EFiled: Nov 06 2015 05:00PM EST
Transaction ID 58129308
Case No. 11687-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

KEVIN CAPONE and STEVEN SCHEINMAN,	)	
Plaintiffs,	)	
v.	)	Civil Action No.:
LDH MANAGEMENT HOLDINGS LLC, a Delaware limited liability company, LDHMH MM, LLC, a Delaware limited liability company, CASTLETON COMMODITIES INTERNATIONAL LLC (f/k/a LOUIS DREYFUS HIGHBRIDGE ENERGY LLC), a Delaware limited liability company, TODD BUILIONE, GLENN DUBIN, GEORGE FERRIS, WILLIAM C. REED II, and JACQUES VEYRAT,	)	
Defendants.	)	

VERIFIED COMPLAINT

Plaintiffs, by their undersigned counsel, bring this Verified Complaint against LDH Management Holdings LLC, LDHMH MM, LLC, Castleton Commodities International LLC (f/k/a Louis Dreyfus Highbridge Energy LLC), Todd Builione, Glenn Dubin, George Ferris, William C. Reed II, and Jacques Veyrat and hereby allege as follows:

PRELIMINARY STATEMENT

1. This is an action by Plaintiffs Kevin Capone and Steven Scheinman to (a) nullify the certificates of cancellation of two Delaware limited liability companies that caused Plaintiffs damage and (b) return assets to these two LLCs so the assets can be used to satisfy Plaintiffs' claims against the LLCs.

2. The canceled LLCs at issue are LDH Management Holdings LLC ("Management Holdings") and its managing member, LDHMH MM, LLC (the "Managing Member").

3. Upon information and belief, the recipients of improper distributions and/or transfers of assets from these LLCs include Castleton Commodities International LLC (f/k/a Louis Dreyfus Highbridge Energy LLC) ("LDH Energy"), Todd Builione, Glenn Dubin, George Ferris, William C. Reed II, and Jacques Veyrat.

4. LDH Energy is an energy company now known as Castleton Commodities. Management Holdings was created by LDH Energy to incentivize and compensate LDH Energy management. Management Holdings owned a 15% profits interest in LDH Energy. Plaintiffs, former executives of LDH Energy, owned membership interests in Management Holdings ("Units"). Plaintiffs were damaged when Defendants redeemed Plaintiffs' Units based on a valuation of LDH Energy (and thus Management Holdings) that was more than half a billion

dollars less than the actual fair market value of LDH Energy. By using the below-fair-market valuation of LDH Energy to redeem Plaintiffs' interests in Management Holdings, Defendants kept for themselves at least $11 million that should have been paid to Plaintiffs for their Units.

5. Earlier this year, Plaintiffs brought an action against these Defendants in New York Supreme Court to recover at least $11 million from Defendants ("the New York Action"). Plaintiffs brought the New York Action pursuant to a forum selection provision in the Management Holdings LLC Agreement. That provision states: "Each of the Members agrees that any action or proceeding arising out of or relating to this Agreement or any Unit Award Agreements issued hereunder shall be instituted in a state or federal court sitting in New York County, New York." Management Holdings LLC Agreement § 9.11(b). In the New York Action, Plaintiffs assert contract and tort claims for damages and also seek nullification of the cancellation of Management Holdings and the Managing Member and the return of assets to those LLCs.

6. Defendants moved to dismiss the New York Action, arguing, among other things, that only in the Delaware Court of Chancery may Plaintiffs seek nullification of the cancellation of Management Holdings and its Managing Member or seek the return of assets to those LLCs. Plaintiffs opposed Defendants' motion on the grounds that the New York court has the power to address

Defendants' misconduct by ordering LDH Energy, a party properly before the court, to file certificates of correction to the certificates of cancellation with the State of Delaware. Plaintiffs initiate the instant action out of an abundance of caution while Defendants' motion remains pending in the New York court, having been scheduled for argument on February 9, 2016.

7. This action in the Court of Chancery, brought because Defendants insist that this is the only court that may grant such relief, is designed to revive Management Holdings and the Managing Member and return assets to them so they can satisfy the judgments that Plaintiffs expect to obtain against those LLCs in the New York Action.

PARTIES

8. Plaintiff Kevin Capone is a resident of Wilton, Connecticut. He is the former Head of Trading for LDH Energy.

9. Plaintiff Steven Scheinman is a resident of Muttontown, New York. He is the former Executive Vice President, General Counsel, Chief Compliance Officer, and Corporate Secretary of LDH Energy.[1]

[1] Because Mr. Scheinman is a former lawyer for LDH Energy, he has certain ethical obligations to LDH Energy. Mr. Scheinman has engaged independent ethics counsel to advise him on those ethical obligations.

10. Defendant LDH Management Holdings LLC is a Delaware limited liability company. Its principal place of business is in Stamford, Connecticut. Management Holdings was formed on September 30, 2009. Defendants cancelled the certificate of formation of Management Holdings on December 31, 2012.

11. Defendant LDHMH MM, LLC is a Delaware limited liability company. It is a wholly owned subsidiary of LDH Energy. It is the managing member of Management Holdings. Its principal place of business is in Stamford, Connecticut. It was formed on September 30, 2009. Defendants cancelled the certificate of formation of LDHMH MM (the Managing Member) on December 31, 2012.

12. Defendant Castleton Commodities International LLC, formerly known as Louis Dreyfus Highbridge Energy LLC, is a Delaware limited liability company. Castleton is the parent company of the Managing Member. Its principal place of business is in Stamford, Connecticut.

13. Defendant Todd Builione is a resident of Suffern, New York. He was at relevant times a member of the Boards of Directors of LDH Energy and Management Holdings. He participated in the management of Management Holdings and the Managing Member.

14. Defendant Glenn Dubin is a resident of New York, New York. He was at relevant times a member of the Board of Directors of LDH Energy, and he

participated in the management of Management Holdings and the Managing Member. He currently is Chairman of the Board of Directors of Castleton.

15. Defendant George Ferris is a resident of Potomac, Maryland. He was at relevant times the Chief Financial Officer and a member of the Board of Directors of LDH Energy, and a Unit holder in Management Holdings. He participated in the management of Management Holdings and the Managing Member.

16. Defendant William C. Reed II is a resident of New Canaan, Connecticut. He was at relevant times (a) the President and Chief Executive Officer and a member of the Board of Directors of LDH Energy, (b) the President and a member of the Board of Directors of Management Holdings, (c) a Unit holder in Management Holdings, and (d) the President of the Managing Member. He participated in the management of Management Holdings and the Managing Member. He currently is President and Chief Executive Officer of Castleton.

17. Defendant Jacques Veyrat is a resident of Paris, France. He was at relevant times a member of the Boards of Directors of LDH Energy and Management Holdings. He participated in the management of Management Holdings and the Managing Member. He currently is a member of the Board of Directors of Castleton.

JURISDICTION

18. This Court has jurisdiction over the claims and the parties herein pursuant to 6 *Del. C.* §§ 18-105, 18-109, 18-111, 18-805, and 10 *Del. C.* § 3104(c).

19. Section 18-111 of the Delaware Limited Liability Act (the "Delaware LLC Act") provides that actions to enforce the "duties, obligations or liabilities among members or managers" of a limited liability company and "the rights or powers of, or restrictions on, the limited liability company, members or managers" may "be brought in the Court of Chancery."

20. Section 18-805 of the Delaware LLC Act provides jurisdiction in the Court of Chancery over "application[s] of … any person who shows good cause therefor" for the appointment of a trustee or receiver of a limited liability company whose certificate of formation has been cancelled.

21. The Individual Defendants all served or functioned as (a) members of the Board of Management Holdings and/or LDH Energy, and/or (b) officers of LDH Energy, and/or (c) an officer of the Managing Member. Exercising their control directly and through LDH Energy, each Individual Defendant participated materially in the management of Management Holdings and the Managing Member and therefore consented to personal jurisdiction in Delaware for purposes of litigation arising from or relating to the businesses of the LLCs. 6 *Del. C.* § 18-109(a).

FACTUAL BACKGROUND

The Contracts
[Timeline: 2009]

22. On December 1, 2009, LDH Energy established a Management Equity Participation Plan (the "Plan") to compensate senior employees of LDH Energy. The Plan was established for the purpose of incentivizing and compensating employees by providing them with the opportunity to participate in the growth and appreciation of LDH Energy. Under the Plan, LDH Energy established a new limited liability company, Management Holdings, and granted to Management Holdings a profits interest in LDH Energy equal to 15% of LDH Energy's future gains. Management Holdings, in turn, initially could issue up to 150 Units to employees selected to participate in the Plan ("Participants"), thus providing Participants with the equivalent of an equity ownership interest in LDH Energy. It was the intent of the parties to be bound by the Plan, the Plan had sufficiently definite terms, and there was consideration.

23. Management Holdings was managed by its sole managing member, LDHMH MM—the Managing Member—which is a wholly-owned subsidiary of LDH Energy, and by a Board of Directors that at all relevant times was comprised of Defendants Builione, Reed, and Veyrat. These same individuals, together with Defendants Dubin and Ferris, comprised the Board of Directors of LDH Energy.

24. The Plan was controlled by the Unit Award Agreements and the LDH Management Holdings LLC Agreement ("LLC Agreement"). Excerpts of the LLC Agreement are attached hereto as Exhibit 1.

25. Plaintiff Capone, LDH Energy's Head of Trading, and Plaintiff Scheinman, LDH Energy's General Counsel, each were awarded Units in the Plan. Pursuant to their respective Unit Award Agreements, Capone was awarded fifteen Series 1 Units, and Scheinman was awarded seven Series 1 Units. Capone's Units gave him 10% ownership of Management Holdings, or the equivalent of 1.5% ownership of LDH Energy. Scheinman's Units gave him 4.67% ownership of Management Holdings, or the equivalent of 0.7% ownership of LDH Energy.

26. Under the LLC Agreement, Management Holdings had a "Separation Call Right," which allowed it to redeem all or any portion of a Participant's Units following such Participant's separation of employment from LDH Energy. LLC Agreement § 7.4(b).

27. The LLC Agreement required that the Separation Call Right be exercised at a price reflecting at least the "Fair Market Value" of the Units:

> [T]he Call Purchase Price for each Unit shall be the greater of (1) the amount specified in the first sentence of this Section [relating to the Unit holder's participation sub-account], and (2) **the Fair Market Value for such Unit as of the last day of the last Fiscal Year preceding the Fiscal Year in which the Call Notice is given**.

LLC Agreement § 7.4(c)(i) (emphasis added). Pursuant to this clause, Defendants had an obligation to determine the fair market value of Plaintiffs' Units as of December 31, 2010 (that being the last day of the last Fiscal Year preceding April 12, 2011, when Defendants sent a Call Notice to Plaintiffs).

28. The LLC Agreement defines fair market value of the Units as:

> **[T]he amount that would be distributed as of any relevant date if (x) all of the assets of LDH [Energy] and its subsidiaries had been sold at their Gross Asset Value (adjusted immediately prior to such deemed sale by the [Management Holdings] Board in good faith and in consultation with the LDH Board)**, (y) the net proceeds of such sale (after payment of any liabilities of LDH and its subsidiaries other than any liabilities of LDH and its subsidiaries associated with the Plan Income or Expense) had been distributed to the members of LDH (including the Company) upon liquidation of LDH in accordance with the LDH Agreement (assuming for this purpose that all Units are Vested Units), and (z) the amount of such distribution to the Company had been distributed to the Members in accordance with Section 8.3; provided, however, that for the purposes of Section 7.5(a), the Board shall, in good faith and in consultation with the LDH Board, consider the value attributed to the assets of LDH and its subsidiaries in the Change of Control transaction.

Exhibit 1, p. 7 (emphasis added).

29. Defendants Management Holdings and the Managing Member were thus obligated by contract to determine the fair market value of Plaintiffs' Units in good faith, in consultation with the Individual Defendants in their capacities as

members of the Boards of Directors of LDH Energy and Management Holdings. Defendants Management Holdings, the Managing Member, and the Individual Defendants also were subject to the implied contractual covenant of good faith and fair dealing. Discharge of these contractual duties and covenants required Defendants to determine the fair market value of Plaintiffs' Units in good faith, including considering all information reasonably available to them in making their determination.

Defendants Decide To Sell the Midstream Assets Business
[Timeline: Q3 & Q4 of 2010]

30. As of the fall of 2010, LDH Energy was composed of two separate businesses: (i) its "Midstream Assets Business" and (ii) its "Merchant Trading Business." The Midstream Assets Business owned and operated physical assets, such as natural gas pipelines and storage facilities. The Merchant Trading Business marketed and traded energy commodities, such as natural gas, through its proprietary trading platform.

31. During the fall of 2010, LDH Energy explored a sale of its Midstream Assets Business. LDH Energy engaged bankers, including Goldman Sachs and Barclays, to assist with the sale.

32. During the winter of 2010/2011, LDH Energy began to receive bids for the Midstream Assets Business, including a proposal from Energy Transfer

Partners L.P. in December 2010 to pay more than **$1.9 billion** for the Midstream Assets Business.

Plaintiffs Are Terminated and the Midstream Assets Business Is Sold [Timeline: Q1 2011]

33. In December 2010, Defendant Reed, LDH Energy's CEO, notified Plaintiff Scheinman that he was being terminated without cause. LDH Energy and Scheinman entered into a separation agreement dated January 13, 2011.

34. In January 2011, Reed notified Plaintiff Capone that he was being terminated without cause.

35. On March 22, 2011, LDH Energy entered into a definitive agreement to sell the Midstream Assets Business to a third-party, a joint venture including Energy Transfer Partners L.P. for approximately **$1.925 billion** in cash.

Defendants Redeem Plaintiffs' Units at Below Fair Market Value [Timeline: Q2 2011]

36. On April 12, 2011, Defendant George Ferris, LDH Energy's CFO, sent letters to Capone and Scheinman notifying each that LDH Energy was exercising "it[s] Separation Call Right" to redeem Plaintiffs' Units.

37. LDH Energy's redemption letter stated that the fair market value of LDH Energy as of December 31, 2010 was $1.744 billion.

38. The $1.744 billion valuation was too low, given the following facts:

- in December 2010 Defendants received knowledge of at least one proposed bid valuing LDH Energy's Midstream Assets Business in excess of $1.9 billion;
- on March 22, 2011 Defendants entered into a definitive agreement to sell the Midstream Assets Business to a third-party for approximately **$1.925 billion** in cash;
- Defendants valued LDH Energy's Merchant Trading Business's energy contracts at **$569 million** on December 31, 2010, and knew that the Merchant Trading Business's energy trading platform had substantial value (more than the $0 value assigned to it by Defendants); and
- Defendants understood that the above components indicated a total value of LDH Energy in excess of **$2.494 billion** as of December 31, 2010 (i.e., $1.925bn + $569m).

39. Defendants' valuation of $1.744 billion is at least $750 million less than the asset value of LDH Energy as of December 31, 2010, not taking into account the value of the energy trading platform. After subtracting $250 million in long-term debt carried by LDH Energy, the amount that LDH Energy said was fair market value was at least $500 million less than the actual fair market value.

40. Plaintiffs suffered millions of dollars in damages when Defendants redeemed their Units, as follows:

Description	**Amount**
Actual Fair Market Value of the Midstream Assets Business as of 12/31/2010 (based on information available to Defendants at such date and confirmed by an arms-length sale agreement on 3/22/2011)	$1.925 billion
Actual Fair Market Value of the Merchant Business's energy contracts as of 12/31/2010 (based on book value of the energy contracts as of 12/31/2010)	+ $569 million
Actual Fair Market Value of the Merchant Business's energy trading platform as of 12/31/2010	+ amount to be proved at trial
Total Actual Fair Market Value of LDH Energy's Assets as of 12/31/2010	= $2.494 billion + value of Merchant Business energy trading platform
Minus long-term debt	- $250 million
Net Actual Fair Market Value of LDH Energy's Assets as of 12/31/2010	**= $2.244 billion + value of Merchant Business energy trading platform**
Fair Market Value Assigned By Defendants for purposes of Redemption Price	***- $1.744 billion***
SHORTFALL	**= $500 million + value of Merchant energy trading platform**
Plaintiff Capone's Shortfall (based on 1.5% share)	$7.5 million + 1.5% of the value of the Merchant energy trading platform + prejudgment interest
Plaintiff Scheinman's Shortfall (based on 0.7% share)	$3.5 million + 0.7% of the value of the Merchant energy trading platform + prejudgment interest

41. It appears that when valuing LDH Energy for purposes of redeeming Plaintiffs' Units, Defendants valued the Midstream Assets Business as of December 31, 2010 at no more than $1.425 billion. This number is the mathematical result of subtracting (a) the book value of the Merchant Business's energy contracts ($569 million) from (b) the purported fair market value of LDH Energy that Defendants used for purposes of redeeming Plaintiffs' Units ($1.744 billion), then (c) adding $250 million in long term debt. ($1.744 billion - $569 million + $250 million = $1.425 billion.)

42. On May 2, 2011, LDH Energy announced that it had closed the sale of its Midstream Assets Business for $1.925 billion to a joint venture including Energy Transfer Partners, L.P. This arms-length sale price is $500 million more than Defendants valued the Midstream Assets Business for purposes of redeeming Plaintiffs' Units.

43. In May and June 2011, Plaintiff Capone requested from LDH Energy a copy of the valuation materials used by Defendants to determine the redemption price for Plaintiffs' Units. LDH Energy denied the requests.

Defendants Damage Plaintiffs

44. LDH Energy and the Individual Defendants undervalued the fair market value of LDH Energy as of December 31, 2010.

45. The Midstream Assets Business had a fair market value of $1.925 billion as of December 31, 2010, as reflected in at least one proposed bid in December 2010, and as confirmed in the arms-length sale agreement for $1.925 billion entered into on March 22, 2011 and the closing of that sale—for $1.925 billion—on May 2, 2011. There was no material change in the value of the Midstream Assets Business reflected in the intervening market activity between December 31, 2010, the "as of" date of the valuation, and March 22, 2011, the date on which the agreement to sell the Midstream Assets Business was executed, and May 2, 2011, the date on which the sale closed.

46. As of December 31, 2010, the Merchant Trading Business was composed of two parts: (i) energy contracts valued by Defendants at $569 million, and (ii) an energy trading platform valued by Defendants at $0. The actual fair market value of the energy trading platform—which includes LDH Energy's intellectual property, trading strategies and research, relationships with customers and suppliers, financing capability, good will, and the going concern of the energy trading business—was worth well in excess of Defendants' valuation of $0, in an amount to be proved at trial.

47. As a result of the undervaluation, Defendants have taken at least $7.5 million owed to Plaintiff Capone (1.5% of $500 million), and at least $3.5 million owed to Plaintiff Scheinman (0.7% of $500 million), before application of

prejudgment interest. These damages are each Plaintiff's share of the difference between (a) the payments they received for their Units and (b) the payments they would have received for their Units had LDH Energy been valued at its actual fair market value.

48. Defendants were obligated by contract and by the implied covenant of good faith and fair dealing to determine the fair market value of Plaintiffs' Units in good faith, yet Defendants failed to act in good faith when they determined and/or approved the artificially low redemption price for Plaintiffs' Units.

49. To date, Defendants have yet to pay Plaintiffs the actual fair market value of their Units. Upon information and belief, Plaintiffs are the only individuals who received redemption letters from Defendants on April 12, 2011, and the only individuals who suffered the harm described in this Complaint.

Defendants Cancel Management Holdings and the Managing Member

50. After undervaluing Plaintiffs' Units, Defendants orchestrated the improper cancellation of the certificates of Management Holdings and the Managing Member.

51. The cancellation was improper under Delaware law because Management Holdings and the Managing Member failed to reserve funds for Plaintiffs' potential claims. In connection with the wind up that must precede any cancellation under Delaware law, Defendants were required to have made a

"reasonable provision to pay all claims and obligations, including all contingent or unmatured contractual claims, known to the limited liability company," and were required to "make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability company or that have not arisen but that, based on facts known to the limited liability company, are likely to arise or to become known to the limited liability company within 10 years after the date of dissolution." 6 *Del. C.* § 18-804(b).

52. Each Plaintiff separately put Defendants on notice of Plaintiffs' potential claims in advance of December 31, 2012, which is the date on which Defendants caused certificates of cancellation to be filed, resulting in the cancellation of Management Holdings and the Managing Member.

53. For example, on February 4, 2011 (before the cancellations), Plaintiff Capone wrote a letter to Defendant Reed, the CEO of Castleton and President of the Managing Member, stating: "I am worried that the Fair Market Value at 12/31/2010 has been set exceedingly low, especially in the light of the bids for the assets that came in just a few days later. . . . If indeed the FMV has been significantly undervalued, it would be devastating to the value of my interest in the equity plan and it is something I would need to review and perhaps formally question." Exhibit 2.

54. This was sufficient to put Defendants on notice that Capone might file legal claims related to the undervaluation of his Units.

55. Defendants were further put on notice on May 17, 2011 (after Defendants' redemption of Plaintiffs' Units and the sale of the Midstream Assets Business for $1.925 billion), when Plaintiff Capone wrote to Defendant Reed:

> I am writing concerning the Call Purchase Price that LDH Management Holdings set for my Units in connection with its recent Separation Call, and to follow up on and to repeat my prior oral requests to George Ferris regarding information about the valuation of Louis Dreyfus Highbridge Energy LLC. . . . I must admit that I am having difficulty understanding how the low value of $1.744 billion could have been reached given the fact [that] only one part of the Company was sold a few months later for more than $1.9 billion.

Exhibit 3.

56. Defendants were further put on notice on June 7, 2011, when Plaintiff Capone had a telephone conversation with Defendant Ferris, the CFO of LDH Energy. During that telephone conversation, Capone again questioned whether Defendants had misrepresented the fair market value of LDH Energy. Ferris again refused to provide Capone with the valuation materials that Defendants used to determine the fair market value of Plaintiffs' Units. The call ended acrimoniously.

57. Defendants were also put on notice in January 2011, when Plaintiff Scheinman specifically reserved his right to bring claims relating to the Plan

because of Scheinman's expressed concerns that LDH Energy may undervalue Plaintiffs' Units.

58. Plaintiff Scheinman also put certain of the Defendants on notice of his potential claims during multiple discussions that he had with certain of the Individual Defendants prior to December 31, 2012, including both before and after execution of his separation agreement.

59. Despite being on notice of Plaintiffs' potential claims, on December 31, 2012 Defendants caused "Certificates of Cancellation" to be filed with the Delaware Secretary of State cancelling the certificates of formation of Management Holdings and the Managing Member.

60. Notwithstanding being on notice of Plaintiffs' potential claims, Defendants cancelled the LLCs without providing notice to Plaintiffs.

61. By operation of Section 18-203 of the Delaware LLC Act, the certificates of cancellation falsely represented that the prerequisite steps had been taken for the certificates to be cancelled. Defendants knew that the representation was untrue at the time that it was made because they knew that no provision had been made for Plaintiffs' claims in accordance with Section 18-804(b) of the Delaware LLC Act.

62. In addition, Defendants caused the certificate of cancellation for Management Holdings to be filed in breach of the LLC Agreement, which required

Management Holdings to make a "reasonable provision of payment" to potential claimants before filing a certificate of cancellation with the Delaware Secretary of State. LLC Agreement §§ 8.3 & 8.5.

63. Upon information and belief, the assets of Management Holdings and the Managing Member were improperly transferred to the Defendants—either as distributions or fraudulent transfers—in connection with the wind up of Management Holdings and the Managing Member, which occurred in connection with the cancellation of these LLCs by Defendants in December 2012.

64. Defendants were aware of Plaintiffs' potential claims and were aware that the LLCs had failed to make a reasonable provision for Plaintiffs' claims yet knowingly took these distributions in violation of Section 18-804(a) of the Delaware LLC Act.

65. Upon information and belief, these distributions took place within three years of the date of this Verified Complaint.

66. On May 21, 2015, Plaintiffs filed a Complaint against Management Holdings, the Managing Member, and Castleton in the Supreme Court of the State of New York, Index No. 651794/2015, to recover damages for contractual breaches, as well as breaches of good faith and fair dealing, and unjust enrichment.

67. On June 22, 2015, Castleton Commodities filed a Motion to Dismiss, arguing in part that Defendants Management Holdings and the Managing Member

are not subject to suit because Defendants had cancelled those LLCs on December 31, 2012, thus obstructing Plaintiffs' ability to recover for Management Holdings' and the Managing Member's contractual breaches. Castleton argued in its Motion to Dismiss that Plaintiffs must seek nullification of the certificates of cancellation and the return of assets to those LLCs in the Court of Chancery. Castleton Motion to Dismiss at 2–3 (filed in New York Supreme Court on June 22, 2015).

68. On July 15, 2015, Plaintiffs filed an Amended Complaint against the present Defendants in the Supreme Court of the State of New York to recover damages for contractual breaches, unjust enrichment, torts, nullification of cancellation of the LLCs, and clawback of the improper distributions and/or transfers.

69. On August 20, 2015, Defendants again argued in a Motion to Dismiss that Plaintiffs must seek nullification of the certificates of cancellation of Management Holdings and the Managing Member and the return of assets to those LLCs in this Court. Castleton Second Motion to Dismiss at 2, 6–7, 29 (filed in New York Supreme Court on August 20, 2015).

COUNT I
Nullification of the Certificates of Cancellation

70. Plaintiffs incorporate by reference paragraphs 1 through 69 as if fully set forth herein.

71. Defendants cancelled Management Holdings and the Managing Member after they had been put on notice multiple times of potential claims against these entities arising out of Defendants' undervaluation of LDH Energy and Plaintiffs' Units.

72. Despite having been put on notice of Plaintiffs' potential claims, Defendants violated Delaware law by failing to make such provision as was reasonably likely to be sufficient to provide compensation for Plaintiffs' potential claims, which, based on facts known at the time to Defendants, were likely to arise within ten years after the date of dissolution of Management Holdings and the Managing Member.

73. Therefore, Defendants improperly dissolved Management Holdings and the Managing Member and improperly filed certificates of cancellation, in violation of Section 18-203 of the Delaware LLC Act. As a result, Plaintiffs are entitled to an order nullifying Defendants' certificates of cancellation of Management Holdings and the Managing Member, and requiring Defendants to file with the Delaware office of the Secretary of State an instrument documenting such nullification, or requiring Defendants to file with the Delaware office of the Secretary of State a certificate of correction to the certificates of cancellation pursuant to Section 18-211 of the Delaware LLC Act.

COUNT II
Violation of Section 18-804 of the Delaware LLC Act – Liability

74. Plaintiffs incorporate by reference paragraphs 1 through 73 as if fully set forth herein.

75. Defendants, as members and/or managers of Management Holdings and the Managing Member, had an obligation to wind up Management Holdings and the Managing Member in compliance with Delaware law and the LLC Agreement.

76. Upon information and belief, they failed to do so.

77. They failed to wind up Management Holdings and the Managing Member in compliance with the Delaware LLC Act by failing to make a reasonable provision for Plaintiffs' potential claims in accordance with Section 18-804(b) of the Delaware LLC Act.

78. Furthermore, they failed to wind up Management Holdings and the Managing Member in compliance with the LLC Agreement by failing to make a reasonable provision for payment to potential creditors before making final distributions in accordance with Sections 8.2 and 8.3 of the LLC Agreement.

79. As members and/or managers of Management Holdings and the Managing Member, Defendants are personally liable to Plaintiffs by reason of their actions in winding up Management Holdings and the Managing Member, including

for failing to wind up Management Holdings and the Managing Member in compliance with the Delaware LLC Act and the LLC Agreement by failing to establish a reasonable provision to pay Management Holdings' and the Managing Member's creditors before paying themselves.

COUNT III
Violation of Section 18-804 of the Delaware LLC Act – Clawback

80. Plaintiffs incorporate by reference paragraphs 1 through 79 as if fully set forth herein.

81. Upon information and belief, Defendants failed to wind up Management Holdings and the Managing Member by failing to make a reasonable provision for Plaintiffs' potential claims in accordance with Section 18-804(a) & (b) of the Delaware LLC Act, and by taking distributions from Management Holdings and the Managing Member in violation of Section 18-804(a) of the Delaware LLC Act.

82. Defendants violated their statutory wind up obligations by failing to make reasonable provisions sufficient to provide compensation for claims that had not arisen but that, based on facts known to Defendants, were likely to arise within 10 years after the date of dissolution, as required by Section 18-804(b)(3) of the Delaware LLC Act.

83. By distributing its assets to its members, including Defendants George Ferris and William Reed, Management Holdings and its managers, which include the Individual Defendants, violated their obligation to reserve assets first for the benefit of the creditors of Management Holdings, including Plaintiffs. 6 *Del. C.* § 18-804(a)(1).

84. By accepting distributions from Management Holdings and the Managing Member, members of these entities including Defendants George Ferris and William Reed violated their statutory obligations because they knew at the time that they accepted (and caused) the distribution that the distribution violated Management Holdings' obligation to reserve assets first for the benefit of the creditors of Management Holdings, including Plaintiffs. 6 *Del. C.* § 18-804(c). Instead, they accepted the improper distributions, then with other Defendants filed certificates of cancellation for Management Holdings and the Managing Member.

85. Pursuant to Section 18-804(c) of the Delaware LLC Act, the members of Management Holdings and the Managing Member, including Defendants, are liable for clawbacks up to the amount of any distributions they received in order to satisfy Plaintiffs' claims against the LLCs.

86. Furthermore, Defendants failed to wind up Management Holdings and the Managing Member in compliance with the LLC Agreement by failing to make the required reasonable provision for Plaintiffs' potential claims.

87. The members of Management Holdings and the Managing Member, including Defendants, are liable directly to Plaintiffs because Defendants have cancelled Management Holdings and the Managing Member, and because Plaintiffs suffered harm as a result of Defendants' actions.

COUNT IV
Fraudulent Transfer

88. Plaintiffs incorporate by reference paragraphs 1 through 87 as if fully set forth herein.

89. As holders of potential claims against Management Holdings and the Managing Member, Plaintiffs were "creditors" with a "claim" against these LLCs under 6 *Del. C.* § 1301(3) and (4) at the time that Defendants wound up and cancelled them.

90. Upon information and belief, all or substantially all of the assets of Management Holdings and the Managing Member were improperly transferred to LDH Energy or its subsidiaries, affiliated entities, board members or executives, including the Individual Defendants (collectively, "Affiliates") in connection with the wind up of Management Holdings and the Managing Member.

91. Defendants made these transfers with the actual intent of hindering, delaying, and defrauding the creditors of Management Holdings and the Managing Member, including the Plaintiffs.

92. Defendants made these transfers without receiving a reasonably equivalent value in exchange for the transfer. Upon information and belief, Management Holdings was not paid reasonably equivalent value when its 15% profits interest in LDH Energy was transferred to LDH Energy or its Affiliates. In connection with this transfer, Defendants intended that Management Holdings would incur, or reasonably should have believed that Management Holdings would incur, debts beyond Management Holdings' ability to pay, including Plaintiffs' claims against Management Holdings.

93. Despite knowing that Plaintiffs may assert claims against Management Holdings and the Managing Member relating to Defendants' undervaluation of Plaintiffs' Units, Defendants transferred all or substantially all of Management Holdings' and the Managing Member's assets in bad faith to LDH Energy or its Affiliates.

94. The transfers from Management Holdings and the Managing Member to LDH Energy or its Affiliates appropriated from Plaintiffs the full value of their Units for the personal gain of the Individual Defendants and/or LDH Energy, which was managed by the Individual Defendants. This constituted self-dealing.

95. The transfers were made after both Plaintiffs put Defendants on notice of their potential claims against Management Holdings and the Managing Member. The transfers were done with no notice to Plaintiffs, and they left Management

Holdings and the Managing Member with little or no assets to satisfy Plaintiffs' claims.

96. The Individual Defendants and/or LDH Energy benefitted from the fraudulent transfers from Management Holdings and the Managing Member, because upon information and belief the assets fraudulently transferred from Management Holdings and the Managing Member ultimately were distributed to or used to compensate the Individual Defendants.

97. The Defendants knew or should have known that the transfers from Management Holdings and the Managing Member were in breach of the obligations of Defendants under applicable Delaware statutes and the LLC Agreement, because Delaware statutes and the LLC Agreement required Defendants to set aside during the wind up of Management Holdings and the Managing Member a reasonable provision for the payment of claims that are likely to arise against the LLCs.

98. The transfers caused Management Holdings and the Managing Member to become insolvent, because no reasonable provision was made during the wind up process for the payment of claims and thus Management Holdings and the Managing Member no longer had sufficient assets to cover potential claims.

99. Plaintiffs are entitled to avoidance of the transfers to the extent necessary to satisfy Plaintiffs' claims; an attachment or other provisional remedy

against the transferred assets; an injunction against further disposition of the transferred assets; an appointment of a receiver to take charge of the transferred assets; and an order allowing Plaintiffs to levy execution of judgment on the transferred assets or their proceeds.

COUNT V
Appointment of a Trustee or Receiver Pursuant to Section 18-805 of the Delaware LLC Act

100. Plaintiffs incorporate by reference paragraphs 1 through 99 as if fully set forth herein.

101. All of the assets of Management Holdings were distributed in connection with its wind up and cancellation, without making a reasonable provision for Plaintiffs' potential claims. Accordingly, in addition to nullification of the certificates of cancellation, Plaintiffs seek the appointment of an independent trustee or receiver of and for the Defendants under Section 18-805 of the Delaware LLC Act to benefit and protect the rights of Management Holdings and the Managing Member and ensure that no further actions are taken to interfere with the rights of those LLCs' creditors.

102. Plaintiffs have shown good cause, pursuant to Section 18-805 of the Delaware LLC Act, to appoint (a) a trustee of and for Management Holdings and the Managing Member, with the power to defend, in the name of Management Holdings and the Managing Member, the proceeding in the Supreme Court of the

State of New York, Index No. 651794/2015, and/or (b) a receiver of and for Management Holdings and the Managing Member to institute on behalf of Management Holdings and the Managing Member suits (i) to recover from the members of Management Holdings and the Managing Member distributions that such members improperly received, (ii) to recover fraudulent transfers that LDH Energy or its Affiliates or others received, and (iii) to pursue causes of action against the managers and Board Members of Management Holdings and the Managing Member.

103. The appointment of a trustee or receiver is proper because the Plaintiffs lack an adequate remedy at law and will suffer imminent, irreparable harm without a receiver or trustee to manage the affairs of the LLCs during the litigation against them.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Kevin Capone and Steven Scheinman hereby request the entry of Judgment, for Plaintiffs and against Defendants, as follows:

I. Nullifying the certificates of cancellation of Management Holdings and the Managing Member and requiring Defendants to file with the Secretary of State an instrument documenting such nullification—or requiring Defendants to file with the Secretary of State a certificate of correction to the certificates of cancellation pursuant to Section 18-211 of the Delaware LLC Act—and thereby

revive/restore the existence of Management Holdings and the Managing Member so they can be held accountable for Plaintiffs' claims.

II. Awarding to Plaintiffs a judgment against Defendants for failing to wind up Management Holdings and the Managing Member in compliance with the Delaware LLC Act and the LLC Agreement in an amount sufficient to satisfy Plaintiffs' claims against Defendants; an award to Plaintiffs of their reasonable expenses, including attorneys' fees; and prejudgment interest.

III. Clawing back from Defendants distributions from Management Holdings and/or the Managing Member sufficient to satisfy Plaintiffs' claims against Defendants; payment of those clawbacks to Plaintiffs; an award to Plaintiffs of their reasonable expenses, including attorneys' fees; and prejudgment interest.

IV. Voiding fraudulent transfers from Management Holdings and the Managing Member sufficient to satisfy Plaintiffs' claims against those entities; an attachment or other provisional remedy against the transferred assets; an injunction against further disposition of the transferred assets; an appointment of a trustee or receiver to take charge of the transferred assets; and an order allowing Plaintiffs to levy execution of judgment on the transferred assets or their proceeds.

V. The appointment of a trustee or receiver of and for Management Holdings and the Managing Member under Section 18-805 of the Delaware LLC

Act to benefit and protect the rights of the LLCs and ensure that no further actions are taken to interfere with the rights of the LLCs' creditors.

VI. Such other and further relief as the Court deems just and proper.

/s/ Andrew J. Peach
Daniel A. Dreisbach (#2583)
Andrew J. Peach (#5789)
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700

Attorneys for Plaintiffs
Kevin Capone and Steven Scheinman

OF COUNSEL:

Brendan V. Sullivan, Jr.
Steven M. Cady
Matthew H. Blumenstein
Ava V. Baker
Kristen M. Mann
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
(202) 434-5000

Dated: November 6, 2015