

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"),¹ in these chapter 11 cases and Plaintiffs in this adversary proceeding (collectively, "Plaintiffs"),

¹ 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.

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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").² 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.

² 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 votes³ 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),

³ 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.⁴ 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.”

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