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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	Chapter 11
LYONDELL CHEMICAL CO., *et al.*,	Case No. 09-10023 (REG)
Reorganized Debtors.	Jointly Administered

NOTICE OF PRESENTMENT OF MOTION OF THE CREDITOR REPRESENTATIVE FOR ENTRY OF AN ORDER APPROVING SETTLEMENT RELATING TO THE CLAIM OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

PLEASE TAKE NOTICE that upon the attached Motion of the Creditor Representative for Entry of an Order Approving Settlement Relating to the Claim of the New Jersey Department of Environmental Protection (the "**Motion**"), the undersigned will present the proposed order, attached to the Motion, approving the Motion, for signature on **_____, 2015 at 1:00 p.m.** (Eastern Time).

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion must comply with the Federal Rules of Bankruptcy Procedures and the Local Rules of the Bankruptcy Court, must be set forth in a writing describing the basis therefor and must be filed with the Bankruptcy

Court electronically in accordance with General Order M-242, as amended by General Order M-269, by registered users of the Bankruptcy Court's electronic case filing system (the User's Manual for the Electronic Case Filing System can be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court) and, by all other parties in interest, on a 3.5-inch disk or CD-ROM, preferably in Portable Document Format (PDF), Word Perfect or any other Windows-based word processing format (with a hard copy delivered directly to Chambers) and served upon each of the following so as to be actually received no later than **_____, 2015 at 12:00 p.m.** (Eastern Time): (i) Brown Rudnick LLP, One Financial Center, Boston, Massachusetts 02111, Attn: Steven D. Pohl, Esq.; (ii) Cohn Lifland Pearlman Herrmann & Knopf, LLP, Park 80 West-Plaza One, 250 Pehle Avenue, Suite 401, Saddle Brook, New Jersey 07663, Attn: Leonard Z. Kaufmann, Esq.; (iii) Pillsbury Winthrop Shaw Pittman LLP, 1540 Broadway, New York, New York 10036, Attn: Andrew M. Troop, Esq.; and (iv) Blank Rome LLP, One Logan Square, 130 N. 18th Street, Philadelphia, Pennsylvania 19103, Attn: Frank A. Dante, Esq.

PLEASE TAKE FURTHER NOTICE that if a written objection is timely filed, a hearing will be held at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004, at a date and time to be established by the Court. The moving and objecting parties are required to attend the hearing, and failure to appear may result in relief being granted or denied upon default.

Dated: _____, 2015

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	Chapter 11
LYONDELL CHEMICAL CO., *et al.*,	Case No. 09-10023 (REG)
Reorganized Debtors.	Jointly Administered

MOTION OF THE CREDITOR REPRESENTATIVE FOR ENTRY OF AN ORDER APPROVING SETTLEMENT RELATING TO THE CLAIM OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

The Creditor Representative, appointed under the Third Amended and Restated Joint Plan of Reorganization for the LyondellBasell Debtors [Docket No. 4418, Exhibit A] (the "**Plan**"), hereby moves the Court for entry of an order approving the settlement it has reached relating to the claim of the New Jersey Department of Environmental Protection ("**New Jersey**").[1] As grounds therefor and in support hereof, the Creditor Representative respectfully states as follows:

PRELIMINARY STATEMENT

1. The Settlement (defined below) brokered by the Creditor Representative with New Jersey is the result of a years-long effort at resolution, which culminated in a day-long mediation session ordered by the Court and led by Chief Bankruptcy Judge Morris.

2. Under the Settlement, the $100 million face amount claim of New Jersey will be allowed at $30 million. The resolution of this claim will facilitate the Creditor Representative's making a third (and, likely, final) distribution to holders of Allowed General Unsecured Claims from the Fixed Settlement Plan Consideration currently held in reserve for Disputed Claims.

3. With nearly five years having passed since the Plan was confirmed, the interests of finality counsel in favor of resolving the claim of New Jersey – the largest remaining Disputed Claim. Although the Settlement provides for the allowance of this claim at a higher percentage than the other MTBE Claims (defined below) previously resolved and supported by the Reorganized Debtors, approval of the Settlement (i) will permit unsecured creditors to make their own important hold-or-sell decisions with respect to the highly appreciated Class A Shares of LyondellBasell Industries held by the Creditor Representative (currently trading at more than four times their original "Plan value") and (ii) will do nothing to disrupt expectations for

[1] Capitalized terms used but not defined herein have the meanings given them in the Plan.

recoveries on Allowed General Unsecured Claims, the holders of which will still receive distributions in excess of what was forecast in the Debtors' Disclosure Statement.

4. For these reasons, and the others set forth below, the Creditor Representative submits that approval of the Settlement by the Court is warranted.

BACKGROUND

I. The Lender Litigation Settlement and Effective Date Distributions.

5. The instant motion has its origins in the Lender Litigation Settlement reached in advance of the Effective Date of the Debtors' Plan. Pursuant thereto, the Settling Defendants agreed to provide $450 million of Fixed Settlement Plan Consideration – $300 million in cash and $150 million in Class A Shares – for distribution to holders of Allowed General Unsecured Claims. Based on a "Plan value" of $17.61 per share, this amounted to approximately 8.5 million Class A Shares.

6. On or shortly after the Effective Date, the Reorganized Debtors made distributions of Fixed Settlement Plan Consideration on account of approximately $1.91 billion in Allowed General Unsecured Claims, representing an approximately 15.4% recovery to holders of such claims. In their Disclosure Statement, the Debtors had estimated that holders of Allowed General Unsecured Claims entitled to share in the Fixed Settlement Plan Consideration would receive a 16.8% distribution. See Disclosure Statement § I.B.

II. Appointment of the Creditor Representative.

7. The Creditor Representative was appointed under the Plan and Creditor Representative Plan Supplement to administer the portion of Fixed Settlement Plan Consideration not distributed on the Effective Date. See Plan § 7.2. In this capacity, the Creditor Representative is responsible for, *inter alia*, making distributions to holders of Disputed Claims as they become allowed. See id. § 8.4.

8. The Plan vests the Reorganized Debtors with the authority to "settle, compromise or otherwise resolve any Disputed Claim without further order of the Bankruptcy Court," id. § 8.2(a),[2] and provides further for the Reorganized Debtors to "consult with the Creditor Representative concerning the Reorganized Debtors' proposed compromise, settlement, resolution or withdrawal of any objection to a General Unsecured Claim that is disputed," id. § 8.2(c).[3]

9. As Disputed Claims are resolved, the Creditor Representative is responsible for making additional distributions to holders of Allowed General Unsecured Claims from the reserve of Fixed Settlement Plan Consideration held on account of those Disputed Claims (the "**Disputed Claims Reserve**"). See Creditor Representative Plan Supplement § 3.3(a) ("[T]he Creditor Representative shall act as Disbursing Agent for the Disputed Claims Reserve in accordance with Article VIII of the Plan."). In December 2012, the Creditor Representative made a second distribution – comprising an additional approximately $20.6 million in cash and 470,100 Class A Shares (with a "Plan value" of approximately $8.3 million) – which added another approximately 1.1% to total recoveries for creditors.

III. Resolution of the MTBE Claims.

10. Since 2012, among the largest remaining of the Disputed Claims has been that of New Jersey, submitted in a face amount of $100 million. The New Jersey claim was one of five submitted against Debtor Lyondell Chemical Co. – in the aggregate face amount of $170 million

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[2] The Reorganized Debtors' position on the Settlement is set forth in a separate statement, to be submitted contemporaneously herewith.

[3] See also Creditor Representative Plan Supplement § 3.1(b) (powers and rights of the Creditor Representative include "participat[ing] in the resolution of Disputed General Unsecured Claims as provided for in the Plan").

– relating to alleged prepetition groundwater contamination by the gasoline additive methyl tertiary butyl ether (the "**MTBE Claims**").[4]

11. In September 2012, the Creditor Representative moved the Court to estimate the MTBE Claims for purposes of the Disputed Claims Reserve, to permit additional distributions of cash and Class A Shares to be made on account of Allowed General Unsecured Claims.[5] To allow out-of-court negotiations relating to the MTBE Claims to progress, the Creditor Representative adjourned the hearing of the Estimation Motion.

12. In July 2013, the Court approved the Reorganized Debtors' settlements of the MTBE Claims of Fresno and Crescenta Valley.[6] Fresno's ($5 million face amount) claim was allowed in the amount of $450,000, and the Reorganized Debtors paid Fresno an additional $325,000. Crescenta Valley's ($10 million face amount) claim was allowed in the amount of $900,000, and the Reorganized Debtors paid Crescenta Valley an additional $525,000.[7]

IV. The Court-Ordered Mediation of the Remaining MTBE Claims.

13. To allow settlement discussions relating to the three then-remaining MTBE Claims – those of New Jersey, Orange County, and Puerto Rico – to continue, the Creditor

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[4] The MTBE Claims are evidenced by proof of claim numbers 7822 ($100 million, submitted by New Jersey, 11851 ($25 million, submitted by the Commonwealth of Puerto Rico ("**Puerto Rico**")), 11852 ($5 million, submitted by the City of Fresno ("**Fresno**")), 11853 ($30 million, submitted by the Orange County Water District ("**Orange County**"), and 11854 ($10 million, submitted by the Crescenta Valley Water District ("**Crescenta Valley**")).

The Reorganized Debtors objected to each of the MTBE Claims as being unenforceable against the Debtors. See Reorganized Debtors' One Hundred Fifty-Fifth Tier I Omnibus Objection to Certain Proofs of Claim Relating to MTBE Actions [Docket No. 6602].

[5] See Motion of the Creditor Representative to Estimate Disputed Claims and to Establish a Distribution Reserve for Purposes of Making Distributions of Fixed Settlement Consideration [Docket No. 7105] (the "**Estimation Motion**").

[6] See Order Pursuant to Bankruptcy Rule 9019 Approving Settlement Agreements with (A) City of Fresno and (B) Crescenta Valley Water District [Docket No. 7216].

[7] See Reorganized Debtors' Motion for Entry of an Order Pursuant to Bankruptcy Rule 9019 Approving Settlement Agreements with (A) City of Fresno and (B) Crescenta Valley Water District [Docket No. 7207] ¶ 28.

Representative again adjourned the hearing of the Estimation Motion. To advance these discussions further, in July 2014, the Reorganized Debtors and Creditor Representative sought, and this Court entered, an order assigning the remaining MTBE Claims to mediation.[8]

14. During the mediation session led by Chief Bankruptcy Judge Morris, the Reorganized Debtors finalized a settlement with Puerto Rico, under which its $25 million face amount claim would be allowed at $1,150,000 and Puerto Rico would receive a cash payment from the Reorganized Debtors bringing the current value of its settlement to $1,000,000.[9]

15. The Creditor Representative (without the involvement of Lyondell) reached an agreement in principle with New Jersey, under which its $100 million face amount claim would be allowed at $30 million. After lengthy negotiation among New Jersey, the Creditor Representative, and the Reorganized Debtors, a final settlement agreement has been reached among these parties (as memorialized in the agreement attached hereto as **Exhibit A**, the "**Settlement**").

16. The Creditor Representative now seeks this Court's approval of the Settlement.[10]

RELIEF REQUESTED

17. The Creditor Representative respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit B**, approving the Settlement.

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[8] See Stipulated Order Assigning the Disputed MTBE Claims to Mediation and Appointing Mediator [Docket No. 7302].

[9] The Court subsequently approved the Reorganized Debtors' settlement with Puerto Rico. See Order Pursuant to Bankruptcy Rule 9019 Approving Settlement Agreement with Commonwealth of Puerto Rico [Docket No. 7340].

[10] The Settlement contains additional preconditions (beyond approval by this Court) to its effectiveness, in particular entry of an order from the Litigation Court (as defined therein) approving the same.

GROUNDS FOR RELIEF

18. The relief sought by the Creditor Representative is grounded in Federal Rule of Bankruptcy Procedure 9019(a), which provides that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a).[11] In deciding the proper exercise of this authority, courts evaluate "whether the settlement falls below the lowest point in the range of reasonableness." Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983).

19. "[T]o that end, courts in this Circuit have set forth factors for approval of settlements based on the original framework announced in TMT Trailer Ferry." Motorola, Inc. v. Official Comm. of Unsecured Creditor (In re Iridium Operating LLC), 478 F.3d 452, 462 (2d Cir. 2007) (citing Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968)). These Iridium factors include:

- The balance between the litigation's possibility of success and the settlement's future benefits;
- The likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment;
- The paramount interests of the creditors, including each affected class's relative benefits and the degree to which creditors either do not object to or affirmatively support the proposed settlement;

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[11] The Creditor Representative acknowledges that Rule 9019(a) speaks of "the trustee," and, by operation of section 1107(a), applies as well to a motion by the debtor in possession. Consideration of the Settlement is nevertheless properly before the Court, whether pursuant to the Creditor Representative's right to be heard under Bankruptcy Code section 1109(b) or the Court's authority to "sua sponte, tak[e] any action or mak[e] any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a); accord Adelphia Business Solutions, Inc. v. Abnos, 482 F.3d 602, 609 (2d Cir. 2007) ("A bankruptcy judge 'must not be shackled with unnecessarily rigid rules when exercising the undoubtedly broad administrative power granted him under the Code,' but rather 'must have substantial freedom to tailor his orders to meet differing circumstances.'") (quoting Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1069 (2d Cir. 1983)); In re Ira Haupt & Co., 361 F.2d 164, 168 (2d Cir. 1966) (Friendly, J.) ("The conduct of bankruptcy proceedings not only should be right but must seem right.").

- Whether other parties in interest support the settlement;
- The competency and experience of counsel supporting, and the experience and knowledge of the bankruptcy court judge reviewing, the settlement;
- The nature and breadth of releases to be obtained by officers and directors; and
- The extent to which the settlement is the product of arm's-length bargaining.

Iridium, 478 F.3d at 462; see also In re WorldCom, Inc., 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006). The Creditor Representative submits that each of the Iridium factors implicated by the Settlement supports its approval.

20. First – with respect to the paramount interests of the creditors – nearly five years after the initial distributions of Fixed Settlement Plan Consideration were made by the Debtors, and more than two years after the Creditor Representative was able to make a modest, additional distribution, the interests of holders of Allowed General Unsecured Claims in receiving distributions of the highly appreciated Class A Shares cannot be overstated. Only then will these creditors be able to make their own important sell-or-hold decisions. Moreover, allowance of the claim of New Jersey in the amount set forth above will not disrupt the recovery expectations of holders of Allowed General Unsecured Creditors. Rather, the third distribution that the Settlement facilitates is expected to bring total recoveries to or above the 16.8% estimated provided in the Debtors' Disclosure Statement. This Iridium factor therefore supports approval of the Settlement.

21. Second – regarding the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay – the Settlement satisfies this Iridium factor for at least two independent reasons:

(i) The multi-district litigation in which the merits of New Jersey's claim are being tried has been pending for more than ten years. New Jersey's original complaint was filed in 2007 and has since been amended four times. Although the MDL court has granted summary judgment against New Jersey on certain of its claims against Lyondell, the balance of claims relating to other sites are nowhere near ready for resolution by dispositive motion, or if they survive a further dispositive motion, what likely will be a lengthy, highly complex trial following remand. More significantly, from the perspective of holders of Allowed General Unsecured Claims, the consummation of the Settlement avoids the need for the Creditor Representative to pursue the relief sought in the Estimation Motion, avoiding the delay and considerable cost that would attend an estimation proceeding; and

(ii) In light of the current market value of the Class A Shares (and the attendant risk, at any time, of a loss of some of the very material post-exit gains), there can be no overstating the future benefits that resolving the claim of New Jersey today may have for creditors. Indeed, even if, *arguendo*, the claim of New Jersey should be allowed at a lower percent of its face amount (*e.g.*, 15%), a drop in the market price of the Class A Shares of only 10% would do more to reduce recoveries for other holders of Allowed General Unsecured than any "excess" reflected in the Settlement.

22. Third – regarding whether parties in interest support the settlement – the Creditor Representative was designated under the Plan as a post-confirmation "voice" for holders of Allowed General Unsecured Claims.[12] Although the Reorganized Debtors do not "support" the Settlement, they are not opposing its approval in deference to the Creditor Representative's

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[12] The Creditor Representative is made up of a "Manager" and a five-person "Advisory Board," whose members reflect the diversity of the pool of holders of Allowed General Unsecured Claims: (i) Wilmington Trust Company; (ii) Law Debenture Trust of New York; (iii) BASF Corporation; (iv) James F. Schorr; and (v) Paul N. Silverstein.

assessment of the benefits of accelerating a distribution to holders of Allowed General Unsecured Claims that will result from the fixing of New Jersey's MTBE Claim.[13] This Iridium factor therefore supports approval of the Settlement.

23. Fourth – with respect to the balance between the litigation's possibility of success and the settlement's future benefits – allowing the claim of New Jersey at 30% of its asserted face amount may, in fact, reflect a reasonable estimate of the likelihood of success on the merits of its claims. The Creditor Representative does not have the Reorganized Debtors' history with and own knowledge of these claims, and acknowledges that the Reorganized Debtors have resolved other of the MTBE Claims in the past by allowing them at lower percentages of their submitted face amount; however, in light of future benefits that unsecured creditors will realize from the resolution of New Jersey's claim (see ¶ 21(ii), *supra*), the Creditor Representative submits that this Iridium factor supports approval of the Settlement.

24. Fifth – with respect to the competency and experience of counsel supporting the settlement – the Settlement was reached following a day-long mediation session led by Chief Bankruptcy Judge Morris. At the mediation and in subsequent negotiations, New Jersey has been represented by its own experienced trial, bankruptcy, and (either or both) outside and in-house counsel. This Iridium factor therefore supports approval of the Settlement.

25. Thus, upon a weighing of the relevant Iridium factors, the Settlement more than satisfies Bankruptcy Rule 9019(a). Its approval by the Court is warranted.

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[13] The Creditor Representative understands that the Reorganized Debtors lack of opposition to the Creditor Representatives' authority to settle the claim of New Jersey, and separately the claim of Orange County, is limited to these two MTBE Claims.

WHEREFORE, the Creditor Representative respectfully requests that the Court (i) enter an order, substantially in the form attached hereto as **Exhibit B**, approving the Settlement and (ii) grant the Creditor Representative such other and further relief as is just and equitable.

Dated: _____, 2015

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Exhibit A

Exhibit B