EFiled: Feb 05 2014 06:12PM EST
Transaction ID 54918739
Case No. 9318-

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

JON SLOTOROFF, Plaintiff, v. KINDER MORGAN, INC.; KINDER MORGAN G.P., INC., Defendants, -and- KINDER MORGAN ENERGY PARTNERS, L.P., Nominal Defendant.	C.A. No. ____________

VERIFIED CLASS ACTION AND DERIVATIVE COMPLAINT

Plaintiff Jon Slotoroff ("Plaintiff") brings this Verified Class Action and Derivative Complaint ("Complaint") derivatively on behalf of nominal defendant Kinder Morgan Energy Partners, L.P. ("KMP" or the "Partnership"), and as a class action on behalf of KMP's Limited Partners, against Kinder Morgan, Inc. ("KMI") and the Partnership's general partner Kinder Morgan G.P., Inc. ("KMGP") (collectively, "KMI"). The allegations of the Complaint are based on the knowledge of Plaintiff as to himself, and on information and belief, including the investigation of counsel and review of publicly available information, as to all other matters.

INTRODUCTION

1. This case involves KMP, a leading pipeline transportation and energy storage company that is one of the oldest and largest MLPs in the nation. KMP does not

have its own board of directors or management. KMP instead relies entirely on KMI, which (through its wholly-owned subsidiary, KMGP) acts as KMP's General Partner. KMI completely controls KMP's business and, among other things, determines the amounts of KMP's quarterly distributions to its Limited Partners and to KMI itself (the "Distributions").

2. KMI is among the most highly compensated of all MLP general partners in the U.S., both in terms of absolute dollars and percentage of each dollar of Distribution. KMI takes home billions of dollars each year because it is entitled to nearly 50% of each dollar that KMP approves as Distributions. Over the past six years, KMI has received over $7 billion in Distributions and since 2010, has received $3.2 billion. As set forth herein, KMI has used its control over KMP to allocate cash flow for Distributions in bad faith, in breach of KMI's fiduciary obligations to KMP's Limited Partners, and in breach of KMI's contractual obligations under KMP's Operating Agreement.

3. The $3.2 billion in Distributions that KMI received since 2010, is being improperly subsidized by KMP's Limited Partners. Specifically, there is a formula that controls how much of KMP's earnings can be issued as Distributions. As set forth below, recognizing the incentive for KMI to use its power over implementing that formula in order to benefit itself at the expense of the business and the Limited Partners, KMI accepted a duty of good faith with respect to its use of that power. Because KMI has caused KMP to issue far greater Distributions than would be allowed had the formula been implemented in good faith, KMI is effectively causing KMP to fund the

Distributions by taking on unnecessary debt and issuing millions of new units – diluting existing unitholders.

4. Just between 2010 and 2012, KMP issued $3.3 billion in new debt and raised $2.6 billion through the sale of common units, much of which was used to pay Distributions. Thus, KMP Limited Partners are financing KMI's profits, while the Limited Partners are responsible for this debt and their ownership interests are being significantly diluted. Between 2010 and 2014, KMP increased the number of its units from 207.3 million to 302.8 million (excluding shares issued in connection with KMP's acquisition of El Paso) or 48%.

5. KMI's Distributions of KMP earnings to KMI violate the controlling agreements. These Distributions are based on KMP's distributable cash flow ("DCF"), a metric that is determined, subject to certain contractual provisions discussed below, by subtracting KMP's maintenance capital expenditures ("Maintenance Capex") from KMP's earnings before depreciation and amortization ("EBDA"). As General Partner, KMI alone dictates whether capital expenditures are designated as "Maintenance Capex" – which reduces the earnings eligible for Distributions – or "Expansion Capex," which does not lower earnings available for Distributions.

6. KMI has an extraordinary motivation to maximize KMP's Distributions through minimizing the allocation to Maintenance Capex, irrespective of the long-term negative effects that excessive Distributions may pose for the class of KMP's Limited Partners, who constitute the Class (the "Class") or for KMP itself. As KMP's Distributions exceed preset targets, KMI receives an increasing percentage of

Distributions. Since KMI owns only about 11% of KMP's equity interests, KMI has a capped long-term interest in the entity. Once a certain distribution threshold is achieved, however, KMI is entitled to receive almost 50% of every dollar that KMI (in its capacity as General Partner) causes the Partnership to distribute to its unitholders in the immediate term. In 2012 alone, this incentive structure resulted in KMI receiving $1.4 billion in total distributions.

7. The Third Amended and Restated Agreement of Limited Partnership of Kinder Morgan Energy Partners, L.P., dated as of May 18, 2011 ("the Partnership Agreement") specifically addresses this issue. It requires that KMI exercise its powers in good faith when allocating capital expenditures between Maintenance Capex and Expansion Capex. KMI has violated this provision of the contract, as well as its fiduciary duty to exercise its powers in good faith, by classifying capital expenditures that should be attributed to Maintenance Capex into the Expansion Capex column instead so as to artificially inflate the amount of money that is available for Distribution.

8. KMI has ensured that, quarter after quarter, hundreds of millions of dollars exit KMP and are thereafter not available for needed maintenance or other operational purposes. KMI compensates for this misallocation by forcing the Partnership to raise market capital much more frequently, and in higher amounts, than it otherwise would – in part through costly equity issuances, thereby diluting the ownership interest of existing limited partners and in part through massive increases in the debt burden that must be borne by KMP.

9. Plaintiff brings this suit in order to compel KMI to act in accordance with the terms of the Partnership Agreement (by requiring KMI to calculate DCF without preference to its personal interests) and to seek money damages on KMP's behalf for past harm inflicted by KMI.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 6 Del. C. § 17-111.

11. This Court has jurisdiction over KMP, KMI, and KMGP pursuant to 6 Del. C. § 17-109.

12. Venue is proper in this forum because this action involves significant issues of Delaware corporate law, and is therefore suitable for adjudication before the Delaware Court of Chancery.

THE PARTIES

13. Plaintiff Jon Slotoroff has owned KMP units continuously for over ten years.

14. Nominal Defendant KMP is the largest independent owner and operator of petroleum product pipelines in the U.S. Its pipelines transport natural gas, refined petroleum products, crude oil, carbon dioxide and other products, while its terminals store petroleum products and chemicals and handle bulk materials such as coal and petroleum coke. The partnership is also the largest carbon dioxide marketer and transporter in the country.

15. KMP is a limited partnership organized under the laws of the state of Delaware, with its principal executive offices located at 1001 Louisiana Street, Suite

1000, Houston, Texas 77002. Common units in KMP are publicly traded on the New York Stock Exchange ("NYSE") under the ticker symbol "KMP."

16. Defendant Kinder Morgan, Inc. ("KMI") is the largest midstream and the third largest energy company in North America, with a combined enterprise value of approximately $100 billion. KMI, through KMGP and Kinder Morgan Management, LLC ("KMM"), is responsible for KMP's daily operations and management. KMI wholly owns 100% of KMGP, the General Partner of Nominal Defendant KMP. KMGP owns an effective 2% interest as the General Partner of KMP and its operating partnerships, as well as approximately 11% of the limited partner interests of KMP.

17. As of December 31, 2012, KMI held approximately 13% of KMP's total equity interests (in its capacity as both a general and limited partner). This equity interest, in combination with KMI's Incentive Distribution Rights that it receives as KMP's General Partner (discussed further below), results in KMI holding an approximately 50 percent economic interest in KMP, worth over $3.2 billion. Further, as of December 31, 2012, KMI held approximately 15 million shares of KMM, the entity to which KMGP has delegated its management of KMP. By reason of its 100% ownership in KMGP and its control over the makeup and structure of KMGP's board of directors, KMI controls KMGP. KMI is incorporated under the laws of the state of Delaware, with its principal executive offices located at 1001 Louisiana Street, Suite 1000, Houston, Texas 77002. KMI is publicly traded on the NYSE under the ticker symbol "KMI."

I. ALLEGATIONS

A. BACKGROUND ON THE KINDER MORGAN ENTITIES

18. KMP was founded in February 1997, when a group of investors led by chairman and Chief Executive Officer Richard D. Kinder – former President and Chief Operating Officer of Enron Corp. – acquired the general partner of Enron Liquids Pipeline, L.P., a small, publicly-traded pipeline limited partnership. According to KMI, Kinder "had a vision to build a different type of energy company by utilizing the master limited partnership (MLP) financial structure as a growth vehicle, something that had never been done before."

19. KMP is involved in a number of energy-related businesses, but its revenues derive primarily from its interests in more than 80,000 miles of natural gas, oil, refined products, and CO2 pipelines in the US and Canada. KMI describes KMP as a "toll road," in that it generates most of its cash flow from the fees it charges oil and gas producers to transport their commodities. KMP has reported steady revenue growth over the past several years, due mainly to factors unrelated to the volume of product transported through KMP's pipelines.

20. Because KMP's primary assets are its tens of thousands of miles of pipelines, it is critical to KMP's long-term financial health that KMP maintain those pipelines in top condition. Failure to do so can lead to catastrophic environmental incidents and significant financial liability. The primary risk associated with gas and oil pipelines is that of a rupture leading to significant release of the product being transported and contamination of the natural environment. Given the hazardous nature of the

materials KMP ships, potential consequences include harmful environmental impacts, property damage, and injuries or fatalities.

21. KMP, under KMI's management, is no stranger to serious environmental incidents resulting from inadequate maintenance and repair of its pipeline systems. For example, in 2004, a KMP pipeline ruptured and spilled over 100,000 gallons of diesel fuel in California's largest wetlands, leading to criminal guilty pleas by KMP and several million dollars of fines. According to the chief of California's pipeline safety division, KMP ignored data indicating that the relevant pipeline had corroded and required maintenance. This was but one of a series of major safety and environmental disasters caused by inadequate maintenance of KMP's pipelines.

22. In 2005, these incidents led to the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration to order KMP to address its "rise in pipeline incidents" as a result of KMP's "inadequacies" in interpreting data to evaluate and repair its pipelines. As a result of this order, KMP later agreed to pay tens of millions of dollars in "safety improvements" for its pipelines. These incidents also led the U.S. Department of Transportation to "form[] a task force to look into Kinder Morgan Inc.'s maintenance and inspection practices on several petroleum product pipelines in the West, the first such task force the agency has ever formed."

23. Because maintenance expenditures are required to sustain current levels of production (and income), and to prevent safety and environmental disasters, KMP's maintenance expenditures are nondiscretionary and critical to KMP's survival. Due to the nondiscretionary nature of maintenance spending, however, as discussed below, KMI's

minimal allocations of KMP's overall capital expenditures to maintenance spending indicates that KMI is actually disguising the true amount it spends on infrastructure maintenance by misallocating its maintenance expenditures to Expansion Capex.

B. MASTER LIMITED PARTNERSHIPS AND DISTRIBUTABLE CASH FLOW

24. As noted above, KMP is organized as an MLP, with KMI (through KMGP) acting as its General Partner. MLPs are publicly traded limited partnerships that combine the tax benefits of a limited partnership with the liquidity of publicly traded securities (called "units"). The IRS tax code permits only certain kinds of companies to operate as MLPs, including energy-related businesses such as petroleum and natural gas extraction and transportation. Thus, most MLPs are in essential industries, providing energy and energy infrastructure.

25. Investors are drawn to MLPs because the contracts governing MLPs typically require them to regularly pay out to their unitholders in quarterly cash distributions all earnings not needed for current operations and maintenance of capital assets. Accordingly, investors typically view MLP units as producing a long-term annuity-like income stream.

26. Institutional ownership of MLPs is generally limited, however, for at least two reasons. First, the MLP structure is not as attractive for ownership by tax-exempt investors. Second, and more importantly, sophisticated investors may be unwilling to place significant amounts of managed money in MLPs because of the perception (and at times reality) that general partners engage in a wide range of abusive conduct yet are insulated from accountability because of liability limitations and disclaimers that are

placed in the relevant MLP partnership agreements. Accordingly, the vast majority of MLP investors are individual retail investors.

27. KMP compensates its Limited Partners through quarterly income distributions based on the non-GAAP metric DCF. DCF is arguably the most important financial metric to KMP's investors, both because it largely dictates the amount of KMP's Distributions to its Limited Partners and because it is a critical indicator of KMP's ability to sustain its Distribution at current rates. Specifically, the ratio of DCF to actual Distributions (the "Coverage Ratio") – which is essentially a measure of how much extra money KMP has remaining after paying its Distributions – is a key measure of the MLP's financial health and sustainability. As discussed more fully below, a higher Coverage Ratio reflects the MLP's greater ability to meet its financial obligations going forward.

28. As noted above, KMP's DCF consists of KMP's "earnings before depreciation and amortization ('EBDA') minus maintenance capital expenditures." This calculation is different from KMP's reported net income because, in calculating its DCF, KMP excludes charges that do not have a cash impact or do not impact ongoing business operations. KMI specifically directs investors to focus on the DCF measurement, stating that that DCF "more effectively reflects [KMP's] ongoing cash generation capacity" than reported net income.

29. As set forth in the calculation above, for every dollar that is allocated to Maintenance Capex, one fewer dollar is available for distribution to KMP's Limited Partners (and KMI). Maintenance Capex is a non-GAAP measure that is supposed to

reflect the amount of capital expenditures incurred for the purpose of sustaining the Partnership's operations at current levels. Specifically, the Partnership Agreement defines Maintenance Capex as follows:

> "Maintenance Capital Expenditures" means cash capital made to maintain, up to the level thereof that existed on the Closing Date, the throughput, deliverable capacity, terminating capacity, or fractionation capacity (assuming normal operating conditions, including, without limitation, down-time and maintenance) of the assets of the Partnership and the Operating Partnership, taken as a whole, as such assets existed on the Closing Date and shall, therefore, not include cash capital expenditures made in respect of Capital Additions [sic] and Improvements.

30. Maintenance Capex is distinguishable from "Expansion Capex," which consists of the capital expenditures incurred to expand KMP's capacity, such as building new pipelines. Importantly, Expansion Capex is not subtracted from KMP's income for the purpose of calculating KMP's DCF – and thus its Distributions – because in theory growth investment will lead to increased future earnings. Indeed, growth investment is often paid out of new debt and equity capital issuances, rather than free cash flow. As General Partner, KMI has the power to determine the allocation of KMP's total capital expenditures between Maintenance Capex and Expansion Capex.

C. KMI's Obligation To Allocate KMP's Capital Expenditures In "Good Faith"

31. In light of the crucial role that Maintenance Capex plays in determining the Limited Partners' returns and the long-term viability of KMP, as well as KMI's unique incentive to drain KMP of money by overstating its DCF, the Limited Partners have a key limitation on KMI's powers to decide KMP's Maintenance Capex.

32. Except as detailed below, under the Partnership Agreement, KMI enjoys significant discretion as General Partner to manage KMP's business without regard to the interests of the Limited Partners. For example, Section 3.1 of the Partnership Agreement states that "[t]he General Partner has no obligation or duty to the Partnership, the Limited Partners or the Assignees to propose or approve, and in its sole discretion may decline to propose or approve, the conduct by the Partnership of any business." Section 6.1(a) of the Partnership Agreement states that KMI "shall have full power and authority to do all things and on such terms as it, in its sole discretion, may deem necessary or appropriate to conduct the business of the Partnership," including among other things "the making of any expenditures," "the use of the assets of the Partnership," and "the distribution of Partnership cash."

33. In light of KMI's sweeping powers under the Partnership Agreement, the restriction that the Partnership Agreement places on KMI's discretion regarding Maintenance Capex is all the more notable. Critically, with respect to KMI's allocation of its capital expenditures between Maintenance Capex and Expansion Capex, the Partnership Agreement mandates that KMI's allocation judgments must be exercised in "good faith." Specifically, the Partnership Agreement's definition of Maintenance Capex states that:

> Where cash capital expenditures are made in part to effectuate the capacity maintenance level referred to in the immediately preceding sentence [defining Maintenance Capex] and in part for other purposes, ***the General Partner's good faith allocation thereof between the portion used to maintain such capacity level and the portion used for other purposes shall be conclusive.***

34. Thus, instead of having "sole" or "unfettered" discretion, when it comes to allocating capital expenditures among maintenance and expansion, the General Partner's judgment must be exercised in "good faith."

35. Similarly, the Partnership Agreement's definition of "Cash From Operations" states that:

> Where cash capital expenditures are made in part in respect of Capital Additions and Improvements and in part for other purposes, ***the General Partner's good faith allocation thereof between the portion made for Capital Additions and Improvements and the portion made for other purposes shall be conclusive.***

36. In other words, KMI's determination of Expansion Capex ("made for Capital Additions and Improvements") must be made in good faith.

37. The Agreement also imposes on KMI a duty of good faith and fair dealing, with respect to the Limited Partners and KMP itself, concerning certain operational and accounting decisions. *See, e.g.*, § 6.8 (KMI shall not be liable "for losses sustained or liabilities incurred as a result of any act or omission if [KMI] acted in good faith").

38. The unique requirement that KMI allocate KMP's capital expenditures between Maintenance and Expansion Capex in "good faith" is critical. This contractual provision requires that KMI allocate Maintenance Capex in a way that does not unfairly dilute the Limited Partners or put their long-term investment at risk. Because the implied covenant of good faith and fair dealing is intrinsic to every partnership contract and cannot be waived away, the explicit and additional imposition of "good faith" in the Partnership Agreement entails the higher duty of the common law use of the phrase "good faith," meaning that KMI must allocate among Maintenance Capex and Expansion

Capex without regard to KMI's own conflicts of interests. Rather, just as the law imposes a duty of entire fairness on controlling shareholders to justify self-interested transactions by showing that the terms approximate what would be achieved in an arms' length third-party negotiation, the KMP Partnership Agreement creates a duty to allocate expenditures the way a non-conflicted third party would. As set forth below, KMI has failed to meet this standard.

D. KMI IS MOTIVATED TO DRAMATICALLY OVERSTATE EXPANSION CAPEX (OR UNDERSTATE MAINTENANCE CAPEX) FOR ITS OWN FINANCIAL INTERESTS

39. The contractual limitation on KMI's power to understate Maintenance Capex – and artificially inflate KMP's DCF – is necessary because there are several powerful incentives for KMI to increase KMP's DCF by whatever means necessary.

40. First, KMI's primary compensation derives from its ownership of KMP's Incentive Distribution Rights, which entitle it to a significant portion of KMP's Distributions. Pursuant to a distribution waterfall schedule set forth in the Partnership Agreement, KMI receives an increasingly higher percentage of KMP's incremental cash flow once the payout on the common units reaches certain predetermined targets. Based on the Partnership Agreement, KMI is entitled to 50% of KMP's incremental Distributions for every penny distributed over $0.235 per unit quarterly. The specific breakdown of the distribution targets and the payouts are set forth below:

		Marginal percentage interest in distribution	
	Total quarterly distribution per unit target amount	**Unitholders**	KMI
First target distribution	$0.15125	98%	2%
Second target distribution	above $0.15125 up to $0.17875	85%	15%
Third target distribution	above $0.17875 up to $0.23375	75%	25%
Thereafter	above $0.23375	50%	50%

41. Due to this Incentive Distribution Rights structure, KMI is highly incentivized to increase KMP's quarterly DCF and thus distributions. This incentive structure should generally work to the Limited Partners' benefit, as KMI is rewarded for increasing KMP's earnings and thus Distributions.

42. As set forth above, the more that KMP allocates to Maintenance Capex rather than Expansion Capex, KMP's DCF is decreased on a dollar-for-dollar basis and is therefore less likely to reach the higher splits in the distribution tiers of Incentive Distribution Rights. Even at the highest splits, every dollar decrease to KMP's DCF as a result of allocations to Maintenance Capex means fifty cents less is paid out to KMI. Accordingly, KMI has a strong financial incentive to allocate as little as possible to Maintenance Capex.

43. However, while KMI is incentivized to increase KMP's DCF by successfully increasing the company's earnings, KMI is also able to increase DCF by manipulating the underlying accounting for KMP's DCF and by understating KMP's Maintenance Capex. Since it has become more difficult to increase KMP's earnings as the entity has become larger and developed a broader asset and earnings base, KMI has resorted to increasing DCF by gamesmanship.

44. KMP has consistently paid out at the highest split for over a decade. KMI's Incentive Distribution Rights payments have exploded over recent years, from $635 million in 2007 to nearly $1.3 billion during the first three quarters of 2013 alone, and totaling more than $7.3 billion since 2007. Indeed, KMP's quarterly Incentive Distribution Rights obligation to KMI, as a percentage of its total payout, is the highest of the ten largest publicly traded master limited partnerships. By comparison, KMI's 11% interest in KMP as a Limited Partner resulted in payments totaling just over $400 million during 2010, 2011, and 2012, or just 14.5% of the amount KMI received as the General Partner as a result of its Incentive Distribution Rights.

45. The stark comparison between what KMI has received due to its Incentive Distribution Rights and what it has received due to its 11% equity interest is set forth below:

($ millions)	**2010**	**2011**	**2012**
Distributions For Equity Interest	128	135	154
Incentive Distribution Rights	731	987	1,152
Total KMI Compensation	**859**	**1,122**	**1,306**

46. Second, in addition to these immediate financial rewards, KMI is also incentivized to overstate its Expansion Capex as a signal to investors that KMP – one of the most mature and largest energy MLPs in the world – continues to be a growth company. Investors view distribution growth as important because it shows that the MLP is both healthy and continuing to grow. KMP has increased Distributions 630% since 1996, and has never paid a lower Distribution than the year earlier.

47. Indeed, KMI represents to investors that its expansion expense is an important measure of the company's anticipated future growth. For example, KMI claims in its 2012 "Letter to Unitholders" that KMI sees "exceptional growth opportunities," as embodied in $11 billion in potential expansion investments.

48. Third, as discussed more fully below, KMI is motivated to overstate KMP's overall DCF in order to maintain KMP's Coverage Ratios for its Distributions. KMP investors and, critically, market analysts, rely on and expect KMP to increase – or at a minimum, maintain – its level of Distributions from quarter to quarter. As noted above, KMP's Distributions have increased nearly every quarter since 1996. However, as KMI increases KMP's Distributions over time, it also must maintain an adequate Coverage Ratio.

49. For example, a Coverage Ratio of 1.0 means that the MLP paid out all the money it had available for Distributions, and retained none, while a 2.0 Coverage Ratio means that the MLP paid out half of the money it had available for Distributions. By maintaining a certain amount of cash, KMP indicates to investors that it is able to increase Distributions over time without depleting its cash on hand in a way that ultimately requires costly debt issuances or dilutive equity issuances.

50. Between 2010 and 2012, KMP's Coverage Ratios averaged 1.26, meaning that KMI did not distribute all of KMP's available cash as distributions. However, this relatively low Coverage Ratio means that if KMP's DCF incrementally declines – including through KMI allocating a greater portion of total capital expenditures to Maintenance Capex – KMP would be in immediate danger of being unable to issue its

Distributions at expected levels. By accounting for certain capital expenditures as Expansion, rather than Maintenance Capex, KMI artificially inflates KMP's DCF and Coverage Ratio, making KMP more attractive to investors. An accurate Maintenance Capex allocation would lower DCF and KMP's Coverage Ratio, revealing that the high level of prior Distributions has become unsustainable.

E. KMI PURSUES ITS OWN INTERESTS TO THE DETRIMENT OF THE LIMITED PARTNERS

51. As noted above, one of KMI's few obligations under the Partnership Agreement is to allocate between Maintenance and Expansion Capex in "good faith." KMI has for years overwhelmingly allocated KMP's capital expenditures to Expansion Capex. Specifically, for the three years ended December 31, 2012, KMP's total capital expenditures amounted to $4.9 billion. Of this amount, KMI has allocated $4.245 billion – or more than 86% – to Expansion Capex. The evidence demonstrates that KMI has deliberately and massively understated KMP's Maintenance Capex in order to maximize KMP's Distributions.

1. Contrary To The Partnership Agreement's Requirements, KMI Does Not Allocate KMP's Capital Expenditures In "Good Faith"

52. Numerous facts demonstrate that KMI improperly misallocates KMP's capital expenditures to its own benefit and to the detriment of KMP's Limited Partners.

53. First, KMI obscures its misallocation of capital expenditures by not reporting KMP's capital expenditures on a project-by-project basis. However, there is significant evidence that KMI has been replacing existing pipelines in ways that purportedly marginally expand capacity, but then reports all of the replacement costs as

Expansion Capex, even if the actual amount of material transported through the pipeline remains constant or declines.

54. For example, KMI announced in 2004 that it was replacing a 14-inch California pipeline with a 20-inch pipeline in a significant "capital expansion project." Similarly, in 2006, KMI announced the replacement of an 8-inch diameter pipeline with a 16-inch pipeline. And, in 2007, KMI announced the replacement of a 12-inch pipeline with a 16-inch pipeline.

55. Each of these three projects replaced pipelines at KMI's SPFF, L.P. subsidiary, at a total cost of $459 million. Under the terms of the Partnership Agreement, KMI should have allocated such capital expenditures between Maintenance and Expansion Capex reflecting the percentage of expenditures that simply maintained the capacity of the pipelines. Thus, KMI should have allocated the costs of merely replacing the previous capacity that existed in the old pipelines as Maintenance Capex. KMI did not do so.

56. The replaced pipelines supposedly increased capacity by approximately 60%, meaning that 60% of the projects' costs, or approximately $275 million, should have been allocated to Expansion Capex. The remaining 40%, or up to $184 million, should be classified as Maintenance Capex. However, although all three projects admittedly replaced existing pipelines, a review of KMI's financial statements indicates that <u>none</u> of the related capital expenditures were classified as Maintenance Capex.

57. Remarkably, while KMI allocated all of these capital expenditures as Expansion Capex, SPFF's "throughput" – or the amount of product routed through

KMP's pipelines – was actually lower after the pipeline expansions than before the expansions. According to SPFF's Federal Energy Regulatory Commission filings and KMI presentations, SPFF throughput was 8% lower in 2012 than it was in 2004, when the expansion projects mentioned above were implemented. In other words, although KMI allocated every dollar spent on replacing the SPFF pipelines as Expansion Capex, the reduction in output from those pipelines after the so-called "expansion" suggests that its expenditures were, at best, overwhelmingly for maintenance.

58. In general, notwithstanding that KMP has allocated 86% of its total capital spending to purported "growth" investments, KMP's overall actual throughput has remained flat or declined over the past four years. Given KMI's allocation of the vast majority of all of KMP's capital expenditures to Expansion Capex, one would expect to see an increase in volume during the same period. However, according to Company filings, total volumes have declined from 2009 to 2012, inclusive. Specifically, total volume, measured in millions of barrels per day, has declined from 1,866 in 2009 to 1,855 in 2012.

2. KMP's Maintenance Capex Falls Far Short Of Comparable Depletion, Depreciation, And Amortization Costs For Itself And By Comparison To Similar Entities

59. In addition to these significant pipeline replacements – for which KMI reported no Maintenance Capex – the deficiency in KMP's Maintenance Capex is also shown by comparison to KMP's reported "depreciation, depletion and amortization" ("DD&A") costs. DD&A is an accounting rule that reflects the expected life of an asset

and actual expense of preserving the asset; thus, it follows that Maintenance Capex should roughly approximate an MLP's DD&A costs.

60. KMP's Maintenance Capex, however, is dramatically lower than its DD&A expenses. Indeed, KMP's Maintenance Capex during the three years from 2010 through 2012 totaled a mere 20% of KMP's DD&A charges during that same period. As set forth below, KMP's Maintenance Capex as compared to its DD&A charges is also dramatically lower than the same metric as measured against its closest industry equivalents. If KMI brought its Maintenance Capex more in line with its peers, this change would have a significant and immediate negative impact on KMI's compensation and ability to attract new KMP investors.

61. First, with respect to certain assets that KMI acquired, KMI's reporting of KMP's Maintenance Capex for these assets deviates significantly from the way those same assets reported Maintenance Capex before KMI's acquisition. For example, KMI acquired El Paso Corporation on May 25, 2012. Prior to the acquisition, El Paso separately reported the Maintenance Capex for its pipeline subsidiaries. During the five years prior to their acquisition by KMI, the Maintenance Capex for the El Paso pipeline subsidiaries averaged over 120% of El Paso's DD&A. Accordingly, El Paso's historical Maintenance Capex charges suggest a baseline of maintenance investment that is at least as great as DD&A.

62. KMI's acquisition of El Paso more than doubled KMP's total miles of pipeline. However, far from doubling KMP's Maintenance Capex commensurate with the size of the acquisition, KMI increased KMP's total level of Maintenance Capex for the

consolidated entity by only 30%. Even more notably, KMP's total level of Maintenance Capex following the acquisition was only 23% of KMP's DD&A expenses – again, far short of El Paso's baseline of 120%. Since the independent reporting of the El Paso subsidiaries ended with their acquisition by KMI, it is impossible to determine the precise amount by which KMI slashed Maintenance Capex for those formerly El Paso subsidiaries.

63. It is inescapable that the amount of KMP's Maintenance Capex did not properly increase, notwithstanding the addition of those significant subsidiaries. Notably, as set forth below, the Maintenance Capex figure for the combined entity was lower than the Maintenance Capex expenditures of El Paso alone.

($ millions)	**2010**	**2011**	**2012**
El Paso Alone	266	339	
KMP Alone	179	212	
Combined Entity:	471*	533*	**285**
**Sum of Maintenance Capex figures for the separate entities*			

64. Indeed, with El Paso's $339 million Maintenance Capex in 2011 as a baseline, prorated for 2012 beginning with the May acquisition, KMP's combined Maintenance Capex for 2012 should have been at least $410 million – at least 44 percent higher than the $285 million that KMP reported.

65. Similarly, Florida Gas Transmission, a pipeline venture in which KMI acquired a 50% interest in 2012, reported Maintenance Capex that was more than twice DD&A expenses (213%) in the four years prior to its acquisition.

66. Second, KMP's Maintenance Capex also falls far short of that allocated by its industry peers. As described above, as an MLP, KMP's public reporting focuses primarily on non-GAAP accounting measures that are subject to KMI's discretion, and does not include much of the data underlying KMP's key reported metrics such as DCF, Maintenance Capex, and Expansion Capex.

67. Other MLPs that were established more recently than KMP were, until quite recently, subject to GAAP, FERC, and other accounting regulations that require transparent and accurate reporting. For example, Phillips 66 Partners first offered units to the public on July 23, 2013. The publicly reported accounting figures of Phillips 66 Partners' regulated predecessor entities, Conoco Phillips and Phillips 66, show maintenance expenditures that are 62% of reported DD&A. Furthermore, Phillips 66 Partners forecasts Maintenance Capex for the twelve months ending March 31, 2014 that is 128% of its forecast DD&A.

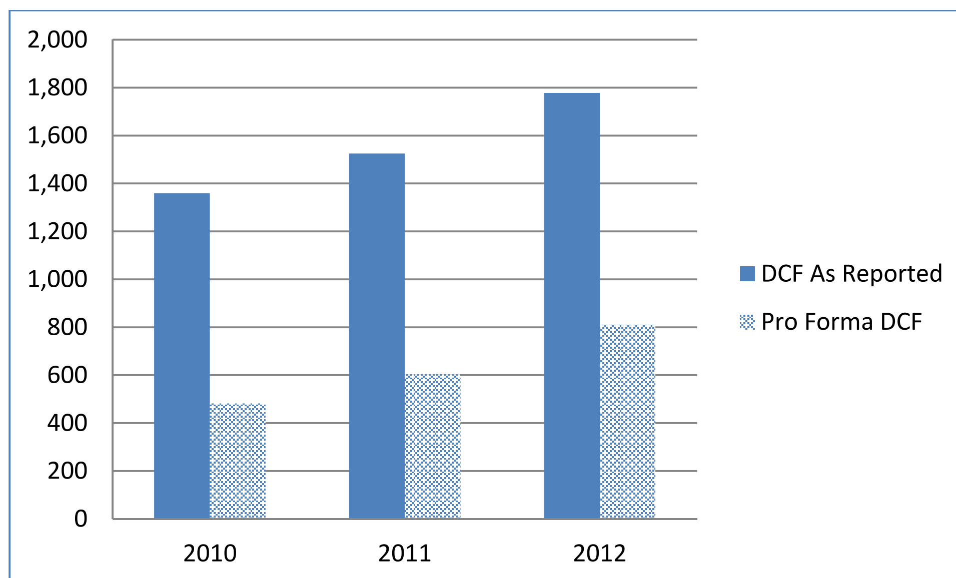
68. Another MLP, Spectra Energy Partners ("Spectra"), proves a particularly telling contrast to KMP. Analysts have described Spectra as KMP's "closest peer," as both companies operate diverse portfolios of similar assets, have similar per-unit growth goals, and have similarly structured general partners.

69. Given the strong similarities between KMP and Spectra, the two should have reasonably similar levels of Maintenance Capex spending. However, for 2012, Spectra's Maintenance Capex was 68% of its DD&A charges, far exceeding KMP's 23% figure. Moreover, in the fourth quarter of 2013, significant assets of Spectra "dropped down" from a regulated Spectra entity to the Spectra MLP. For that reason, as with the

recently regulated Phillips 66, Spectra's reported maintenance spending provides an accurate and reliable measure. For 2014, Spectra reported an expected Maintenance Capex figure of $19,313 per mile of pipeline. KMP's 2013 Maintenance Capex spending of $9,796 per pipeline mile was approximately half of Spectra's reported spending.

70. If KMI followed the practice of its acquired companies and its peers and increased KMP's Maintenance Capex to levels approximating KMP's DD&A expenses, the majority of the Company's total capital expenditures would be allocated to Maintenance Capex rather than to Expansion Capex. This is a reasonable outcome given that KMP's volume throughput has not increased during the last four years.

71. However, increasing KMP's Maintenance Capex to 100% of DD&A would have dramatically reduced KMP's DCF between 2010-2012 by, on average, 55-65%. The difference between actual DCF and pro forma DCF under this scenario is set forth below:



72. Such a dramatically reduced DCF (based on accurate Maintenance Capex figures) would force KMI to cut Distributions to the bone. If, for example, KMI determined to conserve some cash for ongoing operations and maintain KMP's prior Coverage Ratios, this would have cut KMI's Incentive Distribution Rights by over 70% in 2010, by 55% in 2011, and nearly 50% in 2012. In total, KMI's Incentive Distribution Rights over the course of those three years would have been cut by nearly $2 billion, or over 57%.

3. KMI Does Not Compensate For Its Deficient Maintenance Capex By Expensing Maintenance Costs On Its Income Statement

73. While it is virtually inescapable that KMI does not in good faith allocate adequate amounts as Maintenance Capex on its balance sheet, KMI could argue (and recently has suggested) that it is offsetting its cuts to Maintenance Capex through increases to repairs and maintenance expenses on its income statement. GAAP requires that KMP capitalize the costs incurred to preserve the capacity of its assets (which KMP terms Maintenance Capex), while KMP is required to expense on its income statement routine maintenance expenses like repairs and cleaning. While GAAP dictates which costs must be capitalized versus expensed, KMI may have cut Maintenance Capex because it was increasing the repairs and maintenance expenses. A review of KMP's financial statements, however, refutes this potential explanation.

74. KMI's accounting for its El Paso acquisition demonstrates that this has not occurred. At the same time that KMI's Maintenance Capex increased only incrementally (as discussed above), KMI did not increase the expenses recorded to repairs and

maintenance directly related to KMP's pipelines (which KMP refers to as "Transmission Maintenance Expense") but, in fact, sharply decreased those expenditures. KMI slashed maintenance expenses from prior year amounts by at least 63% in the four quarters after the acquisition of El Paso in May 2012. Therefore, KMI clearly does not substitute lower Maintenance Capex with higher repairs and maintenance expenses.

F. KMI'S SELF-INTERESTED ALLOCATION OF KMP'S CAPITAL EXPENDITURES HAS CAUSED HARM TO KMP AND ITS LIMITED PARTNERS

75. By allocating expenditures wholly or almost wholly to Expansion Capex rather than Maintenance Capex, KMI has ensured that, quarter after quarter, hundreds of millions of dollars exit KMP through improper Distributions and are thereafter not available for maintenance or other operational purposes. This practice leaves KMP vulnerable to, at best, a steady decline in earnings over the coming years and, at worst, an utter inability to respond to problems that may arise.

76. The comparison between KMP's reported Maintenance Capex and DD&A expenses, discussed above in Section E.2, demonstrates the true economic impact of KMI's practice. If KMP's reported Maintenance Capex had been equal to its DD&A expenses, as discussed above, KMP's DCF would have been radically reduced over the period of 2010-2012. In order to maintain KMP's actual Distribution levels – including KMI's exorbitant Incentive Distribution Rights – KMP would have had to distribute more cash than it actually received from its operations. Indeed, maintaining Distribution levels in line with KMP's true economic circumstances would have reduced KMP's Coverage Ratios from an average of 1.26 to an average of 0.58 – clearly an economically

unsustainable practice. However, this is, effectively, exactly what KMI has done by misclassifying KMP's Maintenance Capex and artificially inflating KMP's DCF, leading to significant cash shortfalls for KMP.

77. KMI has made up for those shortfalls by (i) regularly issuing new equity interests in KMP to make up the difference, thereby diluting current unitholders; and (ii) raising massive amounts of new debt each year, thereby subjecting KMP to unnecessary and significant annual debt payments. Ostensibly, KMP should issue new units and raise new capital primarily to fund expansion-related projects and acquisitions, so that earnings from expansion would add to DCF and maintain (or increase) the current Distributions to Limited Partners. Indeed, this is the very reason that Expansion Capex is not deducted from DCF. Maintenance Capex is deducted from DCF, on the other hand, because it is by definition spending to maintain the Partnership's current volumes and revenues. By raising money for what are actually maintenance expenditures from the capital markets (through the misallocation between Maintenance and Expansion Capex), current unitholders' stakes are being diluted without any offsetting real growth to increase earnings, boost DCF and maintain Distributions.

78. While these actions are ostensibly done in order to fund KMP's expansion efforts, in reality, KMI is simply maintaining KMP's current operations and Distributions. Indeed, instead of funding new projects and expansion, the capital that KMP raises from new units sold and new debt issued provides the funds that enable KMP's Distributions to continue, each quarter, at ever-increasing levels, reinforcing KMP's image as an exceptionally well-run MLP that can maintain strong Distributions

moving forward. This business model means that KMP functions with almost no cash on hand and relies almost entirely on the capital markets, rather than revenues, to maintain increased Distributions to investors.

79. KMI's practice of artificially inflating KMP's DCF forces the Partnership to raise market capital much more frequently, and in higher amounts, than it otherwise would. Because, as demonstrated by KMP's low Coverage Ratios, such little cash has been left in the Partnership, from 2010 through 2012 KMP was largely forced to issue common units for cash ($2.6 billion) and new debt ($3.3 billion) to fund its maintenance *and* its expansion efforts, a far more onerous task that leaves KMP exposed to the possibility that market capital will dry up.

80. KMP's distribution structure ensures that KMP's equity issuances and debt raises have a far greater impact on the Limited Partners than on KMI. Specifically, pursuant to the Partnership Agreement, KMI will receive its Distributions as a percentage of DCF largely regardless of the number of new debt or equity units that KMP issues. In other words, although KMI's Distributions depend on DCF and the "split," or percentage of DCF, that KMI receives when Distributions are made, KMI is due (at the highest split) 50 cents of every dollar distributed no matter the amount of new debt or equity KMP has raised in the capital markets.

81. In contrast to KMI as the general partner, KMP's Limited Partners find their stakes in KMP – and the percentage of DCF that each Limited Partner takes home – diluted whenever new units are issued. For example, if the 50% split were triggered, and there were $1 million to distribute at that split level, KMI would receive $500,000 of that

distribution whether the Partnership had issued new units in the previous quarter or not. Each Limited Partner, on the other hand, would receive only his proportionate share of the remaining $500,000. If there were 50,000 outstanding limited partner units, each would trigger a $10 payment. If, however, KMP were forced to issue 50,000 additional units, each would trigger only a $5 payment.

82. Such improper dilution harms KMP's limited partners, but has very little effect on KMI's take home as the General Partner. Moreover, going to the capital markets to fund maintenance spending but accounting for that spending as Expansion Capex allows KMI to artificially inflate DCF, triggering higher split levels and higher Distributions, with KMP's Limited Partners left holding the bag.

83. Further, KMI's improper allocation practices force the Partnership to issue debt much more frequently, and in higher amounts, than it otherwise would. The debt of KMP is ultimately borne largely by the public unitholders who own 87% of KMP. Additionally, the high levels of debt that KMP is forced to issue and carry in order to cover maintenance costs must be used to fund increasing payments on existing debt. In 2012, KMP issued over $9.2 billion in new debt while making over $8 billion in debt payments. In 2011, KMP issued $7.5 billion of new debt while making nearly $6.5 billion in debt payments, and in 2010, KMP issued over $7.1 billion of new debt while making almost $6.2 billion in debt payments. Because new debt is thereby used to fund those payments, the Limited Partners effectively bear the cost of KMP's mounting debt load, while the financial benefits generated by the attendant raised market capital accrues disproportionately to KMI as the General Partner.

84. Although KMP's DCF (and reported Expansion Capex) has grown steadily, volume throughput has actually declined. Thus, the Partnership's revenue growth has been driven primarily by new, accretive acquisitions, and <u>not</u> from any expanded capacity. Those acquisitions depend on constantly issuing new units as well as new debt, diluting the holdings of existing unitholders and decreasing existing unitholders' economic interest in the Partnership.

85. Further, along with the risk that capital might dry up based on factors including market competition or volatile commodity prices, KMP's inflated DCF and Coverage Ratios have led investors to expect returns that will likely prove unsustainable. Indeed, numerous analysts and investors have already questioned whether KMP's accounting practices caution against further investment in the Partnership.

86. Accordingly, KMP's Maintenance Capex allocations reflect an outsized risk of a lack of necessary investment in the Partnership's infrastructure and operations, as well as unreliable and unsustainable economic growth.

87. KMP accordingly runs the risk, as in a Ponzi scheme, that it will at some point be unable to attract new investors, exposing a fundamental lack of sustainability and leaving current Limited Partners with massive losses. KMI, meanwhile, will have contributed a fraction of the capital contributed by the Limited Partners – and thus assumed a fraction of the risk – but received billions of dollar in improper Distributions.

II. CLASS ACTION ALLEGATIONS

88. Plaintiff brings this action individually and as a class action on behalf of a class consisting of all public holders of KMP units during the period of February 5, 2011

through the present (the "Class"). Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants.

89. This action is properly maintainable as a class action because:

a. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. There are more than 100 KMP unitholders of record, other than Defendants, and a great many more beneficial owners who own over 437 million KMP limited partnership units;

b. There are questions of law and fact that are common to members of the Class, including, *inter alia*, the following, which predominate over any questions affecting only individual class members:

- whether Defendants have allocated (and are continuing to allocate) Maintenance Capex in good faith;
- whether Defendants' actions constitute a breach of the Partnership Agreement; and
- whether Defendants' actions constitute a breach of the implied covenant of good faith and fair dealing.

c. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. The claims of Plaintiff are typical of the claims of the other members of the Class, and Plaintiff has the same interests as the other members of the Class. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class;

d. No difficulties are likely to be encountered in the management of this action as a class action; and

e. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

III. DERIVATIVE ALLEGATIONS

90. Plaintiff brings this action derivatively to redress injuries suffered by KMP as a direct result of the breaches of duty by KMGP and KMI, the breach of contract by KMGP, and the tortious conduct by KMI.

91. Plaintiff has owned limited partnership units in KMP continuously during this time and the wrongful course of conduct by KMI and KMGP alleged herein, and continue to hold KMP Limited Partnership units.

92. Plaintiff will adequately and fairly represent the interests of KMP and its Limited Partners in enforcing and prosecuting their rights, and have retained counsel competent and experienced in shareholder derivative litigation.

IV. DEMAND ON KMI'S BOARD IS EXCUSED AS FUTILE

93. Plaintiff primarily raises a direct claim that KMI has breached its contractual obligations to Plaintiff and KMP's other Limited Partners. To the extent that any equitable remedy may include disgorgement of KMI's undue profits, with that money going back to KMP, Plaintiff also alleges derivative claims on behalf of Nominal Defendant KMP.

94. Plaintiff has not made a demand on KMI, as KMP's General Partner, to bring suit asserting the claims set forth herein because pre-suit demand was excused as a matter of law. It would be futile to require Plaintiff to issue a demand to KMI requesting it to take action against itself for its conduct as alleged herein. Not only would this require KMI to investigate and bring claims against itself for its own misconduct, but KMI's actions to date also prove conclusively that it will not take action.

95. Under Delaware law, demand is excused as futile unless "the [entity] that would be addressing the demand can impartially consider its merits without being influenced by improper considerations." *Rales v. Blasband*, 634 A.2d 927, 934 (Del. 1993).

96. As summarized below and specified herein, demand is excused because this Complaint alleges with particularity that the Defendants breached the Partnership Agreement and their fiduciary duties to the Limited Partners by accounting for KMP's capital expenditures in a manner designed to maximize KMI's Distributions at the cost of KMP's long-term financial health and not, as required by the Partnership Agreement, in "good faith." Demand is futile because KMI cannot be presumed to exercise independent judgment in assessing the merits of a demand due to its financial interest in the subject matter of the claims raised in this complaint.

97. KMI, which wholly owns and controls KMGP, makes all relevant decisions with regard to KMP's accounting and operations. KMI additionally owns 11 percent of the KMP common units. As a result of its ownership of KMGP , when KMP pays out Distributions, KMI receives significant payments.

98. As a result of KMP's Incentive Distribution Rights structure, as the amount of the Partnership's Distributions increase, payments to KMI increase both as an absolute dollar amount and on a percentage basis, up to the point at which KMI receives 50 percent of the Partnership's marginal Distributions. In other words, the more that KMP distributes, the more KMI receives. As a result, KMI has strong incentives to

ensure that as few of KMP's expenditures as possible are subtracted from the Partnership's DCF, since this reduces the amounts that the Partnership can distribute.

99. Because KMI would control an investigation of the accounting and other conduct that Plaintiff alleges violated the Partnership Agreement as well as KMI's duties of good faith and fair dealing, at the same time that KMI receives significant and unjust cash Distributions from the Partnership as a direct result of KMP's failures to allocate Maintenance Capex in good faith, KMI could not impartially consider a demand from Plaintiff.

100. KMP's Limited Partners have no influence over KMP's operations, and they do not have the ability to vote for KMGP's or KMI's Boards of Directors.

101. Accordingly, demand on KMI is excused.

COUNT I
CLAIM FOR RELIEF AGAINST KMGP FOR BREACH OF CONTRACT IN CONNECTION WITH THE ALLOCATION OF KMP'S MAINTAINENCE CAPEX

102. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

103. The Partnership Agreement constitutes a contract between KMGP, the General Partner, and the Limited Partners of KMP.

104. KMP and KMP's Limited Partners are the intended beneficiaries of the protections afforded by the Partnership Agreement, which obligates KMGP to allocate expenditures to Maintenance Capex in good faith.

105. KMGP has allocated significant expenditures properly attributable to Maintenance Capex wholly, or almost wholly, to Expansion Capex. Those allocations,

particularly in light of the allegations included herein regarding KMP's Maintenance Capex allocations in comparison with similar MLPs, as well as the lack of increased volumes despite the vast allocations to Expansion Capex, were not made in good faith and, accordingly, have breached the Partnership Agreement.

106. As a result, KMP's Limited Partners have suffered damages. The bad faith allocation of Maintenance Capex has artificially inflated KMP's growth rate and profitability, resulting in overvalued securities that are not adequately supported by KMP's business. Further, the bad faith allocation of Maintenance Capex leaves KMP undercapitalized, forcing the Partnership to constantly seek out new sources of financing in the capital markets, leading to the issuance of additional securities that serve to dilute the value of Plaintiff's, and the other Limited Partners', units.

COUNT II
DIRECT AND DERIVATIVE CLAIM FOR RELIEF AGAINST KMI AND KMGP FOR BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING IN CONNECTION WITH THE ALLOCATION OF KMP'S MAINTAINENCE CAPEX

107. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

108. Under the terms of the Partnership Agreement, KMI and KMGP owe KMP, and KMP's Limited Partners, including Plaintiff, a duty of good faith and fair dealing in connection with the allocation of KMP's Maintenance Capex, and are prohibited by these duties from misallocating KMP's Maintenance Capex out of KMGP's own self-interest and for its own benefit, at the expense of KMP and its Limited Partners.

109. In contravention of KMGP's good faith obligations to KMP and its limited partners, it has misallocated KMP's Maintenance Capex by allocating significant maintenance expenditures wholly, or almost wholly, to Expansion Capex.

110. As a result of KMGP's breaches, as discussed above, KMP and its Limited Partners, including Plaintiff, have suffered damages.

COUNT III
DIRECT AND DERIVATIVE CLAIM FOR RELIEF AGAINST KMI FOR AIDING AND ABETTING KMGP'S BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING IN CONNECTION WITH THE ALLOCATION OF KMP'S MAINTENANCE CAPEX

111. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

112. As alleged above, KMGP has breached its duty of good faith and fair dealing, with regard to the allocation of Maintenance Capex, to KMP, and to Plaintiff and KMP's other Limited Partners.

113. Defendants KMI, as the 100% owner of KMGP, as the entity with the power and authority to manage and control KMP's business and affairs, controlled and directed KMGP's conduct in allocating KMP's Maintenance Capex.

114. As a result of KMI's conduct, as discussed above, KMP and its Limited Partners, including Plaintiff, have suffered damages.

COUNT IV
DIRECT AND DERIVATIVE CLAIM FOR RELIEF AGAINST KMI FOR TORTIOUSLY INTERFERING WITH THE PARTNERSHIP AGREEMENT

115. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

116. The Partnership Agreement is a valid contract governing the relationship between KMGP and KMP's Limited Partners.

117. As the sole owner of KMGP, and as the entity that effectively conducts and manages the business of KMP, KMI at all relevant points has known that the Partnership Agreement is a valid contract governing KMGP's conduct.

118. As the sole owner of KMGP, KMP directs KMGP's actions and, as discussed above, has intentionally caused KMGP to misallocate KMP's reported Maintenance Capex in violation of its obligations under the Partnership Agreement.

119. KMI had no justification for causing KMGP to breach the Partnership Agreement by misallocating KMP's reported Maintenance Capex.

120. As a result of KMGP's breach of the Partnership Agreement, KMP's Limited Partners have suffered injury. The bad faith allocation of Maintenance Capex has artificially inflated KMP's growth rate and profitability, resulting in overvalued securities that are not adequately supported by KMP's business. Further, the bad faith allocation of Maintenance Capex leaves KMP undercapitalized, forcing the Partnership to constantly seek out new sources of financing in the capital markets, leading to the issuance of additional securities that serve to dilute the value of Plaintiff's, and the other Limited Partners', units.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment as follows:

a) Finding that demand on KMI would be futile;

b) Declaring that this action is properly maintainable as a class action;

c) Finding that KMGP breached its contractual duties to KMP's Limited Partners, including Plaintiff, by failing to allocate KMP's Maintenance Capex in good faith;

d) Finding that KMI aided and abetted KMGP's breaches of its contractual duties to KMP's Limited Partners, including Plaintiff, by failing to allocate KMP's Maintenance Capex in good faith;

e) Finding that KMGP breached its duty of good faith and fair dealing to KMP and its Limited Partners, including Plaintiff, by failing to allocate KMP's Maintenance Capex in good faith;

f) Finding that KMI aided and abetted KMGP's breaches of its duty of good faith and fair dealing to KMP and its Limited Partners, including Plaintiff, by failing to allocate KMP's Maintenance Capex in good faith;

g) Ordering the disgorgement of any Distributions to KMGP, KMI, and any related entities, beyond amounts that would have been distributed in accordance with a good faith allocation of KMP's Maintenance Capex;

h) Awarding damages (including punitive damages), together with pre- and post-judgment interest;

i) Awarding Plaintiff the costs and disbursements of this action, including attorneys', accountants', and experts' fees; and

j) Awarding such other and further relief as is just and equitable.

Dated this 5th day of February, 2014.

GRANT & EISENHOFER P.A.

BY: */s/ Geoffrey C. Jarvis*
Jay W. Eisenhofer (DE Bar 2864)
Geoffrey C. Jarvis (DE Bar 4064)
David M. Haendler (DE Bar 5899)
123 Justison Street
Wilmington, DE 19801
Tel: 302-622-7000
Fax: 302-622-7100

Counsel for Plaintiff

Mark Lebovitch
Katherine M. Sinderson
Adam Hollander
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1285 Avenue of the Americas
New York, NY 10019
Tel: 212-554-1400
Fax: 800-554-1444

Mark C. Gardy
James S. Notis
Meagan A. Farmer
GARDY & NOTIS, LLP
501 Fifth Avenue
New York, NY 10017
Tel: 212-905-0509
Fax: 212-905-0508

Counsel for Plaintiff

EFiled: Feb 05 2014 06:12PM EST
Transaction ID 54918739
Case No. 9318-

IN THE COURT OF CHANCERY IN THE STATE OF DELAWARE

JON SLOTOROFF, Plaintiff, v. KINDER MORGAN, INC.; KINDER MORGAN G.P., INC., Defendants, -and- KINDER MORGAN ENERGY PARTNERS, L.P., Nominal Defendant.	:	C.A. No. ____________

VERIFICATION AND AFFIDAVIT OF JON SLOTOROFF

STATE OF NEW JERSEY)
) s.s.:
COUNTY OF ATLANTIC)

Jon Slotoroff, being duly sworn, does hereby state as follows:

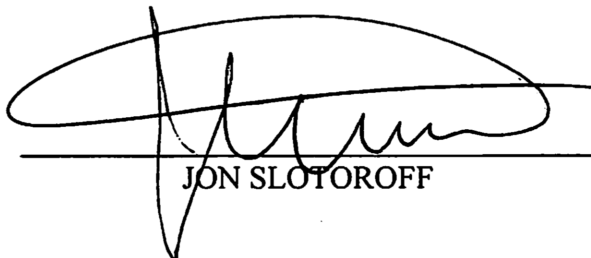
1. I am Jon Slotoroff, plaintiff in the above-captioned class and derivative action and a continuous holder of units of Kinder Morgan Energy Partners, L.P. during all relevant times alleged in the Verified Class Action and Derivative Complaint (the "Complaint"). I am a resident of New Jersey, and am of full legal age. I make this affidavit in support of the Complaint that I filed as plaintiff in the above-captioned case.

2. I make this affidavit under penalty of perjury.

3. I have read the Complaint and consulted with counsel.

4. The facts alleged in the Complaint are true and correct to the best of my knowledge, information and belief.

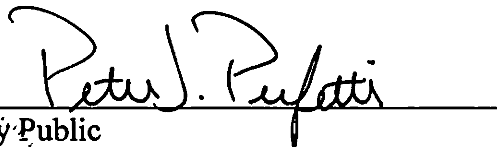
5. In accordance with Delaware Court of Chancery Rule 23(aa), I have not received, been promised or offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in this action except (i) such damages or other relief as the Court may award me as a member of the Class, (ii) such fees, costs or other payments as the Court expressly approves to be paid to me, or (iii) reimbursement, paid by my attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this action.



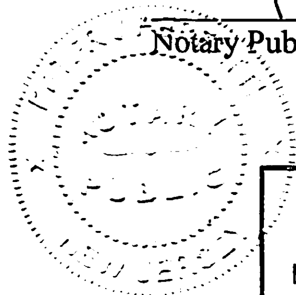
JON SLOTOROFF

Sworn to before me this

5th day of February, 2014.



Notary Public



PETER J PERFETTI
Notary Public - New Jersey
My Commission Expires February 4, 2015

EFiled: Feb 05 2014 06:12PM EST
Transaction ID 54918739
Case No. 9318-

SUPPLEMENTAL INFORMATION PURSUANT TO RULE 3(A)
OF THE RULES OF THE COURT OF CHANCERY

The information contained herein is for the use by the Court for statistical and administrative purposes only. Nothing stated herein shall be deemed an admission by or binding upon any party.

1. **Caption of Case:** Jon Slotoroff v. Kinder Morgan, Inc., Kinder Morgan G.P., Inc. and Kinder Morgan Energy Partners, L.P.

2. **Date Filed:** February 5, 2014

3. **Name and address of counsel for plaintiff:** Geoffrey C. Jarvis (DE Bar 4064), GRANT & EISENHOFER P.A., 123 Justison Street, Wilmington, DE 19801

4. **Short statement and nature of claim asserted:**

Contract and derivative claims re: the partnership agreement of a Master Limited Partnership.

5. **Substantive field of law involved (check one):**

____Administrative law
____Commercial law
____Constitutional law
_X_ Corporation law
____Guardianships
____Labor law
____Trade secrets/trade mark/ or other intellectual property
____Trusts
____Wills and estates
____Zoning
____Real Property
____Other

6. **Related case(s), including any Register of Wills matters (which requires copies of all documents in this matter to be filed with the Register of Wills):**

None

7. **Basis of court's jurisdiction (including the citation of any statute conferring jurisdiction):**

6 Del. C. § 17-111; 6 Del. C. § 17-109

8. **If the complaint seeks preliminary equitable relief, state the specific preliminary relief sought**.

N/A

9. **If the complaint seeks a TRO, summary proceedings, a Preliminary Injunction, or Expedited Proceeding, check here ____. (If #9 is checked, a Motion to Expedite must accompany the transaction.)**

10. **If the complaint is one that in the opinion of counsel should not be assigned to a Master in the first instance, check here and attach a statement of good cause. __X__**

/s/ Geoffrey C. Jarvis
Geoffrey C. Jarvis (DE Bar 4064)

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JON SLOTOROFF, Plaintiff, -against- KINDER MORGAN, INC.; KINDER MORGAN G.P., INC., Defendants, -and- KINDER MORGAN ENERGY PARTNERS, L.P., Nominal Defendant.	C.A. No. ____________

COUNSEL'S STATEMENT OF GOOD CAUSE

I am a director of Grant & Eisenhofer P.A. and a member in good standing of the Bar of the State of Delaware. With my firm, I am counsel to Plaintiff in this action. We respectfully submit that this action is inappropriate for submission to a Master in the first instance, as it involves complex issues of Delaware corporate law.

Dated: February 5, 2014

GRANT & EISENHOFER P.A.

/s/ Geoffrey C. Jarvis
Geoffrey C. Jarvis (DE Bar 4064)
123 Justison Street
Wilmington, DE 19801
(302) 622-7000

Counsel for Plaintiffs