



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION

Index No. **08114552**  
Date purchased October 29, 2008

HEXION SPECIALTY CHEMICALS, INC.; HEXION LLC; AND NIMBUS  
MERGER SUB INC.,

Plaintiff(s) designate(s) New York  
County as the place of trial.

The basis of the venue is  
prior written agreement

*Plaintiff(s)*

*against*

**Summons**

CREDIT SUISSE, CAYMAN ISLANDS BRANCH; CREDIT SUISSE  
SECURITIES (USA) LLC; DEUTSCHE BANK AG CAYMAN ISLANDS  
BRANCH; DEUTSCHE BANK AG NEW YORK BRANCH; DEUTSCHE BANK  
SECURITIES INC.; AND DEUTSCHE BANK TRUST COMPANY AMERICAS,

Plaintiff(s) reside(s) at

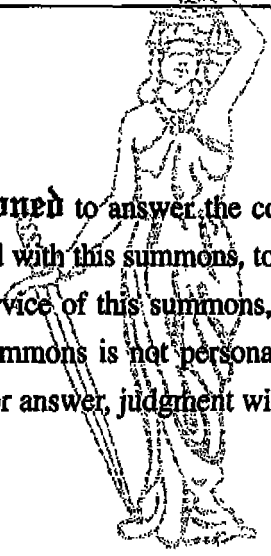
County of Franklin, Ohio

*Defendant(s)*

**FILED**  
OCT 29 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

To the above named Defendant(s)

**You are hereby summoned to answer** the complaint in this action and to serve a copy of  
your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's  
Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30  
days after the service is complete if this summons is not personally delivered to you within the State of New  
York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief  
demanded in the complaint.



Dated,

October 29, 2008

Attorney(s) for Plaintiff

Defendant's address:

Credit Suisse, Cayman Islands Branch  
11 Madison Avenue, New York, NY 10010

Credit Suisse Securities (USA) LLC  
11 Madison Avenue, New York, NY 10010

Deutsche Bank AG, Cayman Island Branch  
60 Wall Street, New York, NY 10005

Deutsche Bank AG, New York Branch  
60 Wall Street, New York, NY 10005

Deutsche Bank Securities, Inc.  
60 Wall Street, New York, NY 10005

Deutsche Bank Trust Company Americas  
60 Wall Street, New York, NY 10005

Office and Post Office Address

Aaron H. Marks, Esq.  
Kasowitz, Benson, Torres & Friedman LLP  
1633 Broadway  
New York, NY 10019



2. Hexion, Merger Sub, and Huntsman are parties to a July 12, 2007 Agreement and Plan of Merger (the "Merger Agreement"), whereby Hexion agreed to acquire Huntsman for \$28.00 in cash per share of Huntsman common stock (the "Merger"), for a total price of approximately \$10.6 billion, provided certain conditions are met. Both Hexion and Huntsman are leading manufacturers and marketers of specialty chemicals.

3. As an integral part of the Merger transaction, on July 11, 2007, Hexion and Hexion LLC, on the one hand, and defendants Credit Suisse and Deutsche Bank, on the other, entered into the binding commitment letter at issue in this action (the "Commitment Letter"). In the Commitment Letter, the Banks agreed, subject to certain limited conditions precedent, to provide Hexion at the closing of the Merger with \$15.35 billion in financing (the "Financing"). The Financing is necessary to consummate the Merger, refinance certain existing debt obligations, and establish a revolving credit facility to fund the business needs of the combined post-Merger Hexion-Huntsman entity (the "Combined Entity"). Hexion cannot consummate the Merger without the Financing.

4. The central issue in this dispute is whether one of the conditions precedent to the Banks' funding obligations under the Commitment Letter -- that the Banks be provided with an opinion or certificate with respect to the solvency of the Combined Entity (the "solvency documentation condition") -- has been satisfied. That condition predicates the Banks' obligation to provide the Financing at closing on their receipt of a "customary and reasonably satisfactory" opinion from a reputable valuation firm, or alternatively a certificate from Hexion's or Huntsman's Chief Financial Officer ("CFO"), with respect to the solvency of the Combined Entity. The opinion or certificate also must be "in form and substance customary for recent financings of this type with portfolio companies controlled by affiliates of or funds managed by"

Hexion's indirect owners, Apollo Management Holdings, L.P. and its affiliates ("Apollo").  
(Commitment Letter Ex. D, § 6.)

5. Hexion and Huntsman have complied with all of their pre-closing obligations under the Merger Agreement, and Hexion has complied with all of its pre-closing obligations under the Commitment Letter. A closing for the Merger was scheduled for October 28, 2008, and the Banks were provided with timely notice of the closing.

6. In particular, in anticipation of the closing, and to ensure that the Financing would be available, Hexion complied with the solvency documentation condition. On October 23, 2008, American Appraisal Associates ("AAA"), a well-known and reputable valuation firm, provided the Board of Directors of Huntsman with its opinion that the Combined Entity would be solvent. That opinion, and an October 28, 2008 letter from AAA reaffirming that opinion as of the closing date (together, the "AAA Solvency Opinion"), have been provided and/or made available at the closing to the Banks. In addition, while the Commitment Letter requires a solvency opinion or a certificate -- it does not require both -- Huntsman's CFO, Kimo Esplin, also provided and/or made available to the Banks a certificate with respect to the solvency of the Combined Entity (the "Huntsman Solvency Certificate"). Substantially identical drafts of both the opinion and the certificate were provided to the Banks in advance of the scheduled closing.

7. On October 28, 2008, as scheduled, Hexion and Huntsman attempted to hold a closing with respect to the Merger. Apart from the Financing, the parties to the Merger Agreement were ready, willing, and able to perform all of their closing obligations under the Merger Agreement. All conditions precedent to the Banks' funding obligations under the Commitment Letter had been met. Apparently, having decided that the transaction is no longer

financially advantageous to them, the Banks, however, refused to attend the scheduled closing or to provide the Financing. As a result, the closing failed to occur.

8. The Banks have taken the position that the AAA Solvency Opinion and the Huntsman Solvency Certificate fail to satisfy the solvency documentation condition in the Commitment Letter, and accordingly, that they are not obligated to provide the Financing. In fact, however, each of the AAA Solvency Opinion and the Huntsman Solvency Certificate independently satisfies that condition. Thus, by failing to provide the Financing when it was due, the Banks have breached their obligations under the Commitment Letter.

9. The Banks' complete breach of their obligations flies in the face of the testimony provided by Credit Suisse's lead banker on this transaction, Malcolm Price. In a separate Texas proceeding commenced by Huntsman against the Banks, Price testified with respect to the Banks that "[w]e'll be there on October 28th. We're ready. We're ready to close. The documents will be ready to negotiate." Price also testified that "we've never reneged on a commitment in history. I don't think we plan to."

10. Price also acknowledged in that same proceeding that the "reasonably satisfactory" standard under the Commitment Letter for the solvency documentation condition "is an objective standard." Nevertheless, despite receiving both the AAA Solvency Opinion and the Huntsman Solvency Certificate -- each of which independently satisfies that objective standard -- the Banks have refused to fund their obligations.

11. Accordingly, Plaintiffs respectfully request that this Court enter a decree of specific performance requiring the Banks to fulfill their obligations to finance the Merger as required by the Commitment Letter. Specific performance is necessary here because without the Financing, Hexion will lose the unique opportunity to consummate its merger with Huntsman --

a strategic transaction that will create one of the world's largest specialty chemical companies. Damages could not readily be calculated and would not compensate Hexion adequately for the loss of this opportunity.

12. Specific performance is also necessary because, in the current credit environment, Hexion cannot procure alternative financing to close the Merger. It is impossible to replicate the amounts, terms, and conditions of the Financing contemplated by the Commitment Letter. Hexion has been working for months to locate alternate debt financing, but has been unable to do so.

#### **PARTIES**

13. Plaintiff Hexion is a New Jersey corporation, with its principal executive offices at 180 East Broad Street, Columbus, Ohio. Hexion is the world's largest producer of binder, adhesive, coating and ink resins for industrial applications.

14. Plaintiff Hexion LLC is a Delaware limited liability company, with its principal place of business at 180 East Broad Street, Columbus, Ohio. Hexion LLC, the parent company of Hexion, is indirectly owned by affiliates of Apollo.

15. Plaintiff Merger Sub is a Delaware corporation and wholly owned subsidiary of Hexion, with its principal executive offices at 180 East Broad Street, Columbus, Ohio.

16. Defendant Credit Suisse, Cayman Islands Branch is a branch of a Swiss bank, with its principal United States office located at 11 Madison Avenue, New York, New York.

17. Defendant Credit Suisse Securities (USA) LLC is a Delaware limited liability company, with its principal office located at 11 Madison Avenue, New York, New York.

18. Defendant Deutsche Bank AG, Cayman Island Branch is a branch of a German bank, with its principal United States office located at 60 Wall Street, New York, New York.

19. Defendant Deutsche Bank, New York Branch is a branch of a German bank, with its principal United States office located at 60 Wall Street, New York, New York.

20. Defendant Deutsche Bank Securities, Inc. is a Delaware corporation, with its principal office located at 60 Wall Street, New York, New York.

21. Defendant Deutsche Bank Trust Company Americas is a New York State-chartered bank, with its principal office located at 60 Wall Street, New York, New York.

22. Non-party Huntsman is a Delaware corporation, with its principal executive offices at 500 Huntsman Way, Salt Lake City, Utah. Huntsman's primary business is the global manufacture and marketing of chemical products.

#### **JURISDICTION AND VENUE**

23. This Court has jurisdiction pursuant to CPLR §§ 301 and 302, and venue is proper pursuant to CPLR § 503.

24. Jurisdiction and venue also are proper because Section 10 of the Commitment Letter provides that each of the parties thereto, including each of the Banks, "irrevocably and unconditionally" submits itself to the exclusive jurisdiction of the state or federal courts in New York County with respect to "any action or proceeding arising out of or relating to," among other things, the Commitment Letter "or the transactions contemplated hereby."

## **FACTUAL ALLEGATIONS**

### **A. Hexion and Huntsman Agree To Merge.**

25. In or about May 2007, Huntsman contacted potential buyers, including Hexion, regarding a potential sale of the company. After several rounds of negotiation with Hexion and a competing bidder, Huntsman ultimately determined to accept Hexion's bid. Accordingly, on July 12, 2007, Hexion and Huntsman entered into a definitive Merger Agreement providing for the acquisition of Huntsman by Hexion, through the merger of Huntsman and Merger Sub, provided that certain conditions were met. The merger consideration is \$28.00 in cash per share of Huntsman stock, with an additional per-share "ticking fee" for each day after April 5, 2008 until the Merger is actually consummated.

26. Huntsman is an attractive merger partner for Hexion. The Combined Entity would be one of the world's largest specialty chemical companies, with anticipated annual sales of more than \$15 billion and more than 19,000 employees and 180 facilities around the world. Among other things, combining Hexion and Huntsman would allow the two companies to realize substantial business synergies. The Combined Entity would also be able to divest non-strategic, non-core segments and improve its overall financial performance.

### **B. The Banks' Financing Obligations.**

#### **1. The Commitment Letter.**

27. Contemporaneously with its negotiation of the Merger Agreement, Hexion negotiated with the Banks to obtain financing for the Merger. As a result of those negotiations, on or about July 11, 2007, Hexion, Hexion LLC, and the Banks executed the Commitment Letter. By its express terms, the Commitment Letter obligates each of Credit Suisse and Deutsche Bank severally to provide 50% of the following debt facilities: an \$8.4 billion senior

secured term loan facility; a \$5.95 billion bridge loan facility; and a \$1 billion revolving credit facility.

28. At closing, the proceeds of the term loan and bridge loan provided for by the Commitment Letter must be used to pay for: (a) the merger consideration to be paid to Huntsman shareholders; (b) repayment and refinancing of certain existing Huntsman and Hexion debt required by the Commitment Letter; (c) fees and expenses related to the Merger; and (d) any other liabilities that would be due at closing. Pursuant to the Commitment Letter, only a portion of the revolving facility can be used to fund the closing; the balance is required to remain available to fund the Combined Entity's working capital and other cash flow needs.

29. The Commitment Letter and related documentation also provide for a Termination Facility -- a vehicle under which the Banks agreed to finance Hexion's payment to Huntsman of the Merger Agreement's \$325 million termination fee in the event the Merger does not close and the termination fee becomes payable.

**2. The Banks Agree To Virtually Unconditional Financing Commitments.**

30. The Financing promised to be extremely lucrative to Credit Suisse and Deutsche Bank. Under the Commitment Letter and related documentation, Hexion agreed to pay the Banks substantial fees, totaling hundreds of millions of dollars, at the closing. In exchange for these enormous fees and other consideration, the Banks agreed to provide the Financing necessary to consummate the Merger, to provide such Financing with virtually no conditions to funding, and to leave that commitment open for the period of time necessary to consummate the Merger.

31. The Commitment Letter provides virtually no “outs” for the Banks, including no outs based on changes in circumstances in the economy generally, interest rates, debt markets, or the business of Hexion or Huntsman:

- No “out” based on changed market conditions. The Banks’ obligations are in no way relieved or excused by changes in the economy or the financial markets. Thus, the Banks assumed the risk that the markets affecting Hexion’s and Huntsman’s financial performance would deteriorate, as well as the risk that financial markets could take a turn for the worse.
- No “out” even if Huntsman’s business suffers a “Material Adverse Effect.” There is no separate “out” for the Banks if Huntsman experiences a “Material Adverse Effect” (“MAE”) under the Merger Agreement. Typically in financings of this type, the Banks’ consent must be obtained if the acquirer wishes to waive the occurrence of an MAE and proceed with the transaction. In this case, however, while the Merger Agreement excuses Hexion’s obligations if an MAE occurs, the Commitment Letter explicitly permits Hexion to waive an MAE without excusing the Banks’ obligations. (Commitment Letter, Ex. D, § 1.)
- No “out” if Hexion’s business deteriorates. The Commitment Letter makes clear that, while the accuracy of certain narrow representations in the Merger Agreement is a condition to the Banks’ obligations, the status of Hexion’s business is not among them: “There shall be no representations (or related defaults) relating to the business of the Borrower or its subsidiaries the making of which shall be a condition to the availability of the Facilities on the Closing Date.” (Commitment Letter ¶ 6.)
- No Maximum Leverage/Coverage Condition. The Commitment Letter does not provide any limit on borrowing based on EBITDA, potentially exposing the Banks to severely increased leverage.
- No “out” if syndication efforts fail. The Commitment Letter contemplates -- as is typical -- that Credit Suisse and Deutsche Bank may seek to syndicate all or a portion of the Financing to other banks, financial institutions, and institutional lenders. However, it

expressly provides that “the completion of such syndication is not a condition to the commitments” by the Banks. (Commitment Letter ¶ 3.)

- No “out” based on changes in interest rates. There is no “out” in the event that interest rates, or the interest-rate spreads on comparable loans, move against the Banks. The financing facilities under the Commitment Letter provide for floating interest rates, pegged to a set number of basis points over LIBOR (the London inter-bank offer rate, which is adjusted daily) or over another variable base rate. Changes in those rates -- or in the basis-point spread charged on other leveraged loans -- do not operate to excuse the Banks’ performance.
- No “out” based on the Banks’ views of solvency. There is no “out” for the Banks based on their own opinion of the Combined Entity’s solvency. The only solvency-related condition in the Commitment Letter is that the Banks are entitled to receive a customary and reasonably satisfactory opinion from a reputable valuation firm, or a certificate from the CFO of Hexion or of Huntsman, attesting to the solvency of the Combined Entity. (Commitment Letter, Ex. D, § 6.)

32. The virtually unconditional nature of the Banks’ commitments is all the more notable given that the Banks also agreed to keep the Commitment Letter open for up to sixteen months, or even potentially longer, depending upon the timing of the Merger. The Commitment Letter does not provide for expiration by a date certain, or give the Banks any control over the expiration date. Rather, by its terms, the Commitment Letter remains in effect until “30 days after the Termination Date (as defined in the Merger Agreement), as such Termination Date may be extended pursuant to Section 7.1(b)(ii) of the Merger Agreement.” (Commitment Letter ¶ 15.)

33. The applicable provisions of the Merger Agreement provide for a Termination Date of April 5, 2008, with two potential 90-day extensions that would bring the Termination Date to October 2, 2008 -- almost fifteen months after the Commitment Letter was signed. The

Merger Agreement also provides Hexion with the right to an additional extension of the Termination Date, for 20 business days or more (approximately one calendar month), if certain conditions are satisfied. Thus, at the time the Banks entered into the Commitment Letter, they accepted and agreed that their commitments could remain in effect for up to sixteen months.

**3. The Solvency Documentation Condition.**

34. As noted, the conditions precedent to the Banks' obligations to fund the Merger are extremely limited, and are set forth in Paragraph 6 of the Commitment Letter and Exhibit D thereto. The Commitment Letter explicitly provides that these are the only conditions: "There shall be no conditions to closing and funding not expressly set forth in this paragraph 6 or Exhibit D hereto." (Commitment Letter ¶ 6.)

35. One of the enumerated conditions precedent in Exhibit D to the Commitment Letter is the receipt by the Banks of documentation with respect to the solvency of the Combined Entity. Section 6 of Exhibit D provides that to satisfy the solvency documentation condition, the Banks must receive a "customary and reasonably satisfactory" certificate from the CFO of Hexion or Huntsman, or an "opinion from a reputable valuation firm," with respect to the solvency of the Combined Entity, that is "in form and substance customary for recent financings of this type with portfolio companies controlled by affiliates of or funds managed by" Apollo Management Holdings:

The Arrangers [*i.e.*, the Banks' agents] shall have received (i) customary and reasonably satisfactory legal opinions, corporate documents and certificates (including a certificate from the chief financial officer of [Hexion] or the chief financial officer of [Huntsman] or an opinion from a reputable valuation firm with respect to solvency (on a consolidated basis) of [Hexion] and its subsidiaries on the Closing Date after giving effect to the Transactions) (all such opinions, documents and certificates mutually agreed to be in form and substance customary for recent financings of this type with portfolio companies controlled by affiliates of or funds managed by [Apollo]); and (ii) payment of fees and

expenses required to be paid hereunder and/or in the Fee Letter to the extent invoiced on or prior to the Closing Date.

36. As Section 6 makes clear, the Banks agreed in the Commitment Letter to permit Huntsman, not just Hexion, to provide the required solvency documentation. This provision was specifically requested by Huntsman, as it ensured that the Banks' funding obligations could be triggered even if Hexion was unwilling or unable to produce satisfactory documentation as to solvency. The Banks thus agreed and have been aware since July 2007 that even though Hexion would be the acquiring party and would manage the Combined Entity, the solvency documentation required by the Commitment Letter could very well be provided by Huntsman.

37. Customary solvency certificates or opinions, including those for recent financings of this type with portfolio companies controlled by affiliates of Apollo, provide that: (a) the aggregate value of the borrower's total assets exceeds its total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) at a fair valuation and at fair saleable value; (b) the borrower has the ability to pay its total debts and liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) as they become due in the usual course of its business; and (c) the borrower does not have an unreasonably small amount of capital with which to conduct its business.

**C. Huntsman's Performance Deteriorates; Hexion Commences Litigation In Delaware Under The Merger Agreement.**

38. After the Merger Agreement and Commitment Letter were executed in July 2007, Hexion and Huntsman proceeded to begin seeking regulatory approval and otherwise preparing for the Merger.

39. By Spring of 2008, monthly and quarterly reports provided to Hexion demonstrated Huntsman's deteriorating financial performance beginning in the fourth quarter of

2007. In light of concerns about Huntsman's financial performance and increasing net debt, Hexion engaged Duff & Phelps, an independent valuation firm, to advise Hexion on whether, after giving effect to the Merger and related transactions, the Combined Entity would be solvent.

40. On June 18, 2008, Duff & Phelps delivered an opinion to Hexion's Board of Directors that the Combined Entity would not be solvent after giving effect to the consummation of the Merger and related transactions. The Duff & Phelps opinion provided that it was only effective as of the date it was rendered -- June 18, 2008 -- and not as of the closing, and stated that it was based upon "market, economic, financial and other conditions as they exist and can be evaluated as of such date."

41. After receiving and reviewing Duff & Phelps' opinion and other materials, Hexion determined that at the time it did not have a good faith belief: (a) that a solvency certificate or opinion could be obtained prior to the Termination Date of the Merger Agreement; or (b) that there would be sufficient funds available under the Commitment Letter, together with available cash at Hexion and Huntsman, to close the Merger.

42. On June 18, 2008, because Hexion did not believe at the time that the Banks could be provided with the solvency documentation, Hexion notified Huntsman, as required by Sections 5.12(b) and 5.13(d) of the Merger Agreement, that it no longer believed (a) that the proceeds contemplated by the Commitment Letter would be sufficient for Hexion to pay the liabilities that would be due at closing; or (b) that Hexion would be able to obtain all or any portion of the Financing contemplated by the Commitment Letter.

43. That same day, June 18, 2008, Hexion, Merger Sub, and several Apollo affiliates commenced an action in the Delaware Court of Chancery -- the exclusive forum for resolution of disputes under the Merger Agreement -- seeking a declaration of Hexion's rights and obligations

under the Merger Agreement and related relief. Hexion Specialty Chemicals, Inc., et al. v. Huntsman Corp., C.A. No. 3841-VCL (Del. Ch.) (the "Delaware Action").

44. In the Delaware Action, Hexion took the position that the Merger could not be consummated because (a) the Banks could not be provided with a solvency certificate or opinion satisfying the solvency documentation condition of the Commitment Letter, and thus neither the Financing nor Alternative Financing would be available, (b) even if the Financing were to be available, there was a gap between the amount of the Financing and the amount of funding necessary to close the Merger that Hexion was not obligated to fill, and (c) the deterioration in Huntsman's performance qualified as a Material Adverse Effect ("MAE") under the Merger Agreement, thus excusing Hexion's obligation to consummate the Merger.

45. Subsequently, on July 15, 2008, Hexion retained independent investment bank Gleacher Partners ("Gleacher") to determine whether Alternate Financing, as defined in the Merger Agreement, might be available. After contacting several major banking institutions and other financing providers to gauge their interest, Gleacher advised Hexion that due to the substantial deterioration of the credit markets, no such Alternate Financing could be obtained.

46. Huntsman disputed Hexion's claims in the Delaware Action. In particular, Huntsman contended: that the Combined Entity would be solvent and that a compliant solvency opinion or certificate could be provided to the Banks; that there was no financing gap (or that any such gap could be addressed before closing); and that the problems with Huntsman's business, while real, did not satisfy the definition of an MAE as set forth in the Merger Agreement. Huntsman also asserted counterclaims, alleging that Hexion had breached the Merger Agreement, and sought specific performance and damages.

47. Expedited discovery followed, and trial was held in the Delaware Action from September 8-16, 2008. In trial testimony, Malcolm Price, a Managing Director at Credit Suisse, acknowledged that "it would be premature to draw a conclusion about whether the combined company will be insolvent at closing." Price also testified that Credit Suisse was "prepared to fund that commitment if a compliance [sic] solvency certificate can be provided."

**D. The Delaware Court Does Not Render A Final Ruling On Solvency; Compels Hexion To Specifically Perform Its Covenants Under The Merger Agreement.**

48. On September 29, 2008, Vice Chancellor Stephen P. Lamb of the Delaware Court of Chancery issued his post-trial Opinion and Judgment (the "Delaware Opinion") and an Order and Final Partial Judgment (the "Order"). In the Delaware Opinion, the court: (a) found that Huntsman had not suffered a Material Adverse Effect (as defined in the Merger Agreement); (b) ruled that Hexion had engaged in knowing and intentional breaches of its obligations under the Merger Agreement; and (c) determined "not to reach the issue of solvency at this time because that issue will not arise unless and until a solvency letter or opinion is delivered to the lending banks and those banks either fund or refuse to fund the transaction." (Delaware Opinion at 78.)

49. Although the court did not determine whether the Combined Entity would be solvent, Vice Chancellor Lamb did opine that the Duff & Phelps insolvency opinion was unreliable because, among other things, it was: (a) produced with knowledge that it would be used for litigation purposes by Hexion; (b) based on overly pessimistic projected numbers for Huntsman; and (c) produced without any consultation with Huntsman management. (Delaware Opinion at 14-22.) Moreover, Vice Chancellor Lamb explained that Huntsman had specifically obtained the right in the Commitment Letter to have its CFO provide a solvency certificate to the Banks, that Huntsman's CFO had testified that he was prepared to provide the required solvency

certificate, and that AAA had been retained to furnish an opinion that also would meet the solvency documentation criterion in the Commitment Letter. (Delaware Opinion at 80-81.)

50. In addition to denying the declaratory relief sought by Hexion, the Delaware court entered judgment for Huntsman ordering Hexion to perform its covenants under the Merger Agreement, including ordering Hexion: (i) to satisfy on a timely basis all terms, covenants, and conditions set forth in the Commitment Letter; (ii) to enter into definitive agreements with the Banks on the terms and conditions contemplated by the Commitment Letter; (iii) to consummate the Financing at or prior to Closing; and (iv) if necessary, to enforce Hexion's rights under the Commitment Letter. (Order at ¶¶ 1, 3 and 5.)

**E. Developments As To The Financial Condition Of the Combined Hexion-Huntsman Entity.**

51. Since the Delaware Action, the anticipated financial condition of the Combined Entity at closing has substantially improved, as a result of additional agreed-to equity infusions, and other adjustments. In fact, these developments have improved the closing-date financial condition of the Combined Entity by more than \$2 billion:

- Affiliates of Apollo have agreed to provide Hexion with an additional \$750 million in equity that can be used to consummate the Merger and/or finance the Combined Entity's operations.
- Shareholders of Huntsman have agreed to contribute \$676 million in "backstop" equity financing.
- Apollo has agreed to waive its \$100 million transaction fee in connection with the Merger, as well as three years of its ongoing monitoring fees.

- Changes in the dollar-Euro exchange rate, as well as improved cash flow at the business, have reduced the financing necessary to repay Huntsman's existing indebtedness at closing by approximately \$300 million.
- These improvements in the Combined Entity's prospective financial condition have reduced the anticipated pension liabilities to be funded at closing, from more than \$400 million to a range between zero and \$100 million.

52. In addition to the foregoing, Huntsman's business and prospects have improved since June 2008:

- The recent and precipitous decline in crude oil prices will have a dramatic benefit to the Combined Entity's profitability going forward given that a significant portion of its costs are based on crude oil derivatives.
- The substantial decline in the Euro exchange rate will greatly benefit Huntsman's cost base, which is heavily focused on Europe, leading to improved profitability and margins. Already for the third quarter of 2008, Huntsman's EBITDA (earnings before interest, taxes, depreciation and amortization) was 15% more than for the second quarter of 2008 (after adjusting for a one-time hurricane impact).
- Huntsman's Performance Products division (which accounts for more than 30% of EBITDA) grew by 69% year-over-year, and is now expected to achieve EBITDA for 2008 more than 15% higher than the figures on which Duff & Phelps based its analysis.

53. The above-mentioned items have changed the long-term outlook for Huntsman's business. In addition, the opportunity to meet with Huntsman's management over the past several months has given Hexion's management increased confidence in several identified and

readily achievable programs to further improve Huntsman's profitability that were not taken into account by Duff & Phelps in June 2008.

**F. American Appraisal Delivers The AAA Solvency Opinion; Huntsman's CFO Delivers A Solvency Certificate.**

54. In September 2008, while the trial in the Delaware Action was ongoing, Huntsman announced publicly that it had retained AAA to determine whether it would be able to furnish a customary and reasonably satisfactory opinion with respect to the solvency of the Combined Entity. AAA is a leading valuation and related services firm that provides expertise in all classifications of tangible and intangible assets. It employs more than 900 people, operating from major financial centers throughout Asia-Pacific, Europe, and North and South America.

55. On October 23, 2008, AAA provided Huntsman's Board of Directors with a letter setting forth its opinion, based on the matters discussed therein, that if the Merger were consummated as proposed and in light of the additional developments described above, the Combined Entity would be solvent (the "October 23 AAA Solvency Opinion"). Specifically, AAA concluded that:

(a) the Fair Value of the aggregate assets of the Combined Entity will exceed its total probable liability on its existing debts and other liabilities, including without limitation its subordinated, unmatured, unliquidated, disputed liabilities and Identified Contingent Liabilities;

(b) the Present Fair Saleable Value of the aggregate assets of the Combined Entity will exceed its total probable liability on its existing debts and other liabilities, including without limitation its subordinated, unmatured, unliquidated, disputed liabilities and Identified Contingent Liabilities;

(c) based upon the facts known to AAA as of the date of its opinion, the Combined Entity will be able to pay its debts and other liabilities (including without limitation its subordinated, unmatured, unliquidated, disputed liabilities and Identified Contingent Liabilities) as such debts and liabilities mature; and

(d) the Combined Entity will not have unreasonably small capital for the business in which it is engaged.

56. The October 23 AAA Solvency Opinion was issued before Hexion's October 27 announcement of an additional injection of \$427 million of capital, comprising \$217 million in backstop financing from certain Huntsman shareholders (in addition to the \$416 million previously announced), and an additional cash equity investment of \$210 million from Apollo (in addition to the \$540 million previously announced).

57. On October 24, 2008, Huntsman provided the Banks with a draft of the AAA Solvency Opinion. Huntsman also made available to the Banks certain backup materials that it had provided to AAA to assist it in formulating its opinion, and made AAA personnel available to the Banks.

58. On October 28, 2008, in connection with the closing of the Merger scheduled for that day, AAA provided Huntsman's Board of Directors with the AAA Solvency Opinion reaffirming, as of that date, its opinion that the Combined Entity will be solvent (the "AAA Solvency Opinion"). The AAA Solvency Opinion, which was substantially identical to the October 23 Solvency Opinion that had been previously provided to the Banks, was made available to the Banks at the scheduled closing.

59. Also on October 28, 2008, the Huntsman Solvency Certificate was provided and/or made available to the Banks. In the Huntsman Solvency Certificate, the CFO of Huntsman, Kimo Esplin, confirmed that the Combined Entity would be solvent.

**G. Both The AAA Solvency Opinion And The Huntsman Solvency Certificate Satisfy The Solvency Documentation Condition Of The Commitment Letter.**

60. Both the AAA Solvency Opinion and the Huntsman Solvency Certificate satisfy the solvency documentation condition (although only one is required under the Commitment Letter): each is "customary and reasonably satisfactory," and each is "in form and substance customary for recent financings of this type with portfolio companies controlled by affiliates of or funds managed by [Apollo]." (Commitment Letter, Ex. D, § 6.) And both the AAA Solvency Opinion and the Huntsman Solvency Certificate state that the Combined Entity will be solvent at closing.

**H. Hexion and Huntsman Attempt To Hold A Closing; The Banks Breach Their Obligations Under The Commitment Letter.**

61. Hexion and Huntsman scheduled a closing with respect to the Merger for Tuesday morning, October 28, 2008. Notice of the closing was provided to the Banks.

62. At approximately 10:00 p.m. on October 27, 2008, following their receipt of substantially final drafts of the AAA Solvency Opinion and the Huntsman Solvency Certificate, the Banks advised Hexion that in their view neither document satisfied the requirements set forth in the Commitment Letter. Accordingly, the Banks advised that they did not intend to appear at the scheduled closing.

63. Hexion, Hexion LLC, and Merger Sub, together with Huntsman, were ready, willing, and able to perform their obligations -- other than with respect to the Financing -- at the October 28 closing. The Banks, however, did not appear at the closing and refused to fund the

Merger as required. As a direct result of this breach by the Banks of their obligations, the closing failed to occur.

**I. Hexion Will Suffer Massive And Incalculable Harm And Has No Adequate Remedy At Law.**

64. The Banks' breaches will cause massive harm to Hexion because it cannot consummate the Merger without the Financing. Specific performance of the Banks' obligations under the Commitment Letter is required, and entirely appropriate, because Hexion lacks an adequate remedy at law.

65. Damages would not be an adequate remedy at law because the Huntsman Merger represents a unique opportunity to combine two of the world's leading specialty chemical companies. The Combined Entity would be able to realize substantial synergies, strategically divest its non-strategic, non-core segments, and ultimately command a higher valuation multiple to EBITDA. Without the Financing, Hexion would lose the ability to consummate this valuable strategic merger. Damages for the loss of the opportunity to acquire Huntsman will be difficult, if not impossible, to quantify.

66. Damages also would be inadequate because Alternate Financing cannot be obtained. Under more-normal market conditions, when a lender refuses to provide financing for an acquisition, damages may be an adequate remedy where the prospective acquirer has the ability to procure alternative financing from other lenders in the marketplace and then sue to recover as damages any additional interest charges or others costs.

67. That option is not available here. The financing package for which Hexion contracted, and that the Banks agreed to provide, cannot be replicated in the market today. The dramatic "tightening" of the credit markets means that alternative financing cannot be obtained. As the Delaware Court noted, citing the applicable standard under the Merger Agreement,

“[t]here is no question that the substantial deterioration of the credit markets has made it impossible to find replacement debt financing that is not materially less favorable to Hexion than the financing contemplated in the commitment letter.” (Delaware Opinion at 34.)

**FIRST CAUSE OF ACTION**  
**(Breach of Contract -- The Merger Financing)**

68. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 67 as if fully set forth herein.

69. The Commitment Letter is a valid and binding contract between Hexion and Hexion LLC, on the one hand, and each of the Banks, on the other hand.

70. Hexion and Hexion LLC have performed, and are ready, willing, and able to perform, all of their obligations under the Commitment Letter.

71. All conditions precedent to the Banks' obligations to provide Hexion with the Financing have been satisfied. In particular, the Banks have been provided with the AAA Solvency Opinion and the Huntsman Solvency Certificate, each of which independently satisfies the solvency documentation condition set forth in the Commitment Letter.

72. The Banks nevertheless have refused to provide the Financing at the October 28, 2008 closing, as required under the Commitment Letter. Accordingly, the Banks have breached the Commitment Letter. Moreover, alternative financing is not available.

73. The Banks also have breached the covenant of good faith and fair dealing implied in every contract that, like this one, is governed by New York law.

74. Plaintiffs have no adequate remedy at law for the Banks' breaches of the Commitment Letter, and will be irreparably harmed thereby. The opportunity to merge with Huntsman is unique, and the Financing required by the Commitment Letter is both irreplaceable and necessary to consummate the Merger.

75. Accordingly, Plaintiffs are entitled to a decree of specific performance compelling the Banks to provide the Financing as set forth in the Commitment Letter. In addition, Plaintiffs are entitled to an award of damages, ancillary to the specific performance award, to make them whole, including for the additional "ticking fee" payments to Huntsman's shareholders under the Merger Agreement resulting from the Banks' breaches.

76. In the alternative, if specific performance is not awarded, then, although monetary damages would be inadequate, Plaintiffs are entitled to damages in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**  
**(Breach of Contract -- Termination Facility)**

77. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 76, above, as if fully set forth herein.

78. Under the Merger Agreement, under certain circumstances, Hexion may be required to pay Huntsman a termination fee of \$325 million in the event Huntsman terminates the Merger Agreement. Under the Commitment Letter, the Banks are obligated to provide Hexion with financing for this payment (the "Termination Facility").

79. Hexion has requested repeatedly that the Banks finalize documentation on the Termination Facility. However, in addition to their breaches with respect to the Financing for the Merger, the Banks have failed to comply with their obligations under the Commitment Letter and related documentation to negotiate and finalize the documentation for the Termination Facility. Indeed, the Banks have even refused to enter into negotiations with Hexion regarding final documentation of the Termination Facility, despite their contractual obligation to do so.

80. The Banks also have breached the covenant of good faith and fair dealing implied in every contract that, like this one, is governed by New York law.

81. Plaintiffs have no adequate remedy at law for the Banks' breaches of the Commitment Letter, and will be irreparably harmed thereby.

82. Accordingly, Plaintiffs are entitled to a decree of specific performance compelling the Banks to finalize the documentation for the Termination Facility.

83. In the alternative, although monetary damages would be inadequate, Plaintiffs are entitled to damages in an amount to be determined at trial.

WHEREFORE, Plaintiffs demand judgment against the Banks:

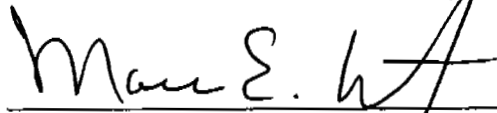
- A. Decreeing specific performance by the Banks of their obligations to provide the Financing to Plaintiffs as set forth in the Commitment Letter;
- B. Awarding Plaintiffs damages against the Banks, ancillary to the decree of specific performance, including for the additional "ticking fee" payments to Huntsman's shareholders under the Merger Agreement.
- C. Decreeing specific performance by the Banks of their obligations to negotiate and finalize the documentation for the Termination Facility;
- D. Alternatively, awarding Plaintiffs damages against the Banks, including consequential damages, in an amount to be determined at trial;
- E. Awarding Plaintiffs pre- and post-judgment interest at the 9% statutory rate;
- F. Awarding Plaintiffs the costs and disbursements of this action, together with attorneys' fees; and

G. Awarding Plaintiffs such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
October 28, 2008

KASOWITZ, BENSON, TORRES  
& FRIEDMAN LLP

By:



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Daniel R. Benson  
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Jed I. Bergman  
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(212) 506-1700 *phone*  
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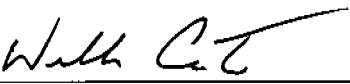
*Attorneys for Plaintiffs Hexion Specialty  
Chemicals, Inc., Hexion LLC, and  
Nimbus Merger Sub Inc.*

**VERIFICATION**

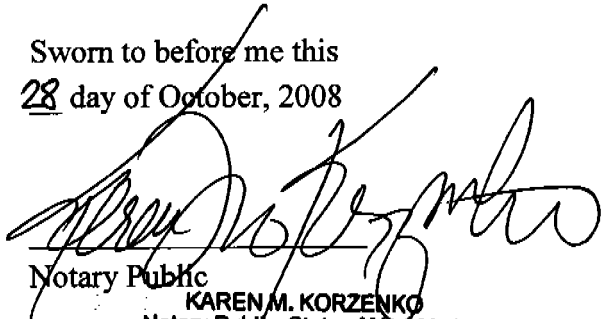
STATE OF NEW YORK    )  
  ) ss:  
COUNTY OF NEW YORK )

William Carter, being duly sworn, deposes and says:

I am the Chief Financial Officer of Hexion Specialty Chemicals, Inc., one of the plaintiffs in this action. I have read the foregoing complaint and it is true to my knowledge except as to matters therein alleged on information or belief and as to those, I believe them to be true.

  
\_\_\_\_\_  
William Carter

Sworn to before me this  
28 day of October, 2008



Notary Public  
KAREN M. KORZENKO  
Notary Public, State of New York  
No. 01K05084073  
Qualified in New York County  
Commission Expires Aug. 25, 2009

Index No.

Year 20 08

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

HEXION SPECIALTY CHEMICALS, INC.; HEXION LLC; AND NIMBUS MERGER SUB INC.,

Plaintiffs,

-against-

CREDIT SUISSE, CAYMAN ISLANDS BRANCH; CREDIT SUISSE SECURITIES (USA) LLC;  
DEUTSCHE BANK AG CAYMAN ISLANDS BRANCH; DEUTSCHE BANK AG NEW YORK  
BRANCH; DEUTSCHE BANK SECURITIES INC.; AND DEUTSCHE BANK TRUST COMPANY  
AMERICAS,

Defendants.

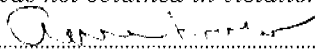
**Summons & Verified Complaint**

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP  
*Attorney(s) for* Plaintiffs, Hexion Specialty Chemicals, Inc.

1633 BROADWAY  
NEW YORK, NEW YORK 10019  
212-506-1700

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated: October 29, 2008

Signature 

Print Signer's Name: Aaron H. Marks

Service of a copy of the within

is hereby admitted.

Dated:

*Attorney(s) for* Plaintiffs

**PLEASE TAKE NOTICE**

Check Applicable Box

that the within is a (certified) true copy of a  
NOTICE OF entered in the office of the clerk of the within-named Court on 20  
ENTRY

that an Order of which the within is a true copy will be presented for settlement to the  
NOTICE OF Hon. \_\_\_\_\_, one of the judges of the within-named Court,  
SETTLEMENT at \_\_\_\_\_  
on \_\_\_\_\_ 20 \_\_\_\_\_, at \_\_\_\_\_ M.

Dated:

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP  
Plaintiffs, Hexion Specialty Chemicals, Inc