

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

IN RE SEMGROUP ENERGY PARTNERS, L.P.,  
SECURITIES LITIGATION

CASE NO. 08-MD-1989-GKF-FHM

**SUPPLEMENTAL SUBMISSION IN SUPPORT OF LEAD PLAINTIFF’S MOTION TO  
DEPOSIT CURRENT AND FUTURE PROCEEDS FROM THE SEMGROUP CLASS’S  
CLAIM IN THE LEHMAN SIPA PROCEEDING INTO THE SETTLEMENT FUND  
AND FOR ATTORNEYS’ FEES AND EXPENSES RELATED THERETO**

Court-appointed Lead Plaintiff, Harvest Fund Advisors LLC (“Lead Plaintiff”), by and through its undersigned counsel, respectfully submits this supplemental submission in support of its previously filed Motion to Deposit Current and Future Proceedings from the SemGroup Class’s Claim in the Lehman SIPA Proceeding into the Settlement Fund and for Attorneys’ Fees and Expenses Related Thereto (ECF Nos. 380-381) (“Motion”).<sup>1</sup> For the reasons discussed herein, only this Court has jurisdiction over the matters raised in Lead Plaintiff’s Motion.

**I. The Court’s Continuing Jurisdiction Over this Litigation is Clearly Set Forth in Prior Court Orders**

This Court has jurisdiction to consider the matters raised in Lead Plaintiff’s Motion and to issue an order in connection therewith, pursuant to its explicit retention of jurisdiction in the Final Judgment and Order of Dismissal with Prejudice dated October 5, 2011 (ECF No. 361) (“Judgment”) and the Order Approving Distribution Plan and Authorizing Distribution of Settlement Proceeds dated July 8, 2013 (ECF No. 375) (“Distribution Order”). *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381-382 (1994) (a court may retain continuing jurisdiction over a settlement agreement if such intention is written into the court order); *Morris*

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion.

*v. City of Hobart*, 39 F.3d 1105, 1110 (10th Cir.1994) (“A district court can, [], retain jurisdiction over a settlement agreement if the order of dismissal shows an intent to retain jurisdiction or incorporates the settlement agreement.”).

Specifically, pursuant to the Court’s Judgment which, among other things, approved the Settlement of the Litigation:

Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of the Settlement and any award or distribution of the Settlement Fund; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys’ fees, interest, and expenses in the Litigation; (d) all parties to the Stipulation for the purpose of construing, enforcing, and administering the Stipulation; and (e) exclusive jurisdiction to enforce the provisions of the bar orders in this Judgment.

*See* Judgment at p. 5, ¶15. This retention of jurisdiction is also explicitly set forth in the Court’s Distribution Order, which authorized distribution of the settlement proceeds to eligible SemGroup Class Members:

WHEREAS, this Court has retained jurisdiction of this Litigation for the purpose of considering any further application or matter which may arise in connection with the administration and execution of the Settlement and the processing of Claim Forms and the distribution of the Net Settlement Proceeds to the Authorized Claimants[.]

*See* Distribution Order at p. 2. Moreover, the Distribution Order clearly demonstrates that the Court’s jurisdiction does not conclude with the distribution of the settlement proceeds, as it further orders that the Court “retain jurisdiction over any further application or matter which may arise in connection with this Litigation . . . .”. *See Id.* at p. 6.

Lead Plaintiff’s Motion seeks the Court’s authorization to deposit the proceeds received to date, as well as any future proceeds, from the SemGroup Class’s Claim in the Lehman SIPA Proceeding into the Settlement Fund for the benefit of the SemGroup Class. The Settlement Fund created in connection with the Settlement of this Litigation remains open and currently

holds proceeds remaining following the initial distribution as a result of uncashed checks as well as interest and dividends earned on the settlement units. Through its Motion, Lead Plaintiff seeks to add additional monies to the Settlement Fund for a future distribution to the SemGroup Class. The relief sought by Lead Plaintiff falls within the Court's continuing jurisdiction of this Litigation "for the purpose of considering any further application or matter which may arise in connection with the administration and execution of the Settlement and the processing of Claim Forms and the distribution of the Net Settlement Proceeds to the Authorized Claimants." *See* Distribution Order at p. 2. Similarly, Lead Plaintiff's request for approval of attorneys' fees and expenses to Lead Counsel from the additional proceeds obtained for the SemGroup Class falls within the Court's continuing jurisdiction to "hear[] and determin[e] applications for attorneys' fees, interest, and expenses in the Litigation." *See* Judgment at p. 5, ¶15.

Accordingly, pursuant to the plain language of the Judgment and Distribution Order, this Court has continuing jurisdiction over matters arising in connection with this Litigation and the authority to order the relief sought in Lead Plaintiff's Motion.

## **II. Case Law Further Supports this Court's Authority to Order the Relief Sought in Lead Plaintiff's Motion**

Courts routinely retain jurisdiction in class actions after judgment is entered and throughout the claims administration process. For example, the court in *In re Lease Oil Antitrust Litig. (No. II)*, following final settlement approval and distribution of settlement proceeds and "pursuant to [the court's] explicit retention of jurisdiction in the final judgments," granted counsel's motion for reimbursement of additional expenses incurred in overseeing the administration process as well as claimant's motion for reconsideration of his previously denied claim, remanding the claim back to the administrator for payment. MDL No. 1206, 2007 WL 4377835, at \*3 (S.D. Tex. Dec. 12, 2007). *See also, e.g., In re Wachovia Corp. "Pick-A-*

*Payment” Mortg. Mktg. and Sales Practice Litig.*, No. 5:09–md–02015–JF, 2012 WL 5868931, at \*1 (N.D. Cal. Nov. 19, 2012) (ruling on various motions arising from the settlement of a class action, including one involving a class member’s opt-out, pursuant to the court’s express retention of “continuing jurisdiction to interpret and enforce the settlement agreement”); *Gates v. Rohm and Haas Co.*, No. 06-1743, 2011 WL 1103683, at \*2 (E.D. Pa. Mar. 24, 2011) (authorizing distribution of unclaimed funds remaining in the settlement fund to five charitable organizations and noting “[i]n its approval order, the Court retained jurisdiction over the performance of the Agreement”); *Marino v. Pioneer Edsel Sales, Inc. et al.*, 349 F.3d 746, 752-753 (4th Cir. 2003) (finding district court had jurisdiction over fee dispute arising from class action settlement because the final order provided that the court “shall have and retain exclusive jurisdiction with respect to . . . any applications or disputes concerning attorney’s fees . . . which may arise”); *In re Vaso Active Pharm. Sec. Litig.*, No. 04-10708 (RCL), slip op. at 1 (D. Mass. Jan 22, 2008) (authorizing sale of settlement notes for less than their original face amount and noting that the court “retained jurisdiction of th[e] Action for the purpose of considering any further application or matter which may rise . . .”).<sup>2</sup>

### III. CONCLUSION

Based on the foregoing, this Court has continuing jurisdiction over the matters set forth in Lead Plaintiff’s Motion. Accordingly, Lead Plaintiff respectfully requests that the Court approve the Motion and enter the proposed order previously submitted to the Court.

Dated: September 25, 2015

**KESSLER TOPAZ  
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s/ Stuart L. Berman  
Stuart L. Berman (*pro hac vice*)

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<sup>2</sup> The slip opinion referenced above is attached hereto as Exhibit A.

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