

**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA**

| | | |
|---|---|---------------------------------|
| BETTINA M. WHYTE, |) | |
| as Trustee for the SemGroup Litigation Trust, |) | |
| |) | |
| Plaintiff, |) | |
| vs. |) | Case No. CJ-2010-04042 |
| |) | The Honorable Daman H. Cantrell |
| PRICEWATERHOUSECOOPERS, LLP, |) | |
| |) | |
| Defendant. |) | |

**PRICEWATERHOUSECOOPERS LLP'S AMENDED ANSWER
TO PLAINTIFF'S PETITION**

SemGroup was not, as Plaintiff asserts, a casualty of any purportedly misstated financial statements or improperly performed audit procedures. SemGroup failed because of record increases in oil prices and an extraordinary credit crisis in 2008 that the company's operations could not withstand. Plaintiff's attempt to blame SemGroup's independent auditor for the company's liquidity problems and bankruptcy is meritless.

From SemGroup's founding in 2000 until its bankruptcy in July 2008, Thomas Kivisto was the company's President, CEO, and a member of its management committee, and was also its largest individual stakeholder. From day one, SemGroup utilized Kivisto's broad expertise in the oil and commodities business to develop and execute the company's overall operational strategies, including its trading strategies. Over the following half decade, SemGroup's operational strategies, paired with aggressive capital acquisitions, built the company into one of the largest privately-held companies in the country.

SemGroup ultimately could not withstand an unanticipated and unprecedented climb in the price of oil, which led SemGroup's trading counterparties to demand massive margin deposits, or cash collateral, to cover unrealized losses on the company's open derivative

positions, thereby challenging the company's liquidity management. As of December 31, 2007, the company accurately reported \$1.7 billion in margin deposits on open derivative positions and \$2.0 billion in derivative liabilities, and those deposits and liabilities grew in 2008. In the face of still-rising oil prices, SemGroup sought additional financing in the summer of 2008. But the company's lenders — then in the midst of a historic credit crisis — turned their backs on the company, leading SemGroup on July 14, 2008 to “novate,” or sell, most of its open trading positions and recognize over \$2.4 billion in losses. Asserting that the “novation” had triggered a “material adverse change,” the SemGroup's lenders declared a credit-agreement default. Bankruptcy followed on July 22, 2008.

Standing in the shoes of SemGroup, plaintiff has no factual or legal basis to blame the company's independent auditor for the liabilities SemGroup incurred during this unprecedented rise of oil prices and historic constriction of the credit markets. PricewaterhouseCoopers LLP conducted its 2007 audit of SemGroup's financial statements in compliance with professional standards. And Plaintiff does not dispute that SemGroup's audited financial statements accurately reported the company's derivative liabilities, realized and unrealized losses from derivatives trading, and margin deposits on open derivative positions.

Plaintiff also misrepresents SemGroup's agency relationship with Westback, an entity in which Kivisto had an ownership stake. This relationship—including the amount Westback owed SemGroup—was properly recorded and disclosed in SemGroup's audited financial statements. The nature of the Westback relationship was also known both to SemGroup's officers and to non-executive members of its management committee.

This lawsuit has no merit. SemGroup's bankruptcy was the product of the unprecedented rise in oil prices coupled with the credit crisis. That bankruptcy was unrelated to accounting or financial reporting.

* * * * *

Pursuant to the Oklahoma Pleading Code, OKLA. STAT. tit. 12, § 2008, Defendant PricewaterhouseCoopers LLP hereby answers Plaintiff's petition, using the same numbering as used in Plaintiff's petition. Any allegation not specifically responded to below is hereby denied. PwC has not answered Count II of Plaintiff's petition because it was dismissed.

1. PwC admits that it audited SemGroup's annual financial statements from 2004 through 2007. PwC denies that it audited SemGroup's 2008 financial statements. PwC denies the remaining allegations in paragraph 1.

2. PwC denies the allegations in this paragraph.

3. PwC admits the allegations in this paragraph.

4. PwC admits the second and third sentences of paragraph 4 and admits that it audited SemGroup's annual financial statements from 2004 through 2007. PwC denies that it audited SemGroup's 2008 financial statements. PwC denies the remaining allegations in this paragraph.

5. PwC admits the allegations in this paragraph, except that it lacks sufficient knowledge to either admit or deny that SemGroup employed over 400 people in Oklahoma.

6. PwC admits the allegations in this paragraph.

7. PwC admits the allegations in this paragraph.

8. PwC admits the allegations in this paragraph.¹

¹ PwC denies the allegations contained in all of the headings and subheadings of the petition.

9. PwC denies the allegations in paragraph 9, except to admit that at certain times SemGroup had non-executive members on its Management Committee.

10. PwC lacks sufficient information to either admit or deny the allegations of paragraph 10.

11. PwC lacks sufficient information to either admit or deny the allegations of this paragraph.

12. PwC denies the allegations in this paragraph, except to admit that Eaglwing executed certain derivatives trades on behalf of Westback.

13. PwC admits the allegations in the first two sentences of paragraph 13. PwC lacks sufficient information to either admit or deny the allegations in the third and fourth sentences of paragraph 13. PwC denies the final two sentences of paragraph 13.

14. PwC denies the allegations in the first, second, and fifth sentences of paragraph 14. PwC lacks sufficient knowledge to either admit or deny the allegations in the third and fourth sentences of paragraph 14.

15. PwC denies the allegations in this paragraph.

16. PwC denies the allegations in this paragraph.

17. PwC denies the allegations in this paragraph.

18. PwC denies the allegations in this paragraph.

19. PwC lacks sufficient information to either admit or deny the allegations in the first sentence of paragraph 19. PwC denies the allegations in the second sentence of paragraph 19.

20. PwC denies the allegations in this paragraph.

21. PwC admits it knew of the existence of the Westback receivable in 2006, and denies the remaining allegations in paragraph 21.

22. PwC denies the allegations in this paragraph.

23. PwC denies the allegations in this paragraph.

24. PwC denies the allegations in this paragraph.

25. PwC denies the allegations in this paragraph.

26. PwC denies the allegations in the first two sentences of paragraph 26. PwC lacks sufficient knowledge to either admit or deny the allegations in the final sentence of paragraph 26.

27. PwC admits the allegations in the first three sentences of paragraph 27. PwC denies the allegations in the final sentence of paragraph 27.

28. PwC denies the allegations in this paragraph.

29. PwC denies the allegations in this paragraph.

30. PwC denies the allegations in this paragraph. PwC lacks sufficient information to either admit or deny footnote 2, because Plaintiff does not allege from where the passages are quoted.

31. PwC lacks sufficient knowledge to either admit or deny the quotations in paragraph 31, and denies the remaining allegations in this paragraph.

32. PwC lacks sufficient information to either admit or deny the allegations in this paragraph.

33. PwC lacks sufficient information to either admit or deny the allegations in this paragraph.

34. PwC lacks sufficient information to either admit or deny the allegations in this paragraph.

35. PwC denies the allegations in paragraph 35, except to admit that if SemGroup could not meet its margin call obligations, its related positions would be closed out and it remained obligated for any shortfall.

36. PwC lacks sufficient information to either admit or deny the allegations in this paragraph.

37. PwC lacks sufficient information to either admit or deny the allegations in this paragraph. PwC denies the allegations to the extent they are read to suggest that any alleged trading strategy utilized by SemGroup was not SemGroup's trading strategy.

38. PwC admits that paragraph 38 accurately quotes a portion of a SemGroup Risk Management Policy. PwC denies the third sentence of paragraph 38. PwC lacks sufficient information to either admit or deny the remaining allegations of paragraph 38.

39. PwC admits that paragraph 39 accurately quotes a portion of a SemGroup Risk Management Policy. PwC lacks sufficient knowledge to either admit or deny the remaining allegations of paragraph 39.

40. PwC lacks sufficient information to either admit or deny the allegations in this paragraph.

41. PwC lacks sufficient information to either admit or deny the allegations in the first and second sentences of this paragraph. PwC denies the remaining allegations in this paragraph.

42. PwC denies the allegations in this paragraph.

43. PwC denies the allegations in this paragraph.

44. PwC denies the allegations in this paragraph.

45. PwC denies the allegations in this paragraph.

46. PwC admits that it audited SemGroup's consolidated annual financial statements from 2004-2007. PwC denies that it audited SemGroup's 2008 financial statements. PwC denies the remaining allegations of Paragraph 46.

47. PwC denies the allegations of paragraph 47, other than to admit the existence of generally accepted auditing standards and that such standards incorporate, among other things, the concept of due professional care.

48. PwC denies the allegations in this paragraph.

49. PwC denies the allegations in this paragraph.

50. PwC admits the allegations in paragraph 50, with the qualification that it opined that SemGroup's financial statements were fairly presented in accordance with GAAP *in all material respects* and that its opinions made a number of other statements that are not quoted in the allegation.

51. PwC denies the allegations in the first two sentences of paragraph 51. PwC admits that it has withdrawn its audit report concerning SemGroup's 2007 financial statements. PwC denies that the withdrawal was an "admission."

52. PwC denies the allegations in this paragraph.

53. PwC denies the allegations in the first sentence of paragraph 53. PwC admits the allegations in the remainder of paragraph 53.

54. PwC admits that paragraph 54 accurately quotes a portion of the footnotes to SemGroup's 2006 financial statements.

55. PwC denies the allegations in this paragraph.

56. PwC lacks sufficient information to either admit or deny the allegations of paragraph 56.

57. PwC denies the allegations in this paragraph.

58. PwC admits that SemGroup's note did not address, one way or the other, whether SemGroup charged interest, a financing fee, or was otherwise compensated by Westback. PwC denies that the disclosures were inadequate.

59. PwC admits that SemGroup's note did not address, one way or the other, whether SemGroup received collateral from Westback. PwC denies that the disclosures were inadequate.

60. PwC admits that SemGroup's note did not address, one way or the other, the nature of Westback's trading strategies. PwC denies that the disclosures were inadequate.

61. PwC admits that the Westback receivable was described in the Related Party Transactions footnote to the 2006 financial statements. PwC denies the remaining allegations in paragraph 61.

62. PwC denies the allegations in this paragraph.

63. PwC denies the allegations in this paragraph.

64. PwC denies the allegations in this paragraph.

65. PwC denies the allegations in this paragraph.

66. PwC admits it was aware of certain details of the Westback receivable and that certain disclosures about the receivable were required to be included in the financial statements. PwC admits that it received a copy of an agreement dated March 20, 2006 signed by Eaglwing and Kivisto on behalf of Westback, and that paragraph 66 accurately quotes a portion of that agreement. PwC otherwise denies the allegations of paragraph 66.

67. PwC denies the allegations in this paragraph.

68. PwC denies the allegations in this paragraph.

69. PwC admits the allegations in the first two sentences of paragraph 69. PwC denies the allegations in the final sentence of paragraph 69.

70. PwC admits that paragraph 70 accurately quotes a selective passage from the first standard of field work, as well as a selective portion of AU 311 applicable to the audit of SemGroup's 2006 financial statements.

71. PwC denies the allegations in this paragraph.

72. PwC admits that paragraph 72 accurately quotes selected passages from Statement of Field Work No. 2. PwC denies paragraph 72's characterizations of the GAAS standards.

73. PwC denies the allegations in this paragraph.

74. PwC admits that paragraph 74 accurately quotes the third standard of field work applicable to the audit of SemGroup's 2006 financial statements. PwC denies the remaining allegations of the paragraph.

75. PwC denies the allegations in this paragraph.

76. PwC denies the allegations in this paragraph.

77. PwC denies the allegations in this paragraph.

78. PwC denies the allegations in this paragraph.

79. PwC denies the allegations in this paragraph.

80. PwC admits that paragraph 80 accurately quotes selected passages from FAS 57, and otherwise denies the allegations of paragraph 80.

81. PwC denies the allegations in this paragraph.

82. PwC denies the allegations in this paragraph.

83. PwC denies the allegations in this paragraph.

84. PwC admits that paragraph 84 quotes selected passages from a portion of FAS 5, and otherwise denies the allegations of paragraph 84.

85. PwC denies the allegations in this paragraph.

86. PwC denies the allegations in this paragraph.

87. PwC denies the allegations in this paragraph.

88. PwC denies the allegations in this paragraph.

89. PwC denies the allegations in this paragraph.

90. PwC denies the allegations in this paragraph.

91. PwC denies the allegations in this paragraph.

92. PwC admits the allegations in this paragraph.

93. PwC denies the allegations in this paragraph.

94. PwC denies the allegations in this paragraph.

95. PwC admits that paragraph 95 accurately quotes a selective portion of the fourth standard of reporting applicable to the audit of SemGroup's 2007 financial statements, and denies the remaining allegations in this paragraph.

96. PwC denies the allegations in this paragraph.

97. PwC admits that paragraph 97 accurately quotes selected passages from the GAAS standards, and otherwise denies the allegations.

98. PwC denies the allegations in this paragraph.

99. PwC denies the allegations in this paragraph.

100. PwC denies the allegations in this paragraph.

101. PwC admits that paragraph 101 quotes from a portion of the footnotes to SemGroup's financial statements and otherwise denies the allegations.

102. PwC denies the allegations in this paragraph.

103. PwC denies the allegations in this paragraph.

104. PwC denies the allegations in this paragraph.

105. PwC denies the allegations in this paragraph.

106. PwC denies the allegations in this paragraph.

107. PwC denies the allegations in this paragraph.

108. PwC denies the allegations in this paragraph.

109. PwC denies the allegations in this paragraph.

110. PwC lacks sufficient information to either admit or deny the allegations in the first sentence of paragraph 110, and denies the allegations in the remainder of this paragraph.

111. PwC denies the allegations in this paragraph.

112. PwC denies the allegations in this paragraph.

113. PwC denies the allegations in this paragraph.

114. PwC denies the allegations in this paragraph.

115. PwC denies the allegations in this paragraph.

116. PwC denies the allegations in this paragraph.

117. PwC denies the allegations in this paragraph.

118. PwC denies the allegations in this paragraph.

119. PwC admits that paragraph 119 accurately quotes selected passages from the GAAS standards.

120. PwC denies the allegations in this paragraph.

121. PwC denies the allegations in this paragraph.

122. PwC denies the allegations in this paragraph.

123. PwC denies the allegations in this paragraph.

124. PwC denies the allegations in this paragraph.

125. PwC denies the allegations in this paragraph.

126. PwC admits that it obtained and was aware of at least some versions of SemGroup's Risk Management Policy. PwC denies the remaining allegations in paragraph 126.

127. PwC denies the allegations in this paragraph.

128. PwC denies the allegations in this paragraph.

129. PwC denies the allegations in this paragraph.

130. PwC denies the allegations in this paragraph.

131. PwC admits that paragraph 131 accurately quotes selective passages from the GAAS standards and otherwise denies the allegations.

132. PwC denies the allegations in this paragraph.

133. PwC denies the allegations in this paragraph.

134. PwC denies the allegations in this paragraph.

135. PwC denies the allegations in this paragraph.

136. PwC denies the allegations in this paragraph.

137. PwC denies the allegations in this paragraph.

138. PwC denies the allegations in this paragraph.

139. PwC denies the allegations in this paragraph.

140. PwC denies the allegations in this paragraph.

141. PwC admits that SemGroup's 2006 and 2007 audited financial statements contain a footnote captioned "Derivative Instruments and Hedging Activities." To the extent that

paragraph 141 intends to allege something broader than that, PwC lacks sufficient information to either admit or deny the allegations.

142. PwC denies the allegations in this paragraph.

143. PwC denies the allegations in this paragraph.

144. PwC denies the allegations in this paragraph.

145. PwC denies the allegations in this paragraph.

146. PwC denies the allegations in this paragraph.

147. PwC denies the allegations in this paragraph.

148. PwC denies the allegations in this paragraph.

149. PwC denies the allegations in this paragraph.

150. PwC denies the allegations in this paragraph.

151. PwC denies the allegations in this paragraph.

152. PwC denies the allegations of paragraph 152, other than to admit that the paragraph accurately quotes selective passages from the GAAS standards.

153. PwC denies the allegations in this paragraph.

154. PwC denies the allegations in this paragraph.

155. PwC denies the allegations in this paragraph.

156. PwC admits that paragraph 156 accurately quotes selective passages from the fourth standard of reporting. PwC denies the remaining allegations in this paragraph.

157. PwC denies the allegations in this paragraph.

158. PwC denies the allegations in this paragraph.

159. PwC denies the allegations in this paragraph.

160. PwC denies the allegations in this paragraph.

161. PwC denies the allegations of paragraph 161, except to admit that the paragraph accurately quotes selective passages of the GAAS standards.

162. PwC admits that paragraph 162 accurately quotes selected portions of AU 230.07. PwC denies the remaining allegations in this paragraph.

163. PwC denies the allegations in this paragraph.

164. PwC denies the allegations in this paragraph.

165. PwC denies the allegations in this paragraph.

166. The responses to the allegations in paragraphs 1 through 165 are hereby incorporated by reference.

167. PwC denies the allegations in this paragraph.

168. PwC denies the allegations in this paragraph.

169. PwC denies the allegations in this paragraph.

170. PwC denies the allegations in this paragraph.

171. PwC denies the allegations in this paragraph.

172. PwC denies the allegations in this paragraph.

* * * * *

182. The responses to the allegations in paragraphs 1 through 172 are hereby incorporated by reference.

183. PwC denies the allegations in this paragraph.

184. PwC denies the allegations in this paragraph.

185. PwC denies the allegations in this paragraph.

186. PwC denies the allegations in this paragraph.

187. PwC denies the allegations in this paragraph.

188. PwC denies the allegations in this paragraph.

RESPONSE TO PLAINTIFF'S PRAYER FOR RELIEF

PwC denies that Plaintiff is entitled to the relief requested, or to any relief at all.

AFFIRMATIVE DEFENSES

First Defense

Plaintiff's claims are barred by the doctrine of *in pari delicto* because Plaintiff asserts the rights of SemGroup, which committed the supposed misdeeds that she contends PwC should have identified.

Second Defense

Plaintiff's claims are barred by the doctrines of waiver and/or estoppel.

Third Defense

Plaintiff's claims are barred, in whole or in part, because SemGroup had actual or constructive knowledge of the alleged misstatements or omissions in PwC's audit reports for SemGroup's financial statements for 2006 and 2007 at the time those reports were issued.

Fourth Defense

Plaintiff's claims are barred by SemGroup's engagement letters with PwC, which release and indemnify PwC "and its personnel from any and all claims, liabilities, costs and expenses attributable to any knowing misrepresentation by management."

Fifth Defense

Plaintiff's claims are limited by SemGroup's engagement letters with PwC, which provide that "In no event shall PricewaterhouseCoopers LLP be liable to the Company, whether a claim be in tort, contract or otherwise, for any consequential, indirect, lost profit or similar damages relating to PricewaterhouseCoopers LLP's services provided under this engagement

letter, except to the extent finally determined to have resulted from the willful misconduct or fraudulent behavior of PricewaterhouseCoopers LLP relating to such services.”

Sixth Defense

Plaintiff’s claims are barred by SemGroup’s engagement letters with PwC, which provide that SemGroup “will not, directly or indirectly, agree to assign or transfer any claim against PricewaterhouseCoopers LLP arising out of this engagement to anyone, except to an entity with which the Company merges or an entity which acquires all or substantially all of the assets of the Company and where, in either case, the assignee entity agrees to be bound by this provision.”

Seventh Defense

Plaintiff’s claims are barred by the doctrines of comparative negligence and audit interference.

Eighth Defense

For further answer and defense, PwC would assert that at all relevant times, the actions of PwC were in good faith, and based upon then existing and relevant law, principles and standards. PwC was justified in all of its acts and/or omissions.

Ninth Defense

Plaintiff’s claims are barred because PwC has met all obligations, if any, owed to the Plaintiff.

Tenth Defense

Plaintiff’s claims are barred by Oklahoma’s statute of limitations, for SemGroup was aware of any injury prior to June 25, 2008.

Eleventh Defense

Plaintiff's claims are barred because SemGroup's injuries, if any, were not foreseeable, nor was the alleged conduct of PwC the proximate cause of any such alleged damages, injuries or losses.

Twelfth Defense

Plaintiff's claims are barred, in whole or in part, because SemGroup's injuries, if any, were the result of the direct, intervening, or superseding conduct of third parties over whom PwC had no control.

Thirteenth Defense

Plaintiff's claims are barred, in whole or in part, because Plaintiff may not seek damages for deepening insolvency.

Fourteenth Defense

Plaintiff's claim for punitive damages is barred and limited by the applicable provisions of OKLA STAT. tit. 23, § 9.1 et seq. Additionally, Plaintiffs' claim for punitive damages is barred by the applicable provisions of the Oklahoma and United States Constitutions.

Fifteenth Defense


Plaintiff's claims are barred, in whole or in part, because SemGroup failed to mitigate its damages, if any, related to PwC's audit reports for SemGroup's financial statements for 2006 and 2007.

Additionally, PwC reserves its rights to plead such additional defenses as may be appropriate depending on facts later revealed by discovery. PwC denies each and every remaining allegation, statement, or request for relief contained in the Petition not otherwise expressly admitted herein to be true. Further, in each of the annual engagement agreements for the audits at issue, SemGroup expressly waived its right to demand a jury, and, accordingly, plaintiff is not entitled to a jury trial on her claims.

Dated: October 27, 2011

Respectfully submitted,

STEIDLEY & NEAL, P.L.L.C.



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Counsel for PricewaterhouseCoopers LLP

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of October, 2011, a true and correct copy of the foregoing was mailed with proper postage fully prepaid to:

Oliver S. Howard
Scott R. Rowland
David E. Keglovits
Amelia A. Fogleman
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