

THE ART OF RENEGING ON A MERGER

By Ray Schachter*

In early 2007, with the Dow rising and consumption in the United States increasingly fuelled by easy credit, there was an explosion of deal making. This combination had given rise to a disproportionately strong seller's market for almost any commodity, including active companies. Exacerbating the situation was a well-funded private equity sector eagerly seeking and demanding deals that would produce the double-digit returns. The credit markets began to unravel in mid-2007, and by late 2008 the appetite for mergers and acquisitions started to sour.¹

Naturally, some buyers decided they no longer wanted to proceed and used every possible strategy to renege on their deals with minimal liability or to restructure the transactions to meet new criteria more palatable to them. However, because of the pressures of a hot seller's market and easy credit, the buyers may not have been able to negotiate flexible exit provisions and other risk-allocation protections into their merger agreements.

Until the credit crisis, lenders were also keen to fund these deals and to earn the generous commitment fees from these mergers.² This affected their risk analysis and perspective.

Unfortunately for reluctant buyers, the courts have not been particularly sympathetic to them or to their lenders. Little attention has been paid in legal commentary to the profound impacts these failed or litigated deals have had on the target businesses, their management or their employees, or to the ethics of the strategies implemented by the buyers. The legal literature and business reports deal mainly with who has the leverage, how it is used and how the legal issues have played out.³ This article describes the background of two major mergers in the United States, and how they turned litigious. Although these cases arose in the United States, they will likely influence Canadian law in this area and thus deserve careful attention.⁴

In a hot market, sellers have a strong bargaining position, and the intense desire of buyers to acquire the targets laid the foundation and rationale for merger agreements without conditions precedent, safeguards, exit strategies and, in some cases, the due diligence requirements in favour of the buyer.

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THE HEXION CASE: A DESPERATE AND UNSUCCESSFUL ATTEMPT TO RENEGE⁵

The Background

In 2007, Hexion Specialty Chemicals Inc. was the world's largest producer of binder, adhesive and ink resins for industrial applications. It was privately held with 92 per cent of the shares owned by Apollo Global Management, a large private equity group. The target was Huntsman, a global manufacturer and marketer of other types of specialty chemical products. Although a public company, Huntsman has been controlled by the Huntsman family since its incorporation in 1970.

In late 2005, the Huntsman family decided to seek a buyer. They started negotiations with Apollo and Hexion. In early 2006, the deal died when Huntsman missed earning targets. However, in May 2007, Huntsman again solicited bids for the company. Apollo and another world-class player engaged in a brief bidding war, which Hexion, to its ultimate regret, won in an all cash-deal for 100 per cent of Huntsman's stock at \$28 per share. On July 12, 2007, Hexion and Huntsman signed the merger agreement. The total transaction value of the deal was approximately \$10.6 billion, including assumed debt.

Because Apollo had an intense desire for the deal, Huntsman had significant negotiating leverage. The resulting merger agreement contained no financing condition and required Hexion to use reasonable best efforts to consummate financing to close. If Hexion knowingly and intentionally breached the agreement, it would have unlimited liability, and for certain enumerated breaches it would be liable for liquidated damages of \$325 million. In case a material adverse event ("MAE") occurred, Hexion could terminate the deal without liability, but the MAE clause was very narrowly drafted to favour Huntsman.⁶ Huntsman had done everything to close off all the exits for Hexion because Huntsman wanted certainty that the deal would close.

Hexion needed financing to close the deal. It did not have the benefit of "subject to financing" clause. On the day before the merger agreement was signed, Hexion obtained a commitment letter with affiliates of Credit Suisse and Deutsche Bank ("CSDB") to secure a loan for \$9.5 billion and had good reason to believe that with the financing (plus the cash balance which it had in reserve) it could close. CSDB had no material conditions precedent to advancing this loan except for receipt of an opinion that the merged entity would be solvent (the "solvency opinion").⁷

Initially Hexion and Apollo were extremely excited about the deal. However, the economic crisis affecting the national and international credit markets started to unfold in the latter part of 2007. Huntsman's pigments

business had been slowing since the signing, but Apollo's view of the deal did not seem to change dramatically until after receipt of Huntsman's disappointing first-quarter numbers on April 22, 2008. Apollo and Hexion began asking whether Huntsman had experienced an MAE which would have allowed Hexion to refuse to close with no liability (its best-case scenario). But demonstrating that an MAE had occurred was an uphill battle for two reasons: first, the courts interpret MAEs very narrowly and the burden of proof is on the buyer; and second, the clause excluded many events (carve-outs). Hexion had agreed to purchase the Huntsman shares at \$28, and by mid-June 2008 the shares were trading in the range of \$12.86. Unlimited liability could be in the billions of dollars.

A series of meetings commenced between Apollo and its counsel and various experts to develop the exit strategies. Apollo's lawyers turned to Duff & Phelps, investment bankers, for the solvency opinion, which, if negative, would have allowed Apollo to exit with liability limited to \$325 million. Duff & Phelps knew they were being hired to support potential litigation.⁸ They signed an engagement letter that envisioned the formation of two teams: a litigation team and an opinion team. The opinion team would prepare the (in)solvency opinion, and the litigation team would prepare for the inevitable court action to follow. Since the issue to be addressed was the solvency of the merged entity, the expert responsible for such an opinion would need access to the financial and business information of both the buyer and the seller; and obviously the expert should not have predetermined the result. The leader of the opinion team was aware of the litigation team, and it is hardly a major leap of faith to conclude that the outcome of the opinion team might very well be influenced by the known and much coveted result.⁹

As expected, Duff & Phelps issued the opinion that Apollo wanted, namely that the merged entity would possibly be insolvent. Apollo now had to decide how to use the opinion. Apollo chose an aggressive and clever route, bringing an action in the Delaware Chancery Court on June 18, 2008, to obtain a court ruling that due to the negative insolvency opinion, the financing was not available and it was therefore not obliged to close. Apollo had not discussed the solvency issue with Huntsman, and the action came as a shock to Huntsman. The CEO of Apollo acknowledged that the revelation of the opinion as part of the action scuttled any chance of financing. Jon Huntsman, CEO, was incensed with Hexion and issued the following press release:

Huntsman Corporation is strong and profitable today. Of course, our business has been considerably damaged during the nearly year long period that Apollo should have used to get this transaction closed. Apollo's recent action in filing this suit represents one of the most unethical contract breaches I have observed in fifty years of business. Leon Black and Josh Harris should be disgraced. Our company

will fight Apollo vigorously on all fronts. First and foremost, we shall protect the interests of our shareholders.¹⁰

Huntsman was clearly not going to give up without a fight. The Huntsman Board voted to extend the termination date of the agreement from July 4, 2008, to October 2, 2008.¹¹ Huntsman embarked on its own review of the solvency opinion. By July 1, "in the wee hours of the morning", Huntsman received from Hexion the analysis behind the opinion. Remarkably, by July 25, Huntsman had compiled results from its divisions and was satisfied that the opinion was wrong.

When negotiating the deal, there was no way for Huntsman to guarantee that Hexion/Apollo would have financing to close, but Huntsman had built in two safeguards: (a) the \$325 million agreed payment to Huntsman if the financing did not close; and (b) if the financing fell through, Hexion had to "use its reasonable best efforts to arrange alternative financing...on terms and conditions...no less favorable to [Hexion] than those in the Commitment Letter."¹² Hexion/Apollo were caught in a vice. They did not want to buy and so had no interest in securing alternative financing; so they hired a consultant to demonstrate best efforts in securing new financing but narrowly limited the scope of the consultant's mandate to financing that would completely replace the commitment letter financing on the same or better terms—thus making the task virtually impossible to fulfill.¹³

In an effort to persuade Apollo to complete, Huntsman offered some additional inducements, including take-back financing for a portion of the purchase price. Hexion publicly rejected these inducements out of hand and issued a press release stating that "we are not seeking to renegotiate this transaction. We are seeking to terminate it."¹⁴

The Trial and the Judgment

The trial began on September 8, 2008, and the judgment had to be rendered prior to the closing date of October 2, 2008. Huntsman understood that the court could not order specific enforcement that Hexion/Apollo must close the deal because Hexion's ability to close and funding were as yet unresolved.

No MAE

Hexion failed to persuade the court that an MAE had occurred. In its judgment, given on September 29, 2008, the court held that in order to determine if "an MAE had occurred, changes in corporate fortune must be examined in the context in which the parties were transacting". In the absence of evidence to the contrary, a corporate acquirer is assumed to be purchasing as part of a long-term strategy, so an adverse change must be measured in years, not in months. The burden of proof is on the party wishing to invoke the MAE. Clear language is necessary to shift the burden.¹⁵

Solvency opinion

This opinion was of no benefit to Apollo. A heading in the judgment reads "The Duff & Phelps Insolvency Opinion is Unreliable", followed by the three reasons: it was produced with the knowledge that it would potentially be used in litigation; it was produced using skewed numbers provided by Apollo; and it was produced without any consultation with Huntsman management.¹⁶

The crossover of information from the opinion team to the litigation team may alone have tainted the opinion. Apollo was in control of the financial information that the court found to be skewed and overly pessimistic. Had Duff & Phelps been provided with unbiased data, the opinion might have gone the other way. The court found that Apollo prevented Duff & Phelps from consulting with Huntsman in order to avoid the risk of compromising the ultimate objective of Hexion to terminate the agreement. This supported the conclusion that Apollo did not act in good faith.¹⁷

Knowing and intentional breach

The merger agreement provided for unlimited liability if Hexion engaged in a "knowing and intentional breach". Hexion argued unsuccessfully that Huntsman had to demonstrate that Hexion *knew that it was committing a breach* rather than *knowingly committing the act which constituted the breach*. Hexion was found to have failed to use reasonable best efforts to consummate the financing (see details above on the solvency opinion) and failed to give notice to Huntsman of its concerns, as it was obliged to do under the merger agreement.¹⁸ Finally, Hexion was found to have attempted to delay antitrust clearance, again a clear breach of the covenant.

The Outcome and the Aftermath

The court concluded that by June 19, 2008, Hexion had knowingly and intentionally breached its covenants and obligations under the merger agreement.¹⁹ Therefore, the damages were not limited by the \$325 million cap.

Huntsman and Hexion, at least in theory, continued to work towards the consummation of the merger, but CSDB refused to fund at the October closing on the basis of not having received its solvency certificate. The case between Hexion and Huntsman was settled at an amount that was reported to have caused a near \$1 billion loss to Hexion in the fourth quarter of 2008.²⁰ Jon Huntsman received \$15 million for negotiating the settlement. Nolan Archibald, a Huntsman board member and the head of its compensation committee, said, "Jon single-handedly negotiated this settlement and, I believe, saved the company in doing so."²¹

A sequel to these events was an action brought by Hexion in the New York Courts against CSDB to recover part of the damages it was going to have to pay Huntsman.²² In a separate action in Texas, Huntsman sued CSDB for

\$4.7 billion plus an additional \$8 billion in punitive damages.²³ In late June 2009, the case was settled by CSDB paying \$632 million in cash, including \$12 million in litigation costs and \$1.1 billion in loans and notes repayable over seven years.²⁴ At the time of this settlement, Huntsman stock was trading at about \$5.30 (compared with \$28 payable under the merger agreement).

The untold part of the story must surely include the impacts on Huntsman, its management, employees, suppliers and customers caused by the uncertainty and hidden costs of the distressing lack of business ethics involved in Hexion's futile attempt to escape from what had become an undesirable acquisition.²⁵

ROHM AND HAAS v. DOW²⁶

The Background

The Dow acquisition of Rohm and Haas was negotiated in 2008, when the credit markets were in turmoil and the economy was sinking into recession. Dow, a diversified chemical company, had annual sales of \$53.5 billion and about 45,900 employees worldwide in 2007. Rohm and Haas, a leading global specialty materials company, in 2007 had reported sales of \$8.9 billion on a portfolio of global businesses including electronic materials, specialty materials and salt. Rohm and Haas was *de facto* controlled by the Haas Family Trust and Paulson & Co., a well-known multi-billion-dollar hedge fund whose prominent directors included John Alfred Paulson and Alan Greenspan.

In June 2008, Dow won a bidding war for Rohm and Haas. At that time, the risk that the United States and world economies could be entering a deep and prolonged recession was widely recognized. Notwithstanding, Dow announced publicly that Rohm and Haas was a jewel and that this was a unique opportunity. Dow entered into an agreement to purchase Rohm and Haas for \$78 per share under a July 10, 2008, merger agreement. The acquisition was valued at \$15.3 billion (U.S.).

Rohm and Haas was well aware of the market conditions and was concerned about the uncertainty created among management staff and its markets by an impending merger. It required certainty that the deal would close. The merger agreement had certain conditions precedent, such as FTC clearance, European Commission approval and shareholder approval by Rohm and Haas shareholders—but no financing or other material conditions favourable to Dow. In due course, all conditions precedent were satisfied. The merger agreement provided that the deal was to close two days following satisfaction of conditions. The very short time interval demonstrated the desire of Rohm and Haas to have the deal completed promptly.

Under the merger agreement, Dow agreed to use reasonable best efforts to close as promptly as practicable and not to take any action reasonably likely to materially delay satisfaction of conditions. Dow announced that it would have all funds required to close. In fact, Dow had arranged financing commitments from lenders.²⁷ Furthermore, the MAE clause was drafted strongly in favour of Rohm and Haas, so that there was very little opportunity for Dow to take advantage of it, even if the material adverse effects disproportionately affected Rohm and Haas in relation to other industry participants.

In addition to the purchase price, Dow was to pay a "ticking fee" from January 10, 2009, for six months until closing of approximately \$3.3 million per day. Rohm and Haas tied up the loose ends by including a clause in the merger agreement that it could seek an order for specific performance forcing Dow to close and that failure to close would result in irreparable damage to it.

Dow took on significant risk when it signed this merger agreement. It was deeply into serious negotiations with a wholly owned subsidiary of Kuwait Petroleum Corp. from which it expected to receive \$9.5 billion by the end of 2008, but at the press conference announcing the Rohm and Haas merger on July 10, 2008, senior officers of Dow said that the merger was not contingent on receipt of these funds. Nonetheless, it appears that Dow was counting on funds being available from the KPC deal.

Even though the economy continued to deteriorate during the fall of 2008, Dow reaffirmed its intention to close by late 2008. Then, on December 28, Dow was advised by Kuwait that the KPC deal would not proceed. According to Rohm and Haas testimony, this marked the time when Dow began to engage in a course of conduct to delay FTC approval.²⁸ Rohm and Haas demanded a commitment from Dow not to delay FTC approval. FTC clearance came through on January 23, 2009, but the next day Dow wrote to Rohm and Haas stating that "due to concerns and uncertainty about the potential success of the combined organizations, we confirm that Dow does not intend to close the acquisition on or by Tuesday [January 27]". Dow refused to commit to closing at a future date, stating only that "we believe that we will be able to determine our ability to close the transaction by June 30, 2009".²⁹

Commencement of the Action

Rohm and Haas filed a complaint against Dow in the Delaware Chancery Court on January 26, 2009, seeking specific enforcement by Dow of its obligations under the merger agreement. Dow filed a 61-page answer to the complaint, which, although obscure, appears not to deny the obligation of Dow to close.

In a motion brought by Rohm and Haas to expedite the trial, Dow raised the issue that if it closed, it would have a financial shortfall within a short time of closing that would jeopardize the merged company and all of the merged company's employees, suppliers and so on. The underlying threat implied by Dow in its arguments to the court was that the American economy would be damaged by an order forcing Dow to close and that, therefore, it was not in the public interest for the court to order it to do so. While counsel for Rohm and Haas argued that default by Dow in its financing was Dow's problem, Dow argued in its answer that the reality was starkly different for the 15,000 employees of Rohm and Haas and the 40,000 employees of Dow along with their associated communities, customers and suppliers. Therefore the court would have to carefully balance the interests of all, not the narrow interests of some (by inference, the shareholders of Rohm and Haas), before specific performance should be ordered. In other words, Dow argued that the Chancery Court should ignore the clear, unequivocal contractual terms of an agreement on the basis that preservation of a significant player in the American economy must outweigh the interests of Rohm and Haas.

The Delaware Chancery Court has a reputation for upholding contractual agreements between business parties, so one would expect this argument to have been rejected had the case not been settled.

Although the facts and law were against it, Dow appears to have used litigation very effectively to leverage a renegotiation of the deal. The Haas Family Trust was well aware of the risk to its overall business if the case had continued over any extended period of time or if the court had denied specific performance. Dow had agreed to pay the Haas Family Trust cash for their shares. As part of the settlement, and in order to close the deal, Haas and Paulson agreed to take \$2.5 billion of perpetual preferred equity of Dow, and to make an additional \$500 million investment in Dow, thus reducing Dow's cash requirements on closing. As for Dow, it buoyantly announced in its news bulletin:

Dow has taken the time and steps necessary to close this transaction on substantially improved financial terms to the company despite the continuing financial and economic uncertainty facing our world. The strategic benefits of the acquisition of Rohm and Haas have never been in question; just the path to completing the deal.³⁰

SUMMARY

Both actions considered in this article appear to have been motivated primarily, if not entirely, by the desire to renege from or renegotiate the terms of a deal that had previously been agreed in good faith. In the Hexion case,

the court found no justification in law for the actions of Hexion. In the Dow case, although not litigated to judgment, there appears to be no justification in law for Dow's action. Nevertheless the action was effective. Both cases raise serious moral and ethical questions that will likely have troubling ramifications for years to come.

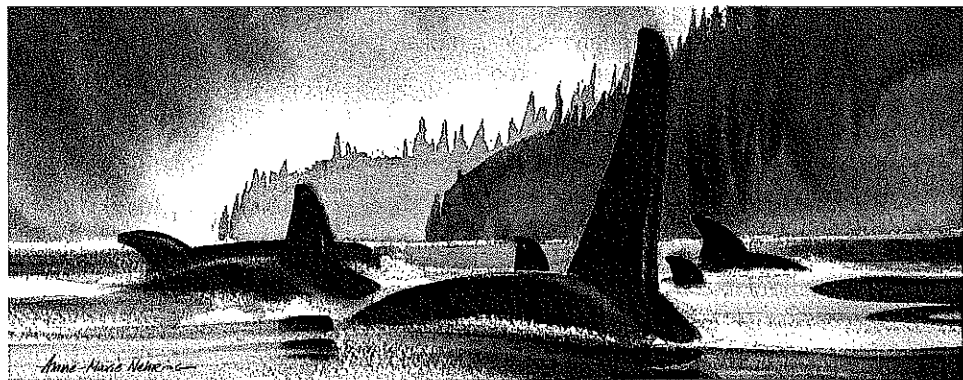
It is noteworthy that in the Hexion case the Delaware Chancery Court was able to hear and dispose of complex issues expeditiously with a clear and impressive judgment. Although cases of this magnitude have not been heard in the Canadian courts, there is much to be learned from the U.S. experience.

ENDNOTES

1. Google "Credit Crisis 2008" to see the many publications, commentaries and video clips of the crisis with the pundits indicating who is responsible. According to CNN, online at: <http://money.cnn.com/2007/12/04/markets/credit_outlook/index.htm> as of December 4, 2007, the credit crunch was already in its sixth month and it was going to be a long road to recovery. The expression "Masters of the Universe" was popularized by Tom Wolfe in *Bonfire of the Vanities*, a novel worth revisiting in light of the actions of corporate executives over the past several years, culminating in the anger of ordinary people over the bonuses to AIG management paid from government bailout money.
2. See *Hexion v. CSDB*, p. 8 of Complaint (N.Y.S.C. No. 0811455, 29 October, 2008): "The Financing promised to be extremely lucrative to Credit Suisse and Deutsche Bank. Under the Commitment Letter...Hexion agreed to pay the Banks' substantial fees, totalling hundreds of millions of dollars, at the closing. In exchange for these enormous fees and other consideration, the Banks agreed to provided the Financing with virtually no conditions to funding..." The "no-outs" are set out on pages 9-10 of the complaint. In hindsight, one wonders how banks can justify the risk of committing unconditionally to a loan of this magnitude. This is typical of the behaviour of lenders who have, in part, created the financial turmoil we are now experiencing. Per *Dow Jones News* October 28, 2008: "The two banks that agreed to provide the funding for the troubled \$6.5bn (€5.2bn) buyout of *Huntsman Corporation* by *Apollo Management* backed Hexion Speciality Chemicals have withdrawn their backing hours ahead of its scheduled close this morning amid concerns over the merged group's solvency. It is the latest stumbling block in the deal struck 15 months ago at the height of the leveraged finance boom." Hexion wanted to collect some of the enormous damages claimed by Huntsman from CSDB. I was unable to determine whether this actually occurred as a result of the outcome of the Hexion/CSDB litigation.
3. The nature of corporations and their consciences has been examined in many books, including the recent book by Joel Bakan, *The Corporation*. If protecting shareholder interest is the primary or only consideration, one could rationalize any effort by hedge fund managers to maximize expected profits from a proposed merger or to minimize losses without regard to other interests such as employees, suppliers and so on. The complex relationships are evident in the bailouts of banks, insurance companies and car manufacturers in United States where a variety of interests are protected, the government essentially being the shareholder or secured creditor.
4. The writer is a Canadian-educated lawyer practising in Vancouver. There are few cases of this type in Canadian jurisprudence, but many of the principles of contract law explored in these cases, in my view, are applicable to Canadian situations. The speed at which these cases are heard and the financial analysis is, however, not typically seen in the Canadian courts.

5. *Hexion Speciality Chemicals v. Huntsman Corp.*, C.A. No. 3481-VCL (Del. Ch., 29 September 2008). "As a result, the merger agreement is more than usually favourable to Huntsman. For example it contains no financing contingency and requires Hexion to use its 'reasonable best efforts' to consummate the financing. In addition, the agreement expressly provides for uncapped damages in the case of a 'knowing and intentional breach of any covenant' by Hexion and for liquidated damages of \$325 million in cases of other enumerated breaches. The narrowly tailored MAE clause is one of the few ways the merger agreement allows Hexion to walk away from the deal without paying Huntsman at least \$325 million in liquidated damages."
6. *Ibid.* at 10.
7. The most recent example in Canada of controversy over a "solvency opinion" arose out of the proposed takeover of BCE by the Ontario Pension Plan (Omers). BCE had included the requirement for a solvency opinion as a condition of closing in order to avoid problems with bondholders. When the deal was finalized, none expected that BCE, the largest telephone and communications provider in Canada and a Canadian business institution, might be insolvent, because the break-up value of its assets had so dramatically decreased due to economic conditions. The deal collapsed, and there may yet be litigation over the break-up fee.
8. *Supra* note 5 at 12.
9. *Ibid.* at 13. Even though Apollo's lawyers said they wanted to make sure that the opinion team was insulated from the litigation team so as not to taint the objectivity of the opinion, the leader of the opinion team participated in calls with the lawyers, and the same employee of Duff & Phelps did modelling work for both the litigation and the opinion team. In fact, the opinion team leader was unaware that he was to be walled off.
10. *Wall Street Journal* Blog, 19 June 2008. Some hedge funds that had purchased Huntsman shares expecting to tender at \$28 were drastically affected by this turn of events: "Diapers might have come in handy at D.E. Shaw Wednesday night after the hedge-fund giant read about the lawsuit that Apollo Management filed against Huntsman. Apollo asked the Delaware Court of Chancery to excuse its chemical company Hexion Specialty Chemicals from buying Huntsman for \$10.6 billion. The news sent Huntsman's shares down 38% to \$12.86. It is trading at a roughly 55% discount to the \$28-a-share deal price": online at: <<http://blogs.wsj.com/deals/2008/06/19/merger-arbs-the-hexion-huntsman-horror-show/>>.
11. This may have been the unilateral right of Huntsman if it determined in good faith an objectively reasonable probability that antitrust approval and consummation of the transaction would occur within 90 days. Hexion argued that Huntsman had violated this provision, but there is little discussion in the decision on that issue and presumably Hexion's arguments were rejected.
12. *Supra* note 5 at 33-34.
13. *Ibid.* at 34.
14. Press release issued 28 August 2008. Hexion statement in response to a report on Schedule 13D filed by several shareholders of Huntsman Corporation.
15. Hexion tried to argue that Huntsman should have the burden of showing the absence of an MAE as it was a condition of closing but its argument was rejected.
16. *Supra* note 5 at 15-16.
17. Lamb J. goes into much detail regarding the models which Apollo provided to Duff & Phelps. It is impressive how the information is summarized and analyzed (pp. 14-20). These are very complex matters with conflicting opinions and complex cross-examination. A study of the record would provide very interesting and instructive reading.
18. *Supra* note 5 at 63-64. There is extensive discussion of the notification obligation which should be carefully reviewed by commercial lawyers as to the implications of such covenants.
19. *Ibid.* at 77.
20. *PR Newswire*, 3 March 2009, "Hexion Posts 2008 Loss on Huntsman Costs."
21. *Wall Street Journal/Law*, online at: <<http://online.wsj.com/article/SB123836899481867551.html>>.

22. *Hexion v. CSDB* complaint No. 0811455 (N.Y.S.C. 29 October 2008).
23. *Huntsman Corp. v. Credit Suisse Securities (U.S.A.) LLC*, No. 08-09-09258 (Montgomery Co., Texas, Dist. Ct.)
24. *New York Times*, 24 June 2009, Zachary Kouwe.
25. For a summary of the complexities of the battles, see online: <<http://dealbook.blogs.nytimes.com/2008/12/14/huntsman-to-settle-with-apollos-hexion-over-failed-deal>>.
26. *Rohm & Haas Co. v. Dow C.A.* No. 4309-CC (complaint filed in Delaware Chancery Court, 26 January 2009). Note: the description is based primarily on the complaint as the matter was settled, and Dow did not really dispute its obligation to close. See the transcript of teleconference on motion to expedite.
27. See the argument in motion that Dow would shortly be in default if it completed, though it could complete. The financing arrangements are outlined at C 8-9 paras. 19-21, with the K-Dow joint venture in 22.
28. *Rohm & Haas v. Dow Chemical Co., C.A.* No. 4309-CC (Affidavit of Robert A. Loneragan, 9 February 2009, p. 3).
29. See page 26 of Dow's response, online at <http://news.dow.com/dow_news/pdfs/20090203answer.pdf>.
30. "Dow Reaches Agreement to Close Rohm and Haas Acquisition" *Dow News Bulletin*, 9 March 2009.



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