

JUL 15 2003

CHARLENE J. KENNEDY, CLERK
BY _____ DEPUTY

**In The United States Bankruptcy Court
for the Southern District of Mississippi
Jackson Division**

In re	§	
	§	Case No 3-03-2984 (WEE)
Mississippi Chemical	§	
Corporation, <i>et al</i>	§	Chapter 11
	§	
Debtors	§	
	§	Jointly Administered

**Order Granting Debtors' Application to Employ Gordian Group, LLC
as Restructuring and Financial Advisor**

Came On For Consideration the *Application to Employ Gordian Group, LLC as Restructuring and Financial Advisors for Debtors and Debtors-in-Possession* (the "Application") filed by the debtors in the above-styled jointly administered bankruptcy cases (the "Debtors"). The Court, having reviewed (i) the Application (ii) the *Affidavit of Peter S. Kaufman in Support of the Debtors' Application to Employ Gordian Group, LLC as Financial Advisor Pursuant to Bankruptcy Code Sections 327 and 328(a)* and the *Supplemental Affidavit of Peter S. Kaufman in Support of the Debtors' Application to Employ Gordian Group, LLC as Financial Advisor Pursuant to Bankruptcy Code Sections 327 and 328(a)*, filed by Gordian Group, LLC ("Gordian") member Peter S. Kaufman in support of the Application (together, the "Kaufman Affidavits"), (iii) the December 20, 2002 engagement letter attached to the Application as Exhibit "A" (the "Engagement Letter") and (iv) the objection to the Application ("Agent's Objection") filed by Harris Trust and Savings Bank, as Administrative Agent (the "Agent" or collectively with each and every lender, whether pre-petition or post-petition, represented by the Agent and possessing secured claims against the Debtors, the "Bank Group"), and having considered the representations of the respective counsel, finds and concludes that the legal and

factual bases set forth in the Application, the Kaufman Affidavits, and the Engagement Letter (collectively, the "Retention Documents") establish just cause for the relief requested in the Application, as modified by this Order with the agreement of the parties including the Debtors, Gordian, the Official Committee of Unsecured Creditors (the "Committee") and the Agent

This Court further finds (a) the Court has jurisdiction over this matter pursuant to 28 U S C §§ 157 and 1334, and this Application is a core proceeding pursuant to 28 U S C § 157(b), (b) the Retention Documents, as modified by this Order, satisfy all applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of Mississippi, (c) Gordian (including its members and associates who will be engaged in these Chapter 11 cases) does not hold or represent any interest adverse to the Debtors' estates, and is a "disinterested person," as that term is defined in Section 101(14) of the Bankruptcy Code (as modified by Bankruptcy Code Section 1107(b)), and as required by Bankruptcy Code Section 327, (d) all necessary and appropriate disclosures required by Bankruptcy Rule 2014 have been made, (e) the Debtors have demonstrated the necessity for employing a financial advisor, (f) the Agent's Objection is the only objection to the Application filed by any party-in-interest, (g) notice of the Application was sufficient and appropriate under the particular circumstances and has been given to the Office of the United States Trustee and to the holders of the twenty largest unsecured claims against the Debtors, as well as to counsel for the Committee, and (h) the relief requested in the Application is necessary and in the best interests of the Debtors, their bankruptcy creditors and estates, and good and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT

1 The Application, as modified by this Order, is GRANTED

2 In accordance with Bankruptcy Code Section 327(a), the Debtors are authorized to employ Gordian as their financial advisor to perform the services described in the Retention Documents, effective as of the Petition Date

3 The terms and conditions of Gordian's retention as set forth in the Retention Documents are hereby approved, except as expressly modified in this Paragraph 3

- a The cap on Gordian's total fees shall be increased from \$4,000,000 to \$5,000,000 (except as may be modified by Paragraph 3 b below), which shall be applicable to any fees (as opposed to reasonable expense reimbursements) received by Gordian from January 1, 2003 throughout the entirety of its engagement
- b After Gordian has received total Monthly Fees and Additional Fees (as such terms are defined in the Engagement Letter) (hereafter collectively "Compensation") of \$3,000,000 in the aggregate, then Gordian shall be entitled to receive additional compensation in an amount no greater than \$2,000,000 in the aggregate ("Additional Compensation") only if the Bank Group has previously received, or receives at the same time as Gordian receives its Additional Compensation as provided herein, payment of the full amount of the Bank Group's claims for principal, interest, costs and expenses, whether pre-petition or post-petition, owing to each member of the Bank Group pursuant to its respective financing documentation (including, without limitation, contingent claims pursuant to undrawn letters of credit, which shall be secured and defeased with cash deposits or such other manner acceptable to the Agent in its sole and absolute discretion) in cash or such other form of consideration acceptable to each respective member of the Bank Group in its sole and absolute discretion, including without limitation, receiving the proceeds of exit or other borrowings of the Debtors (hereafter "Satisfaction of the Bank Group's Claims") Upon Satisfaction of the Bank Group's Claims, then the amount of the Additional Compensation shall be determined as follows: to the extent the Debtors' enterprise value ("Enterprise Value") is at least \$200,000,000, then Gordian shall be entitled to Additional Compensation calculated as (i) \$500,000 plus (ii) 1.0% of all Enterprise Value in excess of \$200,000,000, not to exceed a total of \$2,000,000 in Additional Compensation. For example, if Enterprise Value is calculated as \$300,000,000, Gordian will be owed Additional Compensation of \$500,000 + (\$300,000,000 - \$200,000,000) x 1.0%, or \$1,500,000
- c In no event, despite the Debtor's Enterprise Value exceeding \$350,000,000, shall Gordian's aggregate fees (as opposed to reasonable expenses) for both Compensation and Additional Compensation exceed \$5,000,000
- d The Debtor's Enterprise Value shall expressly include (i) cash and other proceeds of the sale of any assets sold prior to conclusion of the confirmation hearing on

the Debtors' plan of reorganization and (ii) the amount of any pre-petition bank debt repaid, excluding repayments as a result of cash and other proceeds from the sale of assets in (i) above. The Debtors' Enterprise Value shall be determined as part of the confirmation hearing.

- e Notwithstanding paragraph h(1) below, Gordian shall be entitled to reimbursement of all reasonable legal fees and out-of-pocket expenses incurred in obtaining the Court's approval of Gordian's engagement as financial advisor of the Debtors.
- f Reimbursement of Gordian's monthly expenses (but not compensation of Gordian's Monthly Fees or Additional Fees) shall take place in accordance with the provisions of this Court's May 16, 2003 *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and Official Committee Members* (the "Interim Compensation Order"), however Gordian shall not be required to comply with paragraphs E and F of the Interim Compensation Order. This procedure shall take effect on August 15, 2003 for Gordian's July 2003 expenses, and continue each month thereafter.
- g Gordian shall file a final fee application pertaining to all fees and expenses received hereunder. Except as otherwise provided in this Order, Gordian shall not be paid its Additional Fees unless and until Gordian files a fee application and, following notice and hearing, obtains approval and allowance of such fees from the Court. Notwithstanding applicable Bankruptcy Code Sections, Rules of Bankruptcy Procedure, Local Bankruptcy Rules, the United States Trustee Guidelines and other applicable rules and guidelines, Gordian's fee application(s) shall set forth weekly summaries (commencing the week of July 14, 2003) of the approximate time spent and activity of each Gordian professional involved in the Debtors' engagement and, where applicable, a brief summary of the Financial Transaction (as defined in the Engagement Letter) entitling Gordian to receipt of an Additional Fee.
- h Gordian's final fee application shall be reviewed under and subject to the standard set forth in Bankruptcy Code Section 328(a), with the sole exception that the Agent shall have the right to review and object to Gordian's final fee application as follows:
 - (1) In the event the Bank Group does not receive Satisfaction of the Bank Group's Claims, then the Agent shall be entitled to object to the Additional Fees and expenses (as opposed to the Monthly Fees) included in Gordian's final fee application consistent with the standards and provisions set forth in Bankruptcy Code Section 330 and applicable case law. If any other party-in-interest objects to Gordian's final fee application, and to the extent the Agent objects to the Monthly Fees, then such objections shall be subject to and determined by the standard set forth in Bankruptcy Code Section 328(a).

- (11) If the Agent or any party-in-interest objects to Gordian's final fee application, then such objection shall not relate to the form of Gordian's fee application, except to the extent such fee application fails to comply with paragraph 3 g above

1 Notwithstanding anything to the contrary herein, any Additional Fee related to the DIP Financing shall be limited to \$200,000 payable upon the entry of a final order approving the DIP Financing and the remainder of such amount shall be payable, subject to the limitations set forth herein, upon Satisfaction of the Bank Group's Claims

j Gordian and the Debtors agree to cooperate with the Agent and the Committee by providing, through the Debtors, periodic information concerning the status of any restructuring, reorganization, refinancing or asset disposition in a manner consistent with the Bankruptcy Code and, as it pertains to the Agent, the obligations of the Debtors under the relevant Bank Group financing documents

k This Court shall retain jurisdiction over any disputes related to the Retention Documents or this Order

l To the extent the Debtors and Gordian agree that Gordian shall perform additional services outside the scope of the Engagement Letter for which Gordian may seek compensation in addition to the compensation provided in this Order, Gordian and the Debtor shall first obtain Court approval, after notice and hearing

m Unless expressly modified herein, all terms and obligations set forth in the Engagement Letter are hereby approved

4 The indemnification provisions set forth in the Engagement Letter are approved

5 To the extent this Order is inconsistent with the Engagement Letter or Application, this Order shall govern


6 This Order shall supplement, but not supersede, this Court's previous *Order Authorizing Debtors-in-Possession to Employ Gordian Group, L L C Nunc Pro Tunc as Restructuring and Financial Advisors Pursuant to §§ 327 and 328(a)*, dated July 3, 2003

So ordered this 15th day of July 2003



THE HONORABLE EDWARD ELLINGTON
UNITED STATES BANKRUPTCY JUDGE

James W. O'Hara,
Attorney for Debtor


Thomas K. J.
Attorney for Committee

Steph W. Runklett
Attorney for Secured Lenders