible return to creditors while preserving and protecting the interests of the Noteholders. Hence, the Trustee is well suited to fill the fiduciary role of a Committee member in accordance with its fiduciary responsibilities under the relevant Indenture and pursuant to the TIA.

Further, the Bankruptcy Code specifically recognizes the importance of the Trustee's role in bankruptcy cases. See, e.g., 11 U.S.C. §848 (right to examine the debtor), 11 U.S.C. §501(a) (right to file a proof of claim), 11 U.S.C. §503(b)(3) (fees and (5) (compensation for beneficial services), and 11 U.S.C. §1109(b) (right to be heard). Accordingly, appointment of an indenture trustee to a creditors' committee implements the worthy goals of the Bankruptcy Code. Moreover, the Trustee serves a critical function in disseminating information and gathering input from the Noteholders as a whole. If the Trustee serves on an official creditors' committee, the Trustee can be more effective in giving timely notices to the Noteholders and in disseminating ballots and other materials and information relevant to the case.

It is sometimes the case, too, that holders of claims trade out their claims over the course of a case. As a result, an individual holder may not always qualify to serve on the Committee. Having the Trustee as a member of the Committee assures continuity on the Committee of concepts, views and "institutional memory" for a Committee.

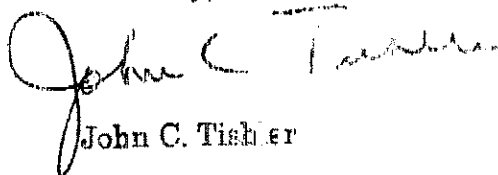
Moreover, holders have come to rely upon the Trustee to act as a conduit for information regarding the status of the bankruptcy case, and parties in interest routinely utilize the Trustee to assist in the administration of the Chapter 11 case. Absent membership on the Committee, the Trustee cannot provide the same degree of meaningful assistance to the Noteholders or responsiveness to other parties in interest as would ordinarily and customarily be expected from a member of the Committee. This, in turn, may increase the cost to Noteholders or other creditors of the bankruptcy estate because the Trustee must take on a number of tasks (through counsel) that it would not otherwise be required to do if it was on the Committee with ready access to such information.

**WALLER LANDEN DORTCH & DAVIS**  
A PROFESSIONAL LIMITED LIABILITY COMPANY

Ronald H. McAlpin, Esq.  
June 12, 2003  
Page 3

For these reasons, I request that you appoint the Trustee to the Committee forthwith. I appreciate your consideration of this issue and look forward to hearing from you at your earliest opportunity.

Sincerely,

  
John C. Tishler

JCT/nms

cc: Dan Edwards  
Skip Jernigan, Esq.  
Doug C. Noble, Esq.

# EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

IN RE:

SERVICE MERCHANDISE  
COMPANY, INC., et al.,

DEBTORS.

99-02288-GP3-11  
U.S. BANKRUPTCY COURT  
MIDDLE DISTRICT OF TN  
Case No. 99-02288-GP3-11  
Jointly Administered

APPOINTMENT AND NOTICE OF APPOINTMENT  
OF OFFICIAL UNSECURED CREDITORS COMMITTEE

The United States Trustee hereby appoints pursuant to 11 U.S.C. § 1102(a) the following  
nine unsecured creditors to serve on the Official Committee of Unsecured Creditors in the  
Service Merchandise, Inc., case (no. 99-02288-GP3-11):

1. AMERICAN CREDIT INDEMNITY CO. (Committee Co-Chair)  
Contact: Kevin McCann  
100 East Pratt Street  
Baltimore, MD 21202-1008  
Tel: (410) 554-0669  
Fax: (410) 554-0883
2. THE BANK OF NEW YORK  
Contact: John W. Stevenson  
101 Barclay Street  
New York, NY 10286  
Tel: (212) 815-5086
3. BENNETT MANAGEMENT CORPORATION (Committee Co-Chair)  
Contact: Brian P. O'Farrell  
2 Stamford Plaza, Suite 1501  
281 Tresser Blvd.  
Stamford, CT 06901-3259  
Tel: (203) 353-3101  
Fax: (203) 353-3113

4. MICHAEL J. BISCONI, ESQ.  
151 Main Street  
Albany, NY 12143  
Tel: (518) 755-2002
5. EMATE STREET BANK AND TRUST CO.  
Contact: Laura L. Morse  
Two International Place  
Boston, MA 02110  
Tel: (617) 664-5604
6. ICON HEALTH & FITNESS, INC.  
Contacts: Charlie Alley  
Chris Browning  
1500 South 1000 West  
Logan, Utah 84321  
Tel: (435) 750-5000  
Fax: (435) 750-3651
7. LUCENT TECHNOLOGIES CONSUMER PRODUCTS, L.P.  
Contact: Stanley M. Hartstein  
535 Mountain Avenue  
Murray Hill, NJ 07974  
Tel: (908) 673-3420  
Fax: (908) 673-3342
8. MATTEL, INC.  
Contact: Dorothy Fee  
353 Continental Blvd.  
B' Segundo, CA 90245  
Tel: (310) 252-2827  
Fax: (310) 252-3048
9. SIMON PROPERTY GROUP, L.P.  
Contact: Ronald M. Tucker  
115 W. Washington St.  
Indianapolis, IN 46220  
Tel: (317) 263-2346  
Fax: (317) 263-7091

10. BULOVA CORPORATION

Contact: Paul Sayegh  
John O'Reilly

One Bulova Avenue  
Woodside, NY 11377  
Tel: (718) 204-3451  
Fax: (718) 204-3507

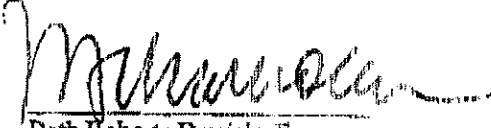
11. VIJAY GOLD DESIGNS

Contact: Russell S. Weisenberg  
1232 Avenue of the Americas, 9<sup>th</sup> Floor  
New York, NY 10036  
Tel: (212) 302-0945  
Fax: (212) 302-0872

Dated: April 8, 1999  
Nashville, Tennessee

Respectfully submitted,

ELLEN B. VERGOS  
UNITED STATES TRUSTEE



Beth Roberts Derrick, Esq.  
Michael E. Collins, Esq.  
Office of the United States Trustee  
701 Broadway, Suite 318  
Nashville, TN 37203  
(615) 736-2254

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ROD FEB 4 - 2002

In re: ) Case No. 02 B 02474  
) (Jointly Administered)  
) Chapter 11  
KMAR CORPORATION, et al. )  
)  
Debtors. ) Hon. Susan Pierson Sonieroy

NOTICE OF APPOINTMENT OF COMMITTEE  
OF UNSECURED CREDITORS

The following persons, selected from unsecured creditors who are willing to serve,  
are hereby appointed as the creditors' committee in this case:

DEBTORES

FILED

REPRESENTATIVE

Fuji Photo Film U.S.A., Inc. UNITED STATES BANKRUPTCY COURT Martin Barish  
555 Teller Road NORTHERN DISTRICT OF ILLINOIS  
Elmhurst, NY 10523 FEB 01 2002

American Greetings KENNETH S. GARDNER, CLERK Art Tuttle  
One American Road TEAM - 3  
Cleveland, OH 44144-2398

Bridgely Foods of Illinois Richard G. Klaczyski  
170 North Green Street  
Chicago, IL 60607

20th Century Fox Home Entertainment UnJu Paik  
Legal Department  
PO Box 930  
Beverly Hills, CA 90213-0900

GMAC Commercial Credit Esther D. Miller  
1290 Avenue of Americas  
New York, NY 10104

Newell Rubbermaid Mark Flapp  
29 East Stephenson Street  
Frederick, IL 61032

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**CONTRIBUTOR**

Kimberly Corporation  
3333 New Hyde Park Road  
Suite 103  
New Hyde Park, NY 11042

Sara Lee Corporation  
475 Corporate Square Drive  
Winston-Salem, NC 27105

PepsiCo  
3501 Algonquin Road  
Rolling Meadows, IL 60008

Nintendo of America, Inc.  
4820 NE 4th Avenue N.E.  
Redmond, WA 98052

Buena Vista Home Video  
500 South Buena Vista Street  
Burbank, CA 91521-9750

MetLife, Inc.  
333 Continental Boulevard  
El Segundo, CA 90245

Pension Benefit Guaranty Corporation  
1200 K Street, N.W.  
Washington, D.C. 20005-4026

**REPRESENTATIVE**

Milton Cooper

David S. Peoples

Scott Nehs

Elizabeth M. Aurilio

Kenneth E. Newman

Kathleen Simpson-Taylor

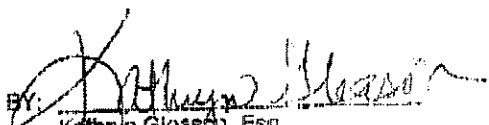
James J. Keighly

RESPECTFULLY SUBMITTED,  
IRA BODENSTEIN  
UNITED STATES TRUSTEE

DATE

2/1/02

BY

  
Kathryn Gleason, Esq.  
Attorney for the U.S. Trustee