

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re	:	Chapter 11
SEMCRUDE, L.P., <i>et al.</i> ,	:	Case No. 08-11525 (BLS)
Debtors.	:	Jointly Administered
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BETTINA M. WHYTE, as the Trustee, on behalf of the SemGroup Litigation Trust,	:	
Plaintiff,	:	
v.	:	Adversary No. 10-50840-BLS
C/R ENERGY COINVESTMENT II, L.P., C/R SEMGROUP INVESTMENT PARTNERSHIP, L.P., RITCHIE SG HOLDINGS L.L.C., SGLP HOLDING, LTD., SGLP US HOLDING, L.L.C. and DOE DEFENDANTS, 1-100	:	
Defendants.	:	
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FIRST AMENDED COMPLAINT

Plaintiff Bettina M. Whyte (“Plaintiff”), the duly appointed Trustee of the SemGroup Litigation Trust (the “Litigation Trust”) established pursuant to the “Fourth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code” (the “Plan”), brings this action against Defendants (a) C/R Energy Coinvestment II, L.P., C/R SemGroup Investment Partnership, L.P. (collectively, “Riverstone”), (b) Ritchie SG Holdings, L.L.C., SGLP Holding,

Ltd., SGLP US Holding, L.L.C. (collectively, “Ritchie”); and (c) Doe Defendants¹ (collectively with Riverstone and Ritchie, the “Defendants”). Plaintiff respectfully alleges as follows:

NATURE OF COMPLAINT

1. Founded in February 2000, SemGroup, L.P. (“SemGroup”) and its affiliates provided transportation, storage, and distribution of oil and gas products to crude oil producers and refiners in North America’s energy corridor stretching from Canada to the Gulf Coast. Within just a few years, SemGroup began to grow rapidly and by 2007 it was regarded as the nation’s fifth largest privately held company by Forbes Magazine.

2. In July 2008, however, SemGroup announced that it had run out of money and was forced to seek bankruptcy protection.

3. Facts uncovered after SemGroup sought bankruptcy protection reveal that SemGroup had in fact been insolvent since at least the end of the second quarter of 2007 (and may have been insolvent much earlier in 2007). Further, since at least July 31, 2007, SemGroup had unreasonably small capital to make the two massive cash distributions (the “Partnership Distributions”) it made to its limited partners—one in August 2007 totaling \$90 million and the other in February 2008 totaling \$100 million.

4. During the relevant period, former SemGroup CEO Thomas Kivisto (“Kivisto”) and others at his direction engaged in unauthorized, speculative derivatives trading that dramatically increased SemGroup’s liabilities without a corresponding increase in assets. And contrary to SemGroup’s debt covenants and other documents provided to creditors and trading counterparties, these trades bore no reasonable relationship to SemGroup’s actual storage

¹ Doe Defendants are any entity affiliated with Ritchie or Riverstone that received Partnership Distributions (as defined herein) that are not currently named in this Complaint.

or transport capacity. The net liability resulting from these trades, when combined with SemGroup's other liabilities, exceeded the fair value of SemGroup's assets as of the end of the second quarter of 2007. Even SemGroup's *reported* balance sheets for the period ended December 31, 2007, revealed that SemGroup's liabilities exceeded its assets by approximately \$342 million. SemGroup continued to be insolvent through the time it sought bankruptcy protection in July 2008.

5. Similarly, the unauthorized, speculative derivatives trading violated SemGroup's covenants in loan agreements, giving rise to events of defaults under such agreements. In such circumstances, SemGroup's lenders would not have waived such defaults, but instead would have taken actions to eliminate SemGroup's access to capital had they known of the trading. Such acts would have crippled SemGroup financially, rendering SemGroup with no capital.

6. Further, Kivisto caused SemGroup to extend credit, on unfair terms, to Westback Publishing Co. L.L.C. ("Westback") for the personal benefit of Kivisto. Between the end of 2006 and the February 2008 Partnership Distribution, the receivable owed by Westback to SemGroup increased by at least \$200 million. This extension of credit was prohibited by SemGroup's secured loan documents and the Indenture, dated as of November 18, 2005, for the 8.75% Senior Notes Due 2015 (the "Indenture"). Had they had a transparent picture of SemGroup's relationship with Kivisto, SemGroup's lenders no doubt would have declared defaults, thereby restricting access to capital.

7. Defendants are investment funds that held investments in SemGroup and were managed by two large private equity investment fund managers known generally as Ritchie

Capital and Carlyle/Riverstone. Both Ritchie and Riverstone had designees who sat on SemGroup's Management Committee.

8. In August 2007, SemGroup made \$90 million in partnership distributions (the "2007 Distributions"). These distributions were made when SemGroup was insolvent and/or had unreasonably small capital to make such distributions. The Defendants received, in the aggregate, approximately \$50.6 million directly on account of their limited partnership interests and indirectly on account of distributions to SemGroup G.P., L.L.C. ("Sem GP") from the 2007 Distributions.

9. In spite of the fact that SemGroup's reported balance sheets as of December 31, 2007 showed negative partner equity of \$342 million, on or about February 15, 2008, Defendants and other members of SemGroup's Management Committee caused SemGroup to make special distribution payments of \$100 million to all holders of partnership interests (the "2008 Distributions"). The Defendants received, in the aggregate, in excess of \$56.3 million directly on account of their limited partnership interests and indirectly on account of distributions to Sem GP.

10. SemGroup received no value in exchange for transferring its scarce cash to the Defendants. Because SemGroup transferred the Partnership Distributions to the Defendants while it was insolvent and/or had unreasonably small capital, and because it received no value in exchange, the Partnership Distributions are constructively fraudulent transfers that are subject to avoidance.

11. Further, each Defendant, as an initial transferee and as a subsequent transferee of Sem GP, is liable to repay its share of the Partnership Distributions to SemGroup's estate.

JURISDICTION AND VENUE

12. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 because this is a civil proceeding arising in or relating to Plaintiff's case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). This is a core proceeding pursuant to 28 U.S.C. § 157(b).

13. Venue is proper in this Court under 28 U.S.C. § 1409(a).

14. This proceeding is initiated pursuant to Rule 7001(1) & (7) of the Federal Rules of Bankruptcy Procedure.

PARTIES

15. On July 22, 2008 and October 17, 2008 (the "Petition Dates"), SemGroup and certain of its affiliates (collectively, the "Debtors")² filed voluntary petitions for relief (the "Bankruptcy Cases") under chapter 11 of the Bankruptcy Code.

16. At all relevant times prior to the Petition Dates, SemGroup was an Oklahoma limited partnership. At all relevant times prior to the Petition Dates, Sem GP was the sole general partner of SemGroup. On information and belief, Sem GP owns no assets other than its equity interests in SemGroup.

² The term "Debtors" refers to the jointly administered Debtors in these chapter 11 cases, which, along with the last four (4) digits of each Debtor's federal tax identification number, are: SemCrude, L.P. (7524); Chemical Petroleum Exchange, Incorporated (8866); Eaglwing, L.P. (7243); Grayson Pipeline, L.L.C. (0013); Greyhawk Gas Storage Company, L.L.C. (4412); K.C. Asphalt L.L.C. (6235); SemCanada II, L.P. (3006); SemCanada L.P. (1091); SemCrude Pipeline, L.L.C. (9811); SemFuel Transport L.L.C. (6777); SemFuel, L.P. (1015); SemGas Gathering L.L.C. (4203); SemGas Storage, L.L.C. (0621); SemGas, L.P. (1095); SemGroup Asia, L.L.C. (5852); SemGroup Finance Corp. (3152); SemGroup, L.P. (2297); SemKan, L.L.C. (8083); SemManagement, L.L.C. (0772); SemMaterials Vietnam, L.L.C. (5931); SemMaterials, L.P. (5443); SemOperating G.P., L.L.C. (5442); SemStream, L.P. (0859); SemTrucking, L.P. (5355); Steuben Development Company, L.L.C. (9042); and SemCap, L.L.C. (5317). SemGroup Holdings, L.P. (6746) is also a Debtor, but its chapter 11 case has not been jointly administered with the other Debtors' cases.

17. Plaintiff is the duly appointed Trustee of the Litigation Trust, which was formed pursuant to the Plan. The Plan, which was confirmed by order of this Court, became effective on November 30, 2009. Among other things, the Plan provides for the transfer of claims against the Defendants from the Debtors' estates to the Litigation Trust. The Plan also provided for the transfer of Contributing Lenders' Claims to the Litigation Trust.

18. Defendant Ritchie SG Holdings, L.L.C., is a Delaware limited liability company, which was formerly known as Ritchie Energy Ventures, L.L.C. Defendant SGLP Holding, Ltd. is a Cayman Island exempted company. Defendant SGLP US Holding, L.L.C. is a Delaware limited liability company. The Ritchie Defendants are subsidiaries of Ritchie Opportunistic Trading, Ltd., which as a result, is the beneficial owner of the SemGroup units held by the Ritchie Defendants. Ritchie Capital Management, Ltd. and Ritchie Capital Management, L.L.C., as the investment manager and sub-advisor, respectively, to Ritchie Opportunistic Trading, Ltd., has voting power and investment control over the SemGroup units. Ritchie and its affiliates are a part of a diversified asset management firm established in 1997 which manages several billion dollars in private equity, venture capital, and hedge fund investments, with offices in Wheaton, Illinois; New York, New York; and Menlo Park, California. On information and belief, Ritchie first acquired partnership interests in SemGroup in or about April 2004. Ritchie also owns interests in Sem GP.

19. Defendants C/R Energy Coinvestment II, L.P. and C/R SemGroup Investment Partnership, L.P. are each limited partnerships operating in New York, New York. Entities owning the equity interests of C/R Energy Coinvestment II, L.P. and C/R SemGroup Investment Partnership, L.P. are affiliated with Carlyle/Riverstone Global Energy and Power Fund II, L.P. ("Carlyle/Riverstone"), a New York-based private equity investment funds focused

on energy and power investments. Riverstone Holdings L.L.C. (“Riverstone Holdings”) and The Carlyle Group (“Carlyle”) are the co-general partners of Carlyle/Riverstone. Riverstone Holdings is a Delaware limited liability company that operates from New York, New York as a private equity investment management firm. Founded in 2000, Riverstone Holdings had about \$17 billion of investment assets under management as of December 31, 2009. Riverstone Holdings conducts buyout and growth capital investments in the midstream, upstream, power, oilfield services, and renewable sectors of the energy industry. Carlyle is a global private equity management partnership, with over \$80 billion in assets under management as of December 31, 2009. On information and belief, Riverstone first acquired partnership interests in SemGroup in or about January 2005. Riverstone also owns interests in Sem GP.

STATEMENT OF FACTS SUPPORTING RELIEF

A. The Debtors’ Prepetition Business

20. The Debtors were involved in the marketing and terminalling of crude oil, refined products such as heating oil and gasoline, natural gas, and natural gas liquids such as propane and other related products. In connection with their businesses, the Debtors traded commodities to offset the risk of price fluctuation inherent in their businesses.

21. Prior to the Petition Date, SemGroup was (directly and indirectly) the parent company of the Debtors. Prior to the Petition Date, SemGroup generally prepared financial statements on a consolidated basis. SemGroup’s fiscal year prior to the Petition Dates ended on December 31 of each year.

22. The prepetition operations of SemGroup and its subsidiaries based in the United States were, in many ways, intertwined and inter-dependent. For example, SemGroup used a centralized cash management system that ultimately centralized cash in a single

depository account maintained with Bank of Oklahoma, N.A., and intercompany transfers were made in the ordinary course every day.

23. Prior to the Partnership Distributions, SemGroup, on a consolidated basis, owed approximately \$1.8 billion in funded debt. Such debt included obligations owed under the “Amended and Restated Credit Agreement,” dated as of October 18, 2005 and as amended from time to time, with Bank of America, N.A., as agent (the “Credit Agreement”) executed in connection with the Bank Facility (as defined below) and unsecured notes totaling approximately \$600 million issued in November 2005.

B. SemGroup’s Prepetition Capital Structure

24. Immediately prior to the 2007 Distributions, SemGroup was the borrower or had guaranteed in excess of \$1.8 billion in debt.³

25. As of July 31, 2007, SemGroup was the borrower under a \$1.277 billion secured working capital facility that matured in October 2010 (the “Bank Facility”). The Bank Facility included a working capital facility, revolving credit facility, and term loan. Substantially all of SemGroup’s assets, except for assets of certain subsidiaries that were not guarantors of the Bank Facility, were pledged as collateral to the lenders under the Bank Facility (the “Banks”).

26. The outstanding obligations as of July 31, 2007 also included approximately \$593.8 million (not including the current portion of such debt) of unsecured notes issued under the Indenture.

27. Between July 2007 and February 2008, SemGroup’s total outstanding debt obligations increased in excess of \$1 billion as, among other things, SemGroup accessed funds

³ Various SemGroup subsidiaries maintained their own credit facilities. For purposes of this Complaint, to the extent such facilities existed on the Partnership Distribution transfer dates, they are included in solvency and reasonable capital analyses.

borrowed under the Bank Facility. As described below, these borrowings were used to fund margin requirements. As further described below, the Bank Facility had covenants prohibiting speculative trading and providing that SemGroup would be in default under the Bank Facility if it violated such covenants. Further, upon default, the Banks had the right to accelerate the amount due on the loans.

C. Kivisto's Speculative Trading and SemGroup's Descent Into Insolvency.

28. According to its audited 2006 financial statements (reported on a consolidated basis), as of December 31, 2006, SemGroup's assets totaled approximately \$4,449 million and its liabilities totaled approximately \$4,089 million, such that there was approximately \$359.5 million in positive partner capital.

29. While partner capital at the end of 2006 was positive, SemGroup's operating cash flow in 2006 was negative.

30. SemGroup's financial condition dramatically declined in 2007. Among other indications of its weakening financial condition, SemGroup reported a net loss of approximately \$605 million during 2007.

31. SemGroup also significantly scaled back its acquisition of assets in 2007. Whereas in 2006 SemGroup spent \$256.7 million acquiring assets, and another \$94.8 million during the first five months of 2007, between June 1, 2007 and December 31, 2007, SemGroup spent only \$12.3 million acquiring assets.

32. A material reason for SemGroup's declining financial condition in 2007 was due to speculative trading by Kivisto, in violation of the Bank Facility.

33. Beginning in early 2007, Kivisto engaged in a pattern of unauthorized, speculative, directional trading untethered to SemGroup's physical storage or transport capacity. These trades increasingly began to bet that oil prices would fall.

34. As part of these trading practices, Kivisto caused SemGroup to assume "naked" or "uncovered" short positions—obligations to sell oil that were not matched against SemGroup's physical capacity or an offsetting trading position. Such "naked" and "uncovered" trading positions exposed SemGroup to enormous financial risks, in this case, if the price of oil increased. When oil prices began their historical rise in 2007 and into 2008, the liabilities associated with these trading positions substantially grew.

35. Kivisto's speculative trading was also designed to avoid immediately realizing trading losses, in a manner that multiplied the risks his trading posed to SemGroup. Kivisto "rolled forward" these negative positions that would have otherwise expired with a realized loss. Like betting "double or nothing" after losing a bet, this strategy had the effect of delaying the recognition of a realized loss temporarily and potentially increasing the realized loss significantly in the future. Kivisto essentially "bet" that the price of oil would return to historical price ranges and that the unrealized losses associated with the "rolled forward" trades would eventually expire in the future without incurring any actual losses. Each time he rolled a position forward, it became more disconnected from SemGroup's actual storage and transport capacity.

36. Kivisto's bet turned out to be wrong. Between September 4, 2007 and February 29, 2008, NYMEX West Texas Intermediate crude oil benchmark prices went from approximately \$75.00 per barrel to approximately \$100.00 per barrel. Specifically, as oil prices rapidly increased in 2007, which increases continued in January and February 2008, Kivisto's trading positions resulted in increasingly large unrealized losses. Between December 31, 2006

and December 31, 2007, these trading positions caused SemGroup's net derivative liabilities to increase by approximately \$1.2 billion.

37. Kivisto's rolling forward of SemGroup's trading positions resulted in huge demands for cash to fund margin payments and subsequent margin calls.

38. Such margin calls became increasingly difficult for SemGroup to fund. Were SemGroup unable to satisfy these demands for cash, it would have had no choice but to sell open positions and incur realized losses at that point in time with no ability to benefit from potentially favorable price movements in the future. Thus, additional cash, obtained through borrowings under the Bank Facility, was necessary to support the mounting losses in SemGroup's trading positions. Indeed, in 2007, SemGroup was forced to borrow another \$1 billion primarily to partially fund the approximately \$1.7 billion in margin calls.

39. By the end of the second quarter of 2007, SemGroup's consolidated balance sheets, when adjusted for the fair market value of the items thereon, reveal that SemGroup was insolvent. Specifically, as of the end of the second quarter of 2007, SemGroup's liabilities, as disclosed on the adjusted consolidated balance sheets, were approximately \$5,033 million, while its assets, as disclosed on the adjusted consolidated balance sheets, were approximately \$5,022 million. Thus, according to the adjusted consolidated balance sheets, net equity was a *negative* \$10.7 million.

40. The balance sheets for the end of the second quarter of 2007 required downward adjustments to the fair market value of SemGroup's assets include, but are not limited to, the following:

- As alleged in ¶¶ 57–64, SemGroup's consolidated balance sheets during this period included the Westback Receivable, which was effectively worthless. As of

the end of the second quarter of 2007, the Westback Receivable was valued on the balance sheets as at least \$168.9 million; and

- SemGroup's net property, plant and equipment during this period was reduced by approximately \$160.8 million for construction-in-progress, which has virtually no fair market value, as well as an adjustment to linefill.

41. Likewise, by the end of the third quarter of 2007, SemGroup's consolidated balance sheets, when adjusted for the fair market value of the items thereon, reveal that SemGroup was insolvent to an even greater degree. Specifically, as of the end of the third quarter of 2007, SemGroup's liabilities, as disclosed on the adjusted consolidated balance sheets, were approximately \$6,084 million, while its assets, as disclosed on the adjusted consolidated balance sheets, were approximately \$5,663 million. Thus, according to the adjusted consolidated balance sheets, net equity was a *negative* \$420.5 million.

- As alleged in ¶¶ 57–64, SemGroup's consolidated balance sheets during this period included the Westback Receivable, which was effectively worthless. As of the end of the third quarter of 2007, the Westback Receivable was valued on the balance sheets as at least \$206.6 million; and
- SemGroup's net property, plant and equipment during this period was reduced for approximately \$139.9 million for construction-in-progress, which has virtually no fair market value, as well as an adjustment to linefill;

42. By December 31, 2007, SemGroup's audited consolidated financial statements also revealed that SemGroup was insolvent.⁴ Specifically, as of December 31, 2007,

⁴ SemGroup's auditors, PricewaterhouseCoopers, recently retracted its unqualified audit opinions previously certifying that SemGroup's consolidated financial statements for 2006–2007

SemGroup's liabilities, as disclosed in its audited consolidated financial statements, were approximately \$7,047 million, while its assets, on a consolidated basis, were only approximately \$6,705 million. Thus, according to the audited consolidated financial statements, without adjustments, partner capital was a *negative* \$342.1 million.

43. Further, whereas prior to the third quarter of 2007, SemGroup routinely made distributions to its limited partners and to Sem GP for tax purposes, starting in the third quarter of 2007, SemGroup ceased making such distributions.

44. SemGroup's consolidated earnings before interest, taxes, depreciation, and amortization ("EBITDA"), another metric for examining SemGroup's financial condition, was, on information and belief, approximately *negative* \$308.2 million for the year ended December 31, 2007, and approximately *negative* \$208.7 million for the three months ended March 31, 2008.

45. The Debtors' financial circumstances only grew worse in the first quarter of 2008. As oil prices continued to increase, the net derivative liabilities from Kivisto's trading positions increased without any corresponding increase in assets, and margin demands escalated, draining SemGroup's operating capital. According to its consolidated balance sheets as of January 31, 2008, without making any adjustments, partner capital was a *negative* \$362.15 million, a \$20 million loss in equity in just one month.

46. The January 31, 2008 balance sheets required downward adjustments, amounting to at least a \$848 million reduction in the fair market value of SemGroup's assets:

were fair and accurate presentations of SemGroup's consolidated financial condition. SemGroup's financial condition during these years is almost certainly worse than what was disclosed in its consolidated financial statements.

- As alleged in ¶¶ 57–64, SemGroup’s consolidated balance sheets during this period included the Westback Receivable, which was effectively worthless. As of January 31, 2008, the Westback Receivable was valued on the balance sheets as at least \$263.4 million;
- On information and belief, the January 31, 2008 balance sheets included \$206.8 million for construction-in-progress and \$0.7 million for capitalized interest, which assets have virtually no fair market value; and
- The January 31, 2008 balance sheets included \$181.97 million for SemGroup’s minority interest in Niska Gas Storage, which SemGroup sold in February 2008 for \$146.2 million, just days before the 2008 Partnership Distributions. Thus, the January 31, 2008 balance sheets overstated the fair market value of this asset by \$35.8 million;

47. Further, the losses accumulating from SemGroup’s trading positions and reflected in SemGroup’s net derivatives liability were not offset by a corresponding increase in the value of SemGroup’s inventory, as one might expect. For example, the value of SemGroup’s inventory as reported in SemGroup’s December 31, 2007 consolidated financial statements was approximately \$964.4 million, but according to an unaudited financial statement as of March 31, 2008, the value of SemGroup’s inventory was only approximately \$929 million. Although SemGroup’s inventory was recorded at cost on its balance sheets, the fair value of the inventory was not significantly higher notwithstanding the increase in oil prices—because SemGroup had a relatively constant inventory volume and its inventory was subject to rapid turnover.

48. An unaudited consolidated financial statement as of March 31, 2008 disclosed that SemGroup’s liabilities, on a consolidated basis, were approximately \$6.0 billion,

while its assets, on a consolidated basis, were valued at only approximately \$5.2 billion. These financial statements indicate that SemGroup's partner capital had decreased further to a *negative* \$801.51 million.

49. Speculative trading was prohibited by SemGroup's risk management policy ("RMP"). Indeed, the RMP expressly stated: "[I]t is SemGroup's policy not to sell naked options."

50. The RMP also imposed a trading volume limit at any given time of 12 million barrels of crude oil for the United States and Canada and a spread limit. Notwithstanding these policy limits, in 2006 and thereafter hundreds of millions of barrels of crude oil were traded.

51. Further, SemGroup disclosed in its audited financial statements that its commodity trading activity was supposed to be designed to reduce risks and expressly stated that speculative transactions in commodities were not permitted. SemGroup stated in such financial statements: "We seek to maintain a neutral net purchase and sale position and minimize exposure to commodity prices. Our commodity price risk management policy dictates that all derivative transactions entered into must offset our inventory and other risk positions. Speculative transactions in commodities are not permitted."

52. The speculative trading that began in early 2007 was also prohibited by the Bank Facility. Specifically, numerous sections of the Credit Agreement, including sections 7.03(f), 7.04, 7.09, 7.12, and 7.13, prohibited the type of trading in which Kivisto had caused SemGroup to engage.

53. SemGroup was also obligated under the Credit Agreement to submit marked-to-market reports, position reports, and borrowing base reports to the lenders. These

reports made it appear that SemGroup was not engaged in speculative trading, even though Kivisto had caused SemGroup to engage in such trading through 2007 and early 2008. Based on these reports, SemGroup's lenders were wrongly led to believe that SemGroup was not engaged in speculative trading.

54. In the case of the Indenture, SemGroup was generally barred from incurring non-ordinary course debt obligations. While SemGroup was permitted to incur hedging obligations, hedging obligations expressly excluded speculative trading.

55. Had creditors, including the Banks, known about the speculative trading and the breach of the loan covenants, they would have exercised remedies to protect themselves. In the case of the Banks, the Banks would have declared a default, accelerated nearly \$1.7 billion obligations then outstanding (as of February 2008), which would have terminated SemGroup's access to \$1.7 billion in committed capital as of that date.

56. Further, on information and belief, parties that traded with SemGroup would have placed trading limits, imposed additional margin requirements, or ceased altogether trading with SemGroup had such parties known of SemGroup's speculative trading.

D. SemGroup's Relationship With Westback

57. SemGroup's financial condition was distorted by a receivable owed by Westback. Westback was, at all relevant times, owned 50% by Kivisto and 50% by his wife, Julie L. Kivisto. Kivisto caused SemGroup to fund Westback's trading activities for his personal benefit. Kivisto accomplished this by having Eaglwing L.P. (a subsidiary of SemGroup) purchase derivatives and post margin for Westback's account.

58. The Westback trading relationship violated both the Credit Agreement and the Indenture, which barred SemGroup from entering into transactions with affiliates other than

on fair and reasonable terms that would be obtainable in a comparable arm's length transaction with a person other than an affiliate. Eaglwing and SemGroup received no consideration for extending to Westback what amounted to an interest-free loan. The material aspects of Westback's relationship with SemGroup were hidden from SemGroup's creditors.

59. Kivisto's use of Eaglwing for Westback trading amounted to trading for his own personal benefit. SemGroup's risk management policy prohibited SemGroup traders from engaging in trading activity for their personal benefit.

60. At the beginning of 2006, Westback owed SemGroup approximately \$19.8 million. But by the end of 2006, the receivable owed by Westback had grown to \$136.3 million as Kivisto caused SemGroup (through Eaglwing) to post margin on Westback's behalf.

61. The Credit Agreement required delivery of audited financial statements by SemGroup. In its 2006 consolidated financial statements, SemGroup disclosed that SemGroup "acts as an agent for an entity owned by certain producer unitholders and an officer of [SemGroup]." There was no disclosure of the name "Westback," that Westback was wholly owned by Kivisto and his spouse (and not by any other "producer unitholders"), or that SemGroup was providing interest-free credit to fund Westback's trading.

62. By the end of 2007, the Westback Receivable had grown by an additional \$200 million, to over \$336 million. Many of the incomplete disclosures in the 2006 audited financial statements were not corrected in the 2007 audited financial statements.

63. SemGroup's financial statements did not adequately disclose the Westback relationship even though the Westback Receivable was material to SemGroup's financial condition. As of December 31, 2006, the Westback Receivable represented 10% of SemGroup's entire accounts receivable and 3.1% of SemGroup's total assets. As of December

31, 2007, the Westback Receivable represented 18% of SemGroup's entire accounts receivable and 4.8% of SemGroup's total assets.

64. Westback did not show the obligation on its own financial statements because, had it done so, it would have been forced to acknowledge that it was balance sheet insolvent.

C. The Defendants' Partnership Interests and the Partnership Distributions

65. Beginning in April 2004, Defendant Ritchie acquired partnership interests in SemGroup and interests in Sem GP in return for an equity investment of approximately \$57 million.⁵ As of the date immediately prior to the 2007 Distributions, on information and belief, Ritchie had already received approximately \$34.7 million on account of its partnership interests in SemGroup. As of the date of the 2007 Distributions, Defendant Ritchie owned (directly and indirectly through its interests in Sem GP) approximately 26% of the partnership interests in SemGroup.

66. Beginning in January 2005, Defendant Riverstone acquired partnership interests in SemGroup and interests in Sem GP in return for an equity investment of approximately \$105.6 million. As of the date immediately prior to the 2007 Distributions, on information and belief, Riverstone had already received approximately \$56.5 million on account of its partnership interests in SemGroup. As of the date of the 2007 Distributions, Defendant Riverstone owned (directly and indirectly through its interests in Sem GP) approximately 30% of the partnership interests in SemGroup.

⁵ This amount includes, on information and belief, a conversion of \$6.4 million of subordinated debt into equity.

67. Thus, even before the Partnership Distributions, Defendants had received tens of millions of dollars in equity distributions from SemGroup.

68. In August 2007, as a part of the 2007 Distributions, SemGroup made \$90 million in distributions to holders of partnership interests in SemGroup. Approximately \$88.2 million was distributed to limited partners, with the balance distributed to Sem GP. Defendants received approximately \$50.6 million of such distributions on account of their limited partnership interests and indirectly on account of distributions to Sem GP.

69. On February 15, 2008, SemGroup, via its Management Committee, authorized the 2008 Distributions, providing \$100 million in distribution to entities and persons holding partnership interests in SemGroup. Approximately \$98 million was distributed to limited partners, with the balance distributed to Sem GP. Defendants received in excess of \$56.3 million of such distributions on account of their limited partnership interests and indirectly on account of distributions to Sem GP.

70. On information and belief, SemGroup did not request or receive an opinion indicating that SemGroup was solvent immediately prior to the Partnership Distributions or that SemGroup would be solvent immediately after the delivery of the Partnership Distributions.

71. The Partnership Distributions provided to the Defendants occurred at a time when SemGroup was operating with unreasonably small capital. Further, SemGroup was insolvent or became insolvent as a result of the Partnership Distributions.

72. Taking into account any assets of Sem GP for purposes of determining SemGroup's insolvency does not change the fact that SemGroup was insolvent or rendered

insolvent by the Partnership Distributions. This is because Sem GP's only asset was its partnership interests in SemGroup, amounting to approximately 2% of the equity in SemGroup.

73. The Partnership Distributions to the Defendants were on account of their partnership interests. The Defendants did not provide any consideration to SemGroup in exchange for the approximately \$106.9 million they received from the Partnership Distributions. Under any circumstances SemGroup received less than reasonably equivalent value on account of the Partnership Distributions.

74. The Defendants received millions of dollars in Partnership Distributions, on information and belief, in the amounts set forth in the table below.⁶ The Partnership Distributions are divided into distributions on account of the Defendants' limited partnership interests (the "Limited Partnership Distributions") and on account of the Defendants' interests in Sem GP, which itself received Partnership Distributions (the "General Partnership Distributions").

⁶ The table below represents the Plaintiff's understanding, on information and belief, of the specific Defendants that received Partnership Distributions. The Plaintiff reserves the right to amend this Complaint to identify additional Defendants or to correct the amounts received by each Defendant.

Partner	2007 Distribution		2008 Distribution		Total Distribution
	Limited Partnership Distributions	General Partnership Distributions	Limited Partnership Distributions	General Partnership Distributions	
Ritchie Entities					
Ritchie SG Holdings, L.L.C.	\$10,612,865.97 ⁷	\$409,478.53	\$11,792,073.31	\$454,976.13	\$23,269,393.94
SGLP Holding, Ltd.	\$9,275,630.26	n/a	\$10,306,255.84	n/a	\$19,581,886.10
SGLP US Holding, L.L.C	\$3,029,971.85	\$61,861.04	\$3,366,635.40	\$68,734.49	\$6,527,202.78
Ritchie Total	\$22,918,468.08	\$471,339.57	\$25,464,964.55	\$523,710.62	\$49,378,482.82
Riverstone Entities					
C/R Energy Coinvestment II, L.P.	\$2,280,563.53	\$46,560.84	\$2,533,959.47	\$51,734.27	\$4,912,818.11
C/R SemGroup Investment Partnership, L.P.	\$24,417,168.08	\$498,510.08	\$27,130,186.79	\$553,900.08	\$52,599,765.03
Riverstone Total	\$26,697,731.61	\$545,070.92	\$29,664,146.26	\$605,634.35	\$57,512,583.14
GRAND TOTAL	\$49,616,199.69	\$1,016,410.49	\$55,129,110.81	\$1,129,344.97	\$106,891,065.96

⁷ This distribution was, on information and belief, made in the name of Ritchie Energy Ventures, L.L.C., the predecessor entity of Ritchie SG Holdings, L.L.C.

COUNT ONE

Constructive Fraudulent Transfer under §§ 544(b) and 550 – Limited Partnership Distributions of the 2007 Distributions against Defendants that Received Such Distributions

75. Plaintiff repeats and re-alleges each and every allegation contained in each of the preceding paragraphs.

76. Pursuant to 11 U.S.C. § 544(b), Plaintiff has the rights of an existing unsecured creditor of the Debtors. 11 U.S.C. § 544(b) permits Plaintiff to assert claims and causes of action that such a creditor could assert under Oklahoma law (Okla. Stat. 24-117(A)).

77. As of the 2007 Distributions, there were unsecured creditors of SemGroup, including holders of notes issued under the Indenture.

78. Within the four-year period immediately preceding the commencement of the Bankruptcy Cases, SemGroup transferred to the Defendants the Limited Partnership Distributions relating to the 2007 Distributions. Each transfer of such Limited Partnership Distributions to the Defendants constituted a transfer of the Debtors' property interests.

79. SemGroup received no consideration or, under any circumstances, received less than reasonably equivalent value, on account of each Limited Partnership Distribution transferred to each Defendant.

80. At the time of such Limited Partnership Distributions, SemGroup had unreasonably small capital and/or was insolvent because its liabilities exceeded the fair value of its assets.

81. Therefore, such Limited Partnership Distributions are voidable under 11 U.S.C. § 544(b) of the Bankruptcy Code, incorporating applicable nonbankruptcy law.

82. Because such Limited Partnership Distributions are avoidable under the Bankruptcy Code and applicable state law, then, pursuant to 11 U.S.C. § 550(a)(1), Plaintiff may recover from the Defendants as initial transferees or entities for whose benefit the fraudulent transfers were made.

COUNT TWO

Constructive Fraudulent Transfer Under §§ 548(a)(1)(B) and 550 – Limited Partnership Distributions of the 2007 Distributions against Defendants that Received Such Distributions

83. Plaintiff repeats and re-alleges each and every allegation contained in each of the preceding paragraphs.

84. During the two-year period immediately preceding the commencement of the Bankruptcy Cases, SemGroup transferred to the Defendants the Limited Partnership Distributions relating to the 2007 Distribution. Each transfer of such Limited Partnership Distributions to the Defendants constituted a transfer of the Debtors' property interests.

85. SemGroup received no consideration or, under any circumstances, received less than reasonably equivalent value, on account of each Limited Partnership Distribution provided to each Defendant.

86. At the time of such Limited Partnership Distributions, SemGroup had unreasonably small capital and/or was insolvent because its liabilities exceeded the fair value of its assets.

87. Therefore, such Limited Partnership Distributions are voidable under 11 U.S.C. § 548(a)(1)(B) of the Bankruptcy Code.

88. Because such Limited Partnership Distributions are avoidable under the Bankruptcy Code, pursuant to 11 U.S.C. § 550(a)(1) Plaintiff may recover from the Defendants as initial transferees or entities for whose benefit the fraudulent transfers were made.

COUNT THREE

Constructive Fraudulent Transfer Under §§ 544(b) and 550 – General Partnership Distributions of the 2007 Distributions against Defendants that Received Such Distributions

89. Plaintiff repeats and re-alleges each and every allegation contained in each of the preceding paragraphs.

90. Pursuant to 11 U.S.C. § 544(b), Plaintiff has the rights of an existing unsecured creditor of the Debtors. 11 U.S.C. § 544(b) permits Plaintiff to assert claims and causes of action that such a creditor could assert under Oklahoma law (Okla. Stat. 24-117(A)).

91. As of the 2007 Distributions, there were unsecured creditors of SemGroup, including holders of notes issued under the Indenture.

92. Within the four-year period immediately preceding the commencement of the Bankruptcy Cases, SemGroup transferred to Sem GP the General Partnership Distributions relating to the 2007 Distributions. Each transfer of such General Partnership Distributions constituted a transfer of the Debtors' property interests.

93. Sem GP subsequently transferred to the Defendants their *pro rata* share of General Partnership Distributions.

94. At the time of the General Partnership Distributions, SemGroup had unreasonably small capital and/or was insolvent because its liabilities exceeded the fair value of its assets.

95. Therefore, such General Partnership Distributions are voidable under 11 U.S.C. § 544(b) of the Bankruptcy Code.

96. Because such General Partnership Distributions are avoidable under the Bankruptcy Code and applicable state law, then, pursuant to 11 U.S.C. § 550(a)(1), Plaintiff may recover from the Defendants as subsequent transferees or entities for whose benefit the fraudulent transfers were made.

COUNT FOUR

Constructive Fraudulent Transfer Under §§ 548(b) and 550 – General Partnership Distributions of the 2007 Distribution against Defendants that Received Such Distributions

97. Plaintiff repeats and re-alleges each and every allegation contained in each of the preceding paragraphs.

98. During the two-year period immediately preceding the commencement of the Bankruptcy Cases, SemGroup transferred to Sem GP the General Partnership Distributions relating to the 2007 Distribution. Each transfer of such General Partnership Distributions constituted a transfer of the Debtors' property interests.

99. Sem GP subsequently transferred to the Defendants their *pro rata* share of General Partnership Distributions.

100. At the time of such General Partnership Distributions, SemGroup had unreasonably small capital and/or was insolvent because its liabilities exceeded the fair value of its assets.

101. Therefore, such General Partnership Distributions are voidable under 11 U.S.C. § 548(b) of the Bankruptcy Code.

102. Because such General Partnership Distributions are avoidable under the Bankruptcy Code, pursuant to 11 U.S.C. § 550(a)(1) Plaintiff may recover from the Defendants as subsequent transferees or entities for whose benefit the fraudulent transfers were made.

COUNT FIVE

Constructive Fraudulent Transfer under §§ 544(b) and 550 – Limited Partnership Distributions of the 2008 Distributions against Defendants that Received Such Distributions

103. Plaintiff repeats and re-alleges each and every allegation contained in each of the preceding paragraphs.

104. Pursuant to 11 U.S.C. § 544(b), Plaintiff has the rights of an existing unsecured creditor of the Debtors. 11 U.S.C. § 544(b) permits Plaintiff to assert claims and causes of action that such a creditor could assert under Oklahoma law (Okla. Stat. 24-117(A)).

105. As of the 2008 Distributions, there were unsecured creditors of SemGroup, including holders of notes issued under the Indenture.

106. Within the four-year period immediately preceding the commencement of the Bankruptcy Cases, SemGroup transferred to the Defendants the Limited Partnership Distributions relating to the 2008 Distributions. Each transfer of such Limited Partnership Distributions to the Defendants constituted a transfer of the Debtors' property interests.

107. SemGroup received no consideration or, under any circumstances, received less than reasonably equivalent value, on account of each Limited Partnership Distribution transferred to each Defendant.

108. At the time of such Limited Partnership Distributions, SemGroup had unreasonably small capital and/or was insolvent because its liabilities exceeded the fair value of its assets.

109. Therefore, such Limited Partnership Distributions are voidable under 11 U.S.C. § 544(b) of the Bankruptcy Code, incorporating applicable nonbankruptcy law.

110. Because such Limited Partnership Distributions are avoidable under the Bankruptcy Code and applicable state law, then, pursuant to 11 U.S.C. § 550(a)(1), Plaintiff may recover from the Defendants as initial transferees or entities for whose benefit the fraudulent transfers were made.

COUNT SIX

Constructive Fraudulent Transfer Under §§ 548(a)(1)(B) and 550 – Limited Partnership Distributions of the 2008 Distributions against Defendants that Received Such Distributions

111. Plaintiff repeats and re-alleges each and every allegation contained in each of the preceding paragraphs.

112. During the two-year period immediately preceding the commencement of the Bankruptcy Cases, SemGroup transferred to the Defendants the Limited Partnership Distributions relating to the 2008 Distributions. Each transfer of such Limited Partnership Distributions to the Defendants constituted a transfer of the Debtors' property interests.

113. SemGroup received no consideration or, under any circumstances, received less than reasonably equivalent value, on account of each Limited Partnership Distribution provided to each Defendant.

114. At the time of such Limited Partnership Distributions, SemGroup had unreasonably small capital and/or was insolvent because its liabilities exceeded the fair value of its assets.

115. Therefore, such Limited Partnership Distributions are voidable under 11 U.S.C. § 548(a)(1)(B) of the Bankruptcy Code.

116. Because such Limited Partnership Distributions are avoidable under the Bankruptcy Code, pursuant to 11 U.S.C. § 550(a)(1) Plaintiff may recover from the Defendants as initial transferees or entities for whose benefit the fraudulent transfers were made.

COUNT SEVEN

Constructive Fraudulent Transfer Under §§ 544(b) and 550 – General Partnership Distributions of the 2008 Distributions against Defendants that Received Such Distributions

117. Plaintiff repeats and re-alleges each and every allegation contained in each of the preceding paragraphs.

118. Pursuant to 11 U.S.C. § 544(b), Plaintiff has the rights of an existing unsecured creditor of the Debtors. 11 U.S.C. § 544(b) permits Plaintiff to assert claims and causes of action that such a creditor could assert under Oklahoma law (Okla. Stat. 24-117(A)).

119. As of the 2008 Distributions, there were unsecured creditors of SemGroup, including holders of notes issued under the Indenture.

120. Within the four-year period immediately preceding the commencement of the Bankruptcy Cases, SemGroup transferred to Sem GP the General Partnership Distributions relating to the 2008 Distributions. Each transfer of such General Partnership Distributions constituted a transfer of the Debtors' property interests.

121. Sem GP subsequently transferred to the Defendants their *pro rata* share of General Partnership Distributions.

122. At the time of such General Partnership Distributions, SemGroup had unreasonably small capital and/or was insolvent because its liabilities exceeded the fair value of its assets.

123. Therefore, such General Partnership Distributions are voidable under 11 U.S.C. § 544(b) of the Bankruptcy Code.

124. Because such General Partnership Distributions are avoidable under the Bankruptcy Code and applicable state law, then, pursuant to 11 U.S.C. § 550(a)(1), Plaintiff may recover from the Defendants as subsequent transferees or entities for whose benefit the fraudulent transfers were made.

COUNT EIGHT

Constructive Fraudulent Transfer Under §§ 548(b) and 550 – General Partnership Distributions of the 2008 Distributions against Defendants that Received Such Distributions

125. Plaintiff repeats and re-alleges each and every allegation contained in each of the preceding paragraphs.

126. During the two-year period immediately preceding the commencement of the Bankruptcy Cases, SemGroup transferred to Sem GP the General Partnership Distributions relating to the 2008 Distributions. Each transfer of such General Partnership Distributions constituted a transfer of the Debtors' property interests.

127. Sem GP subsequently transferred to the Defendants their *pro rata* share of General Partnership Distributions.

128. At the time of such General Partnership Distributions, SemGroup had unreasonably small capital and/or was insolvent because its liabilities exceeded the fair value of its assets.

129. Therefore, such General Partnership Distributions are voidable under 11 U.S.C. § 548(b) of the Bankruptcy Code.

130. Because such General Partnership Distributions are avoidable under the Bankruptcy Code, pursuant to 11 U.S.C. § 550(a)(1) Plaintiff may recover from the Defendants as subsequent transferees or entities for whose benefit the fraudulent transfers were made.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of the Debtors' chapter 11 estates, prays for relief and judgment, as follows:

- a. Declaring that all 2007 Distributions transferred to the Defendants (including Limited Partnership Distributions and General Partnership Distributions) are avoidable pursuant to 11 U.S.C. §§ 544 and/or 548;
- b. Declaring that all 2008 Distributions transferred to the Defendants (including Limited Partnership Distributions and General Partnership Distributions) are avoidable pursuant to 11 U.S.C. §§ 544 and/or 548;
- c. Awarding Plaintiff judgment in an amount equal to the challenged Partnership Distributions and directing the Defendants to pay Plaintiff an amount equal to the Partnership Distributions pursuant to 11 U.S.C. § 550(a), together with interest on such amount from the date of the Partnership Distributions;
- d. Awarding Plaintiff attorneys' fees, costs and other expenses; and
- e. Granting such other and further relief as the Court considers appropriate.

Dated: July 21, 2010

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