



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	
SEMCRUDE, L.P., <i>et al.</i> ,	)	CHAPTER 11
	)	
Debtors,	)	Case No. 08-11525 (BLS)
	)	
	)	(Jointly Administered)
	)	
SEMGROUP, L.P., <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	Adversary No. _____
v.	)	
	)	
JOHN A. CATSIMATIDIS, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
	)	

**DEBTORS' VERIFIED COMPLAINT FOR BREACH OF CONTRACT,  
DECLARATORY JUDGMENT, BREACH OF FIDUCIARY DUTY,  
INJUNCTIVE RELIEF, AND VIOLATION OF THE AUTOMATIC STAY**

SemGroup, L.P. ("SemGroup"), and certain direct and indirect subsidiaries of SemGroup, as debtors and debtors-in-possession (collectively, "SemGroup" or the "Debtors"),<sup>1</sup> in these chapter 11 cases and Plaintiffs in this adversary proceeding (collectively, "Plaintiffs"),

<sup>1</sup> The jointly administered Debtors in these chapter 11 cases, 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 LLC (6777), SemFuel, L.P. (1015), SemGas Gathering LLC (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 is not currently jointly administered.

allege for their Complaint against Defendants John A. Catsimatidis ("Catsimatidis"), Matthew F. Coughlin, III ("Coughlin"), Martin R. Bring ("Bring"), J. Nelson Happy ("Happy"), Myron L. Turfitt ("Turfitt") (collectively, the "Catsimatidis Group") and United Refining Energy Corp. ("UREC") (collectively, "Defendants") as follows:

### **PRELIMINARY STATEMENT**

Catsimatidis, the owner of Gristedes's Supermarkets and United Refining Company ("United Refining"), wants to acquire the Debtors. He is attempting to do so not through the Debtors' well established bidding process, which is open, transparent, and orderly, but by trying to seize control of the management committee of SemGroup's general partner (the "Management Committee") to force through his own self-interested proposal.

In furtherance of his scheme, Catsimatidis has blatantly and openly violated material terms of a Confidentiality Agreement he entered into with the Debtors in order to gain access to the Debtors' confidential business information. Through a variety of tactics including direct appeals to the Debtors' employees, secret meetings with select members of the Debtors' management, misleading press releases, and an unauthorized website – all in direct violation of the Confidentiality Agreement – he has attempted to hijack and control management's reorganization efforts by publicly proclaiming that he himself would reorganize the Debtors. His attempts to drive off current and prospective bidders have thwarted the Debtors' efforts to maximize the value of the estate through a competitive bidding and sale process. Catsimatidis has inserted himself (and four of his business associates) into the role of fiduciaries for the Debtors, despite the fact that, as active bidders, they are plagued by fatal conflicts of interest that prevent them from having the remotest possibility of fulfilling those duties. In his drive to acquire seats on the Management Committee, he has ignored what is in the best interest of the

Debtors by purporting to release past conduct of certain members of the Debtors' pre-bankruptcy leadership. In short, Catsimatidis is an acquisition-minded outsider who is masquerading as a fiduciary to the detriment of the Debtors and the integrity of the chapter 11 process.

Although the Debtors are pleased that Catsimatidis has expressed such a strong interest in acquiring the Debtors, Catsimatidis has rebuffed every attempt on the part of the Debtors to persuade him to comply with the established bidding process, comply with the terms of the Confidentiality Agreement between himself and the Debtors, and for him and his business associates to recuse themselves from their assumed roles as fiduciaries for the Debtors as a result of their conflicts of interest.

The Debtors are committed to maximizing the value of their estates for the benefit of all creditors, whether through reorganization, sale of business units, or a combination of approaches. In order to preserve the integrity of the Debtors' reorganization and sale process, and to preserve and protect the value of the estates, the Debtors are compelled to seek relief from the Bankruptcy Court. In short, the Debtors respectfully request that the Court order Defendants to cease and desist from further violations of the Confidentiality Agreement; withdraw from their positions on the Management Committee; refrain from continuing to obstruct the bankruptcy process; and otherwise comply with the established bidding process.

### **JURISDICTION & VENUE**

1. 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 Plaintiffs' 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).

2. Venue is proper in this Court under 28 U.S.C. § 1409.

3. This proceeding is initiated pursuant to Rule 7001(7) & (9) of the Federal Rules of Bankruptcy Procedure.

### PARTIES

4. Plaintiffs are each debtors and debtors-in-possession in the above-captioned bankruptcy cases by virtue of having filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on July 22, 2008 and October 22, 2008 (the "Petition Dates"). Plaintiffs may be served through their undersigned counsel of record.

5. John A. Catsimatidis is, upon information and belief, a resident of the State of New York and may be served with process through UREC's registered agent, National Registered Agents, Inc., 160 Greentree Dr., Suite 101, Dover, DE 19904.

6. Matthew F. Coughlin, III is, upon information and belief, a resident of the State of Oklahoma and may be served with process at International Insurance Brokers, Ltd., 600 Mid-Continent Tower, 401 South Boston Ave., Tulsa, OK 74103.

7. Martin R. Bring is, upon information and belief, a resident of the State of New York and may be served with process at Ellenoff Grossman & Schole LLP, 150 East 42nd Street, New York, NY 10017.

8. J. Nelson Happy is, upon information and belief, a resident of the State of New York and may be served with process at 823 Eleventh Ave., New York, NY 10019.

9. Myron L. Turfitt is, upon information and belief, a resident of the State of New York and may be served with process through UREC's registered agent, National Registered Agents, Inc., 160 Greentree Dr., Suite 101, Dover, DE 19904.

10. United Refining Energy Corp. is, upon information and belief, a Delaware Corporation. UREC may be served with process through its registered agent, National Registered Agents, Inc., 160 Greentree Dr., Suite 101, Dover, DE 19904.

### BACKGROUND

#### A. Management Committee of SemGroup, GP, LLC

11. The Management Committee of SemGroup, G.P., L.L.C. ("SGGP"), the general partner of SemGroup, is similar to a board of directors. Its members are collectively authorized to make a variety of specific management decisions relating to SemGroup and, indirectly, relating to its subsidiaries. For example, among other responsibilities, the Management Committee has the authority to retain or discharge SGGP's and SemGroup's officers; set SemGroup's operating budget; and approve certain asset sales.

12. There are nine "seats" on the Management Committee. Prior to the Petition Date, the right to those nine seats was divided equally among three groups: (i) three seats were controlled by Thomas L. Kivisto ("Kivisto"), the former Chief Executive Officer of SemGroup; (ii) three seats were controlled by A.R. Thane Ritchie ("Ritchie"), a hedge fund investor; and (iii) three seats were controlled by The Carlyle Group and Riverstone Holdings LLC ("Carlyle/Riverstone").<sup>2</sup> Under the applicable Operating Agreement, the Management Committee cannot take any action with respect to certain enumerated matters without at least one vote by Carlyle/Riverstone.

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<sup>2</sup> Carlyle/Riverstone has the right to appoint three members, but as of the date hereof, has appointed only two members. Each of their two appointed members exercises 15 votes on the Management Committee.

**B. Catsimatidis**

13. Catsimatidis is the owner of the Red Apple Group, which operates a chain of grocery stores in New York and also owns United Refining, a company he acquired from a bankruptcy proceeding.

**C. Catsimatidis Approaches the Debtors About An Acquisition Outside the Bidding Process**

14. On or around September 26, 2008, Coughlin, an associate and business partner of Catsimatidis, contacted Terrence Ronan ("Ronan"), the Chief Executive Officer of SemGroup. Coughlin indicated that Catsimatidis was interested in speaking with Ronan about the possibility of acquiring the Debtors.

15. Catsimatidis spoke to Ronan by telephone. During their conversation, Catsimatidis represented that he was indeed interested in acquiring the Debtors. However, Catsimatidis indicated that he wished to do so without involving The Blackstone Group ("Blackstone"). Blackstone is tasked with providing financial advisory services to the Debtors, and is, among other things, responsible for vetting potential bidders and conducting an orderly and transparent process for marketing the Debtors' business units, as well as advising the Debtors in connection with structure and capital requirements for a chapter 11 plan of reorganization. Before ever meeting with Blackstone, Catsimatidis expressed to Ronan his concern that the involvement of Blackstone was unlikely to result in a "deal" for Catsimatidis.

16. Consistent with his responsibilities to maximize value of the Debtors' estates for the benefit of creditors, Ronan informed Catsimatidis that it would be improper to give him special treatment not accorded to other potential bidders. Ronan advised Catsimatidis that Blackstone was responsible for running the marketing process, and that a transparent and competitive bidding process would be necessary to obtain the highest value for the Debtors.

**D. Catsimatidis Executes Confidentiality Agreement, Purportedly For Possible Acquisition of the Debtors' Assets**

17. Catsimatidis began laying the groundwork for an acquisition of, or investment in, the Debtors or some of their business units. In late October 2008, Catsimatidis requested access to the Debtors' confidential, non-public records in order to evaluate the Debtors' assets. In order to explore a possible transaction with Catsimatidis, the Debtors were willing to grant Catsimatidis access to its confidential records, but, as with all other interested bidders, the Debtors required Catsimatidis to execute a confidentiality agreement in order to protect the Debtors' confidential information and ensure the integrity of the process surrounding any transaction.

18. On November 5, 2008, after negotiating the terms of the agreement, Catsimatidis executed a Confidentiality Agreement (the "Confidentiality Agreement"). Exhibit A, Confidentiality Agreement (Nov. 5, 2008). Catsimatidis signed the Confidentiality Agreement as the "Chairman, CEO" of UREC, a special purpose acquisition company (a "SPAC") that Catsimatidis created for the express purpose of acquiring a petroleum services company.

19. The Confidentiality Agreement imposes strict and unambiguous requirements on Catsimatidis and his associates with regard to the Debtors. For example, for a period of two years, Catsimatidis and UREC, acting alone or as part of a group, are prohibited from, *inter alia*, acquiring, or offering to acquire, any voting securities in the Debtors; making any public statements relating to a possible reorganization of the Debtors; or otherwise seeking to influence, or take control of, the Debtors' management:

In consideration of and as a condition to the Confidential Information being furnished to you, you hereby further agree that, without the prior written consent of the Company [defined as SemGroup, LP and affiliated companies], for a period of two years from the date hereof, neither you nor any of your Affiliates, acting alone or as part of a group, will:

- (i) acquire or offer or agree to acquire, directly or indirectly, by purchase or otherwise, any voting securities (or direct or indirect rights or options to acquire any voting securities) of the Company, or any material portion of the assets or properties of the Company,

\* \* \*

- (iii) make any public announcement with respect to, or solicit or submit a proposal or offer for, directly or indirectly, any merger, business combination, recapitalization, reorganization, asset purchase or other similar extraordinary transaction involving the Company or any of its securities, assets or properties,

\* \* \*

- (v) otherwise seek to influence or control, in any manner whatsoever, alone or in concert with others, the management, general partner or policies of the Company,

\* \* \*

Exhibit A, Confidentiality Agreement § 12.

20. In other words, by executing the Confidentiality Agreement, Catsimatidis agreed, for a two year period, to conform to the bidding process established by the Debtors and to refrain from taking actions that could circumvent or undermine that process.

**E. Less Than a Month Later, Catsimatidis Blatantly Violates the Confidentiality Agreement By Seizing Control of the Management Committee**

21. Even after executing the Confidentiality Agreement, Catsimatidis persisted in his requests to circumvent Blackstone and the established bidding process. In mid-November 2008, Catsimatidis requested an immediate meeting with Ronan and all of the Debtors' business unit leaders in order to explore in more detail the possibility of purchasing the Debtors.

22. Although the Debtors were pleased that Catsimatidis was so obviously eager to explore a possible acquisition, the Debtors continued to request that Catsimatidis work through Blackstone and the established bidding process. The Debtors continued to believe that the

maximum value to the Debtors would be gained through a transparent and orderly bidding process in which all interested bidders would be given an equal opportunity to participate on a level playing field.

23. Thwarted in his initial efforts to circumvent the bidding process, Catsimatidis appears to have shifted tactics in late November 2008. Instead of attempting an arms-length transaction with the Debtors' management, as contemplated by the Confidentiality Agreement, Catsimatidis began a campaign to force through a self-interested deal and drive off potential competition by seizing control of the Management Committee.

24. On November 25, 2008, Catsimatidis created an Oklahoma limited liability company, Tulsa Energy Acquisitions, LLC ("TEA"), which was to serve as his investment vehicle for SemGroup.

25. Approximately one week later, TEA executed simultaneous agreements with Kivisto and Ritchie. *See* Exhibit B, Term Sheet executed by Kivisto and Coughlin (Dec. 5, 2008); Exhibit C, Assignment of Interest executed by Kivisto, Coughlin and Happy (Dec. 5, 2008); Exhibit D, Term Sheet executed by Ritchie and Coughlin (Dec. 7, 2008). Kivisto, who had been terminated by SemGroup and is under investigation by the Securities and Exchange Commission and the United States Attorney's Office, agreed to appoint Catsimatidis's designees to all three of his seats on the Management Committee through the end of 2009. Ritchie, likewise, formally agreed to appoint Catsimatidis to one of his seats through October 2009 and also, upon information and belief, appointed Happy to one of his seats without a formal agreement. Both Kivisto and Ritchie agreed to transfer their equity interests in SGGP and SemGroup to TEA. Upon information and belief, Kivisto has transferred units he controls to TEA, but Ritchie has not yet transferred units to Catsimatidis. What is clear is that Catsimatidis

contemplates that his acquisition vehicle, TEA, will own a majority of the post-reorganization equity of SemGroup.

26. As a further indication of Defendants' intentions to serve their personal interests at the expense of the Debtors, the term sheets entered into between TEA, on the one hand, and Kivisto and Ritchie, on the other, appear to attempt to alter important legal rights of SGGP and the Debtors. For example, the term sheets refer to a "release or deemed release." See Exhibit B at 3; Exhibit D at 3. Further, the Ritchie term sheet provides that if SGGP's Operating Agreement is amended to reduce the "rights of indemnification and exculpation afforded Ritchie, such amendments or alterations shall be ineffective and Ritchie shall continue to be indemnified and exculpated by [the Debtors and SGGP] as if the provisions of the Operative Documents effecting exculpation and indemnification continued in full force and effect." Exhibit D at 3. Although Catsimatidis's company has no right to do so, it is purporting to provide releases, indemnifications, and exculpations to Kivisto and Ritchie on behalf of the Debtors and SGGP. The Debtors specifically reserve their rights to pursue any claim purportedly released by the Defendants.

27. Despite Catsimatidis's express agreement not to "seek to influence or control, in any manner whatsoever, alone or in concert with others, the management, general partner or policies of the [SemGroup]," Catsimatidis now claims to control five of the nine votes<sup>3</sup> on the Management Committee as a result of his transactions with Ritchie and Kivisto. The self-proclaimed Catsimatidis members of the Management Committee (the "Catsimatidis Group") are: Catsimatidis, Happy (an attorney for UREC), Turfitt (President and a Director of UREC),

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<sup>3</sup> Carlyle/Riverstone designees have a total of three votes regardless of the actual number of designees then serving

Bring (an attorney for Catsimatidis), and Coughlin (Executive Vice President of TEA and a Director of UREC).

28. Further, despite Catsimatidis's contractual obligation not to "acquire or offer or agree to acquire, directly or indirectly, by purchase or otherwise, any voting securities . . . of the Company," as a result of the transaction with Kivisto and Ritchie, Catsimatidis acquired Kivisto's, and offered to acquire Ritchie's, equity interests in SGGP and SemGroup.

**F. In Further Violation of the Confidentiality Agreement, Catsimatidis Begins Announcing Publicly That He Will "Reorganize" the Debtors**

29. Despite Catsimatidis's clear obligation under the Confidentiality Agreement not to make any "public announcement with respect to . . . any . . . reorganization," on December 15, 2008, Catsimatidis issued a press release announcing that as a result of Catsimatidis's "control" of the Management Committee, "he intends to develop a reorganization plan for SemGroup L.P." Exhibit E, Catsimatidis Press Release (Dec. 15, 2008). According to the release, "Mr. Catsimatidis said that he plans to work with creditors to develop a reorganization plan that enables SemGroup to repay its debts while preserving a majority of the 2,000 jobs currently at risk." *Id.*

30. Two days later, on December 17, 2008, Catsimatidis issued another press release, announcing his plans to meet with the Debtors' senior management. Exhibit F, Catsimatidis Press Release (Dec. 17, 2008). He also announced that he had reached out to the Administrative Agent for the Senior Secured Creditors regarding his efforts to craft a reorganization plan; and that "[w]e intend to have a preliminary plan ready for consideration in January 2009." *Id.*

31. Over the next two weeks, and in direct violation of the Confidentiality Agreement, Catsimatidis continued to make numerous public statements relating to his purported reorganization of the Debtors. On December 22, 2008, Catsimatidis traveled to Tulsa, Oklahoma

to address the employees of the Debtors directly. Catsimatidis convened a town hall style meeting and explained to the Debtors' employees that he wanted save their jobs and "not have [sic] . . . Larry the Liquidator come in and liquidate the company, because those people don't care about the company, they don't care about you, Larry the Liquidator only cares about how fast can I sell it [sic], how much of a commission can I make selling it. Well, that's not me." Catsimatidis boasted to the Debtors' employees that he would keep their jobs in place. "We need everyone at SemGroup. As a matter of fact, we may need to hire some people back."

32. On the same day that Catsimatidis held the employee town hall meeting, he arranged a "secret dinner" meeting for certain of Debtors' business unit leaders, without informing or including Debtors' authorized officers. The invitation for the meeting was sent by Coughlin the previous Friday. Exhibit G, Email from M. Coughlin to R. Majors (Dec. 19, 2008). In the email, Coughlin identified himself as "one of the new members of SemGroup G.P.'s Management Committee" and asked certain business unit leaders to "join me Monday evening . . . for a private dinner . . . . Please do not share this information with anyone . . . ." The dinner, hosted by Catsimatidis, Happy, and Coughlin, was plainly an attempt to subvert and undermine the authority of Debtors' authorized officers, and is evidence of a further violation of the Confidentiality Agreement.

33. Catsimatidis even created a website prominently featuring the SemGroup proprietary logo and a "Reorganization Hotline." The website's home page, which has the appearance of an official SemGroup web page, is entitled "Reorganization Updates from John Catsimatidis." Exhibit H, Copy of home page for semreorg.com (as of Feb. 5, 2008). The website includes copies of press releases, news articles, a "Q&A" section in which Catsimatidis purports to outline his plans for the Debtors and his reorganization efforts, and a "contact us"

section that allows employees to contact Catsimatidis by email. The "Reorganization Hotline" was established, according to Catsimatidis's press release, to allow "SemGroup employees and concerned citizens" to "leave a message" for Catsimatidis. Exhibit I, Catsimatidis Press Release (Feb. 10, 2008) (announcing creation of hotline).

**G. Catsimatidis's Public Posturing Drives Off Bidders, Chills Bidding and Undermines an Orderly Bankruptcy Process**

34. At the December 22, 2008 meeting at which Catsimatidis addressed the Debtors' employees, one employee asked how Catsimatidis's plans would impact asset sales. In response, Catsimatidis declared that, "Right now, I think most of the asset sales are on hold . . . Nothing currently going. And what I'm saying to the banks is that I want a whole company to reorganize, not a half company to reorganize."

35. This statement, and others like it, have driven away bidders interested in individual assets of the Debtors. For example, a party that was preparing a bid for SemMaterials terminated discussions after Catsimatidis made this announcement. From a bidder's perspective, there is no point in investing the time and energy in bidding on an asset that Catsimatidis indicated an unwillingness to part with. Similarly, members of Blackstone, and others, have reported to the Debtors that other potential bidders for the Debtors' assets have expressed reluctance to continue discussions as a result of Catsimatidis's involvement.

36. Furthermore, upon information and belief, Catsimatidis has also acted behind the scenes in an effort to thwart asset sales. In late December, an asset sales process was taking place with regards to certain SemGroup Europe Holding, L.L.C. ("SGEH") entities and/or assets. On December 23, 2008, the day after the "secret dinner" held by Catsimatidis, one of the attendees of the dinner, the President and Chief Operating Officer of SGEH, Randy Majors ("Majors"), ordered an abrupt halt to the SGEH asset sales process without consulting with the

Debtors' CEO or Chief Reorganization Officer. Majors had, upon information and belief, been informed that the involvement of the Red Apple Group (*i.e.*, Catsimatidis) would likely delay the sales process or render it unnecessary. When the Debtors' CEO learned of Majors' unauthorized order to halt the bidding process, he immediately relieved Majors of his responsibilities with SGEH and ordered that the sales process continue.

37. It is not a coincidence that asset sales are "on hold." That was precisely Catsimatidis's objective – to seize control of the Management Committee, drive away other potential bidders, stifle a fair and competitive bankruptcy process, and ram through his own acquisition.

**H. When Confronted, Catsimatidis Falsely Claims To Have No Interest In Acquiring the Debtors**

38. The fundamental problem with Catsimatidis's attempts to control the reorganization, and the resulting chilling of the bidding process, is that Catsimatidis is attempting to control both sides of the negotiating table.

39. As it became apparent to the Debtors that Catsimatidis's actions were driving away other potential bidders and, consequently, severely narrowing and limiting the Debtors' options for reorganization, the Debtors' counsel confronted Catsimatidis with the fundamental conflict between his role on the Management Committee and as an active bidder for the Debtors. In a letter dated January 29, 2009, the Debtors' counsel explained that "we remain perplexed as to how the Catsimatidis Group believes that it can be (i) in charge of, and have access to, information regarding the debtor bankruptcy plan and asset marketing process and (ii) at the same time, be an active bidder." Exhibit J, Letter from M. Saslaw to T. Kennedy (Jan. 29, 2009). The Debtors demanded, therefore, that the Catsimatidis Group "cease its hindrance of a fair process, free of all conflicts . . . ." *Id.* at 2.

40. The following day, the Catsimatidis Group brushed aside the Debtors' assertion of an improper conflict by making the astonishing assertion that:

*Mr. Catsimatidis is not, and never has been, an "active bidder."*  
As a member of the Management Committee his only current interest is in assisting the Debtor in adopting a plan of reorganization that will cause the Debtor to maximize the value of the Debtor's estate and thereby return the largest possible recovery for its creditors.

Exhibit K, Letter from Catsimatidis Group to M. Sosland (Jan. 30, 2009). The letter was signed by each member of the Catsimatidis Group.

41. This assertion borders on the absurd. From the outset of his contact with the Debtors, Catsimatidis identified himself to Ronan, among others, as a bidder interested in acquiring the Debtors. Other members of the Catsimatidis Group made similar assertions. More than once, Happy asserted to representatives of the Debtors that all he wanted to do was "make a deal."

42. In fact, the Confidentiality Agreement executed by Catsimatidis affirmatively states that the agreement is entered into "[i]n connection with your evaluation of a possible transaction or transactions . . . with or involving SemGroup, L.P. (together with its affiliated companies . . .)." Exhibit A, Confidentiality Agreement at 1. If Catsimatidis was not a bidder, then he misrepresented to the Debtors his intentions for gaining access to the Debtors' confidential business information. Moreover, the Confidentiality Agreement plainly states that, if "[a]t any time you determine not to proceed with the possible Transaction, you will promptly notify the Company in writing." *Id.* No such notice has been received by the Debtors.

43. Furthermore, UREC, the company on whose behalf Catsimatidis executed the Confidentiality Agreement was established for the sole purpose of making an acquisition. According to UREC's filings with the Securities and Exchange Commission, UREC is "a blank

check company . . . formed for the purpose of acquiring, merging with, engaging in a capital stock exchange with, purchasing all or substantially all of the assets of, or engaging in any other similar business combination of an unidentified operating business.” Exhibit L, UREC Annual Report on Form 10-K at 5 (Dec. 1, 2008). Furthermore, UREC was focused not just on any company, but on a company exactly like SemGroup: “We are focused on identifying a prospective target business in the energy industry throughout the world, with a particular focus on businesses or assets involved in the refining of petroleum and specialized products (such as petrochemicals) and services to the energy industry . . . .” *Id*

44. When Catsimatidis addressed the Debtors’ employees on December 22, 2008, Catsimatidis bragged that UREC was waiting in the wings with \$450 million in cash. Catsimatidis declared that he was holding the cash as a “plum” and that there was “a possibility” that UREC, and its cash, could be merged into the Debtors “to help SemGroup.”

45. Moreover, Catsimatidis’s denial of being a “bidder” is directly contradicted by statements made by his own counsel. United Refining and SemMaterials are parties to an adversary proceeding currently pending before the Court.<sup>4</sup> On January 15, 2009, United Refining’s counsel, Richard J. Parks (“Parks”), contacted Debtors’ counsel, requesting that the Debtors agree to a continuance of all “discovery as well as all other proceeding deadlines” in relation to the adversary. Exhibit M, Email from R. Parks to A. Swartz (Jan. 15, 2009). Parks explained that a continuation was appropriate because it did not make sense to invest in litigation between the parties when Debtors would eventually become part of the Red Apple Group, a holding company owned by Catsimatidis. “[I]f Mr. Catsimatidis is successful, the adversary action is moot . . . [I]t is our desire not [to] divert expense and resources at this time if the company is reorganized and becomes part of the Red Apple Group.”

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<sup>4</sup> The adversary is styled *United Refining Company v SemMaterials, L P* (Adversary Case No. 08-51404)

46. Catsimatidis is a bidder, plain and simple. He denies being a bidder only because he does not wish to subject himself to an open and transparent bidding process. The disparity between what Catsimatidis claims to be doing (acting as the philanthropic reorganizer – “That’s just who I am”) and what he is actually doing (using five seats on the Management Committee to try and push through a self-interested plan to ultimately acquire all or part of the Debtors while preventing other potential suitors from participating in a transparent process) underscores and illuminates the underlying conflict between Catsimatidis’s attempt to act as both seller and buyer of the Debtors. His effort to assume both roles undermines the ability of the Debtors to maximize the value of the estate through an open (and unconflicted) bidding process. Moreover, his efforts to hijack control of the Debtors’ management and reorganization, along with his refusal to operate within the established bidding procedures, constitutes a direct violation of the Confidentiality Agreement he entered into with the Debtors.

47. While the Debtors are pleased to have attracted the interest of Catsimatidis with regard to a possible acquisition, Catsimatidis refuses to act in a manner consistent with his obligations under the Confidentiality Agreement and his fiduciary obligations as a member of the Management Committee. As a result, the Debtors have been left with no choice but to seek relief from the Bankruptcy Court.

**COUNT I**  
**Breach of Confidentiality Agreement**

48. The Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs.

49. Defendants breached the Confidentiality Agreement by, among other things: (i) obtaining positions on the Management Committee and offering to acquire and possibly acquiring voting securities of SGGP and SemGroup; (ii) making public announcements with

respect to a reorganization of the Debtors; and/or (iii) seeking to influence or control the management, general partner or policies of SGGP and/or the Debtors. The Debtors are investigating other possible breaches of the Confidentiality Agreement, and reserve their rights to amend the Complaint to add further breaches.

**COUNT II**  
**Breach of Fiduciary Duty**

50. The Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs.

51. Members of the Management Committee owe fiduciary duties to the Debtors and SGGP.

52. The Catsimatidis Group has breached their fiduciary duties to the Debtors and SGGP by purporting to represent the interests of the Debtors and SemGroup while, at the same time, working on behalf of Catsimatidis, TEA and UREC with regard to a possible acquisition of the Debtors. Additionally, the Catsimatidis Group has purported to affect certain legal rights of Debtors in a manner contrary to the best interest of the Debtors and their constituents.

**COUNT III**  
**Declaratory Judgment**

53. The Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs.

54. The Catsimatidis Group currently occupies five seats on the Management Committee.

55. The Confidentiality Agreement, however, prohibits Defendants from "seeking to influence or control, in any manner whatsoever, alone or in concert with others, the management or policies of the Company." Exhibit A, Confidentiality Agreement § 12(v). This contractual

obligation certainly should preclude members of the Catsimatidis Group from serving as members of the Management Committee.

56. Furthermore, members of the Management Committee owe fiduciary duties to SGGP and the Debtors. The Catsimatidis Group cannot fulfill those fiduciary duties as a result of their expressed interest in affecting an acquisition of the Debtors. The Catsimatidis Group cannot act in the best interests of SGGP and the Debtors, while at the same time pursuing a possible acquisition of the Debtors. They cannot, consistent with their fiduciary obligations, occupy both sides of the negotiating table.

57. Therefore, the Debtors respectfully request that the Court enter an order declaring that Defendants' contractual obligations to the Debtors and SGGP, and/or the fiduciary obligations required of members of the Management Committee, preclude the Catsimatidis Group from further serving as members of the Management Committee.

#### **COUNT IV** **Injunctive Relief**

58. The Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs.

59. Bankruptcy Code § 105(a) provides, in relevant part, that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Under § 105(a), the Court may issue any order, including an injunction, that is necessary to protect or preserve the property of the estate.

60. Plaintiffs seek preliminary and permanent injunctions enjoining Defendants from further breaching the Confidentiality Agreement and their fiduciary duties to SGGP and the Debtors by, *inter alia*, (i) continuing to make public statements relating to the Debtors' possible reorganization; (ii) serving on the Management Committee; and (iii) pursuing an interest in

investing in, or acquiring, the Debtors outside the bidding process established and conducted by Blackstone.

61. If the Court were to deny Plaintiffs' request for preliminary and permanent injunctions, there is a substantial threat that Plaintiffs will suffer immediate and irreparable injury for which there is no adequate remedy at law. Among other things, Defendants' continued breach of the Confidentiality Agreement and their fiduciary duties risks impairing the Debtors' ability to maximize the value of their estates through the combination of an orderly reorganization and asset marketing process.

62. Any harm to Defendants from the issuance of an injunction will be significantly outweighed by the harm to Plaintiffs if an injunction is not entered. Moreover, by entering into the Confidentiality Agreement, Defendants agreed that the Debtors are entitled to injunctive relief in the event of a breach of the Confidentiality Agreement. Exhibit A, Confidentiality Agreement § 3.

63. The Debtors plan to file a motion and brief to support their request for injunctive relief and will request a prompt hearing.

**COUNT V**  
**Violation of the Automatic Stay**

64. The Debtors repeat and re-allege each and every allegation contained in the preceding paragraphs.

65. The Debtors' filing of petitions for bankruptcy relief "operates as a stay, *applicable to all entities*, of . . . any act to . . . exercise control over property of the estate." 11 U.S.C. § 362(a)(3) (emphasis added).

66. Defendants violated the automatic stay by attempting to seize control of the Debtors' estates. Catsimatidis has expressed, in no uncertain terms, his determination to acquire

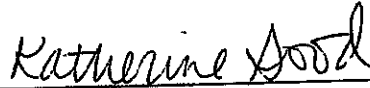
the Debtors. To that end he has, *inter alia*, acquired (or offered to acquire) the equity interests of Kivisto and Ritchie, claimed to exercise control over the Management Committee, attempted to thwart Debtors' efforts to explore the possibility of sales of individual business units, and has claimed publicly to be orchestrating the reorganization of Debtors. Importantly, Defendants have carried out these acts not as unconflicted fiduciaries looking out for the best interests of the Debtors, but as part of an effort to force Debtors into the control and ownership of Catsimatidis.

#### **PRAYER**

WHEREFORE, Plaintiff requests the entry of a judgment: (i) finding that Defendants breached the Confidentiality Agreement; (ii) declaring that the terms of the Confidentiality Agreement, and/or the fiduciary obligations required of members of the Management Committee, preclude the Catsimatidis Group from serving as members of the Management Committee; (iii) finding that the Catsimatidis Group breached their fiduciary duties to SGGP and the Debtors; (iv) granting a preliminary and permanent injunction precluding further violations of the Confidentiality Agreement; (v) finding that Defendants' violated the automatic stay; (vi) awarding the Debtors any and all damages to which they are entitled in an amount to be determined by the court; (vii) awarding attorneys' fees and costs where allowed by contract or law; and (viii) granting such other and further relief as may be just.

Dated: February 11, 2009  
Wilmington, Delaware

Respectfully submitted,



---

Mark D. Collins (No. 2981)  
John H. Knight (No. 3848)  
L. Katherine Good (No. 5101)  
Maris J. Finnegan (*DE admission pending*)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
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-and-

WEIL, GOTSHAL & MANGES LLP  
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-and-

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John B. Strasburger  
Sylvia A. Mayer  
Andrew R. Swartz

*Attorneys for the Debtors and  
Debtors-in-Possession*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE


\_\_\_\_\_) )  
In re: ) )  
SEMCRUDE, L.P., *et al.*, ) ) CHAPTER 11  
Debtors ) ) Case No. 08-11525 (BLS)  
(Jointly Administered)  
\_\_\_\_\_) )  
SEMGROUP, L.P., *et al.*, ) )  
Plaintiffs, ) ) Adversary No. \_\_\_\_\_  
v. ) )  
JOHN A. CATSIMATIDIS, *et al.*, ) )  
Defendants. ) )  
\_\_\_\_\_ ) )

**VERIFICATION OF DEBTORS' COMPLAINT FOR BREACH OF CONTRACT,  
DECLARATORY JUDGMENT, BREACH OF FIDUCIARY DUTY,  
AND INJUNCTIVE RELIEF**

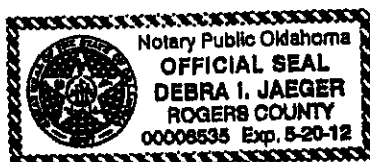
I, Terrence Ronan, the Chief Executive Officer of SemGroup, L.P., hereby certify, on behalf of Debtors SemCrude, L.P., SemCrude Pipeline L.L.C., SemGas, SemKan, L.L.C., SemGas Gathering, L.L.C., SemGas Storage, L.L.C., Greyhawk Gas Storage Company, L.L.C., Stueben Development Company, LLC, Grayson Pipeline, LLC, Eaglwing L.P., and SemGroup L.P., as debtors and debtors in possession, that I have read the Debtors' Complaint for Breach of Contract, Declaratory Judgment, Breach of Fiduciary Duty, and Injunctive Relief against Defendants John A. Catsimatidis, Matthew F. Coughlin, III, Martin R. Bring, J. Nelson Happy, Myron L. Turfitt, and United


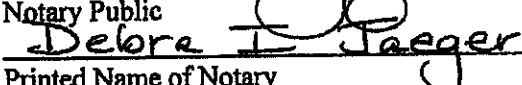
Refining Energy Corp. (the "Complaint"). The factual allegations in the Complaint are true and correct to the best of my knowledge, information or belief based on reasonable review of documents, investigation, and discussions with counsel.

Dated: February 11, 2009

  
\_\_\_\_\_  
Terrence Ronan

SUBSCRIBED AND SWORN TO before me on February 11, 2009.



  
\_\_\_\_\_  
Notary Public  
  
\_\_\_\_\_  
Printed Name of Notary

My Commission Expires: 5-20-2012

**EXHIBIT B**

**Term Sheet**  
**December 5, 2008**

- Parties**
- Tulsa Energy Acquisitions, LLC ("TEA")
  - The undersigned holders ("Kivisto Owners") of equity interests in SemGroup, L.P. ("SGLP") and its general partner, SemGroup G.P., L.L.C. ("SGGP" and collectively with SGLP, the "Company").
- Transaction**
- Exchange by Kivisto Owners of their entire interests in the Company for Class A Units of ownership in TEA. The effectiveness of such exchange shall be subject to any and all rights, obligations, pre-conditions, and contingencies set forth in the Second Amended and Restated Agreement of Limited Partnership of SemGroup, L.P. and the Second Amended and Restated Operating Agreement of SemGroup G.P., L.L.C. and such other agreements to which the interest in the Company owned by the undersigned is subject (each as amended prior to the date hereof, collectively, the "Operative Documents"), including, without limitation, the conditions with respect to transfers set forth in Articles IX, X and Exhibits A thereto (as the case may be) and the other terms and conditions of this Preliminary Term Sheet. The Kivisto Owners make no representations or warranties with respect to the admission of TEA as a "Substitute Member" of SGGP and/or a "Substituted Limited Partner" of SGLP, it being the sole responsibility of TEA to comply with any and all conditions required to achieve that status, including, without limitation, acquiring the consent of Carlyle/Riverstone (as such term is defined in the Operative Documents) and the other Owners.
- TEA Structure**
- The ownership of TEA shall be as follows:
    - Class A Units: 10.0% apportioned pro rata among the holders of all of the equity interests in the Company ("Owners"), including Kivisto Owners
    - Class B Units: 90.0% owned by John A. Catsimatidis ("JAC") or an "Affiliate" (as hereinafter defined) of JAC.
- Any class of Units of TEA (whether A, B or some other designation) (hereinafter "Units") shall have the same terms, rights and privileges except as otherwise set forth herein.
- If any Owner declines to participate in the Transaction, the Class A Units attributable to that Owner will be retained by JAC.
- All cash contributions to the capital of TEA shall be borne by Class B Units. The Class A Units shall have no obligation to contribute cash to the capital of TEA.
  - If additional capital contributions are obtained from any person other than JAC or an Affiliate of JAC, necessitating the issuance of additional Class A Units, the percentage dilution shall be borne pro rata by the holders of Class A and Class B Units. Such dilution will, in all events however, be subject to the "Anti-Dilution" provisions contained herein.

- Anti-Dilution: TEA shall not (a) directly or indirectly through intermediary subsidiaries owning an interest in the Company (or any of its subsidiaries), issue additional Units or securities convertible into or exchangeable for, or options to purchase, Units, or otherwise issue any securities of any kind ("TEA Securities") or (b) cause the Company or any of its subsidiaries to issue additional membership interests, units, partnership interests, or other securities convertible into exchangeable for, or options to purchase any securities of any kind of such issuer (the "SGLP Securities", and collectively with the TEA Securities, the "Securities") (either of (a) or (b) an "Issuance") unless prior to such Issuance, TEA and/or the Company, as the case may be, notifies each of the Kivisto Owners in writing of the contemplated Issuance and grants to each of the Kivisto Owners the right (the "Right") to subscribe for and purchase additional Securities, or such other securities as are issued, at the price per Security paid for such Issuance such that, after giving effect to the Issuance and exercise of the Right (including, for purposes of this calculation, the issuance of Securities upon conversion, exchange or exercise of all securities so convertible, exchangeable or exercisable issued in the Issuance pursuant to the Right (regardless of whether any such conversion or exchange right is actually exercised)), the Securities owned by each of the Kivisto Owners (rounded down to the nearest whole unit of designation) shall represent the same percentage of the outstanding Securities as was owned by each of the Kivisto Owners prior to the Issuance and representing an indirect percentage in the outstanding Securities of the Company (and its subsidiaries) as of such date; provided, however, in no event may the indirect percentage of the outstanding SGLP Securities owned (indirectly) by each of the Kivisto Owners (rounded down to the nearest whole unit of designation) fall below its Initial Ownership Percentage (as hereinafter defined) unless neither JAC nor any of his Affiliates participates in such Issuance. The Right may be exercised by each of the Kivisto Owners at any time by written notice to TEA or the Company (as the case may be) and received by TEA or the Company (as the case may be) within thirty (30) days after receipt of the notice of the exercise of the Right. The closing of the purchase and sale pursuant to the exercise of the Right shall occur at least thirty (30) days after TEA or the Company (as the case may be) receives notice of the exercise of the Right. If the proposed Issuance is terminated, the obligations to issue Securities to each of the Kivisto Owners in connection with such proposed Issuance shall also terminate and, in such event, any amount paid by each of the Kivisto Owners in respect thereof shall be returned to each such Kivisto Owner. For purposes hereof, the "Initial Ownership Percentage" of any Kivisto Owner shall mean that percentage equal to ten percent (10%) of the Original Ownership Percentage set forth below its signature line below and shall be adjusted to reset to account for Issuances in which neither JAC nor his Affiliates participate and such Kivisto Owner elects not to exercise its Right.

- The Manager of TEA shall be appointed by the holder of Class B Units, and shall initially be Nelson Happy. TEA shall cause A.R. Thane Ritchie ("Ritchie") to remain a member of the Management Committee of SGGP ("Manager"), and entitled to all rights and privileges afforded to a Manager under the Operative Documents (including without limitation, rights of exculpation and indemnification). To the extent that the Operative Documents are amended or otherwise altered in a way effecting or otherwise reducing the rights of indemnification and exculpation afforded Ritchie, such amendments or alterations shall be ineffective and Ritchie shall continue to be indemnified and exculpated by the Company as if the provisions of the Operative Documents effecting exculpation and indemnification continued in full force and effect.
- In partial consideration for its assignment of interests in the Company in exchange for Class A Units of TEA, TEA shall allocate (and/or caused to be allocated) to each Kivisto Owner an amount of "qualified nonrecourse financing" (as defined in Section 465(b)(6) of the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations thereunder) of the Company and its direct and indirect subsidiaries that is no less than that amount necessary to be equal to the taxable gain, if any, that would be realized by each such Kivisto Owner if such Kivisto Owner were to dispose of its Units in TEA for no consideration other than the release or deemed release of the liabilities of TEA, the Company and/or its subsidiaries, as such gain is determined immediately as of prior to the date hereof and, thereafter from time to time.
- For purposes hereof, the term "Affiliate" means any Person that directly or indirectly controls, is controlled by, or is under common control with, such Person. As used in this definition of "Affiliate," the term "control" means either: (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise; or (ii) a direct or indirect equity interest of ten percent (10%) or more in the entity, and includes with respect to JAC and his affiliates, each of Red Apple Group, Inc., United Acquisition Corp., United Refining, Inc., United Refining Company, and United Refining Energy Corp., their respective subsidiaries and Affiliates. For purposes hereof, the term "Person" means any natural person, partnership, domestic or foreign limited partnership, domestic or foreign limited liability company, trust, estate, association, or domestic or foreign corporation.

**Purpose** TEA intends to control as the owner of the debtor in possession to effect a Chapter 11 reorganization of SGLP with a view to preserving the current operating business to the extent possible, and halting the current liquidation of the enterprise. In the event that JAC and his Affiliates cease to preserve the current operating business and/or otherwise move to liquidate SGLP, the Kivisto Owners shall the right to purchase, for one dollar (\$1), that number of Units of TEA constituting control of SGLP.

**Timing** Upon execution of assignments to TEA of the Company equity interests at least equal to 50.1% of the whole, JAC shall commence funding TEA and TEA shall pursue the foregoing purpose with all due haste.

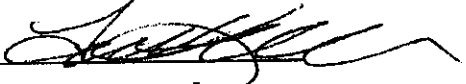
**Conditions Precedent** The transactions contemplated by this Term Sheet shall be subject to, among other things, (i) the parties shall have complied with all applicable provisions of the Operative Documents, including without limitation Articles IX, X and Exhibits A of the Second Amended and Restated Agreement of Limited Partnership of SemGroup, L.P. and the Second Amended and Restated Operating Agreement of SemGroup G.P., L.L.C. and all applicable laws, (ii) the parties shall have made all regulatory filings and obtained all required consents of government agencies, including but not limited to any required under Hart-Scott-Rodino and PUHCA, and (iii) immediately after the transactions contemplated hereby, TEA shall own a majority of the limited partnership interests of SGLP.

**Documentation** As soon as practicable TEA shall prepare and deliver to the Kivisto Owners an operating agreement in normal form memorializing the foregoing structure. The parties agree that no assignment of an interest in the Company shall occur or otherwise be effective until such time as the parties have negotiated and executed applicable definitive agreements incorporating the principles set forth in this Term Sheet, including without limitation, an operating agreement and formal assignments, in form and substance satisfactory to each in its sole and absolute discretion (collectively, the "Definitive Agreements"). The parties agree that this Term Sheet is intended to be non-binding and is subject in its entirety to the negotiation of the Definitive Agreements.

**Governing Law** This Term Sheet and any Definitive Agreement shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, each of the undersigned has executed this Term Sheet the date first above stated.

Thomas L. Kivisto Trust  
Dated June 5, 1996

By: 

Name: Thomas L. Kivisto

Title: Trustee

Current Ownership:  
SemGroup, L.P. 16.3186%  
SemGroup G.P., L.L.C. 17.185 %

Eaglwing Energy, LLC

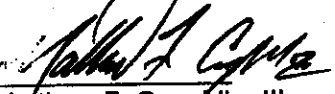
By: 

Name: Thomas L. Kivisto

Title: President

Current Ownership:  
SemGroup, L.P. 3.8462%  
SemGroup G.P., L.L.C. 3.9078%

Tulsa Energy Acquisitions, LLC

By:   
Matthew F. Coughlin, III  
Executive Vice President

**From:** Matthew F. Coughlin, III [mailto:Matthew.F.Coughlin.III@iiblttd.com]  
**Sent:** Friday, December 19, 2008 1:21 PM  
**To:** Majors, Randy  
**Subject:** Private Dinner Invitation  
**Sensitivity:** Confidential



Matthew F. Coughlin, III  
Managing Partner

Randy,

I don't believe we have met. I am one of the new members of SemGroup G.P.'s Management Committee.

I would be pleased if you would join me Monday evening at 7:30 for a private dinner at The Summit Club, 30th Floor, Governors Room.

Please do not share this information with anyone as I am only inviting a very select group and I do not want anyone to be offended.

I would appreciate your reply at your earliest convenience.

Thanks,  
Matt

Matthew F. Coughlin, III  
Managing Partner  
International Insurance Brokers, Ltd.  
600 Mid-Continent Tower  
401 South Boston Avenue  
Tulsa, OK 74103-4041  
918-592-4200  
918-477-4102 (D)  
918-808-8847 (M)  
918-742-2541 (H)  
[Matthew.F.Coughlin.III@iiblttd.com](mailto:Matthew.F.Coughlin.III@iiblttd.com)  
[www.iiblttd.com](http://www.iiblttd.com)