

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>In re: LYONDELL CHEMICAL COMPANY, <u>et al.</u>, Debtors.</p>	<p>Case No. 09-10023 (REG) Chapter 11</p>
<p>EDWARD S. WEISFELNER, AS LITIGATION TRUSTEE OF THE LB LITIGATION TRUST, Plaintiff, v. ALFRED R HOFFMANN CHARLES SCHWAB & CO INC CUST IRA CONTRIBUTORY, <u>et al.</u>, Defendants.</p>	<p>(Jointly Administered) Adv. Pro. No. 10-05525 (REG) ORDER REGARDING MOTIONS TO DISMISS</p>

ORDER

This matter having come before the Court upon: (1) certain defendants’ motions to dismiss the Complaint for lack of standing pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, as incorporated by Rule 7012 of the Federal Rules of Bankruptcy Procedure (the “**Standing Motions**”), and to dismiss the Complaint on other grounds pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, as incorporated by Rule 7012 of the Federal Rules of Bankruptcy Procedure (the “**Merits Motions**”), regarding which the Court heard oral argument on July 12, 2011; and (2) the motions of defendants William Luke Boswell, Agnes Hafner Boswell Jt Ten, and Sacramento County Employees’ Retirement System to dismiss the Complaint pursuant to Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure, as incorporated by Rule 7012 of the Federal Rules of Bankruptcy Procedure (the “**Jurisdiction Motions**”); and the Court having considered the aforementioned motions and the



parties' memoranda in support and in opposition thereto, and having heard oral argument on July 12, 2011; and for the reasons stated by the Court during oral argument on July 12, 2011;

IT IS HEREBY ORDERED that:

1. The Standing Motions are denied under Rule 12(b)(6) of the Federal Rules of Civil Procedure, as incorporated by Rule 7012 of the Federal Rules of Bankruptcy Procedure, without prejudice to defendants' right to seek summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, as incorporated by Rule 7056 of the Federal Rules of Bankruptcy Procedure in accordance with Local Rule 7056-1, on the same grounds as asserted in the Standing Motions, and without prejudice to the plaintiff's right to oppose the filing of any such motion for summary judgment; and

2. The Standing Motions under Rule 12(b)(1) of the Federal Rules of Civil Procedure, as incorporated by Rule 7012 of the Federal Rules of Bankruptcy Procedure, are continued, subject to further factual development concerning the issue of whether the claims asserted in the Complaint were assigned to the Lyondell Litigation Trust pursuant to the Third Amended and Restated Joint Chapter 11 Plan of Reorganization for the LyondellBasell Debtors, with the parties to confer regarding the schedule for and scope of discovery concerning this issue; and

3. The Merits Motions are granted as to Count 2 in the Complaint ("Constructive Fraudulent Transfer" pursuant to 11 U.S.C. § 548(a)(1)(b)), and Count 2 is hereby dismissed without prejudice, subject to further consideration in the event of any change in controlling law, and without entry of judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, as incorporated by Rule 7054 of the Federal Rules of Bankruptcy Procedure, and without prejudice to the rights of others to seek to secure or oppose judgment at an appropriate time; and

4. All other grounds for dismissal of the Complaint raised by the Merits Motions remain *sub judice* and, accordingly, the time for defendants to answer the Complaint remains tolled; and

5. The Jurisdiction Motions are denied.

So ordered this 6th day of October, 2011

s/ Robert E. Gerber

HON. ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE