IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
SEMCRUDE, L.P., et al.,	)	Case No. 08-11525 (BLS)
	)	
Reorganized Debtors.	)	Jointly Administered
	)	
	)	
BETTINA M. WHYTE, as the Trustee, on behalf of SemGroup Litigation Trust,	)	Adversary No. 10-50840
	)	
Plaintiff,	)	Related to Adv. Docket Nos. 42, 43, 50, and 52
	)	
v.	)	
	)	
C/R ENERGY COINVESTMENT II, L.P., C/R SEMGROUP INVESTMENT PARTNERSHIP, L.P., RITCHIE SG HOLDINGS LLC, SGLP HOLDING, LTD., SGLP US HOLDING, LLC, and DOE DEFENDANTS, 1-100,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM ORDER

Upon consideration of the motion to dismiss (the "Motion") [Adv. Docket No. 42] filed by C/R Energy Coinvestment II, L.P. and C/R SemGroup Investment Partnership, L.P. (collectively, the "Defendants"),[1] and the accompanying memorandum of law in support thereof [Adv. Docket No. 43]; the opposition [Adv. Docket No. 50] to the Motion filed by Bettina M. Whyte, as the Trustee, on behalf of the SemGroup Litigation Trust (the "Plaintiff"); and the reply thereto [Adv. Docket No. 52] filed by the Defendants; and upon due deliberation, and ample cause appearing therefor, the Court hereby FINDS as follows:

[1] Although only Defendants C/R Energy Coinvestment II, L.P. and C/R SemGroup Investment Partnership, L.P. filed the Motion, Defendants Ritchie SG Holding, L.L.C., SGLP Holding, Ltd., and SGLP US Holding, L.L.C. have joined in the Motion [Adv. Docket No. 46].

1. On July 22, 2008 and October 17, 2008 (collectively, the "Petition Dates"), SemGroup and certain of its affiliates (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware. The Debtors' bankruptcy cases have been jointly administered. On August 5, 2008, the United States Trustee (the "UST") appointed the official committee of the Debtors' unsecured creditors (the "Committee").

2. On October 28, 2009, the Court entered an order (the "Confirmation Order") [Docket No. 6347] confirming the Debtors' joint plan of reorganization (the "Plan") [Docket No. 5808], and the Plan became effective on November 30, 2009. The Plan and the Confirmation Order provide for the creation of a litigation trust (the "Litigation Trust") and have vested it with certain litigation claims belonging to the Debtors' estates, including the claims that form the basis of this adversary proceeding. Bettina M. Whyte has been designated the trustee of the Litigation Trust (the "Trustee").

3. On March 29, 2010, the Trustee filed a complaint (the "Complaint"), which was subsequently amended,[2] against the Defendants seeking to avoid and recover certain SemGroup partnership distributions that occurred in August 2007 (the "2007 Distribution") and February 2008 (the "2008 Distribution" and together with the 2007 Distribution, the "Distributions"). The 2007 Distribution consisted of $49,616,199.69 that the Defendants received directly from SemGroup on account of their limited partnership interests, and $1,016,410.49 that the Defendants received indirectly from SemGroup on account of the distribution to SemGroup G.P., L.L.C. ("Sem GP"), the sole general partner of SemGroup. The 2008 Distribution consisted of

[2] Subsequent references to the Complaint in the Opinion are references to the amended complaint [Adv. Docket No. 39].

$55,129,110.81 that the Defendants received directly from SemGroup on account of their limited partnership interests, and $1,129,344.97 that the Defendants received indirectly from SemGroup on account of the distribution to Sem GP.

4. The Trustee alleges that SemGroup received less than reasonably equivalent value in exchange for the Distributions, and that SemGroup was insolvent when the Distributions were made, or became insolvent as a result thereof, and retained unreasonably small capital following the Distributions. The Trustee therefore argues that the Distributions are avoidable and recoverable as constructively fraudulent transfers.

5. The Defendants filed the Motion to dismiss the Complaint in its entirety. The Motion alleges that the Complaint fails to state a claim upon which relief can be granted. In support of the Motion, the Defendants argue that the Plaintiff fails to plausibly allege that SemGroup was or became insolvent or was left with unreasonably small capital when the Distributions were made. The Plaintiff has opposed the Motion.

Legal Standard for a Motion to Dismiss

6. A motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7012(b), is aimed to test the sufficiency of the factual allegations in the plaintiff's complaint. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993) ("A 12(b)(6) motion tests the sufficiency of the allegations contained in the complaint.") (citations omitted); Paul v. Intel Corp. (In re Intel Corp. Microprocessor Antitrust Litig.), 496 F. Supp. 2d 404, 407 (D. Del. 2007), citing Kost, 1 F.3d at 183 ("The purpose of a motion to dismiss is to test the sufficiency of a complaint, not to resolve disputed facts or decide the merits of the

case."). The chief inquiry with respect to a motion to dismiss is "not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), abrogated on other grounds by Harlow v. Fitzgerald, 457 U.S. 800 (1982). The movant carries the burden of demonstrating that dismissal is appropriate. Intel Corp., 496 F. Supp. 2d at 408.

7. In light of the U.S. Supreme Court's recent decisions in Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) and Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009), the Third Circuit Court of Appeals has instructed courts to conduct a two-part analysis when considering a motion to dismiss for failure to state a claim. Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009). First, the Court should separate the factual elements from the legal elements of a claim and accept the factual elements. Id. The court must assume the veracity of the factual allegations set forth in the complaint, draw all reasonable inferences from the facts alleged, and construe all allegations in the light most favorable to the plaintiff. Iqbal, 129 S.Ct. at 1949-50 ("When there are well-pleaded factual allegations, a court should assume their veracity . . . ."); Rea v. Federated Investors, 627 F.3d 937, 940 (3d Cir. 2010) ("We accept all factual allegations as true, construe the Complaint in the light most favorable to Rea, and determine whether, under any reasonable reading of the Complaint, Rea may be entitled to relief.") (citation omitted); Phillips v. Cnty. of Allegheny, 515 F.3d 224, 231 (3d Cir. 2008) ("[O]n a Rule 12(b)(6) motion, the facts alleged must be taken as true and a complaint may not be dismissed merely because it appears unlikely that the plaintiff can prove those facts or will ultimately prevail on the merits."). The credibility of the facts alleged by the plaintiff are not at issue in a motion to dismiss because "Rule 12(b)(6) does not countenance . . . dismissals based on a judge's disbelief of a complaint's

factual allegations." Twombly, 550 U.S. at 556 (quoting Neitzke v. Williams, 490 U.S. 319, 327 (1989) (internal quotation marks omitted) ("[A] well-pleaded complaint may proceed even if it appears 'that a recovery is very remote and unlikely.'") (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

8. However, the presumption of truth as to factual allegations does not extend to any conclusory statements of law because the Supreme Court has held that "on a motion to dismiss, courts 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" Twombly, 550 U.S. at 555 (quoting Papasan v. Allain, 478 U.S. 265, 286 (1986)). See also Iqbal, 129 S.Ct. at 1949 ("[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions."); Gen. Motors Corp. v. New A.C. Chevrolet, Inc., 263 F.3d 296, 333 (3d Cir. 2001) ("While facts must be accepted as alleged, this does not automatically extend to bald assertions, subjective characterizations, or legal conclusions.") (citations omitted) (internal quotation marks omitted). The Court may therefore disregard any legal conclusions in the complaint. Fowler, 578 F.3d at 210-11.

9. Second, the Court must determine whether the factual allegations "are sufficient to show that the plaintiff 'has a plausible claim for relief.'" Id. at 211 (quoting Iqbal, 129 S.Ct. at 1950) (internal quotation marks omitted). Federal Rule of Civil Procedure 8(a)(2), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7008(a), requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2).[3] The Supreme Court has stated that the purpose of

[3] Constructive fraudulent transfer claims are specifically governed by Federal Rule of Civil Procedure 8 rather than by the heightened Rule 9(b) pleading standard. See, e.g., Charys Liquidating Trust v. McMahan Sec. Co. (In re Charys Holding Co.), 443 B.R. 628, 632 n.2 (Bankr. D. Del. 2010); China Resource Prods. (U.S.A.) Ltd. v. Fayda Int'l, Inc., 788 F. Supp.

Rule 8 is "to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Twombly, 550 U.S. at 555 (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957) (internal quotation marks omitted). However, the Supreme Court explained that "[w]ithout some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only 'fair notice' of the nature of the claim, but also 'grounds' on which the claim rests." Id. at 555 n.3.[4]

10. The Supreme Court and the Third Circuit both require that a complaint contain more than mere assertions. Id. at 555 n.3 ("Rule 8(a)(2) still requires a 'showing,' rather than a blanket assertion, of entitlement to relief."); Fowler, 578 F.3d at 211 ("[A] complaint must do more than allege the plaintiff's entitlement to relief. A complaint has to 'show' such an entitlement with its facts.") (citations omitted). Although "Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era . . . it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." Iqbal, 129 S.Ct. at 1950. Therefore, "a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (citation omitted). Consequently, "legal conclusions can provide the framework of a complaint," Iqbal, 129 S.Ct. at 1950, but must be accompanied by facts.[5] In the

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815, 819 (D. Del. 1992); Astropower Liquidating Trust v. Xantrex Tech., Inc., (In re AstroPower Liquidating Trust), 335 B.R. 309, 333 (Bankr. D. Del. 2005).

[4] The Third Circuit has observed that, based upon the Supreme Court's recent decisions in Twombly and Iqbal, "pleading standards have seemingly shifted from simple notice pleading to a more heightened form of pleading, requiring a plaintiff to plead more than the possibility of relief to survive a motion to dismiss." Fowler, 578 F.3d at 210.

[5] The Third Circuit has cautioned that "conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." See also Gen. Motors Corp. v. New A.C. Chevrolet, Inc., 263 F.3d 296, 333 (3d Cir. 2001 (internal

Third Circuit, therefore, "it is clear that conclusory or 'bare-bones' allegations will no longer survive a motion to dismiss." Fowler, 578 F.3d at 210. To survive a motion to dismiss, "[t]he plaintiff must put some 'meat on the bones' by presenting sufficient factual allegations to explain the basis for its claim." Buckley v. Merrill Lynch & Co., Inc. (In re DVI, Inc.), Bankr. No. 03-12656, Adv. No. 08-50248, 2008 WL 4239120, at *4 (Bankr. D. Del. Sept. 16, 2008).

11. The incorporation of only some factual allegations, however, may not suffice at the pleading stage because the "[f]actual allegations must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555. In accordance with Supreme Court doctrine, "only a complaint that states a plausible claim for relief survives a motion to dismiss." Iqbal, 129 S. Ct. at 1950 (citation omitted). The Supreme Court's plausibility standard does not require a plaintiff to demonstrate a likelihood of success at trial, but it does require showing "more than a sheer possibility that a defendant has acted unlawfully." Id. at 1949 (citation omitted). However, " where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.' Iqbal, 129 S. Ct. at 1950 (quoting Rule 8(a)(2)). Considering the merits of a motion to dismiss is necessarily "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense," id. (citation omitted), but where a complaint fails to plead "enough fact to raise a reasonable expectation that discovery will reveal evidence [to support the claim]," Twombly, 550 U.S. at 556, the motion to dismiss must be granted as to such claim.

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quotation marks omitted) (quoting 2 James Wm. Moore, Moore's Federal Practice § 12.34[1][b], at 12-61 to 12-63 (3d ed. 2001)).

Constructive Fraudulent Transfers under 548(a)(1)(B) (Counts II and VI)

12. Section 548(a)(1)(B) of the Bankruptcy Code permits a debtor to avoid any transfer of an interest in the debtor's property that was made on or within two years of the debtor's bankruptcy petition, for which the debtor received less than reasonably equivalent value, if, inter alia, the debtor was insolvent on the date that such transfer was made or became insolvent as a result thereof, or retained unreasonably small capital to operate its business when the transfer was made. 11 U.S.C. § 548(a)(1)(B). The Plaintiff alleges that the $49,616,199.69 that the Defendants received in 2007 and the $55,129,110.81 that the Defendants received in 2008 (collectively, the "Limited Partner Distributions") constitute constructive fraudulent transfers under § 548(a)(1)(B). To survive a motion to dismiss, the Plaintiff's constructive fraudulent transfer claims must include sufficient facts that plausibly show that (i) the Limited Partner Distributions were made within two years of the Petition Dates; (ii) SemGroup did not receive reasonably equivalent value in exchange for such distributions; and (iii) SemGroup was insolvent or became insolvent when such distributions were made, or had unreasonably small capital.

13. In the Complaint, the Plaintiff alleges that the Distributions were made in August 2007 and February 2008, such that both Distributions were made well within the statutory period. The Plaintiff has alleged that SemGroup received no consideration for the Distributions, and the Defendants have not disputed this allegation.[6] In support of the Motion, the Defendants argue only that the Plaintiff has failed to plead sufficient facts to support its contention that

[6] In their reply to the Plaintiff's opposition to the Motion, Defendants C/R Energy Coinvestments II, L.P. and C/R SemGroup Investment Partnership, L.P. assert that they will argue that SemGroup received reasonably equivalent value in exchange for the Distributions as an affirmative defense if the Motion is denied.

SemGroup was insolvent when the Distributions were made, or that SemGroup had unreasonably small capital at the time. Therefore, to successfully oppose the Defendants' Motion, the Complaint must allege sufficient facts that plausibly show that SemGroup was insolvent when the Distributions were made or became insolvent as a result thereof, or that the Distributions caused SemGroup to retain unreasonably small capital to operate its business.

Insolvency

14. The Bankruptcy Code provides that a partnership is insolvent if the sum of its debts is greater than the aggregate of the partnership's assets and each general partner's net worth, exclusive of any exempt property or property that was transferred, concealed, or removed with the intent to hinder, delay, or defraud the partnership's creditors. 11 U.S.C. § 101(32)(B). See also 5 COLLIER ON BANKRUPTCY ¶ 548.06[3] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). The Complaint states that at all relevant times, SemGroup was an Oklahoma limited partnership. The Complaint also alleges that at all relevant times, Sem GP was the sole general partner of SemGroup, but that Sem GP owns no assets other than its equity interests in SemGroup. Complaint ¶ 16. Assuming the truth of these allegations, the Plaintiff need only provide sufficient facts to support its contention that SemGroup was insolvent when the Distributions were made, or became insolvent as a result thereof.

15. Here, the Court finds that the Complaint contains factual allegations sufficient to survive a motion to dismiss that indicate that SemGroup was insolvent when the Distributions were made. As to the 2007 Distribution, the Plaintiff alleges that SemGroup was insolvent based upon its adjusted balance sheets by the third quarter of 2007. Complaint ¶ 39. As to the 2008 Distribution, the Plaintiff additionally alleges that SemGroup reported a net loss in 2007 of $605

million. Complaint ¶ 30. The Plaintiff also contends that SemGroup had negative earnings before interest, taxes, depreciation, and amortization ("EBITDA") for 2007 in the amount of $308.2 million, and had negative EBITDA for the first quarter of 2008 in the amount of $208.7 million. Complaint ¶ 44. Finally, the Plaintiff asserts that SemGroup's audited financial statements show that its liabilities exceeded its assets by the end of 2007. Complaint ¶ 42.[7]

16. To the extent that SemGroup is found to not have been insolvent when the Distributions were made, the Plaintiff additionally alleges that such distributions in the aggregate amount of $106.9 million certainly rendered SemGroup insolvent.

17. The Plaintiff alleges SemGroup's insolvency based upon certain proposed adjustments to SemGroup's balance sheets. Specifically, the Plaintiff alleges that certain receivables (the "Westback Receivable") owed by Westback Publishing Co. L.C.C. ("Westback") to SemGroup, as well as the value attributed to "construction-in-progress," were overvalued such that their inclusion on SemGroup's balance sheets overstated its then-current assets. After the Plaintiff's asserted adjustments, SemGroup allegedly had a net equity of negative $10.7 million. Id. The Defendants dispute the Plaintiff's adjustments to SemGroup's balance sheets. However, courts in this District have previously held that substantiated adjustments to a debtor's balance sheets for the purpose of determining insolvency are permissible. See, e.g., Peltz v. Hatten, 279 B.R. 710, 743 (D. Del. 2002), aff'd sub nom. 60 F. App'x 401 (3d Cir. 2003) ("[I]t is appropriate to adjust items on the balance sheet that are shown at a higher or lower value than their going concern value and to examine whether assets of a

[7] The Court notes that the record reflects that SemGroup's independent auditor has recently withdrawn its opinion of SemGroup's financial statements, but the Plaintiff argues that such retraction indicates that SemGroup's financial condition was in fact less sound than its financial statements had otherwise reflected. Complaint ¶ 42.

company that are not found on its balance sheet should be included in its fair value."); Trans World Airlines, Inc. v. Travellers Int'l Ag. (In re Trans World Airlines, Inc.), 180 B.R. 389, 405 n.22 (Bankr. D. Del. 1994), aff'd in part, rev'd in part, 203 B.R. 890 (D. Del. 1996), rev'd, 134 F.3d 188 (3d Cir. 1998), cert. denied, 523 U.S. 1138 (1998).

18. The Plaintiff contends that the value of the Westback Receivable is overstated because collection from Westback, an entity wholly owned by then-SemGroup CEO Thomas Kivisto and his wife, was unlikely. The Plaintiff also contends that the "construction-in-progress" value is overstated because the fair market value of partially completed projects is effectively nil. Whether the Plaintiff will be able to sufficiently substantiate its adjustments is a question for the trier of fact and is not appropriate at this stage in the proceeding. However, accepting all factual allegations in the Complaint as true and drawing all reasonable inferences therefrom in favor of the Plaintiff, the financial data asserted by the Plaintiff supports the allegation that SemGroup was insolvent when the Distributions were made, or at the very least, was rendered insolvent as a result thereof. Because the Court finds that the Plaintiff has sufficiently alleged SemGroup's insolvency when the Distributions were made, the Court need not address the Plaintiff's alternate ground, viz., whether SemGroup had unreasonably small capital when the Distributions were made. Accordingly, the Court finds that the Plaintiff has sufficiently alleged constructive fraudulent transfer claims with respect to the Limited Partner Distributions.

Constructive Fraudulent Transfers under the Oklahoma UFTA (Counts I, III, V, and VII)

19. Under § 544(b), a debtor may avoid any transfer of an interest in the debtor's property that is voidable under applicable law by a creditor holding an allowable unsecured

claim. 11 U.S.C. § 544(b)(1). Here, the Plaintiff has alleged that the Limited Partner Distributions are also avoidable under § 544(b) of the Bankruptcy Code and § 117(A) of Oklahoma's Uniform Fraudulent Transfers Act ("UFTA"), which provides, in relevant part, that

> [a] transfer made . . . by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made . . . if the debtor made the transfer . . . without receiving a reasonably equivalent value in exchange for the transfer . . . and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer . . . .

OKLA. STAT. ANN. tit. 24, § 117(A) (West 2008). Claims made pursuant to § 117(A) must be brought within four years of the date on which the transfer was made. Id. § 121(2). To survive a motion to dismiss, the Plaintiff's constructive fraudulent transfer claims predicated on these two statutory provisions must include sufficient facts that plausibly show that (i) the Limited Partner Distributions were made within four years of the Petition Dates; (ii) SemGroup did not receive reasonably equivalent value in exchange for such distributions; and (iii) SemGroup was insolvent when such distributions were made, or became insolvent as a result thereof.

20. For the reasons discussed above, the Plaintiff has already sufficiently alleged that the Distributions were made within the statutory period, that SemGroup did not receive reasonably equivalent value in exchange for the Distributions, and that SemGroup was insolvent when the Distributions were made or became insolvent as a result thereof. However, the Defendants also argue that the Plaintiff lacks standing to bring a § 544(b) claim for failure to identify a specific creditor whose claim arose before the Limited Partner Distributions were made. Section 544(b) of the Bankruptcy Code permits the Trustee to stand in the shoes of an unsecured creditor holding an allowable claim, but "courts do not generally require a trustee to plead the existence of an unsecured creditor by name, although the trustee must ultimately prove

such a creditor exists." Pardo v. Avanti Corporate Health Sys., Inc. (In re APF Co.), 274 B.R. 634, 639 (Bankr. D. Del. 2001). The Plaintiff has alleged in the Complaint that SemGroup owed approximately $593.8 million in unsecured notes as of July 2007. Complaint ¶ 26. Assuming the truth of this factual assertion, the Court finds that the Plaintiff has alleged sufficient information to permit the inference that the requisite elements of the Plaintiff's § 544(b) claim exist. Accordingly, the Court finds that the Plaintiff has sufficiently alleged constructive fraudulent transfer claims with respect to the Limited Partner Distributions pursuant to § 544(b) and the Oklahoma UFTA.

Constructive Fraudulent Transfers under 548(b) (Counts IV and VIII)

21. Section 548(b) of the Bankruptcy Code allows a debtor to avoid any transfer made specifically to a general partner of the debtor entity of an interest in the debtor's property that was made on or within two years of the debtor's bankruptcy petition, if the debtor was insolvent on the date that such transfer was made or became insolvent as a result of such transfer. 11 U.S.C. § 548(b). Here, the Plaintiff has alleged that the General Partner Distributions are avoidable pursuant to § 548(b). To survive a motion to dismiss, the Plaintiff's constructive fraudulent transfer claims must include sufficient facts that plausibly show that the General Partner Distributions were made to a general partner within two years of the Petition Dates, while SemGroup was insolvent or became insolvent as a result thereof.

22. The Plaintiff has already sufficiently alleged that the Distributions were made within the statutory period and that SemGroup was insolvent when the Distributions were made or became insolvent as a result thereof. Moreover, the Plaintiff has alleged that Sem GP is the sole general partner of SemGroup, and that Sem GP received partnership distributions in the

amount of $1,016,410.49 and $1,129,344.97 (collectively, the "General Partner Distributions") in 2007 and 2008, respectively. Accordingly, the Court finds that the Plaintiff has sufficiently alleged constructive fraudulent transfer claims with respect to the General Partner Distributions.

Recovery of Avoided Transfers under § 550 (All Counts)

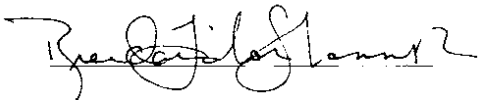
23. Section 550(a) of the Bankruptcy Code provides that, to the extent that a transfer is avoided under, inter alia, §§ 544 or 548, "the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or (2) any immediate or mediate transferee or such initial transferee." 11 U.S.C. § 550(a). For the reasons discussed above, the Plaintiff has alleged sufficient facts to plausibly support its fraudulent transfer claims under §§ 544 and 548 with respect to the Distributions. To the extent that the Plaintiff ultimately succeeds on these claims with respect to the Limited Partner Distributions, the Plaintiff has sufficiently alleged that the Defendants were the initial transferees of such distributions. To the extent that the Plaintiff ultimately succeeds on these claims with respect to the General Partner Distributions, the Plaintiff has sufficiently alleged that the Defendants were subsequent transferees of such distributions because such distributions were initially transferred to Sem GP before being transferred to the Defendants. Thus, the Court finds that the Plaintiff has sufficiently alleged claims for the recovery of allegedly fraudulent transfers, if and to the extent that such transfers are avoided.

24. The Court concludes that the Defendants have not established that dismissal is warranted with respect to any counts in the Complaint.

Accordingly, based upon the foregoing, it is hereby

ORDERED, that the Motion is **DENIED**.

BY THE COURT:



Dated: Wilmington, Delaware
May 9, 2011

Brendan Linehan Shannon
United States Bankruptcy Judge