

Bench Filed

9/17/08

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re	: Chapter 11
SEMCRUDE, L.P., <i>et al.</i> ,	: Case No. 08-11525 (BLS)
Debtors.	: Jointly Administered
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**ORDER ESTABLISHING PROCEDURES FOR THE  
RESOLUTION OF LIENS ASSERTED PURSUANT TO  
PRODUCERS' STATUTORY LIEN OR SIMILAR STATUTES**

WHEREAS, SemCrude, L.P., its parent, SemGroup, L.P. ("SemGroup"), and certain direct and indirect subsidiaries of SemGroup (collectively, the "SemGroup Companies" or the "Debtors"), as debtors and debtors in possession in the above-referenced chapter 11 cases, seek authorization to establish and implement exclusive, global procedures (the "Statutory Claims Procedures") pursuant to sections 105(a) and 362 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for the resolution of the rights and priorities of producers of oil and gas products, operators of oil and gas wells, and interest owners, under applicable law, in oil and gas wells (collectively, the "Producers") asserting entitlement under state laws and/or statutes allegedly providing the Producers with lien rights ("Statutory Lien Claims") and/or statutory trust claims (including, but not limited to, implied, constructive, and resulting trust claims) ("Statutory Trust Claims") with respect to certain of the Debtors' assets, all as more fully set forth in the Motion;<sup>1</sup> and

WHEREAS, certain representatives of Producers have met with representatives of

<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

the Debtors and, through good faith arm's-length negotiations, have fashioned the procedures set forth in this Order and have further agreed to work in good faith together going forward to reach agreement on a schedule that will allow the parties to present the Court with legal issues related to the Statutory Lien Claims and the Statutory Trust Claims in a coordinated and omnibus fashion that will allow the Court to determine and/or dispose of legal issues that apply to multiple parties through a single process, thereby conserving the resources of the Producers, the Debtors, their creditors, and other interested parties, as well as providing for judicial efficiency and economy; and

WHEREAS, the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having determined that sufficient notice of the Motion has been provided to the parties affected by this Order; and

WHEREAS, the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and based on all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the processes and procedures set forth below to resolve certain questions of law common to Statutory Lien Claims and/or Statutory Trust Claims are approved and authorized in their entirety:

- a. Not later than 20 calendar days after entry of this Order, certain Producers, identified in Exhibits A through H hereto as plaintiffs, will commence

separate adversary proceedings (the "Declaratory Judgment Actions") for each of the states identified on Exhibits A through H with the filing of complaints substantially in the form of Exhibits A through H. Any Producer(s) who wish to commence a Declaratory Judgment Action for a state in which Goods were sold to the Debtors which is not listed on any of Exhibits A through H shall file a notice with the Court within 10 days after entry of this Order and shall prepare and file a Declaratory Judgment Action for such state within 30 days after entry of this Order. There shall only be one Declaratory Judgment Action for each state in which Goods were sold to the Debtors. If more than one Producer seeks to file a Declaratory Judgment Action for a given state, such Producers shall coordinate among themselves in the preparation and filing of the Declaratory Judgment Action for such state. The Declaratory Judgment Actions shall seek declaratory judgments as to the rights, status, priority and other legal relations of the Producers related to the Debtors and their Pre-Petition Secured Parties. The Declaratory Judgment Actions, as may be amended pursuant to the Federal Rules of Civil Procedure, will seek a declaration on the threshold questions of law germane to the Statutory Lien Claims and/or the Statutory Trust Claims for any Goods delivered or received prepetition or resulting proceeds under the laws of each state in which Debtors purchased Goods from Producers, including, but not limited to, the legal issues related to validity and priority of such claims, ~~against any other asserted liens or claims~~ (the "Threshold Questions of Law"). Each Declaratory Judgment Action will be limited to declaratory relief for the rights and claims related to all Producers in the applicable state, and any related relief ancillary thereto, but shall not seek payment or damages from the Debtors and shall not determine the particular claims of any individual Producer. Agreement to the Statutory Claims Procedures does not constitute an admission to any allegation in the Declaratory Judgment Actions.

- b. The Declaratory Judgment Actions will be the sole procedure, means, and mechanism by and through which the Court will determine the Threshold Questions of Law that will govern the legal rights of all Producers, Debtors, their creditors, and all other parties in interest, with respect to the Statutory Lien Claims and/or Statutory Trust Claims. The Court may, after providing the parties notice and the opportunity to be heard, consolidate, bifurcate or otherwise structure one or more of the Declaratory Judgment Actions or any claims pled in the Declaratory Judgment Actions, in the interest of judicial economy. The Declaratory Judgment Action shall be coordinated under a case management order applicable to all such Declaratory Judgment Actions.
- c. No Producer or any other party in interest is required to actively participate in the Declaratory Judgment Actions in order to preserve its rights to submit or oppose Statutory Lien Claims and/or Statutory Trust Claims in accordance with the procedures described below. However, the

decisions, rulings, and determinations made in the Declaratory Judgment Actions will be binding on Debtors, all Producers, the Pre-Petition Secured Parties, and all other creditors and parties in interest, regardless of their participation or lack thereof in the Declaratory Judgment Actions.

- d. Any Producer or other party in interest wishing to actively participate in one or more of the Declaratory Judgment Actions, by way of briefing, argument, or otherwise, may do so. Any Producer or other party in interest who desires to preserve the option of appealing any decision must join the Declaratory Judgment Action from which the appeal may be asserted, as a plaintiff or defendant. All other parties who are not plaintiffs or defendants may participate as amicus curiae. The Court expects the Producers and other parties in interest to work together in good faith to limit, and not duplicate, briefing and argument submitted to the Court in the Declaratory Judgment Actions. Any Producer who wants to participate with respect to the Declaratory Judgment Actions must give notice of its intent to participate either as a party or as amicus curiae as set forth in the scheduling order (which is expected to set forth more detailed deadlines and procedures than those described herein) to be submitted and entered at the first scheduling conference in connection with the Declaratory Judgment Actions, which will be held as soon as practicable after the Declaratory Judgment Actions have been filed.
- e. By complying with the procedures set forth herein, a Producer's rights under state statutes purporting to grant Statutory Lien Claims and/or Statutory Trust Claims shall not be prejudiced or limited in any way by (i) such Producer's failure after the Petition Date to (x) take, if applicable, any "self-help" measures with respect to the Goods or proceeds subject to its claim, (y) institute an adversary proceeding or contested matter against the Debtors seeking to enforce its rights to recovery of proceeds from the sale of Goods or collection of proceeds, or otherwise under the statute(s) asserted by the Producer in support of its claim, or (z) continue to prosecute proceedings already commenced, or (ii) the Debtors' continued use, sale, or shipment of the Goods or proceeds therefrom that may be subject to a Statutory Lien Claim and/or Statutory Trust Claim after the Petition Date, provided, however, that the Debtors are not waiving any defense to a Statutory Lien Claim and/or Statutory Trust Claim resulting from the failure of a Producer to timely comply with any requirement under an applicable state law or statute to the extent such act was not stayed by the automatic stay under 11 U.S.C. § 362.
- f. The Declaratory Judgment Actions shall be the forum to determine the priority of the liens of the Prepetition Secured Parties vis a vis the Producers.
- g. The Debtors will include in Schedule F to their Schedules of Assets and Liabilities a listing of amounts, based on their books and records, owed for

the prepetition purchase of crude oil and natural gas on which the Debtors have historically paid severance taxes, provided, however, that the Debtors have reserved the right to designate any such scheduled claims as contingent, disputed, and/or unliquidated to the extent applicable. Following the filing of the Schedules of Assets and Liabilities, the Debtors shall seek entry of a general bar date order establishing a deadline for the filing of proofs of claim, which deadline shall apply to, among others, Statutory Lien Claims and Statutory Trust Claims to the extent holders of such claims dispute the Debtors' scheduling of such claims.

- h. Producers who are the operators of oil or gas wells and/or properties ("Operating Producers") may (but are not required to) file proofs of claims for Statutory Lien Claims and/or Statutory Trust Claims on their own behalf and on behalf of all non-operating interest owners in any such oil or gas wells and/or properties, including, but not limited to, working interest owners, royalty owners, and/or overriding royalty interest owners (the "Non-Operating Interest Owners"). When asserting a claim on behalf of Non-Operating Interest Owners, the Operating Producer need only file a single proof of claim form which clearly references the wells or properties for which Statutory Lien Claims and/or Statutory Trust Claims are asserted, and include a list of the Non-Operating Interest Owners for whom the proof of claim is filed, or, alternatively, identify the specific division order(s) or other contract(s) with the Debtor(s) that lists the Non-Operating Interest Owners for each such well or property. The Operating Producer may attach the division orders or contracts with each claim, but is not required to do so. However, to the extent any Operating Producer does not file a proof of claim on a particular Statutory Lien Claim or Statutory Trust Claim on behalf of any Non-Operating Interest Owner, the Non-Operating Interest Owner or its authorized agent must file a proof of claim by the court-approved bar date to preserve its right to assert Statutory Lien Claims and/or Statutory Trust Claims. It shall be the responsibility of Debtors to provide notice, in accordance with the Court's order establishing a bar date, of any such bar date to any creditor or party-in-interest whose Statutory Lien or Statutory Trust Claims Debtors seek to bar. Nothing in this Order shall prevent any Non-Operating Interest Owner from filing a claim on its own behalf regardless of whether an Operating Producer has filed a claim on behalf of such Non-Operating Interest Owner. A claimant may supplement and/or amend its proof of claim after the bar date to provide supporting documents based on the Court's determination of the Threshold Questions of Law, but a claimant may not add new claims to its proof of claims after the bar date.
- i. When a final judgment from which no further appeal may be taken (the "Final Judgment") is entered on the Threshold Questions of Law that are to be decided in the Declaratory Judgment Actions, the Court shall establish procedures ("Statutory Claims Processing Procedures") for supplementing and/or amending, to the extent necessary, any previously

filed proofs of claims and processing claims (including establishing the factual predicate supporting such claims) in accordance with such Final Judgment.

And it is further

ORDERED that the foregoing Statutory Claims Procedures are the sole and exclusive method for the resolution of the validity, enforceability, non-avoidability and priority of any and all Statutory Lien Claims and/or Statutory Trust Claims asserted against the Debtors and/or its creditors. And it is further

ORDERED that all Producers are prohibited and stayed from taking any other action for the resolution or treatment of their Statutory Lien Claims and/or Statutory Trust Claims against the Debtors, including, without limitation, (a) commencing adversary proceedings or contested matters against the Debtors in connection with any Statutory Lien Claims or Statutory Trust Claims, (b) seeking to obtain possession of any Goods or proceeds from Debtors, or (c) otherwise interfering with the delivery of any Goods to or from the Debtors except in accordance with the provisions of this Order. And it is further

ORDERED that by consenting to these Statutory Claims Procedures and complying with the procedures set forth in the Statutory Claims Procedures, the Debtors are not waiving the protections of the automatic stay imposed by section 362 of the Bankruptcy Code. And it is further

ORDERED that the filing of a statutory notice or claim by an Operating Producer on behalf of a Non-Operating Interest Owner pursuant to the procedures in this Order shall not establish or create any duty of the Operating Producer to any Non-Operating Interest Owner and nothing in this Order shall be construed as creating any such duty or relationship. And it is further

ORDERED that all adversary proceedings and contested matters (including contested matters raised by objection) against Debtors, whether currently pending or initiated in the future, in connection with any Statutory Lien Claim or Statutory Trust Claim, except the Declaratory Judgment Actions contemplated hereby, are stayed, and the claims asserted therein shall be resolved exclusively pursuant to the Statutory Claims Procedures set forth herein, unless otherwise ordered by this Court. And it is further

ORDERED that nothing contained herein or in the Motion shall limit the Debtors' ability to make payments to creditors in accordance with any other order of this Court, regardless of whether such creditors have asserted Statutory Lien Claims and/or Statutory Trust Claims. And it is further

ORDERED that nothing contained herein or in the Motion shall be deemed a determination that any Statutory Lien Claim or Statutory Trust Claim is valid or entitled to adequate protection. And it is further

ORDERED that nothing in this Order shall apply to a Producer's rights to stop goods in transit under applicable state law or the proceedings previously initiated by Teppco Crude Oil, LLC and Vinmar Overseas Limited. And it is further

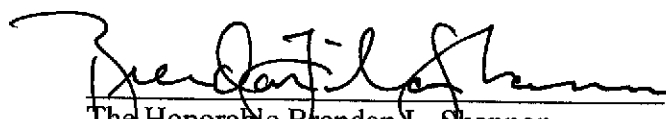
ORDERED that the relief granted in this Order remains subject to prior orders entered by the Court including, but not limited to, the Interim Financing Order and any final financing order entered by the Court. And it is further

ORDERED that nothing contained herein or in the Motion shall constitute any admission or conclusion as to any Debtor's solvency.

This Court retains jurisdiction to interpret and enforce this Order.

Dated: Sept 17, 2008

Wilmington, Delaware



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The Honorable Brendan L. Shannon  
United States Bankruptcy Judge