IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 12

IN RE KINDER MORGAN, INC., SHAREHOLDERS LITIGATION	)	
(This Order Relates to All Actions.)	)	Consolidated Case No. 06-C-801

JOURNAL ENTRY AND ORDER APPROVING SETTLEMENT AND PLAN OF ALLOCATION

On the 12th day of November, 2010, this action came before the Court for a final settlement hearing in the Robinson Courtroom at Washburn University School of Law. The Lead Plaintiff and Class Representative, Dr. Douglas Geiger, appeared by Pamela S. Tikellis, Diane A. Nygaard, Randall J. Baron, Robert J. Kriner, Jr., Scott M. Tucker, and Rick Atwood, Jr. John R. Hamilton appeared as Liaison Counsel for the Plaintiffs. Defendants Richard D. Kinder, C. Park Shaper, Michael C. Morgan, William V. Morgan, Fayez Sarofim, Steven J. Kean, Kimberly Dang, David Kinder, Joseph Listengart and James Street, appeared by Joseph S. Allerhand, James L. Eisenbrandt, and Gary D. White, Jr., their attorneys. Defendants AIG Financial Products Corp. and AIG Knight LLC, appeared by Amelia T.R. Starr, their attorney. Defendants Carlyle/Riverstone Global Energy and Power Fund III, L.P., and Carlyle Partners IV, L.P., appeared by Michael Thompson and J. Christian Word, their attorneys. Defendants The Goldman Sachs Group, Inc., GS Global Infrastructure Partners I, L.P., GS Capital Partners V Institutional, L.P., and GS Capital Partners V Fund, L.P., appeared by Kenneth B. Forrest and Michael Thompson, their attorneys. R. Patrick Riordan appeared as Liaison Counsel for the Defendants. David DeVeau, Corporate Counsel for Kinder Morgan also appeared. There were no other appearances.

I. INTRODUCTION

The parties to this class action have agreed to settle all of the claims asserted against the Defendants and other Released Persons for $200 million. The terms and conditions of the proposed settlement are set forth in a Stipulation of Settlement dated September 7, 2010. An Order Preliminarily Approving Settlement, Notice and Finally Certifying a Class was

entered by this Court on September 8, 2010. Subsequently, Notices of Pendency and Proposed Settlement of Class Action which set forth the deadlines for the filing of objections, the deadline for the filing of requests for exclusions, the date of the final settlement hearing, and other relevant information were mailed to more than 100,000 persons or entities. In addition, Summary Notices which contained similar information, were published in *The Wall Street Journal* and in the *Investor's Business Daily*.

II. FINDINGS OF FACT

1. Prior to May 30, 2007, Kinder Morgan, Inc. was a Kansas corporation with its executive offices located in Houston, Texas.

2. At that time, Kinder Morgan, Inc. was one of the largest energy transportation and storage companies in North America.

3. The corporation transported, stored and handled energy products such as natural gas, refined petroleum products, crude oil, ethanol, coal and carbon dioxide.

4. In addition, Kinder Morgan, Inc. was the general partner of, and had a significant limited partnership interest in, Kinder Morgan Energy Partners, L.P., then one of the largest publicly traded pipeline master limited partnerships in the United States.

5. During the period May 28, 2006 through May 30, 2007, the Board of Directors of Kinder Morgan, Inc., consisted of the following individuals: Richard D. Kinder, Stewart A. Bliss, Edward H. Austin, Jr., Charles W. Battey, William J. Hybl, Ted A. Gardner, Michael Morgan, Edward Randall III, Fayez Sarofim, James M. Stanford, H.A. True III, and Douglas W.G. Whitehead.

6. Richard D. Kinder was President and Chief Executive Officer of Kinder Morgan, Inc.

7. In addition, Mr. Kinder was the only member of the Board of Directors of Kinder Morgan, Inc. who was also an employee or an officer of the corporation.

8. On May 28, 2006, the Board of Directors of Kinder Morgan, Inc. held a special meeting by telephone at the request of Richard Kinder.

9. Prior to the meeting, Mr. Kinder delivered a letter to the Board of Directors.

10. In the letter, Richard Kinder, C. Park Shaper, David Kinder, Joseph Listengart, Kimberly Dang, Steven J. Kean, James Street, Michael Morgan, Fayez Sarofim, and several private equity firms offered $100 per share to purchase all of the outstanding shares of common stock of Kinder Morgan, Inc. (The Court will refer to the group of investors as the "Buyout Group.")

11. In response, the members of the Board of Directors who were not members of the Buyout Group established a Special Committee.

12. Directors Stewart Bliss, Edward Austin, and Ted Gardner (none of whom were members of the Buyout Group) were appointed to serve on the Special Committee.

13. The Special Committee was delegated the power and authority to make decisions and to take action in response to the buyout proposal.

14. Subsequently, the Special Committee retained the law firm of Skadden, Arps, Slate, Meagher & Flom LLP as independent legal counsel.

15. The Special Committee also retained Morgan Stanley & Co., Incorporated and The Blackstone Group L.P. as independent financial advisors.

16. On May 29, 2006, the private offer to purchase all of the publicly owned shares of the corporation for $100 per share was announced in a press release issued by Kinder Morgan, Inc.

17. The following day, a lawsuit challenging the proposed transaction was filed in Texas, and on June 1, 2006, the present action was filed in the District Court of Shawnee County, Kansas.

18. Between May 30, 2006 and June 26, 2006, the following putative class action lawsuits challenging the proposed transaction were filed in Texas: (a) *Mary Crescente v. Kinder Morgan, Inc., et al.,* Cause No. 2006-33011; (b) *Robert Kemp v. Kinder Morgan, Inc., et al.,* Cause No. 2006-33015; (c) *Sandra Donnelly v. Kinder Morgan, Inc., et al.,* Cause No. 2006-3304; (d) *Dean Drulias v. Kinder Morgan, Inc., et al.,* Cause No. 2006-34594; (e) *David Zeitz v. Kinder Morgan, Inc., et al.,* Cause No. 2006-34520; (f) *Robert L. Dunn v. Kinder Morgan, Inc., et al.,* Cause No. 2006-36184; (g) *CWA/ITU Negotiated Pension Plan v. Kinder Morgan, Inc., et al.,* Cause No. 2006-39364; and, (h) *J. Robert Wilson v. Kinder Morgan, Inc., et al.,* Cause No. 2006-40027.

19. Between June 1, 2006 and June 13, 2006, the following putative class action lawsuits challenging the proposed transaction were filed in Kansas: (a) *Morter v. Richard D. Kinder, et al.,* Case No. 06 C 801; (b) *Hodge v. Kinder Morgan, Inc., et al.,* Case No. 06 C 813; (c) *Bolton v. Kinder Morgan, Inc., et al.,* Case No. 06 C 837; (d) *Teamsters Joint*

Counsel No. 53 Pension Fund v. Richard D. Kinder, et al., Case No. 06 C 841; (e) *Geiger v. Austin, et al.,* Case No. 06 C 854; (f) *Land v. Austin, et al.,* Case No. 06 C 853; and, (g) *Cohen v. Kinder Morgan, Inc., et al.,* Case No. 06 C 864.

20. On June 23, 2006, this Court entered an order consolidating all of the Kansas cases into the present action.

21. Subsequently, all of the Texas actions were consolidated in the District Court of Harris County, Texas.

22. On August 1, 2006, this Court appointed Dr. Douglas Geiger and Robert Land to serve as Interim Lead Plaintiffs. At the same time, Pamela S. Tikellis of Chimicles & Tikellis LLP, Wilmington, Delaware, and Diane A. Nygaard of The Nygaard Law Firm (now Kenner, Schmitt, Nygaard, LLC) Overland Park, Kansas, were appointed to serve as Interim Lead Plaintiffs' Counsel.

23. On August 7, 2006, the District Court of Harris County, Texas appointed Randall Baron of Robbins Geller Rudman & Dowd LLP (then known as Lerach Coughlin Stoia Geller Rudman & Robbins LLP), San Diego, California, to serve as Interim Lead Plaintiffs' Counsel in the Texas action.

24. Between May 28, 2006 and August 22, 2006, the Special Committee and its advisors performed a due diligence review, evaluated the buyout proposal, conducted an independent valuation of the corporation, conducted a "market check" in an effort to solicit competing bids, considered alternative transactions, and ultimately commenced negotiations with the Buyout Group.

25. On August 22, 2006, the Special Committee tentatively accepted an offer from the Buyout Group for $107.50 per share for all of the outstanding shares of Kinder Morgan, Inc., and recommended that the Board of Directors approve the offer.

26. On August 27, 2006, the independent members of the Board of Directors of Kinder Morgan, Inc. unanimously voted to accept the offer of $107.50 per share.

27. The offer was incorporated into the terms of a Merger Agreement, which provided that the Buyout Group would acquire all of the outstanding shares of common stock of Kinder Morgan, Inc. (with the exception of those shares owned by members of the Buyout Group) for $107.50 per share.

28. On August 28, 2006, it was publicly announced that the Board of Directors had approved the Merger Agreement, subject to shareholder approval.

29. A special meeting of the shareholders was scheduled to be held December 19, 2006, for the purpose of voting on the proposed transaction.

30. Following the public announcement, the Interim Lead Plaintiffs in the present action filed a Consolidated and Amended Class Action Petition, in which they alleged that the inside members of the Buyout Group breached their fiduciary duties owed to other shareholders and that the non-management Defendants aided and abetted in the fiduciary breaches.

31. On September 8, 2006, the Plaintiffs in the Texas action filed a Consolidated Class Action Petition setting forth similar claims.

32. On October 2, 2006, the Plaintiffs in this action filed a Second Consolidated and Amended Class Action Petition.

33. Throughout this litigation, the Defendants have continued to vigorously deny any allegations of wrongdoing.

34. On October 12, 2006, after consultation with the District Court of Harris County, Texas, this Court issued a Memorandum Decision and Order encouraging the parties to agree upon a Special Master to serve in both the Kansas and Texas actions in order to prevent duplication of efforts and to reduce the possibility of inconsistent decisions.

35. On November 21, 2006, this Court appointed former Delaware Supreme Court Justice Joseph T. Walsh to serve as Special Master.

36. On December 6, 2006, the District Court of Harris County, Texas, also appointed former Justice Walsh to serve as Special Master.

37. On November 15, 2006, a Definitive Schedule 14A (the "Proxy Statement") and Schedule 13e-3 documents were filed with the Securities and Exchange Commission in connection with the special shareholders meeting scheduled for December 19, 2006.

38. The Proxy Statement was mailed to shareholders on or about November 17, 2006, and explained the statutory right of shareholders to dissent and/or to seek appraisal under K.S.A.17-6712.

39. On November 21, 2006, a Third Consolidated and Amended Class Action Petition was filed in this action.

40. On December 9, 2006, Interim Lead Plaintiffs' Counsel in the Kansas action and the Texas action jointly moved to enjoin the shareholder vote on the merger.

41. Following a joint hearing held in New York City, the Special Master issued a Report and Recommendation on December 18, 2006, in which he recommended that the request for injunctive relief be denied. In his Report and Recommendation, the Special Master determined "that the Special Committee had functioned effectively, was well informed, and made its recommendation in good faith." Significantly, the Special Master determined that the Special Committee's "decision recommending the merger price of $107.50 per share enjoys the protection of the business judgment rule."

42. The Special Master's recommendations were accepted by this Court, and the special meeting of the shareholders was held on December 19, 2006.

43. At the special meeting, the affirmative vote of at least two-thirds of the outstanding shares of common stock was required to approve the proposed merger.

44. After the votes were counted, approximately 97 million shares out of 134 million shares voted in favor of the adoption of the Merger Agreement.

45. The merger subsequently closed on May 30, 2007.

46. On January 25, 2008, the Plaintiffs in this action and in the Texas action jointly moved for certification of a single nationwide class.

47. From January 2008 to June 2008, the parties conducted discovery related to the issue of class certification.

48. On September 11, 2008, a hearing was held before the Special Master in New York City on the issue of class certification.

49. At the hearing, the Special Master encouraged the parties to select one jurisdiction for the litigation to proceed.

50. On August 22, 2008, the Special Master entered agreed orders in both this action and the Texas action dismissing all of the claims asserted against Defendants Kinder Morgan, Inc., Charles W. Battey, William J. Hybl, Edward Randall III, James Stanford, H.A. True III, and Douglas Whitehead without prejudice.

51. On September 2, 2008, the Special Master entered an agreed order in this action and in the Texas action dismissing all claims against the members of the Special Committee without prejudice.

52. On October 13, 2008, the Lead Plaintiffs in this action and in the Texas action notified the Special Master that they had decided to pursue their remaining claims in Kansas.

53. By agreed orders entered on October 31, 2008 and November 15, 2008, the Special Master "non-suited" the claims asserted against Knight Acquisition Co. in the Kansas and Texas actions.

54. On November 19, 2008, the District Court of Harris County, Texas, stayed the Texas action in all respects pending entry of a final judgment in this action.

55. The parties agreed that after all rights of appeal have been exhausted in Kansas, the Plaintiffs will dismiss the Texas action with prejudice.

56. On January 9, 2009, the Special Master issued a Report and Recommendation in which he recommended the certification of a class pursuant to K.S.A. 60-223(a) and 60-223(b)(3). In addition, the Special Master recommended that Dr. Douglas Geiger and J. Robert Wilson be appointed to serve as Class Representatives.

57. On February 20, 2009, an Agreed Order was entered by this Court in which it accepted the Special Master's recommendations to certify an "opt-out" class, and it appointed Dr. Geiger and Mr. Wilson as Class Representatives.

58. The Agreed Order defined the Class as follows:

> All holders of Kinder Morgan, Inc. common stock, during the period of August 28, 2006 through May 30, 2007, and their transferees, successors and assigns. Excluded from the Class are defendants, members of their immediate families or trusts for the benefit of defendants or their immediate families, and any majority-owned affiliates of any defendants.

59. On February 20, 2009, the parties retained the Honorable William J. Cahill, a retired judge from San Francisco, California, to serve as Mediator in this action. Prior to that time, the parties had engaged in negotiations but were unsuccessful in resolving their disputes.

60. A formal mediation session was conducted by Judge Cahill in Denver, Colorado, on March 31, 2009. Although an agreement was not reached at that time, the parties agreed to remain open to resuming the mediation at a later date.

61. On April 29, 2009, an in-person status conference was held by this Court to discuss with counsel the course of future discovery, the status of the Texas action, the role of the Special Master, alternative dispute resolution, and other procedural issues.

62. On June 2, 2009, the Plaintiffs filed a Fourth Consolidated and Amended Class Action Petition.

63. On June 22, 2009, Justice Walsh was released from further duties as Special Master with the appreciation of this Court for his service.

64. After completion of additional discovery, the Defendants filed five (5) separate motions for summary judgment on July 16, 2010.

65. In their motions for summary judgment, the Defendants contend that the business judgment rule should be the applicable standard of review in this action.

66. In addition, several of the non-management members of the Buyout Group contend that this Court lacks personal jurisdiction over them.

67. After reviewing the motions for summary judgment, Judge Cahill contacted the parties to discuss various possibilities for resolving this matter.

68. In light of the pendency of the motions for summary judgment, Judge Cahill believed a good opportunity existed for the parties to reach a settlement.

69. Judge Cahill proposed that the parties consider settling this action for $200 million.

70. In Judge Cahill's opinion, the timing for settlement was optimal and a $200 million settlement would provide a significant benefit to the Class Members.

71. Judge Cahill also believed that it was unlikely the parties would be able to come to a resolution on better terms at some later point in time.

72. Furthermore, Judge Cahill believed that the risks associated with the summary judgment motions filed by the Defendants were substantial in light of the Special Master's view that the business judgment rule is applicable in this action.

73. As Judge Cahill explained, the Class Members would receive no recovery should the Defendants prevail on their summary judgment motions or at trial. On the other hand, Judge Cahill pointed out that the Defendants could be exposed to a significant judgment should the Plaintiffs survive summary judgment and ultimately prevail at trial.

74. After considering Judge Cahill's proposal, J. Robert Wilson decided not to accept the settlement proposal at that point in time.

75. However, Dr. Douglas Geiger decided that the settlement proposal in the amount of $200 million was in the best interests of the Class.

76. On August 12, 2010, Dr. Geiger and the Defendants agreed to present the proposed settlement to this Court for its approval.

77. The Court was informed of the proposed settlement on August 25, 2010.

78. On September 7, 2010, the Parties executed a Stipulation of Settlement and submitted it to this Court for review.

79. After reviewing the terms of the proposed settlement and the documents that were submitted in support of the Stipulation of Settlement, the Court entered an Order Preliminarily Approving Settlement, Notice and Finally Certifying a Class on September 8, 2010.

80. In the Order Preliminarily Approving Settlement, the Court defined the Class to be all holders of Kinder Morgan, Inc. common stock during the period of May 29, 2006 through May 30, 2007, and their transferees, successors, and assigns. Excluded from the class definition were the Defendants and members of their immediate families, trusts for the benefit of any Defendants or their immediate family members, and any majority-owned affiliates of any of the Defendants. Also excluded from the class definition were those persons who timely and validly requested exclusion by October 26, 2010.

81. The Court further found, for the purposes of the proposed settlement, that each element required for certification of the Class pursuant to K.S.A. 60-223(a) and (b)(3) had been satisfied. Specifically, the Court found that the number of class members is so numerous that joinder would be impracticable; that there are questions of law and fact common to all Class Members; that the claims of Dr. Douglas Geiger, as Class Representative, are typical of the claims of all Class Members; that Dr. Geiger has and will continue to fairly and adequately represent the interests of all Class Members; that the questions of law and fact common to the Class Members predominate over any questions affecting only individual members of the Class; and, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

82. The Court also preliminarily found that the proposed settlement was fair, reasonable and adequate, subject to further review at the final settlement hearing.

83. The Court authorized Lead Plaintiff's Counsel to retain The Garden City Group, Inc., of Melville, New York, to serve as the Claims Administrator and directed it to publish

a Summary Notice of Settlement in the national editions of the *Wall Street Journal* and the *Investor's Business Daily*.

84. The Court further ordered the Claims Administrator to send a copy of the approved Notice by first class mail to each member of the Class who could be reasonably identified and to post the Stipulation of Settlement, the Notice, the Claim Form and other relevant documents on its website.

85. In addition, the Court ordered the Claims Administrator to use reasonable efforts to give notice to nominee owners such as banks, brokerage firms and other persons who may have owned Kinder Morgan, Inc. common stock during the period May 29, 2006 through May 30, 2007.

86. The Court also set October 26, 2010, as the deadline for the filing of objections and requests for exclusion.

87. The Court found that any Class Member who failed to timely and validly request exclusion from the Class by October 26, 2010, would be bound by all of the rulings, determinations and judgments in this action, and would be barred from commencing, maintaining or prosecuting any action against the Defendants or other persons to be released if the proposed settlement is adopted.

88. The Court further found any Class Member who filed a valid objection to the proposed settlement in a timely manner would be permitted to appear at the final settlement hearing, either in person or by counsel.

89. Pending the Court's determination regarding the final approval of the proposed settlement, all proceedings and related proceedings other than those that may be necessary to carry out the terms and conditions of the proposed settlement have been stayed.

90. On September 17, 2010, the Claims Administrator sent Claim Packets to persons or entities identified as holding Kinder Morgan, Inc. stock during the time period in question.

91. On the same day, a Summary Notice was published in both *The Wall Street Journal* and the *Investor's Business Daily.*

92. The Claims Administrator also established a toll-free Interactive Voice Response system to accommodate potential claimants.

93. In addition, the Claims Administrator placed a copy of the Notice, Proof of Claim, Stipulation of Settlement, and other documents relevant to the proposed settlement on its website.

94. Similar information was also placed on the Shawnee County District Court's website.

95. To date, more than 100,000 Claim Packets have been sent to potential Class Members by first-class mail.

96. As of October 26, 2010, the Claims Administrator had received requests from 11 shareholders, representing 3,934 shares, for exclusion from the proposed settlement.

97. On October 19, 2010, Philip R. Bright of Tucson, Arizona, filed a letter objecting to the fact that those who sold their stock in Kinder Morgan, Inc. prior to May 30, 2007, would not be included in the settlement allocation.

98. Similarly, on October 25, 2010, Joseph E. Stocke of Exton, Pennsylvania, filed a letter objecting to the fact that those who sold their stock prior to May 30, 2007, would not be included in the settlement allocation.

99. On October 26, 2010, an objection to the request for attorney fees was filed on behalf of Mario Lemieux of Pittsburgh, Pennsylvania.

100. On October 29, 2010, Ernest Browne, Jr., an attorney from Beaumont, Texas, also filed an objection to the request for attorney fees.

101. In a letter decision dated November 2, 2010, the Court struck Mr. Browne's objection from the record because it was filed after the deadline without seeking an extension or leave to file out of time.

102. On November 2, 2010, J. Robert Wilson withdrew as a Class Representative.

103. Moreover, Mr. Lemieux withdrew his objection on November 9, 2010.

104. Although their objections were addressed at the final settlement hearing, neither Mr. Bright nor Mr. Stocke were in attendance.

III. CONCLUSIONS OF LAW

A. STANDARD OF REVIEW

In Kansas, there is a strong public policy supporting out-of-court settlements of disputed claims. See *Tilzer v. Davis, Bethune & Jones, LLC*, 288 Kan. 477, 496, 204 P.3d 617 (2009); *Bright v. LSI Corp.*, 254 Kan. 853, 860, 869 P.2d 686 (1994); and, *Kennedy v. City of Sawyer*, 228 Kan. 439, 461, 618 P.2d 788 (1980). However, K.S.A. 60-223(e) provides that "a certified class action may be settled, voluntarily dismissed or compromised

only with the court's approval." "Although the standards and procedures for review and approval of settlements vary, in general the judge is required to scrutinize the proposed settlement to ensure that it is fair to the persons whose interests the court is to protect." *Manual for Complex Litigation (Fourth)*, 13.14 (2010).

"To determine whether a proposed settlement is fair, reasonable, and adequate, the court must examine whether the interests of the class are better served by the settlement than by further litigation." *Manual for Complex Litigation (Fourth)*, 21.61. "The lack of significant opposition may mean that the settlement meets the requirements of fairness, reasonableness, and adequacy." *Id.* Likewise, "[t]here is usually an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval." *Newberg on Class Actions (Fourth)*, 11:41 (2010).

Nevertheless, a trial court "must make an independent analysis of the settlement terms." *Manual for Complex Litigation (Fourth)*, 21.61. In doing so, "the judge must adopt the role of a skeptical client and critically examine the class certification elements, the proposed settlement terms, and procedures for implementation." *Id.* "The test is whether the settlement is adequate and reasonable and not whether a better settlement is conceivable." *Williams Foods, Inc. v. Eastman Chemical Co.*, 2001 WL 1298887 at *2 (Kan.Dist.Ct. – August 8, 2001).

"The criteria generally utilized in determining whether a settlement is fair, reasonable, and adequate are:

1. likelihood of recovery, or likelihood of success;

2. amount and nature of discovery or evidence;

3. settlement terms and conditions;

4. recommendation and experience of counsel;

5. future expense and likely duration of litigation;

6. recommendation of neutral parties, if any;

7. number of objectors and nature of objections; and

8. the presence of good faith and the absence of collusion."

Newberg on Class Actions (Fourth), 11:43. See also *Manual for Complex Litigation (Fourth)*, 21.62.

B. APPLICATION OF CRITERIA TO THIS ACTION

1. Likelihood of Recovery or Success

In the present action, the Class Members would be facing several significant legal and factual hurdles if the proposed settlement is not approved. In particular, they would be faced with confronting a finding by the Special Master, a respected former member of the Delaware Supreme Court, that the business judgment rule is applicable to this action. If this Court ultimately agreed with the Special Master, it would be extremely difficult for the claims of the Class Members to survive summary judgment. Moreover, even if entire fairness is found to be applicable in this action, it is possible that the burden of proof at trial would shift back to the Class Members in light of the effective work of the Special Committee, the unanimous approval of the buyout proposal by the independent members of

the Board of Directors, and the ratification of the Merger Agreement by a vote of more than two-thirds of the outstanding shares of Kinder Morgan, Inc. stock.

If the Class Members can survive summary judgment and establish liability at trial, they still would be required to prove that they suffered damages as a result of the alleged breach of fiduciary duties and/or aiding and abetting such breaches. Although it is possible that a jury could return a verdict in excess of $200 million, it is also possible that a jury could find the price of $107.50 was fair. This is a realistic risk in light of the conflicting expert opinions regarding valuation and the fact that civil juries in Shawnee County, Kansas, are generally conservative. Thus, the Court concludes that this factor weighs in favor of approving the proposed settlement.

2. Amount and Nature of Discovery

Since this action was originally filed on June 1, 2006, the parties have been involved in extensive discovery in three (3) separate phases. The first phase of discovery focused primarily on the issue of whether the Plaintiffs were entitled to injunctive relief to halt the vote of the shareholders on the buyout proposal. The second phase of discovery focused primarily on factual questions and the issue of class certification. The third phase of discovery focused primarily on the multiple expert witnesses designated by the parties in support of their respective claims and defenses.

Although it does not have a "crystal ball" to see into the future, the Court does have the benefit of a comprehensive discovery record to assist it in deciding the fairness, reasonableness, and adequacy of the proposed settlement. Based on a review of the

deposition transcripts, the expert opinions and the documents produced during discovery, the Court is convinced that the proposed settlement is well within the range of reasonableness. In fact, it appears unlikely that the Class Members could recover more money if this case were presented to a jury. Thus, the Court concludes that this factor weighs in favor of approving the proposed settlement.

3. Settlement Terms and Conditions

If approved, the proposed settlement would create a common fund of $200 million. Even though the exact definition of the term may be debated, this amount of money would clearly constitute a "mega-fund" by any definition. This settlement is one of the largest settlements, if not the largest, in Kansas history. After deduction of litigation expenses and reasonable attorney fees, a substantial Net Settlement Fund will be distributed on a pro rata basis to Class Members who file claims in a timely manner.

Based on a review of the Stipulation of Settlement and the supporting documents, this Court is convinced that the terms and conditions of the proposed settlement are in the best interests of the entire Class. Furthermore, it is important to recognize that the rights of those who do not desire to participate in the proposed settlement are also adequately protected because they had the option to exclude themselves pursuant to K.S.A. 60-223(b)(3) and K.S.A. 60-223(c)(2)(B)(v). It is also significant that out of thousands of potential Class Members who received Notice of the proposed settlement, only 11 requests for exclusion (representing 3,954 shares) were filed prior to the deadline established by the Court. Thus, the Court concludes that this factor weighs in favor of approving the settlement.

4. Recommendations and Experience of Counsel

The attorneys representing the various parties in this action have excellent reputations and are very experienced in handling complex litigation, including class actions. For more than four (4) years, the attorneys have zealously advocated on behalf of their respective clients. Furthermore, they have demonstrated to this Court that they have the ability to appropriately analyze the difficult factual questions and legal issues presented in this action. As such, they are in a unique position to comment regarding the benefits and risks of continued litigation.

At the final settlement hearing, it was represented to the Court that the proposed settlement for $200 million is believed to be the largest common fund to be recovered in a post-merger litigation case. The attorneys also candidly advised the Court of the strengths and weaknesses of their respective claims and defenses, as well as their evaluation of the practical consequences of continued litigation. Although the attorneys continued to disagree on the issue of liability, they were unanimous in their endorsement of the fairness of the proposed settlement. Thus, the Court concludes that this factor weighs in favor of approving the settlement.

5. Future Expenses and Likely Duration of Litigation

Although it is impossible to forecast the future with certainty, it is reasonable to predict that the additional time and expense of taking this action to trial and beyond would be substantial. Because the Plaintiffs have incurred more than $1.7 million in litigation expenses to date, the Court anticipates that such expenses will increase significantly if this

action goes to trial and if an appeal is subsequently filed. Moreover, it is important to note that the litigation expenses would be deducted from any monetary judgment that may be awarded to shareholders by a jury.

If the proposed settlement is not approved by this Court, the trial of this action likely would be held in the summer or fall of 2011. Between now and the trial date, there would be several hearings, including oral argument on motions, and a final pretrial conference. Each of these hearings or conferences would increase the litigation expenses in this action. Furthermore, regardless of who prevails at trial, it appears likely that there would be an appeal, and perhaps a cross-appeal. It could take several years for this action to make its way through the appellate courts. Even after the appeals are concluded, it is possible that the action could be remanded to the trial court, which potentially could result in additional time-consuming and expensive appeals. Thus, the Court concludes that this factor weighs in favor of approving the settlement.

6. Recommendation of Neutral Parties

It is important to recognize that the proposed settlement was reached based upon a recommendation made to the parties by Retired Judge William J. Cahill, who served as the Mediator in this action. As the record reflects, Judge Cahill was first retained by the parties in early 2009. Following a formal Mediation session held in Denver, Colorado, on March 31, 2009, Judge Cahill continued to closely monitor this action. After reviewing the five (5) separate summary judgment motions filed by the Defendants in July 2010, Judge Cahill contacted counsel to suggest the possibility of renewing settlement negotiations.

As more fully set forth in the Findings of Fact, it was Judge Cahill who suggested that this action be settled for $200 million. In his opinion, this was an opportune time to resolve the dispute between the parties. Likewise, Judge Cahill believed that it was unlikely that a settlement for a larger amount could be reached at some point in the future. Thus, the Court concludes that this factor weighs in favor of approving the settlement.

7. Number and Nature of Objections

It is noteworthy that only four (4) objections were filed in this action. Of these, two (2) related to the request for attorney fees and two (2) related to the allocation of the Settlement Fund. As indicated above, one of the objections relating to attorney fees was stricken from the record because it was filed out of time and the other was voluntarily withdrawn. It is also important to note that none of the objections addressed the amount of the proposed settlement.

At the final settlement hearing, Lead Plaintiff's Counsel represented to the Court that they had been interviewed by several shareholders who ultimately decided not to file objections. These shareholders included the Evercore Trust Company, acting on behalf of the Kinder Morgan, Inc. Savings Plan (which held more than 2.6 million shares of stock), and Petrus Securities, L.P., a Perot family investment fund (which owned more than 200,000 shares of stock). Thus, the Court concludes that this factor weighs in favor of approving the settlement.

8. Presence of Good Faith and Absence of Collusion

There has been no evidence presented to the Court of bad faith or collusion on the part of the parties or their attorneys. Rather, the record reflects that the proposed settlement was reached as a result of arm's-length negotiations conducted under the guidance of Retired Judge William J. Cahill, who is an experienced and well-respected Mediator. Thus, the Court concludes that this factor weighs in favor of approving the settlement.

C. JUDGMENT OF THE COURT

Based upon the Court's review of the Stipulation of Settlement, the documents filed in support of the proposed settlement, the objections filed, the oral and written comments received regarding the proposed settlement, the court file and the applicable law, it is hereby ordered, adjudged and decreed that:

1. Incorporation of Settlement Documents – The Stipulation of Settlement dated September 7, 2010, the Notice and Summary Notice, which were approved on September 8, 2010, and the Order Preliminarily Approving Settlement entered on September 8, 2010, are incorporated into this Journal Entry by reference.

2. Jurisdiction – This Court has jurisdiction over the subject matter of this action and over all matters relating to the proposed settlement. This Court also has personal jurisdiction over all of the parties to the Stipulation of Settlement, and over all of the Class Members who have not requested to exclude themselves from the proposed settlement in a timely manner.

3. Representation of the Class – The Lead Plaintiff and Lead Plaintiff's Counsel have adequately represented the Class Members throughout this action, including in the negotiation of the terms of the Stipulation of Settlement.

4. Compliance with K.S.A. 60-211 – Throughout the course of this action, the parties and their legal counsel have complied with the requirements of K.S.A. 60-211 and the rules of the Third Judicial District.

5. Notice – The distribution of the Notice and the publication of the Summary Notice: (a) were implemented in accordance with the Order Preliminarily Approving Settlement entered on September 8, 2010; (b) constituted due, adequate and sufficient notice to all Persons entitled to receive notice of the proposed settlement; (c) apprised the Class Members of the effect of the proposed settlement (including the Releases contained therein) as well as their rights to file objections to the proposed settlement, to appear at the final settlement hearing, or to exclude themselves from the proposed settlement; and (d) satisfied and complied in full with the requirements of the laws of the United States Constitution (including the Due Process Clause), the laws of the State of Kansas, (including K.S.A. 60-223(c)(2)), the rules of the Third Judicial District, and the orders of this Court.

6. Objections – Two (2) objections remain to be resolved in this action. Both relate to the Plan of Allocation, which provides that only those who held shares of Kinder Morgan, Inc. common stock as of May 30, 2007, may share in the distribution of the Settlement Fund. It is uncontroverted that the objectors, Philip R. Bright of Tucson, Arizona, and Joseph E. Stocke of Exton, Pennsylvania, sold their shares prior to that date. For the reasons set forth

in the cases of *In re Prodigy Comm'ns Corp. Shareholders Litigation,* 2002 WL 1767543 (Del. Ch. 2002); *In re Triarc Companies Inc. Class and Derivative Litigation,* 791 A.2d 872 (Del. Ch. 2002); and, *In re Resorts International Shareholders Litigation,* 1988 WL 92749 (Del. Ch. 1988), the objections are denied. Notwithstanding, the Court hereby extends the deadline for Mr. Bright and Mr. Stocke to "opt-out" of the Class until 5:00 p.m. (CST) on November 30, 2010.

7. Final Settlement Approval – The terms of the proposed settlement including the Plan of Allocation, are fair, reasonable and adequate. As such, the proposed settlement set forth in the Stipulation of Settlement (including, without limitation, the Releases provided for therein) is fully and finally approved as required by K.S.A. 60-223(e). The parties and their counsel are directed to implement the settlement in accordance with the terms and conditions of the Stipulation of Settlement and the terms of this Journal Entry.

8. Dismissal of Action – This action and all of the claims (and former claims) asserted against the Defendants (and the former Defendants) are hereby dismissed on the merits and with prejudice.

9. Attorney Fees – The Court will address the attorney fees requested by Lead Plaintiff's Counsel in a separate Memorandum Decision and Order.

10. Binding Effect – The terms of the Stipulation of Settlement and of this Journal Entry shall forever be binding on the Lead Plaintiff; all Class Members who have not excluded themselves from the settlement (regardless of whether or not any individual Class Member submits a Proof of Claim or obtains a distribution from the Settlement Fund); each

and all of their respective predecessors, successors, representatives, agents, attorneys, heirs, executors, trustees, personal representatives, estates, administrators and assigns; and, on any other person who has or had the right, ability, standing or capacity to assert, prosecute or maintain any of the released claims belonging to a Class Member and/or to obtain the proceeds of any recovery on those claims.

11. Releases – The Releases as set forth in Section 9 of the Stipulation of Settlement, together with the definitions contained in Section 1 of the Stipulation of Settlement (some of which are repeated herein at Paragraph 13) are expressly incorporated into this Journal Entry by reference.

12. Effective Date – The Effective Date of the settlement shall be as set forth in the Stipulation of Settlement. Accordingly, the Court orders that as of the Effective Date: (a) each and every one of the Class Members (regardless of whether that individual Class Member ever seeks to obtain any distribution from the Settlement Fund) shall: (i) have and be deemed to have fully, finally and forever released, relinquished and discharged each and every one of the released persons from any and all of the released claims; (ii) have and be deemed to have covenanted not to sue any of the released persons with respect to any and all of the released claims; and, (iii) forever be barred and enjoined from filing, commencing, prosecuting, intervening in, participating in (as a Class Member or otherwise) or receiving any benefits or other relief from any other lawsuit, arbitration or other proceeding or order in any jurisdiction that is based upon, arises out of or relates to any and all of the released claims against any of the released persons; and, (b) the released persons shall have and be

deemed to have fully, finally, and forever released the Lead Plaintiff, Lead Plaintiff's Counsel, and the Liaison Counsel for the Plaintiff, of any claims in connection with the commencement, prosecution, settlement or resolution of this action.

13. Definitions – The definitions of the following terms set forth in the Stipulation of Settlement are hereby adopted by the Court:

(a) "Defendants" means Richard Kinder, Fayez Sarofim, Michael Morgan, C. Park Shaper, Steven J. Kean, Kimberly Dang, David Kinder, Joseph Listengart, James Street, William Morgan, Carlyle Partners IV, L.P., Carlyle/Riverstone Global Energy and Power Fund III, L.P., AIG Knight LLC, AIG Financial Products Corp., Knight Holdco LLC (n/k/a Kinder Morgan Holdco LLC), The Goldman Sachs Group, Inc., GS Global Infrastructure Partners I, L.P., GS Capital Partners V Institutional, L.P., and GS Capital Partners V Fund, L.P.

(b) "Former Defendants" means Kinder Morgan, Inc., Knight Acquisition Co., GS Capital Partners V GmbH & CO. KG, GS Capital Partners V Offshore Fund, L.P., Charles W. Battey, Edward H. Austin, Jr., Stewart A. Bliss, Ted A. Gardner, William J. Hybl, Edward Randall III, James M. Stanford, H.A. True III, and Douglas W.G. Whitehead.

(c) "Texas Defendants" means Kinder Morgan, Inc., Richard D. Kinder, Michael C. Morgan, William V. Morgan, Fayez Sarofim, Portcullis Partners, LP, Portcullis G.P., LLC, Goldman Sachs Capital Partners, GS Capital Partners V Fund, L.P., GS Global Infrastructure Partners I, L.P., American International Group, Inc., AIG Financial Products Corp., AIG Global Investment Group, AIG Global Asset Management Holdings Corp., AIG

Highstar Capital, AIG Knight LLC, The Carlyle Group, Riverstone Holdings LLC, Carlyle Partners IV, L.P., Carlyle/Riverstone Global Energy and Power Fund III, L.P., C. Park Shaper, Steven J. Kean, David Kinder, Joseph Listengart, Kimberly Dang, James Street, Knight Holdco, LLC (n/k/a Kinder Morgan Holdco LLC), Knight Acquisition Co., Stewart Bliss, Ted Gardner, Edward Austin, James M . Stanford, Charles W. Battey, Douglas W.G. Whitehead, William J. Hybl, H.A. True III and Edward Randall III.

(d) "Released Persons" means (i) the Defendants, the Former Defendants (including, without limitation, Kinder Morgan, Inc.), and the Texas Defendants (known collectively as the "Defendant Releasees"), and (ii) each of the Defendant Releasees' respective past and/or present affiliates, subsidiaries, parents, and general and limited partners (collectively, the "Affiliated Releasees" and together with the Defendant Releasees, the "Releasees") and (iii) each of the Releasees' past and/or present employees, directors, officers, partners, limited partners, representatives, agents, predecessors, successors, financial advisors, attorneys, advisors, heirs, executors, trustees, estates, administrators, insurers, managers and assigns.

(e) "Released Claims" means any and all claims (including any "Unknown Claims" as defined below), demands, actions, causes of action, obligations, debts, judgments and liabilities of any kind, nature and description, whether direct or derivative, whether at law or in equity, upon any legal or equitable theory, whether contractual, common law or statutory, whether arising under federal, state, common, or foreign law (including, without limitation, claims under the federal securities laws and regulations, claims for breach of

fiduciary duty, breach of contract or corporate charter, or the misstatement of or the failure to disclose material facts), whether known or unknown, secured or unsecured, contingent or absolute, choate or inchoate, liquidated or unliquidated, perfected or unperfected, in any forum, including in arbitration or similar proceedings, including class, derivative, individual, or other claims, that previously existed or that currently exist as of the date of the approval of the Settlement by the Court or that may arise in the future, that: (i) are based upon, arise out of, relate to, or in any way concern the facts, matters, occurrences, allegations, representations, omissions, actions, transactions, or conduct alleged, set forth, referred to, involved in, raised in (or which could have been raised) in the action and/or the Texas action as against the Released Persons; and/or (ii) in any way arise out of, are based upon, relate to, or concern: (aa) the merger among Kinder Morgan, Inc., Knight Holdco LLC, and Knight Acquisition Co. which closed on May 30, 2007 (the "Merger"), including, without limitation, the actions taken or not taken in connection with the development of the May 28, 2006 proposal, the events, activities, and/or negotiations leading to or concerning the Merger or concerning potential alternatives thereto, the agreements and disclosures relating to the Merger, any compensation or other payments made in connection with the Merger or any related agreements or transactions, and the consideration paid pursuant to the Merger; (bb) any alleged misrepresentations and/or omissions in the November 15, 2006 Proxy Statement, or any of the disclosures relating to the Merger; and/or (cc) any purchase, sale, or holding of KMI securities insofar as it relates in any way to any other matter covered in this definition of Released Claims; provided, however, that the claims to be released shall not include the

right of any member of the Class or any of the Released Persons to enforce the terms of the Settlement.

(f) "Releasing Plaintiffs" means Lead Plaintiff and each Class Member (regardless of whether or not that Class Member submits a Proof of Claim Form or seeks to obtain a distribution from the Settlement Fund); and each and all of their respective predecessors, successors, representatives, agents, attorneys, heirs, executors, trustees, personal representatives, estates, administrators, and assigns; and any other person or entity who has the right, ability, standing or capacity to assert, prosecute or maintain any of the Released Claims belonging to a Class Member to obtain the proceeds of any recovery on those claims; provided, however, that Releasing Persons shall not include any Person who or which properly excludes himself, herself or itself by filing a valid and timely Request for Exclusion.

(g) With respect to the use of the term "Unknown Claims" for the purpose of the Released Claims:

(i) The Releasing Plaintiffs and the Released Persons specifically acknowledge that the term "Unknown Claims" in the definition of Released Claims includes claims that each of the Released Plaintiffs currently does not know or suspect exist at the time he, she, or it executes the release, but which, if known by him, her or it, might affect his, her or its agreement to execute or grant the release or might affect a decision with respect to the settlement (including the decision to object or not to object to the settlement);

(ii) The Releasing Plaintiffs and the Released Persons expressly acknowledge that they may hereafter discover facts in addition to or different from those that he, she or it now

knows or believes to be true with respect to the subject matter of the Released Claims, but that it is nevertheless his, her or its intention to fully, finally and forever settle and release the Released Claims including those Unknown Claims as that term is employed in this Paragraph, and will be deemed to have done so by operation of the judgment; and

(iii) The Releasing Plaintiffs and the Released Persons expressly acknowledge that the inclusion of "Unknown Claims" as defined herein was separately bargained for and was a key element of the Settlement (of which the releases provided herein are a material and essential part) and each expressly waives and relinquishes to the fullest extent permitted by law, and shall be deemed by operation of the judgment to have waived and relinquished, the benefits of (aa) the provisions, rights, and benefits of Section 1542 of the California Civil Code which provides that "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 (bb) any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code Section 1542.

14. **No Admissions of Liability** – The terms of the Stipulation of Settlement (including all exhibits thereto), the terms of this Journal Entry, as well as all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings in connection with the settlement:

(a) shall not be offered or received against, or otherwise prejudice, any Released Person as evidence of, or be construed as or deemed to be evidence of, any presumption, concession, or admission by any Released Person with respect to the truth of any fact alleged by any Class Member or Lead Plaintiff or the validity of any claim that has been or could have been asserted in the action or in any other action, or the deficiency of any defense that has been or could have been asserted in the action or in any other action, or of any liability, negligence, fault, damage, or wrongdoing of or by any Released Person;

(b) shall not be offered or received against, or otherwise prejudice, any Released Person as evidence of, or be construed as or deemed to be evidence of, any presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Released Person;

(c) shall not be offered or received against, or otherwise prejudice, any Released Person as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing in any other civil, criminal or administrative, arbitral or other action or proceeding; provided, however, that the Stipulation of Settlement approved by the Court may be used by the Released Parties to it to effectuate its terms, including the Releases granted them hereunder;

(d) shall not be construed against, or otherwise prejudice any Released Person as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial; and

(e) shall not be construed as or received in evidence as an admission, concession or presumption against, or otherwise prejudice, the Lead Plaintiff or any of the Class Members that any of their claims are without merit, or that any defenses asserted by Defendants have any merit, or that damages recoverable under the Action would not have exceeded the amount of the settlement.

15. Enforcement – Nothing in this Journal Entry or in the Stipulation of Settlement shall bar any action or claim by any of the parties to enforce or effectuate the terms of the settlement and/or judgment.

16. Use of Stipulation and Journal Entry – Notwithstanding the provisions of Paragraph 14, any of the Released Persons may file, cite, refer to, or otherwise offer the Stipulation of Settlement and this Journal Entry in any action or proceeding that may be brought against them in any forum in order to effectuate the Releases and liability and other protections granted hereunder, or to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release and discharge, good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim, or in connection with any dispute between a Released Person and his, her, or its insurance carrier, or in connection with any tax issues related to the settlement.

17. Retention of Jurisdiction – Without affecting the finality of the judgment entered herein in any way, this Court hereby retains jurisdiction over: (a) all matters relating in any way to the enforcement, interpretation and implementation of the Stipulation of Settlement, this Journal Entry and any matter relating to the settlement; including the

Settlement Fund and interest earned thereon; (b) disposition or allocation of the Settlement Fund; and (c) all parties to the Stipulation of Settlement and/or this Journal Entry for the purpose of construing, enforcing and administering the settlement and judgment entered herein.

18. Depository of Settlement Funds – The Settlement Fund shall be deposited in and held by Capital Federal Savings in Topeka, Kansas, pending distribution as ordered by the Court. Upon authorization by the Court, funds may be transferred to Huntington National Bank of Columbus, Ohio as needed for distribution.

19. Escrow Agent – The passage of title and ownership of the Settlement Fund to the Escrow Agent is subject to the terms and conditions set forth in the Stipulation of Settlement and this Journal Entry. No Person that is not a Class Member or Lead Plaintiff's Counsel shall have a right to any portion of, or any rights in the distribution of, the Settlement Fund unless otherwise ordered by this Court or as otherwise provided in the Stipulation of Settlement.

20. Termination – If the Effective Date does not occur or the Stipulation of Settlement is terminated, then the Order Preliminarily Approving Settlement, this Journal Entry, and any other orders of the Court relating to the settlement shall be vacated, rendered null and void, and be of no further force or effect, except as otherwise provided by the Stipulation of the Settlement, this Journal Entry and/or further court order.

21. Modifications of the Settlement Agreement – Subject to approval by the Court, the Lead Plaintiff and the Defendants may agree to and adopt such amendments,

modifications, and expansions of the Stipulation of Settlement to effectuate the settlement and judgment as: (a) are not materially inconsistent with this Journal Entry; and, (b) do not materially limit the rights of Class Members under the terms of the Stipulation of Settlement and/or this Journal Entry.

22. Extensions of Time – Subject to approval by the Court, Lead Plaintiff and the Defendants may agree to reasonable extensions of time to carry out any provisions of the Stipulation of Settlement and/or this Journal Entry.

23. Entry of Final Judgment – There is no just reason to delay the entry of judgment approving and adopting the settlement and dismissing all claims asserted in this action on the merits, with prejudice.

24. Further Proceedings – Any further proceedings relating to the application for attorney fees and expenses submitted by Lead Plaintiff's Counsel shall in no way affect or delay the finality of the judgment rendered in this Journal Entry and shall not affect or delay the Effective Date of the settlement as set forth in the Stipulation of Settlement.

25. Filing with Clerk of the District Court – Upon filing with the Clerk of the District Court of Shawnee County, Kansas, this Journal Entry shall serve as the final judgment of this Court.

IT IS SO ORDERED.

Entered on this ___ day of November, 2010.

David E. Bruns
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing JOURNAL ENTRY AND ORDER APPROVING PROPOSED SETTLEMENT AND PLAN OF ALLOCATION was faxed and mailed on this ___ day of November, 2010, to the following:

Liaison Counsel for Plaintiffs:

John R. Hamilton
3649 SW Burlingame Road - Ste. 200
Topeka, Kansas 66611-2277
Fax (785) 267-2942

Liaison Counsel for Defendants:

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_____
Colleen A. Speaker
Administrative Assistant