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September 30, 2013

Honorable Gregory M. Sleet
Chief Judge
United States District Court for the District of Delaware
J. Caleb Boggs Federal Building
844 North King Street, Room 4324, Unit 19
Wilmington, Delaware 19801-3569

Re: *Wilmington Trust Company, et al., v. Tribune Company, et al. (In re Tribune Company, et al.)*, Case Nos. 12-cv-128 GMS, 12-mc-108 GMS, 12-cv-1072 GMS, 12-cv-1073 GMS, 12-cv-1100 GMS, 12-cv-1106 GMS (Consolidated Appeals)

Dear Chief Judge Sleet:

We represent the Reorganized Debtors, appellees in the above-noted appeals. By motion dated January 18, 2013 [D.I. 58], the Reorganized Debtors moved to dismiss the appeals as equitably moot.[1]

On September 27, 2013, appellant Aurelius Capital Management, LP ("Aurelius") notified the Court of the Third Circuit's recent decision in *Samson Energy Resources Co. v. SemCrude, L.P. (In re SemCrude, L.P.)*, No. 12-2736, 2013 WL 4517238 (3d Cir. Aug. 27, 2013). Aurelius asserts that *SemCrude* "squarely addresses the issue of equitable mootness" raised by the Reorganized Debtors. To the contrary, as shown below, *SemCrude* is not remotely on point, and it provides no support for Aurelius's opposition to the Reorganized Debtors' motion. In fact, *SemCrude* affirmed the basic principles of equitable mootness that compel dismissal of these appeals.

To start, the *SemCrude* panel expressly recognized the continued viability of equitable mootness, thus rejecting Aurelius's argument that the doctrine is unconstitutional. *SemCrude*, 2013 WL 4517238 at *1. As Aurelius concedes, the panel held that dismissal of an appeal seeking reversal of a bankruptcy confirmation order is required where "granting the relief requested in the appeal will (a) fatally scramble the plan and/or (b) significantly harm third parties who have justifiably relied on plan confirmation." *Id.* at *5.

[1] Capitalized terms not defined in this letter have the meanings given in the Memorandum of Law in support of the Reorganized Debtors' motion [D.I. 59] and the Reply in support of the motion [D.I. 86] ("Reply").

A comparison of the facts of *SemCrude* with those of this case demonstrates why dismissal is required here but was not appropriate in *SemCrude*. In *SemCrude*, the appellants did "not assert that the central compromise of the Producer Settlement is impermissible." *Id.* at *7. Rather, the appellants merely sought to continue pursuit of their individual claims, for which the amount in controversy was "less than 0.13% of the over $160 million designated for distribution to the Producers" and "pale[d] even more in the context of the entire reorganization plan, which involved over $2 billion." *Id.* The panel noted that "[t]he amount sought by Appellants is roughly one-hundredth of one percent of that sum" and concluded that "the amounts in controversy will not require a sufficient redistribution of assets to destabilize the financial basis of the settlement" challenged on appeal. *Id.*[2]

In contrast, unlike in *SemCrude*, these appeals do not involve an involuntary compromise of a creditor's individual disputed claim *against* the bankruptcy estate. Rather, here, Aurelius has taken dead aim at the DCL Settlement, the very foundation of the $8 billion DCL Plan, which resulted in more than $520 million in settlement proceeds on claims owned and asserted *by* the bankruptcy estates.

Thus, in contrast to payment on the immaterial individual claims in *SemCrude*, the relief sought by Aurelius in this appeal would gut the DCL Settlement and cause the DCL Plan to unravel. Among other things, the requested relief would require recovery of billions of dollars of cash distributed to 17,000 creditors, cancellation of 100 million shares of New Common Stock and New Warrants that have been trading in the open market for more than eight months, rescission of $1.1 billion in new financing obtained from 140 new lenders, return of $80.7 million in cash to 86 different parties to the Step Two/Disgorgement Settlement, reversal of dozens of corporate mergers involving more than 40 Tribune entities, removal of the Reorganized Debtors' new board of directors and Chief Executive Officer, termination of the Litigation Trust and return of the $20 million Litigation Trust Loan (over $5 million of which has already been spent), and reinstatement of 169 adversary proceedings now dismissed in whole or in part with prejudice. *See* Reply at 9.[3]

These are not speculative "future harms," as Aurelius claims. They are real, definitive, and immediate. And, contrary to Aurelius's bald assertion, there simply is no relief available on

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[2] *SemCrude* therefore is similar to *Philadelphia Newspapers*, in which the Third Circuit held that allowance of a $1.8 million administrative claim in the context of a $105 million asset sale would not "undermine" the reorganization. *In re Philadelphia Newspapers, LLC*, 690 F.3d 161, 170 (3d Cir. 2012).

[3] Similarly, the relief sought by the other appellants would wreak havoc on the DCL Plan, as it would require disgorgement of plan distributions from at least 700 Class 1F creditors and/or materially alter the amount and nature of plan distributions made to literally thousands of creditors. *See* Reply at 27, 29-30, 32.

appeal that would "leave the vast majority of the DCL Plan, and indeed Reorganized Tribune, intact." *See id.* at 7-18. At a minimum, under any reasonable assessment, "the Reorganized Debtors' financial well-being – and thus the prospects of their equity investors – would be threatened by granting Appellants relief." *SemCrude*, 2013 WL 4517238 at *9.

The harm that would result upon reversal on appeal is precisely the "'chaos in the bankruptcy court' from a plan in tatters and/or significant 'injury to third parties'" that compel dismissal on equitable mootness grounds. *Id.* at *4 (quoting *Philadelphia Newspapers*, 690 F.3d at 168)). Dismissal is necessary because "a successful appeal would [] require[] [the appellate court] to excise the entire settlement, and thus destabilize the remainder of the plan." *Id.* at *7 n.9 (citing *In re U.S. Brass Corp.*, 169 F.3d 957 (5th Cir. 1999)).

Finally, in *SemCrude*, the debtors' claims regarding the impact of reversal on appeal were "unsupported by the evidence." *Id.* Here, in contrast, the motion to dismiss is supported by four uncontroverted declarations establishing, among other things, distributions of billions of dollars made to tens of thousands of creditors pursuant to the DCL Plan, widespread trading in New Common Stock and New Warrants,[4] transactions consummated as a consequence of and in reliance on the DCL Plan, the severely-detrimental impact of the new liabilities that various appellants seek to impose on the Reorganized Debtors, and the impossibility of restoring the *status quo* in the event that the relief sought by the appellants is ordered. [D.I. 59-1, 59-2, 86-1, 86-2] This is hardly the "wholly conclusory" argument that Aurelius now claims it to be.

Unlike in *SemCrude*, there is overwhelming evidence here that the relief requested by Aurelius and the other appellants would result in "chaos in the bankruptcy court from a plan in tatters." For all the reasons set forth in the Reorganized Debtors' briefs, these appeals should be dismissed.

Sincerely,

James O Johnston JMS

James O. Johnston

cc: Clerk of the Court
William P. Bowden, Esq. (counsel to Aurelius)
Counsel to Appellants

[4] Of course, those securities have continued to trade regularly since the submission of the last of those declarations on February 26, 2013. The Reorganized Debtors will submit additional evidence on this point should the Court desire it.