

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

SEMCRUDE, L.P. *et al.*

Debtors.

Case No. 08-11525 (BLS)

Jointly Administered

Re: Dkt. No. 9625, 9639, 9647 & 9655

**ORDER APPROVING LITIGATION TRUSTEE'S MOTION TO APPROVE PROCESS  
FOR DISTRIBUTIONS FROM LITIGATION TRUST AND TO APPROVE  
LITIGATION TRUSTEE AS DISBURSING AGENT**

Upon the *Motion to Approve Process for Distributions from Litigation Trust and to Approve Litigation Trustee as Disbursing Agent* (the "Motion") filed by Bettina M. Whyte, as Trustee for the SemGroup Litigation Trust ("Ms. Whyte" or the "Litigation Trustee"). The Court, having determined that good and adequate cause exists for approval of the Motion and the Court having determined that no further notice of the Motion must be given, finds:

1. Based on the terms of the *Order Confirming Debtors' Fourth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code* (Docket No. 6347) (the "Confirmation Order"), the *Fourth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code*, dated October 27, 2009 (Docket No. 6329) (the "Plan"), and the Litigation Trust Agreement<sup>1</sup> (collectively, the "Plan Documents"), and in addition to other prior orders of this Court related to the claims adjudication process, the Litigation Trustee has developed a distribution process for which she now seeks Court approval (the "Distribution Process").

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<sup>1</sup> The form of Litigation Trust Agreement is set forth in the Plan Supplement that was filed with the Court on October 10, 2009. *See*, Plan Supplement, Tab 3 (Docket No. 6002).

2. The Plan provides that holders of the Allowed Lender Deficiency Claims receive 60% of any distribution, holders of the Allowed Senior Notes Claims receive 30% of any distribution and holders of Allowed General Unsecured Claims receive their *pro rata* share of 10% of any distribution.

3. The Litigation Trustee has determined it is appropriate to make an Interim Distribution.

**(A) Disbursing Agent and Registrar.**

4. Pursuant to the Plan Documents, the Disbursing Agent is the “Reorganized Debtors or such other Entity as may be designated in the Confirmation Order.” Plan ¶ 1.41. No other Entity was named Disbursing Agent in the Confirmation Order. Paragraph 13.1(c) of the Plan provides that the Reorganized Debtors, as Disbursing Agent, are to make distributions of New Common Stock and Warrants, but not cash. All distributions by the Litigation Trustee will be cash. For the limited purpose of making distributions to the Litigation Trust Beneficiaries, the Litigation Trustee should be designated as the Disbursing Agent with the rights and powers set forth in Paragraphs 14.1 and 14.3 of the Plan.

5. Pursuant to Paragraph 2.5(b) of the Litigation Trust Agreement, the Litigation Trustee has appointed AlixPartners, LLP as Registrar for purposes of recording ownership as to holders of Allowed General Unsecured Claims.

**(B) Record Date for Distributions.**

6. The Litigation Trust Beneficiaries are the holders of Allowed Senior Notes Claims (Classes 149-174), Allowed Lender Deficiency Claims (Classes 175-200), and Allowed General Unsecured Claims (Classes 201-226). Confirmation Order ¶ 57.

7. Paragraph 57 of the Confirmation Order provides that the Record Date with respect to the purpose of determining the holders of Allowed Claims entitled to receive

distributions pursuant to the Fourth Amended Plan in Classes 175 through 226 shall be October 30, 2009. Classes 175 through 226 include the Allowed Lender Deficiency Claims and the Allowed General Unsecured Claims. The Court finds that the holders of the Allowed Lender Deficiency Claims and Allowed General Unsecured Claims will be determined as of October 30, 2009 (the "Allowed LDC and Allowed GUC Record Date").

8. To the extent there is a conflict between or among the provisions of the Litigation Trust Agreement, the Plan or the Confirmation Order, the rank order for the controlling effect of each is (1) the Confirmation Order, (2) the Plan, and (3) the Litigation Trust Agreement. Lit. Trust Agmt. ¶ 1.5. Conf. Order ¶ 60; Lit. Trust Agmt. ¶ 1.5.

9. Paragraph 2.5(a) of the Litigation Trust Agreement states:

2.5 No Transfers.

(a) No transfer, sale [sic] assignment, distribution, exchange, pledge, hypothecation, mortgage or other disposition (each, a "Transfer") of a Litigation Trust Interest or any entitlement of a holder of a Secured Working Capital Lender Claim hereunder may be effected or made; provided, that, Transfers of Litigation Trust Interests or entitlements of a holder of a Secured Working Capital Lender Claim hereunder and/or under the Plan may be made by operation of law or by will or the laws of descent and distribution.

10. The Confirmation Order does not specifically address the record date for holders of Allowed Senior Notes Claims. Plan ¶1.131. The Litigation Trust Agreement is at Tab 3 to the Plan Supplement. The Plan Supplement was approved and incorporated into the Confirmation Order. See, Confirmation Order ¶ 1. The Litigation Trust Agreement's "No Transfer" provision is effective as of the Effective Date of the Litigation Trust Agreement, which is the Effective Date of the Plan – November 30, 2009. Thus, pursuant to the Confirmation Order, the Court finds that distributions should be made to holders of the Allowed Senior Notes

Claims as of the Effective Date of the Plan, November 30, 2009 (the "Allowed SNC Record Date").

**(C) Reserve Amounts for Unliquidated General Unsecured Claims.**

11. The allowed amounts of the Allowed Senior Notes Claims and the Allowed Lender Deficiency Claims are fixed. In the *Order Granting Reorganized Debtors' Reserve Motion* (Docket No. 8477) (the "Reserve Order"), the Court approved the process undertaken by the Reorganized Debtors to estimate claims. As to those Allowed General Unsecured Claims that either were not contingent, unliquidated or disputed, or that have been resolved, the Trustee shall use the scheduled or resolved amounts, as applicable. The Litigation Trustee is authorized to use the reserve amounts approved by the Court for the remaining General Unsecured Claims in determining the percentage distribution to each holder of an Allowed General Unsecured Claim.<sup>2</sup>

**(D) Notice of Interim Distribution.**

12. The Litigation Trustee has served the *Notice of Filing of Litigation Trustee's Motion to Approve Process for Distribution From Litigation Trust and to Approve Litigation Trustee as Disbursing Agent* (the "Notice"), attached as Exhibit 2 to the Motion, which the Litigation Trustee served (i) upon the Allowed Senior Notes Claimants Indenture Trustee and the Allowed Lender Deficiency Claims Agent, as such terms are defined herein, (ii) to the holders of Allowed General Unsecured Claims as listed on the Exhibit 1 attached to the Motion, as amended by the Second Amended Exhibit 1 (Docket No. 9647) (iii) to the remaining holders of Allowed General Unsecured Claim (that are not likely to receive an Interim Distribution), and

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<sup>2</sup> This term is defined in Paragraph 3 of the *Reorganized Debtors' Motion to Estimate Contingent, Unliquidated, and Disputed General Unsecured Claims and Authorizing Distributions to Holders of Allowed General Unsecured Claims* (Docket No. 8378).

(iv) by publication in the *Wall Street Journal*, *USA Today*, *The Houston Chronicle*, *Tulsa World*, and *The Oklahoman*. The Motion and related documents also were served upon those parties listed on the 2002 Service List. The form of Notice as set forth in the Motion and service of the Notice and the Motion was reasonable and sufficient.

It is hereby ORDERED, ADJUDGED AND DECREED that:

13. The Distribution Process, as set forth in the Motion and as set out on Exhibit A attached hereto is APPROVED.

14. Bettina M. Whyte is appointed Disbursing Agent for any and all disbursements from the Trust.

15. Alix is appointed as Registrar for the holders of Allowed General Unsecured Claims.

Dated: November 6, 2014

  
THE HONORABLE BRENDAN L. SHANNON  
CHIEF UNITED STATES BANKRUPTCY JUDGE

Exhibit A

**Distribution Process Applicable to All Distributions To Be Made by the Litigation Trustee.**

1. All distributions made by the Litigation Trustee to holders of Allowed General Unsecured Claims will be made, at the Litigation Trustee's discretion, by either wire transfer or check and all distributions made by the Litigation Trustee to holders of Allowed Senior Notes Claims and Allowed Lender Deficiency Claims will be made by wire transfer, in accordance with Paragraph 13.4 of the Plan.

2. All distributions will be made by the Litigation Trustee to holders of Allowed Litigation Trust Claims as follows:

(a) **Allowed Senior Notes Claims.** As to holders, as of November 30, 2009, of Allowed Senior Notes Claims, the Litigation Trustee will send a single distribution by wire transfer to HSBC Bank USA NA, [in its capacity as Successor Indenture Trustee under the Indenture dated as of November 18, 2005, as supplemented] Corporate Trust and Loan Agency, 10 E. 40th Street, 14th Floor, New York, New York 10016 (the "Allowed Senior Notes Claimants Indenture Trustee"). The Allowed Senior Notes Claimants Indenture Trustee shall make further distributions within fourteen (14) business days after receipt of the single distribution from the Litigation Trustee to the holders of the Allowed Senior Notes Claims in accordance with the Plan, and pursuant to the terms and provisions of the Indenture dated as of November 18, 2005, as supplemented.

(b) **Allowed Lender Deficiency Claims.** As to holders, as of October 30, 2009, of Allowed Lender Deficiency Claims, the Litigation Trustee will send a single distribution by wire transfer to Bank of America, N.A. [in its capacity as administrative agent for the benefit of the holders of the Allowed Secured Working Capital Lender Claims], Attention: Credit Services/RPILAND Ref: Semcrude (the "Allowed Lender Deficiency Claims Agent"). The Allowed Lender Deficiency Claims Agent shall make further distributions within fourteen (14) business days after receipt of the single distribution from the Litigation Trustee in accordance with the Plan, and as may be required by the Amended and Restated Credit Agreement, dated as of October 18, 2005.

(c) **Allowed General Unsecured Claims.** As to holders, as of October 30, 2009, of Allowed General Unsecured Claims and unless otherwise agreed among the Litigation Trustee, Alix, and the holder of the Allowed General Unsecured Claim to which the payment is being sent, the distributions shall be made at the addresses provided to the Litigation Trustee by Alix. These addresses shall be

certified by Alix as those set forth on the Schedules filed with the Bankruptcy Court unless superseded by the address set forth on proofs of claim filed by such holders, or at the last known address of such holders if no proof of claim is filed or notice was provided in writing of a change of address, in accordance with Paragraph 13.5 of the Plan. The Litigation Trustee shall have the authority to rely fully upon the addresses provided to the Litigation Trustee by Alix or as agreed among the Litigation Trustee, Alix, and the holder of the Allowed General Unsecured Claim to which the payment is being sent, and shall have no duty to attempt to locate any holder of an Allowed General Unsecured Claim.

For purposes of the Interim Distribution, the percentage of the distribution to each Allowed General Unsecured Claim shall be made in accordance with the Allowed General Unsecured Claims Registry, attached hereto as Second Amended Exhibit 1. The distribution amount shall be based on the allowed claim amount for each holder of the Allowed General Unsecured Claim or, as to the CUD General Unsecured Claims, as such term is defined in the Reserve Order, that continue to be contingent, unliquidated, or disputed, the maximum limitation set by the Court in the Reserve Order.

3. In accordance with the Plan, the Litigation Trustee will make no single distribution in an amount less than \$100.00 to any holder of a Litigation Trust Interest.<sup>3</sup>

4. As required by the Court's Second Order With Respect to Compromise and Settlement with SemGroup Energy Partners, L.P. (Docket No. 3647 [Ref. 3315]), the Litigation Trustee will make distributions to Blueknight Energy Partners (f/k/a SemGroup Energy Partners, L.P. ("SGLP")) (the "Blueknight Distribution").

5. As required by the Court's Order Approving Settlement and Release Agreement Between SemGroup Holdings, L.P. and Manchester Securities Corp. (Docket No. 383, Case No. 08-12504) (the "Manchester Settlement"), the Litigation Trustee will make distributions on account of the Manchester Settlement directly to Manchester Securities Corp. as set forth in Claim No. 5979 filed in Case No. 08-12504 (the "Manchester Distribution").

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<sup>3</sup> Any distribution amount of less than \$100.00 will be withheld and not distributed, but held in reserve pursuant to Paragraph 6.3 of the Trust Agreement. Based upon the current estimated amount of the Interim Distribution, Allowed General Unsecured Claims of less than \$9,112.00 are not expected to receive a distribution as part of the Interim Distribution.

6. The Litigation Trustee shall make no distribution on account of any Intercompany Claim, as such term is defined in the Plan. Neither the Blueknight Distribution and the Manchester Distribution are Intercompany Claims, as such term is described in the Plan, as neither SGLP nor SemGroup Holdings, L.P. were jointly administered debtors in *In re SemCrude, L.P. et al.*, Bankruptcy Case No. 08-11525 (BLS).

7. If a distribution to any holder is returned as undeliverable, no further distributions shall be made to such holder unless and until Alix, as Registrar, or the Litigation Trustee is notified by such holder or such holder's agent or representative, in writing, of such holder's then-current address. Undeliverable distributions shall remain in the possession of the Litigation Trustee until such time as the distribution becomes deliverable or until such holder fails to claim the undeliverable distribution as set forth herein. A holder shall be deemed to have failed to claim an undeliverable distribution 180 days after such undeliverable distribution is made pursuant to the Distribution Process set forth herein, if such distribution is a final distribution, at which point such holder shall have its entitlement to such undeliverable distribution discharged and shall be forever barred from asserting any entitlement to such distribution or otherwise pursuant to the Plan against the Litigation Trust. In such case, any consideration held by the Litigation Trustee for distribution on account of an undeliverable distribution shall be held, and made with the final distribution to the Litigation Trust Beneficiaries. Nothing shall require the Litigation Trustee to attempt to locate any holder of an Allowed Claim. Any and all Entities, as such term is defined in the Plan, including holders of an Allowed Senior Notes Claim, an Allowed Lender Deficiency Claim or an Allowed General Unsecured Claim shall not be entitled to any interests or other accruals of any kind.



8. Checks issued by the Litigation Trustee on account of the holders of Allowed General Unsecured Claims shall be null and void if not negotiated within 180 days from and after the date of issuance thereof. The Litigation Trustee shall have no obligation to re-issue any check so voided unless a request for re-issuance is made in writing to the Litigation Trustee on or before 180 days before the Litigation Trustee makes a final distribution.

9. The provisions of the Plan Documents that are applicable to the Litigation Trust, the Litigation Trustee, or the Litigation Trust Interests shall govern unless otherwise addressed herein.

10. The Trustee will use reasonable efforts to make the Interim Distribution within fourteen (14) business days after this Order becomes final and non-appealable.