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

MISSISSIPPI CHEMICAL CORPORATION, et al,

Debtors

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Chapter 11
Case No 03-02984 WEE
Jointly Administered

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF
MISSISSIPPI CHEMICAL CORPORATION TO THE DEBTORS' MOTION FOR
ORDERS (1) APPROVING (a) AUCTION AND BID PROCEDURES, (b) BREAK-UP
FEE, (c) SCHEDULING OF FINAL SALE HEARING AND (d) FORM AND MANNER
OF NOTICE, AND (2) AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF
LIENS, CLAIMS AND INTERESTS AND ASSUMPTION OF EXECUTORY
CONTRACTS IN CONNECTION THEREWITH**

The Official Committee of Unsecured Creditors (the "Committee") of Mississippi Chemical Corporation (together with the other above-captioned debtors and debtors-in-possession, collectively, the "Debtors"), by and through its counsel, Orrick, Herrington & Sutcliffe L L P and Harris Geno & Dunbar, PA, hereby objects to the proposed sale of assets and assumption and assignment of executory contracts contemplated by the Debtors' Motion For Orders (1) Approving (A) Auction and Bid Procedures, (B) Break-Up Fee, (C) Scheduling of Final Sale Hearing and (D) Form and Manner of Notice, and (2) Authorizing Sale of Assets Free and Clear of Liens, Claims and Interests and Assumption of Executory Contracts in Connection Therewith (the "Koch Sale Motion") as follows

I PRELIMINARY STATEMENT

1 The Committee's objections to the Koch Sale Motion are founded on the inevitable conclusion that based on current facts an immediate sale of the Debtors' interests in its

ammonia production facility located in the Republic of Trinidad and certain related assets (collectively, the “Trinidad Interests”) as contemplated by the Koch Sale Motion is not in the best interests of the Debtors’ creditors. Firstly, the proposed purchase price leaves tens of millions of dollars of value on the table which will only accrue to the benefit of the proposed purchaser, Koch Nitrogen Company (“Koch”). As was uncontroverted at the last hearing in this case, ammonia prices have increased dramatically from the time that Koch acquired its initial one-half share of the Trinidad Interests to the time when Koch negotiated for the Debtors’ remaining share, and in fact ammonia prices have continued to increase. Specifically, ammonia prices were in the \$150.00 - \$175.00 per metric ton price range during the December 2002 through March 2003 time period during which Koch acquired its presently held 50% interest in the Trinidad Interests, but increased to the \$200.00 - \$225.00 per metric ton price range in the September 2003 through November 2003 period when Koch was negotiating with the Debtors for acquisition of the Debtors’ 50% share of the Trinidad Interests. More recently, ammonia prices have exceeded \$250.00 per metric ton. These higher prices have resulted in substantially higher valuations of both other similarly situated businesses as well as of the Trinidad Interests. Despite these increases, the proposed sale price as contemplated by the Koch Sale Motion is materially LESS than what Koch previously paid for an identical interest in March 2003 prior to the valuation increases.

2. Moreover, it cannot be argued that the auction produced the highest and best possible price, even under the expedited time constraints required because of the Bank Group’s rigid timelines. The entire auction process was tainted by the fact that Koch retained the right to match any other party’s bid, which fact, as was uncontroverted at the last hearing, chilled other prospective bidders from participating in the auction. That result is the reason that one

does not see such a provision in essentially any other bankruptcy auction process. Similarly, Koch made clear that it intends to hold the positive cash flow from the Trinidad operations hostage, and not allow dividends to anyone who purchased the Trinidad Interests. This announced intention was expressly designed to chill bidding. These factors may explain the lack of competing bids in this case.

3 Secondly, there is currently no necessity to sell the Trinidad Interests whatsoever. The Committee, in conjunction with the Debtors, have negotiated an alternative transaction in the form of a supplemental DIP loan (the “Alternative Transaction”) offered by DSC Advisors, L P and DDJ Capital Management, L L C (collectively, the “Supplemental Lenders”), which can satisfy the applicable liquidity event under the current DIP agreement. Satisfaction of that DIP agreement requirement was the entire rationale for the filing of the Koch Sale Motion in the first place. In fact, had the Alternative Transaction then been in place, the Koch Sale Motion would never have been filed. Because the Debtors still acknowledge and will comply with the Bank Group’s demands for a liquidity event respecting the Trinidad Interests at this time, the Bank Group should not be heard complaining of an alternative but allowable form of liquidity event which may also benefit other creditor constituencies in these cases. The Committee would gladly withdraw its support for the Alternative Transaction if the Bank Group would defer its demand for a liquidity event respecting the Trinidad Interests until plan confirmation.

4 Thirdly, and most importantly, the Committee believes that the Alternative Transaction will provide the Debtors with the ability to get to confirmation of a plan of reorganization in the near term while the approval of the Koch Sale Motion will have exactly the opposite effect. Over the last several weeks the Committee has had innumerable discussions

with the Supplemental Lenders regarding their interest in investing in the Debtors. Since essentially the first of those discussions, the Supplemental Lenders have made it clear to the Committee that their interest in the Debtors is not simply to provide the Debtors with a DIP facility, but rather to be an investor in the post reorganized company. However, the Supplemental Lenders' interest in being such an investor is conditioned on the Debtors retaining the Trinidad Interests, failing which the Supplemental Lenders would not have any such interest. It was the filing of the Koch Sale Motion to meet the liquidity requirements imposed by the Bank Group that necessitated the Alternative Transaction as an interim step and which clearly demonstrates the Supplemental Lenders' commitment to be an investor in the post reorganized company.

5 Discussions between the Committee and the Supplemental Lenders have progressed substantially beyond the Alternative Transaction to the framework for a possible plan of reorganization. The Committee recognizes that all or substantially all of the pre-petition unsecured debt will have to be converted into post reorganized equity. Similarly, the Supplemental Lenders have indicated their understanding that some of their supplemental DIP loan will also have to be converted into post reorganized equity, and thus this should not prove an impediment to formulating an exit strategy. Further, the Supplemental Lenders have also indicated that they have had positive discussions with other financial institutions respecting their funding of working capital and/or term loans for exit financing, sufficient in amount to provide the post reorganized company with sufficient cash resources to consummate a plan of reorganization as well as to allow the company to operate post bankruptcy. The other piece that still remains to be completed before a plan of reorganization can be filed is for the Debtors to finalize their preliminary post reorganization business plan, which the Committee believes can

be done so that a plan of reorganization can be filed by no later than the end of the first quarter of 2004, which complies with the requirements imposed by the Bank Group in the current DIP lending facility

6 In contrast, if the Koch Sale Motion is approved in favor of the Alternative Transaction, the Debtors are a long way from being able to propose a plan of reorganization. Following the sale of the Trinidad Interests and another scheduled liquidity event, as currently budgeted there would still be in excess of \$52 million of pre-petition debt that is ostensibly secured by all of the Debtors' remaining assets. Based on the Committee's discussions with prospective sources of exit financing, and the Committee's understanding of similar discussions had by the Debtors, the Committee is not aware of any party who to date has expressed any interest in funding sufficient exit financing without the Debtors' retention of the Trinidad Interests. Not only do the Trinidad Interests increase the base over which the Debtors' overhead can be allocated, but the Trinidad Interests provide a hedge against the volatile domestic natural gas pricing environment. The importance of this hedge was demonstrated earlier this year when high natural gas prices forced the Debtors to close certain of their United States facilities, yet the Trinidad plant operated profitably.

7 The Committee recognizes that absent the Alternative Transaction, the Committee might have had no alternative but to accede to the Koch Sale Motion due to the liquidity requirements imposed by the Bank Group as set forth in the final DIP facility. However, facts have changed and an alternative does now in fact exist. Approval of the Alternative Transaction will provide maximum value to the Debtors' unsecured creditors while in no way diminishing the return to the Bank Group as contemplated in the final DIP facility. Applicable case law requires that a sale must be justified by a viable business reason, which in

this case was the required pay down of the Bank Group. The Alternative Transaction will satisfy the Bank Group's liquidity requirement, and thus there is no longer any viable justification for the proposed rushed "fire sale" to Koch under the Koch Sale Motion. Moreover, the Alternative Transaction will have the added benefit of providing the Debtors with the ability to propose a plan of reorganization and exit from bankruptcy in the near term with a substantially more valuable and diversified enterprise than would be possible following the sale to Koch.

8 For all these reasons the Committee urges the Court to approve the Alternative Transaction and deny the Koch Sale Motion.

II BACKGROUND

9 Since the case background has been aptly presented in other pleadings submitted to this Court, all of which the Committee incorporates herein by reference, the Committee presents this brief description of only certain directly pertinent facts.

10 The Bank Group possessed significant leverage over the Debtors and were able to translate that power into certain liquidity requirements requiring significant pre-confirmation pay downs of the pre-petition debt as a condition to providing needed post-petition financing. In an effort to meet one of the liquidity requirements, the Debtors filed the Koch Sale Motion, because at the time, there existed no alternative that would satisfy the impending liquidity requirement.

11 In recognition of the Debtors' need for continued financing, the Committee refrained from previously objecting to the Koch Sale Motion or the implementation of auction procedures pursuant to the Koch Sale Motion since no viable alternative existed that

could similarly satisfy the Debtors' liquidity requirements. This was despite the fact that the Committee believed, and still believes, that the proposed purchase contemplated in the Koch Sale Motion does not reflect the actual value of the assets to be sold therein.

12 Since that time, due both to the continued efforts of the Committee and its professionals, as well as the changed economic conditions facing both the natural gas and the fertilizer industries, the Committee has now procured an alternative to the Koch Sale Motion in the form of the supplemental DIP, which proposal is agreeable to the Debtors. This alternative proposal will permit the Debtors to retain their Trinidad Interests, while still meeting the Bank Group's imposed liquidity requirement. Moreover, this supplemental lending facility is designed to be a precursor to an ultimate exit financing proposal and plan of reorganization. Accordingly, this Objection was filed.

III ARGUMENT

13 The law is clear that Debtors must proffer a valid business justification for any proposed sale or similar disposition of assets, as well as heeding the Debtors' duties to receive maximum value for all of their assets for the benefit of all the creditors of their estates. In light of the recently proposed Alternative Transaction proffered by the Supplemental Lenders, the only possible justification for the Koch Sale Motion no longer exists, namely, satisfaction of the Bank Group's liquidity requirements. Thus the Koch Sale Motion must be denied in favor of the Alternative Transaction as contemplated under the Debtors' supplemental lending motion now also before this Court.

14 Courts have consistently held that any asset sale in bankruptcy must be "in the best interest of the estate." See In re The Lionel Corporation, 722 F.2d 1063, 1068-69 (2d

Cir 1983), and can only be supported if there is a valid business justification for the property disposition. Id. In denying the sale at issue in that case, the court found that the debtor had failed to prove that the sale had a valid business justification. In making that determination, the court held that a court should “consider all salient factors”, which include “the proportionate value of the assets to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value.” Lionel, 722 F.2d at 1071. Courts of the Fifth Circuit, including the Southern District of Mississippi, have adopted the Lionel factors. See, e.g., In re Condere Corporation, 228 B.R. 615, 628 (Bankr. S.D. Miss. 1998). As demonstrated below, a review of each of the pertinent “Lionel” factors dictates against the Koch Sale Motion, and taking the factors as a whole, the Koch Sale Motion must be denied.

15 Applying the Lionel factors to the asset sale in question in this case unquestionably demonstrates the serious infirmities of the Koch Sale Motion. As indicated above, the Committee believes that Debtors’ Trinidad Interests are increasing in value, which is perhaps the “most important” of the Lionel factors and thus strongly militates against approving the Koch Sale Motion. A sale of the Trinidad Interests at this point will cause all appreciation to inure to the benefit of Koch as the third-party purchaser rather than the Debtors’ estates and its creditors. In contrast, approving the Alternative Transaction will permit the Debtors to retain their rights in the Trinidad Interests and continue to receive the benefit of the appreciating asset and a hedge against the volatile domestic natural gas pricing environment.

16 Additionally, the decision regarding the proposed sale is particularly important in this case because the Trinidad operations constitute approximately half of the overall enterprise value of the Debtors' assets and operations. See Condere, 228 B.R. at 628, citing Lionel. This is not simply a matter of a de minimis asset being sold whose "real value" is not that significant in absolute terms. Rather, the Koch Sale Motion seeks authority to sell the single most important assets of the company for a value inconsistent with recent appraisals, as well as drastically altering the future operations of the Debtors.

17 This negative impact on the future operations and structure of the Debtors leads to another Lionel factor dictating against a sale of the Trinidad Interests. Courts must examine whether a plan of reorganization will be filed and the impact that the proposed asset disposition will have on such plan. See Condere, Lionel. In this case, the Debtors' chances for a successful restructuring will be dramatically improved under any scenario that permits them to retain the Trinidad Interests. Among other things, the Debtors will benefit from the appreciating value of the operations, and perhaps more importantly, will benefit from an overall enterprise that is both larger in scale and more diversified, in contrast to the remaining operations that would result if the sale of the Trinidad Interests was permitted to occur.

18 Moreover, the Supplemental Lenders have indicated that the supplemental DIP loan will presumably lead to a successful emergence from chapter 11, in part through the equitization of at least a portion of the loan facility. In contrast, the liquidity requirements imposed by the Bank Group merely evidence their obvious desire to be distanced from the Debtors as soon as possible. Accordingly, approval of the Alternative Transaction will further assist the realization of a successful restructuring by furthering the aims of a party who has evidenced their willingness to fund the Debtors' emergence from Chapter 11.

19 Finally, Koch's argument that denying the Koch Sale Motion is "not fair" and an inappropriate "end run" around the scheduled sale is not only a mere self serving averment from a party who hopes to profit from the transaction, it is wrong as a matter of law Bankruptcy courts have long recognized that they must be flexible in overseeing the disposition of estate assets in order to ensure that the "sale was in the best interest of the estate " Lionel, 722 F 2d at 1068-69 For example, even circuit courts have approved the re-opening of bidding after a bankruptcy court had initially stated on the record that bidding was closed because one of the potential buyers substantially raised its bid immediately after the alleged "finish" of the auction See In re Food Barn Stores, Inc , 107 F 3d 558 (8th Cir 1997) Among other things, the court recognized that it "must remain mindful of the ubiquitous desire of the unsecured creditors, and a primary objective of the [Bankruptcy] Code, to enhance the value of the estate at hand " See Food Barn, 107 F 3d at 565, citing Metropolitan Airports Comm'n v Northwest Airlines, Inc (In re Midway Airlines, Inc), 6 F 3d 492, 494 (7th Cir 1993)

20 In that case, the court also held it was reasonable to deviate from established the auction procedures because the proposed buyer's expectations were not sufficiently crystallized, as is also the situation in this case Since sales are subject to court approval, it is an implicit acknowledgement of the fact that a court should not merely rubber stamp any bid Just as in that case, this Court has the discretion to disregard the proposed sale to Koch, which has not yet resulted in a final sale approved by the Court

IV CONCLUSION

21 The Committee submits that the Koch Sale Motion should be denied because it will not provide the Debtors with maximum value for their assets, as well as reducing

the Debtors' chances for a successful emergence from bankruptcy. In contrast, the Alternative Transaction will allow the Debtors to retain their Trinidad Interests as well as provide other benefits that will improve the Debtors' chances for a successful long-term restructuring and recovery. This alternative proposal simply did not exist at the time the Koch Sale Motion was filed, and thus the proffered justification for the sale—satisfaction of the Pre-Petition Lenders' pay down requirements—simply no longer exists in light of the existence of the superior alternative proposal.

WHEREFORE, the Committee respectfully requests that the Court (i) deny the Koch Sale Motion, (ii) approve the Alternative Transaction, and (iii) grant the Committee such other and further relief as the Court deems just and proper in the circumstances.

Dated December 12, 2003

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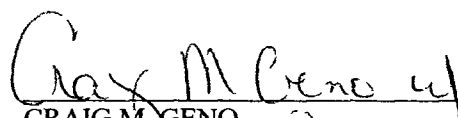
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CERTIFICATE OF SERVICE

I do hereby certify that I have this date caused to be served *via* electronic mail and/or U S Mail postage prepaid, a true and correct copy of the above and foregoing pleading to all parties listed below

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SO CERTIFIED, this the 12th day of December, 2003


CRAIG M GENO
Permitted by
