



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE EL PASO CORPORATION  
SHAREHOLDER LITIGATION

CONSOLIDATED  
C.A. No. 6949-CS

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement (the “Stipulation”), dated September 7, 2012, is entered into, through their counsel, by and among: (a) Pompano Beach Police & Firefighters’ Retirement System, Pipefitters Local Union #537 Trust Funds, Saratoga Advantage Trust Energy & Basic Materials Portfolio and Saratoga Advantage Trust Mid Capitalization Portfolio, Co-Lead Plaintiffs in the above-captioned consolidated class action (collectively, “Delaware Co-Lead Plaintiffs”), on behalf of themselves and the Class<sup>1</sup>; (b) defendants Kinder Morgan, Inc. (“Kinder Morgan”), Sherpa Merger Sub, Inc. and Sherpa Acquisition, LLC (collectively with Kinder Morgan, the “Kinder Morgan Defendants”); (c) defendants The Goldman Sachs Group, Inc. (“GS Group”) and Goldman, Sachs & Co. (“Goldman,” and together with GS Group, the “Goldman Defendants”); (d) defendants Juan Carlos Braniff, David W. Crane, Douglas L. Foshee, Robert W. Goldman, Anthony W. Hall, Jr., Thomas R. Hix, Ferrell P. McClean, Timothy J. Probert, Steven J. Shapiro, J. Michael Talbert, Robert F. Vagt, and John L. Whitmire (collectively, the “Individual Defendants,” and together with the Kinder Morgan Defendants and the Goldman Defendants, the “Defendants”); and (e) non-party El Paso LLC (formerly known as El Paso Corporation) (“El Paso,” and together with Defendants and Delaware Co-Lead Plaintiffs, the “Parties”). This Stipulation is submitted pursuant to Delaware Court of Chancery Rule 23.

---

<sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in ¶ 1 herein.

Subject to the terms and conditions set forth herein and the approval of the Court, the Settlement embodied in this Stipulation is intended: (a) to be in full and final disposition of the Delaware Consolidated Action; (ii) to state all of the terms of the Settlement and the resolution of the Delaware Consolidated Action; (iii) to fully and finally compromise, resolve, dismiss, discharge and settle each and every one of the Released Plaintiff Claims against each and every one of the Released Defendant Persons; and (iv) to fully and finally compromise, resolve, dismiss, discharge and settle each and every one of the Released Defendant Claims against each and every one of the Released Plaintiff Persons.

WHEREAS:

A. On May 24, 2011, the Board of Directors (the “Board”) of El Paso granted initial approval of a plan to spin off of its exploration and production (“E&P”) business (the “Spin-Off”). El Paso publicly announced the Board’s approval of the Spin-Off that day. El Paso retained Goldman as its financial advisor for the Spin-Off.

B. On August 30, 2011, without the Spin-Off having been consummated, El Paso received an unsolicited proposal from Kinder Morgan to acquire El Paso at a price of \$25.50 per outstanding share of El Paso common stock.

C. As of the date of the Kinder Morgan offer, and thereafter during all relevant times, certain funds managed by Goldman’s Merchant Bank beneficially owned approximately 19% of Kinder Morgan, and two of Goldman’s managing directors served on Kinder Morgan’s Board of Directors. The Goldman representatives on Kinder Morgan’s Board of Directors recused themselves from the Kinder Morgan board discussions concerning a potential transaction with El Paso.

D. El Paso's Board initially consulted the Goldman investment banking team for advice in connection with Kinder Morgan's takeover proposal. In light of the ownership stake in Kinder Morgan held by Goldman-related funds, the Board retained another financial advisor, Morgan Stanley & Co. LLC ("Morgan Stanley"), to provide advice in connection with Kinder Morgan's proposal. The Board continued to receive advice from the Goldman investment banking team concerning the Spin-Off while considering whether to proceed with the alternative transaction with Kinder Morgan. Morgan Stanley provided a fairness opinion in connection with the Merger; Goldman did not.

E. On October 16, 2011, El Paso and Kinder Morgan announced that they had entered into a definitive merger agreement pursuant to which Kinder Morgan would acquire all outstanding shares of El Paso Corporation common stock for consideration valued at \$26.87 per share in cash, stock and warrants, based on the previous trading day's closing price of Kinder Morgan stock and the parties' assigned value for the warrants. The consideration represented a 47 percent premium to the 20-day average closing price of El Paso Corporation common shares and a 37 percent premium over the closing price of El Paso Corporation common shares on October 14, 2011.

F. Between October 19, 2011 and November 10, 2011, the following thirteen putative stockholder class actions were filed in the Court challenging the proposed Merger, alleging, among other things, that it was the product of breaches of fiduciary duty by the El Paso Board, aided and abetted by Kinder Morgan and Goldman: (i) *Kahn v. Foshee, et al.* (Case No. 6949); (ii) *Isabella v. El Paso Corp., et al.* (Case No. 6952); (iii) *Pipefitters Local Union #537 Trust Funds v. Braniff, et al.* (Case No. 6953); (iv) *Bacher v. El Paso Corp., et al.* (Case No. 6954); (v) *Saratoga Advantage Trust Energy & Basic Materials Portfolio, et al. v. El Paso*

*Corp., et al.* (Case No. 6958); (vi) *Louisiana Municipal Police Employees' Retirement System v. Braniff, et al.* (Case No. 6960); (vii) *Oklahoma Firefighters Pension and Retirement System v. Braniff, et al.* (Case No. 6967); (viii) *Shaev v. Braniff, et al.* (Case No. 6966); (ix) *KBC Asset Management NV v. Braniff, et al.* (Case No. 6965); (x) *International Brotherhood of Electrical Workers Local 98 Pension Fund v. Foshee, et al.* (Case No. 6978); (xi) *Pompano Beach Police and Firefighters' Retirement System v. Foshee, et al.* (Case No. 6986); (xii) *Vitelli v. El Paso Corp., et al.* (Case No. 7004); and (xiii) *Knowles v. Braniff, et al.* (Case No. 7028). These 13 actions are collectively referred to as the “Delaware Cases.”

G. On November 18, 2011, the Court entered an Order: (i) consolidating the Delaware Cases under the caption *In re El Paso Corporation Shareholder Litigation*, Consolidated C.A. No. 6949-CS (the “Delaware Consolidated Action”); (ii) appointing Pompano Beach Police & Firefighters’ Retirement System, Pipefitters Local Union #537 Trust Funds, Saratoga Advantage Trust Energy & Basic Materials Portfolio, and Saratoga Advantage Trust Mid Capitalization Portfolio as Co-Lead Plaintiffs in the Delaware Consolidated Action; and (iii) appointing the law firms of Bernstein Litowitz Berger & Grossmann LLP, Grant & Eisenhofer, P.A. and Labaton Sucharow LLP as Plaintiffs’ Co-Lead Counsel in the Delaware Consolidated Action. The Court’s November 18, 2011 Order also appointed an Executive Committee in the Delaware Consolidated Action chaired by Pomerantz Haudek Grossman & Gross LLP and Motley Rice LLC, with additional members Murray Frank LLP, Berman Devalerio, Vianale & Vianale LLP and Sarraf Gentile LLP.

H. On November 29, 2011, Delaware Co-Lead Plaintiffs filed the Verified Consolidated Class Action Complaint in the Delaware Consolidated Action (the “Delaware Consolidated Complaint”). The Delaware Consolidated Complaint substantially repeated the

allegations and claims of the individual complaints in the Delaware Cases, and also included allegations that the preliminary proxy contained material misstatements and omissions.

I. As a result of this lawsuit as well as other factors, El Paso did not pay the \$20 million fee or any indemnity payments allegedly owed to Goldman under the terms of its engagement, and, therefore, El Paso retained in excess of \$20 million it otherwise would have paid to Goldman.

J. Between October 17, 2011 and November 1, 2011, the following eight putative stockholder class actions were filed in the District Court of Harris County, Texas (the “Texas Court”) challenging the Merger, alleging, among other things, that it was the product of breaches of fiduciary duty by the El Paso Board, aided and abetted by Kinder Morgan and Goldman: (i) *Johnson v. El Paso Corp., et al.* (Cause No. 2011-62339); (ii) *Insulators and Asbestos Workers Local No. 14 v. El Paso Corp., et al.* (Cause No. 2011-63235); (iii) *Southeastern Pennsylvania Transportation Authority v. El Paso Corp., et al.* (Cause No. 2011-63284); (iv) *City of Roseville Employees’ Retirement System v. El Paso Corp., et al.* (Cause No. 2011-63772); (v) *Abigt, et al. v. El Paso Corp., et al.* (Cause No. 2011-63791); (vi) *Bushansky v. Braniff, et al.* (Cause No. 2011-64336); (vii) *Oakland County Employees’ Retirement System v. El Paso Corp., et al.* (Cause No. 2011-64652); and (viii) *Melton v. El Paso Corp., et al.* (Cause No. 2011-66384). These eight actions are collectively referred to as the “Texas Cases.”

K. By Order dated November 4, 2011, the Texas Cases were consolidated under the caption *Rebecca Johnson v. El Paso Corporation*, Cause No. 2011-62339. The Texas Plaintiffs agreed that, for purposes of the Texas Action, Robbins Geller Rudman & Dowd LLP and Barrack, Rodos & Bacine would serve as interim class counsel for plaintiffs in the Texas Action.

L. A Consolidated Amended Petition for Breach of Fiduciary Duty was filed in the Texas Action on November 22, 2011.

M. On November 7, 2011, an action was filed in the Supreme Court of the State of New York, captioned *Grossman v. The Goldman Sachs Group, Inc.* (Index No. 11112770), by a purported holder of El Paso Corporation common stock, both individually and on behalf of the same putative class of El Paso Corporation stockholders in the Delaware Consolidated Action and in the Texas Action, alleging that Goldman aided and abetted a breach of fiduciary duties by El Paso directors in connection with their agreement to sell El Paso. No other Persons were named as defendants in the New York Action.

N. Following the filing of the New York Action, the New York Plaintiff entered into a stipulation with Goldman providing that the New York Plaintiff would participate in discovery in the Delaware Consolidated Action. In that regard, counsel for the New York Plaintiff was provided for review all of the documents produced by the parties in the Delaware Consolidated Action as well as copies of the transcripts of all of the depositions taken in the Delaware Consolidated Action as well as the marked exhibits.

O. Following the consolidation of the Delaware Cases, the appointment of a leadership structure and the filing of the Delaware Consolidated Complaint, Delaware Co-Lead Plaintiffs and Defendants embarked on a course of expedited discovery and the filing of competing expert reports in the Delaware Consolidated Action in connection with Delaware Co-Lead Plaintiffs' motion to preliminarily enjoin the Merger.

P. By agreement dated November 2, 2011, the parties in the Texas Action agreed that any motion for preliminary injunctive relief related to the proposed Merger would be adjudicated before the Delaware Court of Chancery. The Texas Plaintiffs were given access to

the discovery that was taken by Delaware Co-Lead Plaintiffs in the Delaware Consolidated Action.

Q. In connection with the discovery performed in the Delaware Consolidated Action, Delaware Co-Lead Counsel reviewed over 450,000 pages of documents produced by Defendants and third parties relating to, among other things, the El Paso Board's decision to pursue the Merger rather than the Spin-Off, the negotiation process leading to the Merger, alleged conflicts of interest potentially compromising the independence of El Paso's financial advisors and certain officers of the Company, and the value of the consideration received by Class Members in connection with the Merger. In addition, the depositions of Richard D. Kinder (Chairman and Chief Executive Officer of Kinder Morgan); Douglas L. Foshee (former Chairman, President and Chief Executive Officer of El Paso); John R. Sult (former Chief Financial Officer of El Paso); Stephen D. Daniel (Partner and Managing Director of Goldman, financial advisor to the Company); Jonathan Cox (Managing Director of Morgan Stanley, financial advisor to the Company); Robert Pacha (Senior Managing Director of Evercore Group L.L.C., financial advisor to Kinder Morgan); and Robert Vagt (former Director of El Paso and current Director of Kinder Morgan) were taken by or under the direction of Delaware Co-Lead Counsel. Delaware Co-Lead Counsel also defended the deposition of David G. Clarke, ASA, founder and President of The Griffing Group, Inc., who was retained by Delaware Co-Lead Counsel to opine on the valuation analyses and advice provided to the Board by Goldman and Morgan Stanley in connection with the Merger. Plaintiffs' counsel in the Texas Action attended and participated in certain of the depositions conducted by Delaware Co-Lead Counsel in the Delaware Consolidated Action.

R. On January 13, 2012, Delaware Co-Lead Plaintiffs filed their opening brief in support of their Motion for a Preliminary Injunction, whereby Delaware Co-Lead Plaintiffs sought to enjoin El Paso from putting the Merger to a stockholder vote and also to enjoin enforcement of certain provisions in the Merger Agreement. Defendants filed opposition papers on January 23, 2012 and Delaware Co-Lead Plaintiffs filed their reply papers on February 3, 2012.

S. On February 1, 2012, El Paso filed with the Securities and Exchange Commission (“SEC”) its revised definitive proxy statement in connection with the Merger (and together with all preliminary versions and amendments thereto, the “Proxy”), which stated that El Paso had scheduled a special meeting of its stockholders on March 6, 2012, to consider and vote upon a proposal to adopt and approve the Merger Agreement and other proposals related to the Merger.

T. The Court conducted a hearing lasting over six hours on Delaware Co-Lead Plaintiffs’ Motion for a Preliminary Injunction on February 9, 2012, at which Delaware Co-Lead Counsel and Defendants’ Counsel presented oral argument regarding whether the Court should preliminarily enjoin the El Paso Corporation shareholder vote on the Merger, as well as the enforcement of certain of the Merger Agreement’s deal protection provisions.

U. On February 29, 2012, the Court issued a written decision denying the Motion for Preliminary Injunction, finding that while “plaintiffs [had] a reasonable likelihood of success in proving that the Merger was tainted by disloyalty,” the “balance of harms counsel[ed] against a preliminary injunction.” The Court also stated that “it is difficult to prove an aiding and abetting claim” and that it was, “at best, doubtful” that Co-Lead Plaintiffs could prevail on their aiding and abetting claims against Goldman or Kinder Morgan.



V. Following issuance of the Court's decision, El Paso adjourned its stockholder meeting to approve the Merger until March 9, 2012. El Paso made a copy of the Court's decision available on its website at *investor.elpaso.com* and filed a Current Report on Form 8-K attaching the Court's decision as an exhibit.

W. On March 9, 2012, El Paso held its special meeting of stockholders and the Merger was approved. Approximately 79 percent of El Paso Corporation's outstanding shares of common stock as of the record date were voted at the meeting; of the shares voted, more than 95 percent voted in favor of the Merger.

X. The Merger thereafter closed on May 24, 2012 and became effective on May 25, 2012. Upon closing, the former stockholders of El Paso Corporation owned approximately 32% of Kinder Morgan.

Y. Subsequent to the denial of their Motion for Preliminary Injunction, Delaware Co-Lead Plaintiffs continued to litigate the Delaware Consolidated Action in pursuit of a damage remedy based on Delaware Co-Lead Plaintiffs' view that the Merger was the product of breaches of fiduciary duty by the Board, aided and abetted by the Goldman Defendants and the Kinder Morgan Defendants. Delaware Co-Lead Plaintiffs, through their counsel, served additional discovery requests upon the Defendants and certain third parties; received and reviewed productions of documents in response to those requests; filed a Motion for Class Certification; and prepared an amended complaint.

Z. On April 23, 2012, the Court entered a Stipulation and Order Governing Case Schedule which provided, among other things, for a trial commencing on March 4, 2013.

AA. Periodically during the litigation of the Delaware Consolidated Action, Delaware Co-Lead Plaintiffs and Defendants engaged in discussions concerning a potential resolution of

the case. On June 8, 2012, Delaware Co-Lead Plaintiffs and Defendants participated in a mediation session with former judge Daniel Weinstein (the “Mediator”). While the June 8, 2012 mediation session did not result in a settlement, Delaware Co-Lead Plaintiffs and Defendants agreed to continue their dialogue through the Mediator. As a result of those ongoing discussions with the Mediator, an agreement in principle was reached on July 18, 2012 to settle, dismiss and release all claims asserted in the Delaware Consolidated Action for \$110 million in cash, subject to the execution of a customary “long-form” stipulation and agreement of settlement and related papers.

BB. Delaware Co-Lead Plaintiffs, through Delaware Co-Lead Counsel, have conducted an investigation and pursued extensive discovery relating to the claims and the underlying events and transactions alleged in the Delaware Consolidated Action. Delaware Co-Lead Counsel have analyzed the evidence adduced during their investigation and through the extensive discovery in the Delaware Consolidated Action described above, and have also researched the applicable law with respect to the claims asserted in the Delaware Consolidated Action and the potential defenses thereto. Additionally, the multiple mediation statements prepared and exchanged between Delaware Co-Lead Plaintiffs and Defendants, as well as Delaware Co-Lead Plaintiffs’ and Defendants’ respective presentations concerning potential damages should any liability be proven, have provided Delaware Co-Lead Plaintiffs with a detailed basis upon which to assess the relative strengths and weaknesses of their position and Defendants’ position in this litigation.

CC. Based upon their investigation and prosecution of the Delaware Consolidated Action, Delaware Co-Lead Plaintiffs and Delaware Co-Lead Counsel have concluded that the terms and conditions of the Settlement and this Stipulation are fair, reasonable and adequate to

Delaware Co-Lead Plaintiffs and the other members of the Class and in their best interests. Based on their direct oversight of the prosecution of this matter, along with the input of Delaware Co-Lead Counsel, Delaware Co-Lead Plaintiffs have agreed to settle the claims raised in the Delaware Consolidated Action pursuant to the terms and provisions of this Stipulation, after considering: (i) the substantial benefits that Delaware Co-Lead Plaintiffs and the other members of the Class will receive from the resolution of the Delaware Consolidated Action; (ii) the attendant risks of litigation; and (iii) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation. The Settlement and this Stipulation shall in no event be construed as, or deemed to be, evidence of a concession by Delaware Co-Lead Plaintiffs of any infirmity in the claims asserted in the Delaware Consolidated Action.

DD. Each of the Defendants and El Paso vigorously and expressly deny all allegations of wrongdoing, fault, liability, or damage to Delaware Co-Lead Plaintiffs and as well as each and every other member of the Class (including, without limitation, the Texas Plaintiffs and the New York Plaintiff) and further deny that Delaware Co-Lead Plaintiffs have asserted a valid claim as to any of them. Each of the Defendants and El Paso further deny that they engaged in any wrongdoing or committed, or aided or abetted, any violation of law or breach of duty and believe that they acted properly, in good faith, and in a manner consistent with their legal duties and are entering into this Settlement and Stipulation solely to avoid the substantial burden, expense, inconvenience and distraction of continued litigation and to resolve each of the Released Plaintiff Claims as against the Released Defendant Persons. The Settlement and this Stipulation shall in no event be construed as, or deemed to be, evidence of or an admission or concession on the part of any of the Defendants with respect to any claim or factual allegation or of any fault or liability

or wrongdoing or damage whatsoever or any infirmity in the defenses that any of the Defendants have or could have asserted.

EE. The Parties recognize that the litigation has been filed and prosecuted by Delaware Co-Lead Plaintiffs in good faith and defended by Defendants in good faith and further that the Settlement Amount paid, and the other terms of the Settlement as set forth herein, were negotiated at arm's-length, in good faith and reflect an agreement that was reached voluntarily after consultation with experienced legal counsel.

NOW THEREFORE, without any admission or concession on the part of Delaware Co-Lead Plaintiffs of any lack of merit of the Delaware Consolidated Action whatsoever, and without any admission or concession of any liability or wrongdoing or any lack of merit in their defenses whatsoever by Defendants, it is hereby STIPULATED AND AGREED, by and among Delaware Co-Lead Plaintiffs, Defendants, and El Paso, through their respective attorneys, subject to approval of the Court pursuant to Delaware Court of Chancery Rule 23 and the other conditions set forth herein, in consideration of the benefits flowing to the Parties from the Settlement, that the Delaware Consolidated Action shall be finally and fully settled, compromised and dismissed with prejudice on the merits and that each of the Released Plaintiff Claims shall be finally and fully compromised, settled, discharged, released and dismissed with prejudice as to each of the Released Defendant Persons, in the manner and upon the terms and conditions hereafter set forth.

### **DEFINITIONS**

1. As used in this Stipulation, the following terms shall have the following meanings:

(a) “Actions” means, collectively, the Delaware Consolidated Action (including each of the Delaware Cases), the Texas Action (including each of the Texas Cases), and the New York Action.

(b) “Authorized Claimant” means a Class Member who submits a properly executed Claim Form to the Claims Administrator, in accordance with the requirements established by the Court, which Claim is approved for payment, in whole or in part, from the Net Settlement Fund.

(c) “Claim” means a Claim Form submitted to the Claims Administrator.

(d) “Claimant” means a Person that submits a Claim Form to the Claims Administrator seeking to share in the proceeds of the Settlement Fund.

(e) “Claim Form” or “Proof of Claim Form” means the proof of claim form and release, as approved by the Court, that will be mailed to all Class Members and that a Claimant must complete, execute and submit to the Claims Administrator in order for that Claimant to be eligible to share in a distribution of the Net Settlement Fund and which shall be substantially in the form annexed hereto as Exhibit 2 to Exhibit A.

(f) “Claims Administrator” means the firm retained by Delaware Co-Lead Plaintiffs and Delaware Co-Lead Counsel, subject to approval of the Court, to provide all notices approved by the Court to potential Class Members, to process the Proof of Claim Forms and to administer the Settlement in accordance with the terms and conditions set forth in this Stipulation, the plan of allocation and any orders of the Court relating thereto.

(g) “Class” means all Persons who held El Paso Corporation common stock at any time during the Class Period (including, without limitation, the Texas Plaintiffs and the New York Plaintiff), and each of their transferees, successors and assigns. Excluded from the Class

are the following: (a) (i) the Individual Defendants and each member of their Immediate Families; (ii) El Paso (including El Paso Corporation) and the Kinder Morgan Defendants, their respective parents, subsidiaries, and affiliates, as well as each Person who served as a Section 16 Officer, director, partner or member of El Paso (including El Paso Corporation) or any of the Kinder Morgan Defendants during the Class Period and each member of their Immediate Families; (iii) the Goldman Defendants and Morgan Stanley and their respective parents, subsidiaries, and affiliates (including, without limitation, the GS Entities), as well as each Person who served as a Section 16 Officer, director (including managing directors), partner or member of any of the Goldman Defendants or Morgan Stanley during the Class Period and each member of their Immediate Families; and (iv) any Person in which any Defendant or El Paso (including El Paso Corporation) has or had a Controlling Interest (the Persons identified herein in (a)(i) through (a)(iv) are collectively, the “Excluded Parties”), provided, however, that any Investment Vehicle other than the GS Entities shall not be deemed an Excluded Party; and (b) each of the Excluded Parties’ respective legal representatives, heirs, beneficiaries, successors or assigns (together, with the Excluded Parties, the “Excluded Persons”).

(h) “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants.

(i) “Class Member” means any Person who falls within the definition of the Class set forth in ¶ 1(g) herein who is not an Excluded Person.

(j) “Class Period” means the period beginning on August 30, 2011 through and including May 25, 2012.

(k) “Controlling Interest” means an interest in a Person where such interest is sufficient to allow the interest holder directly or indirectly to direct or cause the direction of the management and policies of the Person, whether through ownership of the voting shares, by contract, or otherwise.

(l) “Court” means the Court of Chancery of the State of Delaware.

(m) “Defendants” means the Kinder Morgan Defendants, Goldman Defendants, and Individual Defendants.

(n) “Defendants’ Counsel” means the law firms of Weil, Gotshal & Manges LLP and Seitz Ross Aronstam & Moritz LLP, counsel for the Kinder Morgan Defendants; Sullivan & Cromwell LLP and Richards Layton & Finger, P.A., counsel for the Goldman Defendants; Wachtell Lipton Rosen & Katz and Potter Anderson & Corroon LLP, counsel for the Individual Defendants; and Bouchard Margules & Friedlander, P.A., counsel for Defendant Douglas L. Foshee.

(o) “Delaware Co-Lead Counsel” means the law firms of Bernstein Litowitz Berger & Grossmann LLP, Grant & Eisenhofer, P.A. and Labaton Sucharow LLP.

(p) “Delaware Co-Lead Plaintiffs” means Pompano Beach Police & Firefighters’ Retirement System, Pipefitters Local Union #537 Trust Funds, Saratoga Advantage Trust Energy & Basic Materials Portfolio and Saratoga Advantage Trust Mid Capitalization Portfolio, collectively and individually.

(q) “Delaware Consolidated Action” means the consolidated putative class action pending in this Court under the caption *In re El Paso Corporation Shareholder Litigation*, Consolidated C.A. No. 6949-CS, and includes each of the Delaware Cases.

(r) “Delaware Consolidated Complaint” means the Verified Consolidated Class Action Complaint filed in the Consolidated Action on November 29, 2011.

(s) “Delaware Executive Committee” means the law firms of Pomerantz Haudek Grossman & Gross LLP, Motley Rice LLC, Murray Frank LLP, Berman Devalerio, Vianale & Vianale LLP and Sarraf Gentile LLP.

(t) “Effective Date” means the date on which all of the events and conditions specified in ¶ 44 herein have occurred and been met.

(u) “El Paso” and the “Company” means El Paso LLC (formerly known as El Paso Corporation).

(v) “Escrow Account” means an account maintained at Valley National Bank to hold the Settlement Fund, which account, subject to the Court’s supervisory authority, shall be under the control of Delaware Co-Lead Counsel and which is to be managed consistent with the provisions of this Stipulation.

(w) “Escrow Agent” means Valley National Bank.

(x) “Escrow Agreement” means the agreement between Delaware Co-Lead Counsel and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account in accordance with the terms and conditions of the Stipulation, the Escrow Agreement and any orders of the Court relating thereto.

(y) “Final,” when referring to the Judgment, means the expiration of any time for the filing or noticing of any appeal or review of the Judgment, or, if any appeal is filed and not dismissed, the date of final affirmance (in all material respects) on appeal of the Judgment and the expiration of all deadlines for any further appeal or review thereof (whether by motion or petition for reconsideration or reargument or other mechanism), all proceedings ordered on



remand and all proceedings arising out of any subsequent appeal or appeals following a decision on remand. Notwithstanding the foregoing, whether the Judgment is Final does not depend in any way upon the resolution or status of any proceedings (including, without limitation, any and all disputes, motions, appeals, decisions, orders, rulings, consideration or other matters) relating solely to: (a) any application for attorneys' fees and/or Litigation Expenses; and/or (b) the Plan of Allocation.

(z) "Goldman Defendants" means The Goldman Sachs Group, Inc. and Goldman, Sachs & Co.

(aa) "GS Entities" means GS Capital Partners V Fund, L.P.; GSCP V Offshore Knight Holdings, L.P.; GS Capital Partners V Offshore Fund, L.P.; GS Capital Partners V Institutional, L.P.; GSCP V Germany Knight Holdings, L.P.; GS Capital Partners V GmbH & Co. KG; GS Capital Partners VI Fund, L.P.; GSCP VI Offshore Knight Holdings, L.P.; GS Capital Partners VI Offshore Fund, L.P.; GS Capital Partners VI Parallel, L.P.; GSCP VI Germany Knight Holdings, L.P.; GS Capital Partners VI GmbH & Co. KG; GS Global Infrastructure Partners I, L.P.; GS Institutional Infrastructure Partners I, L.P.; GS Infrastructure Knight Holdings, L.P.; GS International Infrastructure Partners I, L.P.; Goldman Sachs KMI Investors, L.P.; GSCP KMI Investors, L.P.; and GSCP KMI Investors Offshore, L.P.

(bb) "Immediate Family" means an individual's spouse, parents, siblings, children, grandparents, grandchildren; the spouses of his or her parents, siblings and children; and the parents and siblings of his or her spouse, and includes step and adoptive relationships. In this paragraph, "spouse" shall mean a husband, a wife, or a partner in a state-recognized domestic partnership or civil union.

(cc) “Individual Defendants” means Douglas L. Foshee, Juan Carlos Braniff, David W. Crane, Robert W. Goldman, Anthony W. Hall, Jr., Thomas R. Hix, Ferrell P. McClean, Timothy J. Probert, Steven J. Shapiro, J. Michael Talbert, Robert F. Vagt, and John L. Whitmire.

(dd) “Investment Vehicle” means any investment company or other pooled investment fund, including but not limited to mutual fund families, exchange-traded funds, fund of funds and hedge funds in which Goldman or Morgan Stanley or any of their respective affiliates has a direct or indirect interest or acts as an investment advisor, but in which Goldman, Morgan Stanley or any other Excluded Person is not a majority owner or does not hold a majority beneficial interest. This definition does not bring into the Class any of the Defendants or any other Excluded Person.

(ee) “Judgment” means the order of final judgment to be rendered by the Court in the Delaware Consolidated Action finally approving the Settlement and dismissing the Delaware Consolidated Action with prejudice and which shall be substantially in the form attached hereto as Exhibit B.

(ff) “Kinder Morgan Defendants” means Kinder Morgan, Inc., Sherpa Merger Sub, Inc., and Sherpa Acquisition, LLC.

(gg) “Litigation Expenses” means costs and expenses incurred by Plaintiffs’ Counsel in connection with commencing, prosecuting, and resolving the Delaware Consolidated Action, for which Delaware Co-Lead Counsel intends to apply to the Court for reimbursement from the Settlement Fund.

(hh) “Merger” means the merger and any related transactions and proceedings (including without limitation, all agreements, conduct, votes, steps, analysis, deliberations and

other actions leading to, required or taken to consummate it) by which Kinder Morgan acquired all of the outstanding shares of El Paso Corporation common stock, in accordance with the Merger Agreement, which transaction closed on May 24, 2012 and became effective on May 25, 2012.

(ii) “Merger Agreement” means the October 16, 2011 Agreement and Plan of Merger among Kinder Morgan, Sherpa Merger Sub, Inc., Sherpa Acquisition, LLC, Sirius Holdings Merger Corporation, Sirius Merger Corporation and El Paso Corporation, as well as any amendments thereto.

(jj) “Morgan Stanley” means Morgan Stanley & Co. LLC.

(kk) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses that may be awarded by the Court; and (iv) any attorneys’ fees that may be awarded by the Court.

(ll) “New York Action” means the putative class action pending in the Supreme Court of the State of New York, captioned *Grossman v. The Goldman Sachs Group, Inc.*, Index. No. 11112770.

(mm) “New York Plaintiff” means Howard L. Grossman.<sup>2</sup>

(nn) “Notice” means the Notice of Proposed Settlement of Class Action, Settlement Hearing, and Right to Appear, which is to be sent to members of the Class and which shall be substantially in the form attached hereto as Exhibit 1 to Exhibit A.

(oo) “Notice and Administration Costs” means the costs, fees and expenses that are incurred by the Claims Administrator and/or Delaware Co-Lead Counsel in connection with

---

<sup>2</sup> The New York Plaintiff is a signatory to this Stipulation solely for purposes of effectuating the provisions of ¶ 43 herein.

providing notice to the Class and administering the Claims process, and the costs, fees and expenses incurred in connection with the Escrow Account.

(pp) “Parties” means Defendants, El Paso, and Delaware Co-Lead Plaintiffs, on behalf of themselves and the Class.

(qq) “Person” means an individual, corporation, entity, partnership, association, joint stock company, estate, legal representative, trust, government (or any political subdivision or agency thereof) and any other type of business or legal entity.

(rr) “Plaintiffs’ Counsel” means Delaware Co-Lead Counsel and the Delaware Executive Committee and all other legal counsel who, at the direction and under the supervision of Delaware Co-Lead Counsel, performed services on behalf of the Class in the Delaware Consolidated Action, the Texas Action or New York Action.

(ss) “Plan of Allocation” means the proposed plan of allocation for distribution of the Net Settlement Fund to Authorized Claimants, as set forth in the Notice and subject to the approval of the Court, or such other plan of allocation as the Court may approve.

(tt) “Released Claims” means collectively the Released Defendant Claims and the Released Plaintiff Claims.

(uu) “Released Defendant Claims” means (a) any and all claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, interests, debts, expenses, charges, rights, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature and description whatsoever; (b) whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, perfected or not perfected, choate or inchoate, suspected or unsuspected, liquidated or not

liquidated, fixed or contingent, ripened or unripened, including any Unknown claims; (c) whether at law or equity, whether based on or arising under state, local, foreign, federal, statutory, regulatory, common or other law or rule and upon any legal theory, no matter how asserted; (d) that previously existed, currently exist, or that exist as of the date of the approval of the Settlement by the Court; (e) that were or could have been asserted by any or all of the Releasing Defendant Persons against any or all of the Released Plaintiff Persons in the Actions, in any federal or state court, or in any other court, tribunal, arbitration, proceeding, administrative agency or other forum in the United States or elsewhere; and (f) that arise out of or relate in any way to the institution, prosecution, settlement or dismissal of the claims against the Defendants in the Actions (or any of the constituent actions that comprise the Actions). “Released Defendant Claims” shall not, however, include any claims to enforce the Settlement or this Stipulation.

(vv) “Released Defendant Persons” means each of: (a) the Defendants and El Paso (the “Defendant Party Releasees”); (b) each of the Defendant Party Releasees’ respective past and/or present affiliates, subsidiaries, parents, general partners, limited partners and any Person in which any Defendant Party Releasee has or had a Controlling Interest (the “Defendant Affiliated Releasees,” and together with the Defendant Party Releasees, the “Defendant Releasees”); and (c) each of the Defendant Releasees’ past and/or present family members, heirs, principals, trustees, executors, administrators, predecessors, successors, assigns, members, parents, subsidiaries, employees, officers, managers, directors, partners, limited partners, agents, investment bankers, attorneys, representatives, estates, divisions, financial advisors, estate managers, assigns, insurers and reinsurers.

(ww) “Released Plaintiff Claims” means: (a) any and all claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, interests, debts, expenses, charges, rights, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature and description whatsoever; (b) whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, perfected or not perfected, choate or inchoate, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, ripened or unripened, including any Unknown claims; (c) whether at law or equity, whether based on or arising under state, local, foreign, federal, statutory, regulatory, common or other law or rule and upon any legal theory (including but not limited to any claims arising under the federal securities laws, including any claims arising under Section 14 of the Securities Exchange Act of 1934 or any claims that could be asserted derivatively on behalf of El Paso), no matter how asserted; (d) that previously existed, currently exist, or that exist as of the date of the approval of the Settlement by the Court; (e) that were or that could have been asserted by the Releasing Plaintiff Persons against any or all of the Released Defendant Persons in the Actions, in any federal or state court, or in any other court, tribunal, arbitration, proceeding, administrative agency or other forum in the United States or elsewhere that arise out of or relate to its/her/his ownership of El Paso Corporation common stock, its/her/his status as El Paso Corporation shareholders, or its/her/his El Paso Corporation stockholdings during the Class Period; and (f) that are based upon, arise out of, relate in any way to, concern or involve, in whole or in part, any of the following: (A) the Merger, (B) the Merger Agreement, (C) any actions, deliberations, negotiations or financial advisory services in connection with the Merger, including the process of deliberation or negotiation, by each of El

Paso and Kinder Morgan and any and all of their respective officers, directors, employees, representatives or advisors, (D) the consideration received by Class Members in connection with the Merger, (E) the Proxy as well as any other disclosures, public filings, periodic reports, press releases, amendments, information statements, solicitation materials, notifications or other statements issued, made available, propounded, disseminated, published or filed relating to or discussing, in whole or in part, the Merger, (F) the October 16, 2011 Voting Agreement entered into by and among El Paso and the stockholders of Kinder Morgan listed on the signature pages thereto, (G) any fiduciary obligations of any of the Released Defendant Persons in connection with the Merger or the Merger Agreement, including the negotiation and consideration of the Merger or any disclosures related thereto, (H) the proposed Spin-Off and the decision by the El Paso Board of Directors not to consummate the Spin-Off, (I) any actual or potential conflicts of interest by any Defendant or Released Defendant Person, and/or (J) any other facts, matters, occurrences, conduct, allegations, representations, omissions, transactions, actions, things or causes whatsoever, or any series thereof, that were alleged, asserted, raised, made, set forth, claimed, embraced, involved in, related to, or referred to, in whole or in part, in the Delaware Consolidated Complaint, in any of the other complaints, pleadings or briefs filed by plaintiffs in the Actions (including, without limitation, the Texas Action and the New York Action) and/or in the Court's opinion dated February 29, 2012. "Released Plaintiff Claims" shall not, however, include (i) any claims to enforce the Settlement or this Stipulation; or (ii) any claims solely for statutory appraisal with respect to the Merger pursuant to Section 262 of the Delaware General Corporation Law of the State of Delaware by El Paso Corporation stockholders who properly perfected such claims for appraisal and have not otherwise waived their appraisal rights.

(xx) “Released Persons” means collectively the Released Defendant Persons and the Released Plaintiff Persons.

(yy) “Released Plaintiff Persons” means each of: (a) Delaware Co-Lead Plaintiffs and the other Class Members (including, without limitation, the Texas Plaintiffs and the New York Plaintiff) (the “Plaintiff Party Releasees”); (b) each of the Plaintiff Party Releasees’ respective past and/or present affiliates, subsidiaries, parents, general partners, limited partners and any Person in which any Plaintiff Party Releasee has or had a Controlling Interest (the “Plaintiff Affiliated Releasees,” and together with the Plaintiff Party Releasees, the “Plaintiff Releasees”); and (c) each of the Plaintiff Releasees’ past and/or present family members, heirs, principals, trustees, executors, administrators, predecessors, successors, assigns, members, parents, subsidiaries, employees, officers, managers, directors, partners, limited partners, agents, investment bankers, attorneys, representatives, estates, divisions, financial advisors, estate managers, assigns, insurers and reinsurers.

(zz) “Releases” means the releases and liability protections set forth in ¶¶ 31-35 herein.

(aaa) “Releasing Defendant Persons” means each and all of the following: El Paso and each and every Defendant, on behalf themselves, each of the other Released Defendant Persons, and each and all of the Released Defendant Persons’ respective successors in interest, predecessors, representatives, trustees, executors, administrators, agents, heirs, estates, assigns, or transferees, immediate and remote, and any other Person who has the right, ability, standing or capacity to assert, prosecute or maintain on behalf of El Paso and/or any of the Defendants any of the Released Defendant Claims or to obtain the proceeds of any recovery therefrom in whole or in part.



(bbb) “Releasing Persons” means collectively the Releasing Defendant Persons and the Releasing Plaintiff Persons.

(ccc) “Releasing Plaintiff Persons” means each and all of the following: Delaware Co-Lead Plaintiffs and each and every other Class Member (including, without limitation, the Texas Plaintiffs and the New York Plaintiff) (regardless of whether such Person actually submits a Claim Form, seeks or obtains a distribution from the Net Settlement Fund, is entitled to receive such a distribution under the plan of allocation approved by the Court or has objected to the Settlement, the Plan of Allocation and/or any application for an award of attorneys’ fees or Litigation Expenses), on behalf of themselves and each and all of their respective successors in interest, predecessors, representatives, trustees, executors, administrators, agents, heirs, estates, assigns, or transferees, immediate and remote, and any other Person who has the right, ability, standing or capacity to assert, prosecute or maintain on behalf of any Class Member any of the Released Plaintiff Claims (or to obtain the proceeds of any recovery therefrom), whether in whole or in part.

(ddd) “Scheduling Order” means the proposed order to be entered by the Court scheduling the Settlement Hearing and directing notice be provided to the Class in the manner set forth therein and which shall be substantially in the form attached hereto as Exhibit A.

(eee) “Section 16 Officers” means all Persons covered by the definition of “officer” under Rule 16a-1(f) of the Securities Exchange Act of 1934 during the Class Period.

(fff) “Settlement” means the settlement contemplated by this Stipulation on the terms and conditions contained herein.

(ggg) “Settlement Amount” means the sum of one hundred ten million dollars (\$110,000,000) in cash, which amount shall be paid to the Escrow Account in full settlement of

all claims asserted against the Defendants in the Delaware Consolidated Action and in consideration of, among other things, the releases and other liability protections contained herein.

(hhh) “Settlement Fund” means the Settlement Amount plus any and all interest earned thereon.

(iii) “Settlement Hearing” means the hearing to be set by the Court under Delaware Court of Chancery Rule 23, to consider, among other things, final approval of the Settlement.

(jjj) “Summary Notice” means the Summary Notice of Proposed Settlement of Class Action, Settlement Hearing, and Right to Appear to be published as set forth in the Scheduling Order and which shall be substantially in the form attached hereto as Exhibit 3 to Exhibit A.

(kkk) “Taxes” means: (a) all federal, state and/or local taxes of any kind on any income earned by the Settlement Fund; and (b) the reasonable expenses and costs incurred by Delaware Co-Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

(lll) “Texas Action” means the consolidated putative class action pending in the Texas Court under the caption, *Rebecca Johnson v. El Paso Corporation*, Cause No. 2011-62739. “Texas Action” includes each of the Texas Cases.

(mmm) “Texas Court” means the Harris County Texas District Court.

(nnn) “Texas Plaintiffs” means Rebecca Johnson, Insulators and Asbestos Workers Local No. 14, Southeastern Pennsylvania Transportation Authority, City of Roseville

Employees' Retirement System, Randy Abigt, Larry V. Sutton, Stephen Bushansky, Oakland County Employees' Retirement System, and James E. Melton.<sup>3</sup>

(ooo) "Unknown" shall have the meaning as set forth in ¶ 34 herein.

### **CLASS CERTIFICATION**

2. Solely for purposes of the Settlement and for no other purpose, the Parties stipulate and agree to: (a) certification of the Delaware Consolidated Action as a non-opt out class action pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) on behalf of the Class; (b) appointment of Delaware Co-Lead Plaintiffs as Class Representatives; and (c) appointment of Delaware Co-Lead Counsel as Class Counsel.

3. In the event that the Settlement does not become effective for any reason, the certification of the Delaware Consolidated Action as a class action (as well as the appointment of Class Representatives and Class Counsel) shall be vacated and the Delaware Consolidated Action shall proceed as if the Class had never been certified and Defendants shall be entitled to oppose certification of any plaintiff class in the Actions or in any other proceedings.

### **SCHEDULING ORDER AND NOTICE**

4. As soon as practicable after this Stipulation has been executed, Delaware Co-Lead Plaintiffs and Defendants shall submit this Stipulation, together with its exhibits, and shall jointly apply to the Court for entry of the Scheduling Order, substantially in the form attached hereto as Exhibit A, providing for, among other things: (a) certification of the Class for purposes of the Settlement only; (b) the mailing by the Claims Administrator to the Class Members of the Notice

---

<sup>3</sup> After the parties to the Delaware Consolidated Action agreed upon the terms for settling that Action, the Texas Plaintiffs were apprised of the Settlement terms. The Texas Plaintiffs' signature herein reflects their acceptance of the Settlement terms.

and Proof of Claim Form; (c) the publication of the Summary Notice; and (d) the scheduling of the Settlement Hearing.

5. The Scheduling Order to be proposed by Delaware Co-Lead Plaintiffs and Defendants shall contain a provision that, pending the Court's determination as to final approval of the Settlement, Delaware Co-Lead Plaintiffs and all other Class Members (including, without limitation, the Texas Plaintiffs and the New York Plaintiff) are barred and enjoined from commencing, prosecuting, maintaining, instigating or asserting any of the Released Plaintiff Claims against any of the Released Defendant Persons.

6. From the date of this Stipulation through and including final approval of the Settlement by the Court (including the final dismissals of the Delaware Consolidated Action and the Texas Action and the New York Action), Delaware Co-Lead Plaintiffs agree to stay the Delaware Consolidated Action and not to initiate or participate in any proceedings arising out of, based upon or concerning any of the Released Plaintiff Claims, other than those matters necessary to implement and effectuate the Settlement itself. Delaware Co-Lead Plaintiffs also agree, from the date of this Stipulation forward, to use best efforts in working with El Paso or the Defendants to prevent, stay, seek dismissal of, or oppose entry of any interim or final relief in favor of any Class Member in any litigation (whether or not it has previously been filed) against any of the Released Defendant Parties that asserts any of the Released Plaintiff Claims against any Released Defendant Person or which challenges the Settlement. If any action is filed or prosecuted in any court asserting any of the Released Plaintiff Claims against any of the Released Defendant Persons, Delaware Co-Lead Plaintiffs shall use best efforts in working with El Paso or the Defendants in an effort to obtain the dismissal or withdrawal of such litigation, including where appropriate joining in any motion to dismiss or demurrer to such litigation.

7. Delaware Co-Lead Counsel shall direct the Claims Administrator to cause the Notice to be mailed by first-class mail, postage prepaid, to the Class Members at the address of each such Person as set forth in the records of El Paso (as successor in interest to El Paso Corporation) and/or their transfer agent(s), or who otherwise may be identified through further reasonable effort. Delaware Co-Lead Counsel will cause to be published the Summary Notice pursuant to the terms of the Scheduling Order in the manner ordered by the Court. For the purpose of identifying and providing notice to the Class, within five (5) business days of the date of entry of the Scheduling Order, El Paso shall provide or cause to be provided to the Claims Administrator (at no cost to the Settlement Fund, Delaware Co-Lead Counsel or the Claims Administrator) El Paso's list of Persons who held El Paso Corporation common stock during the Class Period (consisting of security holder names and addresses), in an electronic form suitable to the Claims Administrator.

8. The Claims Administrator shall use reasonable efforts to give Notice to beneficial owners of shares by: (a) making additional copies of the Notice available to any record holder who requests additional copies of the Notice for distribution to beneficial owners; (b) reimbursing the actual reasonable out-of-pocket expenses incurred by banks, brokerage firms, nominees and custodians who hold shares of record to provide copies of the Notice to beneficial owners on whose behalf they act; and/or (c) furnishing additional copies of the Notice to beneficial owners as requested by record holders.

9. In accordance with the schedule set forth in the Scheduling Order, Delaware Co-Lead Counsel shall cause to be filed with the Court (as well as serve on Defendants' Counsel) proof (by affidavit or other competent evidence) that the Notice, Proof of Claim Form, and Summary Notice were disseminated in accordance with the Scheduling Order.

### **THE SETTLEMENT CONSIDERATION**

10. In consideration of the full and complete settlement of the Released Plaintiff Claims against Defendants and the other Released Defendant Persons, El Paso shall pay or cause to be paid the Settlement Amount into the Escrow Account as follows: (i) El Paso shall pay or cause to be paid \$1,000,000 of the Settlement Amount into the Escrow Account no later than five (5) business days after the date of entry of the Scheduling Order; (ii) El Paso shall pay or cause to be paid \$54,000,000 of the Settlement Amount into the Escrow Account no later than ten (10) business days after the date of entry of the Scheduling Order; and (iii) El Paso shall pay or caused to be paid the remaining \$55,000,000 of the Settlement Amount into the Escrow Account no later than thirty (30) business days after the date of entry of the Scheduling Order.

11. Delaware Co-Lead Counsel shall provide to El Paso's counsel all documentation reasonably necessary to effectuate payment of the Settlement Amount into the Escrow Account.

12. No Defendant nor any Released Defendant Person shall have any obligation to pay, or responsibility or liability for, any additional amounts, expenses, costs, damages or fees to or for the benefit of Delaware Co-Lead Plaintiffs, the Texas Plaintiffs, the New York Plaintiff or any Class Member in connection with the Actions or this Settlement, including without limitation any attorneys' fees or expenses for any counsel to any Class Member or any costs of Notice or settlement administration or otherwise, except as otherwise expressly provided herein.

### **USE OF SETTLEMENT FUND**

13. The Settlement Fund shall be used to pay the following, and only the following, and only then in accordance with the provisions of this Stipulation: (a) any Taxes; (b) any Notice and Administration Costs; (c) any Litigation Expenses that may be awarded by the Court; and (d) any attorneys' fees that may be awarded by the Court. The balance remaining in the

Settlement Fund, after making the deductions for the items referred to in clauses (a) through (d) of this paragraph (*i.e.*, the Net Settlement Fund) shall be distributed to Authorized Claimants after the Effective Date, as provided below.

14. Except as provided herein or pursuant to orders of the Court, the Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances of less than \$250,000 may be invested in an account that is fully insured by the United States Government or any agency thereof, including the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in a non-interest bearing account that is fully insured by the United States Government or any agency thereof, including the FDIC.

15. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Delaware Co-Lead Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Such returns shall be consistent with this paragraph and in all events shall reflect that all taxes on

the income earned on the Settlement Fund shall be paid out of the Settlement Fund as provided below. Delaware Co-Lead Counsel shall also be solely responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. Upon written request, Defendants will provide promptly to Delaware Co-Lead Counsel the statement described in Treasury Regulation § 1.468B-3(e). Delaware Co-Lead Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

16. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement, and without prior Order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes (including any interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

17. This is not a claims-made settlement. Upon the occurrence of the Effective Date, neither the Released Defendant Persons, their insurance carriers nor any other Person who or which paid any portion of the Settlement Amount, shall have any right to the return of the Settlement Fund or any portion thereof irrespective of the number of Claims filed, the collective damages of Authorized Claimants, the percentage of recovery of damages or the amounts paid to Authorized Claimants from the Net Settlement Fund.



18. The Claims Administrator shall discharge its duties under Delaware Co-Lead Counsel's supervision and subject to the jurisdiction of the Court. Except as otherwise expressly provided herein, the Released Defendant Persons shall have no responsibility whatsoever for, nor any liability whatsoever to any Person in connection with, any of the following: (a) the administration of the Settlement or the Settlement Fund; (b) the Plan of Allocation and its interpretation, administration and implementation; (c) the allocation, disbursement, administration or distribution of the Net Settlement Fund; (d) the dissemination of the Notice, Proof of Claim, and Summary Notice to the Class Members; (e) the processing, reviewing, challenging or determination of Claims; (f) any payment of attorneys' fees or Litigation Expenses made to Plaintiffs' Counsel; (g) any fee and/or expense allocation among Plaintiffs' Counsel and/or any other person who may assert a claim thereto; (h) paying any Taxes due; (i) filing elections or other required statements or tax returns (or paying or withholding the costs associated therewith) with respect to any Taxes; and/or (j) any tax liability that a Class Member may incur as a result of the Settlement.

19. Prior to the Effective Date, Delaware Co-Lead Counsel may pay from the Settlement Fund, without further approval from Defendants or further order of the Court, all reasonable Notice and Administration Costs actually incurred up to the amount of \$1,000,000. After the Effective Date, Delaware Co-Lead Counsel may pay from the Settlement Fund all reasonable Notice and Administration Costs (including those in excess of \$1,000,000) actually incurred without Defendants' consent or further order of the Court. Such Notice and Administration Costs shall include, without limitation, the actual costs of printing and mailing the Notice and publishing the Summary Notice, reimbursements to nominee owners for forwarding the Notice to the beneficial owners of El Paso Corporation common stock, the

administrative expenses incurred and fees charged by the Claims Administrator in connection with providing Notice and processing the submitted Claims and the fees, if any, of the Escrow Agent.

20. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs reasonably paid or incurred, including any related fees, shall not be returned or repaid to El Paso, any other Defendant, or any other Person who or which paid any portion of the Settlement Amount on their behalf (including, without limitation, any insurer of any of the Defendants).

#### **DISTRIBUTION OF THE SETTLEMENT FUND**

21. After the Effective Date, the Net Settlement Fund shall be distributed to Authorized Claimants pursuant to the Plan of Allocation as approved by the Court. Delaware Co-Lead Counsel shall seek Court approval of the Plan of Allocation at the Settlement Hearing.

22. The Plan of Allocation is neither a part of this Settlement nor a necessary term of this Stipulation. It is not a condition of the Stipulation or the Settlement that any particular plan of allocation be approved by the Court. The Court shall consider the Plan of Allocation separate and apart from its consideration of whether the proposed Settlement is fair, reasonable and adequate. Any order or proceedings relating to the Plan of Allocation or any appeal thereafter (or any other plan of allocation that may be proposed or approved in the Delaware Consolidated Action) shall not: (a) operate to modify, terminate or cancel this Settlement; (b) affect or delay the validity or finality of the Judgment or any other orders entered by the Court giving effect to this Stipulation; (c) affect or delay the Effective Date; (d) provide any grounds or otherwise permit Delaware Co-Lead Plaintiffs, any other Class Member, or Delaware Co-Lead Counsel to

cancel, terminate or withdraw from the Stipulation or the Settlement; and/or (e) affect or delay the validity of the Settlement.

23. Delaware Co-Lead Counsel shall be responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund in accordance with the terms of this Stipulation and any orders of the Court relating thereto. Delaware Co-Lead Counsel may retain the Claims Administrator to help implement and administer the Settlement. Reasonable costs incurred by the Claims Administrator may be paid from the Settlement Fund, in a manner consistent with the term of this Stipulation and any orders of the Court.

24. For purposes of determining the extent, if any, to which a Class Member shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

(a) Each Class Member shall be required to complete and submit a Claim Form signed under penalty of perjury and supported by such documents as are designated therein, including proof of the number of shares of El Paso Corporation common stock held by the Claimant as of the effective date of the Merger, or such other documents or proof as the Claims Administrator or Delaware Co-Lead Counsel, in their discretion, may deem acceptable;

(b) All Claim Forms must be submitted by the date set by the Court in the Scheduling Order and specified in the Notice, unless such deadline is extended by order of the Court. Provided that it is received before the motion for the Class Distribution Order is filed, a Claim Form shall be deemed to be submitted when mailed, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator;

(c) Each Claim Form shall be submitted to and reviewed by the Claims Administrator, who shall determine, in accordance with this Stipulation and under the supervision of Delaware Co-Lead Counsel, the extent, if any, to which each Claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below;

(d) Claim Forms that do not meet the submission requirements may be rejected. Prior to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with the Claimant in writing to give the Claimant the chance to remedy any curable deficiencies in the Claim Form submitted. The Claims Administrator, under the supervision of Delaware Co-Lead Counsel, shall notify, in a timely fashion and in writing, all Claimants whose Claim the Claims Administrator proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the Claimant whose Claim is to be rejected has the right to a review by the Court if the Claimant so desires and complies with the requirements of subparagraph (e) below;

(e) If any Claimant whose Claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within twenty (20) calendar days of the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a Claim cannot be otherwise resolved, Delaware Co-Lead Counsel shall thereafter present the request for review to the Court; and

(f) No Person that is not a Class Member shall have any right to any share of the Net Settlement Fund or to receive a distribution therefrom.

25. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Claim, and the Claim will be subject to investigation and discovery under the Rules of the Delaware Court of Chancery, provided that such investigation and discovery shall be limited to that Claimant's status as a Class Member and the validity and amount of the Claimant's Claim. No discovery shall be allowed on the merits of the Delaware Consolidated Action or this Settlement in connection with the processing of Claim Forms.

26. Delaware Co-Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for a Class Distribution Order: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted; (b) approving payment of any administration fees and expenses associated with the administration of the Settlement from the Escrow Account; and (c) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants from the Escrow Account.

27. Payment pursuant to the Class Distribution Order shall be deemed final and conclusive as against the Delaware Co-Lead Plaintiffs and all other Class Members (including, without limitation, the Texas Plaintiffs and the New York Plaintiff). Any Class Member who does not submit a Claim or whose Claim is not approved by the Court shall be: (a) deemed to have waived his, her or its right to share in the Settlement Fund; (b) forever be barred from participating in distributions from the Net Settlement Fund; (c) bound by all of the terms and provisions of this Stipulation and the Settlement and all proceedings, determinations, judgments and orders in the Delaware Consolidated Action relating thereto, including without limitation the terms of the Judgment to be entered in the Delaware Consolidated Action and the releases provided for therein; and (d) permanently barred and enjoined from commencing, maintaining,

prosecuting or bringing any of the Released Plaintiff Claims against any of the Released Defendant Persons.

28. The Claims Administrator shall administer the process of receiving, reviewing and approving or denying claims under Delaware Co-Lead Counsel's supervision, subject to the jurisdiction of the Court and consistent with the terms of this Stipulation.

29. No Released Defendant Person shall be permitted to review, contest or object to any Claim Form or any decision of the Claims Administrator or Delaware Co-Lead Counsel with respect to accepting or rejecting any Claim Form or Claim for payment by a Class Member. Delaware Co-Lead Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Claim Forms submitted in the interests of achieving substantial justice, provided that such waiver does not otherwise violate any provision of this Stipulation.

30. All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court.

#### **RELEASE OF CLAIMS**

31. The obligations incurred pursuant to this Stipulation shall be in full and final dismissal, discharge, settlement and disposition, with prejudice, of: (a) the Delaware Consolidated Action; (b) any and all Released Plaintiff Claims as against the Released Defendant Persons by any of the Releasing Plaintiff Persons; and (c) any and all Released Defendant Claims as against the Released Plaintiff Persons by any of the Releasing Defendant Persons.

32. Upon the Effective Date, each and every one of the Releasing Plaintiff Persons (which includes, without limitation, the Texas Plaintiffs and the New York Plaintiff) (regardless of whether such Person actually submits a Claim Form, seeks or obtains a distribution from the Net Settlement Fund, is entitled to receive such a distribution under the plan of allocation approved by the Court or has objected to the Settlement, the Plan of Allocation and/or any application for an award of attorneys' fees or Litigation Expenses) shall: (a) have and be deemed by operation of the Judgment to have completely, fully, finally, and forever dismissed, released, relinquished and discharged with prejudice each and every one of the Released Defendant Persons from any and all of the Released Plaintiff Claims; (b) forever be barred and enjoined by operation of the Judgment from filing, commencing, intervening in, participating in (as a class member or otherwise), instituting, maintaining, prosecuting, seeking relief in (including filing an application or motion for preliminary or permanent injunctive relief) or receiving any recovery, remedy, benefits or other relief from any other lawsuit, arbitration or other proceeding in any jurisdiction that asserts any of the Released Plaintiff Claims against any of the Released Defendant Persons; and (c) have and be deemed by operation of the Judgment to have covenanted not to sue any of the Released Defendant Persons with respect to any and all of the Released Plaintiff Claims.

33. Upon the Effective Date, each and every one of the Releasing Defendant Persons shall (a) have and be deemed by operation of the Judgment to have completely, fully, finally, and forever dismissed, released, relinquished and discharged with prejudice each and every one of the Released Plaintiff Persons from any and all of the Released Defendant Claims; (b) forever be barred and enjoined by operation of the Judgment from filing, commencing, intervening in, participating in, instituting, maintaining, prosecuting, seeking relief in or receiving any recovery,

remedy, benefits or other relief from any other lawsuit, arbitration or other proceeding in any jurisdiction that asserts any of the Released Defendant Claims against any of the Released Plaintiff Persons; and (c) have and be deemed by operation of the Judgment to have covenanted not to sue any of the Released Plaintiff Persons with respect to any and all of the Released Defendant Claims.

34. With respect of the use of the term “Unknown” in the definitions of Released Plaintiff Claims and Released Defendant Claims:

(a) (i) Delaware Co-Lead Plaintiffs specifically acknowledge (and the other Releasing Plaintiff Persons shall be deemed by operation of the Judgment to have acknowledged) that the term “Unknown” in the definitions of Released Plaintiff Claims shall mean all claims that each of the Releasing Plaintiff Persons do not know or suspect to exist at the time of the release of the Released Plaintiff Claims against the Released Defendant Persons, but which, if known by it/her/him, might affect its/her/his decision with respect to the Settlement (including the decision to object or not to object to the Settlement); and (ii) Defendants and El Paso specifically acknowledge (and the other Releasing Defendant Persons shall be deemed by operation of the Judgment to have acknowledged) that the term “Unknown” in the definitions of Released Defendant Claims shall mean all claims that each of the Releasing Defendant Persons do not know or suspect to exist at the time of the release of the Released Defendant Claims against the Released Plaintiff Persons, but which, if known by it/her/him, might affect its/her/his decision with respect to the Settlement (including the decision to object or not to object to the Settlement);

(b) (i) Delaware Co-Lead Plaintiffs expressly acknowledge (and the other Releasing Plaintiff Persons shall be deemed by operation of the Judgment to have



acknowledged) that they may hereafter discover facts in addition to or different from those that it/she/he now knows or believes to be true with respect to the subject matter of the Released Plaintiff Claims but that it is nevertheless its/her/his intention to fully, finally and forever settle and release those claims without regard to the subsequent discovery of any such additional or different facts; and (ii) El Paso and the Defendants expressly acknowledge (and the other Releasing Defendant Persons shall be deemed by operation of the Judgment to have acknowledged) that they may hereafter discover facts in addition to or different from those that it/she/he now knows or believes to be true with respect to the subject matter of the Released Defendant Claims but that it is nevertheless its/her/his intention to fully, finally and forever settle and release those claims without regard to the subsequent discovery of any such additional or different facts; and

(c) the Parties expressly acknowledge (and the other Releasing Persons shall be deemed by operation of the Judgment to have acknowledged) that the inclusion of “Unknown” claims in the definitions of Released Claims was separately bargained for and was a key element of the Settlement, and with respect to the Released Claims the Parties expressly waive and relinquish, and the other Releasing Persons shall be deemed to have waived and relinquished, and by operation of the Judgment shall have specifically waived and relinquished:

(i) any and all provisions, rights and benefits conferred under Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

and (ii) any and all provisions, rights and benefits conferred by any law of the United States or state or territory of the United States or principle of common law or foreign law which is similar, comparable or equivalent to Section 1542 of the California Civil Code.

35. Notwithstanding anything to the contrary above, the Released Claims do not include claims to enforce the Judgment and the Settlement, including without limitation the releases and other liability protections provided for thereby.

#### **ATTORNEYS' FEES AND LITIGATION EXPENSES**

36. Delaware Co-Lead Counsel will apply to the Court for an award of attorneys' fees and for reimbursement of Litigation Expenses to Plaintiffs' Counsel to be paid out of the Settlement Fund. Neither Defendants nor any other Released Defendant Person shall take any position with respect to Delaware Co-Lead Counsel's application for an award of attorneys' fees and/or Litigation Expenses, provided it is not inconsistent with the terms of this Stipulation. Delaware Co-Lead Counsel's application for an award of attorneys' fees and/or Litigation Expenses is not the subject of any agreement between Defendants and Delaware Co-Lead Plaintiffs beyond what is set forth in this Stipulation. Notwithstanding any other provision of this Stipulation, no attorneys' fees or Litigation Expenses shall be paid to Plaintiffs' Counsel in the absence of entry by the Court of the Judgment.

37. Any attorneys' fees and/or Litigation Expenses that are awarded by the Court shall be paid to Plaintiffs' Counsel within three (3) business days after the date of entry of an order authorizing such an award, notwithstanding the existence of any timely filed objections to the award, or the potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiffs' Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund (plus accrued interest at the same net rate as is earned by the Settlement

Fund), if and when: (a) the Stipulation is terminated pursuant to the terms of this Stipulation, and/or (b) if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or Litigation Expenses is reduced, vacated or reversed. Plaintiffs' Counsel shall make the appropriate refund or repayment in full no later than twenty (20) business days after receiving from Defendants' Counsel or from a court of appropriate jurisdiction notice of the termination of the Settlement or notice of any reduction of the award of attorneys' fees and/or Litigation Expenses.

38. Any attorneys' fees and Litigation Expenses awarded by the Court shall be paid from the Settlement Fund and not by any of the Released Defendant Persons. The Settlement Fund shall be the sole source of any attorneys' fees and Litigation Expenses awarded by the Court and Delaware Co-Lead Plaintiffs and the other Releasing Plaintiff Persons, and any of their respective counsel, shall have no recourse against the Released Defendant Persons for any such fees and expenses.

39. The Court is to consider and rule upon the fairness, reasonableness, and adequacy of the Settlement independently of any consideration and ruling on Delaware Co-Lead Counsel's application for an award of reasonable attorneys' fees and Litigation Expenses. The Settlement, this Stipulation and the implementation or effectuation thereof, as well as entry of the Judgment, are not conditioned in any way on any award of attorneys' fees and/or Litigation Expenses to Plaintiffs' Counsel. An award of attorneys' fees and/or Litigation Expenses is neither a necessary term nor a condition of this Stipulation or the Settlement. Any orders or proceedings relating to any request by Plaintiffs' Counsel for attorneys' fees, expenses or costs or any appeal from any such order shall not (a) operate to modify, terminate or cancel this Settlement; (b) affect or delay the validity or finality of the Judgment or any other orders entered by the Court

giving effect to this Stipulation; (c) affect or delay the Effective Date; (d) provide any grounds or otherwise permit Delaware Co-Lead Plaintiffs, any other Class Member, or Delaware Co-Lead Counsel to cancel, terminate or withdraw from the Stipulation or the Settlement; and/or (e) affect or delay the validity of the Settlement.

40. Delaware Co-Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the prosecution and settlement of the Delaware Consolidated Action.

### **DISMISSAL OF THE ACTIONS**

41. If the Settlement contemplated by this Stipulation is approved by the Court, Delaware Co-Lead Counsel and Defendants' Counsel shall request that the Court enter a Judgment substantially in the form annexed hereto as Exhibit B.

42. Within three (3) business days after the date of entry of the Judgment, the Texas Plaintiffs shall file a Nonsuit with Prejudice substantially in the form attached hereto as Exhibit C dismissing with prejudice on the merits the claims of the plaintiffs in the Texas Action based on the Settlement (the "Nonsuit"). Texas Plaintiffs and their counsel shall use their best efforts to obtain dismissal with prejudice on the merits of the Texas Action pursuant to the Nonsuit (including in any appeal or other proceeding in connection with dismissal of the Texas Action).

43. Within three (3) business days after the date of entry of the Judgment, the New York Plaintiff shall file a Notice of Discontinuance with the New York State Supreme Court discontinuing the New York Action with prejudice ("Notice of Discontinuance"). The Notice of Discontinuance shall be substantially in the form attached hereto as Exhibit D. New York Plaintiff and his counsel shall use their best efforts to obtain the discontinuance with prejudice of

the New York Action pursuant to the Notice of Discontinuance (including in any appeal or other appeal in connection with the discontinuance of the New York Action).

**EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

44. The Settlement shall become effective on the Effective Date, which shall be the date on which all the following events and conditions have occurred and been met:

(a) The Court has entered the Scheduling Order, substantially in the form set forth in Exhibit A annexed hereto;

(b) The Settlement Amount has been deposited in the Escrow Account in accordance with the provisions of ¶ 10 herein;

(c) The Settlement and Stipulation have not been terminated pursuant to ¶ 46 or ¶ 47 herein;

(d) Final approval by the Court of the Settlement, following notice to the Class and the Settlement Hearing;

(e) Entry by the Court of a Judgment, substantially in the form set forth in Exhibit B annexed hereto;

(f) The Judgment becomes Final;

(g) Texas Plaintiffs have filed the Nonsuit in the Texas Action; and

(h) New York Plaintiff has filed the Notice of Discontinuance in the New York Action.

45. Notwithstanding anything in this Stipulation, the Effective Date (and the effectiveness of the Settlement) does not depend in any way upon the resolution of any orders, proceedings, rulings, consideration, appeals or other matters concerning, relating to, based upon or arising out of: (a) any application by Delaware Co-Lead Counsel for an award of attorneys'

fees and Litigation Expenses in connection with the Settlement (including the allocation of such fees among counsel); and/or (b) the Plan of Allocation.

46. El Paso and Delaware Co-Lead Plaintiffs shall each have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”) to all other Parties to this Stipulation within ten (10) business days after the occurrence of any of the following:

- (a) the Court’s declining to enter the Scheduling Order in any material respect;

- (b) the Court’s refusal to approve the Settlement as set forth in the Stipulation in any material respect (including with respect to the Releases);

- (c) the Court’s modification of the Settlement as set forth in the Stipulation in any material respect (including with respect to the Releases);

- (d) the Court’s declining to enter the Judgment in any material respect (including with respect to the Releases);

- (e) the date upon which the Judgment is vacated, modified, revised or reversed in any material respect by any level of appellate court (including with respect to the Releases);

- (f) the Texas Plaintiffs’ failure to file the Nonsuit in the Texas Action within five (5) business day after the date of entry of the Judgment; or

- (g) the New York Plaintiff’s failure to file the Notice of Discontinuance in the New York Action within five (5) business days after the date of entry of the Judgment.

47. Delaware Co-Lead Plaintiffs shall have the right to terminate the Settlement, and thereby this Stipulation, if the Settlement Amount is not paid in accordance with the provisions

of ¶ 10 herein, provided that Delaware Co-Lead Plaintiffs shall have first provided notice to Defendants' Counsel of such failure to make payment and the failure shall not have been cured within three (3) business days of receipt of such notice. Notwithstanding the foregoing, Delaware Co-Lead Plaintiffs shall have the right to collect interest from El Paso to compensate the Class for any delay in payment of the Settlement Amount into the Escrow Account.

48. Notwithstanding any other provision or paragraph in this Stipulation, no action or inaction by the Court or any appellate court relating solely to any award of attorneys' fees and Litigation Expenses pursuant to ¶ 36 herein and/or the Plan of Allocation shall entitle Delaware Co-Lead Plaintiffs to cancel or terminate the Settlement or this Stipulation.

49. The Parties agree that any disputes concerning the termination of the Settlement pursuant to ¶ 46 or ¶ 47 herein shall be presented to the Court, which shall have exclusive jurisdiction to resolve and rule as to whether this Stipulation has been properly terminated.

50. Except as otherwise provided herein, in the event that the Settlement is terminated pursuant to the terms of this Stipulation or does not become effective: (a) the Settlement and this Stipulation shall be null and void and without prejudice to, or force and effect to or upon, the rights of the participants to the agreement and none of their terms shall be effective or enforceable (except for those provisions contained in ¶¶ 3, 18, 20, 37, 49, 50, 56, and 63 herein); (b) the fact of the Settlement shall not be admissible in any trial of the Actions; (c) the participants to the agreement shall be deemed to have reverted to their respective litigation positions in the Actions immediately prior to July 18, 2012; and (d) except as otherwise expressly provided, the participants to the agreement shall proceed in all respects as if this Stipulation and any related orders had not been entered. In that event, any portion of the Settlement Amount previously paid by or caused to be paid by El Paso, together with any interest

earned thereon, less any Taxes paid or due with respect to such income, and less any Notice and Administration Costs actually incurred and paid or payable, shall be returned to the Persons that funded the Settlement within ten (10) business days of joint written notification of such event by Defendants' Counsel and Delaware Co-Lead Counsel to the Escrow Agent pursuant to the terms of the Escrow Agreement.

### **REPRESENTATIONS AND WARRANTIES**

51. Each of the Delaware Co-Lead Plaintiffs represent and warrant that it was, at all times relevant to the Delaware Consolidated Action, an El Paso Corporation stockholder, and that, to its knowledge, none of its Released Plaintiff Claims has been assigned, encumbered, or in any manner transferred in whole or in part. Each of the Delaware Co-Lead Plaintiffs and Delaware Co-Lead Counsel represent and warrant that it will not attempt to assign, encumber, or in any manner transfer in whole or in part any of the Released Plaintiff Claims.

52. Each of the Delaware Co-Lead Plaintiffs and each of the Defendants represent and warrants that: (a) he or it has made such investigation of the facts pertaining to the Settlement provided for in this Stipulation, and all of the matters pertaining thereto, as such Party deems necessary and advisable; and (b) he or it, or a responsible officer, partner, fiduciary, counsel (including Delaware Co-Lead Counsel and Defendants' Counsel) or other such similar Person thereof, has read this Stipulation and understands the contents hereof.

53. As to the payment made or to be made by or on behalf of El Paso under this Stipulation, El Paso warrants as of the date of entering into this Stipulation that (and further agrees that it shall be deemed to have warranted as of the date of the actual making of such payment that) it is not insolvent and that any payment made or required to be made by or on its behalf has not and/or will not render it insolvent within the meaning of and/or for the purposes of



the United States Bankruptcy Code, including §§ 101 and 547 thereof. This representation is made by El Paso and not by its counsel.

54. All counsel and any other Person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms and that it shall be binding on such party in accordance with its terms.

#### **NO ADMISSION OF WRONGDOING**

55. Each of El Paso and the Defendants: (i) deny and continue to deny that they have committed, or aided or abetted in the commission of, any unlawful or wrongful act or violation of any duty owed to any plaintiff in any of the Actions, the Class or any other Person in connection with the Released Plaintiff Claims and the subject matter thereof; (ii) maintain that they diligently and scrupulously complied with all of their legal duties and obligations in connection therewith; and (iii) are entering into the Stipulation solely because the proposed settlement will eliminate the distraction, burden and expense of continued litigation.

56. Whether or not the Settlement is approved by the Court and whether or not the Settlement is consummated, the facts and terms of the Settlement and this Stipulation (including all exhibits hereto), as well as all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings in connection with the Settlement:

(a) shall not be described as, construed as, interpreted as, or offered or received against any of the Released Defendant Persons as evidence of and/or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendant Persons as to: (i) the truth of any fact alleged in the Actions; (ii) the validity of any claim that has

been or could have been asserted in the Actions or in any other litigation; (iii) the deficiency of any defense that has been or could have been asserted in the Actions or in any other litigation; and/or (iv) any liability, breach of fiduciary duty, negligence, fault or wrongdoing on their part;

(b) shall not be described as, construed as, interpreted as or offered or received against Delaware Co-Lead Plaintiffs or any other Class Member (including, without limitation, the Texas Plaintiffs and the New York Plaintiff) as evidence of any infirmity in the claims of the Delaware Co-Lead Plaintiffs or any other Class Member (including, without limitation, the Texas Plaintiffs and the New York Plaintiff) or that damages recoverable from the Defendants would not have exceeded the Settlement Amount;

(c) shall not be described as, construed as, interpreted as, offered or received against any of the Parties as an admission or concession that the consideration to be given in the Settlement represents the amount which could be or would have been awarded after trial; and

(d) shall not be construed, offered interpreted, deemed, or received in evidence or otherwise against any of the Released Defendant Persons or Released Plaintiff Persons in any other civil, criminal or administrative action, litigation or proceeding, except in connection with any proceeding to enforce the terms of this Stipulation or the Judgment.

57. Notwithstanding the foregoing, if the Judgment is entered by the Court, the Released Defendant Persons and the Released Plaintiff Persons may file, offer, refer to and otherwise employ, the Settlement and the Stipulation: (i) to enforce the terms of the Settlement; (ii) to enforce or effectuate the releases and other protections from liability granted hereunder (including those set forth in ¶¶ 31-35 herein); and/or (iii) to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, discharge, good faith settlement,

judgment bar or reduction, any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

### **MISCELLANEOUS PROVISIONS**

58. All of the exhibits attached to this Stipulation are material and integral parts hereof and are hereby incorporated by reference as though fully set forth herein.

59. This Stipulation is the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Stipulation. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that the Stipulation or a particular provision or paragraph of the Stipulation may have been prepared by counsel for a particular Party.

60. The Parties and their respective counsel agree to cooperate fully with one another in seeking Court approval of this Stipulation and the Settlement and to use their best efforts, and take all such other such steps as may be necessary and required, to effect the consummation of this Stipulation and the Settlement. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

61. All Released Persons who are not Parties are intended third-party beneficiaries of the Settlement and, upon the occurrence of the Effective Date, are entitled to enforce the terms of the releases provided under the Judgment.

62. This Stipulation and the Settlement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of laws principles. Any dispute arising out of this Stipulation or Settlement shall be filed and litigated exclusively in the Court of Chancery of the State of Delaware. Each Party hereto: (a) consents to personal jurisdiction in any such action (but in no other action) brought in this Court; (b) consents to

service of process by registered mail upon such party and/or such party's agent; (c) waives any objection to venue in this Court and any claim that Delaware or this Court is an inconvenient forum; and (d) waives any right to demand a jury trial as to any such action.

63. The administration and consummation of this Settlement as embodied in this Stipulation shall be under the authority of the Court. Without affecting the finality of the Settlement, the Court shall retain jurisdiction for purposes, among other things, of administering the Settlement and resolving any disputes hereunder.

64. If a case is commenced in respect of any of the Defendants (or any other Person contributing funds to the Settlement Fund on behalf of Defendants) under Title 11 of the United States Code (Bankruptcy), or if a trustee, receiver or conservator, is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of Defendants to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited to the Settlement Fund by others, then, at the election of Delaware Co-Lead Plaintiffs, Delaware Co-Lead Plaintiffs and Defendants shall jointly move the Court to vacate and set aside the releases given and the Judgment entered in favor of Defendants and the other Released Defendant Persons pursuant to this Stipulation, which releases and Judgment shall be null and void, and Delaware Co-Lead Plaintiffs and Defendants shall be deemed to have reverted to their respective litigation positions in the Delaware Consolidated Action immediately prior to July 18, 2012, and any cash amounts in the Settlement Fund shall be returned as provided in ¶ 50 herein.

65. The Parties intend this Settlement to be a final and complete resolution of all disputes asserted or which could have been asserted by the Delaware Co-Lead Plaintiffs, any

other Class Members (including, without limitation, the Texas Plaintiffs and the New York Plaintiff) and their respective attorneys, against all Released Defendant Persons with respect to all Released Plaintiff Claims. Accordingly, Delaware Co-Lead Plaintiffs and their counsel and each Defendant and their counsel agree not to assert in any forum that the Delaware Consolidated Action was brought or prosecuted by Co-Lead Plaintiffs or defended by Defendants in bad faith or without a reasonable basis. The Parties further agree that the amount paid and the other terms of this Settlement were negotiated at arm's-length and in good faith including at a mediation session conducted by former judge Daniel Weinstein and through further settlement discussions through the Mediator between Delaware Co-Lead Counsel and Defendants, and reflect a settlement of the Delaware Consolidated Action that was reached voluntarily after consultation with experienced legal counsel.

66. All agreements made and orders entered during the course of the Delaware Consolidated Action relating to the confidentiality of information and documents shall survive this Stipulation and the Effective Date pursuant to their terms unless otherwise modified by the Court.

67. While retaining their right to deny that the claims asserted in the Delaware Consolidated Action were meritorious, Defendants, including their counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Delaware Consolidated Action was commenced or prosecuted in bad faith nor will they deny that the Delaware Consolidated Action was commenced and prosecuted in good faith and that the Delaware Consolidated Action is being settled voluntarily after consultation with competent legal counsel. Likewise, Delaware Co-Lead Plaintiffs and their counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Delaware

Consolidated Action was defended in bad faith nor will they deny that it was defended in good faith and that the Delaware Consolidated Action is being settled voluntarily after consultation with competent counsel. In all events, Delaware Co-Lead Plaintiffs, including their counsel, and Defendants, including their counsel, shall not make any accusations of wrongful or actionable conduct by any Party concerning the prosecution, defense and resolution of the Delaware Consolidated Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

68. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by such other Party.

69. No waiver, express or implied, by any Party of any breach or default in the performance by the other Party of its obligations under this Stipulation shall be deemed or construed to be a waiver of any other breach, whether prior, subsequent, or contemporaneous, under this Stipulation.

70. This Stipulation and its exhibits constitute the entire agreement among the Parties concerning this Settlement and such documents supersede any prior agreements or understandings between them with respect to the Settlement. In entering into this Stipulation, none of the Parties is relying on any promise, warranty, inducement or representation other than those in this Stipulation and the Parties disclaim the existence of any such promise, warranty, inducement or representation.

71. This Stipulation is and shall be binding upon, and inure to the benefit of, the Parties and their respective agents, executors, administrators, heirs, successors, legal representatives and assigns, including, without limitation, any Person with which any Party hereto may merge or otherwise consolidate.

72. If any Party is required to give notice to another Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or facsimile or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Delaware Co-Lead Plaintiffs or  
Delaware Co-Lead Counsel:

Bernstein Litowitz Berger & Grossmann LLP  
1285 Avenue of the Americas  
New York, New York 10019  
Telephone: (212) 554-1400  
Facsimile: (212) 554-1444  
Email: markl@blbglaw.com  
Attn: Mark Lebovitch, Esq.

Grant & Eisenhofer P.A.  
123 Justison Street  
Wilmington, Delaware 19801  
Telephone: (302) 622-7000  
Facsimile: (302) 622-7100  
Email: mmcintyre@gelaw.com  
Attn: Megan D. McIntyre, Esq.

Labaton Sucharow LLP  
140 Broadway  
New York, New York 10005  
Telephone: (212) 907-0700  
Facsimile: (212) 818-0477  
Email: ISchochet@labaton.com  
Attn: Ira A. Schochet, Esq.

If to the Kinder Morgan Defendants  
and El Paso:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007  
Email: joseph.allerhand@weil.com  
Attn: Joseph S. Allerhand, Esq.

If to the Goldman Defendants: Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Telephone: (212) 558-4000  
Facsimile: (212) 558-3588  
Email: hardimanj@sullcrom.com  
Attn: John L. Hardiman, Esq.

If to the Individual Defendants: Wachtell Lipton Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Telephone: (212) 403-1000  
Facsimile: (212) 403-2000  
Email: PKRowe@WLRK.com  
Attn: Paul K. Rowe, Esq.

If to Defendant Douglas L. Foshee: Bouchard Margules & Friedlander, P.A.  
222 Delaware Avenue, Suite 1400  
Wilmington, Delaware 19801  
Telephone: (302) 573-3500  
Facsimile: (302) 573-3501  
Email: abouchard@bmf-law.com  
Attn: Andre G. Bouchard, Esq.

73. This Stipulation may not be amended or modified except in a writing signed by all counsel who have executed this Stipulation.

74. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

75. This Stipulation shall be binding when signed by all Parties, but the Settlement shall be effective only upon occurrence of the Effective Date.

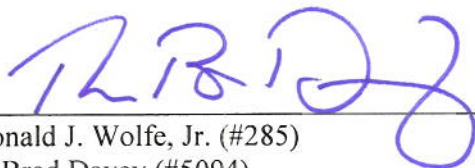
76. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile or by a .pdf. or tif. image of the signature transmitted via electronic mail. Signatures exchanged via facsimile or electronic mail shall have the same force and effect as originally signed signature pages.



DATED: September 7, 2012

Of Counsel:

Paul K. Rowe  
Stephen R. DiPrima  
Bradley R. Wilson  
WACHTELL LIPTON ROSEN & KATZ  
51 West 52nd Street  
New York, New York 10019  
(212) 403-1000

  
Donald J. Wolfe, Jr. (#285)  
T. Brad Davey (#5094)  
POTTER ANDERSON & CORROON LLP  
Hercules Plaza – 6th Floor  
1313 Market Street  
P.O. Box 951  
Wilmington, Delaware 19899  
(302) 984-6000

*Counsel for Defendants Douglas L. Foshee, Juan Carlos Braniff, David W. Crane, Robert W. Goldman, Anthony W. Hall, Jr., Thomas R. Hix, Ferrell P. McClean, Timothy J. Probert, Steven J. Shapiro, J. Michael Talbert, Robert F. Vagt, and John L. Whitmire*

Andre G. Bouchard (#2504)  
BOUCHARD MARGULES &  
FRIEDLANDER, P.A.  
222 Delaware Avenue, Suite 1400  
Wilmington, Delaware 19801  
(302) 573-3500

*Counsel for Defendant Douglas L. Foshee*

Of Counsel:

John L. Hardiman  
SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, New York 10004  
(212) 558-4000

Gregory V. Varallo (#841)  
Raymond J. DiCamillo (#3188)  
Kevin M. Gallagher (#5337)  
RICHARDS LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
(302) 651-7700

*Counsel for The Goldman Sachs Group, Inc. and Goldman, Sachs & Co.*

DATED: September 7, 2012

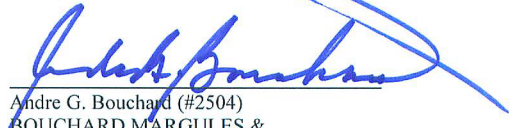
Of Counsel:

Paul K. Rowe  
Stephen R. DiPrima  
Bradley R. Wilson  
WACHTELL LIPTON ROSEN & KATZ  
51 West 52nd Street  
New York, New York 10019  
(212) 403-1000

---

Donald J. Wolfe, Jr. (#285)  
T. Brad Davey (#5094)  
POTTER ANDERSON & CORROON LLP  
Hercules Plaza – 6th Floor  
1313 Market Street  
P.O. Box 951  
Wilmington, Delaware 19899  
(302) 984-6000

*Counsel for Defendants Douglas L. Foshee,  
Juan Carlos Braniff, David W. Crane, Robert  
W. Goldman, Anthony W. Hall, Jr., Thomas R.  
Hix, Ferrell P. McClean, Timothy J. Probert,  
Steven J. Shapiro, J. Michael Talbert, Robert  
F. Vagt, and John L. Whitmire*



---

Andre G. Bouchard (#2504)  
BOUCHARD MARGULES &  
FRIEDLANDER, P.A.  
222 Delaware Avenue, Suite 1400  
Wilmington, Delaware 19801  
(302) 573-3500

*Counsel for Defendant Douglas L. Foshee*

Of Counsel:

John L. Hardiman  
SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, New York 10004  
(212) 558-4000

---

Gregory V. Varallo (#841)  
Raymond J. DiCamillo (#3188)  
Kevin M. Gallagher (#5337)  
RICHARDS LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
(302) 651-7700

*Counsel for The Goldman Sachs Group, Inc.  
and Goldman, Sachs & Co.*

DATED: September 7, 2012

Of Counsel:

Paul K. Rowe  
Stephen R. DiPrima  
Bradley R. Wilson  
WACHTELL LIPTON ROSEN & KATZ  
51 West 52nd Street  
New York, New York 10019  
(212) 403-1000

---

Donald J. Wolfe, Jr. (#285)  
T. Brad Davey (#5094)  
POTTER ANDERSON & CORROON LLP  
Hercules Plaza – 6th Floor  
1313 Market Street  
P.O. Box 951  
Wilmington, Delaware 19899  
(302) 984-6000

*Counsel for Defendants Douglas L. Foshee, Juan Carlos Braniff, David W. Crane, Robert W. Goldman, Anthony W. Hall, Jr., Thomas R. Hix, Ferrell P. McClean, Timothy J. Probert, Steven J. Shapiro, J. Michael Talbert, Robert F. Vagt, and John L. Whitmire*

---

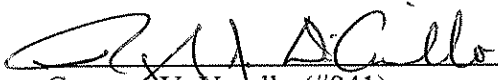
Andre G. Bouchard (#2504)  
BOUCHARD MARGULES &  
FRIEDLANDER, P.A.  
222 Delaware Avenue, Suite 1400  
Wilmington, Delaware 19801  
(302) 573-3500

*Counsel for Defendant Douglas L. Foshee*

Of Counsel:

John L. Hardiman  
SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, New York 10004  
(212) 558-4000

---



Gregory V. Varallo (#841)  
Raymond J. DiCamillo (#3188)  
Kevin M. Gallagher (#5337)  
RICHARDS LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
(302) 651-7700

*Counsel for The Goldman Sachs Group, Inc. and Goldman, Sachs & Co.*

Of Counsel:

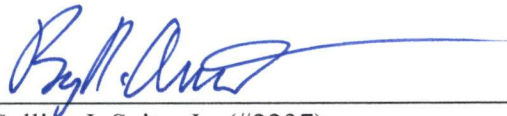
Joseph S. Allerhand  
Seth Goodchild  
Michael Bell  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
(212) 310-8000

Of Counsel:

Mark Lebovitch  
Amy Miller  
Jeremy Friedman  
BERNSTEIN LITOWITZ BERGER &  
GROSSMANN LLP  
1285 Avenue of the Americas  
New York, New York 10019  
(212) 554-1400

Of Counsel:

Ira A. Schochet  
Matthew C. Moehlman  
LABATON SUCHAROW LLP  
140 Broadway  
New York, New York 10005  
(212) 907-0700



Collins J. Seitz, Jr. (#2237)  
Bradley R. Aronstam (#5129)  
SEITZ ROSS ARONSTAM & MORITZ LLP  
100 S. West Street, Suite 400  
Wilmington, Delaware 19801  
(302) 576-1600

*Counsel for Defendants Kinder Morgan, Inc.,  
Sherpa Merger Sub, Inc., and Sherpa  
Acquisition, LLC and non-party El Paso LLC*

Stuart M. Grant (#2526)  
Megan D. McIntyre (#3307)  
GRANT & EISENHOFER P.A.  
123 Justison Street  
Wilmington, Delaware 19801  
(302) 622-7000

*Co-Lead Counsel for Delaware Plaintiffs and  
the Class*

Christine S. Azar (#4170)  
Charles B. Vincent (#5078)  
LABATON SUCHAROW LLP  
300 Delaware Avenue, Suite 1225  
Wilmington, Delaware 19801  
(302) 573-2530

*Co-Lead Counsel for Delaware Plaintiffs and  
the Class*

Of Counsel:

Joseph S. Allerhand  
Seth Goodchild  
Michael Bell  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
(212) 310-8000

---

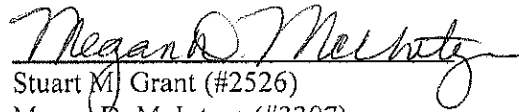
Collins J. Seitz, Jr. (#2237)  
Bradley R. Aronstam (#5129)  
SEITZ ROSS ARONSTAM & MORITZ LLP  
100 S. West Street, Suite 400  
Wilmington, Delaware 19801  
(302) 576-1600

*Counsel for Defendants Kinder Morgan, Inc.,  
Sherpa Merger Sub, Inc., and Sherpa  
Acquisition, LLC and non-party El Paso LLC*

Of Counsel:

Mark Lebovitch  
Amy Miller  
Jeremy Friedman  
BERNSTEIN LITOWITZ BERGER &  
GROSSMANN LLP  
1285 Avenue of the Americas  
New York, New York 10019  
(212) 554-1400

---

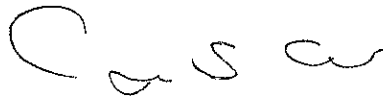
  
Stuart M. Grant (#2526)  
Megan D. McIntyre (#3307)  
GRANT & EISENHOFER P.A.  
123 Justison Street  
Wilmington, Delaware 19801  
(302) 622-7000

*Co-Lead Counsel for Delaware Plaintiffs and  
the Class*

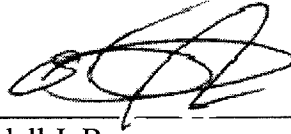
Of Counsel:

Ira A. Schochet  
Matthew C. Moehlman  
LABATON SUCHAROW LLP  
140 Broadway  
New York, New York 10005  
(212) 907-0700

---

  
Christine S. Azar (#4170)  
Charles B. Vincent (#5078)  
LABATON SUCHAROW LLP  
300 Delaware Avenue, Suite 1225  
Wilmington, Delaware 19801  
(302) 573-2530

*Co-Lead Counsel for Delaware Plaintiffs and  
the Class*



---

Randall J. Baron  
ROBBINS GELLER RUDMAN  
& DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, California 92101  
(619) 231-1058

---

Jeffrey W. Golan  
Jeffrey B. Gittleman  
BARRACK, RODOS & BACINE  
3300 Two Commerce Square  
2001 Market Street  
Philadelphia, Pennsylvania 19103  
(215) 963-0838

*Counsel for Texas Plaintiffs*

Solely with respect to ¶ 43 of this Stipulation:

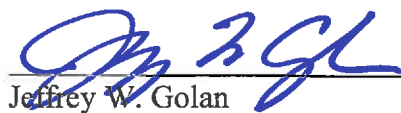
---

Mark Levine  
STULL, STULL & BRODY  
6 East 45th Street  
New York, New York 10017  
(516) 687-7230

*Counsel for New York Plaintiff*

---

Randall J. Baron  
ROBBINS GELLER RUDMAN  
& DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, California 92101  
(619) 231-1058



---

Jeffrey W. Golan  
Jeffrey B. Gittleman  
BARRACK, RODOS & BACINE  
3300 Two Commerce Square  
2001 Market Street  
Philadelphia, Pennsylvania 19103  
(215) 963-0838

*Counsel for Texas Plaintiffs*

Solely with respect to ¶ 43 of this Stipulation:

---

Mark Levine  
STULL, STULL & BRODY  
6 East 45th Street  
New York, New York 10017  
(516) 687-7230

*Counsel for New York Plaintiff*

---


Randall J. Baron  
ROBBINS GELLER RUDMAN  
& DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, California 92101  
(619) 231-1058

---

Jeffrey W. Golan  
Jeffrey B. Gittleman  
BARRACK, RODOS & BACINE  
3300 Two Commerce Square  
2001 Market Street  
Philadelphia, Pennsylvania 19103  
(215) 963-0838

*Counsel for Texas Plaintiffs*

Solely with respect to ¶ 43 of this Stipulation:

  
Mark Levine  
STULL, STULL & BRODY  
6 East 45th Street  
New York, New York 10017  
(516) 687-7230

*Counsel for New York Plaintiff*