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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD S. WEISFELNER, AS TRUSTEE OF THE LB CREDITOR TRUST, Plaintiff, -against- STUART REICHMAN, RONNIE REICHMAN, CENTER FOR FOOT & ANKLE SURGERY LLC U/A DTD 1/01/1999 (GEORGE JOSEPH FAHOURY JR., TRUSTEE), MARGARET DRAYTON REVENTLOW REVOCABLE TRUST UAD 11/06/06 (M. REVENTLOW & M. ACKERLY, TRUSTEES), GLENN H. ROTH, KIM KAUFMAN, CHARLES E. HAYWARD, MARY W. BERGQUIST, EUSTACE FOTIU, MARY ANN FOTIU, ROBERT A. EDDINS, GILLIAN L. EDDINS, HARRISON-BLAINE, INC., SHIRLEY B. LEVITT, EUGENE J. LEVITT, GEORGE MARSHALL, THEA GUETTA, NANCY T. MAHNICK, JOHN JOSEPH BOLLWARK, CHARLES SCHWAB & CO. INC. CUST. IRA ROLLOVER, HERMAN SCHULMAN, DEERFIELD LLC, MARVIN BRESSLER, MARLA FRIEDMAN, ELLIOTT SATNICK, CHARLES SCHWAB & CO. INC. CUST. ROTH CONTRIBUTORY IRA, MATTHEW KAPLAN, G. FAHOURY CUST. FOR ANTHONY FAHOURY UNJUTMA, and THEODORE E. HEPP, each on their own behalf, and on behalf	Adv. Pro. No. 12-01570 (REG) **AMENDED COMPLAINT**

of a class of defendants consisting of persons or entities (except :
as set forth herein) who, directly or indirectly, received payments :
in respect of shares of the Lyondell Chemical Company upon the :
conversion of such shares on December 20, 2007 into the right to :
receive $48 in cash, :
:
Defendants. :
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AMENDED COMPLAINT

Plaintiff, Edward S. Weisfelner, as Trustee for the LB Creditor Trust (the "**LB Creditor Trust**"), through his undersigned counsel, as and for his Amended Complaint, alleges as follows:

1. This action arises from the December 2007 highly leveraged acquisition of Lyondell Chemical Company ("**Lyondell**"), formerly North America's third-largest independent, publicly-traded chemical company. The ill-fated acquisition was led by Leonard Blavatnik ("**Blavatnik**"), through Blavatnik-controlled Basell AF S.C.A., a Luxembourg entity (including, as the context requires, its direct and indirect subsidiaries, "**Basell**"), thereafter renamed LyondellBasell Industries AF S.C.A. ("**LBI**"). On July 16, 2007, the board of directors of Lyondell (the "**Board**" or the "**Lyondell Board**"), headed by chairperson Dan F. Smith ("**Smith**"), authorized a cash-out merger of Lyondell shareholders (the "**Merger**" or the "**Transaction**") for a blow-out price of $48 per share. In total, $12.5 billion was paid to Lyondell shareholders as merger consideration.

2. In this action, Plaintiff, as Trustee for and on behalf of the beneficiaries of the LB Creditor Trust (the "**Creditors**"), seeks to have set aside and to recover as fraudulent transfers payments of the Merger Consideration paid upon the Merger to shareholders of Lyondell (the "**Shareholder Transfers**").[1] Recovery is sought, except as otherwise indicated herein, against (i) named defendants, each of whom, upon information and belief, is believed to have received

[1] Pursuant to this action, the Trustee seeks to avoid and recover all Shareholder Transfers exclusive of those made to: (1) named defendants named in the Third Amended Complaint in Edward S. Weisfelner, as Trustee of the LB Creditor Trust v. Fund 1, et al., Adv. Pro. No. 10-04609 (REG); (2) the Secured Lender Releasees and the Settling Defendant Releasees, as defined in the Third Amended and Restated Joint Chapter 11 Plan of Reorganization for the LyondellBasell Debtors, dated March 12, 2010 and confirmed by the United States Bankruptcy Court for the Southern District of New York on April 23, 2010 (the "**Plan**"); (3) persons against whom claims under applicable state law constructive and intentional fraudulent transfer claims are asserted in Weisfelner v. Blavatnik, Adv. Pro. No. 09-1375 (REG); and (4) any individual who served as an officer of employee of the Debtors as of December 15, 2009 that is entitled to a release in accordance with Section 11.8(A) or (B) of the Plan. The approximately 32,000 members of the Class consist primarily of former Lyondell shareholders who each received, respectively, less than $100,000 of Merger Consideration, but also includes, *inter alia*, former Lyondell shareholders and/or recipients of Shareholder Transfers who are not included in one of the four enumerated exclusions above, who received more than $100,000 of Merger Consideration.

payments of Merger Consideration, and (ii) the members of a class of approximately 32,000 persons who, directly or, indirectly through one or more mediate transferors, received Merger Consideration (as hereinafter defined with greater particularity, the "**Class**"). The named defendants and the members of the Class are referred to collectively herein as the "**Shareholder Transferees**". The named defendants against whom the claims are asserted both in their individual capacities and as representatives of the Class (the "**Class Representatives**") are identified in paragraph 19 below.

3. In authorizing Lyondell to enter into a merger with Basell and in recommending approval of the Transaction by Lyondell shareholders, the Lyondell Board understood that every dollar that would go out to shareholders and every dollar used to pay the approximately $1 billion in transaction fees charged by affiliates, advisors, and professionals, would be funded with debt leveraged against the assets of Lyondell and its operating subsidiaries. The Board and Blavatnik both understood that the capital needed to fund operations after the Merger and to pay the interest on the exorbitant debt incurred would have to come from the earnings of LBI and its subsidiaries. The Lyondell Board also knew, or intentionally turned a blind eye, to the fact that the "refreshed" projections of future earnings that had been provided to Blavatnik and his financing sources on July 14, 2007 grossly overstated and inflated the earnings that Lyondell could achieve, were not prepared using data derived from actual performance, and had in fact been fabricated specifically to induce Blavatnik to pay a price for Lyondell beyond what a realistic valuation would support. Those same inflated earnings also were knowingly provided to the investment banks that committed to provide ultimately approximately $22 billion of financing.

4. For his part, as set forth below, Smith, the sole member of management on the Lyondell Board, dominated the Board's decision-making process generally, and specifically with respect to the Transaction by, *inter alia*, failing to affirmatively disclose to the Board (i) that "refreshed" projections for Lyondell were bogus projections manufactured at Smith's direction within days after the May 11, 2007 filing of Blavatnik's Schedule 13D announcing his intention (through a wholly-owned shell entity) to potentially acquire all of Lyondell's stock, (ii) that Smith, who alone negotiated the $48 per share price with Blavatnik, had previously told the CEO of Basell that if Blavatnik wanted to purchase Lyondell, he would have to pay $48 per share, and (iii) that Smith's inner cadre of senior management, who assisted Smith in presenting the refreshed projections to the Board, to Blavatnik's team, and to the investment banks, all knowingly participated in presenting the false projections in order to justify the blow-out price of $48 per share and to induce the requisite financing.

5. As set forth below, while the Board was dominated by Smith, most of the other members had served on Lyondell's Board for a number of years and all the Board members well understood, *inter alia*, the cyclicality of Lyondell's business and were well aware that the "refreshed" projections represented a remarkable inflation of Lyondell's already inflated 2007 Long Range Plan earnings projections. The Board members well understood that the "refreshed" projections presented by Smith and his inner cadre of senior management were implausible and unachievable, and that while the $48 per share was a blow-out price for shareholders, Creditors were being set up to be the eventual victims when the combined enterprise collapsed under $22 billion of Merger financing. Thus, while Smith did not disclose to the other members of Lyondell's Board the true circumstances of his negotiations with Blavatnik nor the actual process by which the bogus set of Lyondell projections were created, the other Lyondell directors, all of

whom received Merger consideration, at a minimum, wilfully and recklessly turned a "blind eye" and rubber-stamped the Transaction negotiated and engineered by Smith, despite the foreseeable dire implications for Lyondell's creditors.

6. As a direct and foreseeable consequence of the Merger, LBI, Lyondell's corporate parent, LyondellBasell Finance Company ("**LB Finance**"), Lyondell, and many of the respective direct and indirect subsidiaries and affiliates of LBI and Lyondell, including all of Lyondell's major operating subsidiaries (collectively, "**LyondellBasell**") were forced to file for bankruptcy within approximately a year following the closing of the Merger.[2]

7. The Creditors consist of persons and entities and their respective successors and assigns who have unsatisfied claims against LyondellBasell, including each of the LyondellBasell Debtor Obligors (defined herein), for the payment of money (the "**Creditor Claims**") and who have transferred, assigned and delivered to the Trust all of their respective rights, title, and interests in and to claims and causes of action arising under state law against certain persons including the Shareholder Transferees, that the Creditors had based on the receipt by such entities of consideration in connection with the Merger. The Creditor Claims are comprised of: unpaid trade claims against LyondellBasell; unpaid, unsecured funded debt claims against LyondellBasell; and unpaid, senior secured deficiency claims and unpaid, subordinated secured deficiency claims against LyondellBasell.[3]

8. The Shareholder Transfers may be recovered from the Shareholder Transferees for the benefit of the Creditors as transfers made by Lyondell and the other Senior Credit Facility

[2] The bankruptcy cases were filed in the United States Bankruptcy Court for the Southern District of New York, Case No. 09-10023 (REG) on January 6, 2009 and April 24, 2009. The definition "LyondellBasell" includes each of the corporate entities identified on Schedule A to this Amended Complaint.

[3] In its Decision and Order on Motions to Dismiss issued on January 14, 2014 (the "**Decision**"), the Bankruptcy Court granted, on grounds of ratification, the Shareholder Defendants' motion to dismiss to the extent that the Creditor Trust asserts fraudulent transfer claims as assignee of the lending parties that financed the LBO (the "**Ratification Ruling**"). The Trustee reserves all rights with respect to claims impacted by the Ratification Ruling, including the right to oppose the approval of, and to appeal from the Decision, or any portion thereof.

Obligors, the Bridge Loan Obligors and the ABL Obligors (as each such term is hereinafter defined) who have filed for bankruptcy (collectively, the "**LyondellBasell Debtor Obligors**")[4] whose assets were used as collateral to fund the Shareholder Transfers with the actual intent to hinder, delay or defraud the Creditors. Alternatively, the Shareholder Transfers may be recovered from the Shareholder Transferees as constructively fraudulent to the Creditors because (i) the LyondellBasell Debtor Obligors did not receive reasonably equivalent value or fair consideration in exchange for the Shareholder Transfers (indeed, the Shareholder Transferees gave nothing in return for the Shareholder Transfers) or the liens the LyondellBasell Obligors granted to secure the funding of the Shareholder Transfers and (ii) the $12.5 billion paid to shareholders rendered each of the LyondellBasell Debtor Obligors insolvent, with unreasonably small capital and resulted in LyondellBasell incurring debt that it would be unable to pay as such debt came due. Accordingly, pursuant to applicable law, the Shareholder Transfers may be recovered.

9. The $48 per share price paid to Lyondell shareholders (the "**Merger Consideration**"), as noted, was a "blowout price" that resulted in a windfall to Lyondell shareholders, its directors and management. Prior to being put into play by Blavatnik, Lyondell's stock price had languished for years, and during a prior cyclical downturn, was as low as approximately $11 per share. As a result of the Merger, Smith walked away with a windfall of over $100 million, much of it in the form of Merger-related consideration paid in respect of stock and options issued to him pursuant to various management incentive plans. Smith's inner circle of senior management who assisted him in perpetrating the fraudulent inflation of the Company's projections also received tens of millions of dollars in Merger-related consideration; and the Company's "outside" directors received over $19 million in Merger-

[4] Each of the LyondellBasell Debtor Obligors are identified on Schedule A to this Amended Complaint.

related consideration, with one director's (Stephen J. Chazen) own company (Occidental Petroleum Corporation) ("**Occidental**") getting a windfall gain of $326 million through dumping all its Lyondell stock in the weeks prior to the Merger Agreement being executed. Blavatnik himself was an extraordinary beneficiary of this "blowout price" since shortly before Basell entered into an agreement to acquire Lyondell, Blavatnik had acquired, through a Delaware entity, rights to approximately 8.5% of Lyondell's stock sold by Occidental. In addition, after the Merger Agreement was executed, Blavatnik's Delaware entity purchase another 3,971,400 shares on the open market in or about August 2007, for a total of 24,961,470 shares, or 9.85% of Lyondell's outstanding stock (the "**Toe-Hold Position**"). Consequently, $1.2 billion of the eventual $12.5 billion distributed to shareholders went, directly or indirectly, to or for the benefit of Blavatnik. Through this Toe-Hold Position alone, Blavatnik, through a complex series of transfers, netted a tax-free windfall profit in excess of $333 million.[5] In all, Blavatnik was able to extract a "profit" of over $880 million from Lyondell and Basell in connection with the Merger, which as set forth below, served as a powerful incentive for Blavatnik not to seek to scuttle the Transaction when, on September 11, 2007, it became clear to Blavatnik and his team that the "management" projections for Lyondell for 2007 were materially inflated.

10. For numerous reasons, all of which were well known to the Lyondell Board, the extremely leveraged capital structure that resulted from the Merger was both unreasonable and reckless for Lyondell and fatal to the Creditors. First of all, as was known by the Board, both of Lyondell's major business segments, the manufacture of petrochemicals and petroleum refining,

[5] The same Blavatnik-controlled entity used for this series of transactions, Nell Limited, organized under the laws of Gibraltar, also received a $100 million "one time" transaction advisory fee upon the Merger plus a $25 million "management" fee – all purportedly tax-free. Blavatnik also caused Basell after filing his Schedule 13D, to issue three significant shareholder distributions in 2007, bringing the total amount of cash taken out of Basell in 2007 in the form of shareholder distributions to €315 million (or approximately $430 million). Thus, as a result of Basell's acquisition of Lyondell, Blavatnik was over $880 million ahead on day one.

were and remain highly capital intensive. The maintenance and operation of the enormous and enormously complex major assets of these industries, *i.e.*, the petroleum refineries and the "crackers" that break hydrocarbons into commercially useable petrochemicals, carried and continue to carry with them correspondingly enormous fixed costs.

11. As was known to the Board, complicating the capital demands imposed by high fixed costs is the extreme cyclicality of the petrochemical industry and the petroleum refining industry. During cycle "peaks," participants in these industries invest excess earnings in increasing capacity. When, as inevitably occurs, industrial capacity exceeds demand, margins and profits are squeezed and the industry heads towards a "trough." When industry overcapacity coincides with declining demand, as in a recessionary economic environment, the industry downturn will be deeper and last longer. During a downturn, earnings and margins decline as manufacturers of what are essentially commodity products are forced to lower prices, sometimes to below break even, to maintain market share. During a trough, those participants in the industry least able to compete or to fund operations through a period of decreased or negative profitability will cease production, either temporarily or permanently, reducing capacity. Eventually, conditions of overcapacity will end and the cycle will begin again.

12. The combination of high fixed costs and extreme cyclicality means that companies in the petrochemicals and refining industries, if they hope to survive a cycle downturn, must be adequately capitalized to enable continued operations through a trough. As was known to the Board, the Merger and related financing would leave Lyondell inadequately capitalized. Its highly leveraged balance sheet and massive interest burdens left it unable to make it through the predicted industry cycle.

13. As was known to the Lyondell Board, the highly leveraged capital structure that would result from the Merger also was extremely reckless from the perspective of liquidity. The working capital requirements of petrochemical producers and refining companies are subject to extreme changes due to the volatility of the market for crude oil and the other "feedstocks" that constitute the raw materials of the industry. A single dollar upswing in the price of crude oil translates into the immediate need for millions of dollars of additional working capital. A petrochemical producer must maintain a sufficient liquidity cushion to fund volatile cash needs and must do so even as margins are squeezed by declining demand. Even in a relatively robust environment, a petrochemicals producer whose capital structure and credit rating leave it unable to increase its short term borrowing to fund its working capital needs quickly may find itself out of money and out of luck.

14. Imposing billions of dollars of additional debt on Lyondell was particularly reckless in view of the timing of the Transaction. As the Lyondell Board had long been aware, all leading industry analysts were forecasting that, due to worldwide overcapacity, the ongoing petrochemical cycle peak of circa 2004-2007 and the high margins contemporaneously being attained by petroleum refiners would end sometime in 2008 or 2009 and that these industries would then experience a supply driven downturn. Any divergence of opinion on the coming downturn was only with regard to exactly when the peaks in refining and petrochemicals would end, how long the downturn would last, and how deep the troughs would be. As explained herein, Lyondell and its operating subsidiaries, as well as Basell (and its subsidiaries), due to a variety of factors, were disadvantaged, as compared with their competitors, to withstand the stress of a downturn. Moreover, in the months before the Merger closing, disturbances in the credit markets and other indicators of economic instability indicated the strong possibility, if not

the likelihood, of an economic recession that would exacerbate the impact of oversupply on the affected industries. The investment banks that initially committed to provide the approximately $22 billion used to fund the acquisition did so with the expectation that, after being paid approximately $260 million in transaction fees (in addition to other substantial fees), they could, in accordance with the then prevailing practice, quickly syndicate virtually all of the "junk" obligations being incurred and unload them off their own books. This deal, however, turned out to be different. Approximately two months after having signed loan commitments, the investment banks, who were never told that Lyondell had submitted fabricated projections, learned that Lyondell was falling far short of achieving the financial projections for 2007 and the loan syndication effort was in trouble. The financing package was drastically re-priced, restructured, and re-sized in an effort to spruce it up for the syndication market. Notwithstanding these efforts and contrary to the plans of their internal credit committees, at the closing of the Merger, the banks that had originated the loans and undertaken to act as lead arrangers for their syndication were left holding most of the "junk."

15. As had been entirely foreseeable by the Lyondell Board, within weeks of the closing of the Merger, LBI would be unable to meet its operating expenses and commitments from existing resources and would shortly be in a full-blown liquidity crisis. In response, Blavatnik made emergency funding available by papering the transaction as a revolving credit facility (the "**Access Revolver**") between LBI and a Blavatnik entity, Access Industries Holdings LLC ("**Access Industries**" or "**Access**"). Meanwhile, LBI negotiated to "upsize" its third party credit facilities with reluctant lenders who took the opportunity to extract further substantial fees. These desperate measures were not enough. By November 2008, less than a year after the Merger was consummated, LBI collapsed under the weight of the debt foisted upon it by the

Merger. Due to its overleveraged balance sheet and financial impairment, LBI was unable to fund its operations, or pay its creditors when due, and had no access to further borrowings. Blavatnik, having made sure that amounts drawn under the Access Revolver in October 2008 had been repaid (thereby cutting his exposure), decided not to come to the aid of ailing and doomed LBI, and blocked any further funding from the Access Revolver. Less than a year after the Transaction, LBI was planning for chapter 11 filing and negotiating for bankruptcy financing with its existing lenders.

16. Obligors on the debt incurred to finance Lyondell's acquisition included Lyondell, its operating subsidiaries, LBI, and certain LBI affiliates.[6] Obligations to repay the acquisition financing were secured by, *inter alia*, first and second liens on substantially all of the assets of the obligors in favor of the lenders providing the Merger Financing (as herein defined). Although the obligor entities became liable for the repayment of the Merger Financing, to the extent that the proceeds were paid to Lyondell shareholders or used to refinance the debt of affiliates, these entities did not receive any substantive value (let alone reasonably equivalent value) in consideration for the obligations incurred. Nor, to such extent, did these obligors receive value for the liens that they granted to secure the repayment of these obligations.

17. The LB Creditor Trust hereby seeks relief pursuant to applicable state fraudulent transfer law from the fraudulent transfers of the assets and property of the LyondellBasell Debtor Obligors to the Shareholder Transferees that occurred upon the Merger which transfers were made with the intent to hinder, delay or defraud creditors and/or were made without receiving reasonably equivalent value or fair consideration in exchange and resulted in each of the LyondellBasell Debtor Obligors being rendered insolvent, left with unreasonably small capital, and unable to pay its debts when they became due.

[6] See Schedule A hereto.

THE PARTIES, PROCEDURAL HISTORY

I. The Plaintiff

18. Plaintiff Edward S. Weisfelner, Trustee for the LB Creditor Trust, is a resident of New York County and has been designated to, among other things, prosecute and resolve claims against the former Lyondell shareholders pursuant to the Plan[7] on behalf of the LB Creditor Trust.

II. The Shareholder Defendant Class Representatives

19. The Defendant Class Representatives. Alleged below, on information and belief, are: (i) the names of the defendant Class Representatives, (ii) to the extent available, the number of Shares in which they held a legal and/or beneficial interest as of the date of the Merger, and (iv) to the extent available, the amount of the Merger Consideration transferred to them, directly or indirectly, by LyondellBasell.[8]

NAME	ADDRESS	SHARES	SHAREHOLDER TRANSFERS
STUART REICHMAN & RONNIE REICHMAN	8 FORGE LANE CHERRY HILL, NJ 08002	2,066	$99,179
CENTER FOR FOOT & ANKLE SURGERY LLC U/A DTD 1/01/1999 (GEORGE JOSEPH FAHOURY JR. , TRUSTEE)	1131 BROAD STREET SHREWSBURY, NJ 07702	2,020	$96,963
MARGARET DRAYTON REVENTLOW REVOCABLE TRUST UAD 11/06/06 (M. REVENTLOW & M. ACKERLY, TRUSTEES)	P.O. BOX 1046 LITCHFIELD, CT 06759	2,000	$96,000
GLENN H. ROTH	1299 PALMER AVE., APT. 120 LARCHMONT, NY 10538	2,000	$96,000

[7] Third Amended Joint Chapter 11 Plan of Reorganization for the LyondellBasell Debtors confirmed on April 23, 2010.

[8] In the event it is determined that a Shareholder Defendant received more Merger Consideration than alleged, the Trustee seeks all Merger Consideration received.

KIM KAUFMAN	15 W. 81ST STREET APT. 1E NEW YORK, NY 10024	2,000	$96,000
CHARLES E. HAYWARD	670 W. END AVE., APT. 6C NEW YORK, NY 10025	1,650	$79,200
MARY W. BERGQUIST	56 HILLCREST DRIVE UPPER SADDLE RIVER, NJ 07458	1,500	$72,000
EUSTACE FOTIU & MARY ANN FOTIU	6 ARROWHEAD ROAD MAHWAH, NJ 07430	1,500	$72,000
ROBERT A. EDDINS & GILLIAN L. EDDINS	11 RIVERSIDE DRIVE APT. 8TW NEW YORK, NY 10023	1,500	$72,000
HARRISON-BLAINE, INC.	C/O BARBRO SHOPSIN 1700 JERICHO TURNPIKE NEW HYDE PARK, NY 11040	1,500	$72,000
SHIRLEY B LEVITT & EUGENE J. LEVITT	6 GINA DRIVE CENTERPORT, NY 11721	1,500	$72,000
GEORGE MARSHALL	390 GREENWICH STREET, 3RD FLOOR NEW YORK, NY 10013	1,500	$72,000
THEA GUETTA	170 STONEHURST DRIVE TENAFLY, NJ 07670	1,455	$69,860
NANCY T. MAHNICK	101 ELKINS ROAD CHERRY HILL, NJ 08034	1,450	$69,600
JOHN JOSEPH BOLLWARK, CHARLES SCHWAB & CO. INC. CUST. IRA ROLLOVER	21 BROOKDALE ROAD CRANFORD, NJ 07016	1,400	$67,200
HERMAN SCHULMAN	220 LAUREL AVENUE LINCROFT, NJ 07738	1,400	$67,200
DEERFIELD LLC	5 EAST 59TH STREET SUITE 700 NEW YORK, NY 10022	1,400	$67,200
MARVIN BRESSLER	57 MARIE CRESCENT COMMACK, NY 11725	1,380	$66,240

MARLA FRIEDMAN	9 WOODS DRIVE ROSLYN, NY 11576	1,340	$64,320
ELLIOTT SATNICK, CHARLES SCHWAB & CO. INC. CUST. ROTH CONTRIBUTORY IRA	P.O. BOX 692 ALPINE, NJ 07620	1,185	$56,880
MATHEW KAPLAN	32 WAWAPEK ROAD COLD SPRING HARBOR, NY 11724	1,095	$52,560
G. FAHOURY CUST. FOR ANTHONY FAHOURY UNJUTMA	23 RIVERSIDE DRIVE RUMSON, NJ 07760	1,092	$52,416
THEODORE E. HEPP	48 W. 71ST STREET NEW YORK, NY 10023	1,090	$52,320

III. Procedural History

20. This action was filed in the Supreme Court of the State of New York, County of New York on December 19, 2011.

21. On April 25, 2012, one of the defendants removed the case to the United States District Court for the Southern District of New York. In his Notice of Removal, such defendant stated, *inter alia*, that the action "arises in" and is "related to" the "Lyondell Chapter 11 Case". See Notice of Removal, ¶¶ 9-14.

22. On April 26, 2012, this case was referred to the Bankruptcy Court pursuant to the then-standing order of reference of the United States District Court for the Southern District of New York, dated July 10, 1984 [Adv. Pro. Docket No. 1]

NON-PARTIES

A. Former Members of the Board of the Lyondell Chemical Company

23. Dan F. Smith served as the Chief Executive Officer ("CEO") and Chairman of the Lyondell Board prior to the Merger. Smith was Chief Financial Officer of Lyondell from 1988 until 1994, when he became President. He was CEO of Lyondell from December 1996 until

completion of the Merger, and served as a Director of Lyondell from 1988 until completion of the Merger. Smith was, at all relevant times until the Merger, a significant shareholder in Lyondell. As alleged below, Smith received over $100 million as a result of the Merger. Smith utilized his longtime status as the CEO of Lyondell and the sole management member of the Board to regularly influence and dominate decisions of the Board. In the case of the Transaction, as alleged herein, Smith combined his historical domination of the Board with his desire to net himself $100 million, and, together with his inner circle of senior Lyondell executives failed to disclose the relevant details regarding the bogus "refreshed" projections and his private negotiation with Blavatnik's personal representative (Basell's CEO) in early June 2007 of the $48 per share price.

24. Stephen I. Chazen ("**Chazen**") was elected to the Lyondell Board in 2002, and served as a director of Lyondell through the date of the Merger. Chazen routinely attended Lyondell Board meetings at which the Long Range Plan and other strategic planning for Lyondell set forth herein were presented and discussed. Chazen further attended Board meetings at which the fraudulently refreshed projections were presented and discussed, and participated in Board decisions with respect to the Transaction. Chazen, by virtue of his business experiences and his role on the Board, knew that consummation of the Merger and payments to the Shareholder Transferees (and other recipients of Merger Consideration) would hinder, delay or defraud Lyondell Creditors. Chazen, at relevant times, also was a Senior Executive Vice President and Chief Financial Officer of Occidental, which until it sold its stock to a Blavatnik-controlled entity via Merrill Lynch, held approximately 8.5% (or 20,997,200 shares) of Lyondell's outstanding common stock. Chazen had a deep familiarity and expertise with the refining and petrochemical market, by virtue of his own business expertise and the fact, *inter*

alia, that Occidental was Lyondell's largest ethylene customer. Moreover, since Occidental itself had seriously explored during 2006 and 2007 construction of a refinery in Panama, Chazen otherwise had a unique appreciation and understanding of the cycles of the refinery business and refining margins. Given that Occidental's sale of its position in Lyondell, which began with the sale of 6,997,020 shares on May 9, 2007 and continued until July 10, 2007 (just after Blavatnik's $48 per share offer), enabled Blavatnik to launch his tender for Lyondell, Chazen had a transparent conflict of interest and although he was aware that the refreshed refining projections at issue were bogus, he stood by silently and allowed Occidental through its sale to the Blavatnik-controlled entity and in subsequent open market transactions just prior to the Board approving this Merger, to make an astonishing pre-tax gain of $326 million on its Lyondell stock holdings (held as of May 9, 2007) while Lyondell's creditors were decimated as a result of the Merger.

25. Travis Engen ("**Engen**") was elected to the Lyondell Board in 1995, and served as a director of Lyondell through the date of the Merger. Engen routinely attended Lyondell Board meetings at which the Long Range Plan and other strategic planning for Lyondell set forth herein were presented and discussed. Engen further attended Board meetings, *inter alia*, at which the fraudulent refreshed projections (which had been prepared at the direction of Smith) were presented and discussed, and participated in Board decisions with respect to the Transaction. Engen, by virtue, *inter alia*, of his role on the Board, knew that consummation of the Merger and payments to the Shareholder Transferees (and other recipients of Merger Consideration) would hinder, delay or defraud Lyondell Creditors.

26. Carol A. Anderson ("**Anderson**") was elected to the Lyondell Board in 1998 and served as a director of Lyondell through the date of the Merger. Anderson routinely attended

Lyondell Board meetings at which the Long Range Plan and other strategic planning for Lyondell set forth herein were presented and discussed. Anderson further attended Board meetings at which the fraudulent refreshed projections were presented and discussed, and participated in Board decisions with respect to the Transaction. Anderson, by virtue, *inter alia*, of her role on the Board, knew that consummation of the Merger and payments to the Shareholder Transferees (and other recipients of Merger Consideration) would hinder, delay or defraud Lyondell Creditors.

27. William R. Spivey ("**Spivey**") was elected to the Lyondell Board in 2000 and served as a director of Lyondell through the date of the Merger. Spivey routinely attended Lyondell Board meetings at which the Long Range Plan and other strategic planning for Lyondell set forth herein were presented and discussed. Spivey further attended Board meetings at which the fraudulent refreshed projections were presented and discussed, and participated in Board decisions with respect to the Transaction. Spivey, by virtue, *inter alia*, of his role on the Board, knew that consummation of the Merger and payments to the Shareholder Transferees (and other recipients of Merger Consideration) would hinder, delay or defraud Lyondell Creditors.

28. David J. Lesar ("**Lesar**") was elected to the Lyondell Board in 2000 and served as a director of Lyondell through the date of the Merger. Lesar routinely attended Lyondell Board meetings at which the Long Range Plan and other strategic planning for Lyondell set forth herein were presented and discussed. Lesar further attended Board meetings at which the fraudulent refreshed projections were presented and discussed, and participated in Board decisions with respect to the Transaction. Lesar, by virtue, *inter alia*, of his role on the Board,

knew that consummation of the Merger and payments to the Shareholder Transferees (and other recipients of Merger Consideration) would hinder, delay or defraud Lyondell Creditors.

29. Danny W. Huff ("**Huff**") was elected to the Lyondell Board in 2003, and served as a director of Lyondell through the date of the Merger. Huff routinely attended Lyondell Board meetings at which the Long Range Plan and other strategic planning for Lyondell set forth herein were presented and discussed. Huff further attended Board meetings at which the fraudulent refreshed projections were presented and discussed, and participated in Board decisions with respect to the Transaction. Huff, by virtue, *inter alia*, of his role on the Board, knew that consummation of the Merger and payments to the Shareholder Transferees (and other recipients of Merger Consideration) would hinder, delay or defraud Lyondell Creditors.

30. David J.P. Meachin ("**Meachin**") was elected to the Lyondell Board in 2004, and served as a director of Lyondell through the date of the Merger. Meachin routinely attended Lyondell Board meetings at which the Long Range Plan and other strategic planning for Lyondell set forth herein were presented and discussed. Meachin further attended Board meetings at which the fraudulent refreshed projections were presented and discussed, and participated in Board decisions with respect to the Transaction. Meachin, by virtue, *inter alia*, of his role on the Board, knew that consummation of the Merger and payments to the Shareholder Transferees (and other recipients of Merger Consideration) would hinder, delay or defraud Lyondell Creditors.

31. Daniel J. Murphy ("**Murphy**") was elected to the Lyondell Board in 2006 and served as a director of Lyondell through the date of the Merger. Murphy attended Lyondell Board meetings at which the Long Range Plan and other strategic planning for Lyondell in 2006 were presented and discussed. Murphy further attended Board meetings at which the fraudulent

refreshed projections were presented and discussed, and participated in Board decisions with respect to the Transaction. Murphy, by virtue, *inter alia*, of his role on the Board, knew that consummation of the Merger and payments to the Shareholder Transferees (and other recipients of Merger Consideration) would hinder, delay or defraud Lyondell Creditors.

32. Defendant Paul S. Halata ("**Halata**") was elected to the Lyondell Board in 2006, and served as a director of Lyondell through the date of the Merger. Halata attended Lyondell Board meetings at which the Long Range Plan and other strategic planning for Lyondell in 2006 were presented and discussed. Halata further attended Board meetings at which the fraudulent refreshed projections were presented and discussed, and participated in Board decisions with respect to the Transaction. Halata, by virtue, *inter alia*, of his role on the Board, knew that consummation of the Merger and payments to the Shareholder Transferees (and other recipients of Merger Consideration) would hinder, delay or defraud Lyondell Creditors.

33. Defendant Susan K. Carter ("**Carter**") was elected to the Lyondell Board in 2007, and served as a director of Lyondell through the date of the Merger. Carter attended Board meetings at which the fraudulent projections were presented and discussed, as well as other Board meetings at which discussions with respect to the Transaction were made that enabled Carter to know, *inter alia*, that consummation of the Merger and payments to the Shareholder Transferees (and other recipients of Merger Consideration) would hinder, delay or defraud Lyondell Creditors.

34. The Directors identified in paragraphs 24 to 33 above received, in aggregate, over $19 million in Merger-related consideration.

B. <u>Key Lyondell Officers/Employees</u>

35. T. Kevin DeNicola, at all relevant times until the Merger, was Chief Financial Officer ("CFO") of Lyondell and reported to Smith. After joining Lyondell in 1990 as a

financial analyst, DeNicola served in a number of positions before becoming CFO in 2002, including ethylene product manager, director of investor relations, and vice president of corporate development. Among DeNicola's general responsibilities were overseeing, under Smith's directions, Lyondell's preparation of financial projections, including Lyondell's annual Long Range Plan and rating agency presentations. As alleged below, DeNicola, at the direction of Smith, was complicit at every stage in the process of "refreshing" the Company's EBITDA projections and played a key role, *inter alia*, in presenting the bogus "refreshed" projections to the Lyondell Board, Blavatnik's team and the investment banks. DeNicola received over $28 million in Merger-related consideration.

36. Edward J. Dineen, at all relevant times until the Merger, was Senior Vice President of the Chemicals and Polymers segment of Lyondell (a position he held from May 2002 until December 20, 2007), and was complicit in presenting misleading "refreshed" projections. Dineen received approximately $5.7 million in Merger-related consideration. Dineen was employed by Lyondell (or one of its predecessors) for over 32 years.

37. W. Norman Phillips, at all relevant times until the Merger, was the Senior Vice President of the Fuels and Pipelines segment of Lyondell (a position he held since 2002), and was complicit in presenting misleading "refreshed" projections. Phillips received approximately $5.7 million in Merger-related consideration. Phillips was employed by Lyondell for over 30 years.

38. Kerry A. Galvin joined Lyondell in 1990 and served as General Counsel of Lyondell from May 2000 until the Merger. She reported directly to Smith. Galvin attended all Board meetings (regular, special and strategy), and regularly attended business performance meetings at Lyondell as well. Galvin was complicit, *inter alia*, in the preparation of the

misleading "refreshed" projections. Galvin received approximately $16.458 million in Merger-related consideration.

39. Robert Salvin served, during the relevant period in connection with the "refreshed" projections, as Lyondell's Manager of Portfolio Planning in Lyondell's Corporate Development Group. Salvin owned Lyondell stock at the time he was tasked by Smith (as discussed below) to manufacture fabricated "refreshed" projections, and received substantial Merger-related consideration.

40. Doug Pike, at relevant times, was Lyondell's Vice President of Investor Relations and regularly participated in management meetings with Smith, Dineen, DeNicola and Galvin, to review business performance updates. Pike was complicit, *inter alia*, in the preparation of the misleading "refreshed" projections, and knowingly presented misleading "refreshed" Lyondell projections at lender presentations after execution of the Merger Agreement. Pike received in excess of $1 million in Merger-related consideration.

C. <u>Blavatnik-Affiliated Non-Parties</u>

41. Access Industries, Inc., upon information and belief, is an entity organized under the laws of Delaware under the control of Blavatnik.

42. Nell Limited is an entity organized under the laws of Gibraltar under the control of Blavatnik. As of the date of the Merger, Blavatnik had a 97.3% ownership interest in NAG Investments LLC, which in turn had at least a 96.5% interest in Nell Limited. Other members of Nell Limited included Access Industries.

43. Leonard Blavatnik, at all relevant times, was Chairman and President of Access Industries and a member of the Supervisory Board of LBI. Blavatnik controlled Basell and later LBI through his ownership and control over Access and the related entities.

44. Lincoln Benet, at all relevant times, was Chief Executive Officer of Access Industries, a manager of AI Chemical Investments LLC ("**AI Chemical**") and a member of the Supervisory Board of LBI effective December 20, 2007.

45. Alan Bigman was Chief Financial Officer of Basell, at all times relevant prior to December 20, 2007, including the period prior to the execution of the Merger Agreement on or about July 15, 2007 through the closing of the Merger on December 20, 2007, a manager of LyondellBasell Industries AF GP S.à.r.l. (the "**GP**"), the general partner of LBI (prior to the Merger, known as "**Basell AF GP S.à.r.l.**") and was a board member of Lyondell Chemical Company as of March 28, 2008.

46. Philip Kassin was Head of Mergers and Acquisitions and Financing of Access Industries at all times relevant prior to December 20, 2007, including the period prior to the execution of the Merger Agreement on or about July 15, 2007 through the closing of the Merger on December 20, 2007, a manager of the GP, and upon information and belief, effective December 20, 2007, was a member of the Supervisory Board of LBI.

47. Volker Trautz, at all relevant times, was Chief Executive Officer of Basell and later LBI.

48. Ajay Patel, at all relevant times, was a Vice President of Mergers and Acquisitions at Access.

D. <u>Financing Parties and Affiliates</u>

49. Citibank, N.A. ("**Citibank**"), is referenced in its capacity as (i) predecessor administrative agent under the Senior Credit Facility (as hereinafter defined), and individually as lender thereunder; (ii) collateral agent under the Bridge Loan Facility (as hereinafter defined); and (iii) in such other capacities as it has acted under the Senior Credit Facility or the Bridge Loan Facility.

50. Citibank International plc is referenced in its capacity as predecessor European administrative agent under the Senior Credit Facility and individually as lender thereunder.

51. Citigroup Global Markets Inc. is referenced in its capacity as a joint lead arranger under the Senior Credit Facility and individually as lender thereunder.

52. Goldman Sachs Credit Partners, L.P. ("**Goldman**"), is referenced in its capacity as (i) a joint lead arranger under the Senior Credit Facility and individually as lender thereunder and (ii) a joint lead arranger under the Bridge Loan Facility and individually as lender thereunder.

53. Goldman Sachs International is referenced in its capacity as a joint lead arranger under the Senior Credit Facility and individually as lender thereunder.

54. Merrill, Lynch, Pierce, Fenner & Smith Incorporated ("**Merrill**" or "**Merrill Lynch**") is referenced in its capacity as (i) investment banking advisor, through its Global Markets and Investment Banking Group, to Access and Blavatnik for the Lyondell acquisition, (ii) a joint lead arranger under the Senior Credit Facility and individually as lender thereunder and (ii) a joint lead arranger under the Bridge Loan Facility and individually as lender thereunder.

55. Merrill Capital Corporation is referenced in its capacity as (i) a joint lead arranger under the Senior Credit Facility and individually as lender thereunder and (ii) administrative agent under the Bridge Loan Facility.

56. ABN AMRO Inc. ("**ABN AMRO**") is referenced in its capacity as (i) a joint lead arranger under the Senior Credit Facility and individually as lender thereunder and (ii) a joint lead arranger under the Bridge Loan Facility and individually as lender thereunder.

57. ABN AMRO Bank N.V. is referenced in its capacity as a joint lead arranger under the Senior Credit Facility and individually as lender thereunder.

58. UBS Securities, LLC ("**UBS**"), is referenced in its capacity as (i) a joint lead arranger under the Senior Credit Facility and individually as lender thereunder and (ii) a joint lead arranger under the Bridge Loan Facility and individually as lender thereunder.

DEFENDANT CLASS ALLEGATIONS

59. Plaintiff brings this action as a defendant class action pursuant to, *inter alia*, Federal Rule of Civil Procedure 23(a), (b)(1)(B) and (b)(3), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7023, on behalf of a class, consisting of all persons or entities who, directly, or indirectly through one or more mediate transferors, received Shareholder Transfers (the "**Class**"). Excluded from the Class are: (i) named defendants in the Third Amended Complaint in Edward S. Weisfelner, as Trustee of the LB Creditor Trust v. Fund 1, et al., Adv. Pro. No. 10-04609 (Bankr. S.D.N.Y.)(REG); (ii) the Secured Lender Releasees and the Settling Defendant Releasees, as defined in the Plan; (iii) persons against whom claims under applicable state law constructive and intentional fraudulent transfer claims are asserted in Weisfelner v. Blavatnik, Adv. Pro. No. 09-1375 (REG); and (iv) any individual who served as an officer or employee of the Debtors as of December 15, 2009 that is entitled to a release in accordance with Section 11.8(A) or (B) of the Plan.

60. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to the Plaintiff at this time, as a result of prior discovery in related actions, upon information and belief, the Plaintiff states that there are approximately 32,000 of members of the Class. Upon information and belief, the identity of any transferees who are members of the Class that were not the registered

holders of Shares, and who received Shareholder Transfers indirectly through one or more mediate transferees, may be ascertained by the records of registered shareholders or other persons from or through whom Shareholder Transfers were made and, to the extent not made aware of the pendency of this action as a result of the Trustee's filing, may be notified of the pendency of this action pursuant to an appropriate notice of this Complaint, as directed by the Court.

61. Any claims against and claimed defenses of the Class Representatives are typical of the claims against and claimed defenses of the unnamed members of the Class. The claims against and claimed defenses of each member of the Class arise out of the same factual circumstances involving the Merger and the transfer of Merger Consideration to shareholders of Lyondell in connection with the Merger.

62. There are numerous questions of law and fact that are common to the unnamed members of the Class, and that predominate over any questions affecting only individual members of the Class, including, but not limited to:

a. Whether Lyondell earnings projections were fabricated and/or manipulated and/or reverse engineered during an alleged "refreshing" of Lyondell's 2007 Long Range Plan in May, June and early July 2007, including in anticipation of a potential sale of Lyondell;

b. Whether modifications in May, June and early July 2007 to Lyondell earnings projections were made with the intent to hinder, delay or defraud the creditors of LyondellBasell;

c. Whether the knowledge and intent of Dan Smith, Lyondell's then CEO and Chairman, with respect to, *inter alia*, the fabricated and manipulated Lyondell earnings projections, should be imputed, *inter alia*, to Lyondell;

d. Whether the Merger was approved by Board of Lyondell with the knowledge that the transactions that would be executed in connection therewith, including the making of the Shareholder Transfers, would result in, *inter alia*, the insolvency, financial demise and bankruptcy of LyondellBasell;

e. Whether Blavatnik, Access and Basell engaged in fraudulent misconduct and acted with intent to hinder, delay or defraud creditors of LyondellBasell in connection with the Merger;

f. Whether the Merger involved a transfer of property of the Debtors;

g. Whether in view of the capital structure that would result from the Merger, the economic conditions prevailing at the time of the Merger and the then forecasted outlook for petrochemicals and refining, the post-Merger financial demise of LyondellBasell was foreseeable at the time of the Merger;

h. Whether LyondellBasell received reasonably equivalent value in exchange for the Shareholder Transfers made;

i. Whether, at the time that the Shareholder Transfers were made to the Transferees, LyondellBasell was insolvent, or became insolvent as a result of the Shareholder Transfers;

j. Whether LyondellBasell, at the time that the Shareholder Transfers were made, was engaged or was about to engage in a business or transaction for which remaining assets were unreasonably small in relation to the business or transaction; and

k. Whether LyondellBasell, at the time the Shareholder Transfers were made, intended, believed, or reasonably should have believed that they would incur debts beyond their ability to pay such debts as they became due.

63. The Class Representatives will fairly and adequately protect and represent the interests of the unnamed members of the Class and have as much incentive to vigorously defend against the Plaintiff's claims as any unnamed class member would.

FACTUAL BACKGROUND

I. Lyondell Shareholders Are Cashed Out in a Highly Leveraged Acquisition

A. Lyondell – History and Background

64. Lyondell was incorporated in 1985 as a subsidiary of the Atlantic Richfield Company ("**ARCO**"). It initially consisted of an aggregation of petrochemical and refining assets that no longer fit within ARCO's business plan and for which it had been unsuccessful in

finding a buyer. Upon its formation, Smith, who had begun his career at ARCO, was named one of the vice presidents of the new subsidiary. In 1988, shortly before Lyondell became a public company, Smith was appointed as the Company's Chief Financial Officer. At the same time, he was also elected to serve as a member of the Lyondell Board. Smith became the president of Lyondell in August 1994 and was was given the title of Chief Executive Officer in December 1996. Smith served as Lyondell's Chief Executive Officer and Chairman of the Board during all times relevant to this action. At all relevant times, he has been the only member of Lyondell management serving on the Board, a circumstance which he used to control and manipulate information provided to the Board.

65. Hoping to create a viable company, Smith deployed a strategy of opportunistic acquisitions, picking up assets being cast off by the major petrochemical companies who were exiting intermediate petrochemical manufacturing. After going public in 1989, the strategy of growth through acquisitions continued. Under Smith's leadership, during the ten year period from 1996 through 2006, revenues grew from $5.1 billion to $22.2 billion, primarily through acquisitions funded by debt. In 1998, Lyondell acquired ARCO Chemical for approximately $6 billion which levered Lyondell's balance sheet from a debt-to-equity ratio of 30% to more than 80%. After forming the Equistar Joint Venture in 1997, Lyondell subsequently consolidated those joint venture assets through buyouts of Lyondell's partner's interests in 2002 and 2004. In 2004, Lyondell acquired Millenium Chemicals.

66. Occidental had been a significant customer of Lyondell's for many years. Lyondell's ethylene sales to Occidental accounted for annual revenue of between $800 million and $1.050 billion. In 2006, Lyondell estimated sales revenue to Occidental would exceed $880 million based on sales of approximately 1.9 billion pounds of ethylene.

67. In August 2002, Occidental sold its interest in Equistar Chemicals, L.P. ("Equistar") (then a joint venture between Occidental, Lyondell and Millennium Chemicals) to Lyondell in exchange for Lyondell shares. As a part of the August 2002 transaction, Occidental and Lyondell entered into a shareholder agreement, which contained, *inter alia*, a standstill provision and limitations on the disposition of the Lyondell equity securities acquired by Occidental. The shareholders agreement also provided for specified representation of Occidental on the Lyondell Board, depending on the number of shares of common stock beneficially owned by Occidental. From and after August 2002, Chazen served on the Lyondell Board as Occidental's nominee. While Occidental had held as many as 46,307,860 shares of Lyondell stock in March 2005 (approximately 19% of Lyondell's outstanding shares), Occidental subsequently sold portions of its Lyondell holdings in May 2005 and November 2006, leaving it with 20,997,020 shares of Lyondell common stock (approximately 8.5% of Lyondell's outstanding shares), which Occidental classified as an available-for-sale investment.

68. By 2006, Lyondell was the third largest independent chemical company in the United States with facilities in several states, and a minor presence in Japan and France. By virtue of these acquisitions, with a market capitalization of approximately $5.83 billion and total debt of $7.5 billion, it was also among the most leveraged. In addition to its petrochemical manufacturing assets, Lyondell assets have included a crude oil refinery on the Gulf Coast of Texas (the "**Houston Refinery**").

69. Since inception, material factors driving Lyondell's profitability have been the macroeconomic environment, the cyclical character of the petrochemical industry and the price and availability of the "feedstocks" (most importantly naphtha and natural gas) used as the raw material for its petrochemical products and supply and demand for gasoline and other refined

pertroleum products. Anticipating, planning for, taking advantage of, and ameliorating the negative impacts of the petrochemical industry cycle and the volatility of the commodities markets have accordingly dominated Lyondell's historical choices and corporate strategies. In the early 1990s, Lyondell sought to sell the Houston Refinery, whose operations were subject to dramatic price swings in the cost of crude oil and in refined products. Unable to find a buyer and seeking to hedge the risks of the crude oil markets, in 1993 Lyondell entered into a crude oil supply contract with Petroleos de Venezuela, S.A. ("**PDVSA**"), the national oil company of Venezuela. In connection with this arrangement, CITGO Petroleum Corporation ("**CITGO**"), a wholly-owned subsidiary of PDVSA entered into a joint venture agreement with Lyondell pursuant to which it agreed to invest in expansion of the Houston Refinery in exchange for a 42% interest.

70. The basics of the petrochemical cycle are well-known and non-controversial. At the peak of a petrochemical cycle, profitability is high as limits on the capacity of existing plants to convert petrochemical into ethylene, propylene, and other products used in a wide range of industrial applications permit manufacturers to obtain high margins on their products. Excess profits earned during peak periods are invested in new manufacturing facilities. Eventually, manufacturing capacity will exceed demand and manufacturers will be forced to lower their prices to compete. Under conditions of overcapacity, profitability declines as margins are squeezed. When demand catches up with capacity, margins will again increase. The period of low or negative margins preceding the upswing towards peak profitability is referred to as a "trough."

71. Volatility of earnings is increased as a result of macroeconomic forces. During 1993, the deepest trough in recent petrochemicals history, cash margins on ethylene, a major

primary petrochemical commodity, dropped to approximately 13% of margins seen just three years before. In the subsequent peak in the ethylene cycle, margins shot up almost 1100% from 1993 levels (from 1.4 cents per pound to 16.8 cents per pound) only to drop again to 2.9 cents a pound in 2002. And during the more recent petrochemical industry trough of 2002, the drop in certain industry commodity spreads was even worse than in 1993.

72. In addition to industry cycles, Lyondell's performance and strategy was also impacted by the volatility of the markets for crude oil and petrochemical feedstocks. Due to this volatility, the working capital requirements of petrochemical producers and refining companies are subject to extreme changes. A single dollar upswing in the price of crude oil translates into the immediate need for millions of dollars of additional working capital. To survive, a petrochemical producer must maintain a sufficient liquidity cushion to fund volatile cash needs and must do so even as margins are squeezed by declining demand. Even in a relatively robust environment, a petrochemicals producer whose capital structure and credit rating leave it unable to increase its short term borrowing to fund its working capital needs quickly may find itself out of money. Smith and the other members of the Board were intensely aware of the need for sufficient liquidity. After acquiring ARCO Chemical for approximately $6 billion in 1998, all of it raised in a debt offering – Lyondell, planned to de-lever with the profits from operations. The petrochemical cycle and the economy did not cooperate. Within a couple of years, the industry entered a downturn, leaving the Company saddled with high leverage during the deep and long trough of 2000-2003, during which its stock prices reached a low of approximately $11 per share. In order to survive the trough without a dividend cut, Lyondell was forced to raise proceeds of more than $250 million in two secondary offerings of shares.

73. A company that has both petrochemical assets and refinery assets is subject to both cycles and a need for substantial liquidity reserves. Historically, petrochemical cycles occur over a five- to seven-year period; petroleum refining cycles have been longer. If both industries are in a downturn at the same time, the financial performance of a company relying on both petrochemical and refining assets will be doubly devastated.

74. Characteristic of a company whose principal business was the manufacture of commodity petrochemicals, Lyondell's profits and earnings had tracked the peaks and troughs of the industry as a whole and had historically been very volatile. Fiscal 2000 through 2003, for example, were tough years for Lyondell. Lyondell's EBITDA (*i.e.*, earnings before interest, taxes, depreciation, and amortization) for 2003, a "trough" year for the petrochemicals industry, was only approximately 24% of what it had been in 1995, a "peak" year. Seven of Lyondell's Directors serving at the time of the Merger already were Directors in 2003, and were aware of the foregoing.The trading value of Lyondell shares likewise tracked the peaks and troughs of the petrochemical cycle, a fact also known to Lyondell's Directors.

75. Lyondell's Form 10-K filing in March 2004 (for period ending December 31, 2003), contains a full description of trough conditions in the petrochemical industry and the impact of such conditions on Lyondell.

76. As Lyondell reported "[t]here is ongoing overcapacity in the chemical industry, as a number of participants in the chemical industry, including Lyondell, have added capacity and demand growth has lagged behind rates experienced historically. There can be no assurance that future growth in product demand will be sufficient to utilize current or additional capacity. Excess industry capacity has depressed and may continue to depress Lyondell's and its joint ventures' volumes and margins. The global economic and political environment continues to be

uncertain. This environment and uncertainty contributed to low industry operating rates, added to the volatility of raw material and energy costs, and forestalled the industry's recovery from trough conditions, which has and may continue to place pressure on Lyondell's and its joint ventures' results of operations. As a result of excess industry capacity and weak demand for products, as well as rising energy costs and raw material prices, Lyondell's operating income has declined and may remain volatile."[9]

77. During the period from its inception through 2006, the CITGO joint venture functioned, albeit to a limited extent, to smooth out some of the volatility of Lyondell's earnings. Pursuant to the contractual arrangement governing the joint venture, most of the crude used by the Houston Refinery was supplied by PDVSA and the Refinery was required to sell to CITGO, at prices calculated under a formula, 100% of the products refined from that crude. Those arrangements limited both Lyondell's upside and its downside from participation in the Houston Refinery. However, once Lyondell acquired 100% of the Houston Refinery in 2006, the pre-existing crude supply and product purchase arrangements would cease and the operations of the Houston Refinery would be fully exposed to the market for crude and for petroleum products, thereby increasing the volatility of earnings and cash flows.

78. Lyondell's historical stock prices reflected the company's earnings volatility and other investor concerns, such as high leverage. Offered to the public at $30 per share in 1989, Lyondell stock was an aftermarket disaster. It peaked at approximately $36 per share in 1998 only to fall back to much lower levels and thereafter languished for years until it was again buoyed by a peak in the petrochemical and refining industry cycles.

79. To assist in formulating a corporate strategy addressed to the Company's ongoing struggle to tame its leverage and maintain profitability through the industry cycles, Lyondell

[9] Lyondell Chemical Company, Form 10-K filed March 12, 2004 (for period ending December 31, 2003), at p. 27.

management, headed by Smith, engaged in both periodic strategic planning and an annual long range planning process. Each year, with the exception noted below, the annual planning process typically spanned approximately six months and resulted in the adoption of a formal annual Long Range Plan (the "**LRP**") by the Board. (Each of the eleven Lyondell Directors identified herein participated in the LRP Board review process, with the exception of Carter, who joined the Board in early 2007). The LRP included a summary of the current business environment, the macroeconomic assumptions that underlay management strategy, statements regarding the strategy and identification of key actions to implement that strategy. Each LRP also included five-year EBITDA projections from the operations of all business segments that supposedly reflected the views of management with regard to the future profitability given macroeconomic, industry and Company specific factors. These EBITDA projections informed the Company's capital expenditure plan and budget.

80. The planning process used by Lyondell for its fiscal years 2003 through 2007 reflects that Lyondell expected and planned for the profitability of particular petrochemical or refining operations to vary from year to year due to several interdependent variables. Of critical significance, while some of these variables were specific to Lyondell, many of the variables having the greatest influence on profitability are extrinsic to the Company. Variables considered in the LRP process independently of the cost structure of Lyondell's particular facilities included worldwide and regional petrochemical manufacturing capacity, the availability and projected pricing of feedstock, macroeconomic conditions that bear on supply and demand generally and regulatory and technological developments relating to particular products. Extrinsic variables specific to refining include the projected price of different varieties of crude oil, new and developing sources of crude oil extraction, alternative fuel sources and government regulation.

Developing views regarding these specific extrinsic factors involved analysis of forecasts of global GDP growth, regional GDP growth, public and propriety data regarding the capacity of worldwide petrochemical and feedstock refinery facilities ("nameplate capacity"), conditions in the relevant commodity markets, crude oil forecasts, natural gas forecasts, interest rates and other factors. Forecasting performance of Lyondell also required accurate information regarding the Company's specific assets including production capacity, condition, past and current performance and operating costs of the particular facilities owned by Lyondell.

81. The methodology of projecting future performance of specific assets by using assumptions regarding extrinsic factors, such as future macroeconomic and industry conditions to extrapolate from actual data regarding the past performance and costs of operations is sometimes referred to as a "bottoms up approach".

82. As might be expected of a company of its size and complexity, for purposes of planning, Lyondell management subscribed to or otherwise obtained analysis from a range of industry experts. Firms providing analysis to industry participants such as Lyondell are typically in the full-time business of serving the petroleum and petrochemical industries and/or commit substantial resources to following these industries on an ongoing basis. To provide their services, consultants to the industry continuously analyze, review and monitor industry dynamics worldwide, track "nameplate capacity" for petroleum products worldwide, keep abreast of announcements regarding the planning of new production facilities and other production developments (such as new technologies and new sources of feedstocks and commodities) and regulatory changes that affect product supply and pricing.

83. For Lyondell, except as noted below, the LRP process typically began during late spring/early summer and was completed by the end of each calendar year. At the conclusion of

the process, the LRP, which covered a five-year projection period, was presented to the Board in connection with seeking Board approval of an annual budget for capital expenditures reflecting the Company's strategic and operational plans for the future. The Board knew that the LRP process was a long one, that considerable time and resources were expended on it and that management used and relied on economic and industry experts and consultants as part of the process. Although the LRP process was long and involved many complex and arcane matters, the LRP itself was typically a fairly short, simple document that did not recapitulate in any depth the data for management's conclusions. The presentation to the Board of the LRP was accompanied by supporting materials prepared by management under Smith's direction. In reviewing and approving the LRP, most members of the Board largely depended on information being supplied by management to the Board. Other Board members, by virtue of their own experience (*e.g.*, Chazen), were nonetheless fully capable of forming, to a lesser or greater degree, an independent view. Through the LRP process, Smith was able to selectively provide the Board with the information that supported Smith's preferred strategies and suited his personal agenda.

84. The LRP process was managed by the Business Decisions Analysis group ("**BDA**") which, in turn reported to a Corporate Development Group. Participants in this process included, in addition to the BDA, the Business Performance Analysis and Reporting group ("**BPAR**"), the heads of business units (refining and chemicals). Managers and operations personnel under the direct or indirect supervision of the business heads also provided input into the process. Other departments such as Treasury and Human Resources were also part of the LRP process.

85. The very first step in the annual process was for management to formulate a view regarding macroeconomics, including a view with regard to forecasted Gross Domestic Product, interest rates and inflation. This view was informed by work done by the consulting firm "Global Insights," a worldwide business consulting company, as well as other sources of macroeconomic analysis and forecasts.[10] After the macroeconomic view was developed by management involved in the LRP process, it would be reviewed and endorsed by the Chief Financial Officer. An approved, uniform macroeconomic view would then be used to forecast worldwide demand for all of the many products produced by Lyondell.

86. The next step in the process was to forecast projected volumes and margins for all Lyondell products. Formulation of volume and margin forecasts for many of Lyondell's petrochemical products was based on the data and forecasts supplied by chemical industry consultant Chemical Market Associates, Inc. ("CMAI"), which firm, as part of their business, tracks petrochemical manufacturing worldwide. Volume and margin forecasts for refining were formulated based on data and forecasts supplied by the refining consulting firms Purvin & Gertz, Inc. ("PGI"), Turner, Mason & Company and Muse, Stancil & Company ("Muse"), each a firm dedicated to the petroleum refining industry.

87. The following step in the LRP was to develop variable contribution margins for each of the Lyondell businesses based on the cost structure of Lyondell's assets and many other operational complexities, including but not limited to, the market for, or ability to utilize by-products of the manufacturing process of other products, the ability to use alternative, cost advantaged feedstocks and processes, and changes in the regulatory and competitive environment for particular products. Manufacturing, which is responsible for the day-to-day

[10] Global Insights, a consulting practice with offices throughout the world, thereafter did business as "Economics and Country Risk."

operation of Lyondell's plants, provided estimates for turnarounds, safety, environmental improvements, plant process, and cost improvements. Next, variable contribution margin data was rolled up to create EBITDA forecasts for units; unit EBITDA was aggregated to create a consolidated EBITDA for the entire company over the five-year projection period.

88. Once an initial, consolidated EBITDA forecast was created, it then was reviewed by business heads separately and as a group. Dineen and Phillips, as the heads, respectively, of the petrochemical and refining units, reviewed initial projections and provided questions and comments on those initial projections with each business unit going through the same process. Each business head was supposedly held accountable for its forecast data. The consolidated EBITDA forecast was then used to create and finalize a capital expenditure budget. After each business unit finalized its analysis, the numbers were provided to the Corporate Development group, which would create the actual LRP. Creation of the LRP was followed by numerous presentations by the heads of each unit to senior management, and, much like the process within the business units, there was back and forth between senior management and the business heads about various aspects of the LRP. If the process stayed on schedule, a LRP would be ready for submission to the Board during early November.

89. As a result of the LRP process, the five-year EBITDA projections included in the LRPs prepared in 2003, 2004 and 2005 reflected, at least to some extent, the then current industry outlook for the petrochemical and refining industries. In particular, LRPs for fiscal years 2004, 2005 and 2006 reflected that by 2004, Lyondell and the petrochemical industry was recovering from the downturn that had commenced in 2000. The 2005 LRP reflected that during 2004, Lyondell, like the rest of the petrochemical industry, had begun to enjoy more robust earnings as the industry headed towards a peak. Even as conditions continued to improve,

however, by no later than 2003, and consistently thereafter, petrochemicals industry analysts were forecasting the next petrochemical industry downturn. Incorporating the views of these analysts, the Lyondell LRP for fiscal 2004, prepared in 2003, projected that the petrochemical margins would peak in 2006. This view held steady for fiscal year 2005, as seen in the EBITDA projections contained in the LRP for that year. Thereafter, reflecting observations by consultants such as CMAI that the large new facilities being constructed in Asia and the Middle East (that were projected to result in overcapacity) were taking longer to come on line than had initially been expected, the 2006 LRP moved the projected peak to 2007, with 2008 being the first year of declining margins. As shown in the excerpt reproduced below, the 2006 LRP showed steeply descending margins on petrochemical products after 2007 as the new low cost capacity would come on line and oversupply would squeeze margins, bottoming out to a "trough" during 2009-2010:

EC&D 2006 LRP Financials

Amounts in Millions of Dollars	2005e	2006	2007	2008	2009	2010
Olefins & Aromatics	$ 918	$ 1,120	$ 1,351	$ 1,171	$ 344	$ 238
Polymers	89	51	66	8	(40)	(69)
Oxygenated Chemicals	6	7	(59)	(75)	(66)	(27)
Acetyls	24	15	9	(14)	-	(4)
Operating Income	**1,037**	**1,193**	**1,367**	**1,090**	**238**	**138**
Other Expense	(11)	(4)	(4)	(4)	(4)	(4)
Depreciation/Amortization	380	380	385	387	389	391
2006 LRP EBITDA	**$ 1,406**	**$ 1,569**	**$ 1,748**	**$ 1,473**	**$ 623**	**$ 525**
2005 LRP EBITDA	*$ 1,267*	*$ 2,279*	*$ 1,665*	*$ 841*	*$ 333*	

90. During 2006, certain developments strongly influenced the process of developing the 2007 LRP and resulted in the inclusion of inflated and unrealistic EBITDA projections for the 2007 LRP. The first was the dissolution of the CITGO joint venture and the opportunity it presented to acquire CITGO's interest in the Houston Refinery.

B. <u>The CITGO Buyout and the Quincy Model Projections</u>

91. By 2006, the Lyondell-CITGO relationship had become increasingly strained and disputes had arisen concerning the crude oil purchase agreement with PDVSA. In April 2006, Lyondell and CITGO announced the signing of a letter of intent to jointly explore the sale of the Houston Refinery. As a result of these developments, Lyondell was faced with a decision. The CITGO joint venture agreement provided Lyondell with a right of first refusal to buy CITGO out. Lyondell could either cooperate with CITGO to arrange for the sale of the entire asset to a third party or exercise its right to buy CITGO's 41.25% interest and become the owner of 100% of the Houston Refinery.

92. Smith, who claimed complete ownership of the refinery would add financial strength to Lyondell, was the driving force behind the selection of the latter choice. The decision was controversial, but as was typically the case, Smith got his way. The purchase of CITGO's interest would be quite expensive – Lyondell would ultimately acquire the CITGO interest in a transaction valued at approximately $2.1 billion. To finance the acquisition, Lyondell had to incur significant debt. Responding to trough conditions of 2000 through 2003, Smith had advocated de-levering as a keystone of Lyondell's business strategy to enhance shareholder value. Consistent with this objective, Lyondell used cash flow from operations to repay more than $2.5 billion of debt from September 2004 to December 2006. The proposed CITGO buy-out would set the Company way back in respect of the goal of reducing the leverage it had accumulated to a manageable level before the onset of the next trough.

93. The Lyondell Board was acutely aware of the direct relationship between the cyclicality of the industries in which the Company operated and the need to limit leverage in order to ensure the financial flexibility to get through a trough. Operating under the CITGO joint venture arrangement, the Houston Refinery had been a hedge against the volatility of Lyondell's chemicals operations; following the dissolution of the joint venture, the fixed price arrangements would terminate and the cash flows and profitability of the refinery would make the Company as a whole even more subject to volatility. The Form 10-K for the fiscal year ended December 2006, filed on February 28, 2007, signed by Smith and each member of the Lyondell Board, reflects the knowledge that the incurrence of debt to finance the CITGO buy-out meant the Company needed to double-down on its commitment to de-leverage:

> Lyondell's strategy is to enhance its financial flexibility by **improving its balance sheet** through debt reduction and by **maintaining a strong liquidity position**, with an ultimate goal of **achieving an investment-grade credit rating**. Consistent with this objective, Lyondell used cash flow from operations to repay more than $2.5 billion of debt from September 2004 to December 2006. Following the recent increase in debt related to the acquisition of the Houston refinery, and in anticipation of increased cash flow from the refinery, Lyondell has increased its debt-repayment target from $3 billion to $5 billion.
>
> Furthermore, Lyondell recognizes the inherent cyclical nature of the chemical and refining industries and continues to take this cyclicality into account when making financial decisions, such as the timing of debt repayment, pension funding and the maintenance of a strong liquidity position. At December 31, 2006, Lyondell's liquidity totaled $2.5 billion, consisting of cash and availability under revolving lines of credit and accounts receivable sales facilities.

94. During April and May 2006, with the decision of whether to buy the Houston Refinery still unmade, an auction process was initiated and bids from third parties were solicited and obtained. Since the Houston Refinery had for many years been operated as a joint venture

with CITGO, there was no recent history of its performance under ordinary market conditions. The product mix was defined by CITGO's needs rather than to maximize profits. In connection with putting the Refinery up for auction, Lyondell set up a virtual data room with information about the Houston Refinery and created a financial model of the projected performance of the Houston Refinery, post-CITGO. The code name for the project of putting the Houston Refinery up for sale was "Quincy" and the financial model developed for this purpose was called the "Quincy Model." Lyondell had every motive to use the Quincy Model to demonstrate that Houston Refinery would be highly profitable – it was seeking to induce high bids from potential third party purchasers. Accordingly, the Quincy Model incorporated the anticipated financial benefits of producing the higher value products that would maximize profitability and selling those products to the market. In addition, the Quincy Model incorporated the benefits of important capital improvements planned for the Refinery.

95. Financial analysis of the purchase was supported by advice from consultants, including Muse. Muse provided Lyondell with several studies concerning market conditions and pricing in the market in which the Houston Refinery would operate. These studies concluded that refining margins had peaked in 2005 and would decline beginning in 2006 for several years. Lyondell solicited and received the opinions of a number of major refining and petroleum industry experts while analyzing the Houston Refinery transaction. The outlook of these consultants – that margins were on the decline, was consistent.

96. Bids from interested buyers in the $5 billion range were obtained as a result of the auction. Smith, however, wanted the Refinery for Lyondell and pressed the Board to accede to his position. Smith professed to have had his own personal contrarian views with respect to margins achievable (or which he contended should be achievable) by the Houston Refinery. No

third party bidder, according to Smith's contrarian views, was correctly valuing the Houston Refinery. Smith's view, which was unsupported by any macroeconomic or industry studies, expert analysis or actual data, reflected an extremely inflated margin, was that historically high margins of $15 per barrel miraculously and contrary to industry experts' outlook and actual data, could be achieved in each of 2007, 2008 and 2009 – a forecast which, was used by Smith in order to justify the purchase. Board member Chazen, then a Senior Executive Vice President of Occidental Petroleum, which at the time owned a major block of Lyondell stock and as noted, had a sophisticated understanding of refinery margins, did not share Smith's personal views. Specifically, Chazen, *inter alia*, on refinery margins, in line with industry analysts, believed, according to Smith, that refining EBITDA would be approximately $500 to $700 million per year less than the inflated figures arrived at by Smith in making the decision to go ahead with the acquisition – a view he communicated at the time to Smith and other members of the Lyondell Board. Smith's inflated views on projected crack spreads and margins, not Chazen's or those of Muse–or any other consultant or expert, were incorporated into the Quincy Model, reflecting Smith's ability to impose his own views and positions on the Board.[11] EBITDA projections for the Houston Refinery based on the Muse analysis versus EBITDA projections based on Dan Smith's personal inflated views are compared below:

EBITDA PROJECTIONS $ MILLION						
	2007	2008	2009	2010	2011	Total
"Consultant View"	$813	805	489	384	394	2,885
Dan Smith's View	1,334	1,324	1,376	1,110	933	6,073

[11] According to handwritten notes taken by Salvin of a conference call held on July 13, 2006, Chazen expressed the view that the variable margin would be $10 per barrel for the years 2007 through 2009, and $8 per barrel in 2010. By contrast, Smith had advocated, without objective support, that the refining margins would be $15 per barrel for 2007-2009. As noted, Smith's inflated projections were imposed on the Board.

97. As explained below, Smith's personal inflated views on future profitability, after finding their way into the Quincy Model, were later incorporated into the 2007 LRP, a fact known to the Board. As a result, the 2007 LRP, at least with regard to the Houston Refinery, was not done in accord with Lyondell's historical LRP process, something known to all Board Members.

C. Blavatnik Aims to Acquire Major Petrochemical Assets

98. In addition to the ongoing Quincy Project, the other extraordinary development that influenced the 2007 LRP process and resulted in the inflation of the 2007 EBITDA projections was Blavatnik's declaration of interest in 2006 in acquiring Lyondell. Smith, keenly aware of Blavatnik's spurned bid for Lyondell in 2006 (discussed below), wanted to position Lyondell's financial projections to be as inflated as possible in the event Blavatnik or another suitor came calling in 2007 to justify the highest possible share price. By 2004-2005, low interest rates, loosening lending standards, and the post-Enron/WorldCom regulatory tightening on publicly-held companies had given rise to the largest private equity boom the world had ever seen. Equity sponsors, funds, and "strategic" investors alike were on the lookout for acquisition targets that could be bought with borrowed money, would generate cash flows to pay for themselves, and could then be drained of their cash and/or sold at a profit.

99. Whereas the conventional wisdom had been that only certain industries and only selected targets with low debt loads and stable cash flows were suitable candidates for highly-leveraged acquisitions, by 2005, these suitability criteria had been cast aside and almost any company with EBITDA could become the subject of a leveraged acquisition strategy. Investment bankers eager to generate their "deal" fees and confident that the non-investment grade or "junk" markets would buy whatever they were selling, competed in an overheated private equity market to sell "financing packages" for leveraged acquisitions. The rewards for

the investment bankers and the institutions that originated these loans were great. Once securing a leveraged financing transaction and earning multi-million dollar fees for investment banking services, the financing parties earned additional fees through the syndication of the loans and in their roles as administrative and collateral agents for the banks, institutions, and funds that held the loans. Generally, the financing parties who originated the loans would then sell most of the loans through syndication, keeping for themselves only the highest quality (most secure, best priced) piece of the loan and freeing up their own balance sheets to do the next deal, earn the next round of fees, and on and on.

100. Blavatnik, founder of Access Industries, an international industrial group, was an active and eager participant in this investment market. On May 5, 2005, Access, through its affiliate Nell Acquisition S.à.r.l. (another Blavatnik-controlled entity) acquired Netherlands-based Basell from Royal Dutch Shell plc and the BASF Group in a highly-leveraged transaction. Eighty percent of the financing for the €4.5 billion price paid by Access for Basell was debt.

101. Having acquired Basell, Blavatnik and his team at Access, including Philip Kassin, Senior Vice President and head of Mergers and Acquisitions and Financing, were eager to use Basell as an equity stake for much larger leveraged transactions. Blavatnik's strategy was to capitalize on the cheap money available in the non-investment grade credit markets to acquire, using maximum leverage and minimum equity, one or more major petrochemicals producers, thereby amassing a global petrochemical conglomerate. Counting on the spread between cheap long term money and return on assets acquired, Blavatnik's strategy was to rely on earnings to service debt and reduce the debt load, freeing up cash to be distributed to him in the form of shareholder distributions or management fees. During the period from its acquisition by Blavatnik until December 20, 2007, when Basell was used as the platform for the acquisition of

Lyondell, Blavatnik-controlled Access affiliates took out approximately €340.5 million (or $463 million) of cash from Basell in the form of dividends and management fees.

102. While Blavatnik's strategy was simple, the pronounced cyclicality of the petrochemical industry heightened the risk involved in a highly leveraged acquisition. Rather than enjoying stable cash flows that can be counted upon to cover fixed costs and charges (such as the costs of plant operation and maintenance as well as interest payments on mountains of acquisition financing), petrochemical operations could be counted upon to be subject to peaks and troughs in earnings.

103. Whatever the risks, Blavatnik was intent on acquiring major petrochemical assets in one or more highly leveraged transactions. By 2007, the petrochemicals industry was poised for a downturn. If, after being acquired, the earnings of the acquired company would remain strong enough for long enough, earnings from operations would be sufficient to fund operations through a trough. If successful in maintaining ownership of assets through the turn of the petrochemical cycle, Blavatnik's upside would be great. The LBO debt could be refinanced and Blavatnik could emerge on the other side of a trough with substantial equity in a major global petrochemical company poised to generate robust earnings as the industry heads toward the next peak. If, as it turned out, he overleveraged and could not finance his business through a downturn, because of his minimal equity investment, the pain would largely be felt by others, namely the creditors of Lyondell and Basell.

104. By the spring of 2006, Access had identified Lyondell among several other possible acquisition targets, including Huntsman International, LLC ("**Huntsman**"), a major petrochemical company.

105. Lyondell was much larger than Basell, with revenues for fiscal year 2005 of approximately $18.6 billion, compared to Basell's approximately €8.6 billion in revenues (approximately $10.2 billion).

106. In April 2006, Blavatnik saw the auction process for the Houston Refinery as a means to learn more about Lyondell and place Access in a better position to potentially acquire the whole company. At the same time, Smith identified, in Blavatnik's desire to make a major petrochemicals acquisition, the opportunity of a lifetime. Smith, who at age 60, was already the subject of Board discussion about a successor, was one of the largest non-institutional holders of Lyondell stock, and stood to amass a huge personal fortune if his shares of Lyondell could be sold during a peak in the petrochemical cycle. On the other hand, with past as precedent, its stock would tank in the coming downturn. Moreover, if the bet on refining turned out to be wrong, Lyondell could find itself in a distressed situation for which Smith, as the advocate of the Houston Refinery acquisition, would be held responsible. Given where Smith was in his career and the anticipated petrochemical industry downturn, 2007 could have been seen by Smith as his last, best opportunity to cash out his lifetime investment in Lyondell at a peak.

107. On April 10, 2006, Blavatnik and Kassin arranged an introductory meeting in New York with Smith. Signaling Access's interests in acquiring Lyondell, Kassin also informed Smith that he had plans to meet with Chazen. Occidental held as noted *supra*, at the time, a significant percentage of Lyondell's outstanding stock.

108. On April 18, 2006, Kassin reported to Blavatnik that he had met with Chazen. Kassin reported that Chazen would support a sale of Lyondell "at the right price" but advised Kassin that Smith is "the guy to convince." Chazen also emphasized that Blavatnik would have to assure Occidental that its relationship with Lyondell as Lyondell's largest ethylene customer would not be impacted.

109. Kassin called Smith on April 19, 2006 to follow up on the initial April 10, 2006 meeting and to request a further meeting in Houston to discuss the interest of Access in exploring a potential acquisition of Lyondell by Basell.

110. On April 26, 2006, Kassin, acting on Blavatnik's instructions, contacted Smith to make an offer to purchase Lyondell for $24 to $27 per share based solely on publicly available information. Smith brought Blavatnik's offer to the attention of the Lyondell Board at a regular meeting held on May 4, 2006. At the same meeting, Chazen informed the board that representatives of Access had approached him in his capacity as Chief Financial Officer of Occidental regarding an interest in Lyondell. The Board discussed the indication of interest and determined that the proposed price range, which was approximately 10% above the range at which shares of Lyondell had recently been trading, was insufficient.

111. Weeks later, in early June 2006, Kassin was advised by Smith that Access's offer was deemed by the board to have been too low to warrant a formal response. According to Smith, if Access wanted to negotiate, it would have to offer at least a 20% premium over the most recent closing price of its stock. As of that time, the price of Lyondell stock had actually fallen a bit – back to approximately $24 per share. On August 10, 2006, Access made its first formal bid to purchase Lyondell, proposing in a written offer to acquire all of the outstanding shares of Lyondell for a cash price of $26.50 to $28.50 per share. Access's offer letter, which

was signed by Volker Trautz, CEO of Basell (on behalf of Basell), and Blavatnik (on behalf of Access), indicated that Access and Basell would need 30-45 days of due diligence "[w]ith the cooperation of Lyondell's management team" before signing a definite merger agreement. Access' offer letter also included a "Merrill Lynch Highly Confident Letter," which indicated that virtually all the purchase price would be financed. On July 20, 2006, the Board approved Lyondell's buy out of the CITGO interest in the Houston Refinery. Market perception of the Houston Refinery acquisition was not positive. Following Lyondell's announcement in July 2006 that the auction process to sell the refinery to a third party would be discontinued, Standard & Poor's placed Lyondell on credit watch with negative implications. Other rating agencies took similar action.

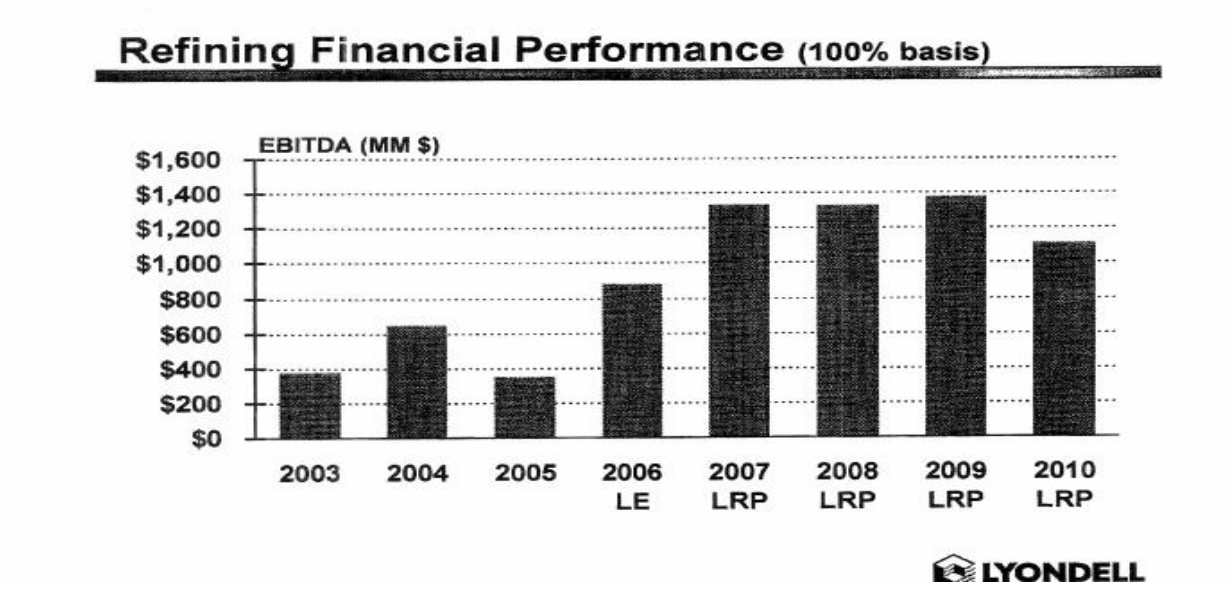
112. On August 14, 2006, a special meeting of the Lyondell Board was held to discuss the Access offer. Smith urged the Board to not accept the offer. According to him, the timing was not right. Smith explained to the Board that the then current LRP (the 2006 LRP), which had been prepared before anyone had shown an interest in acquiring Lyondell, only supported a share price value in "the upper $20 to $30 range." In Smith's stated view, the acquisition of the CITGO interest, which had not yet been finalized, would add $5-8 per share to the value of Lyondell. Smith instructed the Board to wait until management provided the Board with its "strategic update", which would occur in October 2006, before considering any business combination. Following Smith's urging, the Board "instructed" Smith to reject the proposal. The rejection was communicated in writing to Access.

D. <u>The 2007 LRP</u>

113. Meanwhile, with the offer from Blavatnik and the overheated LBO market in the background and Smith recommending to the Board that it defy the markets and purchase the

Houston Refinery, the 2007 LRP process and the formulation of five year EBITDA projections was ongoing.

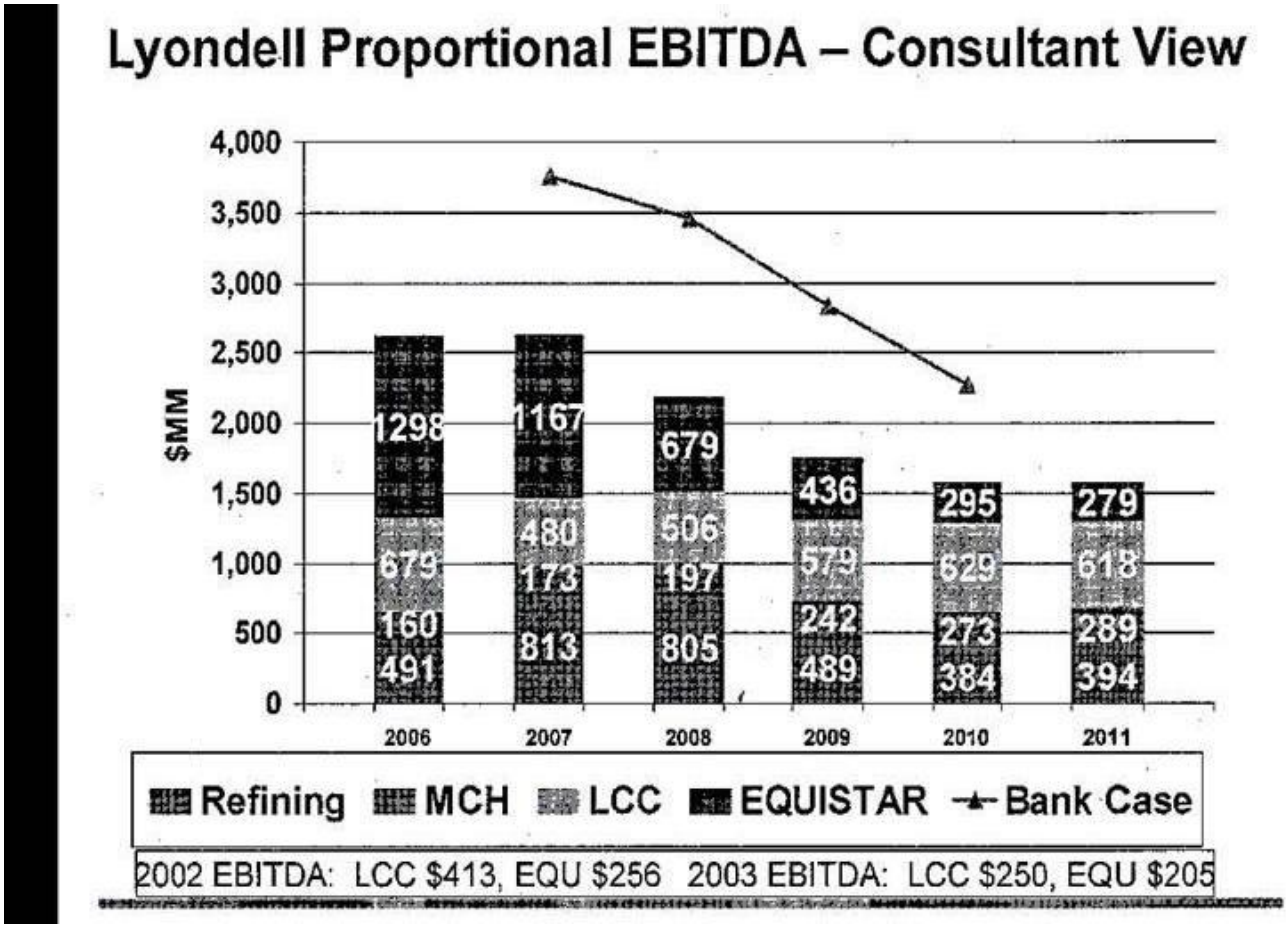
114. Some aspects of the 2007 LRP were previewed by the Board in the October 4, 2006 strategic presentation by management to the Lyondell Board. Included in that presentation to the Board, shown below, were EBITDA projections for the Houston Refinery based on Lyondell's 100% ownership and the operating conditions that would pertain post-CITGO:



115. In or around November 2006, before finalizing the 2007 LRP, management considered at least three alternative EBITDA cases. One case was referred to as the "Consultant View." For its projections of EBITDA from Lyondell's petrochemical business, the Consultant View incorporated the then-current CMAI margin data for olefins and polymers. With respect to Lyondell's refining business, the Consultant View used the Muse data that had been rejected in creating the Quincy Model. Another case was referred to as the "Bank Case." The margin calls for petrochemical products incorporated into the Bank Case were much more optimistic than anything that could be derived from CMAI. For refining, the so-called Bank Case used Quincy Model projections which had incorporated Dan Smith's highly inflated and idiosyncratic view of

refinery margins. To turn the "Bank Case" into a five-year projection, projections from the 2007 LRP process were added for 2011. Management also prepared a "Trough Case," which evaluated the effect on EBITDA if petrochemical and refining margin reductions similar to those experienced during the 2001 to 2003 trough were applied.

116. The Consultant View, compared with the Bank Case, reproduced from a Lyondell internal presentation dated November 2, 2006 (the "November 2007 Earnings Cases Presentation") are shown below. As noted, the bar chart shows the "Consultant View." The graphed line floating high above the bar chart is the so-called Bank Case:



117. The Bank Case, endorsed by Smith, was adopted by the Lyondell Board for the 2007 LRP. Once again, Smith's views prevailed, as the Board rubber-stamped the Smith-directed 2007 LRP.

118. The Consultant View and the Bank Case/2007 LRP EBITDA projections were provided to the Lyondell Board in December 2006 as part of a Smith-led presentation on Company strategy. No explanation was given for the gross disparity between the views of management and the view of industry consultants that management supposedly relied upon for forecasting purposes. No source was provided for 2007 EBITDA Bank Case/LRP EBITDA projections other than that they were somehow the product of the LRP process and reflected management's "views." The Board knew, however, that Lyondell was positioning itself for a possible bid by Blavatnik or other strategic investor and that, as Smith had explained, higher management projections would supported a higher target share price. The Board, in short, knew that the 2007 LRP included inflated projections driven by Smith.

119. The 2007 LRP projections of EBITDA for the five-year projection period equalled $14.9 billion in the aggregate. Under the "Consultant View," EBITDA for the five year projection period was $9.7 billion, a reduction of $5.2 billion. Not only did management's supposed views include a much greater absolute amount of EBITDA for the five-year period, but the descent towards the trough was distinctly different. Whereas the "Consultant View" showed refining EBITDA for 2007 at $1.167 billion with a precipitous drop to $679 million in 2008, management projected $1.465 billion of refining EBITDA in 2007 with strong performance through 2008. There was no credible objective support for management departing radically from the views of the consultants on whom management otherwise relied for an outlook on the petrochemical industry.

120. On August 16, 2006, Lyondell announced the completion of its acquisition of the CITGO interests. Market perception of the Houston Refinery acquisition was not positive. According to one analyst, not only was the timing of the deal and the resulting new borrowing

"not the most prudent," but any benefit from owning the Refinery was outweighed by "the raft of negative fundamentals." As one analyst explained:

> Lyondell is one of the largest manufacturers of ethylene, and therefore it has significant exposure to the commodity chemical cycle. As we stare down past the peak of the chemical cycle, we foresee a trough in chemical profitability in 2008-2009. We believe that the next cyclical trough, on the back of large cost-advantaged capacity coming on stream in the Middle East, will be prolonged and particularly severe on companies that do not have access to low-cost feedstocks or that have their production assets primarily located in high-cost regions. Lyondell checks both of these boxes. . . ."[12]

121. Upon announcing the acquisition of the Houston Refinery, Lyondell claimed that had it owned 100% of the Refinery throughout 2006, its pro forma earnings would have increased from $450 million to $640 million. Notwithstanding Smith's claim that the acquisition would increase the value of Lyondell, in the months following the acquisition through the end of the 2006, Lyondell's stock price remained in the same range at the approximately $24.00 - $26.00 per share.

122. Following the increase in the debt related to the acquisition of CITGO's interest in Houston Refinery in August 2006, Lyondell increased its debt-repayment target from $3 billion to $5 billion.

123. In the coming months, as was correctly anticipated by the consultants and advisors upon which management relied for industry forecasting, the gap between actual and Plan-forecasted EBITDA continued to grow.

124. The performance of Lyondell's petrochemical business in the first quarter of 2007 did not track the 2007 LRP. Instead, it tracked closely to the rejected "Consultant View." In particular, Lyondell's performance during the first four months of 2007 revealed, at miniumum,

[12] HSBC Global Research August 21, 2006.

extreme unreasonableness of the 2007 LRP for Lyondell's core petrochemicals business – known as EC&D for "Ethylene Co-Products & Derivatives."

125. Between April 24, 2007 and May 1, 2007, Lyondell made its annual presentation to ratings agencies (the "**Spring 2007 Ratings Agency Presentation**"). Smith and DeNicola led the presentation for Lyondell, with Smith presenting the "Industry Conditions and Outlook" and DeNicola presenting the "Financial Overview." The Spring 2007 Rating Agency Presentation purported to state "the current beliefs and expectations of management" with regard to the Company and its future financial performance as of the first quarter of 2007. Like the LRP, the EBITDA forecasts included in Spring 2007 Rating Agency Presentation for refining were based on post-CITGO market crude supply contract assumptions. Refining EBITDA for 2006 was presented on a pro forma basis assuming both 100% ownership for the full year and the market based crude supply arrangement. On this basis, with these assumptions, refining EBITDA for 2006 was stated as $1.31 billion and the projections for future years were the same as those for refining in the LRP. In sum, as of the date of the Spring 2007 Ratings Agency Presentation reflected no change in the "current beliefs and expectations of management" for the Company's refining segment. With regard to Lyondell's petrochemicals forecasts, the Spring 2007 Rating Agency Presentation EBITDA forecast for 2007 had been adjusted to reflect the poor first quarter performance of the EC&D segment. The forecasts for petrochemical operations for the balance of the forecast period remained unchanged from the forecasts in the 2007 LRP.

E. Blavatnik Acquires the Toe-Hold Position in Lyondell

126. Meanwhile, Access had not lost interest in acquiring Lyondell. In connection with Access' ongoing interest, Merrill brought to Access's attention the fact that Occidental Petroleum was in the process of disposing of a large block of Lyondell stock.

127. Merrill advised Access that if it acquired the Occidental Petroleum block, it stood to make a profit either upon an Access buyout of Lyondell or a buyout by a third party.

128. On April 15, 2007, Chazen called Smith to advise him that Occidental was considering selling its remaining Lyondell shares. On April 25, 2007, Chazen advised the Lyondell Board that Merrill Lynch had approached him about purchasing 20,997,020 shares of Lyondell common stock owned by Occidental. Chazen also noted that Merrill Lynch had an arrangement with one single individual buyer for the shares. While Chazen was aware that the "individual" was a Blavatnik controlled-entity, he did not disclose this fact to the Board at the time. Chazen drove the negotiations with Merrill Lynch on behalf of Occidental, and determined that Occidental did not need to "annul" its shareholder agreement with Lyondell in order to execute the trade.

129. On April 27, 2007, Chazen spoke to Merrill Lynch (who immediately reported on the conversation to Blavatnik), and discussed with Merrill Lynch whether the Lyondell Board was aware that it was an Access entity that had a deal to purchase the Occidental block.

130. At the Board's subsequent May 3, 2007 regular meeting, Chazen provided a purported update regarding Occidental's plans to divest all of its shares of Lyondell common stock. The Lyondell Board minutes reflected that the Board (including Smith), was aware of Access's expression of interest in Lyondell in 2006, strongly suspected at the time that the individual buyer was in fact Blavatnik. Chazen, it appears, did not disclose to the Board at the time that he already knew that a Blavatnik-controlled Access entity was the counterparty, and coyly and falsely stated, assuming the Lyondell Board minutes are accurate on this issue, that he was "not aware for certainty [sic] of the identity of the ultimate buyer."

131. To acquire the Toe-Hold Position, Blavatnik formed AI Chemical, with Benet, Access's Chief Executive Officer as one of its Managers. On May 4, 2007, Occidental Petroleum, through an affiliate, entered into agreements with Merrill Lynch by which it would divest itself of 20,990,070 shares of Lyondell common stock. On the same day, AI Chemical entered into an agreement with Merrill Lynch (the "**Merrill Lynch Agreement**"). Pursuant to the Merrill Lynch Agreement, AI Chemical had the right to purchase 20,990,070 shares (the same number of shares being sold by Occidental). Further, pursuant to the Merrill Lynch Agreement, until May 9, 2008, AI Chemical could elect to either physically settle the contract for a price of $32.11 per share or to settle the transaction (*i.e.*, to receive or pay the change in the value of the underlying shares). At the time AI Chemical entered into the Merrill Lynch Agreement, Blavatnik was the sole member of AI Chemical, and its rights with respect to the Toe-Hold Shares were apparently AI Chemical's sole asset.

132. On May 9, 2007, Occidental sold 6,997,020 of its 20,997,020 shares of Lyondell stock to Merrill Lynch. Occidental would subsequently sell its remaining 14 million shares from May 21, 2007 through July 10, 2007, which would ultimately be acquired by AI Chemical.

133. On May 11, 2007, Blavatnik and AI Chemical filed a Schedule 13D reporting having entered into the Merrill Lynch Agreement and disclosing Blavatnik's interest in a possible acquisition of all the shares of Lyondell, by merger, combination or similar transaction. On the same day, Lyondell received a letter sent on behalf of AI Chemical and Blavatnik, stating that Blavatnik, through AI Chemical, might acquire over 50% of the outstanding stock of Lyondell.

134. In response to the news, on the same day as the Schedule 13D filing, Lyondell's stock closed at $36.75 per share, up 11% from the day before. Press reports announced that Lyondell was "in play."

135. With Lyondell now clearly "in play," Smith got a call on May 14, 2007 from Apollo Management L.P. ("Apollo") offering to back Smith in a management led buy-out. Smith rejected the proposal, but apparently elected not to report to the Board until July 10, 2007 (after Blavatnik had offered $48 per share) that he had received the call from Apollo or even that he had spurned the offer. Smith had his eyes set on a transaction with Access (which would not involve a management-led acquisition), and Smith was determined to manipulate the information flow and process at Lyondell to position Lyondell for an all-cash purchase by Blavatnik at a blow-out price. Smith understood that it would be far better for himself and other senior management to be cashed out than to be left, in a management-led LBO, with their own money tied up in a company crippled by acquisition debt. Indeed, Smith acknowledged as much in 2007 when he testified that he would not lead a management led buyout because, "if you do a leveraged buyout stand-alone and you try to finance this with the valuation you've got in earnings, there will come a year in the very near future that you won't be able to pay the interest bill. There's just too much variation in the numbers . . . ."

136. Shortly prior to news of Blavatnik's acquisition of Occidental shares being made public, Smith, speaking on May 9, 2007 (the same day Occidental sold 6,997,020 shares of Lyondell to Merrill Lynch) at a conference in Las Vegas, spoke about the grave implications of a leveraged buy-out of Lyondell by an equity sponsor causing direct injury to Lyondell's Creditors. Smith admitted that such a transaction could "enrich the shareholders" but observed the very different impact on Lyondell creditors. Smith continued: "If you're a bondholder, I am

not sure you get enriched in that situation. If you think you are going to have a down cycle in the chemical markets, I don't think you want to add $8 billion, $10 billion debt to this and live through that."

137. In response to the news that Blavatnik had acquired the Toe-Hold Position and disclosure that Lyondell was a potential acquisition target, Smith saw his opportunity to cash out. Unfortunately, Lyondell's performance was not conforming to Smith's plan to cash out at a bonanza price. At a Board meeting held on April 25, 2007, Smith reported that first quarter earnings were below "street estimates," a result which he attributed to the impact of raw material costs, among other factors. At the Board meeting held on May 3, 2007, only eight days before Blavatnik filed his Schedule 13D, management presented mixed results to the Board. Dineen reported to the Board that the results for Company's core EC&D business the first quarter of 2007 were the lowest since the third quarter of 2005 when U.S. refinery operations had been disrupted due to Hurricane Katrina. While Dineen had reported to the Board on February 22, 2007 that he anticipated beating the Company's 2006 EC&D results, at the May Board meeting he explained that even with improved performance for the balance of the year, it would be difficult to meet the expections of the 2007 LRP. At the May meeting, Phillips, as business head of refining, reported decreased first quarter results for refining, which he attributed to the turnaround at the Houston Refinery. And, while the minutes reflect that Phillips reviewed "quarterly refining EBITDA versus budget," and "current market strength," the minutes are silent with respect to any change in the expectations for the performance of the Houston Refinery, either over the short term or the long.

F. <u>Smith Directs the Creation of Fabricated "Refreshed" EBITDA Projections</u>

138. On Friday, May 11, 2007, the very day that Blavatnik and AI Chemical filed a Schedule 13D disclosing the Toe-Hold Position, Robert Salvin, Lyondell's Manager of Portfolio

Planning in its Corporate Development Group, was summoned to a meeting with Galvin, Lyondell's then-General Counsel, and DeNicola, Lyondell's then-CFO. Galvin and DeNicola, as noted, reported directly to Smith. Salvin was given a "heads-up" by Galvin and DeNicola that he likely would be meeting with Smith early the following week and that Smith was "going to want to take another look at [the LRP]." For his part, Salvin had participated in the 2007 LRP process and was aware of management's current view of Lyondell's future performance, having received on May 7, 2007 a copy of Lyondell's Spring 2007 Ratings Agency Briefing.

139. Shortly thereafter, Salvin, who like many other Lyondell employees, held Lyondell stock, emailed his wife, forwarding an internal email Smith had sent to all Lyondell employees on May 11, 2007, advising them of the Schedule 13D filing, eagerly informing his wife: "Interesting news stock is up $3.50 since."

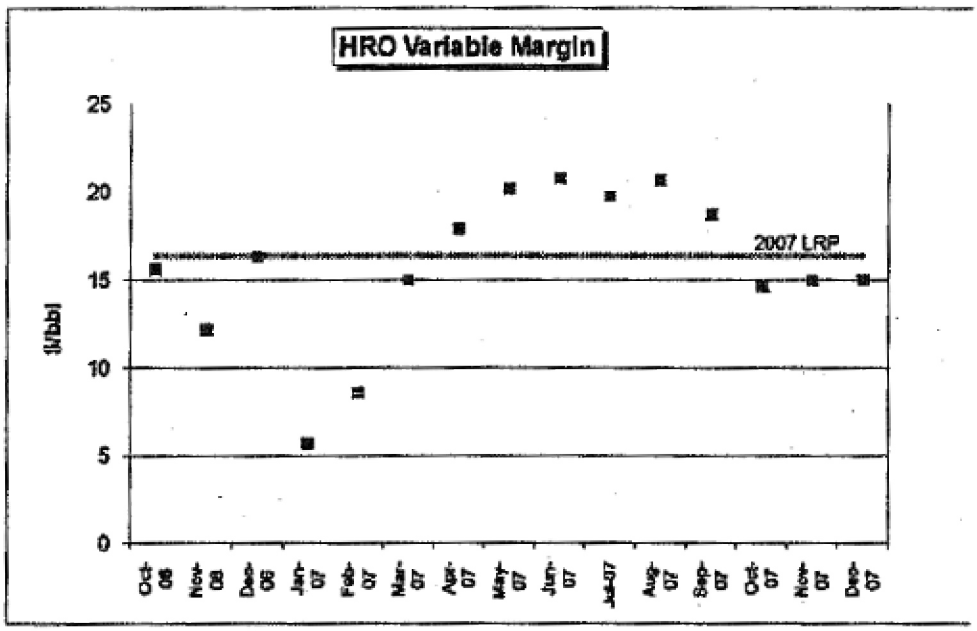
140. On Tuesday, May 15, 2007, Smith met privately with Salvin. Smith's plan had already been hatched. Smith was determined to make sure that Blavatnik and his lenders would receive an inflated set of management projections that "justified" the highest price and financing possible, regardless of its disastrous or even catastrophic consequences to creditors. Smith knew, from Blavatnik's Schedule 13D filing and Blavatnik's 2006 spurned bid for Lyondell, that Blavatnik was interested in making a bid for all of Lyondell, that it likely would involve virtually 100% financing, and that Lyondell would need extremely aggressive projections to justify the price per share that Smith wanted to cash out. Smith had concluded that the 2007 LRP, whose refining projections already reflected an aggressive and inflated view of potential earnings, had to be artificially inflated significantly more to justify the blow-out price per share Smith wanted. Only extremely limited public information was available about the post-CITGO profitability of the Houston Refinery. Given the changes in the crude supply arrangements, it could be expected

that performance of the Refinery going forward would be different – a situation which Smith identified as supplying an opportunity to fabricate numbers. Salvin's personal notes from his meeting with Smith indicate that Smith instructed Salvin to create a set of "refreshed" projections for the five years projection period of 2007-2011. Salvin was told that this should be accomplished with a "top down" process without "a lot of details." Salvin took notes at his meeting with Smith that refer to "Refining" and contain the numbers "1.5-1.6B." This was the annual EBITDA for the Houston Refinery that Smith had pre-determined should be the outcome of the process of "refreshing" the 2007 LRP.[13]

141. No macroeconomic or refining industry developments had occurred between the approval by the Board of the 2007 LRP in December, 2006 and its inflated refining EBITDA forecasts that could possibly justify the projection of yet additional EBITDA during the five year projection period, let alone the estimated $1.6 billion of additional refining EBITDA that Smith demanded be included. In fact, during the period since adoption of the 2007 LRP, the Refinery had been undergoing maintenance and upgrading that had resulted in its failure to attain even the variable margin that had been assumed for purposes of the 2007 LRP. Whereas as the 2007 LRP assumed a variable margin of $15.14, an internal report prepared by Lyondell in or around May 21, 2007 to track the variable margins of the Houston Refinery against the 2007 LRP forecast showed variable margins for January, February and March were $5.71, $8.58 and $15.00, respectively. This internal report is reproduced below. The only purportedly actual data on this

[13] Salvin, for his part, attempted, after LBI's collapse to conceal the fact that he had taken these notes, along with hundreds of other pages of handwritten notes from production to the Creditor's Committee during the Lyondell bankruptcy. He even improperly removed his hundreds of pages of handwritten notes, which he kept in several bound notebooks when he left LBI in July 2010. It was not until just before Salvin was deposed on February 2, 2011 that he first produced any of his handwritten notes. His concealment of such critical records was all the more outrageous due to the fact that, during the Lyondell bankruptcy, his job position had changed and his role was to assist making documents available to the Creditor's Committee and he ran the "data room" that housed documents produced by the Debtors to interested parties, notably including the Creditor's Committee.

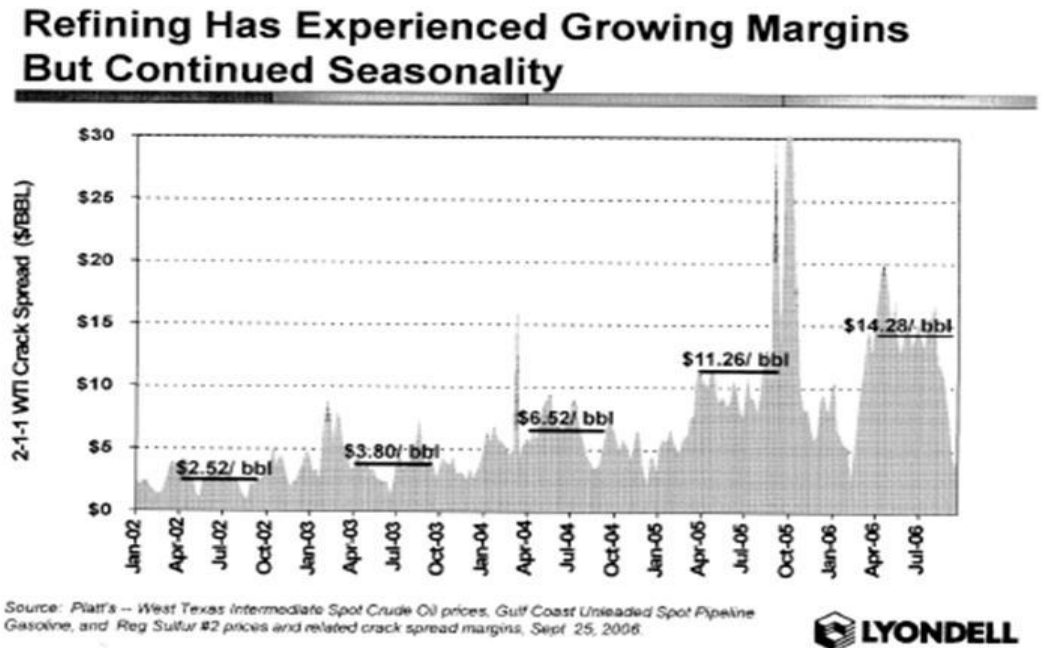
report is for the months preceding and including April 2007; all data for later months are projections:



142. The report shows that in April 2007 alone the variable margin of products from that single month refined from crude at the Houston Refinery had reached $17.92, a marked contrast from the prior three months which had averaged $9.76 or 54.4% less. An isolated month's performance was a specious and fabricated justification or basis for refreshing the projections for the entire year of 2007, much less any future year, as Salvin, Smith, the Board, and anyone having even a basic understanding of refining cycles and margins knows. This is because for among other reasons, as Salvin, Smith and the Board were well aware, refining earnings were historically highly seasonal and had repeatedly peaked in or around April.[14] A presentation prepared by Lyondell management, shown below during 2006 highlighted the seasonality of refining earnings. Accordingly, as Salvin, Smith and the Board knew, the fact that

[14] This was the case other than a surge in prices and margins that occurred in October 2005 as a result of a massive temporary shutdown in refining capacity caused by the record-breaking 2005 Atlantic hurricane season, which included Hurricanes Rita and Katrina.

the Houston Refinery may have had a strong month in April 2007, did not provide a basis to revise the projections over the full year anymore than a hot August in Houston would be the basis to revise the weather forecast for Houston in the coming winter.



143. Salvin relayed to several others at Lyondell that he was seeking to better understand the assumptions with respect to the 2007 LRP, without disclosing to them either Smith's true agenda or that predetermined refreshed projections had to be achieved. In a May 15, 2007 email to several others, Salvin explained: "This is not a bottom's up."

144. In a May 16, 2007 email to Lyondell CFO DeNicola and Kimberley Foley (a manager involved in directing workflow during the LRP process), Salvin transparently laid out how, by arbitrarily increasing the assumption for the crack spread from $31/ bbl (supposedly the assumption used in the 2007 LRP projections) to $34-35/bbl for the second and third fiscal quarters of 2007, this would add "$150 – 200 MM to the $1330 forecast and get in the $1500 [million] range."

145. Seeking a methodology to tie a crack spread assumption to EBITDA, Salvin contacted several Lyondell employees in Lyondell's refining, corporate development and treasury groups to get information about the relationship between crack spread assumptions and variable margins in the 2007 LRP.[15] Unable to obtain the LRP assumptions or methodology, Salvin, who by his own admission is not a refinery expert, instead under pressure to generate expedited "refreshed" projections for Smith, came up with his own simplified bogus methodology to tie Smith's fabricated crack spread assumption to the $17.92 variable margin supposedly achieved in April 2007, which was 54.4% more than the average of the prior three months. Salvin thereafter claimed to have used this preposterous so-called methodology to attempt to justify his pumping up the refining EBITDA to the arbitrary, falsely inflated levels directed by Smith. [16]

146. By May 18, 2007, a mere three days after meeting with Smith, Salvin's "refreshed" projections for the refining EBITDA were essentially done.

147. Notwithstanding that even several months of attaining a certain variable margin (much less a single month's purported data) provides no basis for a five-year EBITDA

[15] At depositions, these other non-senior level Lyondell employees disclaimed involvement in the "refreshing" process, and contradicted Salvin's false effort to claim that somehow Lyondell employees provided him with data that supported his bogus, contrived projections.

[16] Salvin's bogus methodology begins with a targeted variable margin and worked backwards, a methodology that even Salvin conceded was improper. Variable margins for refining can be expressed by a formula. The variable margin is equal to the difference between the price of crude and the price of refined product made from crude (the "crack spread"), minus the operational and material costs of "cracking" (*i.e.*, refining) a barrel of crude into products such as gasoline and heating oil. Calculating the variable margin of heavy sour crude involves an additional variable: the differential between the cost of heavy and "standard" sweet crude. One back of the envelope way to estimate the crack spread for heavy sour crude (such as could be refined by the Houston Refinery) is to start with the crack spread for sweet crude and then add the price differential between sweet and heavy crude. An internal Lyondell report apparently created after May 18, 2007, showed that the variable margin (approximating EBITDA) of the Houston Refinery during the month of April 2007 was equal to 70% of heavy sour crack spread calculated in accordance with the foregoing formula. To arrive at a bogus projection of $1.6 billion 2007, Salvin started with the assumption that the Houston Refinery would always be able to capture as variable margin 70% of the heavy sour crack spread, which has absolutely no objective support. Salvin literally was taking isolated out-of-context data, and quickly using such data to concoct a predetermined EBITDA result. Any objective data that did not support the predetermined EBITDA target was ignored or rejected. With respect to 2008 through 2011, Salvin then created heavy sour crack spread assumptions that, when multiplied by projected volumes, would result in the targeted EBITDA figures.

projection, Salvin on May 18, 2007 provided "refreshed" refining EBITDA projections to DeNicola. No backup was provided, but the $1.6 billion annual EBITDA projection for 2007 to 2010 was – not coincidentally – directly in line with the arbitrary and inflated range of $1.5 to $1.6 billion requested three days earlier by Smith. No explanation was provided regarding why Houston Refinery margins would be impervious to the effects of changes in supply and demand or why the views of consultants whose business was to analyze the industry should be ignored.

148. Salvin's May 18, 2007 "refreshed" refining projections, which added $1.626 *billion* to the already inflated forecasted EBITDA for the projection period, are shown below:

EBITDA (in millions of $)

Refining	**2007**	**2008**	**2009**	**2010**	**2011**	**Total**
2007 Long Range Plan	1,333	1,324	1,376	1,110	931	6,074
"Refining Revised"	1,600	1,600	1,600	1,600	1,300	7,700

149. Salvin's formula was, in fact, nothing more than a brazen and amateurish effort to manipulate figures to achieve the predetermined result directed by Smith. Many independent variables impact the profitability of refineries and preclude the validity of using any formula based on fixed margin assumption – such as the Salvin method – to create long-term projections. First of all, the profitability of any refinery is impacted by the then prevailing crack spreads – the term used to describe the differential between the cost of crude and the value of the products produced from that crude. Crudes vary as to cost and accordingly the crack spread of one kind of crude is different from another. In particular, heavier high sulfur ("sour") crudes have historically been cheaper than low sulfur ("sweet") crudes and so have a greater crack spread. However, heavy crudes are more expensive to refine into gasoline, heating fuel and other high value products. Accordingly, the competitive advantage of refining heavy crudes depends on the

differential between the price of heavy sour and sweet crude being large enough to cover the greater costs of production. The bigger the discount for heavy sour as compared to sweet light, the greater the advantage of the complex refinery. Conversely, as the price of heavy sour crude rises relative to sweet light crude, the cost advantage of a complex refinery declines and may vanish. However, even if a complex refinery has a cost advantage over a simple refinery, its margins will decline under conditions of weakened demand and oversupply of petroleum products. Since, for among other reasons, both demand for petrochemical and refined products and the relative cost of sweet and sour crude varies over time, so too will the variable margins of a complex refinery.

150. During 2006, refineries were benefiting from a strong demand for their products and complex refineries were benefiting from the margin advantage associated with the ability to process lower cost heavy crude. However, industry analysts, including those whose services were used by Lyondell, forecasted during 2007 and thereafter, refining margins from "heavy sour" crude oil would be driven downwards by declining supplies of heavy crude and new heavy crude facilities. This was the view that prevailed in 2006 and is reflected in the declining refining EBITDA forecasts in the 2007 LRP. There is not the slightest evidence of any new data resulting in a change of that view during the period between the finalization of the 2007 LRP and the "refresh" process. In fact, during the spring of 2007, Lyondell commissioned a study by the refining consulting firm PGI to examine the outlook for heavy crude oil and in particular the outlook for Heavy Sour Coking refineries similar in capability and performance to the Houston Refinery. The results of PGI's study were presented to Lyondell on May 4, 2007. PGI's report, in line with that of other analysts, reflected an expected decline in refining margins for all refineries beginning in 2007 and continuing for several years.

151. On or about June 7, 2007, Volker Trautz, the CEO of Basell, flew to London at the request of Blavatnik and met with Smith (who was in London for a conference). During a private dinner meeting, according to a contemporaneous email of Trautz, Smith told Trautz that if Blavatnik "really want[s] to consolidate then [Blavatnik] can use Lyondell as a platform." According to Trautz's email, Smith explicitly "suggest[ed] a price of $48/share [for Lyondell] would be justified." Smith told Trautz at the private meeting that Smith expected that Lyondell's performance "will be largely supported by a refining supercycle." Trautz understood Smith to be communicating that if Blavatnik wanted to acquire Lyondell, he had to offer $48 per share. Smith, for his part, suggested that the $48 per share price knowing that the EBITDA projections were being falsely inflated to a valuation of Lyondell that would support such a price, and that the refining projections in particular were being falsely inflated to support Smith's statement that Lyondell's performance would be "largely supported by refining." The stage was now set to finalize the bogus projections and see if Blavatnik "bid" for all of Lyondell.

152. Eleven days after Smith's meeting with Trautz, Salvin provided a revised version of the refreshed projections in a June 18, 2007 email to DeNicola and Pike:

EBITDA (in millions of $)

Refining	2007	2008	2009	2010	2011	Total
2007 Long Range Plan	1,333	1,324	1,376	1,110	933	6,078
Case 1 - "Today's View"	1,700	1,700	1,600	1,500	1,300	7,800
Case 2 - "Alternate View"	1,600	1,600	1,600	1,600	1,600	8,000
EC&D						
2007 Long Range Plan	1,465	1,295	599	564	518	4,441
Case 1 - "Today's View"	1,150	1,150	800	700	600	4,400
Case 2 - "Alternate View"	1,150	1,150	800	700	600	4,400
PO&RP						
2007 Long Range Plan	712	657	664	701	676	3,410
Case 1 - "Today's View"	712	657	664	701	676	3,410
Case 2 - Alternate View	712	657	664	701	676	3,410
Total Company EBITDA						
2007 Long Range Plan	3,510	3,276	2,639	2,375	2,125	13,925
Case 1 - "Today's View"	3,562	3,507	3,064	2,901	2,576	15,610
Case 2 - "Alternate View"	3,462	3,407	3,064	3,001	2,876	15,810

153. Underscoring the fact that, rather than being *bona fide* estimates developed using assumptions regarding costs and volumes, the refinery projections had been reverse engineered from targeted EBITDA, the "refreshed" refining projections were round numbers, crudely reflecting their fabrication.

154. Salvin was also involved with manipulating "refreshed" projections of Lyondell's petrochemical businesses. In order to achieve Smith's targeted goals, Salvin had to make sure that Lyondell's EC&D projections did not decline, even though Lyondell's EC&D performance had fared poorly in early 2007. As explained above, the 2007 LRP EBITDA projections for Lyondell's petrochemical's business were based on the assumption that CMAI and other petrochemical consultants and experts had basically gotten the industry forecast for the

anticipated downturn all wrong. According to CMAI, margins of major petrochemical products would decrease after 2007 from peak levels in 2006, that expected 2008 earnings would be only 50-60% of 2007 earnings and that trough earnings (2010-1011) would be only about 10%-20% of cycle peak. Nevertheless, according to the 2007 LRP, the downturn would be much milder, with margins in 2008 remaining almost unchanged from 2007 and trough earnings to be approximately 40% of earnings during 2007. According to the 2007 LRP, Lyondell's projections for EC&D for 2007-2011 were $4.441 billion.

155. Due to the unreasonable assumptions embedded in the 2007 LRP, by mid-year, EC&D earnings were far below the plan at the time Salvin was supposedly updating them at Smiths request. For the EC&D business, it appears Salvin collected then available CMAI forecasts of olefins and polylefins that supported, for the entire five year projection period, lower projections for EC&D than those found in the 2007 LRP. None of this information was incorporated into a "refreshed" view of the projection period, since it did not support the results Smith wanted. Nonetheless, the incontrovertible reality of the poor earnings during the first half of the year required Salvin to adjust the current 2007 year forecast. And, because the 2008 forecast would then, implausibly, be far greater than the 2007 latest estimate, Salvin had no choice but to shave a bit off 2008 as well. Salvin well understood his task however – and it was to arbitrarily increase rather than decrease the five-year EBITDA forecast. Accordingly, what had to be subtracted from 2007 and 2008 forecast for petrochemicals was simply improperly and quite astonishingly moved to 2009-2011 (to falsely boost EC&D projections for 2009-2011) – as if poor performance in 2007 somehow portended arbitrarily and without any support compensating overperformance later in the projection period. In fact, in mid-2007, no forecasts or industry development remotely supporting the idea that the outlook for those years had

somehow improved in the months since the 2007 LRP was finalized and approved, a fact that was known to Smith and the rest of the Board. As a result, Salvin's "refreshed" projections for 2007-2011 for EC&D, in Salvin's June 18, 2007 "refreshed" projections, were remarkably $4.4 billion, only $41 million less than the $4.441 billion 2007 LRP. Had Salvin used CMAI's weighted average plant cash margins that had been provided to Lyondell during the "refreshing" process, over the five year period from 2007 to 2011, EC&D EBITDA alone would have been $1.565 billion less than the "refreshed" 2007 LRP projections. But since objective data and margins did not fit Smith's agenda, Salvin ignored all such relevant CMAI data.

156. The impact of the speculative and unsupported assumptions concerning the profitability of the Lyondell operations was to add approximately an additional $1.6 billion of EBITDA to the already highly optimistic projections contained in the 2007 Long Range Plan – even though no data supported any increase in refining projections and current performance of the petrochemical operations further underscored the unwarranted optimism embedded in the 2007 LRP. Moreover, the refreshed 2007 LRP falsely failed to reduce EC&D projections during the 2007 to 2011 period, resulting in further material overstatements.

157. As if to underscore the fact that the Company's EBITDA projections were being reverse engineered to reach a targeted enterprise value, Salvin's June 18, 2007 email to DeNicola actually includes a simplified enterprise valuation showing how, using a 6x multiple for EBITDA to price, the bump of EBITDA from the 2007 LRP translated to an increase of $7.42 per share of Lyondell stock.

G. <u>Blavatnik Turns His Attention to Huntsman</u>

158. Blavatnik was internally known at Access as the "King of Optionality." While Smith was finalizing the "refreshed" Lyondell's projections in preparation for negotiations with

Blavatnik, Blavatnik was exploring other acquisition opportunities. Blavatnik had, as among potential acquisition targets, for some time also been actively pursuing Huntsman. On June 26, 2007, after extensive negotiations and due diligence by Basell, Basell and Huntsman entered into a definitive agreement pursuant to which Basell committed to acquire Huntsman in a transaction valued at approximately $9.6 billion.

159. Upon learning of the Huntsman deal, Smith became concerned as he believed that it was unlikely that Blavatnik would acquire both Huntsman and Lyondell. In fact, just after learning that Blavatnik entered into a definitive agreement with Huntsman, Smith remarked in an email to DeNicola, "[n]ow we will have to contend with Len and Peter [Huntsman]!" Despite the disappointment, the implications of the Huntsman deal for Lyondell was not lost on Smith. He commented that the premium that Blavatnik was paying for Huntsman "is equal to about 48 for us."

160. In the hope that Lyondell was not completely off Blavatnik's radar, Smith wanted to know how the proposed financing structure of the Huntsman deal would be affected "if we were added to mix?"

161. On July 4, 2007, Huntsman advised Access and Basell that Hexion Specialty Chemicals, Inc. ("**Hexion**"), an Apollo-controlled entity, had made a superior bid. Thereafter, on July 12, 2007, Huntsman backed out of its agreement with Basell, incurring a $200 million contractual break-up fee (payable to Basell) in order to enable it to accept the higher offer from Hexion.

162. Huntsman was not the only petrochemicals target to elude Blavatnik. He also had failed in his efforts earlier in 2007 to acquire General Electric's plastics division, which Basell's competitor, Saudi Arabian Basic Industries (or "**SABIC**"), snatched up. By early July 2007,

there were already indications that the credit markets could be tightening. The "King of Optionality," sensing his options were slipping away, resolved that he would close the deal to acquire Lyondell.

H. Blavatnik's Renewed Pursuit of Lyondell

163. On July 4, 2007, the very day that Access learned it was out-bid on the Huntsman deal by Apollo, Blavatnik contacted Smith directly to request a meeting about the Lyondell acquisition.

164. On July 9, 2007, Smith and Blavatnik met privately at Access's offices in Manhattan right before Smith flew to The Netherlands for a regularly scheduled Lyondell board meeting. According to Lyondell's proxy statement soliciting shareholder consent to the Merger, on this occasion, Blavatnik initially suggested a price of $40 per share for Lyondell, which was then trading at $39.21 per share. Smith suggested that if Blavatnik was serious, he needed to make his best offer. Smith had on a previous occasion indicated that the Lyondell Board would be looking for a 20% premium over market price. Moreover, Smith had already told Trautz in London on June 9, 2007 that $48 per share was an appropriate price to purchase Lyondell (something Smith elected not to disclose to the Board). Blavatnik requested that Smith contact him later that same day to further discuss the matter.

165. During the July 9 meeting, Blavatnik told Smith that if a deal was consummated, Blavatnik intended to appoint Trautz as CEO of the combined companies, displacing Smith as the chief executive of Lyondell. In reality, Smith was not concerned about his potential role with the new company, or with the consequences of the inflated projections he had engineered, or with the consequences to Creditors of LyondellBasell being unable to service its crushing debt. Although he did not formally decline the offer to remain as Chairman of the combined

companies until October 2007, for Smith the transaction meant an opportunity to exit from his role as Lyondell's chief executive, and cash out with an enormous personal fortune.

166. Later, on July 9, Smith called Blavatnik from the airport. After some discussion, Blavatnik indicated to Smith that Basell could pay $48 per share if Lyondell could sign an agreement by Monday, July 16, 2007 and agree to a $400 million break up fee. Blavatnik said the transaction would have fully committed financing and that consummation of the transaction would not be conditioned on obtaining financing. He gave Smith until July 11, 2007 to respond. Smith responded that he would report that information to the Lyondell Board. The Lyondell Board had a meeting scheduled for July 10, at The Hague, The Netherlands.

167. When word of Blavatnik's offer to acquire Lyondell at $48 per share reached his top executives, they were both incredulous and frightened. On July 9, 2007, Kassin informed Patel by email that Blavatnik intended to sign an agreement with Lyondell by July 16. Patel asked if Kassin was joking. Kassin responded by email: "No I aint [sic] – last hour most bizarre in my carrer [sic]."

168. In an email dated July 10, 2007, Kassin commented on the transaction to Bigman, Chief Financial Officer of Basell, "Not my idea. I can't sleep thinking of this at $48." Bigman replied: "Me neither, woke up at 4:30." Bigman emailed his concerns to Blavatnik, even knowing it would be no use: "I know you've already made up your mind, but I am uncomfortable with the valuation—it's almost $5 billion more than we were offering a year ago and over $2 billion more than we were discussing just a few weeks ago."

169. Learning about the offer, Merrill, as Blavatnik's banker became concerned about the amount of leverage in the proposed deal and proposed including a "market flex" provision into the financing commitment that would permit Merrill to require that Access provide an

incremental equity contribution to the merged entities of $1 to $2 billion if necessary to syndicate the loan. Merrill also proposed issuance of PIK (*i.e.*, payment in kind) financing at the holding company level in order to lower the debt levels at the operating company level. Although Access had proposed including up to $1 billion of cash (of which up to $150-200 million might be comprised of PIK securities) as part of its unsuccessful August 2006 offer for Lyondell, Patel promptly informed Merrill that such proposed financial structures were unnecessary and "wholly unacceptable." Access and Blavatnik no longer had any intention of putting their own cash or capital at risk in the deal.

170. Writing to Blavatnik, Bigman acknowledged that Merrill having raised the need for a market flex provision was "another indication that we're on the edge here." In fact, the "all debt" financing of an acquisition of Lyondell was not "on the edge," but well over it. The extreme leverage being proposed would, upon the Merger, result in LBI being severely undercapitalized for the purposes of its combined businesses.

171. Like Lyondell, Basell had an annual plan process which in November 2006 had resulted in the issuance of a 2007-2011 Basell Business Plan including EBITDA projections for the five year projection period. By July 2007, these projections had already been adjusted upward at least once since the issuance of the 2007 Basell Business Plan. Rather than reconsider, in view of projected high leverage, whether the combined entities would be adequately capitalized, on or prior to July 10, 2007 Access supplied Merrill with another upward adjustment of the Basell forecast including significantly higher earnings by Basell for all years during the period projected. This new forecast significantly reduced the earnings trough that Basell had earlier projected for 2009 and 2010. These "updated" Basell EBITDA projections were updated yet again on or prior to July 14-15, 2007. These upward adjustments to the

projections found in the then current Basell business plan resulted in an aggregate increase in the projected EBITDA of Basell of 19% for the period. These "updates" to the Basell EBITDA projections are shown in the table below:

EBITDA (in millions of $)

Basell Management Projections	2007	2008	2009	2010	2011	Total
2006 Plan	1,375	1,396	1,287	1,113	1,296	6,467
July 9-10, 2007 Update	1,675	1,483	1,353	1,158	1,358	7,027
July 14-15, 2007 Update	1,905	1,755	1,359	1,311	1,365	7,695
Aggregate change ($)	530	359	72	198	69	1,228
Aggregate change (%)	38.5	25.7	5.6	17.8	5.3	19

172. The smaller, older and less efficient petrochemical plants operated in Europe by Basell would foreseeably be hit hard in the coming downturn. The Basell projections, however, had been prepared with a view to their use in connection with leveraging Basell to acquire additional assets. As such, these projections largely ignored the forecasted downturn and failed to reflect the sharp decrease in earnings that many of Basell's facilities would foreseeably experience.

173. On July 10, 2007, Merrill, using the new, higher Access-driven Basell projections, prepared a revised presentation containing a "Base Case" and "Downside Case" for the combined performance of Basell and Lyondell. Since at this time, Access had yet to gain access to Lyondell's non-public business performance data, the Base Case attempted to use CMAI and other publicly available data to forecast Lyondell EBITDA. The Base Case also incorporated the highly optimistic and non-achievable Smith-driven assumptions of the Quincy Model which had

become available to Access during 2006 in connection with its participation in the auction of the Houston Refinery.

174. On July 11, 2007, Benet emailed Blavatnik, Trautz, Bigman, Kassin, and Patel with his analysis of the proposed transaction based on the revised modeling. According to Benet, if Lyondell, considered on a standalone basis, performed as forecasted by the "Base Case," the combined enterprise would likely meet its debt service but its equity owners would essentially be "working for the banks." As Benet crunched the numbers, only if Lyondell materially outperformed the Base Case would the transaction make any sense. He showed this by adjusting the Base Case to increase EBITDA by 15%, calling this upside case, the "Sensitivity Case." Under this Sensitivity Case, Lyondell EBITDA would be $3.5 billion in 2007, as opposed to a "Base Case" EBITDA projection of approximately $3.1 billion. As explained by Benet, the acquisition was a bet on the chance that Lyondell would materially overshoot the Base Case. He explained: "[T]he rationale at this price [$48 per share] would be that we actually are buying the option on (a) the upside case equal to or greater than the Sensitivity, and (2) owning an enormous asset base into the next upswing."

175. In reviewing Benet's analysis, Trautz asked Benet if he was correct "that we basicly [sic] at 48 per share can only justify the deal via synergies and the belief in the upside over the base case?" Benet confirmed that this was indeed his view:

> Correct. For the next three years, the Base Case assumed average EBITDA of $2.3bn. That's not enough for $48/share.
>
> We need to be expecting > $2.7bn to start paying down debt in the 'good times'. And if we get $3bn it makes a real dent, which also provides cushion against a sharper downfall in the 'bad times'.
>
> If they were to make $3.5bn [for 2007], is > $2.7bn average for the next 3 years realistic or a pipedream?

176. Unknown to Benet, Trautz and others at Access, the Quincy projections (which were incorporated into the Base Case) were based on flawed assumptions that resulted in overstating refinery performance and, with respect to its petrochemicals business, Lyondell had already failed during the first half of 2007 to meet Base Case assumptions.

I. The Lyondell Board Learns of the Refreshed Projections And Rubber-Stamps the Transaction

177. On July 10, 2007, the Lyondell Board met in The Hague, and Smith reported on his discussions with Blavatnik, and it was decided that the Board would convene a special meeting the following day to further discuss the matter. At that meeting, DeNicola (who was fully aware of the fact that the "refreshed" projections were a fabrication) represented to the Board that due to "market perceptions," Lyondell's trading multiple was below its peers. According to DeNicola's analysis, notwithstanding actions by the Company to "educate" the market and the financial community, this undervaluation of Lyondell would likely continue. In the context of this discussion, the Lyondell Board was provided with the fabricated "refreshed" projections showing that the "current" view of management was that the Company would earn almost $2 billion more than the inflated EBITDA projections that, a few months earlier, management had in the 2007 LRP process endorsed after months of deliberation and that the Board had approved. The "more current analysis" were discussed by the Board and compared to the 2007 Long Range Plan. As part of their Board "packet," the Board had a copy of the Spring 2007 Ratings Agency Briefing that Smith and DeNicola had just made weeks earlier, adjusting downward the 2007 LRP due to the poor first quarter 2007 performance of Lyondell.

178. Before tasking Salvin to come up with a "refreshed" set of projections, Smith did not consult with the Board, disclose his intentions or seek Board authorization. There is no evidence that following the revision of the projections, that the Board was informed or even

inquired on what basis management had, at some point after the 2007 LRP process had been completed, come up with the radically more bullish view of refining. In particular, there is nothing in the minutes indicating that any member of the Board questioned why the refining projections had been revised so radically. Instead, the record reflects complete silence by the Board in the face of fabricated refreshed projections presented on top of an inflated 2007 LRP that just weeks earlier, Lyondell was forced to "mark down" for 2007 in the Ratings Agency presentation due to poor operating performance.

179. In fact, the Lyondell Board knew that the "current view" had been developed in response to the Blavatnik Schedule 13D filing with a view toward supporting a far higher valuation of Lyondell than any realistic projection of its earning capacity could possibly justify. The Lyondell Board knew that during the first half of 2007, the Company's actual performance did not indicate that it would outperform the 2007 EBITDA projections in the 2007 LRP. They had, in fact, been told during the two regular Board meeting preceding the July 10 meeting that the Company's EC&D business would be unlikely to meet plan. With regard to refining, while the Board had continued to hear reports from Smith about the prospects for strong refinery performance – they had yet to see any sustained results that would support such bullish forecasts. The Board had even been told that seasonality rather than a long-term trend accounted for the performance of the Refinery during the second quarter of 2007.

180. Far more fundamentally, the Board knew, from both their professional experience and through their Board participation, that due to changes in the price of crude and other factors, the short term results of a refinery are extremely volatile. So much so, that short term results of operations are simply not a basis to project long-term performance. Specifically, the Board knew

that the operating results for the Houston Refinery over a single month were not a basis upon which to extrapolate a full year, much less several years of increased earnings.

181. The Board in fact knew that the performance of the Houston Refinery was and would remain subject to extrinsic, macroeconomic and industry factors that had been examined in connection with the CITGO buy-out and the 2007 LRP process. The Lyondell Board knew that the decision to acquire 100% of the Houston Refinery was based on Smith's personal arbitrary views of the industry and had exposed the Company to significant risk in the event Smith had gotten it wrong. The Lyondell Board knew that the projections that had been incorporated into the 2007 LRP fully reflected Smith's arbitrary inflated refinery forecast and the full, anticipated benefits of operating without an agreement with CITGO and taking into account all planned capital improvements to the Houston Refinery. The Board also knew that no macroeconomic or industry developments had occurred since the adoption of the 2007 LRP that could possibly warrant the enormous change in the five year outlook for the Houston Refinery. Chazen, while he at least challenged Smith's refining assumptions in 2006, was silent in July 2007, since Occidental had just made $326 million dumping all its Lyondell stock which he understood was sold to Blavatnik's shell entity. The Board further knew that the process of developing a multi-year outlook for a complex facility like the Houston Refinery required weeks, if not months of work as well as input form industry specialists. The Board accordingly knew that the "refreshed" numbers they were shown were not the product of a good faith revision based on changed circumstances.

182. In sum, the Board knew that the projections had been revised for the purpose of being provided to Access and the investment banks to support the price Smith wanted and not because they represented legitimate or even good faith management views regarding Lyondell's

future performance. The Board knew that the projections were inflated, unreasonable, and unachievable. The Board further knew that the projections would be used and relied upon by Blavatnik's bankers in obtaining financing for the proposed transaction. Finally, the Board knew the risks of overleveraging into a trough and knew that they were putting Lyondell's creditors at grave risk by inducing a leveraged buyout of the Company based on false projections.

183. The next day, a special meeting of the Lyondell Board was convened, again in The Hague, and Smith reported on discussions with Blavatnik since July 10, 2007. The Lyondell Board was advised that Lyondell management wanted to schedule a special Board meeting "on the afternoon of Monday, July 16th," *i.e.*, the deadline purportedly set by Blavatnik for entering a definitive agreement to buy Lyondell for $48 per share. It was explained to the Board by Smith that Blavatnik would sign a merger agreement after only a couple of days of due diligence. Once the merger agreement would be signed, there would be no out based on information discovered afterwards.

184. The Lyondell Board authorized management to continue the discussions with Blavatnik regarding a possible transaction with the understanding that Access and its bankers would be provided with the refreshed projections. The next step for Smith was to close the deal by providing the projections to Access and its bankers under the guise of being *bona fide*, good faith forecasts based on Lyondell's historical experience operating its assets and prevailing information regarding the demand for Lyondell products.

185. On July 12, 2007, the Lyondell Board met again in The Hague, at which time it reconfirmed that it would have a special meeting on July 16, 2007. Following the Board meeting, Smith and other members of Lyondell senior management returned to the United States to conclude the deal. On or about July 12, 2007, Lyondell commenced providing materials to Basell

and Access in response to the preliminary due diligence request of Basell and Access. In reality, virtually no due diligence was done before the Merger Agreement was executed on July 16, 2007.

186. Joseph Tanner, Lyondell's then Director of the BPAR group was part of a team assembled in Houston on Friday July 13, 2007 to support Lyondell officers in New York preparing to make a presentation to representatives of Basell, Access, Citibank, Merrill and Goldman at the New York offices of Skadden Arps on Saturday, July 14, 2007. Notwithstanding his role in the business planning and the LRP process, Tanner has denied having any part in developing the newly "refreshed" EBITDA projections sent by Salvin to him on July 13, 2007 in an email with an attached spreadsheet.

J. <u>A Deal Is Struck Based on the Bogus Refreshed Projections</u>

187. By the time it came to complete this truncated due diligence and paper up the Transaction, Kassin, who remained opposed to the deal, was resigned to the inevitability of the transaction going forward. Although he believed Access was overpaying, his main objective was to convince the banks that they could fund the Transaciton without requiring Access to contribute cash equity. Kassin commented in an email dated July 12, 2007:

> My job is to sign this up…I will make it happen if I have to kill myself…the real problem is – I hate the deal at $48 and am scared to death that the banks will ALL want new cash equity…I am trying to separate my two roles – one deal weasel who will get this signed up in record time…vs. Board member with fiduciary role for the shareholder…this one will be tough.

188. Kassin and others within Access and Basell expressed their concerns regarding the accelerated pace of the deal. Kassin remarked to Patel, in an email dated July 12, 2007, that: "There is no realism in the schedule whatsoever" and that "we should have bought Huntsman at 26/27 – not Hugo at 48." At the same time, Kassin remarked to Bigman, Trautz and Patel in a

separate email that the meetings between Lyondell and Basell needed to start as soon as possible the morning of July 13th, because "starting at 1 pm has us really losing half a day in a schedule that has no fat." The next day, despite Access's efforts to expedite the process, a meeting that was scheduled to take place on Friday, July 13, 2007 was delayed, because, according to an email from Kassin, "the Hugo CFO just called me and they are still scrambling and have been really caught flatfooted."

189. On Friday, July 13, 2007, DeNicola, Galvin, Phillips and Dineen participated in a late evening meeting at the New York office of Lyondell's counsel, Baker Botts, in which Lyondell's senior management prepared for the presentation to Access and the investment banks of the bogus "refreshed" projections scheduled to occur the next day at the New York office of Skadden Arps. This group of Smith's inner cadre of senior management reviewed the changes that had been made from the 2007 LRP and all were aware of the bogus nature of the "refreshed" projections. At 11:22 p.m. on July 13, 2007, DeNicola emailed Smith (copying Galvin), advising Smith that DeNicola, Phillips and Dineen were still at Baker Botts' office, and that they were "finalizing mgnmt presentations and financial projections." DeNicola reported to Smith that the "refreshed" projections would be released to the "financing banks tomorrow morning [*i.e.*, July 14, 2007]." As discussed below, the projections presented on July 14, 2007 with one discrete adjustment for EC&D for 2010, were identical to Salvin's bogus "Today's View" projections in Salvin's June 18, 2007 spreadsheet.

190. The sole due diligence meeting between Lyondell's management and the banks (*i.e.*, Merrill, Citibank, and Goldman) occurred at the offices of Skadden Arps in New York on Saturday, July 14, 2007. During this meeting, Lyondell's management team gave a PowerPoint presentation (the "**Management Presentation**") to representatives of Basell, Access, Citibank,

Merrill and Goldman. Smith's three "trusted" senior management members, DeNicola (CFO), Phillips (head of Refining) and Dineen (head of EC&D/PO & RP) made the presentation: DeNicola presented the Financial Overview, which included the bogus "refreshed" LRP.[17] Galvin also attended. The EBITDA projections for years 2008 through 2011 contained in the Lyondell Management Presentation were identical to the "Today's View" contained in the June 18 spreadsheet from Salvin, other than a downward adjustment of $100 million for EC&D in 2010. The EBITDA projections set forth in the Lyondell Management Presentation were as follows:

EBITDA (in millions of $)

YEAR	2007 (E)	2008	2009	2010	2011
Refining	1,568[18]	1,700	1,600	1,500	1,300
EC&D	950	1,150	800	600	600
PO& RP	730[19]	657	664	701	676
Total	3,248	3,507	3,064	2,801	2,576

191. Unlike the EBITDA forecasts for 2008-2011 in the 2007 LRP and Merrill Lynch's July 10, 2007 Base Case for Lyondell, each of which fell considerably short of the average annual EBITDA of ">$2.7 bn," Access's Benet thought necessary to support the $48/share acquisition price and "start paying down debt in 'good times'," the inflated EBITDA in the Management Presentation met this mark.

[17] Phillips, for his part, claimed to not have been involved at all in the refreshing of the Refining projections, testifying at a deposition that he first learned about the refreshed projections when preparing for his deposition (in January 2010), although he was present at the meeting held by senior Lyondell management at Baker Botts on July 13, 2007, at which the "refreshed" projections were reviewed, was present for the presentation on July 14, 2007 at Skadden Arps, and was copied on email communication late on July 14, 2007, establishing that Phillips was aware that Lyondell was improperly reverse-engineering margin and volume data.
[18] Including "turn around adjustment."
[19] Including "adjustments."

192. Access was also provided with quarterly EBITDA estimates, set forth below, for each quarter of 2007. These showed that management now projected total EBITDA of $3.248 billion for the year ending 2007. This 2007 projection included $818 million of EBITDA for the third quarter of 2007 and $916 million of EBITDA for the fourth quarter of 2007:

	A	C	D	E	F	G	H	I	J	K
1	Segment EBITDA									
2		1Q07	2Q07	3Q07	4Q07	2007	2008	2009	2010	2011
3	Refining	133	457	408	400	1,398	1,700	1,600	1,500	1,300
4	Turn around adj	140	30	0	0	170	0	0	0	0
5	Total Refining	273	487	408	400	1,568	1,700	1,600	1,500	1,300
7	EC&D	177	212	243	318	950	1,150	800	600	600
9	PO&RD	87	218	167	198	670	657	664	701	676
10	Adjustments	60	0	0	0	60	0	0	0	0
11	Total PO&RD	147	218	167	198	730	657	664	701	676
13	Total	597	917	818	916	3,248	3,507	3,064	2,801	2,576

193. From July 12, 2007 through July 15, 2007, the parties and their external and internal legal counsel prepared and negotiated the form of a definitive agreement for the transaction and related documentation.

194. On Saturday, July 14, 2007, Lyondell retained Deutsche Bank Securities, Inc. ("**DBSI**") to deliver an opinion to the Board as to the financial fairness to Lyondell shareholders of the price to be paid for Lyondell common stock. Since Salvin had not included margin and volume assumptions in his "refreshed" projections, Lyondell under the direction of Smith and his inner circle of senior management, decided to manufacture or, in reality, reverse-engineer margin and volume assumptions to support Salvin's arbitrary EC&D figures. The margin and volume assumptions which supposedly supported the EC&D projections but which were reverse engineered with DeNicola's direct input to result in revised EBITDA amounts for EC&D, were supplied by Tanner to DeNicola, Phillips, Dineen, Galvin and Pike at 11:40 p.m. on July 14, 2007, only after the Management Presentation was made at Skadden Arps' New York offices.

Even Salvin has conceded that reverse-engineering margin and volume assumptions for projections was entirely improper, yet this is precisely what Lyondell did. For its part, DSBI simply plugged in the "refreshed" projections, without any changes or effort to determine if they were in any respect appropriate or reasonable.

195. These fabricated and reverse-engineered volume and margin assumptions are shown below:

	2007	2008	2009	2010	2011
Refreshed EC&D EBITDA, million dollars	$ 950	$ 1,150	$ 800	$ 600	$ 600
Volume, million pounds					
Ethylene	9847	10430	10154	9871	10075
Polyethylene	5470	5507	5184	5061	4945
EBITDA Margin, cents per pound					
Olefins	6.34	8.61	6.6	5.26	5.33
Polymers	3.29	3.45	2.41	1.6	0.91

196. Over the preceding months, Merrill had been providing to Access financial models of the proposed merger based on "Street" analysis of Lyondell which included projections accessed during the Houston refinery auction process in 2006. On or about July 14, 2007, Access provided Merrill with the latest, newly updated and inflated projections for Basell EBITDA, increasing the EBITDA projected to be achieved by Basell for the five year period 2007 through 2011 by approximately $650 million (almost 10% over the most recent cumulative EBITDA provided to Merrill). By Sunday, July 15, 2007, Merrill had generated a revised model of the Transaction, incorporating Lyondell management projections and "updated" Basell projections. Merrill's new "Base Case" EBITDA projections (the "**July 15 Base Case**"), set forth in the table below side by side with Merrill's "Base Case" EBITDA projections of only a few days before (the "**July 10 Base Case**"), were materially higher.

Fiscal Year	**July 10 Base Case**	**July 15 Base Case**	**Percentage Change from July 10 to July 15**
2007	$4,839	$5,375	+11.1%
2008	$4,435	$5,222	+17.7%
2009	$3,878	$4,281	+10.4%
2010	$3,435	$4,005	+16.6%
2011	$3,538	$3,906	+10.4%
2012	$3,878	$3,928	+1.3%
2013	$4,144	$4,090	-1.3%

197. Conveniently, the July 15 Base Case, unlike the old July 10, 2007 projections (dated only three business days earlier), showed the enterprise's combined debt/EBITDA ratios would stay comfortably below the "too risky" 5x levels which had prompted Merrill to raise the issue of requiring additional equity from Access.

198. Lyondell management, having been authorized by the Board to progress the transaction based on the bogus "refreshed" projections that they had been shown on July 10, represented that those projections represented an actual forecast of Lyondell's earnings – which was untrue. Blavatnik insisted that the merger agreement had to be signed by Monday, July 16, 2007, and, consequently, Access recklessly accepted Lyondell's internal "management projections" and used them to pump up the purported valuation of Lyondell. Greased in this way, the transactional wheels continued to move forward. The idea of obtaining a commitment from Access to support the merged entities with additional equity was apparently abandoned by Merrill.

199. On July 16, 2007, Access and Basell made a formal written proposal to Lyondell to acquire all of the common stock of Lyondell for a cash purchase price of $48 per share and outlined the other terms of Basell's offer, as reflected in the proposed form of merger agreement

and the Commitment Letter (as defined below). The proposal explained that the $48 per share price was a "compelling price" for Lyondell's shareholders because it represented:

- a 45% premium to the closing stock price of $33.07 on May 10th (the day prior to public disclosure of Access's agreement to acquire a 8% position in Lyondell)
- a 40% premium to the 52-week "unaffected" high closing price through May 10th of $34.18 (closing price on May 3, 2007)
- a 128% premium to the 52-week unaffected low closing price through May 10th of $21.05 (closing price on June 13, 2006)

200. Later in the day on July 16, 2007, a special meeting of the Lyondell Board was held. At the July 16, 2007 meeting, the Board had access to and reviewed the financing materials describing the manner in which the payments to shareholders would be funded. This financing was considered and discussed by the Board. The Board also reviewed the payments that would be received by Board members based on the $48 price pursuant to the various benefit and incentive plans in which management and the Board participated. The Board was made aware of the source from which these payments would be made, the level of debt that would be incurred upon closing to fund these and other payments and that the financing parties to the Merger would have no "out" if it turned out that the Company did not perform as expected based on the management projections that had been provided. There is no record that the Board discussed or considered the devastating impact, or even the risk of leverage on present or future creditors of Lyondell that they all were aware the Transaction would cause. Instead, it appears that all Board members consciously ignored and intentionally turned a blind eye to the disastrous consequences to creditors of the leverage being incurred pursuant to the Transaction.

201. After having been retained only two days prior, DBSI made a presentation to the Board at the July 16, 2007 meeting in support of the finding of DBSI that the consideration to be received by shareholders upon the Merger was fair to them. The grossly inflated "refreshed"

projections for refining operations and the inflated EC&D projections were included in the DBSI materials, without change. There is no record that any member of the Board questioned the source of those projections at the July 16, 2007 meeting or took any steps to educate him or herself regarding the bogus process which had resulted in almost $2 billion of EBITDA being added to the projections in the context of the Transaction. For his part, Smith was silent on this as well, in order to ensure that the Transaction would be rubber-stamped by the Board, whom he knew would follow his lead on the Transaction. Chazen, who in July 2006 had warned the Board that Smith's refining EBITDA projections for Project Quincy were materially inflated, stood by silently although he was well aware that the "refreshed" projections added a bogus level of further inflated projections for Refining and that the EC&D projections were unsupportable. Chazen's company, after all, had just made $326 million in selling its entire block of Lyondell stock (via Merrill Lynch) to Blavatnik's shell entity, AI Chemical, and he was eager to protect the Occidental sale; Chazen simply fell in line with the other Board members, and, rather than recuse himself, rubber-stamped the deal Smith had negotiated. Afterwards, no member of the Board has acknowledged having any understanding of what had changed between the adoption of the inflated 2007 LRP (or even the Spring 2007 Ratings Agency Presentation) and the creation of the bogus management projections provided to DBSI to account for the enormous disparity. One Board member after-the-fact falsely speculated that it could be due to "interest rates" or a change in the "terminal value" used in the valuation. Another member of the Board, questioned about the disparity between the LRP projections and the projection provided to Deutsche Bank, falsely asserted that the Board had no knowledge of the LRP process other than what was brought to its attention by management.

202. In rendering its opinion, DBSI simply accepted the financial forecasts and projections provided to it by Lyondell, and thus expressed no view as to the reasonableness of such forecasts and projections, or the assumptions upon which they were based. Nor did DBSI assume any responsibility for independently verifying any information that it relied upon, whether publicly available or furnished to it. The Board did not request of DBSI, and DBSI did not provide, an opinion regarding whether the Transaction would result in the insolvency of Lyondell or result in Lyondell being unable to pay its debts when due. In return for providing the Fairness Opinion (two days after being retained), DBSI received a Transaction Fee of $35 million. A large portion of this fee ($25 million) was dependent upon consummation of the Merger.

203. With full knowledge of the debt to be incurred by the Company to finance the buy out of shareholders, the absence of a financing out, and knowledge that management projections had been materially increased without, at minimum, any known basis, the proposed transaction was unanimously approved by each member of the Lyondell Board.

204. By approving the Merger, the Lyondell Board effectively turned over all of the value of Lyondell to Blavatnik for him to use as collateral to borrow all of the cash necessary to pay the Merger Consideration. The Board provided this approval knowing that the financial projections upon which the financing parties were committed to fund had artificially inflated the value of Lyondell and that the earning that the financing parties projected would be achieved upon the Merger were, in fact, not attainable. Each member of the Board further knew that the entity resulting from the Merger, due to its high leverage, would have insufficient financial resources to enable it to fund operations through the coming cyclical downturn in the industry.

The Board knew that as a consequence of the Merger, a bankruptcy or a restructuring could likely occur with the outcome that Lyondell creditors would not be paid.

205. Upon the Merger, each outstanding share of Lyondell common stock would be converted into the right to receive $48 in cash, funded using the value of Lyondell assets. Notably, members of the Lyondell Board, including Smith, stood to earn huge sums of money on the deal. In addition to benefiting from the Merger to the extent of existing stockholdings, they would receive additional payments triggered by the Merger.

206. Approximately $21 billion was necessary to complete the proposed acquisition including approximately (i) $12.5 billion of Merger Consideration to be paid in respect of the outstanding shares of Lyondell's common stock, (ii) $7.1 billion plus an additional approximately $500 million in related prepayment fees to refinance certain existing indebtedness of both legacy companies, (iii) approximately $574.6 million[20] to pay fees and expenses in connection with the Transaction and the financing agreements, and (iv) $337.3 million to pay amounts pursuant to various Lyondell benefit and incentive plans, stock option plans, and other equity based incentive programs, including certain change in control arrangements.

207. On the same day as the three banks agreed to provide $21 billion of financing to enable Blavatnik to amass his global petrochemical company, Blavatnik caused Basell to issue a shareholder dividend in the amount of €75 million, draining Basell of the capital that it shortly would desperately need. This was the second Basell cash dividend of 2007, the prior being a dividend on or about May 29, 2007, for €140 million.

[20] Including M&A advisory and financing Arranger fees, other professional fees, and costs and expenses. Assumes $1.40/€.

208. On or about July 16, 2007, a formal vote was held at Basell to approve the proposed acquisition.[21] At a deposition conducted in a Lyondell shareholder litigation following the signing of the Merger, Kassin, who served on Basell's Supervisory Board, claimed he voted against the transaction, later explaining that he found the $48 per share price "ludicrous," and could not, consistent with his fiduciary responsibility as a member of Basell's Supervisory Board, vote in favor of it. According to Kassin, Trautz was also opposed to acquiring Lyondell at $48 per share.

209. On or as of July 16, 2007, the parties executed and delivered the Agreement and Plan of Merger, dated as of July 16, 2007 among Basell, BIL Acquisition Holdings Limited, a wholly owned Delaware subsidiary of Basell, and Lyondell (the "**Merger Agreement**").

210. As negotiated between Basell and Lyondell, the Merger Agreement had no "financing out" – Basell's obligation to close the Transaction was not conditioned on its ability to find the money to pay for it. On the same day as it entered into the Merger Agreement, Basell obtained a commitment letter from Merrill, Citibank, and Goldman. Pursuant to the commitment letter, the three co-lead banks committed to fund up to $14 billion of first lien secured credit facilities, including a $13 billion Term Loan, and up to $7 billion of second lien loans pursuant to a bridge facility. Basell, at its option and in lieu of the bridge facility could issue up to $7 billion in principal amount of second lien notes and/or senior unsecured notes (at the option of the banks) in a private debt offering. Merrill, Citibank, and Goldman were appointed as joint

[21] Although Blavatnik, Kassin and Bigman gave sworn deposition testimony that they each participated in their capacities as members of the Basell Supervisory Board in a meeting held in July 2007 to consider and approve the Merger, minutes produced to the Trustee indicate that Blavatnik's approval was given in his capacity as a member of the supervisory board of Basell Holdings BV ("BV Supervisory Board"). Reflecting the confusion or indifference to corporate formalities on the Basell side, Blavatnik's counsel (notwithstanding Blavatnik's sworn testimony regarding the Supervisory Board of Basell) has since stated that before the Merger, Basell did not have a Supervisory Board.

lead arrangers, bookrunners, and global coordinators for the first lien credit facilities. ABN AMRO joined as a fourth lead arranger in early August.

211. On July 17, 2007, prior to the opening of trading on the New York Stock Exchange, Lyondell and Basell issued a joint press release announcing the proposed transaction.

212. On or about August 25, 2007, Basell made an irrevocable offer to purchase the Berre L'Etang Refinery ("**Berre**") from Royal Dutch Shell plc for a purchase price of approximately $947 million. Basell made the commitment, which like the Merger, had no financing contingency, without funding in place to pay for this billion dollar asset and without a plan on how to finance the purchase. Of course, Basell intended to fund the purchase of Berre with further borrowings. The financing of the Berre acquisition remained an open issue throughout the fall of 2007, and Patel wrote to Twitchell on September 13, 2007 that "[n]o bank or bondholder will just fund into this deal [without] a definitive answer on how the refinery will be financed."

213. In October, when UBS agreed to join Merrill, Citibank, Goldman, and ABN AMRO (collectively, the "**Lead Arrangers**"), these parties agreed to increase the size of the commitment from $21 billion to $22 billion in exchange for various pricing concessions. As the Lead Arrangers duly noted at the time, the additional $1 billion of funding, earmarked to pay for Berre and other assets Basell hoped to snap up, further increased the leverage at which the company would be forced to operate.

II. Lyondell Continues to Underperform, Smith Discloses to Blavatnik on September 11, 2007 Missed Targets, And Blavatnik Elects to Cross the Rubicon

214. In mid-July 2007, when Basell entered into the Merger Agreement and contractually bound itself to buy Lyondell for $48 per share, all of the parties to the Merger Agreement knew that the combined companies would be severely challenged to generate

sufficient earnings through a downturn in the industry cycle to fund operations and service the mountain of debt to be incurred. The members of the Board of Directors of Lyondell knew that the entire transaction would be financed with debt: Lyondell's Quarterly Report on Form 10-Q for the quarter ended June 30, 2007 (the "**June 30, 2007 10-Q**") contained the following disclosure regarding the impact of the planned Merger on Lyondell's financial condition and, inferentially, on its future access to the credit markets:

> Basell intends to finance the merger consideration with borrowings and, as a result, Lyondell would have become more levered, which would exacerbate the risks relating to Lyondell's level of debt. In July 2007, Standard and Poor's Rating Services placed its credit rating for Lyondell, Equistar and Millenium debt on Credit Watch with negative implications and Moody's Investor Service placed the rating of Lyondell, Equistar and Millenium under review for possible down grade, *each as a result of the anticipated post-merger capital structure.*

(Emphasis added).

215. The Lyondell Board also knew that the highly-leveraged company would face significant barriers in obtaining additional financing in the highly foreseeable event that the liquidity available through the financing put in place upon the Merger was insufficient. Lyondell's June 30, 2007 10-Q presented the leveraging of Lyondell pursuant to the Merger as a risk factor: "Lyondell's consolidated balance sheet is highly levered and, if the merger is completed, Lyondell may become more levered which would exacerbate the risks described herein."

216. These risks were more specifically described to include the following:

> *Lyondell may not be able to obtain financing in the future for working capital, capital expenditures, acquisitions, debt service requirements or other purposes;* less levered competitors could have a competitive advantage because they have lower debt service requirements; and in the event of poor business conditions, Lyondell may be less able to take advantage of significant business

> opportunities and to react to changes in market or industry conditions than its competitors.

(Emphasis added).

217. Thus it was clear, at the time of the signing of the Merger Agreement (apart from the bogus "refreshed" projections), that the economic enterprise created by combining Basell and Lyondell was severely disadvantaged by its proposed capital structure.

218. Almost immediately following the signing of the Merger Agreement and long before the Merger closed, emerging operating results for Lyondell and other information demonstrated that the "Today's View" EBITDA projections which had been incorporated into the July 15 Base Case were, at a minimum, unreasonably and speculatively optimistic. Data available to the capital markets and to the managements of Lyondell, Access, and Basell, demonstrated that petrochemical manufacturers, unable to pass on increased feedstock costs, were experiencing a strong compression of margins. In short, the window to do a leveraged finance deal in petrochemicals had closed.

219. The sobering reality for Lyondell was repeatedly confirmed and reconfirmed in the weeks and months leading to the December 20, 2007 closing. Lyondell's final numbers for the second quarter were below its projections. Lyondell's performance for the third quarter of 2007 departed even more sharply from the "refreshed" projections presented in the Lyondell Management Presentation. Instead, these results looked remarkably like the "Downside Case" that analysts at Merrill and Citibank had included in their reports to their credit committees. As the year moved into the fourth quarter, even the "Downside Case" was looking unduly optimistic. Clouding the prospects for strong earnings, crude oil prices, which had been rising steadily all year, were continuing to rise and there were growing concerns that increasing energy costs, among other factors, would trigger a recession. For his part, Trautz was not surprised in

the least that oil prices would continue to rise, and suspected, even before the Merger Agreement was signed, that the trend of increasing oil prices alone was likely to ensure that Lyondell would not meet its rosy projections for the second, third, and fourth fiscal quarters of 2007. If this spike in oil prices occurred, and price increases could not be passed on to customers, margin squeeze could result in earnings in line with the Credit Stress Test scenario that had been run by Merrill in April 2007, which showed Lyondell's EBITDA for 2008 dropping to approximately $2.1 billion.

220. With so much at stake in the continuation of robust earnings through 2007, once the Merger Agreement had been inked, Lyondell's operating results, including its final, adjusted EBITDA balances for the second quarter of 2007, emerging results of the third quarter and its revised earnings projections for the balance of the year, were eagerly awaited by Access and the Lead Arrangers. This data would be a centerpiece of the presentations to prospective lenders being prepared by the Lead Arrangers to syndicate the $21 billion in debt that they had committed themselves to fund.

221. In actuality, as early as July 19, 2007, just *three days* after signing the Merger Agreement, Lyondell management, under Smith's direction, already knew that it would not meet its third quarter EBITDA projections for 2007. Thereafter, it was estimated that Lyondell would miss its third quarter EBITDA projections for 2007 by $85 million or approximately 10%. Ultimately, the third quarter miss, at $134 million, or approximately 16%, was even larger than estimated.

222. Despite knowing by no later than mid-August that Lyondell would widely miss its third quarter projections, Smith did not disclose this information to anyone at Access until September 11, 2007. On that date, Smith finally sent an email to Blavatnik with emerging

results of the third quarter. In that same email, Smith also informed Blavatnik that Lyondell was likely to miss its fourth quarter EBITDA projections by approximately $200 million, or approximately 22%. Smith provided no explanation for these significant misses. Overall, actual EBITDA for 2007 would miss Lyondell management's EBITDA projections for 2007 by $376 million, and actual EBITDA for the second half of 2007 was 27% below the projections contained in the Lyondell Management Presentation.

223. The reaction inside Access was alarm – Lyondell was materially missing projections that had been provided by Lyondell's management on July 14, 2007, merely two months earlier, and just prior to execution of the Merger Agreement. The assumption underlying the Lyondell management projections that had been used by Merrill for its July 15 Base Case, that the strong performance of the first quarter of the year would be sustained through the year, had been exposed as completely wrong. Blavatnik, noting the drop, responded to Smith's September 11 email stating, "Quite a change from your team's projections." At the same time, Blavatnik forwarded the results to Alan Bigman (Basell) and Philip Kassin (Access) asking, "Much below projected??" Kassin responded in two separate emails. In the first, he responded, "3rd qtr original projection was $818 mm." In the second email he wrote, forwarding the "refreshed" projections that had been presented at Skadden Arps on Saturday, July 14, 2007, "fyi – HERE WAS THE FORECAST THEY GAVE US WHEN WE SIGNED MERGER AGREEMENT."

224. Patel, emailing Alan Bigman and others, raised the possibility that Basell consult with its attorneys to consider its "options." To Kassin, Patel ticked off a list of recent leveraged transactions ("**Great, Harman, SLM, Genesco, Reddi Ice**") that had been renegotiated or from which one party had sought to back away based on purported changes in circumstances.

225. As the management teams for Lyondell, Basell, and Access prepared in late September 2007 to present updated pro forma financials to the banks financing the Merger, Bigman was gravely concerned. Emailing Kassin and Patel on September 24, Bigman stated that "Lyondell's shortfall is the number one problem we face—by a big margin." Patel responded, "the banks will be very, very troubled by the updated projections when they hear them on Wed." Lyondell management struggled to explain and minimize the significance of the earnings shortfall.

226. With a choice between confronting Lyondell about the deeply off-the-mark projections for 2007 and potentially renegotiating or even scuttling the Transaction, Blavatnik instead made the cross-the-Rubicon choice to protect his enormous tax-free profit and other significant consideration he was extracting in connection with the Merger and to join forces with Lyondell in falsely portraying and inflating the combined enterprise's prospects over the projection period. Blavatnik had compelling financial and other reasons to do so. Blavatnik already had convinced the banks to fully finance the Transaction, Blavatnik had blunted the bank's request that Blavatnik contribute his "equity" in Lyondell to the deal, Blavatnik had drained Basell of needed capital having extracted €215 million from Basell in the form of "shareholder distributions" since filing his Schedule 13D (he would extract another €100 million on December 7, 2007)[22] and Blavatnik was slated to cash in a $333 million short-term profit on his Toe-Hold Stake (whereby over $1.2 billion in Merger Consideration was transferred to or for the benefit of Blavatnik), and would receive a $100 million Transaction fee, in addition to other consideration, such as a $25 million annual management fee. After all, it would be Lyondell's creditors, not Blavatnik (who extracted over $880 million, most "tax free" in connection with the

[22] On May 29, 2007, Blavatnik extracted a "shareholder distribution" of €140 million from Basell, and on July 16, 2007 (the same day the Merger Agreement was signed and the investment banks agreed to provide financing), Blavatnik caused Basell to issue a second "shareholder distribution" in the amount of €75 million.

Merger), who would take the hit if the Merger resulted in a collapse of the Company. Moreover, Blavatnik wanted to avoid the fees and penalties the banks were entitled to extract upon a failed syndication.[23]

227. In his own effort to preserve the Transaction, Blavatnik and his team looked first to artificially chop costs and identify, non-existent synergies in an effort to preserve the deal. To cover up the shortfall, adjustments were made to the EBITDA balances to add back over $237 million to the EBITDA for the first two quarters, supposedly for "non-recurring costs." Watching the process of Lyondell scurrying to get ready to explain the status of the deal to the banks, commented Patel, was "like witnessing a slow motion train wreck." Kassin anticipated that banks that were planning to participate in the syndication would be "screaming bloody murder" and "requesting backup on Q3 and Q4 data for their credit comms." Kassin also warned Blavatnik to "expect more fireworks" from the banks after they receive the business plan and projections. Notwithstanding the foregoing, Blavatnik and his team did not press Smith to disclose the basis or backup for the "refreshed" projections, and Smith and his inner cadre of senior management, not surprisingly, did not volunteer to do so. On the Lyondell side, Dineen took the lead assisted by Pike, in facilitating the identification of artificially inflated synergies.

228. Lyondell's poor performance provoked strong concerns about the banks' ability to syndicate the deal. Although the banks' obligations to fund were not technically conditional on a successful syndication, a failed syndication would have repercussions on all parties. Access had a material interest in the successful syndication of the loans because, if syndication was

[23] According to published reports, by late 2013, Blavatnik, who had the financial means to invest in shares of the reorganized LyondellBasell as it emerged from bankruptcy (stripped of billions of dollars of debt), has been personally enriched to the extent of approximately $5 billion as a result. He reportedly sold $440 million in Lyondell stock in 2013 and has also collected substantial dividends. Such returns, of course, are directly related to the discharge in bankruptcy of billions of dollars of acquisition financing, trade and other debt, the pain of which was born by Creditors.

unsuccessful, the banks had a variety of options, including the prerogative to increase interest rates on certain tranches of the Merger debt, to increase the commitment fees on undrawn portions of certain facilities, and otherwise re-tranche debt on terms more favorable to the banks. To support the syndication, and notwithstanding the fact that the July 15 Base Case had been exposed as unrealistic, Basell, Access and Lyondell now had a common burden to present projections showing that earnings would be sufficient for LBI to finance its businesses though the expected earnings downturn. Writing to Blavatnik on September 14, 2007, Kassin made clear that he understood that the objective for the upcoming presentation to be made to the Lead Arrangers was "to sell 20b in debt."

229. Kassin, keeping Blavatnik in the loop, also set out his roadmap of how to goose the projections to get to the necessary magic numbers. First of all, Trautz and Bigman could not afford to be conservative so as to assure that projections would be met. Second, Basell management needed to layer optimistic projections with purported "synergies" that would boost the projections. "Synergies" – reduced costs of operations (either through the elimination of redundancy, greater efficiency, or other means) anticipated in connection with a business combination – are notoriously "soft" numbers, and here, for a number of reasons, Lyondell and Basell were ill suited to realize cost reductions due to claimed "synergies," had not done adequate due diligence on potential synergies, and were left to exaggerate or invent various potential synergies to attempt to compensate for the loss in EBITDA.

230. Trautz, for his part, expressed his skepticism over the ability to rely on aggressive claimed synergies to make up for lost EBITDA. Kassin acknowledged that while Trautz's concerns were valid, in order "to achieve good execution on the financing and give the NewCo a better financial footing we need to 'sell' a realistic synergy scenario to the market . . . applying

leverage to this number will be very helpful . . . erring on the side of being not too conservative helps here greatly." Kassin separately emailed Bigman and Patel on September 22, 2007: "We blow the projections next week to the banks and it will be a disaster."

231. The financial projections of the combined companies developed for a September 26, 2007 presentation to lenders were another feat of reverse engineering, in which Lyondell's bogus projections were combined with Access' own contrived efforts to preserve the deal. Rather than meeting the July 15 Base Case of $3.4 billion of EBITDA for 2007, Lyondell's 2007 EBITDA would come in at no more than $2.7 billion. The problem to overcome: sustaining the believability of the July 15 Base Case in the face of the emerging reality of Lyondell's poor performance for 2007. Reflecting the consensus industry outlook, all of the prior projections of Lyondell's performance submitted by Merrill showed earnings peaking in 2007 and then plateauing or declining in 2008 and thereafter beginning a steeper descent into the anticipated trough in 2011. However, if actual 2007 EBITDA for Lyondell were used as the starting point for this downward descent, projected earnings for each subsequent year would be materially and adversely impacted. Such revised projections would clearly demonstrate that the combined companies were severely undercapitalized and would be unable to cover debt charges through the downturn. Moreover, the reduced earnings projections would also impact the discounted cash flow analysis of LBI and show a company that was either insolvent or, at best, verging on insolvency.

232. The solution to declining earnings? First, ignore all available economic, industry and company indicators pointing to a continued decline in earnings and project a huge earnings spike for 2008. Second, make up lost 2007 earnings in later years by adding "synergies," thus reducing the slope of the downward descent. This intentional further manipulation of projections

is exactly what Blavatnik's team, under his direction, did. At all relevant times, Blavatnik's team was supported in this further manipulation of projections by Smith's inner circle of senior management.

[redacted]

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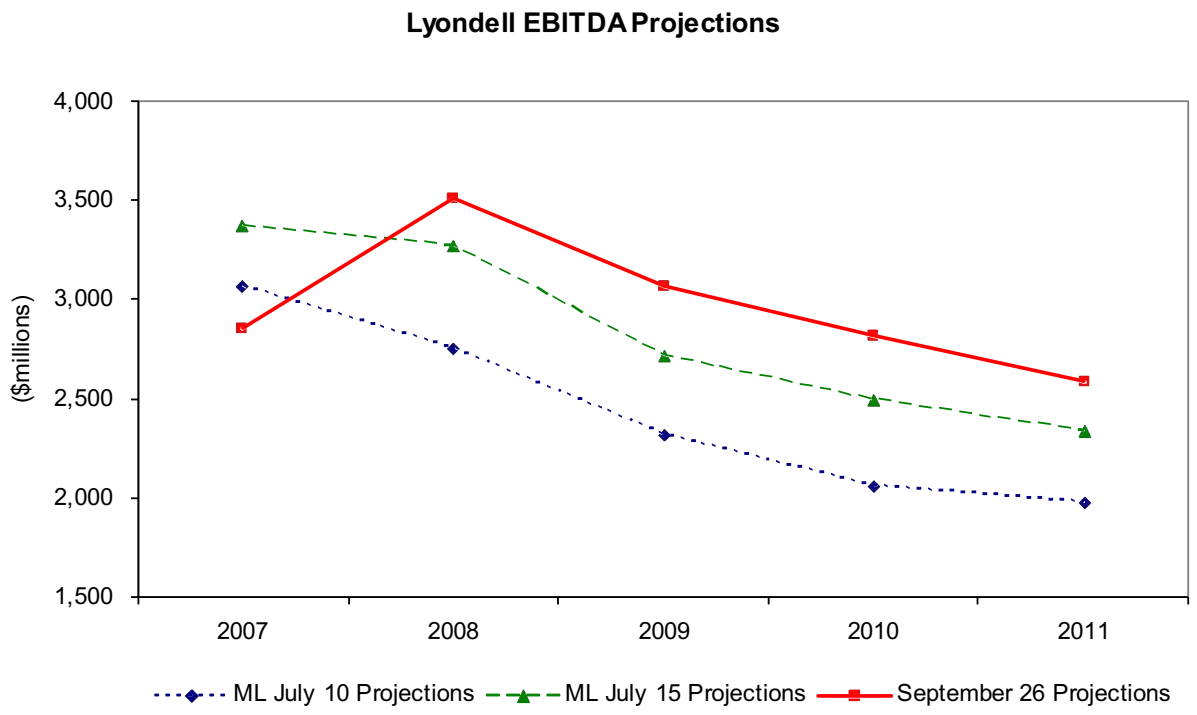
233. Graphed below are projections of Lyondell's performance (i) prepared for Access by Merrill dated July 10, 2007 using only the data then available to Access (including the inflated Quincy projections); (ii) prepared for Access by Merrill, dated July 15, 2007 incorporating the "refreshed" projections supplied by Lyondell management on July 14, 2007 immediately prior to the signing of the Merger Agreement (which by September 11, 2007 were known to be materially inaccurate for 2007); and (iii) projections prepared on behalf of Access in early September 2007 for presentation to lenders on September 26, 2007 (the "**September Projections**").

234. Strikingly apparent is the pronounced spike in earnings (not featured in the prior projections) that now was being projected to occur during 2008. Lyondell thus projected a 23% increase in 2008 EBITDA versus 2007. Notable also is (i) the impact of the projected 2008 spike on earnings projections for each successive year, and (ii) the slower descent of the slope. Whereas the July 15 Base Case had shown EBITDA declining 31% from 2007, a "peak" year, to 2011, a "trough" year, the September Projections now showed a peak to trough decline of less than 10%.



235. The 2008 earnings spike seen in the September Projections was unsupported by any reasoned analysis and inconsistent with industry forecasts. The September Projections baselessly ignored industry forecasts that the decline from the 2005 peak in the margins (the "**crack spread**") for refined petroleum products generally, and particularly for the type of crude processed at the Houston Refinery, *i.e.*, "heavy sour," would continue during 2008 and thereafter. This pressure on margins reflected by Lyondell's third and fourth quarter results was no fluke but was driven by factors that would foreseeably continue to depress margins over time. First, gasoline demand was down due to high prices and the beginning of a weakening in the economy. Second, and longer term, substantial new capacity to convert "heavy sour" was scheduled to come on line in 2009 and beyond. Third, due to local conditions in Mexico and Venezuela, the production of "heavy sour" had declined, driving up its price and reducing the relative discount seen between heavy sour (which is more expensive to refine) and the higher priced "light sweet" crudes. Unaccountably and baselessly, the assumption underlying the

September Projections was that the crack spread for heavy sour would increase materially (by 15%) in 2008 and remain, in subsequent years, at much higher levels than were being forecasted by industry analysts. Thus, whereas the third quarter projection for the Maya crack spread by PGI, a leading refinery forecasting firm, was $24.23 a barrel, projected EBITDA for LBI was based on a margin of $30.41 a barrel for this type of crude. Reflecting the market's understanding that, due to declining demand and increased capacity, the refining cycle was heading toward a downturn, by the end of August 2007, the stock prices for publicly traded oil refining companies had declined by 20% to 25%, with both stock prices and margins projected to slide even further in the fourth quarter.

236. Another unfounded assumption built into the September Projections was that 2008 EBITDA for Lyondell's commodities chemicals business (EC&D) would increase by almost 50% over 2007 EBITDA from such business sector. No such increase was being forecast by analysts. Moreover, the September Projections for this industry segment unreasonably overlooked Lyondell's disadvantages, relative to its competitors, including, without limitation, its dependence on liquid feedstocks (the prices of which were increasing) as opposed to natural gas feedstocks (which had remained relatively stable). Rather than forecasting a surge in profitability for 2008, analysts, including CMAI had, during the course of 2007, grown increasingly bearish on basic petrochemicals, repeatedly adjusting downward projections on margins for leading petrochemical products such as ethylene and polyethylene. Broader indications of industry prospects also pointed to 2007 being the end of the peak. In July 2007, Standard & Poor's announced that the entire industry's average credit rating was deteriorating and cut the credit ratings of two-thirds of the chemicals companies it covered to speculative status.

237. For anyone to have projected future performance based on Lyondell materially outperforming its industry peers in 2008, as is implied by the projected 23% spike in refining EBITDA and the projected expansion of petrochemicals margins, was manifestly unreasonable, if not fraudulent. In fact, in addition to the reasons stated above, for the additional reasons summarized below, all of which were known to Lyondell and Basell management, following the Merger, both historical Lyondell and the combined Lyondell and Basell companies were far more likely to underperform relative to their peers and be less able to compete in a downturn:

a. Lyondell's Houston Refinery. Lyondell's Houston Refinery, one of Lyondell's most important assets, had a significantly higher cost of production than its competitors and its profitability was dependent on, among other factors, the discount at which "heavy sour" crude could be purchased relative to lighter, sweeter grades. By 2006 it was known that the competitive advantage derived from the Houston Refinery's ability to refine "heavy sour" crude was diminishing due to the narrowing of this differential, a trend that was expected to continue.[24]

b. Olefins (Ethylene, Propylene Butadiene, and Isobutylene). Both Lyondell and Basell's olefin businesses were heavily exposed to the slower growing markets in North America and Western Europe, where their facilities were primarily based, and both lacked a significant low-cost business presence in the Middle East, exposing the combined company to substantial additional risk in the olefin business during the next industry down-cycle. Lyondell's and Basell's olefin assets were also older (relative to their competitors) and smaller (relative to their competitors). They also were particularly economically vulnerable to shutdowns (*e.g.*,

[24] As noted above, Basell, prior to the Merger, had entered into a contract to purchase Berre. The closing of the acquisition of Berre occurred in April 2008, but the risks associated with such acquisition were known before the Merger. Moreover, as discussed below, Goldman told Access, before the closing of Berre, that it was "morally wrong" for Basell to acquire Berre and that Basell should "break" the deal. Basell spurned Goldman's request and acquired the refinery, further exacerbating LBI's liquidity problems.

Basell's steam crackers). Unlike its domestic competitors, moreover, Lyondell's olefin facilities, which are based in the United States, significantly rely on "heavy liquid feed" (*i.e.*, distillates from the Houston Refinery), which puts Lyondell's olefin business at a competitive disadvantage in the United States.

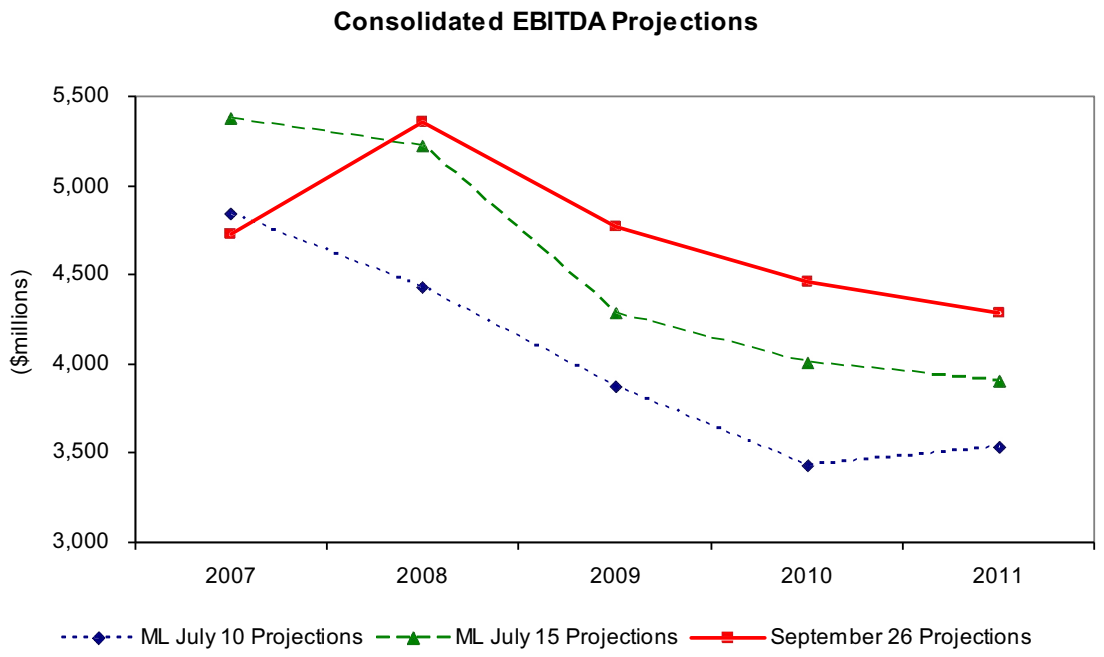
c. Polyethylene (High and Low Density). Both Lyondell and Basell, due to their primary presence in North America and Western Europe, were heavily exposed to slower growing markets in these regions and additional pressures due to environmental regulation and were not positioned to participate in developing higher margin products with their existing facilities. Due to their relatively uncompetitive cost structure and their geographical footprint focused on North America and Europe, Lyondell and Basell were exposed to be harder hit by the next high density polyethylene industry downturn. Lyondell's low density polyethylene business focused on lower margin products, which would be particularly vulnerable in the next downturn. Both Lyondell and Basell had older, smaller scale facilities than their competitors. In Lyondell's case, its facilities carried higher overhead relative to its competitors due to inefficiently operated facilities with high maintenance costs. Basell suffered from the same infirmities (*i.e.*, its Frankfurt, Germany facility was old, small, and had a higher cost of production relative to its competitors).

d. Propylene Oxide and Derivatives, Acetyls, and Aromatics. Lyondell's presence in each business sector had a competitive disadvantage. For example, in Propylene Oxide, Lyondell was heavily dependent on co-product technology, which was facing pressure both from significant competition and legislation at the time (*i.e.*, MTBE, which was being phased out as an oxygen aid for gasoline and is now banned in the United States, and co-product styrene, which was a poor industry performer). In Acetyls, Lyondell had only a single

production site compared to a global and growing presence for its key competitors (BP and Celanese Corporation). And in Aromatics, Lyondell's business carried high unit costs due to its lack of scale compared to its competitors.

e. Technology. Basell's technology revenue, which relied heavily on capital, was likely to slow considerably due to the impending petrochemical industry trough, reducing investment in the technologies it licensed.

238. The September Projections for the combined Lyondell and Basell entities were even more fanciful than the standalone projections for Lyondell. In addition to the baseless spike in earnings for both its petrochemicals and refinery operations that Lyondell would supposedly enjoy in 2008, the September Projections for the combined companies (graphed below together with the July 10 Base Case and the July 15 Base Case) likewise ignored currently available information indicating the onset of a downturn and were inflated by incorporation of billions of dollars of projected earnings over the five-year projection period based on purported "synergies." Combined projected earnings for 2008 included $75 million of "synergies." Projected earnings for 2009 included $280 million in "synergies." Each subsequent year included $420 million in "synergies."



239. Remarkably, the new projections actually showed combined EBITDA for 2008 to be 13.2% higher than for 2007, even though, as reflected by all prior projections, Wall Street and industry analysts were all projecting that earnings for petrochemicals and refining would trend downwards or remain flat during this period. Even the bogus Lyondell management projections incorporated into the July 15 Base Case showed a 3% decrease during this same period.

240. The projected spike in Lyondell earnings for 2008 and inflated earnings for years 2009 through 2011 were entirely unreasonable, if not fraudulent, and were unsupported by factors intrinsic to Lyondell or Basell, conditions with respect to the industries in which they operated, or the overall economic outlook as forecasted at the time. The synergies were pure speculation, added to bring earnings to where they needed to be rather than based on any expected cost-savings from the Merger. According to Francesco Zerega of Basell, even $250 million (as opposed to $400 million) was a stretch. In an email sent to Trautz and Bigman, Zerega wrote: "given the very limited market/product overlap between Basell and Hugo, a 400 m USD longer term target is in my view very unlikely. A number closer to the 250 m USD

ballpark would be in my view a more logical, challenging and stretching (but not unrealistic) target for the transition team . . . if we talk about higher long term targets, we should also talk about higher implementation costs."

241. Lyondell's official third quarter results confirmed a material downward earnings trend, which Smith had first disclosed to Access on September 11, 2007. As disclosed to the public in its report of third quarter earnings on Form 8-K dated October 25, 2007 (the "**October 25, 2007 Form 8-K**"), EBITDA was $684 million. In order to have remained on target to meet the July 15 Base Case projections for 2007 of $3.4 billion, EBITDA for the third quarter of 2007 should have been at least as high as for the preceding quarter. Instead, the third quarter's $684 million EBITDA was a 23% drop from second quarter EBITDA. In Lyondell's third quarter earnings press release, Smith expressed concern for Lyondell's financial performance:

> Entering the quarter, we and many others in the industry expected that crude oil and ethane costs would plateau at then-current levels; however, they continued to escalate. As a result, significant price increases were required just to offset the cost increases, and margins did not expand to levels that we believe reflect the supply/demand balance. Refining results, while solid, reflected the fact that industry spreads declined from very strong early-summer levels earlier than usual. This occurred despite record low gasoline and distillate inventories as measured by days of inventory. Unfortunately, crude oil and ethane prices have increased steadily throughout the year, and a certain amount of time is needed to pass increases of this magnitude through the chemical and polymer markets. As a consequence, year-to-date results have not fully reflected existing industry operating rates.

242. The outlook for the fourth quarter of 2007 was equally grim. Lyondell's October 25, 2007 Form 8-K warned:

> Thus far in the fourth quarter, both crude oil and ethane price increases have accelerated, setting new highs. Quarter to date, our refining spreads are slightly less than the third-quarter average as our heavy crude advantage has partially offset declines in base refining margins. In the ethylene, co-products and derivatives segment, record high raw material costs are offsetting the benefit

> of recent price increases, necessitating further pricing initiatives. In our propylene oxide and related products segment, oxygenated fuel (MTBE/ETBE) margins have declined following typical seasonal patterns.

243. At the presentation to lenders that took place on or around September 26, 2007, mid-year operating results for Lyondell and Lyondell management's projections for the second half of the year were disclosed to the Lead Arrangers. According to Kassin, when Citibank and Merrill learned of Lyondell's mid-year results, they were shocked over how much Lyondell "missed [its] numbers."

244. During October 2007, the Lead Arrangers began to formally solicit banks and other institutions to participate in senior secured facilities that would be used to finance the Merger. For this purpose, a Confidential Information Memorandum dated October 2007 (the "**October CIM**") and other materials were furnished to prospective lenders. Four tranches of loans were offered pursuant to the October CIM: $2.150 billion in asset-based loan facilities, a $1 billion revolving credit facility, a $2 billion Senior Secured Term Loan A, and a $9.450 billion Senior Secured Term Loan B. The remaining financing of the Merger – the $8 billion Bridge Loan Facility (as hereinafter defined) – was not included in this syndication effort. The October CIM was supplemented during November 2007 with a Confidential Information Memorandum (the "**November CIM**") prepared for purposes of soliciting participation in the $2.15 billion asset-based lending facilities.

245. Not surprisingly, despite the parties' efforts to market the loan syndication, the banks that had been counted upon to participate in the first phase of the syndication were backing away. In an email from Patel to Bigman and others, Patel recalls that several banks whom they had counted on to significantly participate in the loan syndication, including HSBC, JP Morgan, Credit Suisse, and Morgan Stanley, "ran for the hills." Unfortunately for Access, its efforts to

secure participation by threatening to retaliate against banks who were not willing to participate materially in the loan syndication (*i.e.*, by either not allowing them into future Access deals or otherwise terminating business relationships) were not successful.

246. Responding to the failed syndication effort, the Lead Arrangers presented Access with proposed modifications to the terms of the financing as it had been outlined in the Commitment Letter. Whereas the original $13 billion Commitment had consisted entirely of term loans and revolving loans, the Lead Arrangers now proposed to substitute $2.15 billion of receivables and inventory asset-based financing for $2.15 billion of the term loan/revolver financing. Such asset-based financing is a less flexible source of liquidity for the borrower than a committed term loan or revolver since borrowings thereunder are tied to a borrowing base of inventory and receivables. Due to the volatility of the commodities markets, dependency on an inventory based facility is particularly problematic for a petrochemical manufacturer such as Lyondell. If orders slow or the value of inventory declines, the borrower is unable to draw upon the facility because there will be insufficient current receivables and inventory to provide the borrowing base to support borrowings. When prices rise sharply, the size of the facility may quickly become inadequate to finance working capital needs. Then, if prices decline, receipt of cash from product sales may lag behind cash necessary to make required repayments as the borrowing base declines.

247. In September 2007, the management of Lyondell, Access, and Basell knew that the $2.15 billion asset-based facilities being implemented were not the functional equivalent of a conventional senior term loan facility in the same nominal amount such as contemplated by the initial Commitment Letter. Moreover, crude oil prices, which had been approximately $50 a barrel in January 2007, had risen steadily all during 2007, reaching $75 a barrel in September

2007. From and after September 2007 through the December 20, 2007 closing of the Merger, crude oil prices rose at an accelerated rate. From the perspective of this pre-Merger period, and more so as the year approached its end, it was unreasonable not to have available sufficient liquidity in the event prices continued to rise and, instead, to rely on a short-term abatement of price escalation to maintain the company in operation. The increased liquidity needs of LBI were ignored when the asset-based facilities were substituted for the term loan financing; a substitution motivated not by the projected liquidity needs of LBI but by the fact that such asset-based financing limited lender exposure and would be easier for the Lead Arrangers to syndicate. In the months to come, much of the incremental liquidity supposedly available under these asset-based facilities would prove illusory and would vanish precisely when needed, leaving the company with a liquidity shortfall in the range of $2 to $3 billion. This liquidity shortfall was entirely foreseeable to Blavatnik, Access, Lyondell and Basell management.

248. In addition to structural changes made to the financing package, pricing modifications were also made to enhance the potential salability of the loans.

249. On November 20, 2007, the merger between Lyondell and Basell was approved at a meeting of Lyondell shareholders.

250. On November 28, 2007, S&P and Moody's simultaneously downgraded the debt of both Basell and Lyondell, citing the substantial post-LBO increase in debt "at a mature state in the petrochemical cycle."

251. By the end of November 2007, of the $21.6 billion of financing committed to fund the LBO, the Lead Arrangers had succeeded in securing participation only in the $2.15 billion asset-based loans. According to Citibank's closing memorandum, "[t]he deal was mostly funded by underwriters at close with a handful of banks (5) coming in with small commitments."

252. In the midst of the Lead Arrangers' failed efforts to syndicate their loans, on December 7, 2007, Blavatnik caused Basell to issue its third shareholder distribution of 2007, for €100 million, bringing the total amount of cash taken out of Basell in 2007 in the form of shareholder distributions to €315 (or approximately $430 million).

253. On December 10, 2007, an article was published titled "Basell to Delay $21 Billion Lyondell Financing Plan." In this article, Trautz is quoted as saying "We thought we would be going to the markets in October or November, now we think we will go in first or second quarter." Trautz's comments caused more consternation among the Lead Arrangers, as observed by Kassin in an email dated December 10, 2007:

> "Uday [Merrill Lynch] just called to say that the banks are very unhappy with [Trautz's] comments…"
>
> "It gets worse . . . just released on Bloomberg . . . our phones are ringing off the hook."

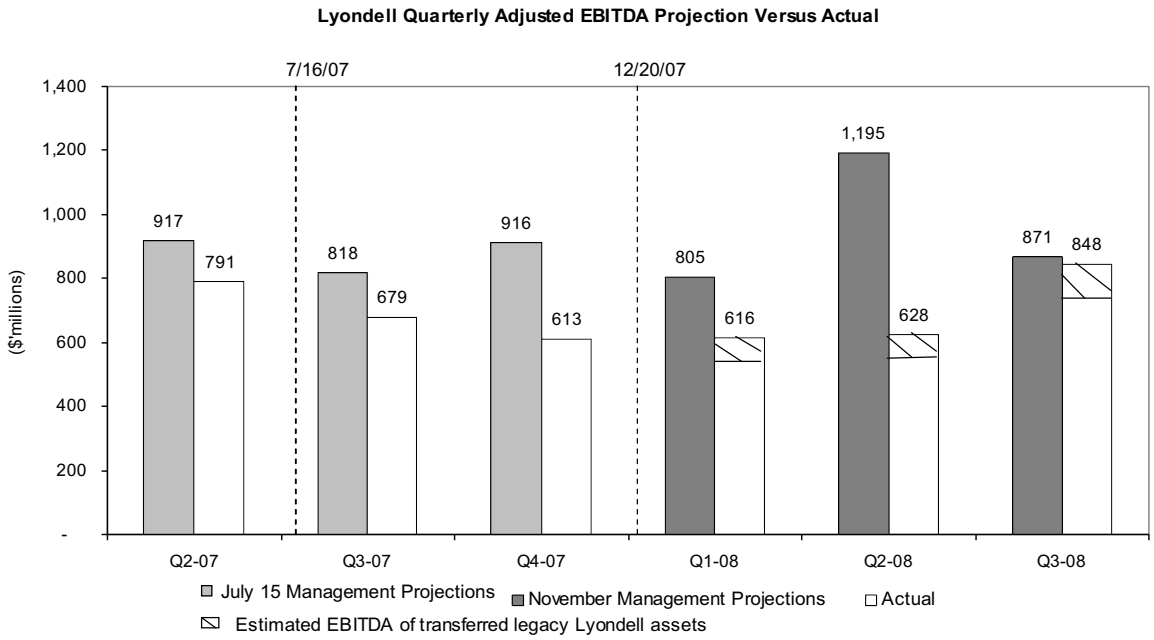
254. On December 11, 2007, Fitch followed S&P and Moody's with its own downgrade of the debt of Basell and Lyondell, citing substantial re-leveraging to facilitate the Transaction.

255. Margins continued to tighten during the fourth quarter. Rather than making up for prior lost earnings, Lyondell operated at a loss during the last quarter of 2007 and had unadjusted EBITDA for that period of approximately $613 million, off by approximately 33% from the Lyondell Management Presentation. Actual EBITDA for Lyondell for all of 2007 was $2.7 billion, off 20% from the July 15 Base Case.

256. Against the background of Lyondell's deteriorating third and fourth quarter performance and industry forecasts of a more severe downturn, it became more and more obvious as the scheduled date for the Merger approached that the earnings projections provided

by Lyondell Management in connection with the Merger Agreement were, at a minimum, unreasonable and, in fact, inflated.

257. The unreasonableness of management's projections for 2008 alone is strikingly apparent from the comparison graphed below, of actual Lyondell adjusted EBITDA versus management projections for the three quarters preceding the Merger. Ignoring a pattern of repeated, widening "misses" for each of three successive quarters in 2007, management's quarterly projections for 2008, prepared on or around November 2007 for "legacy" Lyondell following the Merger, were completely unreasonable:[25]



258. During 2007, prior to the closing of the Merger, including during the period after the Merger Agreement was signed until the closing of the Merger, the petrochemical industry forecasts weakened progressively, due, *inter alia*, to the slowing economy, rising energy costs (which led to compressing of margins), weakening demand for chemicals, and announcements of

[25] Actual results presented below for 2008 adjusted EBITDA are based on publicly available data reported for Lyondell Chemical Company. Estimated 2008 EBITDA represents estimated EBITDA generated from assets of certain former non-U.S. subsidiaries of Lyondell Chemical Company that were transferred following the Merger to non-U.S. subsidiaries of LBI. Actual EBITDA from these transferred entities is not available at the present time.

increased capacity within the industry (by competitors of Lyondell and Basell). Deteriorating industry and related business developments suggested that the next trough in the petrochemical industry would be longer and considerably deeper than anticipated at the beginning of 2007. Moreover, given the disadvantaged position of Lyondell and Basell compared to their competitors and their particular vulnerability to the next petrochemical industry trough, representatives of Lyondell, Basell, and Access, including Blavatnik, knew that the next petrochemical industry trough would much more severely and negatively impact the income and profitability of Lyondell and Basell than their more advantaged competitors.

259. Indeed, in the midst of the liquidity crisis that occurred soon after the Merger, it was widely acknowledged within Access that Lyondell's "refreshed" projections had been prepared for selling purposes and could not be relied upon for purposes of estimating cash flows. As Javier Martinez, an associate at Access, stated in a March 11, 2008 email in which he advocated for updated projections to address the liquidity crisis:

> The one major outstanding issue is the projection update (surprise, surprise!). . . . This is important because currently liquidity position and models are being compared and contrasted to the July 2007 Base Case (which was mainly prepared by Lyondell for selling purposes anyway!) so it is difficult for them to understand what the situation is past the next month or so.

260. In commenting on LBI's liquidity issues immediately after the Merger, Patel noted that "[b]asically, 80% of the liquidity 'issue' is stuff that should have been incorporated into forecast because it was [known] quite a while ago."

III. <u>The Merger Closes</u>

261. On December 20, 2007 (the "**Merger Closing**"), pursuant to the Merger Agreement, an indirect merger subsidiary of Basell was merged into Lyondell, and all of Lyondell's 253,535,778 outstanding shares of common stock, including restricted stock, were

converted into the right to receive $48 in cash and Basell, which thereupon changed its name to LyondellBasell Industries A.F. S.C.A., became, through an intermediate holding company, the corporate parent of Lyondell.

262. Also on December 20, 2007, Lyondell and certain affiliates entered into debt facilities (the "**Facilities**") pursuant to which they incurred obligations in the approximate amount of $20.7 billion (the "**Obligations**"). The Obligations were incurred under (i) a senior credit facility (the "**Senior Credit Facility**")[26] providing term and revolving loans in the aggregate amount of approximately $12.4 billion; (ii) a bridge loan facility (the "**Bridge Loan Facility**") providing for second lien bridge term loans (the "**Bridge Loans**") in the aggregate amount of $8 billion; (iii) an inventory-based revolving credit facility (the "**ABL Inventory Facility**") providing for a $1 billion inventory-based revolving facility; and (iv) $1.15 billion receivables securitization facility (the "**ABL Receivables Facility**" and, together with the ABL Inventory Facility, the "**ABL Facilities**", and the ABL Facilities together with the Senior Credit Facilities and the Bridge Loan Facility, the "**Merger Financing**").

263. The Senior Credit Facility was created pursuant to a credit agreement (the "**Senior Credit Agreement**"), dated as of December 20, 2007, as amended and restated on April 30, 2008, among Citibank, N.A., as administrative agent, Citibank international plc, as European administrative agent, the lenders party thereto from time to time (the "**Senior Lenders**"), and Citigroup Global Markets Inc., Goldman Sachs Credit Partners L.P., Merrill Lynch, Pierce, Fenner & Smith Inc., ABN AMRO Inc., and UBS Securities LLC as joint lead arrangers (such parties to the Senior Credit Facility including Deutsche Bank Trust Company Americas as successor to Citibank, N.A., as administrative agent, and Citibank International plc, as European

[26] The Senior Credit Facility included, inter alia, a €1.3 billion, 7-year Senior Secured German Term Loan B with Basell Germany as Borrower (the "**German Term Loan B**") and a $500 million, 6-year Senior Secured Dutch Term Loan A with Basell Holdings as Borrower (the "**Dutch Term Loan A**").

administrative agent, (the "**Senior Credit Facility Lender Parties**")), Lyondell, Basell Holdings B.V. ("**Basell Holdings**"), Basell Finance Company B.V. ("**Basell Finance**") and Basell Germany Holdings GmbH ("**Basell Germany**") as borrowers (the "**Senior Credit Facility Borrowers**"), and certain direct and indirect subsidiaries of the Senior Credit Facility Borrowers as guarantors (the "**Senior Credit Facility Subsidiary Guarantors**" or the "**Subsidiary Guarantors**"; and together with the Senior Credit Facility Borrowers, collectively, the "**Senior Credit Facility Obligors**").[27]

264. To secure repayment of the Obligations incurred under the Senior Credit Facility (the "**Senior Credit Facility Obligations**"), the Senior Credit Facility Obligors (excluding Millennium US Op Co LLC, Millennium Petrochemicals, Inc. and Milennium Specialty Chemicals, Inc. which granted no security interests in their assets) granted security interests to Citibank, N.A., as collateral agent, in certain of their real and personal property. The Senior Credit Facility Obligors that are U.S. entities granted security interests in certain of the real and personal property, including: (a) all stock owned by each such Senior Credit Facility Obligor in any wholly owned subsidiary of LBI; (b) all debt securities held by each such Senior Credit Facility Obligor; (c) all payments, rights, privileges and proceeds of (a) and (b); and (d) substantially all of each such Senior Credit Facility Obligor's personal property, including equipment but not including accounts receivable, inventory and interests in any joint ventures. LBI, Basell Holdings, Basell Finance, Basell Germany and certain affiliates (the "**European Obligors**"), granted security interests to Citibank, N.A., as Senior Collateral Agent, in certain equity and debt securities owned by the European Obligors and all rights related thereto, and in certain other personal property. Finally, pursuant to various pledge, charge, security and assignment agreements between themselves and Citibank, N.A., as Senior Collateral Agent,

[27] The Senior Credit Facility Obligors are identified on Schedule A hereto.

other subsidiaries of Basell granted to the Senior Collateral Agent a first priority security interest over various equity securities, as well as other real, personal and intellectual property (all of the foregoing described security interests and liens, the "**Senior Liens**").

265. The Bridge Loan Facility was created pursuant to a bridge loan agreement (the "**Bridge Loan Agreement**"), dated as of December 20, 2007, as amended and restated on April 30, 2008, and as further amended and restated on October 17, 2008, among Merrill Lynch Capital Corporation, as administrative agent; Citibank, N.A., as collateral agent; the lenders party thereto from time to time (the "**Bridge Lenders**"); and Merrill Lynch, Pierce, Fenner & Smith Inc.; Goldman Sachs Credit Partners, L.P.; Citigroup Global Markets Inc.; ABN AMRO Inc.; and UBS Securities LLC as joint lead arrangers (such parties, the "**Bridge Loan Lender Parties**"), LyondellBasell Finance Company, as borrower (the "**Bridge Borrower**"); and the Subsidiary Guarantors that guaranteed the Senior Credit Facility Obligations, as guarantors thereunder (the "**Bridge Guarantors**;" and together with the Bridge Borrower, the "**Bridge Loan Obligors**").[28]

266. To secure the repayment of all obligations incurred under the Bridge Loan Facility, including the guarantee obligations thereunder (the "**Bridge Loan Obligations**"), LyondellBasell Finance Company and each of the Bridge Guarantors, including the European Obligors, granted to Citibank, N.A., as collateral agent (in such capacity, the "**Bridge Collateral Agent**"), a second priority (or third priority) security interest in substantially the same real and personal property that secured the Senior Credit Facility Obligations (the "**Bridge Loan Liens**").

267. The ABL Facilities were created pursuant to a credit agreement, dated as of December 20, 2007, among Citibank, N.A., as administrative agent and co-collateral agent, General Electric Capital Corporation, as co-collateral agent (along with Citibank, N.A., the

[28] The Bridge Loan Obligors are identified on Schedule A hereto.

"**ABL Collateral Agents**"), the lenders party thereto from time to time, Citigroup Global Markets Inc., Goldman Sachs Credit Partners L.P., Merrill Lynch Capital Corporation, ABN AMRO Inc., and UBS Securities LLC, as joint lead arrangers; and Lyondell, Houston Refining LP, Equistar, and Basell USA Inc., as borrowers thereunder (the "**ABL Obligors**"), providing for a $1 billion, 5-year Asset Based Inventory Revolving Credit Facility, $175 million of which was funded at closing.[29]

268. To secure obligations under the ABL, the ABL Obligors granted to the ABL Collateral Agents for the benefit of the ABL Lenders, (i) a first priority pledge of all equity interests owned by each ABL Obligor in, and all indebtedness owed to each ABL Obligor by LB Receivables I and Basell Capital Corporation and (ii) a first priority security interest in certain deposit accounts, all receivables and inventory, and related assets owned by each ABL Obligor (together, the "**ABL Liens**" and, together with the Senior Liens and Bridge Loan Liens, the "**Liens**"). Further, the ABL was guaranteed on an unsecured basis by each U.S. subsidiary (the "**ABL Guarantors**") of each ABL Obligor (the "**ABL Obligations**").

A. <u>Uses of the Proceeds of the Merger Financing</u>

269. The proceeds of the Merger Financing were applied to fund the transactions contemplated in connection with the Merger as follows:

(i) <u>Shareholder Payments.</u> Approximately $12.5 billion to former shareholders of Lyondell as payment of the cash due to them upon conversion of their shares into the right to receive cash including (x) $523,803,305 to Nell Limited, an entity incorporated in Gibraltar in respect of shares of Lyondell, (y) $674,328,055 to LyondellBasell Finance for further transfer to Merrill Lynch Equity Derivatives, in satisfaction of a debt owed by Nell Limited, also in respect of Lyondell shares and (z) $100 million in Merger Consideration to Lyondell Officers and Directors, as set forth below.

[29] The ABL Obligors are identified on Schedule A hereto.

(ii) Refinancing of Pre-Existing Debt. Approximately $7.1 billion (net of $489 million of premiums and other breakage costs associated with the tender offers of Lyondell and Equistar public debt) was used to refinance pre-existing debt of Lyondell, Basell, and certain of their respective consolidated subsidiaries as follows:

(a) $3.062 billion to repay the Lyondell 10½% Senior Unsecured Notes Due 2013 ("**2013 Notes**"), the Lyondell 8% Senior Unsecured Notes Due 2014 ("**2014 Notes**"), the Lyondell 8¼% Senior Unsecured Notes Due 2016 ("**2016 Notes**"), and the Lyondell 6⅞% Senior Unsecured Notes Due 2017 ("**2017 Notes**");

(b) $1.753 billion to the repay the Lyondell Term Loan Due 2013 ("**2013 Term Loan**");

(c) Approximately $858,811 to repay the Lyondell 10½% Senior Secured Notes Due 2013 ("**2013 Secured Notes**");

(d) Approximately $1.475 billion to repay the Equistar 10.125% Senior Unsecured Notes Due 2008 ("**2008 Notes**"), the Equistar 8.75% Senior Unsecured Notes Due 2009 ("**2009 Notes**"), and the Equistar 10.625% Senior Unsecured Notes Due 2011 ("**2011 Notes**");

(e) Approximately $301 million to repay the Equistar inventory-based credit facility;

(f) Approximately $576 million to repay the Equistar accounts receivable securitization facility; and

(g) Approximately €310.6 million to repay the Basell Multicurrency Revolving Senior Facility (the "**Basell Senior Facility**").

(iii) Payments to Lyondell Officers and Employees. The proceeds of the Facilities were also used to fund approximately $337.3 million of payments under various Lyondell benefit and incentive plans, stock option plans, and other equity based incentive programs triggered or accelerated by the change of control of Lyondell (the "**Change of Control Payments**"). Payments received by Lyondell Officers and Directors, set forth below included (i) Change of Control Payments and (ii) payments of Merger Consideration in respect of Lyondell common stock and vested stock options owned by them.

Executives	Change of Control Payments[30]	Payments of Merger Consideration[31]
Dan F. Smith	$57,216,503	$54,781,787
T. Kevin DeNicola	$15,476,541	$10,366,012
Edward J. Dineen	$11,110,970	$1,855,947
W. Norman Phillips Jr.	$4,366,503	$1,352,351
Eight Other Executives[32]	$70,681,499	$25,639,888
Total	**$158,852,016**	**$93,995,985**

Non-employee Directors	Change of Control Payments	Payments of Merger Consideration
Ten Non-employee Directors	$13,537,523	$5,607,686

(iv) Transaction Fees and Expenses. Approximately $574.6 million to fund additional fees and expenses, including the following:

(a) $127,608,860 to Nell Limited by Basell AF S.C.A. as payment for (a) a purported one time transaction advisory fee ($100 million), (b) an annual management fee of $25 million, and (c) reimbursement of claimed expenses of $2.6 million. [33]

IV. As a Result of the Merger, LyondellBasell Was Left with Unreasonably Small Capital

270. Given the cyclicality of Lyondell's business, Lyondell's fixed costs and working capital requirements, the business could not be reliably funded from earnings. Lyondell needed a

[30] For both the executives and non-employee directors, these amounts include payments made as a result of, or accelerated by, the Merger in connection with the following, where applicable: unvested stock options, restricted stock, cash payments made in connection with the award of restricted stock, performance units, a deferral plan, a supplemental executive retirement plan, a severance pay plan, and so-called welfare benefits.

[31] For both the executives and non-employee directors, these amounts include Lyondell common stock and vested stock options that the individuals held independent of the Merger, and that were cashed out in connection with the Merger.

[32] Actual amounts for these eight other executives are likely higher because the LB Creditor Trust has limited information for two of the executives.

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capital structure that would provide the necessary flexibility, including access to the credit markets, to keep the company afloat during a downturn. In addition, according to Smith, Lyondell needed between $2 and $2.5 billion of "room" just to meet its working capital needs. Testifying at a deposition held on October 25, 2007, a little less than two months before the Merger would be consummated on December 20, 2007, Smith explained Lyondell's need for over $2 billion in available liquidity as a simple lesson learned from the commodities markets over the prior two years:

> That's about how much room you need with the crazy market that we deal in with crude oil and natural gas, et cetera, that we literally have seen cost of inputs rise more than $2 billion in each of the last two years. So our working capital has gone way higher. You've got to be able to finance the business. And then suddenly, if the earnings fall off, you're just stuck.

271. "You've got to be able to finance the business." In failing to adequately capitalize LBI while incurring $22 billion of indebtedness to fund the Merger, $12.5 billion of which would flow out to Lyondell stockholders (including $1.2 billion to Blavatnik and over $100 million to Smith), the parties to the Merger recklessly or willfully overlooked this simple truth. Taking into appropriate account actual performance of Lyondell and Basell for 2007 and all available data which was known by Lyondell, Basell, and Access management, LBI was insufficiently capitalized to provide it with the necessary liquidity to fund its operations through a downturn. When the cost of hydrocarbon inputs continued to rise after the Merger, as they had for the prior two years, LBI had to exhaust all available sources of liquidity to finance its working capital needs. And, when as had been widely forecasted, earnings did indeed fall off, LBI, unable to fund its operations or meet its obligations as they became due, was forced into bankruptcy.

A. Reasonableness of Projections

272. The adequacy of the capitalization of the combined companies following the Transaction was premised on the EBITDA forecasted by the managements of the two companies as stated in the July 15 Base Case, as subsequently modified (the "**Management Projections**").[34] The Management Projections included $18.38 billion of cumulative EBITDA projected by the managements of the two companies from the combined operations during the period 2008 through 2011 (the "**Projection Period**").

273. EBITDA forecast in the Management Projections for each year of the Projection Period are as follows:

EBITDA (in millions of $)

YEAR	2008	2009	2010	2011	Cumulative
Basell	1,681	1,343	1,109	1,135	5,268
Lyondell	3,515	3,072	2,818	2,593	11,998
Other	(18)	(18)	(18)	(18)	(72)
Net Synergies	45	300	420	420	1,185
	5,223	4,697	4,329	4,130	18,379

274. However, only cash flows that are reasonably anticipated should be considered in assessing capital adequacy. As described in detail, *supra*, the Management Projections while

[34] Limited modifications to EBITDA forecasts contained in the July 15 Base Case were made in the October CIM and the November CIM. The principal difference between the July 15 Base Case and the identical forecasts contained in the October and November CIMs are the EBITDA numbers given for 2007 and 2008. While the July 15 Base Case forecast $5.253 billion of EBITDA for 2007, the October CIM and the November CIM reflect a recognition that actual results for 2007 would fall short of the July 15 Base Case and show a revised EBITDA forecast for 2007 of $4.613 billion. The October CIM and November CIM EBITDA forecasts for 2008 are also reduced relative to the July 15 Base Case by $155 million in the amount of synergies forecast for 2008 and Basell 2008 EBITDA was adjusted modestly downward by approximately $70 million. Apart from the limited adjustment in Basell's EBITDA forecast for 2008, the July 15 Base Case projections were virtually identical to the projections included the Management Projections in forecasting EBITDA for 2008-2011.

fraudulent, were unsupported by objective data, and were at odds with the economic and supply/demand forecasts of leading petrochemicals and refining industry analysts. Ultimately, based on information known at the time of the Transaction, the $18.38 billion of cumulative EBITDA included in the Management Projections exceeded, by between $5 and $6 billion (one third of the projected EBITDA), what could reasonably and prudently be relied upon as a source of the cash necessary to operate the businesses of LBI during the Projection Period.

275. Three dozen EBITDA projections were prepared by Lyondell and Basell and their financial advisors or the Lead Arrangers during 2007 prior to the Transaction. Of these, the Management Projections (which incorporate the July 15 Base Case with minimal changes) contain the most aggressive EBITDA forecasts for the Projection Period. The Management Projections, at a minimum, were recklessly used by management of Lyondell, Access, and Basell to support a premium price for the Merger, which was to be 100% financed with debt, and to support the syndication of the excessive Merger Financing, all to the detriment and serious injury of LyondellBasell's other creditors.

276. Various downside projections prepared by the Lead Arrangers, although not true downside cases in that they did not reflect the full range of foreseeable downside scenarios from the perspective of late 2007, more adequately demonstrated the reasonably foreseeable cash flows of LBI upon the close of the Transaction. The downside cases included the April 10, 2007 Merrill Lynch "Credit Stress Test Case," the "July 10, 2007 Merrill Lynch Downside Case" and the July 15, 2007 "Citibank Downside Case." In each of these cases, net cash flows on a cumulative basis were negative, indicating that LBI would be unable to meet its debt service obligations and/or fund capital expenditures over the five-year period. The annual net cash flows in the "Credit Stress Test Case" and "Citibank Downside Case" turn negative in 2009, with the

net cash flows in the "Merrill Lynch Downside Case" turning negative in 2010. All three cases continue to generate negative cash flow throughout the remainder of the projection period, except for the "Citibank Downside Case" which anticipates net cash flow turning positive in 2012, after reaching a $1 billion cumulative deficit over the preceding period. The cumulative debt service obligations alone with respect to the Merger Financing account for 77% to 93% of the cumulative EBITDA projected in the three downside cases.

277. None of the three cases provide any meaningful level of cash flows to support or contribute to LBI's other liquidity needs, including the need to provide for reasonably foreseeable stresses and contingencies. The resulting debt to EBITDA leverage ratios indicate that LBI had far exceeded reasonable measures of debt capacity and would not be able to reasonably refinance its maturing long-term debt obligations on an arms' length basis over the course of the projection period, and that LBI would be anticipated to fail the debt service covenant requirements of the Merger Financing in the third quarter of 2008, the fourth quarter of 2008 and in each year from 2009-2012.

B. <u>LyondellBasell's Highly Leveraged Capital Structure</u>

278. Following and as a result of the Transaction, and as assessed, *inter alia*, by reference to the historical liquidity of the two legacy companies and by liquidity levels maintained by comparable petrochemical and refining companies operating under the same conditions of volatility and cyclicality to which LBI was subject, LBI's leverage was too high to allow it to survive potential downturns in operating cash flows or to meet a wide range of reasonably foreseeable stresses and contingencies. Due to its high leverage, LBI was unable to obtain an acceptable credit rating to maintain necessary trade credit and, as a consequence of the

liens and restrictions imposed under the terms of the Merger Financing, had inadequate borrowing capacity to cover foreseeable stresses and contingencies.

279. The debt burden of LBI was so much higher than the combined debt burden of Basell and Lyondell before the Transaction that it moved the combined company to the highest end of the range for virtually every leverage measure, as compared to the following comparable companies in the chemicals and refining industries: BASF, Celanese, Dow, Eastman, Huntsman, Nova, and Westlake (chemicals); Alon USA, Frontier Oil, Holly, Sunoco, Tesoro, Valero and Western (refining). Following the Merger and as a result thereof, LBI was the lowest ranking company among its peers, as measured by Liquidity to Current Liabilities, Liquidity to Tangible Assets, Liquidity to Total Assets and Liquidity to Current Assets.

280. LBI's opening liquidity at the close of the Transaction was also considerably less than the total combined historical liquidity of the legacy companies. Between December 31, 2006 and September 30, 2007, the combined reported liquidity of Lyondell and Basell fell between $3.3 and $3.9 billion, in comparison to the $1.323 billion in liquidity immediately after the consummation of the Transaction (of which liquidity only $926 million was truly available for use in funding operations). Despite the increased size and debt burden of the combined businesses, LBI's opening liquidity as of December 20, 2007 was far less than what legacy Lyondell maintained by itself in the year prior to the Transaction and instead approximates the level of liquidity that the smaller Basell maintained by itself over the same period. Between December 31, 2006 and September 30, 2007, the combined reported liquidity of Lyondell and Basell was between 27.1% and 37.0% of outstanding debt. In contrast, LBI's liquidity was 5.5% of its outstanding debt after the consummation of the Transaction.

C. Foreseeable Contingencies

281. The information available at the time of the Transaction confirmed that LBI's liquidity was inadequate to address reasonably foreseeable contingencies. Pricing of crude oil options in late 2007 indicated significant expected volatility (even exceeding the expected volatility of the S&P 500 stock market index). The risk of a recession was anticipated and estimated by Basell as 50% in March 2007. Further, weather-related interruptions in service were foreseeable, as LBI had fourteen plants along the Gulf Coast, a region vulnerable to the dangers of hurricane activity.

282. Evidencing the predictability of these contingencies, and their effect on liquidity needs, in December 2006 Lyondell estimated contingent liquidity needs as follows:

Unplanned Downtime (one plant)	$150-$350MM
Large Turnarounds	$75-175MM
Weather	$150-500MM
Margin Calls	$150-250MM
Working Capital	$200-400MM
	$725-$1675MM

283. In its Proxy Statement filed with the SEC prior to the Transaction, Lyondell likewise recognized the risks associated with the projections it created, including:

- The availability, cost and price volatility of raw materials and utilities;
- Uncertainties associated with the U.S. and worldwide economies, including those due to political tensions in the Middle East and elsewhere;
- The cyclical nature of the chemical and refining industries; and
- Operating interruptions (including leaks, explosions, fires, weather-related incidents, mechanical failure, unscheduled downtime, and supplier disruptions).

284. LBI's liquidity was insufficient to provide for these known risks. Moreover, LBI had a centralized cash management system, meaning that the unreasonably small capital of the LBI corporate group resulted in unreasonably small capital for LBI and each of its direct and indirect subsidiaries.

V. LyondellBasell's Liquidity Failure Upon the Merger

285. As was reasonably foreseeable at the time, LBI's collapse started early. Very predictably, the spike in 2008 EBITDA, forecasted in response to Lyondell's disappointing results for 2007, did not materialize. Instead, predictably, the same factors that had adversely impacted Lyondell's earnings in each of the last three quarters of 2007, continued to squeeze the margins of LBI's chemicals business. Similarly, LBI's forecasts (unsupported by industry analysts) of improved refining margins proved to be unfounded: margins on refining, a key profit driver for LBI, remained at the rates seen in 2007. Earnings through the first four months of 2008, including income from joint ventures, fell behind the projections by $326 million. By April 2008, LBI was forced to materially revise its pre-Merger forecasts downward to reflect its actual business performance. Under these revised forecasts, the new "Base Case" was for $4.6 billion of EBITDA for 2008 versus $5.4 billion[35] of EBITDA for the September Projections used for syndication purposes. Looking forward to future revisions to the business plan, management formulated an April 2008 "downside" case for the year projecting 2008 EBITDA at $4.3 billion – almost a full billion dollars below the July 15 Base Case.

286. Moreover, from the effective time of the Merger until filing for Chapter 11, LBI was in an ongoing liquidity crisis from which it was unable to emerge. As of the Merger closing, LBI's available liquidity (cash balances and unfunded portions of its facilities), less incremental constraints imposed by its credit facilities, and deductions for uncertainty of timing of cash

[35] Including Solvay Engineered Polymers, Inc., which LBI purchased in February 2008, and Berre.

receipts and distributions, was only $926 million. And while a billion dollars may seem like a lot of money, for an operation of the size, complexity and volatility of LBI, a company materially larger even than Lyondell, $1 billion of liquidity was completely inadequate. In a single day, cash outflows could reach $500 million, a reality that Karen Twitchell, LBI's treasurer, had to deal with on a day by day basis. Twitchell's concerns regarding LBI's liquidity, however, fell on deaf ears. This reality was known to Access, Basell, and Lyondell management well prior to the Merger. Within approximately 60 days after the closing of the Merger, liquidity actually available on a day-to-day basis, net of unfunded commitments, was *negative* $213 million.

287. Within weeks after the Merger, LBI management was forced to seek to "upsize" its borrowing capacity by $600 million by finding funding for the "accordion" feature included in the ABL. Also near the end of March 2008, the company sought to upsize its European accounts receivable asset-backed facility by $170 million. With LBI's daily liquidity in the negative at the end of February 2008, it was fighting for its life, according to Kassin.

288. Conditions worsened in March 2008; by March 13, 2008, there were concerns at LBI that by the end of March 2008, LBI's projected liquidity would be $153 million, well below the minimum liquidity needed to fund LBI's daily operations. While waiting for additional funds to become available through the upsizing of the revolvers, Access, battling with LBI's lenders, was forced to make available what the parties characterized as a credit line (the Access Revolver) in order to meet LBI's immediate needs for liquidity. So desperate was LBI for an additional $600 million in ABL financing that it agreed to a "LIBOR floor" on the term loan facility with an estimated incremental cost of $309 million.

289. The liquidity crisis was largely the result of falsified projections and a failure to adequately account for contingencies – as Patel stated in a March 12, 2008 email, "as far as I can tell, only about $200 million of [the liquidity] crunch is due to rising oil, the rest is bad planning and pretending that all is well. . . . Basically, 80% of the liquidity 'issue' is stuff that should have been incorporated into forecast because it was [known] quite a while ago."

290. The Lead Arrangers also expressed concern. As Kassin noted in a March 16, 2008, email, referencing Citibank's view, "[p]eople at very high levels are flipped out and nervous regarding the LBI liquidity crunch." In late March 2008, Goldman pressed Access to "put in $500-$1,000 million of equity" into Basell, and advised Patel that the "level of angst in their shop is rising to high levels." Patel reported to Blavatnik and others in a March 19, 2008 email that Goldman was consumed with Lyondell's liquidity crisis, stating that Goldman believed that "It's 'morally wrong for LBI to buy [the] Berre [refinery] and they [*i.e.*, Basell] should just break' the deal [to purchase Berre]." Access worried that if the seller "sniff[ed]" the liquidity problems, they would "panic" and "you can kiss LBI . . . goodbye." However, instead of breaking the Berre deal, Access and Basell rejected Goldman's request and closed that transaction the following month, using approximately $600 million in borrowed funds from the banks that further depleted LBI's liquidity.

291. On March 27, 2008, LBI, Basell Finance, and Lyondell agreed to the terms of the Access Revolver with Access Industries, which was supposed to have provided the Company with $750 million in revolving credit. Even as it was being put into place, the undisclosed intention was to use the Access Revolver only as a last resort. Blavatnik had no interest in being a lender to LBI and from the perspective of the Lead Arrangers, who were still hoping to syndicate in a delayed launch, LBI's need to obtain emergency funding from an affiliate looked

bad. The plan, however, was to delay a draw on the Access Revolver until the Lead Arrangers had succeeded in syndicating their loans.

292. In an April 10, 2008 email to Kassin, Twitchell wrote: "No one is truly listening. This company needs more liquidity. The company's daily/monthly/quarterly cash flows are VERY volatile . . . bottom line is that this company needs more liquidity."

293. LBI's persistent problems forced it to revise its planned debt reduction for 2008 from a $1.3 billion reduction to only a $300 million reduction. With an industry-wide trough already underway, LBI's inability to pay down debt caused both S&P and Moody's to downgrade their outlooks on all ratings of LBI from stable to negative.

294. At the same time, trade credit became restricted. As Bigman stated in a September 2, 2008 email, between the closing of the Merger and September 2, 2008, LBI lost an estimated $420 million of trade credit - $180 million of which was lost since the S&P downgrade.

295. LBI's available cash plummeted $1 billion in just two months from June to August 2008, and fell another $500 million by the middle of October. Without the Access Revolver or the upsizing of the ABL Facility, by mid-October 2008, LBI's available cash was near $0.

296. In the second half of 2008, EBITDA in LBI's chemicals businesses continued to decline, and its fuels business plunged over the precipice, off $780 million by October 2008, and off $1.4 billion by December 2008.

297. By October 2008, the blame game between the Access team (Kassin and Patel) and the LBI team (Trautz and Bigman) was in full swing. Patel and Kassin, worried about their

reputations, exchanged frantic emails as they watched LBI management fail to avoid the impending collapse.

298. In the last quarter of 2008, the punishingly high prices of raw materials began to drop. And, because the ABL Inventory Facility generally permitted LBI to borrow only up to 75% of the inventory's value, eroding inventory values resulted in a severely diminished borrowing base and triggered LBI's obligation to repay the ABL Lenders. The timing of this contraction in the borrowing base coincided with a steep decline in earnings during the second half of 2008. As receivables dried up, so too did the borrowing base under the ABL Receivables Facility.

299. On October 15, 2008, Lyondell, unable to otherwise satisfy obligations then becoming due and unable to obtain financing from any other source, drew $300 million from the last resort Access Revolver. Although Lyondell was clearly insolvent at the time, and had insufficient capital to continue operating, on October 16, 17, and 20, it repaid the $300 million in three payments of $100 million each. Even as the cash starved company commenced its death dive, the priority remained to assure that risk to Blavatnik be minimized or non-existent.

300. By the end of November 2008, LBI's earnings were significantly off in every division except Technology, which accounted for only an immaterial amount of earnings. LBI's EBITDA was only approximately $2 billion, off 53% versus projected November year-to-date EBITDA in the LBI business plan.

301. LBI began negotiating forbearance agreements with its lenders, eventually obtaining a forbearance of $281 million in principal, interest, and fees.

302. On December 12, 2008, Twitchell e-mailed Richard Storey, Finance Director of Access, informing him that Lyondell would require funding under the Access Revolver in the

amount of $100 million on December 29, and in the amount of $300 to $350 million on December 30 or 31 early in the morning. She stated that Lyondell would be unable to repay the $300 million draw for several months. Storey forwarded the e-mail to Benet and wrote, "This is a problem."

303. On December 17, 2008, Access assigned the Access Revolver to AI International, a Luxembourg entity, so that it could fund any draws on the Access Revolver with offshore funds. By this point in time, however, Blavatnik had already consulted with restructuring advisors and been told a far greater infusion of funds than was potentially available under the Access Revolver was necessary to fund LBI's operations and allow it to meet its obligations into 2010.

304. On December 17, 2008, a Managing Director at Lazard Ltd., who had been seeking to be retained for the restructuring of LBI, gave Blavatnik some personal advice. The Managing Director told Blavatnik not to "put any more money into LBI until you know that you (possibly with a partner) are able to invest more than what is required. In this case, we calculate that you need more than $3 billion." The Managing Director advised Blavatnik that if he only invested $1 billion in LBI, "based on the numbers we see, you won't save the existing equity and you probably won't get much of your $1 billion back."

305. By mid-December 2008, LBI management was involved in emergency discussions with its lenders to prepare for a Chapter 11 filing and arrange financing to support LBI through bankruptcy proceedings, in which Blavatnik, through Access or another Blavatnik-controlled entity, would contribute part of such financing in an amount equal to the Access Revolver to obtain a more favorable secured position than if Access permitted a draw down under the Access Revolver.

306. By December 20, 2008, Access was considering the tax benefits of waiting to abandon LBI in 2009 versus 2008.

307. On December 29, 2008, Kassin informed Blavatnik that LBI was unraveling at a very rapid pace and would likely not last until January 5, 2009.

308. On December 30, 2008, even though Lyondell managers knew that AI International would reject the request, they went through the charade of requesting a draw down of the entire $750 million balance of the Access Revolver. AI International promptly denied the request, and LyondellBasell thereafter filed a Chapter 11 proceeding.

309. None of the difficulties that LBI faced in its first year were unanticipated. Each should and could have been dealt with had LBI been adequately capitalized with a capital structure that reasonably provided for LBI's foreseeable needs to finance its businesses through a downturn. Economists and industry analysts had been handicapping the possibility of an economic recession which foreseeably would depress demand and exacerbate the forecasted chemicals industry downturn. As put by Alan Bigman in an affidavit submitted along with Lyondell's bankruptcy filings, "[t]he petrochemical industry historically *has been defined* by its cyclical nature." Before Lyondell became an acquisition target, Lyondell's strategy was to leverage down in anticipation of the downturn. Instead, Access chose to leverage up, imposing a staggering debt burden just as the peaks in both industries had past. It was clear, moreover, by the fall of 2007, that the fact that LBI was operating in two major industries, petrochemicals and refining, would not operate as a hedge on risk. Both industries would head into the downturn at the same time. By the time the Merger closed, and indeed well before, it was known that LBI was on a high-wire without a net.

310. The consequences to LBI of insufficient liquidity were also a known risk long before the Merger closed. After two years of steady increases in the commodities markets and a marked increase in volatility, no petrochemicals manager should even be seriously heard to claim surprise at the trend continuing. Crude oil prices had already reached $90 a barrel by the time the Merger closed in late December, up almost $40 a barrel from where they had been less than twelve months before. As characterized by Smith, the commodities market for oil and gas was a "crazy market" and an additional $40 rise may have seemed unlikely to some but was far from outside the realm of possibility.

311. In short, LBI did not fail because of a unique or unforeseeable convergence of bad luck. Levered within an inch of its life, it was absolutely barred from accessing financing needed to survive even a short term drop off in earnings. As the capital markets that recoiled from holding its debt understood even before the Merger closed, LBI's capital structure made its failure during the downturn inevitable. Once the Merger closed, the only question remaining was the precise point along the path to the trough at which complete and irretrievable failure would occur. LBI failed because its creation was predicated on false and fraudulent projections, was inadequately capitalized and grossly overleveraged and, accordingly, unable to deal with the stresses inherent in the industries in which it was operating.

VI. Upon the Merger, LyondellBasell Was Insolvent

312. Because the Merger rendered the LBI enterprise insolvent, it rendered Lyondell flagrantly insolvent because Lyondell, only a part of the new enterprise, was nonetheless obligated on all of the Merger debt. Upon the closing of the Merger, LBI, considered on a consolidated basis with its subsidiaries (the "**LBI Group**"), had liabilities in the amount of approximately $26 billion. Of such amount, approximately $22 billion represented obligations under the Facilities and the balance was other debt. On and as of the date of the Merger,

December 20, 2007, the fair value of the assets of LBI Group ranged from no more than $21.1 billion to at most $24.29 billion and may have been materially less than this range of fair value. Accordingly, from and after the closing of the Merger, the LBI Group was insolvent. This insolvency deepened over the course of 2008.

313. Further, each of the LyondellBasell Debtor Obligors was likewise insolvent when considered on an individual basis, as a result of each taking on approximately $20.7 billion of joint and several liability which, when combined with other liabilities of the individual LyondellBasell Debtor Obligors, was considerably more than the fair value of their assets. The amount of debt incurred by each individual Debtor was not diminished by the operation of contribution rights, as such rights were unavailable to those LyondellBasell Debtor Obligors that were primary borrowers under the Obligations (such as Lyondell Chemical Company for approximately $10 billion of the Obligations) and, moreover, were subordinate to the repayment in full of the obligors under the new Facilities. The contribution rights were, in any event, worthless against other entities that were themselves rendered insolvent by the Transaction.

314. The insolvency of the LBI Group (and each of its individual members) as of the date of the Merger can be strongly demonstrated by, among other means, the very same methodology repeatedly used by Merrill in its role as advisor to Blavatnik and Access for the Lyondell acquisition. As investment advisor to Access, to value the pro forma combined Lyondell-Basell companies, Merrill customarily performed what it referred to as a "Mid-Cycle EBITDA-based valuation." To perform such a valuation of the pro forma company, Merrill would first compute "Mid-Cycle EBITDA," which was the average of five years of projected pro forma combined EBITDA. Merrill would then multiply the resulting Mid-Cycle EBITDA by a

range of "Exit Multiples," (5.75x, 6.50x, 7.25x) selected by it as appropriate, thereby arriving at a range of "enterprise values" for LBI Group.

315. Using this methodology, over the course of its involvement, Merrill prepared for Access several different valuations based on a variety of different earnings projections. With respect to projected earnings of Basell, Merrill consistently used forecasts provided to Merrill by Access/Basell. With respect to projected earnings for Lyondell, until July 15, 2007, all projections used by Merrill for valuing the combined enterprise were developed using industry sources including industry data from industry consultants and analysts such as CMAI and other publicly available company specific and industry sources. For example, on or about July 10, 2007, before having received non-public projections from Lyondell management, Merrill, relying on Access projections for Basell and projections developed using industry sources for Lyondell, provided Access with a valuation based on its "Downside Case Projections" for the combined entity. Using its "Downside Case" projections, Merrill calculated a Mid-Cycle EBITDA of $3.8 billion. Then, applying its selected Exit Multiples to Mid-Cycle EBITDA, it provided a range of values from between $22 billion (using the 5.75x multiple) to $27.7 billion (using the 7.25x multiple), with $24.8 billion as its mid-point valuation (using the 6.50x multiple) for the combined companies.

316. A few days after providing Access with this "Downside Case," Merrill applied this same Mid-Cycle EBITDA-based valuation methodology using the earnings projections provided to Access and Basell by Lyondell management. Based on Lyondell management earnings projections as of July 15, 2007, Merrill calculated a Mid-Cycle EBITDA of $4.8 billion. Then, applying its selected Exit Multiples to this amount, it generated a range of posited values, with the mid-point value, based on the mid-point 6.50 exit multiple, being $31.5 billion.

317. The EBITDA projections upon which Merrill based its valuations, however, included billions of dollars of earnings that were, at a minimum, unsupported by the historical performance of the two companies, and unreasonable in view of macroeconomic, industry, and company specific factors known at the time of the Merger. Neither the Lyondell projections nor the Basell projections reasonably reflected the foreseeable impact on the earnings of these companies of the supply driven downturn widely forecasted for the petrochemical industry in the years immediately succeeding the Merger. Moreover, as demonstrated above, Lyondell's projections were pumped up, *inter alia*, with hundreds of millions of dollars of annual projected earnings from refining operations based on an entirely unsupported forecast of crack margins reflecting Smith's directions, at odds with objective industry data.

318. Using the same Mid-Cycle EBITDA-based valuation methodology used by Merrill to value the companies on a combined pro forma basis, but using the projections that more reasonably reflected the earnings that could be reasonably anticipated in view of factors known at the time of the Merger, the liabilities of the combined LBI Group exceeded the fair value of its assets on and as of the date of the Merger.

VII. Upon the Merger, LyondellBasell Incurred Debts that Were Beyond its Ability to Repay

319. Upon the Merger, LBI incurred obligations which, combined with its pre-existing obligations, constrained its further access to the capital markets. As financed pursuant to the Merger, LBI was left with insufficient funds available to meet short and medium term needs, including: (i) funding the post-Merger payment of the purchase price for Berre that it had committed to purchase prior to the Merger, as well as other planned acquisitions and capital expenditures; (ii) the payment of millions of dollars of interest and fees due to the Lead Arrangers, including approximately $250 million of incremental fees due as a result of the

exercise by the Lead Arrangers of the "flex provisions" included in the Merger Financing; and (iii) other costs, expenses and obligations that foreseeably would become due and payable within the weeks and months following the Merger. As a means to extricate itself from the resulting liquidity crisis that arose shortly after the closing of the Merger, LBI "upsized" its existing working capital facilities, effectively exhausting all remaining available sources of liquidity.

320. Thereafter, when, as had been fully foreseeable, under the stress of a forecasted industry downturn that reduced its earnings and margins, the borrowing bases of LBI's asset based facilities contracted, and LBI was required to pay down these facilities, it was left with insufficient funds to operate, fell into financial distress and was unable to pay other obligations as they became due, including payment of principal and interest due on the Facilities.

321. Upon the Merger, the LyondellBasell Debtor Obligors had incurred, or believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

COUNT I
CONSTRUCTIVE FRAUDULENT TRANSFER
(Applicable State Fraudulent Transfer Law)

(Against Former Lyondell Shareholders)

322. The LB Creditor Trust restates and realleges the foregoing paragraphs, which are incorporated by reference as if set forth fully herein.

323. On or about December 20, 2007, the LyondellBasell Debtor Obligors transferred to the Shareholder Transferees proceeds of the Facilities.

324. The LyondellBasell Debtor Obligors did not receive reasonably equivalent value or fair consideration in exchange for the obligations they incurred or the payments made to enable the Shareholder Transfers paid to the Shareholder Transferees.

325. At the time of the Shareholder Transfers to the Shareholder Transferees, the LyondellBasell Debtor Obligors were insolvent or became insolvent as a result of the obligations incurred or the payments made. Consequently, the Shareholder Transfers were fraudulent as to then present and future creditors.

326. At the time of the Shareholder Transfers to the Shareholder Transferees, (i) the LyondellBasell Debtor Obligors were engaged in business or a transaction, or were about to engage in business or a transaction, for which any property remaining with the LyondellBasell Debtor Obligors was an unreasonably small capital; and/or (ii) the LyondellBasell Debtor Obligors intended to incur, or believed or reasonably should have believed that they would incur, debts that would be beyond their ability to pay as such debts matured. Consequently, the Shareholder Transfers were fraudulent as to then present and future creditors.

327. The Shareholder Transfers paid to the Shareholder Transferees should be set aside pursuant to applicable state fraudulent transfer law and the Shareholder Transferees should be required to return the Shareholder Transfers to the LB Creditor Trust.

COUNT II
INTENTIONAL FRAUDULENT TRANSFER
(Applicable State Fraudulent Transfer Law)

(Against Former Lyondell Shareholders)

328. The LB Creditor Trust restates and realleges the foregoing paragraphs, which are incorporated by reference as if set forth fully herein.

329. Lyondell and Basell approved, authorized and entered into the Transaction with knowledge, *inter alia*, that the (i) incurrence of the Obligations, (ii) granting of the Liens to secure the repayment of the Obligations, and (iii) making of the Shareholder Transfers necessary

to consummate the Transaction would hinder, delay or defraud the creditors of the LyondellBasell Debtor Obligors.

330. The Shareholder Transfers paid to the Shareholder Transferees should be set aside pursuant to applicable state fraudulent transfer law and the Shareholder Transferees should be required to return the Shareholder Transfers to the LB Creditor Trust.

PRAYER FOR RELIEF

WHEREFORE, by reason of the foregoing, Plaintiff requests that judgment be entered in its favor against the Shareholder Transferees as follows:

(1) Certification of a class of shareholder defendants pursuant to Federal Rule of Civil Procedure 23(a) and (b)(1)(B) (or, alternatively, under (b)(3)) and designation of the proposed Class Representatives as representatives of this class, and appointing or designating class counsel to the defendant class;

(2) On Count I:

a. finding that the Shareholder Transfers were fraudulent as to the Creditors pursuant to applicable state fraudulent transfer law;

b. avoiding, disregarding and nullifying the Shareholder Transfers to the extent necessary to satisfy the Creditor Claims;

c. entering judgment against the Shareholder Transferees in the amount of the Shareholder Transfers and allowing Plaintiff to levy execution against them in satisfaction of the Creditor Claims; and

d. providing for such other relief as justice and equity may require.

(3) On Count II:

a. finding that the Shareholder Transfers were fraudulent as to the Creditors pursuant to applicable state fraudulent transfer law;

b. avoiding, disregarding and nullifying the Shareholder Transfers to the extent necessary to satisfy the Creditor Trust Claims;

c. entering judgment against the Shareholder Transferees in the amount of the Shareholder Transfers and allowing Plaintiff to levy execution against them in satisfaction of the Creditor Claims; and

d. providing for such other relief as justice and equity may require.

Dated: April 7, 2014
New York, New York

Respectfully submitted,

EDWARD S. WEISFELNER, AS TRUSTEE OF THE LB CREDITOR TRUST

By: _/s/ Sigmund S. Wissner-Gross_____

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SCHEDULE A

I. Senior Credit Facility Debtor Obligors

A. Senior Credit Facility Debtor Borrowers

LyondellBasell Industries AF S.C.A.
Lyondell Chemical Company
Basell Germany Holdings GmbH

B. Senior Credit Facility Debtor Guarantors:

Basell Finance USA Inc.
Basell Germany Holdings GmbH
Basell North America Inc.
Basell USA Inc.
Equistar Chemicals, LP
Houston Refining LP
LBI Acquisition LLC
LBIH LLC
Lyondell (Pelican) Petrochemical L.P. 1, Inc.
Lyondell Chemical Company
Lyondell Chemical Delaware Company
Lyondell Chemical Espana Co.
Lyondell Chemical Europe, Inc.
Lyondell Chemical Nederland, Ltd.
Lyondell Chemical Products Europe, LLC
Lyondell Chemical Technology 1 Inc.
Lyondell Chemical Technology Management, Inc.
Lyondell Chemical Technology, L.P.
Lyondell Chimie France LLC
Lyondell Europe Holdings Inc.
Lyondell Houston Refinery Inc.
Lyondell LP3 GP, LLC
Lyondell LP3 Partners, LP
Lyondell LP4 Inc.
Lyondell Petrochemical L.P. Inc.
Lyondell Refining Company LLC
Lyondell Refining I LLC
LyondellBasell Finance Company
LyondellBasell Industries AF S.C.A.
Lyondell-Equistar Holdings Partners
Millennium America Holdings Inc.
Millennium America Inc.

Millennium Chemicals Inc.
Millennium Petrochemicals GP LLC
Millennium Petrochemicals Partners, LP
Millennium Worldwide Holdings I Inc.
Nell Acquisition (US)

II. Bridge Loan Debtor Obligors

A. Bridge Loan Facility Debtor Borrower:

LyondellBasell Finance Company

B. Bridge Loan Facility Debtor Guarantors

Basell Finance USA Inc.
Basell Germany Holdings GmbH
Basell North America Inc.
Basell USA Inc.
Equistar Chemicals, LP
Houston Refining LP
LBI Acquisition LLC
LBIH LLC
Lyondell (Pelican) Petrochemical L.P. 1, Inc.
Lyondell Chemical Company
Lyondell Chemical Delaware Company
Lyondell Chemical Espana Co.
Lyondell Chemical Europe, Inc.
Lyondell Chemical Nederland, Ltd.
Lyondell Chemical Products Europe, LLC
Lyondell Chemical Technology 1 Inc.
Lyondell Chemical Technology Management, Inc.
Lyondell Chemical Technology, L.P.
Lyondell Chimie France LLC
Lyondell Europe Holdings Inc.
Lyondell Houston Refinery Inc.
Lyondell LP3 GP, LLC
Lyondell LP3 Partners, LP
Lyondell LP4 Inc.
Lyondell Petrochemical L.P. Inc.
Lyondell Refining Company LLC
Lyondell Refining I LLC
LyondellBasell Finance Company
LyondellBasell Industries AF S.C.A.
Lyondell-Equistar Holdings Partners
Millennium America Holdings Inc.
Millennium America Inc.

Millennium Chemicals Inc.
Millennium Petrochemicals GP LLC
Millennium Petrochemicals Partners, LP
Millennium Worldwide Holdings I Inc.
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III. ABL Facilities Debtor Obligors

A. ABL Debtor Borrowers

Lyondell Chemical Company
Basell USA Inc.
Houston Refining LP
Equistar Chemicals LP

B. ABL Debtor Guarantors

Lyondell Chemical Delaware Company
Lyondell Refining I, LLC
Lyondell Refining Company LLC
Lyondell Houston Refinery Inc.
Houston Refining LP
Lyondell Chemical Technology 1, Inc.
Lyondell Chemical Tech. Mgt., Inc.
Lyondell Chemical Technology L.P.
Millennium Chemicals Inc.
Millennium Worldwide Holdings I Inc.
Millennium America Holdings, Inc.
Millennium America Inc.
Millennium Petrochemicals GP LLC
Millennium Petrochemicals Partners, LP
Lyondell LP3 GP, LLC
Lyondell LP3 Partners, LP
Lyondell LP4 Inc.
Lyondell Petrochemical L.P. Inc.
Lyondell (Pelican) Petrochemical L.P. 1, Inc.
Lyondell Chemical Netherland , Ltd.
Lyondell Chemical Europe, Inc.
Lyondell Europe Holdings Inc.
Lyondell Chemical Products Europe, LLC
Lyondell Chimie France LLC
Lyondell Chemical Espana Co.
Lyondell Equistar Holdings Partners
Equistar Chemicals LP