

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE EL PASO CORPORATION  
SHAREHOLDER LITIGATION

CONSOLIDATED  
C.A. NO. 6949-CS

**FINAL ORDER AND JUDGMENT**

WHEREAS, Delaware Co-Lead Plaintiffs, on behalf of themselves and the other members of the Class (defined below), Defendants, and non-party El Paso have entered into a Stipulation and Agreement of Settlement dated September 7, 2012 (the "Stipulation"), that provides for a complete dismissal with prejudice of the claims asserted in the above-captioned consolidated action (the "Consolidated Action"), as well as the resolution, discharge, dismissal and settlement with prejudice of (i) each and every one of the Released Plaintiff Claims against each and every one of the Released Defendant Persons and (ii) each and every one of the Released Defendant Claims against each and every one of the Released Plaintiff Persons, subject to the approval of this Court; and

WHEREAS, by Order dated September 14, 2012 (the "Scheduling Order"), this Court: (a) preliminarily certified the Class solely for purposes of effectuating the Settlement; (b) ordered that notice be provided to all potential Class Members in the manner and form set forth in the Scheduling Order; (c) set forth the procedures by which potential Class Members could appear and object to the proposed Settlement; and (d) scheduled a hearing to consider the proposed Settlement; and

WHEREAS, adequate and sufficient notice of the Settlement and the hearing has been given to the Class in accordance with the Scheduling Order, which notice complied in all respects with the requirements of Court of Chancery Rule 23, the United States Constitution (including the Due Process Clause), and all other applicable laws and rules; and

WHEREAS, the respective Parties have appeared by their attorneys of record; and

WHEREAS, an opportunity to be heard has been given to all other Persons requesting to be heard in accordance with the Scheduling Order and the Notice; and

WHEREAS, the Class has been adequately represented by Delaware Co-Lead Plaintiffs and Delaware Co-Lead Counsel in connection with the Consolidated Action; and

WHEREAS, this Court conducted a hearing on December 3, 2012 to consider, among other things, whether: (a) the terms and conditions of the Settlement are fair, reasonable and adequate to the Class and should therefore be approved; and (b) a judgment should be entered dismissing the Consolidated Action as against Defendants with prejudice and on the merits and providing for the resolution, discharge, dismissal and settlement with prejudice of the (i) Released Plaintiff Claims as against each of the Released Defendant Persons; and (ii) Released Defendant Claims against each of the Released Plaintiff Persons; and

WHEREAS, this Final Order and Judgment hereby incorporates by reference the definitions in the Stipulation, and unless otherwise indicated herein, the capitalized words and terms used herein shall have the same meaning as they have in the Stipulation (certain of which are repeated herein for ease of reference only); and

WHEREAS, the Court has reviewed and considered the Stipulation, all papers filed and proceedings held in connection with the Settlement, all oral and written comments regarding the proposed Settlement and the record in the Consolidated Action, and with good cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THIS 3<sup>d</sup> DAY OF  
DECEMBER, 2012 AS FOLLOWS:**

1. **Incorporation of Documents** – This Final Order and Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on September 7, 2012 and all of its terms, conditions, provisions, and exhibits; and (b) the Notice and Summary Notice, filed with the Court on November 8, 2012.

2. **Jurisdiction** – This Court has jurisdiction over the subject matter of the Consolidated Action and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Class Members.

3. **Notice** – The Court finds that the dissemination of the Notice and publication of the Summary Notice: (a) were implemented in accordance with the Court’s Scheduling Order; (b) constituted the best notice reasonably practicable under the circumstances; (c) constituted notice that was reasonably calculated under the circumstances to advise potential Class Members (including, without limitation, the Texas Plaintiffs and the New York Plaintiff) of: (i) the pendency of the Consolidated Action, (ii) the effect of the Settlement (including the releases provided for therein), (iii) Delaware Co-Lead Counsel’s application for attorneys’ fees and reimbursement of Litigation Expenses, (iv) the rights of Class Members to object to the Settlement and/or Delaware Co-Lead Counsel’s application for an award of attorneys’ fees and reimbursement of Litigation Expenses, and (v) the rights of Class Members to appear at the Settlement Hearing; (d) constituted due, adequate and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Court of Chancery Rule 23, the United States Constitution (including the Due Process Clause), and all other applicable laws and rules.

4. **Class Findings** – With respect to the Class set forth below, this Court finds (solely for purposes of effectuating the Settlement) that the prerequisites for a class action under

Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) have been satisfied in that: (a) the members of the Class are so numerous that their joinder in the Consolidated Action would be impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of Delaware Co-Lead Plaintiffs are typical of the claims of the Class; (d) in connection with both the prosecution of the Consolidated Action as well as the Settlement, Delaware Co-Lead Plaintiffs and Delaware Co-Lead Counsel have and will fairly and adequately represent and protect the interests of the Class; (e) the prosecution of separate actions by individual members of the Class would create a risk of inconsistent adjudications which would establish incompatible standards of conduct for Defendants; (f) as a practical matter, the disposition of the Consolidated Action would influence the disposition of any pending or future identical cases brought by other Class Members; and (g) Defendants have allegedly acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

5. Solely for purposes of the Settlement, the Court finds that the Consolidated Action is a proper class action pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) and hereby finally certifies the Class as consisting of: all Persons who held El Paso Corporation common stock at any time during the period beginning on August 30, 2011 through and including May 25, 2012 (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”).

6. Solely for purposes of the Settlement, Delaware Co-Lead Plaintiffs, 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, are appointed as Class Representatives and Delaware Co-Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP, Grant & Eisenhofer P.A., and Labaton Sucharow LLP, are appointed as Class Counsel.

7. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and in accordance with, Court of Chancery Rule 23, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation, the amount of the Settlement, the Releases provided for therein and the dismissal with prejudice of (a) any and all of the Released Plaintiff Claims against each and every one of the Released Defendant Persons and (b) any and all of the Released Defendant Claims against each and every one of the

Released Plaintiff Persons) and finds that the Settlement is, in all respects, fair, reasonable and adequate and in the best interests of the Class. The Court further finds that the Settlement set forth in the Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of the respective Parties. Accordingly, this Court fully and finally approves the Settlement set forth in the Stipulation in all respects (including the Releases contained therein and the dismissal with prejudice of (a) the Released Plaintiff Claims against each and every one of the Released Defendant Persons and (b) the Released Defendant Claims against each and every one of the Released Plaintiff Persons). The Parties and their Counsel are hereby authorized and directed to comply with and to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

8. As of the Effective Date, the Consolidated Action and all claims asserted against Defendants in the Consolidated Action (including each and every count contained in the complaints filed in the Delaware Cases and in the Verified Consolidated Class Action Amended Complaint in the Consolidated Action served on November 29, 2011) are hereby dismissed with prejudice on the merits. The Parties shall bear their own costs and expenses, except as otherwise provided in the Stipulation.

9. The terms of the Stipulation and of this Final Order and Judgment shall forever be binding on each and every one of the Releasing Plaintiff Persons (whether or not any individual Class Member actually submits a Claim Form, seeks or obtains a distribution from the Net Settlement Fund or is entitled to receive such a distribution under the plan of allocation approved by the Court) and each and every one of the Releasing Defendant Persons.

10. **Releases** – The releases and liability protections set forth in Paragraphs 31-35 of the Stipulation (the “Releases”), together with the definitions contained in Paragraph 1 of the

Stipulation relating thereto (certain of which are repeated herein below) are expressly incorporated herein in all respects. These Releases shall be effective as of the Effective Date.

11. Accordingly, this Court orders that, upon the Effective Date:

(a) each and every one of the (i) Released Plaintiff Claims as against the Released Defendant Persons by any of the Releasing Plaintiff Persons; and (ii) Released Defendant Claims as against the Released Plaintiff Persons by any of the Releasing Defendant Persons, is hereby compromised, settled, released, discharged and dismissed with prejudice by virtue of this Final Order and Judgment.

(b) 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): (i) shall have and shall 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; (ii) shall 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 (iii) shall have and shall 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; and

(c) each and every one of the Releasing Defendant Persons: (i) shall have and shall 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; (ii) shall 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 (iii) shall have and shall 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.

12. As provided in the Stipulation:

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

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

(c) “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.

(d) “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.

(e) "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.

(f) “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.

(g) “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.

(h) “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.

13. 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 this Final Order and Judgment to have acknowledged) that the term "Unknown" in the definitions of the 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 this Final Order 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 this Final Order and Judgment to have acknowledged) 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 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 this Final Order and 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.

14. The effectiveness of the provisions of this Final Order and Judgment and the rights and obligations of the Parties under the Settlement (including without limitation the Releases contained herein) shall not depend on, or be conditioned on or subject in any way to, the resolution of any orders, proceedings, rulings, consideration, appeals or other matters concerning, relating to, based upon or arising out of: (a) the application by Delaware Co-Lead Counsel for an award of reasonable attorneys' fees and Litigation Expenses to Plaintiffs' Counsel in connection with the Settlement (including the allocation of such fees among counsel); and/or (b) the Plan of Allocation.

15. Nothing contained in this Final Order and Judgment shall preclude any action to enforce the terms of the Stipulation or this Final Order and Judgment.

16. **No Admissions** – This Final Order and Judgment, the facts and terms of the Settlement and the Stipulation (including all of its exhibits), 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 as evidence of any infirmity in the claims of the Delaware Co-Lead Plaintiffs or any other Class Member 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 the Stipulation or this Final Order and Judgment.

17. Notwithstanding the provisions of paragraph 16 above, the Released Defendant Persons and the Released Plaintiff Persons may file, offer, refer to and otherwise employ, the Stipulation and this Final Order and Judgment in the Consolidated Action or in any other proceeding: (a) to enforce the terms of the Settlement, the Stipulation or this Final Order and Judgment; (b) to enforce or effectuate the Releases provided under the Stipulation and this Final Order and Judgment; and/or (c) 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.

18. **Plan of Allocation** – The Court hereby finds and concludes that the Plan of Allocation is, in all respects, fair and reasonable to the Class. Accordingly, the Court hereby approves the Plan of Allocation proposed by Delaware Co-Lead Plaintiffs.

19. **Attorneys' Fees and Expenses** – Plaintiffs' Counsel are hereby awarded \$ 26,000,000 in attorneys' fees and reimbursement of Litigation Expenses, which sum the Court finds to be fair and reasonable and which shall be paid to Plaintiffs' Counsel from the Settlement Fund.

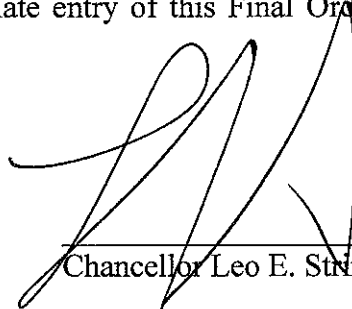
20. **Retention of Jurisdiction** – Without affecting the finality of this Final Order and Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation and enforcement of the Settlement; (b) the disposition of the Settlement Fund and the Net Settlement Fund; (c) the Class Members for all matters relating to the Consolidated Action; and (d) any motion for a Class Distribution Order.

21. **Termination** – In the event that the Settlement is terminated pursuant to the terms of the Stipulation or does not become effective: (a) the Settlement and the 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 of the Stipulation); (b) the fact and terms 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 the Stipulation, this Final Order and Judgment, the Scheduling Order and any other orders of the Court relating to the Settlement had not been entered.

22. **Modifications of the Settlement Agreement** – Without further approval from the Court, Delaware Co-Lead Plaintiffs and Defendants: (a) are hereby authorized to agree to and adopt such amendments, modifications, and expansions of the Stipulation and/or any of the exhibits attached thereto to effectuate the Settlement that are not materially inconsistent with this Final Order and Judgment and/or that do not materially limit the rights of Class Members under the Stipulation; and (b) may agree to reasonable extensions of time to carry out the provisions of the Settlement.

23. **Entry of Final Judgment** – There is no just reason to delay the entry of this Final Order and Judgment. Accordingly, immediate entry of this Final Order and Judgment by the Register in Chancery is expressly directed.



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Chancellor Leo E. Strine, Jr.