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KS. DISTRICT COURT  
THIRD JUDICIAL DIST.  
TOPEKA, KS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION 12

2010 SEP - 8 P 4:38

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IN RE:	Kinder Morgan, Inc.	)	
	Shareholders Litigation	)	Cons. Case No. 06 C 801
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STIPULATION OF SETTLEMENT

This Stipulation of Settlement, dated September 7, 2010 (the "Stipulation"), is made and entered into, through their counsel, by and among: (a) Lead Plaintiff Douglas Geiger, on behalf of himself and the Class,<sup>1</sup> (b) Defendants Richard D. Kinder, Fayez Sarofim, Michael C. Morgan, William V. Morgan, C. Park Shaper, Steven J. Kean, Kimberly Dang, David Kinder, Joseph Listengart, James Street, Knight Holdco LLC (n/k/a Kinder Morgan Holdco LLC), AIG Financial Products Corp., AIG Knight LLC, Carlyle/Riverstone Global Energy and Power Fund III, L.P., Carlyle Partners IV, L.P., 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. (collectively, the "Defendants"), and (c) Kinder Morgan, Inc. ("KMI"). Subject to the terms and conditions hereof and the Court's approval, the settlement embodied in this Stipulation is intended to: (a) fully, finally and forever resolve and settle the Action, and (b) fully, finally and forever resolve, discharge, dismiss and settle the Released Claims against the Released Persons.

WHEREAS, the following events have occurred:

1. On May 29, 2006, KMI publicly announced that its Board of Directors received a proposal from a group of investors, led by Richard D. Kinder ("Kinder"), Chairman and CEO of the Company, and including several private equity firms, to acquire all of the publicly-owned shares of KMI for \$100 per share.

<sup>1</sup> All capitalized words or terms, not otherwise defined herein, shall have the meaning as set forth below in Section 1 hereof, entitled "Definitions."

2. Between June 1, 2006 and June 13, 2006, the following putative class action lawsuits challenging the proposed merger were filed in this Court: (a) *Morter v. Richard D. Kinder, et al.*, C.A. No. 06 C 801 (the "Morter Action"); (b) *Hodge v. Kinder Morgan, Inc. et al.*, C.A. No. 06 C 813 (the "Hodge Action"); (c) *Bolton v. Kinder Morgan, Inc. et al.*, C.A. No. 06 C 837 (the "Bolton Action"); (d) *Teamsters Joint Counsel No. 53 Pension Fund v. Richard D. Kinder, et al.*, C.A. No. 06 C 841 (the "Teamsters Action"); (e) *Geiger v. Austin, et al.*, C.A. No. 06 C 854 (the "Geiger Action"); (f) *Land v. Austin, et al.*, C.A. No. 06 C 853 (the "Land Action"); and (g) *Cohen v. Kinder Morgan, Inc., et al.*, C.A. No. 06 C 864 (the "Cohen Action").

3. On June 23, 2006, the Court entered an order consolidating the Morter, Hodge, Bolton, Teamsters, Geiger, Land and Cohen Actions (the "Action").

4. Between May 30, 2006 and June 26, 2006, the following putative class action lawsuits challenging the proposed merger were filed in the Texas Court: (a) *Mary Crescente v. Kinder Morgan, Inc., et al.*, Cause No. 2006-33011 (the "Crescente Action"); (b) *Robert Kemp v. Richard D. Kinder, et al.*, Cause No. 2006-33015 (the "Kemp Action"); (c) *Sandra Donnelly v. Kinder Morgan, Inc., et al.*, Cause No. 2006-33042 (the "Donnelly Action"); (d) *Dean Drulias v. Kinder Morgan, Inc., et al.*, Cause No. 2006-34594 (the "Drulias Action"); (e) *David Zeitz v. Richard D. Kinder, et al.*, Cause No. 2006-34520 (the "Zeitz Action"); (f) *Robert L. Dunn v. Richard D. Kinder, et al.*, Cause No. 2006-36184 (the "Dunn Action"); (g) *CWA/ITU Negotiated Pension Plan v. Kinder Morgan, Inc., et al.*, Cause No. 2006-39364 (the "CWA/ITU Plan Action"); and (h) *J. Robert Wilson v. Kinder Morgan, Inc., et al.*, Cause No. 2006-40027 (the "Wilson Action").

5. On June 26, 2006, June 29, 2006, and June 30, 2006 the Texas Court entered orders consolidating the Crescente, Kemp, Donnelly, Drulias, Zeitz, Dunn, Wilson, and CWA/ITU Actions (the "Texas Action").

6. On August 1, 2006, the Court appointed plaintiffs Robert Land and Dr. Douglas Geiger as Interim Lead Plaintiffs, and Pamela S. Tikellis of Chemicles & Tikellis LLP and Diane A. Nygaard of The Nygaard Law Firm as Interim Lead Counsel for plaintiffs in the Action.

7. On August 7, 2006, the Texas Court appointed Randall Baron of Robbins Geller Rudman & Dowd LLP (then known as Lerach Coughlin Stoia Geller Rudman & Robbins LLP) as Interim Class Counsel in the Texas Action.

8. Upon receiving the proposal to acquire KMI at \$100 per share, the KMI Board members who were not members of the Buyout Group established a Special Committee consisting of three directors (Stewart A. Bliss, Edward H. Austin, and Ted A. Gardner), none of whom was a member of the group making the proposal.<sup>2</sup> The Special Committee retained separate legal and financial advisors. The Special Committee was delegated the full power and authority, among other things, to take any and all actions and to make any and all decisions regarding the buyout proposal and any alternatives, including to reject it, or in the alternative, to recommend it or a revised or alternative proposal to the other directors who were not members of the Buyout Group. During the approximately 3-month period of its existence, the Special Committee and its advisors performed a due diligence review, evaluated the proposal, conducted an independent valuation of the Company, conducted a "market check" in an effort to solicit

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<sup>2</sup> The KMI Board members who were not members of the Buyout Group were Stewart A. Bliss, Edward H. Austin, Charles W. Battey, William J. Hybl, Ted A. Gardner, Edward Randall, III, James M. Stanford, H.A. True, III, and Douglas W.G. Whitehead (the "Non-Buyout Group Directors").

competing bids for KMI, considered alternative structures and transactions, and ultimately commenced negotiations with the Buyout Group.

9. On or about August 22, 2006, Richard Kinder, on behalf of the Buyout Group, offered to purchase all of KMI's outstanding shares for \$107.50 per share, which price was accepted by the Special Committee and recommended to the Board for approval. On August 27, 2006, the KMI Board of Directors, without the participation of directors Kinder, M. Morgan and Sarofim, unanimously approved a Merger Agreement which, among other things, provided that the Buyout Group, through an acquisition vehicle, would acquire all of the outstanding shares of KMI's common stock not owned by the Buyout Group for \$107.50 per share (the "Merger") and recommended that KMI's shareholders approve the Merger Agreement.

10. On August 28, 2006, KMI publicly announced that the Board had approved the Merger Agreement. The Merger was subject to shareholder approval. A shareholder vote was subsequently scheduled for December 19, 2006.

11. Following the announcement, plaintiffs in the Action filed their Consolidated and Amended Class Action Petition ("Amended Petition") on August 28, 2006. The Amended Petition challenged the Merger and asserted claims for breach of fiduciary duty, including wrongful self-dealing and entire fairness, against the Inside Members of the Buyout Group and aiding and abetting those breaches against the Officer Defendants and the Non-Management Buyout Defendants.

12. On September 8, 2006, plaintiffs in the Texas Action filed a Consolidated Petition for Breach of Fiduciary Duty and Aiding and Abetting (the "Texas Consolidated Petition"). The Texas Consolidated Petition challenged the Merger and asserted claims of breach of fiduciary

duty against the Inside Members of the Buyout Group and aiding and abetting against the Non-Management Buyout Defendants and certain other defendants.

13. On October 2, 2006, plaintiffs in the Kansas Action filed a Second Consolidated and Amended Class Action Petition ("Second Petition"). The Second Petition asserted claims substantially similar to the Amended Petition. Defendants denied the allegations of wrongdoing.

14. On October 12, 2006, after consultation with the Texas Court, the Court issued a memorandum decision and order regarding the appointment of a special master. By Order filed on November 21, 2006, this Court appointed former Delaware Supreme Court Justice Joseph T. Walsh Special Master in order to address pre-trial matters in both the Action and the Texas Action. On December 6, 2006 an Order was filed appointing former Justice Walsh Special Master in the Texas Action.

15. On November 15, 2006, KMI filed the Definitive Schedule 14A (the "Proxy") and Schedule 13e-3 documents with the Securities and Exchange Commission in connection with a special shareholders meeting to vote on the Merger, which was scheduled for December 19, 2006. The Definitive Schedule 14A was mailed to shareholders on or about November 17, 2006. The Definitive Schedule 14A included, among other things, a description of shareholders' statutory right to dissent and seek appraisal under K.S.A. § 17-6712.

16. On November 21, 2006, the Third Consolidated and Amended Class Action Petition ("Third Petition") was filed in the Action. The Third Petition alleged, among other things, that the KMI Board of Directors failed to discharge its fiduciary obligations in connection with its negotiation and approval of the Merger; the Inside Members of the Buyout Group engaged in wrongful self-dealing and the wrongful diversion of KMI's strategic machinery secretly to pursue a buyout; and the Officer Defendants and the Non-Management Buyout

Defendants aided and abetted the breaches of fiduciary duty by the Inside Members of the Buyout Group. The Defendants denied the allegations of wrongdoing.

17. On December 9, 2006, Interim Lead Counsel in the Kansas Action and Interim Lead Counsel in the Texas Action, on behalf of their clients and the putative class, jointly moved pursuant to K.S.A. § 60-901 and Tex. R. Civ. P. §§ 680-693C to enjoin the shareholder vote on the Merger on the grounds that the Merger process and offer price were unfair and that the disclosures made in connection with the Merger were false and misleading. On December 18, 2006, the Special Master issued a report recommending that the motion be denied. In the report and recommendation, the Special Master determined that, *inter alia*: (1) the Special Committee functioned effectively, was well informed, performed an effective market check and made its recommendation in good faith, and as such its decision recommending the Merger was protected by the business judgment rule; (2) Kinder did not control, dominate or strong arm the KMI independent directors; and (3) the disclosures in the Proxy were not false or misleading, and further that the Proxy had not failed to disclose any material information. The Special Master further determined that the application of the business judgment rule to the Special Committee's decision was a "formidable, if not conclusive barrier," to the Kansas and Texas plaintiffs demonstrating the probability of ultimate success in a trial on the merits.

18. On December 19, 2006, KMI held its shareholder vote on the Merger. Under KMI's Certificate of Incorporation and the terms of the Merger Agreement, the affirmative vote of at least two-thirds of the outstanding shares of KMI common stock was required to approve and adopt the Merger Agreement. In a Form 8-K filed that same day, KMI announced that of the approximately 100 million shares voted at the December 19, 2006 shareholders' meeting, approximately 97 million voted in favor of the adoption of the Merger Agreement.