IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ROHM AND HAAS COMPANY,	:	
Plaintiff,	:	
v.	:	C.A. No. _____
THE DOW CHEMICAL COMPANY and RAMSES ACQUISITION CORP.,	:	
Defendants.	:	

VERIFIED COMPLAINT

Plaintiff Rohm and Haas Company ("Rohm and Haas"), by its undersigned attorneys, for its complaint for specific performance, injunctive relief and other relief against defendants The Dow Chemical Company and Ramses Acquisition Corp. (collectively, "Dow"), upon knowledge as to itself and its conduct and upon information and belief as to all other matters, alleges as follows:

NATURE OF THE ACTION

1. This suit is brought by Rohm and Haas to force Dow to honor its obligations under a July 10, 2008, agreement to acquire Rohm and Haas for $78 in cash per share of Rohm and Haas common stock (plus a "ticking fee" commencing on January 10, 2009) (the "Merger"). Even though all conditions to Dow's obligation to close the Merger have now been satisfied, Dow has refused to close in an intentional breach of the parties' agreement. Rohm and Haas is entitled, therefore, to an order of specific performance directing Dow to proceed to consummate the Merger without delay.

2. The Agreement and Plan of Merger between Dow and Rohm and Haas (the "Merger Agreement") (Exhibit A hereto) expressly provides that the closing date for the Merger "shall be no later than the second business day" after the satisfaction of the conditions to closing. Merger Agreement § 1.2. Notwithstanding Dow's surreptitious, wrongful and deliberate efforts to delay receipt of antitrust clearance of the Merger, on Friday, January 23, 2009, the FTC cleared the Merger to close, satisfying the last outstanding condition. Dow never asserted prior to January 23 that any other condition remained to be satisfied and, in particular, never claimed that Rohm and Haas had suffered a "Material Adverse Effect" in its business. The Merger Agreement therefore unambiguously required Dow to close the Merger no later than Tuesday, January 27, 2009.

3. Despite the plain language of the Merger Agreement, on January 25, 2009, Dow's Chairman and CEO, Andrew Liveris, wrote to Rohm and Haas's Chairman and CEO, Raj Gupta, 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]." Mr. Liveris 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."

4. Dow's refusal to proceed to close is driven by the Kuwait government's decision in late December 2008 to terminate a planned joint venture — known as K-Dow Petrochemicals ("K-Dow") — between Dow and a Kuwaiti company. The failure of the K-Dow venture does not provide Dow with a basis for refusing to close. Dow's obligations under the Merger Agreement are not in any way conditioned on consummation of the K-Dow joint venture. In fact, Dow's obligation to complete the Merger is not conditioned on financing of any kind. To the contrary, Dow covenanted that it "shall take all action necessary to ensure that as of the Closing Date, [Dow] will obtain the Financing." Merger Agreement § 5.1(b)(i). Dow's

refusal to close, therefore, is without any legal justification. And Dow does have in place committed financing that is two billion dollars in excess of the total purchase price for Rohm and Haas.

5. Dow agreed in Section 8.5(a) of the Merger Agreement that "irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached," that the parties would not have any adequate remedy at law in the event of such a breach and that Rohm and Haas would be entitled "to enforce specifically the terms and provisions of this Agreement" in the event of a breach. Rohm and Haas therefore is entitled to: (a) an order of specific performance requiring Dow to perform its obligations under the Merger Agreement and close the Merger immediately and (b) an injunction preventing Dow from breaching its obligations under the Merger Agreement.

PARTIES

6. Plaintiff Rohm and Haas is a leading global specialty materials company. In 2007, Rohm and Haas reported sales of $8.9 billion on a portfolio of global businesses including electronic materials, specialty materials and salt. Rohm and Haas is incorporated under the laws of Delaware. Its principal executive offices are in Philadelphia, Pennsylvania.

7. Defendant The Dow Chemical Company is a diversified chemical company engaged in the manufacture and sale of chemicals, plastic materials, and agricultural and other specialized products and services. In 2007, it had annual sales of $53.5 billion and employed approximately 45,900 people worldwide. The Dow Chemical Company is incorporated under the laws of Delaware. Its principal executive offices are in Midland, Michigan.

8. Defendant Ramses Acquisition Corp. is a Delaware corporation, wholly owned by The Dow Chemical Company, which was formed solely for the purpose of facilitating the acquisition of Rohm and Haas.

JURISDICTION

9. This Court has subject matter jurisdiction: under 6 *Del. C.* § 2708(b), which grants the courts of Delaware jurisdiction over actions on contracts, such as the Merger Agreement here, in which the parties have specified that Delaware law governs; under 8 *Del. C.* § 111(a)(6), which grants the Court of Chancery jurisdiction over "[a]ny civil action to interpret, apply, enforce or determine the validity of the provisions of . . . [a]ny agreement . . . of merger" governed by the merger provisions of the DGCL, as is the Merger Agreement; and under 10 *Del. C.* § 341, which gives the Court of Chancery jurisdiction "to hear and determine all matters and causes in equity."

10. Personal jurisdiction is proper in this Court because all of the parties are Delaware corporations and also because Rohm and Haas and Dow agreed in Section 8.5(a) of the Merger Agreement that the Delaware courts would have exclusive jurisdiction over any dispute with respect to the Merger Agreement. A confidentiality agreement entered into by the parties likewise provided for a Delaware forum.

FACTUAL ALLEGATIONS

A. Rohm and Haas negotiates a Merger Agreement that requires Dow to close on a clearly defined schedule.

11. Rohm and Haas and Dow executed the Merger Agreement on July 10, 2008, at the conclusion of a bidding contest that pitted Dow against one of its rivals in the chemical industry, which had offered to acquire Rohm and Haas for $75 a share. By July 2008, the credit markets were already in turmoil and the risk that the U.S. and world economies could

be entering a deep and prolonged recession was widely acknowledged. Dow nonetheless agreed to pay a very substantial premium for Rohm and Haas because it recognized that the acquisition of Rohm and Haas presented a once in a lifetime opportunity to transform Dow into the world's premier specialty chemical company. In the words of Dow's Chairman and CEO, Andrew Liveris, Rohm and Haas "is a jewel. . . . There aren't many jewels out there, this is one of them."

12. Because the economic environment was challenging and because a number of would-be acquirers had recently sought to renege on their commitments, Rohm and Haas stressed throughout the negotiations that certainty that the Merger would close was fundamental to its decision whether to accept Dow's bid. Indeed, in Dow's July 7, 2008, bid letter to Rohm and Haas, Mr. Liveris wrote, "I have taken to heart, am respectful of and keenly share the critical importance of speed to signing and certainty of close desired by Rohm and Haas' Board." In order to effectuate this intent, the Merger Agreement requires closing not later than two business days after the conditions set forth in Article VI thereof are satisfied:

> SECTION 1.2 Closing. The closing of the Merger (the "Closing") shall take place at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York at 10:00 a.m., local time, on a date to be specified by the parties (the "Closing Date") which shall be **no later than the second business day after the satisfaction or waiver (to the extent permitted by applicable Law (as defined in Section 3.7(a)) of the conditions set forth in ARTICLE VI** (other than those conditions that by their nature are to be satisfied by action at the Closing, but subject to the satisfaction or written waiver of such conditions), or at such other place, date and time as the Company and Parent may agree in writing. (Emphasis added).

13. Article VI of the Merger Agreement sets forth certain conditions to the obligations of the parties to effect the Merger, including approval of the Merger by Rohm and Haas stockholders, the absence of an injunction by a court or other tribunal of competent jurisdiction prohibiting the consummation of the Merger, and FTC clearance and European Commission approval of the Merger. Regarding FTC clearance, Section 6.1(c)(i) of the Merger Agreement

provides that, before Dow's obligation to close is triggered, "[a]ny applicable waiting period under the HSR Act shall have expired or been earlier terminated." All of the conditions to Dow's obligation to close the Merger set forth in Article VI have now been satisfied.

14. In furtherance of the parties' intent that the Merger would close promptly, Dow covenanted to use its "reasonable best efforts" to consummate the Merger "as promptly as practicable." Merger Agreement § 5.6. Dow also specifically covenanted that it "shall not . . . take any action . . . that is reasonably likely to . . . materially delay the satisfaction of the conditions to the Merger set forth in Section 6.1 of this Agreement or the consummation of the transactions contemplated hereby." Merger Agreement § 5.1(b)(ii).

15. Dow also demonstrated its commitment to a certain closing by agreeing to an unusually restrictive definition of "Company Material Adverse Effect," which, among other things, explicitly excludes adverse effects (i) "generally affecting the specialty chemical industry or the segments thereof in which [Rohm and Haas] and its Subsidiaries operate" or (ii) "generally affecting the economy or the financial, debt, credit or securities markets, in the United States or elsewhere." (The carve-out extends even to adverse effects that disproportionately affect Rohm and Haas.). Merger Agreement § 3.1. In agreeing to this MAE definition, Dow affirmatively assumed the risk that the economy and credit markets would further deteriorate during the period between signing and closing.

16. Section 2.1(a) of the Merger Agreement provides that Dow must pay "Additional Per Share Consideration" in the event that the Merger does not close by January 10, 2009, for a period of up to six months. The additional consideration (*i.e.*, the "ticking fee") amounts to approximately $3.3 million a day, minus any dividend that Rohm and Haas pays to its stockholders between January 10, 2009 and the earlier of July 10, 2009 or the closing date. Section 2.1(a) is not a liquidated damages provision and does not give Dow the option to delay

the closing so long as it pays the "ticking fee." The ticking fee is payable if the Merger closes. If the Merger does not close, Dow will not pay the ticking fee.

17. The parties further memorialized their commitment to closing the Merger by explicitly agreeing that a failure to perform any of the terms of the Merger Agreement would constitute irreparable harm without any adequate remedy at law, and that the parties are entitled to injunctive relief to prevent breaches of the Merger Agreement, and to specific performance. As set forth in Section 8.5(a) of the Merger Agreement:

> The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and that the parties would not have any adequate remedy at law. It is accordingly agreed that **the parties shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement**. . . . The foregoing is in addition to any other remedy to which any party is entitled at law, in equity or otherwise. (Merger Agreement § 8.5(a) (emphasis added)).

18. In order to provide Rohm and Haas the assurance that it demanded, Dow agreed that there would be no financing condition in the Merger Agreement. Accordingly, Dow covenanted, with no reasonable best efforts qualification, that it "shall take all action necessary to ensure that as of the Closing Date, [Dow] will obtain the Financing." Merger Agreement § 5.1(b)(i). Further, Dow expressly represented that it would have the funds necessary to close. As provided in the Merger Agreement:

> SECTION 4.6 Available Funds. [Dow] will have available to it at the Closing all of the funds required to be provided by [Dow] for the consummation of the transactions contemplated hereby and for the satisfaction of all of [Dow's] obligations under this Agreement, including the payment of the Merger Consideration and the Option and Stock-Based Consideration, and the funding of any required financings or repayments of indebtedness (collectively, the "Financing").

Dow's covenant to obtain financing for the Merger is a binding and unqualified contractual obligation. It is not subject to Dow's convenience or preference, and the Merger Agreement does not state that the financing obtained must be on terms agreeable to Dow.

19. In connection with representing that it would have the financing necessary to close the Merger and covenanting to obtain it by the closing date, Dow entered into a debt commitment letter with Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Inc., Merrill Lynch Capital Corp., Morgan Stanley Senior Funding, Inc. and Morgan Stanley Bank. On September 8, 2008, as contemplated by the debt commitment letter, Dow entered into a definitive term loan agreement with the lenders. Under the agreement, the lenders committed to lend Dow $13 billion to finance the bulk of the Merger consideration. The agreement set interest rate and other terms before the dramatic credit market dislocations later that month. Dow thus was able to "lock in" debt financing for the Merger on favorable terms.

20. Dow also obtained equity commitment letters from Berkshire Hathaway Inc. and the Kuwait Investment Authority ("KIA"), under which Berkshire Hathaway and KIA agreed to acquire 3,000,000 and 1,000,000 shares, respectively, of cumulative convertible perpetual preferred stock of Dow at a price of $1,000 per share, for aggregate consideration of $4 billion. Under the definitive investment agreements with Berkshire Hathaway and KIA signed October 27, 2008, each preferred share may be converted to 24.2010 shares of common stock, subject to certain conditions. This conversion rate — amounting to approximately $41.32 per share of Dow common stock — has become very favorable to Dow in light of subsequent declines in Dow's stock price.

21. Together, these debt and preferred equity financing commitments total $17 billion — $2 billion more than the total transaction price of approximately $15 billion.

22. These financing sources were in addition to anticipated cash proceeds from the formation of K-Dow, a planned joint venture between Dow and Petrochemical Industries Company ("PIC") of the State of Kuwait, a wholly owned subsidiary of Kuwait Petroleum Corporation ("KPC"). At the time Dow announced its entry into a memorandum of understanding regarding K-Dow in December 2007, Dow expected to receive $9.5 billion in cash proceeds from the joint venture, which was expected to close by the end of 2008. But as stated in Dow's press release announcing the K-Dow memorandum of understanding, K-Dow "was subject to the completion of definitive agreements, customary conditions and regulatory approvals."

23. Thus, at the time Dow signed the Merger Agreement with Rohm and Haas, Dow did not have a binding contract with PIC. Comments by Mr. Liveris and Dow's CFO, Geoffrey Merszei, during the July 10, 2008, press conference announcing the Merger make clear that Dow knew that it could not count on funds from K-Dow being available to finance the Merger:

> [Analyst]: In the same vein, I'm wondering — it looks like that you are very confident now on getting the Kuwait deal done, and it sounds like you are counting on — in fact, counting on that money to do this deal.
>
> ANDREW LIVERIS: Well, I'll get Geoffrey to chime in. But look, **no, we are not counting on it. We can do this deal without the Kuwait money, and we will stay at investment grade**. . . .
>
> GEOFFREY MERSZEI: No, I mean, I would just have to reiterate what Andrew said. I mean, I think it's a very key point here. **This deal is certainly not contingent on the closing of our Kuwait joint venture.**

24. Both Dow and Rohm and Haas thus understood at all times that Dow's obligations under the Merger Agreement were not in any way conditioned on completion of the K-Dow joint venture, and that these funds were not required to consummate the Merger. This understanding is reflected in the Merger Agreement which, among other things, contains no financing contingency. In Dow's July 7, 2008 bid letter to Rohm and Haas, Mr. Liveris admitted

as much: "We intend to finance the Merger with our available cash balances and a fully committed financing facility. Accordingly, the Merger Agreement is not subject to any financing contingency."

B. The economy further deteriorates, but Dow reaffirms its commitment to closing.

25. During the fall of 2008, the U.S. and global economies suffered significant shocks. Nonetheless, throughout this period, Dow continued to emphasize its ability to close the Merger despite the economic environment. For example, on October 23, 2008, Mr. Liveris appeared on the program "Morning Call" on Bloomberg TV. After a discussion that focused on the challenging economic climate, Mr. Liveris was asked about the Merger. Mr. Liveris responded:

> **We'll close early next year. We feel very good about it.** [A] lot of work we've done already on due diligence tells us that we'll make sure that the synergies are bankable. In fact, the numbers look very good. . . . Uh, and **that deal will close early next year** (Emphasis added).

26. In a December 1 analyst call, Mr. Liveris once again asserted that Dow would close the Merger, despite prevailing economic conditions:

> I've got to tell you, after over 700 meetings with Rohm and Haas in a legal structure context, integration, planning, clean team environment, **we are thrilled at the quality of their leadership, thrilled at the quality of their growth programs and actually their decisiveness in taking out costs of their own, which they had announced prior to this economic meltdown**.
>
> . . . We will proceed and implement the deal. **We are very confident that we will emerge with strong financials as a consequence of the acquisition** and in particular achieve the goal that we've been talking about for several years here. I didn't ask for these economic conditions. No one else did. But at Dow, we don't just sit in back rooms and say, oh, woe is me. We actually get moving and implement better, faster, stronger to deliver the economic goals that we promise. (Emphasis added).

And, during a December 8, 2008 webcast, Mr. Liveris again reassured that Dow was "on track to close the Rohm and Haas acquisition," that Dow "remain[ed] committed to closing the deal," and that Dow had "plenty of financing resources available" to do so.

C. Dow and Rohm and Haas work toward obtaining antitrust clearance for the Merger.

27. Following execution of the Merger Agreement, Dow and Rohm and Haas jointly undertook to obtain antitrust clearance for the Merger from both the FTC and the European Commission.

28. In connection with seeking FTC clearance, Dow and Rohm and Haas made filings under the Hart-Scott-Rodino ("HSR") Act on July 30, 2008, starting a 30-day initial waiting period. On August 29, 2008, at the end of the initial 30-day waiting period, the FTC issued a formal Request for Additional Information and Documentary Materials, colloquially known as a "Second Request," to Dow and Rohm and Haas. The Second Request sought additional documents and information from both parties regarding potential antitrust issues. Issuance of the Second Request extended the applicable HSR waiting period until 30 days after both parties certified substantial compliance with the Second Request.

29. Dow and Rohm and Haas both certified substantial compliance with the Second Request on October 7, 2008. This triggered the second 30-day waiting period under the HSR Act, which expired on November 6. Dow had previously entered into a timing agreement with the FTC Staff that gave the Staff additional time beyond the HSR Act's 30-day waiting period to review the transaction. As subsequently modified, the timing agreement provided that Dow would have to provide the FTC with 30-days' notice of its intent to close. As required by the Merger Agreement, Dow obtained Rohm and Haas's consent before entering into these tim-

ing agreements with the FTC. Dow gave the FTC notice of its intention to close on December 5, 2008.

30. By late December 2008, the only remaining conditions to Dow's obligation to close were antitrust approvals by the FTC and the European Commission. It was anticipated that the FTC would vote to clear the Merger before January 5, 2009, and the European Commission would approve the Merger on Thursday, January 8, 2009. As a result, all indications were that the Merger would close no later than two business days thereafter, *i.e.*, by Monday, January 12.

D. K-Dow collapses.

31. On December 28, 2008, KPC and PIC informed Dow that the Kuwait Supreme Petroleum Council had reversed its prior approval of the K-Dow joint venture. The collapse of K-Dow prompted Dow to attempt to postpone its obligations to close the Merger by delaying antitrust clearance, a knowing and intentional breach of Dow's covenants in Sections 5.1(b)(ii); 5.6(a) and 5.6(b) of the Merger Agreement.

32. Dow first approached the FTC on December 31, without notice to Rohm and Haas, and volunteered that it would not consummate the Merger until January 9. Thereafter, Mr. Liveris, Dow's Chairman and CEO engaged in improper *ex parte* contacts, personally visiting three FTC Commissioners to lobby for a delay in FTC clearance, again without notice to Rohm and Haas. As a result of these improper actions, Dow was able to delay the receipt of antitrust clearance from January 5 to January 23. Dow's repeated efforts to delay FTC clearance through *ex parte* contacts with the FTC constituted flagrant and intentional violations of Sections 5.1(b)(ii), 5.6(a), 5.6(b), 5.6(c)(iii), 5.6(c)(iv) and 5.6(c)(v) of the Merger Agreement.

33. On January 6, 2009, at the very same time that Dow was acting to delay antitrust clearance, Mr. Liveris suggested in remarks to *The Wall Street Journal* that the closing

of the Merger might be "several months" away. Mr. Liveris further claimed that "there is no deadline on the Rohm & Haas deal" and suggested that Dow is free to delay the Merger indefinitely so long as it pays a "ticking fee" under the Merger Agreement beginning on January 10, 2009. Mr. Liveris is wrong: the ticking fee provision does not give Dow an option to delay the Merger's closing at will as long as Dow pays the fee. Moreover, the ticking fee is payable only if Dow honors its contractual obligation to close the Merger — which Dow refuses to do.

E. Dow seeks to put off the closing date without giving any assurance that the Merger, in fact, will close or offering any legal justification for its request.

34. When Rohm and Haas learned that Dow had surreptitiously procured the delay of FTC clearance, Rohm and Haas demanded that Dow commit that it would not seek any further delay. Mr. Liveris and Rohm and Haas's Chairman and CEO, Raj Gupta, met on January 19 in Philadelphia to discuss the matter. After committing that Dow would not take further steps to delay FTC clearance, Mr. Liveris requested that Dow be given until June 30, 2009, to close the Merger. Mr. Liveris refused, however, to commit that at the end of that time Dow would close. Mr. Liveris did not claim that Dow had any legal basis for refusing to close, asserting only that it would be financially advantageous to Dow if it had more time to restructure its business and balance sheet prior to closing the Merger. Mr. Gupta replied that Dow's request for such an extension of the time to close was unacceptable to Rohm and Haas.

35. A similar request for additional time was made at a subsequent meeting between Mr. Charles Kalil, Dow's General Counsel, and Mr. Robert Lonergan, Rohm and Haas's General Counsel on January 20. Once again, Dow refused to commit that it would close the Merger if it was given more time. And once again, Dow did not claim that it had any legal justification for refusing to close. Mr. Lonergan reiterated that such request for additional time was not acceptable to Rohm and Haas.

F. Notwithstanding FTC clearance of the Merger, Dow wrongfully refuses to close.

36. The FTC granted final antitrust clearance for the Merger on Friday, January 23, 2009. Under Section 1.2 of the Merger Agreement, this triggered a closing date of no later than Tuesday, January 27, 2009.

37. The FTC's January 23 press release announcing clearance of the Merger makes clear that its action would permit the transaction to close. As stated in the press release, "Under the proposed consent order **allowing the transaction to proceed**, Dow will sell a range of assets . . . ." (Emphasis added.)

38. On January 24, Messrs. Liveris and Kalil of Dow met with Messrs. Gupta and Lonergan of Rohm and Haas. Once again, Dow did not claim that it had any justification under the Merger Agreement for refusing to commit to a closing date. Instead, Dow claimed that it was economically disadvantageous for Dow to close on schedule.

39. On January 25, Mr. Liveris wrote to Mr. Gupta, 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] pursuant to the existing terms." Mr. Liveris 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." Mr. Liveris did not claim that there was any legal basis for Dow's refusal to close.

G. The irreparable harm from Dow's breach.

40. Dow's failure to honor its contractual commitment to close the Merger on schedule is subjecting the business and affairs of Rohm and Haas to intolerable uncertainty, affecting not only Rohm and Haas and its stockholders, but also employees, customers, suppliers and other persons or entities doing business with Rohm and Haas. The longer that this uncer-

tainty about the Merger continues, the more likely it is that Rohm and Haas's business will suffer — for example, by losing employees, customers and suppliers. Moreover, as noted above, Dow agreed in Section 8.5(a) of the Merger Agreement that irreparable damage would occur in the event that Dow failed to perform its obligations thereunder.

CAUSE OF ACTION

(Specific Performance)

41. Rohm and Haas repeats and realleges the allegations of paragraphs 1 through 40 as if fully set forth herein.

42. Rohm and Haas and Dow entered into the Merger Agreement, a binding contractual agreement for valuable consideration.

43. Rohm and Haas is not in violation of any provision of the Merger Agreement. Rohm and Haas has performed and is prepared to continue to perform all of its obligations under that contract.

44. All of the conditions to closing the Merger were satisfied as of January 23, 2009. Under Section 1.2 of the Merger Agreement, this triggered a mandatory closing date of no later than January 27, 2009.

45. Dow has unequivocally stated that it will not close the transaction on January 27, 2009.

46. Dow's conduct violates Sections 1.2, 5.1(b) and 5.6 of the Merger Agreement, is without justification and is a knowing and intentional breach of the Merger Agreement.

47. Rohm and Haas has no adequate remedy at law. A damages award, while enormous, would be imprecise, while an award of specific performance might entirely or in large part eliminate the need for a determination of damages.

48. Rohm and Haas has a contractual right to enforce specifically the terms and conditions of the Merger Agreement, as expressly provided in Section 8.5(a) thereof.

49. Dow specifically covenanted in Section 5.1(b)(i) of the Merger Agreement to "take all action necessary to ensure that as of the Closing Date, [Dow] will obtain the Financing." And, in fact, Dow has the ability to consummate the Merger. Dow has $13 billion in debt financing and an additional $4 billion of preferred equity financing committed to fund the Merger, more than adequate funds to pay the bargained-for aggregate consideration of approximately $15 billion.

50. By reason of the foregoing, Rohm and Haas is entitled to a decree of specific performance requiring Dow to close the Merger Agreement immediately.

WHEREFORE, plaintiff requests that this Court enter a judgment against defendants:

A. Ordering defendants to specifically perform their obligations under the Merger Agreement and consummate the Merger immediately;

B. Temporarily, preliminarily and permanently enjoining defendants and any of their directors, officers, employees, affiliates or agents and any other person acting in concert with them from breaching defendants' obligations under the Merger Agreement and directing defendants to perform their obligations under the Merger Agreement and consummate the Merger;

C. Restraining defendants from proceeding with any litigation with respect to or arising out of the Merger or Merger Agreement in another forum in violation of Section 8.5(a) of the Merger Agreement;

D. Granting such other, further and different relief as the Court may deem just and proper together with the costs and expenses of this action.

Dated: January 26, 2009

CONNOLLY BOVE LODGE & HUTZ LLP

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