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August 5, 2008

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RE: Hexion Specialty Chemicals, Inc., et al. v. Huntsman Corp.
C.A. No. 3841-VCL

Dear Counsel:

On July 9, 2008, in disposing of Huntsman's motion for expedited proceedings on its counterclaims, I decided that an expedited trial on issues of liability should be held over a period of six days beginning on September 8, 2008 and that the trial should also include counts I–IV asserted in Hexion's complaint. In reaching those decisions, I was conscious that the parties would be confronting a Herculean task of discovering into and preparing this relatively complex matter for trial in such a short time. I also understood that the parties' burden would be lessened by the decision to bifurcate any actual damages calculations.

Huntsman resisted Hexion's effort to include count III of the Hexion complaint in the expedited trial. That claim is brought by the Apollo Entities (as defined) for declaratory relief that they do not have any liability to Huntsman in connection with the merger. That claim is framed by section 7.3(f) of the merger agreement but, in essence, seeks a declaration that the Apollo Entities have not engaged in fraud. It anticipated Huntsman's later filing in Texas of a complaint alleging fraud against a number of the Apollo Entities.

Huntsman now moves for clarification of my ruling and also to dismiss count III of the complaint. Having considered the parties' submissions and the arguments presented by counsel, I now conclude that the proper course of action is

to narrow the scope of the upcoming trial to eliminate the declaration sought in count III of the complaint. There are two principal reasons for this. First, it is now abundantly clear that the task the parties are confronting in discovering into and trying the other issues on the schedule I have fixed is, if anything, more daunting than it appeared in July. Thus, narrowing the issues for expedited trial will help the parties meet the existing schedule. Second, Hexion concedes that the claim asserted in count III, unlike the other claims set for trial, need not be decided before the scheduled termination date for the merger. Indeed, judging from Huntsman's motion to dismiss, it is unclear that the claim asserted in count III is even ripe for adjudication at this time or that the Apollo Entities who bring the claim have standing to sue under the merger agreement, as they purport to do. Thus, if that claim should be tried in this court, as the Apollo Entities urge, delaying trial on it will allow time to consider it on a more sensible schedule once it is known whether the merger closes or not. Similarly, if Huntsman is right that count III should be asserted as a defense to its action in Texas, then the issues it raises and any other defenses to the Huntsman Texas complaint can be litigated in the Texas court after all relevant facts are settled.¹

For these reasons, Huntsman's motion for clarification is GRANTED and count III will not be heard at the September 8, 2008 expedited trial. The motion to dismiss count III will be briefed and heard after the conclusion of the currently scheduled expedited proceedings, on a schedule to be determined. IT IS SO ORDERED.

/s/ Stephen P. Lamb
Vice Chancellor

¹ Of course, piecemeal litigation of this sort carries with it the distinct likelihood that a fact found in this first proceeding will preclude relitigation of the same fact or issue in the later proceeding. *Capano v. State*, 889 A.2d 968, 985-86 (Del. 2006) (Steele, C.J., dissenting in part).