



## Case & Project Experience

### Fraudulent Conveyance Analysis in Lyondell Bankruptcy

#### Background

On 16 July 2007, Lyondell Chemical Company (“Lyondell”), a chemicals manufacturer and petroleum refiner, and Basell AF S.C.A. (“Basell”) entered into a merger agreement. Under the terms of the merger, Basell paid \$23 billion for Lyondell, and shareholders of Lyondell received \$48 per share. When the all-cash merger closed on 20 December 2007, Lyondell became a wholly owned indirect subsidiary of LyondellBasell Industries AF S.C.A. (“LBI”), creating one of the world’s largest polymers, petrochemicals, and fuels companies. In order to facilitate the merger, Lyondell and some of its affiliates and subsidiaries (the “Debtors”) entered into debt facilities representing a maximum of \$22.6 billion in financing.

On 6 January 2009, Lyondell and certain of its affiliates and subsidiaries filed for Chapter 11 protection in the Bankruptcy Court in the Southern District of New York. On 24 April 2009, LBI was added to the Debtors’ Chapter 11 filing.

Following the bankruptcy, the plaintiff, the Official Committee of Unsecured Creditors (the “Committee”), filed a fraudulent conveyance lawsuit against, among others, LBI and its financing parties alleging that, at the time of the merger, (i) LBI was insolvent because the stated value of its liabilities exceeded the fair value of its assets; (ii) LBI was insufficiently capitalized to fund its operations through a downturn; and (iii) the bankruptcy was foreseeable.

#### NERA’s Role

NERA was retained by LBI to conduct an independent review of the Committee’s claims and to conduct an independent evaluation of the findings detailed in affirmative and rebuttal expert reports filed by the plaintiff’s and defendants’ experts.

These reports were filed in connection with the claims that LBI was insolvent at the closing date and that its subsequent bankruptcy filing was foreseeable at the time of the merger. Specifically, NERA was asked to evaluate:

1. The reasonableness of EBITDA projections offered by Basell and Lyondell management for the period 2007-2011 and relied upon at the time of the merger;
2. The foreseeability of certain global economic, market, industry, and LBI-specific events that preceded LBI’s January 2009 bankruptcy.

NERA Senior Vice President Dr. Ramsey Shehadeh conducted economic research to address the first issue, and Senior Vice President Dr. Faten Sabry did a study of capital markets’ reactions to the LBO from its announcement through the actual closing.

Dr. Shehadeh conducted several economic investigations to assess whether Plaintiff’s experts demonstrated that management’s business projections—relied upon by Defendants’ experts in their conclusion that LBI was solvent at the time of the merger—were unreasonable as of the time of the merger, and also whether the other financial projections relied upon by Plaintiff’s experts were reasonable alternatives.

Dr. Sabry examined quantitative measures from the financial markets including credit default swaps, credit ratings, and yields to maturity to assess whether the markets expected LBI to be solvent at the time of the merger and whether the events leading up to LBI’s bankruptcy in 2009 could have been reasonably anticipated at the time of the merger.

On 2 December 2009, NERA's experts presented their findings to LBI. Ultimately, NERA submitted two declarations and Dr. Shehadeh provided deposition testimony in February 2010.

## The Result

On 16 February 2010, LBI announced that it had agreed to settlement terms with the Committee to pave the way to LBI's emergence from Chapter 11. NERA's work aided LBI substantially in consensually resolving a major dispute in one of the most contentious recent Chapter 11 cases.

In 2011, Lyondell's complex workout was named as Investment Dealers' Digest Restructuring Deal of the Year, and the company's Chapter 11 reorganization was recognized at the Turnaround Awards as the M&A Advisor Industrial Goods and Basic Resource Deal of the Year. The Turnaround Awards are granted by an independent panel of judges, and honor deal teams, deal makers, and firms whose activities set the standard for the M&A industry.

## Experts Involved

### Dr. Faten Sabry, Senior Vice President

Dr. Sabry directs projects in the areas of securities, complex damages disputes, and mass torts. This work includes both advisory engagements and litigation support in cases that culminated in trials or bankruptcy hearings. Her work includes the analysis and valuation of complex and thinly-traded securities, derivatives, and loan portfolios. Dr. Sabry has conducted quantitative analysis to assess fraudulent conveyance claims and solvency issues in bankruptcy cases. Dr. Sabry testified as an expert at trial and her research was published in the *Journal of Structured Finance*, *Journal of Investment Compliance*, *International Trade Journal*, and others.

### Dr. Ramsey Shehadeh, Senior Vice President

Dr. Shehadeh's research includes the economics of industry and company performance, pricing, innovation, and business investment. His research addresses economic issues raised in the context of government and regulatory investigations, complex commercial litigation, and business strategy. He also specializes in the application of statistical modeling and econometrics to these areas. Dr. Shehadeh has conducted research and prepared expert reports related to class certification, breach of contract, business impairment, business interruption, adhesion, franchise disputes, fraud, fraudulent conveyance, mergers, market power, tort allegations, and patent, copyright, and trademark

infringement. This has included research on economic issues related to liability and calculation of damages. Dr. Shehadeh has presented his research numerous times in state and federal court proceedings and before enforcement agencies including the US Federal Trade Commission, US Department of Justice, US Commodities Futures Trading Commission, Federal Energy Regulatory Commission, attorneys general, members of Congress, European Commission, and the Canadian Competition Bureau, among others.

## About NERA

NERA Economic Consulting ([www.nera.com](http://www.nera.com)) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

## Contacts

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