

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SIMON ZOLOTAREV, Individually and on)
Behalf of All Others Similarly Situated,)
)
Plaintiff,)

v.)

SUNCOKE ENERGY PARTNERS, L.P.,)
MICHAEL G. RIPPEY, P. MICHAEL)
HARDESTY, JOHN W. SOMERHALDER)
II, ALVIN BLEDSOE, FAY WEST,)
KATHERINE T. GATES, MARTHA)
CARNES, SUNCOKE ENERGY, INC.,)
SUSAN R. LANDAHL, PETER B.)
HAMILTON, ROBERT A. PEISER, JOHN)
W. ROWE, and JAMES E. SWEETNAM,)

Defendants.

Case No.

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF SECTIONS 14(a) AND
20(a) OF THE SECURITIES
EXCHANGE ACT OF 1934**

JURY TRIAL DEMANDED

Plaintiff Simon Zolotarev (“Plaintiff”), by his undersigned attorneys, alleges upon personal knowledge with respect to himself, and information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This action is brought as a class action by Plaintiff on behalf of himself and the other holders of the common units of SunCoke Energy Partners, L.P. (“SXCP” or the “Company”) against the Company and the members of the Company’s General Partner’s board of directors (“SXC board”), SunCoke Energy, Inc. (“SXC” or “SunCoke”) and its board of directors (“SXC board”)¹ for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a), SEC Rule 14a-9, 17 C.F.R. 240.14a-9, and Regulation G, 17 C.F.R. § 244.100, in connection with the proposed merger (the “Proposed

¹ SXCP, the SXCP board, SXC and the SXC board are also referred to herein collectively as the “Defendants.”

Merger”) between SXCP and SXC.

2. SXCP is a limited partnership whose units are publicly traded on the New York Stock Exchange. SXCP’s general partner is a Delaware limited liability company called SunCoke Energy Partners LLC GP (“General Partner”). The General Partner is wholly owned by an affiliate, Sun Coal & Coke LLC, a Delaware limited liability company (“SC&C”). SC&C is in turn wholly owned by SunCoke.

3. SXCP is governed by the First Amended and Restated Agreement of Limited Partnership of SunCoke Energy Partners, L.P. dated January 24, 2013 (“Partnership Agreement”).² The General Partner and SC&C are signatories to the Partnership Agreement.

4. The General Partner, the General Partner Board of Directors, the Conflicts Committee (defined below) *and any General Partner affiliates that cause the General Partner to act*, are obligated under the terms of the Partnership Agreement to act in their respective capacities in good faith. Partnership Agreement, Section 7.9.

5. SC&C is the record holder and beneficial owner in the aggregate of, and has the right to vote, 61.7% of the SXCP Common Units outstanding. S-4/A (defined below) at 31.

6. All SXCP unit holders and persons charged with deciding the vote of unit holders, such as the Independent Conflicts Committee, were entitled to full, fair and material information regarding the Proposed Merger pursuant to the securities laws including Sections 14(a) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78n(a), 78t(a), SEC Rule 14a-9, 17 C.F.R. 240.14a-9, and Regulation G, 17 C.F.R. § 244.100.

² Available at www.sec.gov/Archives/edgar/data/1555538/000119312513022346/d472248dex31.htm, the full body of which is incorporated by reference herein.

7. On February 4, 2019, Defendants entered into an agreement and plan of merger (“Merger Agreement”), pursuant to which the Company’s common unitholders will receive 1.40 shares of common stock of SunCoke for each SXCP unit they own plus a fraction of a share of SunCoke common stock equal to the product of the number of days, beginning with the first day of the most recent full calendar quarter with respect to which an SXCP unitholder distribution record date has not occurred and ending on the day immediately prior to the closing of the merger, multiplied by a daily distribution rate equal to the quotient of the most recent regular quarterly cash distribution paid by SXCP divided by 90, whose product is then divided by \$10.91, the closing price of SunCoke common stock as of February 1, 2019 (the “Merger Consideration”). Based on the exchange ratio and current trading price of SXC stock, the estimated per unit value of the Merger Consideration is approximately \$13 per unit.

8. Pursuant to the Partnership Agreement, the Proposed Merger must be approved by a vote of a majority of the outstanding common units excluding the units held by the General Partner and its affiliates. The votes of the General Partner and its affiliates may be counted if the General Partner Conflict Committee recommends the Proposed Merger. Partnership Agreement, Section 14.3(a), (b); SunCoke Energy Partners, L.P. Annual Report 27 (Form 10-K) (Feb. 15, 2018); *see also* S-4/A Explanatory Note.

9. On March 8, 2019, in order to convince SXCP unitholders to vote in favor of the Proposed Merger, a materially incomplete and misleading Form S-4 Registration Statement³ (the “S-4”) was filed with the Securities and Exchange Commission (“SEC”), in violation of Sections 14(a) and 20(a) of the Exchange Act. The materially incomplete and misleading S-4 violates both

³ All versions of the initial Form S-4 and all versions and amendments thereto filed with the SEC are incorporated by reference herein.

Regulation G (17 C.F.R. § 244.100) and SEC Rule 14a-9 (17 C.F.R. 240.14a-9), each of which constitutes a violation of Section 14(a) and 20(a) of the Exchange Act. The S-4 has been amended several times, including on April 11, 2019, May 16, 2019 and May 20, 2019, but none of the amendments addressed the violations of Sections 14(a) and 20(a) of the Exchange Act contained in the S-4. The S-4, including the amendments, is referred to as the “S-4/A” or the “Registration Statement.”

10. The S-4/A contains the recommendation of the General Partner’s Conflicts Committee recommending the Proposed Merger to SXCP unit holders. *See* S-4/A 39-44. Consequently, the General Partner’s affiliate’s (*i.e.*, SC&C) votes of its units may count toward approval of the Proposed Merger with the other common unit holders.

11. Simultaneously with the execution of the Merger Agreement on February 4, 2019, SC&C entered into a Support Agreement with SXCP (the “Support Agreement”) (signed by Defendant Fay West for both parties), pursuant to which, among other things, SC&C agreed to support the Merger by delivering a written consent covering all the 61.7% of outstanding common units it owns approving the Merger, within two business days *after* the effectiveness of the S-4/A (the “Written Consent”). Support Agreement, Section 2. This means that the independent Conflicts Committee would have been relying in part on the legally defective and materially incomplete S-4/A that was the subject of the lawsuit at the time the decision to tender the votes was actually implemented without objection or further action by the Conflicts Committee.

12. “In connection with the proposed Merger, management of SunCoke prepared non-public projections relating to the future financial and operating performance of SunCoke and SXCP with respect to the fiscal years ending December 31, 2019 through 2023.”⁴ This information

⁴ Registration Statement 44.

is indisputably material due to the astounding conflicts of interest that SXC concedes in the S-4/A by disclosing that the SXCP's internal projections used by the Conflicts Committee and its financial advisor to weigh the fairness of the Proposed Merger were created by employees of SXC. *See* Registration Statement 20 and 44. These projections were provided to the Conflicts Committee to use in deciding how to vote, but only summaries prepared by SXC were provided to SXCP's unitholders. Whatever projections were provided to the Conflicts Committee, no matter how incomplete they may have been, would have been material to SXCP's unitholders and should have been disclosed completely to unitholders instead of only providing unitholders with summaries. The supporting information contained in the projections would have been material, and full knowledge of what the Conflicts Committee considered in formulating its recommendation would have also been material to SXCP's unitholders.

13. This Action was commenced on April 17, 2019 alleging that Defendants violated Section 14(a) of the Exchange Act by disseminating false and/or misleading solicitation material recommending the Proposed Merger to unitholders and to the independent Conflicts Committee which controlled the vote of 61.7% of the units held by SC&C. Two additional related actions were commenced also alleging that the S-4/A was false and/or misleading in violation of Section 14(a).

14. Approximately two years ago, when a similar merger transaction was proposed and the independent Conflicts Committee was provided material information concerning that proposed merger, it exercised its discretion to recommend against the merger.⁵

⁵ Available at www.businesswire.com/news/home/20161130005303/en/Capital-Family-Holdings-Offer-SXC-Acquire-SXCP. The Company in its Form 10-Q for the quarter ended March 31, 2017 disclosed that the Conflicts Committee had recommended against that proposed transaction: "In April 2017, SunCoke announced the termination of discussions with the Conflicts Committee of our Board of Directors regarding its proposal to acquire all of the Partnership's

15. The S-4/A is materially deficient and violates SEC Regulations G and 14a-9. While touting the fairness of the Merger Consideration to the Company's unitholders in the S-4/A, Defendants have failed to disclose certain material information that is necessary for unitholders to properly assess the fairness of the Proposed Merger, thereby violating SEC rules and regulations and rendering certain statements in the S-4/A materially incomplete and misleading.

16. In particular, the S-4/A contains materially incomplete and misleading information concerning the financial projections for the SXCP and SXC that were prepared by the SXC and relied on by Defendants in recommending that SXCP unitholders vote in favor of the Proposed Merger. The financial projections were also utilized by SXCP's financial advisor, Citigroup Global Markets Inc. ("Citi"), in conducting certain valuation analyses in support of its fairness opinion.

17. The material omissions and misrepresentations of the projected financial performance of SXCP and SXC bears directly on the valuation of the outstanding common units and the fairness of the Merger Consideration. The previous unsuccessful attempt to take over SXCP and squeeze out minority unitholders in a similar transaction that was rejected by the Conflicts Committee was done at a value of \$17.60.⁶

common units not already owned by SunCoke ("Simplification Transaction"), announced on October 31, 2016. The Conflicts Committee and its independent advisors reviewed the proposal made by SunCoke and had several discussions with SunCoke over the last few months regarding the potential transaction. At this time, the parties have determined that they will not be able to reach an agreement and have therefore terminated discussions regarding the proposed Simplification Transaction." SunCoke Energy Partners, L.P. Quarterly Report (Form 10-Q) 18 (Apr. 25, 2017). Available at www.sec.gov/Archives/edgar/data/1555538/000155553817000002/sxcp-20170331x10q.htm.

⁶ See Affidavit of M. Travis Keath, CFA, CPA/ABV ("Keath Aff.") ¶ 15, attached hereto as Exhibit A.

18. In January 2018, analysts had valued SXCP at a value of between \$21 and \$30 per common unit. SC&C has acquired the 61.7% of SXCP unit in the open market at per unit prices in excess of the Merger Consideration in ranges of \$17.67 to \$18.00. Thus, the Merger Consideration is not fair to SXCP unit holders.

19. It is imperative that the material information that has been omitted from the S-4/A is disclosed prior to the forthcoming vote to allow the Company's unitholders to make an informed decision regarding the Proposed Merger. It is likewise imperative that the material information be disclosed before the vote is taken on June 27, 2019 in order to allow the Conflicts Committee to review the information, and be fully informed, and rescind its recommendation of how the shares should be voted, if appropriate, based on full disclosure. A lack of full disclosure may not be shielded by only partial control of a majority of units, which *partial control* is not sufficient to avoid having to form an *independent* Conflicts Committee to make the ultimate decision. The independent Conflicts Committee had as much of a right to full and fair disclosure of material information as the other 38.3% of unit holders.

20. For these reasons, and as set forth in detail herein, Plaintiff asserts claims against Defendants for violations of Sections 14(a) and 20(a) of the Exchange Act, based on Defendants' violation of (i) Regulation G (17 C.F.R. § 244.100) and (ii) Rule 14a-9 (17 C.F.R. 240.14a-9). Plaintiff seeks to enjoin Defendants from holding the unitholders vote on the Proposed Merger and taking any steps to consummate the Proposed Merger unless, and until, the material information discussed below is disclosed to SXCP unitholders sufficiently in advance of the vote on the Proposed Merger or, in the event the Proposed Merger is consummated, to recover damages resulting from the Defendants' violations of the Exchange Act.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(a) and 20(a) of the Exchange Act.

22. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over Defendant by this Court permissible under traditional notions of fair play and substantial justice.

23. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because SXCP is incorporated in this District.

PARTIES

24. Plaintiff is, and at all relevant times has been, a holder of SXCP common units.

25. Defendant SXCP is a publicly-traded limited partnership formed under the laws of the state of Delaware and maintains its principal executive offices at 1011 Warrenville Road, Suite 600, Lisle, Illinois 60532. The Company's common units trade on the NYSE under the ticker symbol "SXCP."

26. Defendant SunCoke is incorporated in Delaware and maintains its principal executive offices at 1011 Warrenville Road, Suite 600, Lisle, Illinois 60532. The Company's common stock trades on the NYSE under the ticker symbol "SXC".

27. Individual Defendant Michael G. Rippey is SXCP's Chairman, President and Chief Executive Officer, and has been a director of SXCP since December 2017. Rippey is also the President and Chief Executive Officer of SunCoke and has been a director at Suncoke since

December 2017.

28. Individual Defendant Alvin Bledsoe has been a director of SXCP since September 2017. Bledsoe is also a director of SunCoke and has been one since June 2011.

29. Individual Defendant P. Michael Hardesty is the Senior Vice President of Commercial Operations for SunCoke and has been a director of SXCP since September 2015.

30. Individual Defendant John W. Somerhalder II has been a director of SXCP since September 2017 and serves on the Conflicts Committee.

31. Individual Defendant Fay West is the Chief Financial Officer and a Senior Vice President of SunCoke and has been a director of SXCP since October 2014.

32. Individual Defendant Katherine T. Gates is a Senior Vice President, Chief Compliance Officer and General Counsel for SunCoke and has been a director of SXCP since October 2015.

33. Individual Defendant Martha Carnes has been a director of SXCP since September 2017 and serves on the Conflicts Committee.

34. Individual Defendant John W. Rowe is SunCoke's Chairman and has been a director of SunCoke since April 2012.

35. Individual Defendant Peter B. Hamilton has been a director of SunCoke since June 2011.

36. Individual Defendant James E. Sweetnam has been a director of SunCoke since January 2012.

37. Individual Defendant Susan R. Landahl has been a director of SunCoke since September 2017.

38. Individual Defendant Robert A. Peiser has been a director of SunCoke at all relevant times.

39. The Individual Defendants referred to in paragraphs 27-38 are collectively referred to herein as the “Individual Defendants” and/or the “Board Members.”

40. Non-party SunCoke Energy Partners LLC GP, is the SXCP general partner and is a single-member Delaware limited liability company.

41. Non-party Sun Coal & Coke, LLC is the single member of SunCoke Energy Partners LLC GP and is a Delaware limited liability company. Sun Coal & Coke, LLC is wholly owned by SunCoke. Sun Coal & Coke, LLC is the record and beneficial owner of 61.7% of SXCP outstanding units.

CLASS ACTION ALLEGATIONS

42. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and the other unitholders of SXCP (the “Class”).

43. This action is properly maintainable as a class action because:

a. The Class is so numerous that joinder of all members is impracticable. As of April 11, 2019, there were approximately 47,000,000 units of SXCP common units outstanding, held by hundreds of individuals and entities scattered throughout the country;

b. There are questions of law and fact that are common to the Class that predominate over any questions affecting only individual members, including the following:

i) whether Defendants disclosed material information that includes non-GAAP financial measures without providing a reconciliation of the same non-GAAP financial measures to their most directly

comparable GAAP equivalent in violation of Section 14(a) of the Exchange Act;

- ii) whether Defendants have misrepresented or omitted material information concerning the Proposed Merger in the S-4/A in violation of Section 14(a) of the Exchange Act;
- iii) whether the Individual Defendants have violated Section 20(a) of the Exchange Act; and
- iv) whether Plaintiff and other members of the Class will suffer irreparable harm if compelled to vote their units regarding the Proposed Merger based on the materially incomplete and misleading S-4/A;

c. Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature, and will fairly and adequately protect the interests of the Class;

d. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class;

e. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the party opposing the Class;

f. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole; and

g. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

SUBSTANTIVE ALLEGATIONS

I. The Proposed Merger

44. SXCP is a Master Limited Partnership that primarily produces coke used for the blast furnace production of steel in the United States. The Company has two operating segments, Domestic Coke and Logistics. SXCP also provides metallurgical and thermal coal mixing and handling terminal services, as well as operates an export terminal in the United States Gulf Coast. The Company also provides coal handling and/or mixing services to steel, coke, electric utility and coal mining customers.

45. On February 5, 2019, Defendants issued a joint press release announcing the Proposed Merger, which states in pertinent part:

LISLE, Ill., Feb. 5, 2019 /PRNewswire/ -- SunCoke Energy, Inc. (NYSE: SXC) and SunCoke Energy Partners, L.P. (NYSE: SXCP) today announced that they have entered into a definitive agreement whereby SXC will acquire all outstanding common units of SXCP not already owned by SXC in a stock-for-unit merger transaction (the "Simplification Transaction"). The Simplification Transaction is expected to close late in the second quarter or early in the third quarter of 2019, subject to customary closing conditions. Pursuant to the terms of the merger agreement, SXCP unaffiliated common unitholders will receive 1.40 SXC common shares for each SXCP common unit. The SXCP unit price implied by the exchange ratio represents a 9.3% premium to SXCP's closing price on February 4, 2019 and a 12.7% premium, based on SXC's and SXCP's 30-day volume weighted average prices ending February 4, 2019.

"We are pleased to announce this transaction today along with strong financial and operating results for the fourth quarter and full-year 2018," said Mike Rippey, President and Chief Executive Officer of SXC. "We believe there are clear benefits to this Simplification Transaction, as we will be able to unlock our full potential. With a simplified corporate structure, increased liquidity and improved financial flexibility, we will be better positioned to execute on our strategic growth opportunities and generate immediate and long-term value for SXC and SXCP stakeholders alike."

On behalf of SXCP, the terms of the Simplification Transaction were negotiated, reviewed and approved by the conflicts committee of the board of directors of SXCP's general partner, which committee consisted solely of independent directors. The conflicts committee also recommended that the board of directors of SXCP's general partner approve the transaction. The transaction was approved by the board of directors of SXCP's general partner and the board of directors of SXC.

TRANSACTION BENEFITS

- Simplifies the organizational and governance structure, reducing complexity for investors
- Creates a larger publicly-traded company, increasing public float and enhancing trading liquidity
- Immediately accretive to SXC shareholders
- SXC intends to initiate a \$0.24 annual dividend per share in the first full quarter after closing the transaction
- Improved credit profile and enhanced access to capital markets lowers cost of capital
- Consolidation of cash flow and elimination of MLP distribution accelerates objective of reducing leverage
- Estimated cost synergies of approximately \$2 million per year from eliminating dual public company requirements and estimated cash tax savings of approximately \$40 million over the next five years
- More cash flow available to deploy for organic growth projects, attractive M&A opportunities and/or to return capital to shareholders
- Eliminates MLP qualifying income limitations on growth

SIMPLIFICATION TRANSACTION DETAILS

Pursuant to the terms of the merger agreement, SXC will acquire all of the outstanding SXCP common units that it does not already own. SXCP common unitholders will be entitled to receive 1.40 shares of SXC per SXCP unit. SXCP anticipates that the Simplification Transaction will not close prior to the record date for the distribution relating to the first quarter of 2019. In addition, SXCP common unitholders will receive a prorated distribution per unit, payable in SXC common shares and based upon a quarterly distribution of \$0.40 per unit, for the period beginning with the first day of the most recent full calendar quarter with respect to which an SXCP unitholder distribution record date has not occurred (or if there is no such full calendar quarter, then beginning with the first day of the partial calendar quarter in which the closing occurs) and ending on the day prior to the close of the merger, as provided in the merger agreement.

Following completion of the Simplification Transaction, SXCP will become a wholly-owned subsidiary of SXC, SXCP's common units will cease to be publicly traded and SXCP's incentive distribution rights will be eliminated. Additionally,

SXCP's 7.50% Senior Notes due 2025 will remain outstanding. Completion of the merger is subject to customary closing conditions, including the approval by holders of a majority of the outstanding SXC common shares and SXCP common units, as well as customary regulatory approvals. SXC indirectly owns a sufficient percentage of the SXCP common units to approve the transaction on behalf of the holders of SXCP common units.

ADVISORS

Evercore and Baker Botts L.L.P. acted as financial and legal advisors, respectively, to SXC. Citi and Akin Gump Strauss Hauer & Feld LLP acted as financial and legal advisors, respectively, to the conflicts committee of the general partner of SXCP.

CONFERENCE CALL AND WEBCAST INFORMATION

SXC will host a live conference call and webcast to discuss the transaction as well as fourth quarter and full year earnings results at 10:00 a.m. Eastern Time (9:00 a.m. Central Time) today, February 5, 2019. A presentation outlining the transaction will be posted on the home page of the "Investors" section of SXC's website, at www.suncoke.com, prior to the call. Investors may participate in this call by dialing 1-833-236-5757 in the U.S. or 1-647-689-4185 if outside the U.S., confirmation code 3165918. The conference call will be archived for replay on a webcast link located in the "Investors" section of www.suncoke.com.

SXCP will host a live conference call and webcast to discuss the transaction as well as fourth quarter and full year earnings results at 12:00 a.m. Eastern Time (11:00 a.m. Central Time) today, February 5, 2019. A presentation outlining the transaction will be posted on the home page of the "Investors" section of SXCP's website, at www.suncoke.com, prior to the call. Investors may participate in this call by dialing 1-833-236-5757 in the U.S. or 1-647-689-4185 if outside the U.S., confirmation code 1497078. The conference call will be archived for replay on a webcast link located in the "Investors" section of www.suncoke.com.

ABOUT SUNCOKE ENERGY, INC. AND SUNCOKE ENERGY PARTNERS, L.P.

SunCoke Energy, Inc. (NYSE: SXC) and its sponsored master limited partnership subsidiary, SunCoke Energy Partners, L.P. (NYSE: SXCP), supply high-quality coke used in the blast furnace production of steel, under long-term, take-or-pay contracts that pass through commodity and certain operating costs to customers. We utilize an innovative heat-recovery technology that captures excess heat for steam or electrical power generation. Our cokemaking facilities are located in Illinois, Indiana, Ohio, Virginia and Brazil. We have more than 50 years of cokemaking experience serving the integrated steel industry. Through SXCP, we provide export and domestic material handling services to coke, coal, steel, power and other bulk and liquids customers. Our logistics terminals have the collective

capacity to blend and transload more than 40 million tons of material each year and are strategically located to reach Gulf Coast, East Coast, Great Lakes and international ports. To learn more about SunCoke Energy, Inc. and SunCoke Energy Partners, L.P., visit our website at www.suncoke.com.

46. In light of the fact that SunCoke owns 100% of the general partner of SXCP and 61.7% of the outstanding SXCP common units, therefore directly controlling SXCP, the Company's Conflicts Committee (the "Conflicts Committee") retained a financial advisor and counsel and interacted with SunCoke without the other members of the SXCP board. The Conflicts Committee consists of two independent directors, John W. Somerhalder II and Martha Z. Carnes. The other five members of the Company's board are executive officers and/or board members of SunCoke.

47. On October 31, 2016, SunCoke announced it had submitted a proposal to the SXCP board to acquire all outstanding common units of SXCP for a purchase price of \$17.80, representing a 5% premium. The Conflicts Committee rejected this offer as inadequate and talks of a merger ended on April 20, 2017.

48. On February 5, 2018, the newly elected Chief Executive Officer and President of SunCoke, Michael G. Rippey, discussed with the SunCoke board the possibility of reigniting the merger talks with SXCP. On November 28, 2018, the SunCoke board submitted a new offer to SXCP outlining an exchange ratio of 1.35 new shares of SunCoke common stock for each outstanding SXCP common unit and changed the exchange ratio to 1.40 new shares of SunCoke common stock for each outstanding SXCP common unit on January 22, 2019, representing a 10.4% implied premium.

49. On January 8, 2018, an article was posted to *SeekingAlpha* calling SXCP a good purchase for investors to make, commenting "[m]ost dividend yield stocks come at the expense of growth potential and vice versa. I believe SunCoke Energy Partners LP [] is an opportunity to reap

a sustainable 14% distribution yield while still benefiting from significant potential upside to both intrinsic and takeout valuations.”⁷ The article describes the potential for a SXCP/SunCoke merger and said that SunCoke could pay “up to a 40% premium for SXCP and still drive 10% FCF accretion.”⁸ The author also states that he believes the October 31, 2016 offer of a 5% premium was in part due to a conflict of interest where the previous Chairman, President and Chief Executive Officer Frederick A. Henderson owned \$20 million of SunCoke stock but only \$300,000 of SXCP units.

50. Michael G. Rippey, the new Chairman, President and Chief Executive Officer of both SunCoke and the General Partner of SXCP and the Chairman of SXCP, appears to be in a similar position to Frederick A. Henderson. SunCoke’s form DEF 14A filed on March 21, 2018 states that Rippey owns no common units of SXCP and 221,128 shares of SunCoke common stock worth \$1,769,020.⁹ Additionally, Rippey has five years to meet the CEO Stock Ownership Guidelines (five times annual base salary), meaning within five years Rippey must own at least \$2.25 million in SunCoke stock.

51. In sum, it appears that SXCP is well-positioned for financial growth and the Merger Consideration fails to adequately compensate the Company’s unitholders. It is imperative that Defendants disclose the material information they have omitted from the S-4/A, discussed in detail below, so that the Company’s unitholders can properly assess the fairness of the Merger

⁷ Cornerstone Investors, SunCoke Energy Partners: 14% Yield and Potential Takeout Makes for a Compelling Buy, Seeking Alpha, Jan. 8 2018, <https://seekingalpha.com/article/4135916-suncoke-energy-partners-14-percent-yield-potential-takeout-makes-compelling-buy> (last visited Apr. 16, 2019).

⁸ *Id.*

⁹ *See* SunCoke, Definitive Proxy Statement (DEF 14A) (Mar. 21, 2018).

Consideration for themselves and make an informed decision concerning whether or not to vote in favor of the Proposed Merger.

52. If the false and/or misleading S-4/A is not remedied and the Proposed Merger is consummated, Defendants will directly and proximately have caused damages and actual economic loss (i.e. the difference between the value to be received as a result of the Proposed Merger and the true value of their units prior to the merger), in an amount to be determined at trial, to Plaintiff and the Class.

II. The Materially Incomplete and Misleading S-4/A

53. On April 11, 2019, Defendants caused the S-4/A to be filed with the SEC in connection with the Proposed Merger. The S-4/A solicits the Company's unitholders to vote in favor of the Proposed Merger. Defendants were obligated to carefully review the S-4/A before it was filed with the SEC and disseminated to the Company's unitholders to ensure that it did not contain any material misrepresentations or omissions. However, the S-4/A misrepresents and/or omits material information that is necessary for the Company's unitholders to make an informed decision concerning whether to vote in favor of the Proposed Merger, in violation of Sections 14(a) and 20(a) of the Exchange Act.

Financial Projections that Violate Regulation G and SEC Rule 14a-9

54. The S-4/A fails to provide material information concerning the SXCP's and SXC's financial projections, which were developed by SXC's management and relied upon by the SXCP board and the Conflicts Committee and the SXC board in recommending that the unitholders vote in favor of the Proposed Merger. S-4/A 42. Certain of the financial projections also were relied on by the Company's financial advisor, Citi, for purposes different than those for which the SXCP board utilized the financial projections. Citi utilized certain of the financial projections in connection with its valuation analyses and respective fairness opinions. *Id.* at 47-48.

55. The S-4/A contains values for projected non-GAAP (Generally Accepted Accounting Principles) financial metrics from 2019-2023 for: (1) Adjusted EBITDA attributable to SXCP, (2) Distributable Cash Flow, (3) Total Distributed Cash Flow, (4) Standalone SunCoke Adjusted EBITDA, (5) SXCP Distribution, and (6) Cash Available for Dividends, but fails to provide the (i) line items used to calculate these non-GAAP metrics nor (ii) a reconciliation of these non-GAAP projections to the most comparable GAAP measures, in direct violation of Regulation G and consequently Section 14(a). *Id.* at 46.

56. The term “Adjusted EBITDA attributable to SXCP” is defined as a non-GAAP term representing “EBITDA, adjusted for non-recurring items and excluding the impact of transaction costs related to the simplification transaction. Adjusted EBITDA attributable to SXCP includes 100% interests in Convent Marine Terminal, Kanawha River Terminal, and Lake Terminal, 98.0% interests in Middletown, Haverhill, and Granite City, and SXCP’s corporate costs.” *Id.* at 46 n.4. However, the S-4/A fails to provide the values of any of these line items and fails to reconcile Adjusted EBITDA to its most comparable GAAP equivalent. *Id.* at 46. This omitted information is material because it was used to calculate and project critical projected financial measures utilized by the SXCP board, the Conflicts Committee and Citi to recommend the unfair Merger Consideration, and its omission renders the SXCP board’s recommendation, the projected financials, Citi’s valuations and the Merger Consideration misleading. *See* Keath Aff. ¶¶ 37-41.

57. The term “Distributable Cash Flow” is described as a non-GAAP term defined as: “Adjusted EBITDA attributable to SXCP, computed as described above, less net cash paid for interest expense, ongoing capital expenditures, accruals for replacement capital expenditures, cash taxes, and adjusted for deferred revenue.” S-4/A 46 n.5. Nevertheless, Defendants again fail to provide the values of any of these line items and fail to reconcile Distributable Cash Flow to its

most comparable GAAP equivalent. *Id.* at 46. This omitted information is material because it was used to calculate and project critical projected financial measures utilized by the SXCP board, the Conflicts Committee and Citi to recommend the unfair Merger Consideration, and its omission renders the recommendation, the projected financials, Citi's valuations and the Merger Consideration misleading. *See* Keath Aff. ¶¶ 33-36.

58. The term "Total Distributed Cash Flow" is defined as "Total distributions paid by SXCP to its general partner and limited partners assuming a \$0.40 per unit quarterly distribution." S-4/A 46 n.6. Nevertheless, Defendants again fail to provide the values of any of these line items and fail to reconcile Total Distributed Cash Flow to its most comparable GAAP equivalent. *Id.* at 46. This omitted information is material because it was used to calculate and project critical projected financial measures utilized by the SXCP board, the Conflicts Committee and Citi to recommend the unfair Merger Consideration, and its omission renders the recommendation, the projected financials, Citi's valuations and the Merger Consideration misleading. *See* Keath Aff. ¶¶ 33-36.

59. The term "Standalone SunCoke Adjusted EBITDA" is defined as: "Standalone SunCoke Adjusted EBITDA is a non-GAAP measure of financial performance. Adjusted EBITDA represents earnings before interest, taxes, depreciation and amortization ('EBITDA'), adjusted for non-recurring items and excluding the impact of transaction costs related to the simplification transaction. Standalone SunCoke Adjusted EBITDA refers to adjusted EBITDA attributable to SunCoke excluding GP/LP distributions from SXCP and cash distributions made by Indiana Harbor in respect of non-controlling interests and related capital expenditure reimbursements, and includes SunCoke's 100% interests in Jewell Coke, Brazil, and Dismal River Terminal, 85.2% interest in Indiana Harbor, 2% interests in Middletown, Haverhill, and Granite City, and

SunCoke’s corporate and other costs.” S-4/A 46 n.1. Nevertheless, Defendants again fail to provide the values of any of these line items and fail to reconcile Standalone SunCoke Adjusted EBITDA to its most comparable GAAP equivalent. *Id.* at 46. This omitted information is material because it was used to calculate and project critical projected financial measures utilized by the SXC board, the SXCP board, the Conflicts Committee and Citi to recommend the unfair Merger Consideration, and its omission renders the recommendation, the projected financials, Citi’s valuations and the Merger Consideration misleading. *See* Keath Aff. ¶¶ 37-41.

60. The term “SXCP Distributions” is defined as “SunCoke’s GP/LP distributions from SXCP.” S-4/A 46 n.2. Defendants fail to provide the values of any of this item and fail to reconcile SXCP Distributions to its most comparable GAAP equivalent. *Id.* at 46. This omitted information is material because it was used to calculate and project critical projected financial measures utilized by the SXC board, the SXCP board, the Conflicts Committee and Citi to recommend the unfair Merger Consideration, and its omission renders the recommendation, the projected financials, Citi’s valuations and the Merger Consideration misleading.

61. The term “Cash Available for Dividends – Adjusted” is defined as: “Cash Available for Dividends – Adjusted is a non-GAAP measure of financial performance and is defined as Standalone SunCoke Adjusted EBITDA, computed as described above, less standalone maintenance capital expenditures, interest expense, cash taxes, and excluding certain noncash items. Adjustment includes adding back one-time oven rebuild costs at Indiana Harbor (\$40 million of capital expenditures and \$10 million of operating expenses) in 2019.” *Id.* at 46 n.3. This omitted information is material because it was used to calculate and project critical projected financial measures utilized by the SXC board, the SXCP board, the Conflicts Committee and Citi to recommend the unfair Merger Consideration, and its omission renders the recommendation, the

projected financials, Citi's valuations and the Merger Consideration misleading. *See* Keath Aff. ¶¶ 33-36.

62. When a company discloses non-GAAP financial measures in a registration statement that were relied on by a board of directors to recommend that unitholders exercise their corporate suffrage rights in a particular manner, the company must, pursuant to SEC regulatory mandates, also disclose all projections and information necessary to make the non-GAAP measures not misleading, and must provide a reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial measure disclosed or released with the most comparable financial measure or measures calculated and presented in accordance with GAAP. 17 C.F.R. § 244.100; *see also* Keath Aff. ¶¶ 42-51.

63. Indeed, the SEC has scrutinized the use of non-GAAP financial measures in communications with shareholders. Former SEC Chairwoman Mary Jo White has stated that the frequent use by publicly traded companies of unique company-specific non-GAAP financial measures (as SXCP included in the S-4/A here), implicates the centerpiece of the SEC's disclosures regime:

In too many cases, the non-GAAP information, which is meant to supplement the GAAP information, has become the key message to investors, crowding out and effectively supplanting the GAAP presentation. Jim Schnurr, our Chief Accountant, Mark Kronforst, our Chief Accountant in the Division of Corporation Finance and I, along with other members of the staff, have spoken out frequently about our concerns to raise the awareness of boards, management and investors. And last month, the staff issued guidance addressing a number of troublesome practices *which can make non-GAAP disclosures misleading*: the lack of equal or greater prominence for GAAP measures; exclusion of normal, recurring cash operating expenses; individually tailored non-GAAP revenues; lack of consistency; cherry-picking; and the use of cash per share data. I strongly urge companies to carefully consider this guidance and revisit their approach to non-GAAP disclosures. I also urge again, as I did last December, that appropriate controls be

considered and that audit committees carefully oversee their company's use of non-GAAP measures and disclosures.¹⁰

64. The SEC has acknowledged that potential "misleading inferences" are exacerbated when the disclosed information contains non-GAAP financial measures¹¹ and adopted Regulation G¹² "to ensure that investors and others are not misled by the use of non-GAAP financial measures."¹³

65. Defendants must comply with Regulation G. More specifically, Defendants must disclose the most directly comparable GAAP financial measure and a reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial measure disclosed or released with the most comparable financial measure or measures calculated and presented in accordance with GAAP. 17 C.F.R. § 244.100. This is because the SEC believes "this reconciliation will help investors . . . to better evaluate the non-GAAP financial measures . . . [and] more accurately evaluate companies' securities and, in turn, result in a more accurate pricing of securities."¹⁴

66. The SEC has required compliance with Regulation G, including reconciliation requirements in other merger transactions. *Compare Youku Tudou Inc., et al.*, Correspondence 5

¹⁰ Mary Jo White, *Keynote Address, International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability* (June 27, 2016), <https://www.sec.gov/news/speech/chair-white-icgn-speech.html> (emphasis added) (footnotes omitted) (last visited Apr. 16, 2019).

¹¹ Non-GAAP financial measures are numerical measures of future financial performance that exclude amounts or are adjusted to effectively exclude amounts that are included in the most directly comparable GAAP measure. 17 C.F.R. § 244.101(a)(1).

¹² Item 10 of Regulations S-K and S-B were amended to reflect the requirements of Regulation G.

¹³ SEC, *Final Rule: Conditions for Use of Non-GAAP Financial Measures* (Jan 22, 2003), available at <https://www.sec.gov/rules/final/33-8176.htm> ("SEC, *Final Rule*").

¹⁴ SEC, *Final Rule*.

(Jan. 11, 2016) (Issuer arguing that Rule 100(d) of Regulation G does not apply to non-GAAP financials relating to a business combination),¹⁵ with *Youku Tudou Inc., et al.*, SEC Staff Comment Letter 1 (Jan. 20, 2016) (“[The SEC] note[s] that your disclosure of projected financial information is not in response to the requirements of, or pursuant to, Item 1015 of Regulation M-A and is thus not excepted from Rule 100 of Regulation G.”);¹⁶ see *Harbin Electric, Inc.*, Correspondence 29 (Aug. 12, 2011) (“Pursuant to the requirements of Regulation G, we have added a reconciliation of actual and projected EBIT to GAAP net income . . .”).¹⁷

67. Compliance with Regulation G is mandatory under Section 14(a), and non-compliance constitutes a violation of Section 14(a). Thus, in order to bring the S-4/A into compliance with Regulation G as well as cure the materially misleading nature of the projections under SEC Rule 14a-9 as a result of the omitted information, Defendants must provide a reconciliation table of the non-GAAP measures to the most comparable GAAP measures and/or

¹⁵ Available at <https://www.sec.gov/Archives/edgar/data/1442596/000110465916089133/filename1.htm>.

¹⁶ Available at <https://www.sec.gov/Archives/edgar/data/1442596/000000000016062042/filename1.pdf>.

¹⁷ Available at <https://www.sec.gov/Archives/edgar/data/1266719/000114420411046281/filename1.htm>. See also *Actel Corporation*, SEC Staff Comment Letter 2 (Oct. 13, 2010) (“Opinion of Actel’s Financial Advisor, page 24 . . . This section includes non-GAAP financial measures. Please revise to provide the disclosure required by Rule 100 of Regulation G.”), available at <https://www.sec.gov/Archives/edgar/data/907687/000000000010060087/filename1.pdf>. See also *The Spectranetics Corp.*, SEC Staff Comment Letter 1 (July 18, 2017) (“Item 4. The Solicitation or Recommendation Certain Spectranetics Forecasts, page 39 . . . [P]rovide the reconciliation required under Rule 100(a) of Regulation G”), available at <https://www.sec.gov/Archives/edgar/data/789132/000000000017025180/filename1.pdf>. The SEC Office of Mergers and Acquisitions applied Regulation G in these transactions and reflect the SEC’s official position. Any claim that the SEC has officially sanctioned the use of non-GAAP financial forecasts for business combinations when the Board itself created and relied on such non-GAAP forecasts to recommend a transaction such as the Proposed Transaction is incorrect. The SEC’s website provides certain unofficial guidance for certain matters, called Compliance and Disclosure Interpretations (“C&DI’s”) which through the use of Q&As reflect the views of particular SEC staff and on which certain issuers have in the past claimed an exemption from Regulation G. The SEC itself expressly disclaims C&DI’s as they are not regulations that have been reviewed by the SEC, and the SEC expressly states that they are not binding and should not be relied on. See www.sec.gov/divisions/corpfin/cfguidance.shtml.

disclose the line item projections for the financial metrics that were used to calculate the aforementioned non-GAAP measures. Such projections are necessary to make the non-GAAP projections included in the S-4/A not misleading.

The Materially Misleading Financial Analyses

68. The financial projections at issue were relied upon by the Company's financial advisor, Citi, in connection with its valuation analyses and respective fairness opinions. S-4/A 47-48. The opacity concerning the Company's internal projections renders the valuation analyses described below materially incomplete and misleading, particularly as companies formulate non-GAAP metrics differently. Once a registration statement discloses internal projections relied upon by the board, those projections must be complete and accurate.

69. With respect to Citi's *Discounted Cash Flow Analysis*, the S-4/A states that Citi calculated "the estimated present value of the unlevered free cash flows that SXCP was forecasted to generate during the fiscal years ending December 31, 2019 through December 31, 2023 based on the SXCP forecasts." *Id.* at 53. Despite disclosing that the unlevered after-tax free cash flow projections were based on the Company's financial projections, the S-4/A fails to disclose the actual unlevered after-tax free cash flow or the values of the line items utilized to calculate unlevered after-tax free cash flow. The absence of this information renders Citi's discounted cash flow analysis incomplete and misleading. *See* Keath Aff. ¶¶ 24-25.

70. Citi additionally used a terminal Adjusted EBITDA multiple of 5.7x to 7x and a discount rate of 8.3% to 9.8% for which there is no stated reason as to why those ranges were chosen. *Id.* at 53-54.

71. The definition of projected after-tax unlevered free cash flow ("UFCF") is, in and of itself, and separate and apart from the mandates of Regulation G, materially false and/or

misleading in violation of SEC Rule 14a-9 (17 C.F.R. 240.14a-9). Because neither the method nor the line items used to calculate projected after-tax UFCF were disclosed, unitholders are unable to discern the veracity of Citi's discounted cash flow analysis. Without further disclosure, unitholders are unable to compare Citi's calculations with the Company's financial projections. Thus, the Company's unitholders are being materially misled regarding the value of the Company. See Keath Aff. ¶¶ 28-36.

72. These key inputs are material to SXCP unitholders, and their omission renders the summary of Citi's discounted cash flow analysis incomplete and misleading. As a highly-respected professor explained in one of the most thorough law review articles regarding the fundamental flaws with the valuation analyses bankers perform in support of fairness opinions, in a discounted cash flow analysis a banker takes management's projections and then makes several key choices "each of which can significantly affect the final valuation." Steven M. Davidoff, *Fairness Opinions*, 55 Am. U.L. Rev. 1557, 1576 (2006). Such choices include "the appropriate discount rate, and the terminal value . . ." *Id.* As Professor Davidoff explains:

There is substantial leeway to determine each of these, and any change can markedly affect the discounted cash flow value . . . The substantial discretion and lack of guidelines and standards also makes the process vulnerable to manipulation to arrive at the "right" answer for fairness. This raises a further dilemma in light of the conflicted nature of the investment banks who often provide these opinions[.]

Id. at 1577-78 (footnotes omitted).

73. These omissions from the *Discounted Cash Flow Analysis* are all the more misleading because the equity value ranges Citi calculated fall below the Merger Consideration. On April 10, 2019, SunCoke's stock closed at \$9.04 per share. Using the exchange rate of 1.40 shares per unit of SXCP, the Merger Consideration is valued at \$12.66. Citi's *Discounted Cash Flow Analysis* estimated the implied per unit equity value of SXCP to be \$14.10 to \$19.60. Furthermore, on April 10, 2019, SXCP's units closed at \$13.12 per unit. Therefore, in order for

SXCP unitholders to become fully informed regarding the fairness of the Merger Consideration, the material omitted information must be disclosed to unitholders.

74. With respect to Citi's *Implied Exchange Ratio Reference Range* calculations (S-4/A 51- 55), there appears to be an inconsistency in Citi's comparison of the values of SXCP and SunCoke, respectively. For example, based on its *Selected Public Companies Analysis*, Citi calculated a broad overall range of SXCP-to-SunCoke values of 0.627x – 1.382x, calculated as follows:

- a. $0.627 = \$9.15$ (SXCP's lowest indicated value) \div $\$14.60$ (SunCoke's highest indicated value)
- b. $1.382 = \$15.00$ (SXCP's highest indicated value) \div $\$10.85$ (SunCoke's lowest indicated value).

75. The problem with the above calculations is that SunCoke's value is largely a function of its holdings of the SXCP's units. As such, the lowest indication of SunCoke's value requires the lowest indication of SXCP's value, while the highest indication of SunCoke's value requires the highest indication of SXCP's value. But the ratio in (a) above requires the value of SXCP to simultaneously be at both its minimum (for the numerator) and its maximum (for the denominator). The ratio in (b) above has the same nonsensical requirement, although in this instance the maximum value of SXCP goes to the numerator while the minimum value of SXCP simultaneously goes to the denominator. The same problem of inconsistency plagues the corresponding calculations of the *Implied Exchange Ratio Reference Range* shown in Citi's *Discounted Net Cash Flow Analyses*. The information contained in the Registration Statement is of insufficient granularity to enable SXCP's unitholders to correct Citi's error. See Keath Aff. ¶ 17.

76. At least two of the analyses underlying Citi's fairness opinion strongly suggest that the Merger Consideration is inadequate. *See id.* at ¶19.

77. First, as previously noted in paragraph 13 of the Keath Affidavit, the implied market value of the Merger Consideration had dropped to \$12.72 as of the date the Registration Statement was filed with the SEC (and further to \$10.49 as of the date of the Keath Affidavit). This lies below the entire range of \$14.10 to \$19.60 per unit indicated by Citi's *Discounted Cash Flow Analyses*. S-4/A 54. Second, the Wall Street analyst price targets examined by Citi ranged from \$14.00 to as high as \$20.00, with a median figure of \$19.50 per unit. *Id.* at 55. The fact that Citi's own financial analyses raise doubts about the adequacy of the Merger Consideration indicates the importance of providing SXCP's unitholders with the information necessary to independently assess the value of both SXCP and SunCoke. *See* Keath Aff. ¶ 20.

78. In sum, the S-4/A independently violates both (i) Regulation G, which requires a presentation and reconciliation of any non-GAAP financial to their most directly comparable GAAP equivalent, and (ii) Rule 14a-9, since the material omitted information renders certain statements, discussed above, materially incomplete and misleading. As the S-4/A independently contravenes the SEC rules and regulations, Defendants violated Section 14(a) and Section 20(a) of the Exchange Act by filing the S-4/A to garner votes in support of the Proposed Merger from SXCP unitholders.

79. Absent disclosure of the foregoing material information prior to the special unitholder meeting to vote on the Proposed Merger, Plaintiff and the other members of the Class will not be able to make a fully-informed decision regarding whether to vote in favor of the Proposed Merger, and they are thus threatened with irreparable harm, warranting the injunctive relief sought herein.

80. Further, failure to remedy the deficient Registration Statement and consummate the Proposed Transaction will directly and proximately cause damages and actual economic loss to unit holders (*i.e.* the difference between the value to be received as a result of the Proposed Merger and the true value of their units prior to the merger), in an amount to be determined at trial, to Plaintiff and the Class.

**PLAINTIFF’S ADDITIONAL ALLEGATIONS ON
MATERIALITY OF OMITTED INFORMATION**

81. The SXCP Conflicts Committee recommended the Merger based in part on its review of the Company’s projected financial measures, only a portion of which (the “Financial Forecasts”) is included in the Disclosures set forth in the S-4/A.¹⁸ The Financial Forecasts provided to SXCP’s unitholders constitute only a *summary* of the unabridged projections available to SunCoke (and therefore all SXCP unitholders except the public SXCP unitholders), the SXCP conflicts committee, and their respective financial advisors:

The *summary of these projections* is included below because *these projections* were made available to the SXCP Conflicts Committee, the SXCP Board, the SunCoke Board and their respective financial advisors in connection with the proposed Merger.¹⁹

82. SunCoke (the buyer) prepared not only its own financial projections but also the financial projections of SXCP (the seller), thereby creating a conflict of interests that heightens the need for thorough disclosure:

In connection with the proposed Merger, management of SunCoke prepared non-public projections relating to the future financial and operating performance of SunCoke and SXCP with respect to the fiscal years ending December 31, 2019 through 2023.”²⁰

¹⁸ Registration Statement 41, 51.

¹⁹ *Id.* at 44 (emphases added).

²⁰ *Id.*

83. The unabridged financial projections constitute material information to SXCP's unitholders, and their absence from the Registration Statement is therefore a material shortcoming in the disclosures made to SXCP's unitholders.

84. The market values of the Proposed Merger Consideration implied by SunCoke's closing stock prices as of selected dates were:

- a. \$14.15 per unit, based on SunCoke's closing price of \$10.11 per share on February 5, 2019 (the date the Merger was announced);
- b. \$12.72 per unit, based on SunCoke's closing price of \$8.72 per share on April 11, 2019 (the date the Registration Statement was filed with the SEC);
- c. \$10.64 per unit, based on SunCoke's closing price of \$7.60 per share on May 29, 2019.

85. The question of the fair value of SXCP's common units is central to the decision facing the Company's unitholders. As detailed herein, the disclosures ("Disclosures") set forth in the Registration Statement suffer from a number of material omissions regarding the following important topics:

- a. The Registration Statement withheld from unitholders the unlevered free cash flows of both SXCP and SunCoke; and
- b. The Registration Statement failed to provide the information necessary to reconcile SXCP's non-GAAP financial metrics (such as unlevered free cash flows and EBITDA) to pertinent GAAP-based financial metrics underlying the financial projections relied upon by the Company's financial advisor.

86. The failure to disclose this information to SXCP's unitholders was inappropriate and this information that would have afforded a far clearer indication with respect to the

Company's value and form a more educated opinion of the merits of the Proposed Merger. These omissions constitute a material shortcoming in the disclosures made to SXCP's unitholders because this omitted information was material information.

**Citi's Fairness Analysis is Flawed, Poorly
Explained and of Dubious Utility to SXCP's Unitholders**

87. The description of Citi's fairness analysis appearing on pages 47 through 56 of the Registration Statement is problematic for at least two reasons. It suggests an irregularity in Citi's *Implied Exchange Ratio Reference Range* calculations. It also contains information that calls into question Citi's conclusion of the fairness of the Merger, from a financial point of view, to SXCP's unitholders.

88. The irregularity in Citi's *Implied Exchange Ratio Reference Range* calculations results from an apparent inconsistency in Citi's comparison of the values of SXCP and SunCoke, respectively. For example, based on its *Selected Public Companies Analysis*, Citi calculated a broad overall range of SXCP-to-SunCoke values of 0.627x – 1.382x, calculated as follows:

- a. $0.627 = \$9.15$ (SXCP's lowest indicated value) \div $\$14.60$ (SunCoke's highest indicated value)
- b. $1.382 = \$15.00$ (SXCP's highest indicated value) \div $\$10.85$ (SunCoke's lowest indicated value).

89. The problem with the above calculations is that SunCoke's value is largely a function of its holdings of the SXCP's units. As such, the lowest indication of SunCoke's value requires the lowest indication of SXCP's value, while the highest indication of SunCoke's value requires the highest indication of SXCP's value. But the ratio in (a) above requires the value of SXCP to simultaneously be at both its minimum (for the numerator) and its maximum (for the denominator). The ratio in (b) above has the same nonsensical requirement, although in this

instance the maximum value of SXCP goes to the numerator while the minimum value of SXCP simultaneously goes to the denominator. The same problem of inconsistency plagues the corresponding calculations of the *Implied Exchange Ratio Reference Range* shown in Citi's *Discounted Net Cash Flow Analyses*. The information contained in the Registration Statement is of insufficient granularity to enable SXCP's unitholders to correct Citi's error.

90. Furthermore, the description of the fair value of SunCoke's asset EBITDA is inaccurate and confusing, and almost certainly the result of a drafting error in the Registration Statement.

91. Furthermore, at least two of the analyses underlying Citi's fairness opinion strongly suggest that the Merger Consideration is inadequate.

92. As previously noted, the implied market value of the Merger Consideration had dropped to \$12.72 as of the date the Registration Statement was filed with the SEC (and further to approximately \$10.64 on May 29, 2019). This lies below the entire range of \$14.10 to \$19.60 per unit indicated by Citi's *Discounted Cash Flow Analyses*.²¹ Similarly, the Wall Street analyst price targets examined by Citi ranged from \$14.00 to as high as \$20.00, with a median figure of \$19.50 per unit.²² The fact that Citi's own financial analyses raise doubts about the adequacy of the Merger Consideration indicates the importance of providing SXCP's unitholders with the information necessary to independently assess the value of both SXCP and SunCoke.

**The Importance of Providing Sufficient Information to
Shareholders to Enable an Adequately Informed Decision is Axiomatic**

93. It is axiomatic that unitholders should be informed about the merits (or lack thereof)

²¹ Registration Statement 54.

²² *Id.* at 55.

with respect to any transaction for which their approval is sought. Indeed, Defendants themselves have acknowledged as much in the Registration Statement by admonishing unitholders to reach a full understanding of the financial analyses underlying Citi's Fairness Opinion:

In order to fully understand the financial analyses, the tables must be read together with the text of each summary as the tables alone do not constitute a complete description of the financial analyses.²³

94. The Registration Statement further acknowledged the potential of the information pertaining to Citi's analysis to be misleading if all analyses and factors were not considered:

Considering the data in the tables below without considering the full narrative description of the financial analyses, including the methodologies and assumptions underlying the financial analyses, could create a misleading or incomplete view of such financial analyses.²⁴

95. As discussed hereinafter, however, the Disclosures failed to provide adequate information to investors – particularly with respect to (i) unlevered free cash flows of SXCP and SunCoke, and (ii) the important information necessary to reconcile projected non-GAAP financial measures to their most directly comparable GAAP-based counterparts.

**The Disclosures Failed to Disclose the Unlevered Free Cash Flows
Necessary to Calculate the Values of Both SXCP and SunCoke**

Primacy of Discounted Cash Flow Analysis

96. As an initial matter, it is important to understand that the discounted cash flow (“DCF”) analysis has primacy among corporate valuation techniques. This particular analysis, in fact, forms the basis for all other valuation techniques and is the very core of modern corporate

²³ *Id.* at 50.

²⁴ *Id.*

finance.^{25, 26, 27} Both academicians and practitioners alike acknowledge this principle.

97. Because DCF analyses are of such fundamental importance in the determination of corporate value, it follows that the propriety of the financial projections used to create the DCF analysis in the fairness presentation prepared by SXCP's financial advisor (which was relied upon by the conflicts committee of the Company's board of directors in making its recommendation to unitholders) is commensurately important. This information would have enabled SXCP's unitholders to independently prepare DCF analyses for SXCP and SunCoke, as well as to assess the merit of Citi's analysis, and therefore the weight (if any) to place on Citi's conclusions.

98. The unique vantage point from which it is able to ascertain the future outlook for the operations of the business makes management's assessment of the Company's future operating and financial performance all but irreplaceable in most instances. For this reason, thorough disclosure with respect to the projected cash flows required to prepare a DCF analysis (including the manner in which such cash flows were calculated) is a staple in the vast majority of proxy statements filed by publicly traded companies being acquired in corporate mergers.

²⁵ "Discounted cash flow (DCF) forms the core of finance Though professionals may employ other methods of valuation, such as relative valuation and the contingent claims approach, DCF forms the basis for all other valuations. Underscoring the importance of DCF valuation is the fact that it provides a linchpin to link various fields of finance." See "Developing an Automated Discounted Cash Flow Model." *The Valuation Handbook: Valuation Techniques from Today's Top Practitioners* ("The Valuation Handbook") 110, Ed. Rawley Thomas and Benton E. Gup. Hoboken: John Wiley & Sons, 2010.

²⁶ "While discounted cash flow valuation is only one of the three ways of approaching valuation and most valuations done in the real world are relative valuations, it is the foundation on which all other valuation approaches are built. To do relative valuation correctly, we need to understand the fundamentals of discounted cash flow valuation. This is why so much of this book focuses on discount cash flow valuation." Damodaran, Aswath, "Approaches to Valuation," *Investment Valuation* 11 (2nd ed.).

²⁷ "In finance theory, present value models [also referred to as discounted cash flow models] are considered the fundamental approach to equity valuation." CFA® Program Curriculum 2015 • Level II • "Volume 4: Equity." CFA Institute 22, 2014.

99. Defendants themselves explicitly acknowledged the importance of future cash flows to the Proposed Merger generally, indicating that “[t]he failure of SXCP’s or SunCoke’s businesses to achieve projected results, including projected cash flows, could have a material adverse effect on the price of SunCoke Common Stock, SunCoke’s financial position and SunCoke’s ability to reinstate, maintain or increase its dividends following the Merger.”²⁸

100. In contrast to normal practice, however, the Disclosures inappropriately excluded the projected unlevered free cash flows of both SXCP and SunCoke used in Citi’s *Discounted Cash Flow Analyses*.²⁹ Instead the Financial Forecasts in the Registration Statement included only the following financial metrics, none of which is a substitute for the unlevered free cash flow required to perform DCF analyses of SXCP and SunCoke:³⁰

- a. For SXCP: Adjusted EBITDA attributable to SXCP, Distributable Cash Flow, and Total Distributed Cash Flow.
- b. For SunCoke: Adjusted EBITDA, SXCP Distributions, and Cash Available for Dividends.

²⁸ Registration Statement 20.

²⁹ *Id.* at 53-54.

³⁰ *Id.* at 46.

Figure 1: Registration Statement Omits Material Information Necessary to Value SXCP and SunCoke

	Year Ended December 31,				
	2019	2020	2021	2022	2023
(Dollars in millions)					
SunCoke:					
Standalone SunCoke Adjusted EBITDA (1)	\$ 47	\$ 69	\$ 67	\$ 70	\$ 65
SXCP Distributions (2)	\$ 47	\$ 47	\$ 47	\$ 47	\$ 47
Cash Available for Dividends – Adjusted (3)	\$ 84	\$ 93	\$ 79	\$ 63	\$ 67
SXCP:					
Adjusted EBITDA attributable to SXCP (4)	\$219	\$227	\$232	\$237	\$217
Distributable Cash Flow (5)	\$100	\$104	\$106	\$129	\$114
Total Distributed Cash Flow (6)	\$ 75	\$ 75	\$ 75	\$ 75	\$ 75

(1) Standalone SunCoke Adjusted EBITDA is a non-GAAP measure of financial performance. Adjusted EBITDA represents earnings before interest, taxes, depreciation and amortization (“EBITDA”), adjusted for non-recurring items and excluding the impact of transaction costs related to the simplification transaction. Standalone SunCoke Adjusted EBITDA refers to adjusted EBITDA attributable to SunCoke excluding GP/LP distributions from SXCP and cash distributions made by Indiana Harbor in respect of non-controlling interests and related capital expenditure reimbursements, and includes SunCoke’s 100% interests in Jewell Coke, Brazil, and Dismal River Terminal, 85.2% interest in Indiana Harbor, 2% interests in Middletown, Haverhill, and Granite City, and SunCoke’s corporate and other costs.

(2) SunCoke’s GP/LP distributions from SXCP.

(3) Cash Available for Dividends – Adjusted is a non-GAAP measure of financial performance and is defined as Standalone SunCoke Adjusted EBITDA, computed as described above, less standalone maintenance capital expenditures, interest expense, cash taxes, and excluding certain noncash items. Adjustment includes adding back one-time oven rebuild costs at Indiana Harbor (\$40 million of capital expenditures and \$10 million of operating expenses) in 2019.

(4) Adjusted EBITDA attributable to SXCP is a non-GAAP measure of financial performance. Adjusted EBITDA represents EBITDA, adjusted for non-recurring items and excluding the impact of transaction costs related to the simplification transaction. Adjusted EBITDA attributable to SXCP includes 100% interests in Convent Marine Terminal, Kanawha River Terminal, and Lake Terminal, 98.0% interests in Middletown, Haverhill, and Granite City, and SXCP’s corporate costs.

(5) Distributable Cash Flow is a non-GAAP measure of financial performance and is defined as Adjusted EBITDA attributable to SXCP, computed as described above, less net cash paid for interest expense, ongoing capital expenditures, accruals for replacement capital expenditures, cash taxes, and adjusted for deferred revenue.

(6) Total distributions paid by SXCP to its general partner and limited partners assuming a \$0.40 per unit quarterly distribution.

101. Although the importance of omitting SXCP’s unlevered free cash flows was perhaps self-evident since this information is necessary to perform a DCF analysis of the Company, the omission of SunCoke’s unlevered free cash flows was equally problematic in this instance. This is true because all of the Merger Consideration to be paid to the Company’s unitholders consists of SunCoke common stock, which must also be valued. Accordingly, it was important for SXCP’s unitholders to be made aware of the pertinent information necessary to determine the worth of SunCoke.

102. Generally speaking, if an acquirer’s stock is deemed by the target’s unitholders to be overvalued, such acquirer stock will tend to be perceived, *cet. par.*, as less favorable than would otherwise be the case (and vice-versa). As such, it is as important for SXCP’s unitholders to examine and understand the value of the consideration they stood to *receive* (i.e., SunCoke common stock) as the value of what they were being asked to *sell* (i.e., their units of the Company).

103. For its own DCF analyses of SXCP and SunCoke, Citi utilized management-prepared financial forecasts that:

Citi was directed to utilize in its analyses, [and] was advised by the managements of SXCP General Partner and SunCoke, and Citi assumed, with the SXCP Conflicts Committee's consent, that they were reasonably prepared on bases reflecting the best currently available estimates and judgments of such managements, as applicable, as to, and were a reasonable basis upon which to evaluate, the future financial performance of SXCP and SunCoke, the potential strategic implications and financial and operational benefits (including the amount, timing and achievability thereof) anticipated by the management of SunCoke to result from, and other potential pro forma financial effects of, the Merger and the other matters covered thereby. Citi expressed no view or opinion as to any financial forecasts and other information or data (or underlying assumptions on which any such financial forecasts and other information or data are based) provided to or otherwise reviewed by or discussed with Citi and Citi assumed, with the SXCP Conflicts Committee's consent, that the financial results, including with respect to the potential strategic implications and financial and operational benefits anticipated to result from the Merger, reflected in such financial forecasts and other information and data would be realized in the amounts and at the times projected.³¹

104. Furthermore, Citi failed to specify how it calculated unlevered free cash flow for SXCP and SunCoke, or even whether the same formula was used for both companies.

None of (a) Distributions, (b) Cash Available for Dividends, (c) Distributable Cash Flow, or (d) Total Distributed Cash Flow Are Equivalent to Unlevered Free Cash Flow

105. Whether individually or in combination, none of the above financial measures presented for SXCP and SunCoke in the Financial Forecasts is a substitute for unlevered free cash flow when preparing a DCF analysis. Rather, these measures were each calculated on a *levered* basis (i.e., with a deduction for interest expense). The cash flow figures used by Citi in its *Discounted Cash Flow Analyses* were calculated on an *unlevered* basis (i.e., unaffected by the presence or absence of interest-bearing debt).

³¹ *Id.* at 48.

106. Because interest expense is deducted from *levered* cash flows, but not *unlevered* cash flows, the *levered* figures included in the Financial Forecasts for (a) Distributions, (b) Cash Available for Dividends, (c) Distributable Cash Flow, or (d) Total Distributed Cash Flow all likely understate projected *unlevered* free cash flows used by Citi and necessary for SXCP's unitholders to perform a proper DCF analyses for the Company and SunCoke.

107. The use of *unlevered* free cash flows is the most common method used in corporate valuation, and is appropriate for SXCP and SunCoke as evidenced by the fact that *unlevered* DCF models were used by both Citi and Evercore³² (SunCoke's financial advisor) in their respective fairness opinions.

108. Because it precludes SXCP's unitholders from being able to independently assess both the Company's value and SunCoke's value using the single-most meaningful valuation method – DCF analysis – the projected unlevered free cash flows are of such singular importance that this omission alone constitutes a material shortcoming in the total mix of information available to SXCP's unitholders.

EBITDA and Other Projected Financial Measures Are Not a Substitute for Unlevered Free Cash Flow

109. Because EBITDA is another metric sometimes misunderstood to be equivalent to unlevered free cash flow, it is important to emphasize that the two are not the same and must not be treated as if they are. Shannon Pratt, a longtime valuation practitioner and author, points out “this error is not a minor matter.”³³

³² The Registration Statement indicates that the discount rate used by Evercore was based on a weighted-average cost of capital, which is consistent with an *unlevered* DCF model. See Registration Statement 61.

³³ “Occasionally, we find an analyst treating earnings before interest, taxes, depreciation, and amortization (EBITDA) as if it were free cash flow. This error is not a minor matter...” Shannon Pratt, “Net Cash Flow: The Preferred Measure of Return,” *Cost of Capital* 16.

110. While EBITDA is widely used by financial analysts and can be useful in the appropriate context, the valuation community recognizes that the metric has its shortcomings and limitations and should not be overemphasized when other important financial information is available. According to *The Valuation Handbook*:

EBITDA can be a useful measure to assess a company's performance, [but] has a number of shortcomings that should not be ignored when using it, including, but not limited to, the following:

- EBITDA represents debt-free firms, which is not the case for most companies...
- EBITDA also ignores tax payments, which profitable firms cannot, or cannot always, avoid...
- It does not take into account firms with different capital investments and the depreciation that comes with them...
- EBITDA does not exclude all noncash items such as the allowance for bad debts and inventory write-downs as well as the impact of investments in working capital...³⁴

111. The wider investment community, as well, has likewise learned to use caution when considering EBITDA. While acknowledging its merits when used appropriately, Moody's Investors Service has long warned against overreliance on EBITDA. In a 23-page *Special Comment* dated June 2000, Moody's indicated:

We find the ten critical failings of using EBITDA to be the following:

1. EBITDA ignores changes in working capital and overstates cash flow in periods of working capital growth
2. EBITDA can be a misleading measure of liquidity
3. EBITDA does not consider the amount of required reinvestment – especially for companies with short lived assets
4. EBITDA says nothing about the quality of earnings

³⁴ The Valuation Handbook 529-30.

5. EBITDA is an inadequate standalone measure for comparing acquisition multiples
6. EBITDA ignores distinctions in the quality of cash flow resulting from differing accounting policies – NOT all revenues are cash
7. EBITDA is not a common denominator for cross- border accounting conventions
8. EBITDA offers limited protection when used in indenture covenants
9. EBITDA can drift from the realm of reality
10. EBITDA is not well suited for the analysis of many industries because it ignores their unique attributes³⁵

112. Elsewhere in the same *Special Comment*, Moody's noted that knowledge of the limitations of EBITDA was commonplace, indicating that "[b]y all appearances, most corporate managers are aware of the limitations of EBITDA. In varying language, many financial statements contain warnings regarding the use of EBITDA."³⁶

113. Already on record regarding the issue, Moody's again urged caution in 2014, when it explained that "calculating EBITDA can be open to interpretation," that "EBITDA may be calculated aggressively to portray a more favorable credit profile," and that "issuers can have a tendency to more aggressively calculate EBITDA to improve their credit metrics and facilitate market access." Perhaps most pointedly, one of the concluding remarks of the 2014 Special Comment was that "EBITDA cannot be taken at face value and generally should be evaluated alongside other liquidity and cash metrics."³⁷

³⁵ Moody's Investors Service, *Special Comment* entitled *Putting EBITDA In Perspective: Ten Critical Failings of EBITDA as the Principal Determinant of Cash Flow* ("*Special Comment*") 1 (June 2000).

³⁶ *Id.* at 3.

³⁷ Moody's Investors Service, *Special Comment* entitled *EBITDA: Used and Abused* 1, 5, and 8 (Nov. 20, 2014).

Despite Acknowledging the Important Distinction Between non-GAAP and GAAP Financial Metrics, Defendants Failed to Provide the Necessary Reconciliation

114. The importance of reconciling between non-GAAP and GAAP financial measures is (and has long been) widely acknowledged. The SEC adopted “Regulation G” in 2003, in response to the mandate set forth in Section 401(b) of the Sarbanes-Oxley Act that rules be enacted to regulate the use of pro forma financial information. Regulation G states that when a publicly-traded company, such as SXCP, discloses material information that includes non-GAAP financial measures, the company also must include the most directly comparable GAAP financial measure, as well as a reconciliation of the two. 17 C.F.R. §244.100(a). Such reconciliations were deemed necessary to address the proliferation of non-GAAP financial measures lacking a uniform definition and therefore carrying the risk of misleading investors.

115. Defendants themselves emphasized in SXCP’s quarterly earnings releases (the most recent of which contains five pages of reconciliations between non-GAAP and GAAP financial measures³⁸) the importance of distinguishing between non-GAAP and GAAP financial metrics. In fact, SXCP’s definition of Adjusted EBITDA contains not one but two references alerting unitholders to the facts that:

Adjusted EBITDA does not represent and should not be considered an alternative to net income or operating income under accounting principles generally accepted in the U.S. . . . and may not be comparable to other similarly titled measures in other businesses.³⁹

EBITDA and Adjusted EBITDA are not measures calculated in accordance with GAAP, and they should not be considered an alternative to net income, operating cash flow or any other measure of financial performance presented in accordance with GAAP.⁴⁰

³⁸ See SXCP Earnings Release 11-15.

³⁹ See SXCP Earnings Release 4.

⁴⁰ *Id.*

116. Substantially identical language appears in SunCoke's quarterly earnings releases.⁴¹ SunCoke's earnings releases also contain reconciliations between GAAP and non-GAAP financial measures,⁴² as do other communications SunCoke makes to its shareholders.⁴³

117. Despite these cautionary messages, Defendants inexplicably withheld from unitholders the financial figures necessary to reconcile the differences between non-GAAP and GAAP projected financial metrics in their consideration of the value of the Company, the value of SunCoke, and the merits and risks facing them with respect to the Merger.

118. The shortcomings of the non-GAAP metrics referred to in the Company's earnings releases and SEC filings were consistent with longstanding cautionary language appearing in guidance published for valuation and financial analysis. According to The Valuation Handbook:

Many have objected to the use of... so-called non-GAAP measures. The [SEC] and the International Organization of Securities Commissions ("IOSCO") are among them. At the end of the previous century and the start of this century, the SEC debated the subject in many comment letters that were sent to companies using such measures. In May 2002, the IOSCO also cautioned issuers, investors and other users of financial information to use care when presenting and interpreting non-GAAP measures.⁴⁴

119. A Law360 article indicated that "[i]n recent years, the use of non-GAAP financial measures has become more widespread, and the magnitude of the differences between non-GAAP and GAAP . . . measures has grown."⁴⁵ The article went on to say that "[t]he SEC continues to

⁴¹ See SunCoke Earnings Release 4.

⁴² *Id.* at 11-12.

⁴³ See, e.g., SunCoke Investor Presentation 30, 38.

⁴⁴ The Valuation Handbook 531.

⁴⁵ Harwood, Elaine, Frank Mascari and Laura Simmons: *Renewed SEC Focus On Non-GAAP Measures: 1 Year Later*, Law360.com (May 16, 2017), available at

emphasize the need for caution with regard to the use of non-GAAP measures[,]” and to cite sources indicating that 2015 non-GAAP earnings per share (“EPS”) of companies in the Dow Jones Industrial Average were approximately 31% higher than EPS reported based on GAAP,⁴⁶ and that earnings for S&P 500 firms grew nearly 14% from 2012 to 2015 based on non-GAAP measures, but were essentially unchanged based on GAAP.⁴⁷

120. Recent growth in the appearance of non-GAAP metrics in proxy statements has been significant. According to accounting research firm Audit Analytics, “more and more proxy statements include non-GAAP language. In 2009, fewer than 20% of proxies had such language; but by 2016, nearly 60% did.”⁴⁸

121. Investing is always a forward-looking endeavor, and a direct examination of the benefits anticipated from a given investment provides insight that is unavailable in any other way – even from analyses as important as those based on the market approach (which entails comparison to comparable public companies and precedent merger transactions). It therefore stands to reason that a reconciliation of non-GAAP to GAAP *projected* financial metrics is of at least comparable – if not greater – importance than the same information provided on an *historical* basis.

<https://www.law360.com/articles/920528/sec-s-renewed-focus-on-non-gaap-measures-1-year-later>.

⁴⁶ John Butters, “Did DJIA Companies Report Higher Non-GAAP EPS in FY 2015?” FactSet, March 11, 2016, https://insight.factset.com/2016/03/earningsinsight_03.11.16 (accessed May 29, 2019).

⁴⁷ Michael Rapoport and Dave Michaels, “SEC Tightens Crackdown on ‘Adjusted’ Accounting Measures,” Wall Street Journal, May 18, 2016, <https://www.wsj.com/articles/sec-tightens-crackdown-on-adjusted-accounting-measures-1463608923> (accessed May 29, 2019).

⁴⁸ <http://www.auditanalytics.com/blog/use-of-non-gaap-in-proxy-statements/> (accessed May 29, 2019)

122. This is perhaps especially true in the instance of SXCP, because the fairness opinion which formed part of the basis for the board's recommendation to unitholders did not refer to any GAAP financial measures. The only financial measures underlying Citi's valuation analysis were non-GAAP measures.

- a. Selected Public Companies Analysis:⁴⁹ Adjusted EBITDA, asset EBITDA;
- b. Discounted Cash Flow Analyses:⁵⁰ Unlevered free cash flow, Adjusted EBITDA, asset EBITDA;
- c. Has/Gets Analysis:⁵¹ Unlevered free cash flow, Adjusted EBITDA, asset EBITDA, Cost Savings; and
- d. Certain Illustrative Pro Forma Financial Effects of the Merger Analysis:⁵² Distributable Cash Flow, Cash Available for Dividends, Distributions, Cost Savings.

123. Furthermore, the Registration Statement seems to imply that the Adjusted EBITDA figures used by Citi in its analysis correspond to the similarly titled figures contained in the Financial Forecasts. However, it does not specify that this is true, nor does it otherwise provide enough detail about the formulae used by Citi to enable SXCP's unitholders to ascertain this for themselves.

⁴⁹ Registration Statement 51-2.

⁵⁰ *Id.* at 53-54.

⁵¹ *Id.* at 54-55.

⁵² *Id.* at 55.

LOSS CAUSATION

124. The S-4/A's material omissions and misrepresentations of the projected financial performance of SXCP bears directly on the valuation of the outstanding common units and the fairness of the Merger Consideration.

125. SunCoke attempted to take over SXCP and squeeze out minority unitholders in a similar transaction at a value of \$17.60, which effort was rejected by the Conflicts Committee (with different members at that time).

126. In January 2018, analysts had valued SXCP at a value of between \$21 and \$30 per common unit, with "significant upside" if domestic steel utilization improves.⁵³ SC&C has acquired 61.7% of SXCP units in the open market at per unit prices in excess of the Merger Consideration in ranges of \$17.67 to \$18.00.

127. In November 2016, one of SXCP's top ten unitholders, Capital Family Holdings, submitted a letter to the SXCP Conflicts Committee and the SXCP board with a valuation of \$29.70.⁵⁴ Capital Family Holdings also has objected to the current Proposed Merger.⁵⁵

128. The trend in SXCP key data that drives a valuation obtained from the public filings and disclosures from 2016 (when offer was at \$17.60) to the current offer (which is based on an exchange ratio of approximately \$13) is in the below table. SXCP revenues grew substantially:

⁵³ See, e.g., Cornerstone Investors, *SunCoke Energy Partners: 14% Yield and Potential Takeout Makes for a Compelling Buy*, Seeking Alpha, Jan. 8 2018, <https://seekingalpha.com/article/4135916-suncoke-energy-partners-14-percent-yield-potential-takeout-makes-compelling-buy>.

⁵⁴ Simon Zolotarev, *Capital Family Holdings: Offer from SXC to Acquire SXCP is Deeply Inadequate*, Business Wire, Nov. 30, 2016, available at www.businesswire.com/news/home/20161130005303/en/Capital-Family-Holdings-Offer-SXC-Acquire-SXCP.

⁵⁵ Available at www.marketwatch.com/press-release/capital-family-holdings-put-offer-to-independent-sxcp-holders-2019-02-20.

SXCP Key data:			
	<u>12/31/2018</u>	<u>12/31/2017</u>	<u>12/31/2016</u>
Total Revenues	\$ 892.1	\$ 845.6	\$ 779.7
Adj EBIDTA	\$ 212.5	\$ 221.3	\$ 213.0
Total Assets	\$ 1,619.5	\$ 1,641.4	\$ 1,696.0
L/T Debt	\$ 793.3	\$ 818.4	\$ 805.7

129. Thus, the Merger Consideration is not fair and in the event the Proposed Merger is consummated, SXCP unit holders seek damages in an amount reflecting the fair value of the units.

COUNT I

(Against All Defendants for Violations of Section 14(a) of the Exchange Act and 17 C.F.R. § 244.100 Promulgated Thereunder)

130. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

131. Section 14(a)(1) of the Exchange Act makes it “unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 78l of this title.” 15 U.S.C. § 78n(a)(1).

132. As set forth above, the S-4/A omits information required by SEC Regulation G, 17 C.F.R. § 244.100, which independently violates Section 14(a). SEC Regulation G, among other things, requires an issuer that chooses to disclose a non-GAAP measure to provide a presentation of the “most directly comparable” GAAP measure and a reconciliation “by schedule or other

clearly understandable method” of the non-GAAP measure to the “most directly comparable” GAAP measure. 17 C.F.R. § 244.100(a).

133. The failure to reconcile the non-GAAP financial measures included in the S-4/A violates Regulation G and constitutes a violation of Section 14(a).

134. As a direct and proximate result of the dissemination of the false and/or misleading S-4/A Defendants used to recommend that unitholders approve the Proposed Merger, Plaintiff and the Class will suffer damages and actual economic losses (i.e. the difference between the value they will receive as a result of the Proposed Merger and the true value of their units prior to the merger) in an amount to be determined at trial and are entitled to such equitable relief as the Court deems appropriate, including rescissory damages.

COUNT II

(Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9 Promulgated Thereunder)

135. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

136. SEC Rule 14a-9 prohibits the solicitation of unitholder votes in registration statements that contain “any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading[.]” 17 C.F.R. § 240.14a-9(a).

137. Regulation G similarly prohibits the solicitation of unitholder votes by “mak[ing] public a non-GAAP financial measure that, taken together with the information accompanying that measure . . . contains an untrue statement of a material fact or *omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure . . . not*

misleading.” 17 C.F.R. § 244.100(b) (emphasis added).

138. Defendants have issued the S-4/A with the intention of soliciting unitholder support for the Proposed Merger. Each of the Defendants reviewed and authorized the dissemination of the S-4/A, which fails to provide critical information regarding, amongst other things, the financial projections for the Company.

139. In so doing, Defendants made untrue statements of fact and/or omitted material facts necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue of their roles as directors and/or officers, were aware of the omitted information but failed to disclose such information, in violation of Section 14(a). The Individual Defendants were therefore negligent, as they had reasonable grounds to believe material facts existed that were misstated or omitted from the S-4/A, but nonetheless failed to obtain and disclose such information to unitholders although they could have done so without extraordinary effort.

140. The Individual Defendants knew or were negligent in not knowing that the S-4/A is materially misleading and omits material facts that are necessary to render it not misleading. The Individual Defendants undoubtedly reviewed and relied upon the omitted information identified above in connection with their decision to approve and recommend the Proposed Merger.

141. The Individual Defendants knew or were negligent in not knowing that the material information identified above has been omitted from the S-4/A, rendering the sections of the S-4/A identified above to be materially incomplete and misleading.

142. The Individual Defendants were, at the very least, negligent in preparing and reviewing the S-4/A. The preparation of a registration statement by corporate insiders containing materially false or misleading statements or omitting a material fact constitutes negligence. The

Individual Defendants were negligent in choosing to omit material information from the S-4/A or failing to notice the material omissions in the S-4/A upon reviewing it, which they were required to do carefully as the Company's directors. Indeed, the Individual Defendants were intricately involved in the process leading up to the signing of the Merger Agreement and the preparation of the Company's financial projections.

143. SXCP is also deemed negligent as a result of the Individual Defendants' negligence in preparing and reviewing the S-4/A.

144. The misrepresentations and omissions in the S-4/A are material to Plaintiff and the Class, who will be deprived of their right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the vote on the Proposed Merger.

145. As a direct and proximate result of the dissemination of the false and/or misleading S-4/A Defendants used to recommend that unitholders approve the Proposed Merger, Plaintiff and the Class will suffer damages and actual economic losses (i.e. the difference between the value they will receive as a result of the Proposed Merger and the true value of their units prior to the merger) in an amount to be determined at trial and are entitled to such equitable relief as the Court deems appropriate, including rescissory damages.

COUNT III

(Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act)

146. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

147. The Individual Defendants acted as controlling persons of SXCP and SXC within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as directors and/or officers of SXCP and SXC, and participation in and/or awareness of the

Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in the S-4/A filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that Plaintiff contends are materially incomplete and misleading.

148. Each of the Individual Defendants was provided with or had unlimited access to copies of the S-4/A and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

149. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the Exchange Act violations alleged herein and exercised the same. The S-4/A at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Merger. They were thus directly involved in preparing the S-4/A.

150. In addition, as the S-4/A sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The S-4/A purports to describe the various issues and information that the Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

151. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

152. As set forth above, the Individual Defendants had the ability to exercise control

over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9 by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Individual Defendants' conduct, Plaintiff and the Class will be irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class Representative and his counsel as Class Counsel;

B. Enjoining Defendants and all persons acting in concert with them from proceeding with the unitholder vote on the Proposed Merger or consummating the Proposed Merger, unless and until the Company discloses the material information discussed above which has been omitted from the S-4/A;

C. Directing Defendants to account to Plaintiff and the Class for all damages sustained as a result of their wrongdoing and to award damages arising from proceeding with the Proposed Merger;

D. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and expert fees and expenses; and

E. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: June 7, 2019

OF COUNSEL:

Respectfully submitted,

FARUQI & FARUQI, LLP

By: /s/ Michael Van Gorder

FARUQI & FARUQI, LLP

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Counsel for Plaintiff

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ARTHUR MARKS, Individually and on)
Behalf of All Others Similarly Situated,)
)
Plaintiff,)
)
v.)
)
SUNCOKE ENERGY PARTNERS, L.P.,)
MICHAEL G. RIPPEY, P. MICHAEL)
HARDESTY, JOHN W. SOMERHALDER)
II, ALVIN BLEDSOE, FAY WEST,)
KATHERINE T. GATES, MARTHA)
CARNES, SUNCOKE ENERGY, INC.,)
SUSAN R. LANDAHL, PETER B.)
HAMILTON, ROBERT A. PEISER, JOHN)
W. ROWE, and JAMES E. SWEETNAM,)
)
)
Defendants.)

Affidavit of M. Travis Keath, CFA, CPA/ABV

1. I am M. Travis Keath, CFA, CPA/ABV. I have been retained by Plaintiffs' counsel to render independent financial advice and assistance in connection with the above-captioned action, and to provide expert testimony, as needed, relevant to transaction terms, valuation and disclosure issues.

2. I am currently employed as a Principal of VALUE Incorporated, a financial valuation consulting firm located in Irving, Texas. I am a financial analyst by profession, specializing in matters pertaining to business and securities valuation and capital markets. A copy of my resume, which outlines my professional experience and expertise, appears in Attachment A to this Declaration.

3. I hold the Chartered Financial Analyst designation, am a Certified Public Accountant licensed in the state of Texas and hold the Accredited in Business Valuation

designation conferred by the American Institute of Certified Public Accountants. I have been qualified or accepted as an expert on the operations of the securities markets, damages, financial valuation, and related corporate finance matters in numerous federal and state courts nationwide since 1996. I have provided many depositions and submitted numerous declarations and affidavits on matters in these subject areas as well. My opinions have never been excluded from any case based on a challenge of their admissibility.

4. For my entire professional career, I have both been an investor in U.S capital markets myself, and provided expert advice and valuation analysis to my clients. I have worked for and discussed investment-related issues with hundreds if not thousands of business owners, investors, unitholders, and corporate executives. I keep abreast of news and developments regarding capital markets, corporate transactions, and business valuation, and have substantial experience and expertise regarding investors, investment analysis, and investment decision-making processes.

5. I have been asked to opine as to the materiality of certain facts and information omitted from the Form S-4/A Registration Statement (the "Registration Statement") filed by SunCoke Energy Partners, L.P. ("SXCP" or the "Company") on April 11, 2019 with the Securities and Exchange Commission ("SEC") and disseminated to SXCP's unitholders. The Registration Statement solicited unitholder votes in favor of a merger transaction (the "Proposed Merger") with SunCoke Energy, Inc. ("SunCoke") and disclosed that the conflicts committee of SXCP's General Partner's board of directors recommended the Proposed Merger based in part on the Company's projected GAAP¹ and non-GAAP financial measures and contained the summary of a fairness opinion delivered by Citigroup Global Markets Inc. ("Citi"), in its role as the financial advisor to the conflicts committee of the SXCP Board, in support of the Proposed Merger.²

¹ "GAAP" is an abbreviation for "Generally Accepted Accounting Principles."

² The SXCP General Partner is SunCoke Energy Partners LLC GP ("General Partner"), which owns 61.7% of the outstanding common units. The SXCP GP board of directors has a 2-member conflicts committee that has recommended that SXCP's common unitholders, including the GP, vote in favor of the Merger. Registration Statement at 39-44.

6. In forming the opinions set forth herein, I have examined and considered:
 - a. The Class Action Complaint in this matter, filed with the Court April 17, 2019;
 - b. The Registration Statement;
 - c. The Company's Form 8-K ("SXCP Earnings Release") filed with the SEC April 24, 2019;
 - d. SunCoke's Form 8-K ("SunCoke Earnings Release") filed with the SEC April 24, 2019;
 - e. SunCoke's Form 8-K ("SunCoke Investor Presentation") filed with the SEC May 22, 2019; and
 - f. Other materials I deemed relevant to my analysis.

7. I have been asked to use the following definition of materiality for the facts and information, which were originally omitted from the Registration Statement:

"An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote."

8. Citi's fairness opinion addressed the consideration ("Merger Consideration") to be paid to SXCP unitholders, which consisted of (x) 1.40 shares of SunCoke common stock and (y) a fraction of a share of SunCoke common stock equal to the product of (aa) the number of days beginning with the first day of the most recent full calendar quarter with respect to which an SXCP unitholder distribution record date has not occurred, and ending on the day immediately prior to the Closing, multiplied by (bb) a daily distribution rate that is equal to the quotient of the most recent regular quarterly cash distribution paid by SXCP divided by 90, such product divided by \$10.91.³

³ The closing price of the SunCoke common stock as of February 1, 2019, which was the last full trading day prior to the date of the execution of the Merger Agreement.

9. Based on the analyses underlying its fairness opinion, Citi concluded that the Merger Consideration was fair, from a financial point of view, to SXCP Public Unitholders. Citi's fairness opinion was delivered to the SXCP conflicts committee on February 4, 2019.

10. The SXCP conflicts committee recommended the Proposed Merger based in part on its review of the Company's projected financial measures, only a portion of which (the "Financial Forecasts") is included in the Disclosures set forth in the Registration Statement.⁴ The Financial Forecasts provided to SXCP's public unitholders constitute only a *summary* of the unabridged projections available to SunCoke (and therefore all SXCP unitholders except the public SXCP unitholders), the SXCP conflicts committee, and their respective financial advisors:

The summary of these projections is included below because *these projections* were made available to the SXCP Conflicts Committee, the SXCP Board, the SunCoke Board and their respective financial advisors in connection with the proposed Merger.⁵ (emphases added)

11. SunCoke (the buyer) prepared not only its own financial projections but also the financial projections of SXCP (the seller), thereby creating a conflict of interests that heightens the need for thorough disclosure:

In connection with the proposed Merger, management of SunCoke prepared non-public projections relating to the future financial and operating performance of SunCoke and SXCP with respect to the fiscal years ending December 31, 2019 through 2023."⁶

⁴ Registration Statement, pp. 41, 51.

⁵ Op. Cit., p, 44.

⁶ Ibid.

12. It is my opinion that the unabridged financial projections constitute material information to SXCP's unitholders, and that their absence from the Registration Statement is, therefore, a material shortcoming in the disclosures made to SXCP's unitholders.

13. The market values of the Proposed Merger Consideration implied by SunCoke's closing stock prices as of selected dates were:

- a. \$14.15 per unit, based on SunCoke's closing price of \$10.11 per share on February 5, 2019 (the date the Proposed Merger was announced)
- b. \$12.72 per unit, based on SunCoke's closing price of \$8.72 per share on April 11, 2019 (the date the Registration Statement was filed with the SEC)
- c. \$10.49 per unit, based on SunCoke's closing price of \$7.49 per share on May 30, 2019 (the closing price on the day preceding the date of this affidavit)

14. The question of the fair value of SXCP's common units central to the decision facing the Company's unitholders. As detailed herein, the disclosures ("Disclosures") set forth in the Registration Statement suffer from a number of material omissions regarding the following important topics:

- a. The Registration Statement withheld from unitholders the unlevered free cash flows of both SXCP and SunCoke (see paragraphs 24 through 41)
- b. The Registration Statement failed to provide the information necessary to reconcile SXCP's non-GAAP⁷ financial metrics (such as unlevered free cash flows and EBITDA⁸) to pertinent GAAP-based financial metrics underlying the financial

⁷ GAAP stands for "generally accepted accounting principles."

⁸ "EBITDA" is a commonly used acronym for "earnings before interest, taxes, depreciation, and amortization."

projections relied upon by the Company's financial advisor (see paragraphs 42 through 51)

15. In my opinion, it was inappropriate to withhold from SXCP's unitholders this information that would have afforded a far clearer indication with respect to the Company's value and form a more educated opinion of the merits of the Proposed Merger. It is my opinion that these omissions constitute a material shortcoming in the disclosures made to SXCP's unitholders because this omitted information was material information.

Citi's Fairness Analysis is Flawed, Poorly Explained and of Dubious Utility to SXCP's Unitholders

16. The description of Citi's fairness analysis appearing on pages 47 through 56 of the Registration Statement is problematic for at least two reasons. It suggests an irregularity in Citi's *Implied Exchange Ratio Reference Range* calculations. It also contains information that calls into question Citi's conclusion of the fairness of the Proposed Merger, from a financial point of view, to SXCP's unitholders.

17. The irregularity in Citi's *Implied Exchange Ratio Reference Range* calculations results from an apparent inconsistency in Citi's comparison of the values of SXCP and SunCoke, respectively. For example, based on its *Selected Public Companies Analysis*, Citi calculated a broad overall range of SXCP-to-SunCoke values of 0.627x – 1.382x, calculated as follows:

- a. $0.627 = \$9.15$ (SXCP's lowest indicated value) \div $\$14.60$ (SunCoke's highest indicated value)
- b. $1.382 = \$15.00$ (SXCP's highest indicated value) \div $\$10.85$ (SunCoke's lowest indicated value)

18. The problem with the above calculations is that SunCoke's value is largely a function of its holdings of the SXCP's units. As such, the lowest indication of SunCoke's value requires the lowest indication of SXCP's value, while the highest indication of SunCoke's value requires the highest indication of SXCP's value. But the ratio in (a) above requires the value of SXCP to simultaneously be at both its minimum (for the numerator) and its maximum (for the denominator). The ratio in (b) above has the same nonsensical requirement, although in this instance the maximum value of SXCP goes to the numerator while the minimum value of SXCP simultaneously goes to the denominator. The same problem of inconsistency plagues the corresponding calculations of the *Implied Exchange Ratio Reference Range* shown in Citi's *Discounted Net Cash Flow Analyses*. The information contained in the Registration Statement is of insufficient granularity to enable SXCP's unitholders to correct Citi's error.

19. Furthermore, at least two of the analyses underlying Citi's fairness opinion strongly suggest that the Merger Consideration is inadequate.

20. First, as previously noted in paragraph 13 herein, the implied market value of the Merger Consideration had dropped to \$12.72 as of the date the Registration Statement was filed with the SEC (and further to \$10.49 as of the date of this Affidavit). This lies below the entire range of \$14.10 to \$19.60 per unit indicated by Citi's *Discounted Cash Flow Analyses*.⁹ Second, the Wall Street analyst price targets examined by Citi ranged from \$14.00 to as high as \$20.00, with a median figure of \$19.50 per unit.¹⁰ The fact that Citi's own financial analyses raise doubts about the adequacy of the Merger Consideration indicates the importance of providing SXCP's

⁹ Registration Statement, p. 54.

¹⁰ Op. Cit., p. 55.

unitholders with the information necessary to independently assess the value of both SXCP and SunCoke.

The Importance of Providing Sufficient Information to Shareholders to Enable an Adequately Informed Decision is Axiomatic

21. I consider it axiomatic that unitholders should be informed about the merits (or lack thereof) with respect to any transaction for which their approval is sought. Indeed, Defendants themselves have acknowledged as much in the Registration Statement by admonishing unitholders to reach a full understanding of the financial analyses underlying Citi's Fairness Opinion.

In order to fully understand the financial analyses, the tables must be read together with the text of each summary as the tables alone do not constitute a complete description of the financial analyses.¹¹ (emphasis in the original)

22. The Registration Statement further acknowledged the potential of the information pertaining to Citi's analysis to be misleading if all analyses and factors were not considered.

Considering the data in the tables below without considering the full narrative description of the financial analyses, including the methodologies and assumptions underlying the financial analyses, could create a misleading or incomplete view of such financial analyses.¹² (emphasis in the original)

23. As discussed hereinafter, however, the Disclosures failed to provide adequate information to investors – particularly with respect to (i) unlevered free cash flows of SXCP and SunCoke, and (ii) the important information necessary to reconcile projected non-GAAP financial measures to their most directly comparable GAAP-based counterparts.

¹¹ Registration Statement, p. 50.

¹² Ibid.

The Disclosures Failed to Disclose the Unlevered Free Cash Flows Necessary to Calculate the Values of Both SXCP and SunCoke

Primacy of Discounted Cash Flow Analysis

24. As an initial matter, it is important to understand that the discounted cash flow (“DCF”) analysis has primacy among corporate valuation techniques. This particular analysis, in fact, forms the basis for all other valuation techniques and is the very core of modern corporate finance.^{13,14,15} Both academicians and practitioners alike acknowledge this principle.

25. Because DCF analyses are of such fundamental importance in the determination of corporate value, it follows that the propriety of the financial projections used to create the DCF analysis in the fairness presentation prepared by SXCP’s financial advisor (which was relied upon by the conflicts committee of the Company’s board of directors in making its recommendation to unitholders) is commensurately important. This information would have enabled SXCP’s unitholders to independently prepare DCF analyses for SXCP and SunCoke, as well as to assess the merit of Citi’s analysis, and therefore the weight (if any) to place on Citi’s conclusions.

26. The unique vantage point from which it is able to ascertain the future outlook for the operations of the business makes management’s assessment of the Company’s future operating and financial performance all but irreplaceable in most instances. For this reason, thorough

¹³ “Discounted cash flow (DCF) forms the core of finance.... Though professionals may employ other methods of valuation, such as relative valuation and the contingent claims approach, DCF forms the basis for all other valuations. Underscoring the importance of DCF valuation is the fact that it provides a linchpin to link various fields of finance.”

“Developing an Automated Discounted Cash Flow Model.” *The Valuation Handbook: Valuation Techniques from Today’s Top Practitioners*. Ed. Rawley Thomas and Benton E. Gup. Hoboken: John Wiley & Sons, 2010. 110.

¹⁴ “While discounted cash flow valuation is only one of the three ways of approaching valuation and most valuations done in the real world are relative valuations, it is the foundation on which all other valuation approaches are built. To do relative valuation correctly, we need to understand the fundamentals of discounted cash flow valuation. This is why so much of this book focuses on discount cash flow valuation.” Damodaran, Aswath. “Approaches to Valuation.” *Investment Valuation*. 2nd ed. 11.

¹⁵ “In finance theory, present value models [also referred to as discounted cash flow models] are considered the fundamental approach to equity valuation.” CFA® Program Curriculum 2015 • Level II • “Volume 4: Equity.” CFA Institute, 2014. 22.

disclosure with respect to the projected cash flows required to prepare a DCF analysis (including the manner in which such cash flows were calculated) is a staple in the vast majority of proxy statements filed by publicly traded companies being acquired in corporate mergers.

27. Defendants themselves explicitly acknowledged the importance of future cash flows to the Proposed Merger generally, indicating that “[t]he failure of SXCP’s or SunCoke’s businesses to achieve projected results, including projected cash flows, could have a material adverse effect on the price of SunCoke Common Stock, SunCoke’s financial position and SunCoke’s ability to reinstate, maintain or increase its dividends following the Proposed Merger.”¹⁶

28. In contrast to normal practice, however, the Disclosures inappropriately excluded the projected unlevered free cash flows of both SXCP and SunCoke used in Citi’s *Discounted Cash Flow Analyses*.¹⁷ Instead the Financial Forecasts in the Registration Statement included only the following financial metrics, none of which is a substitute for the unlevered free cash flow required to perform DCF analyses of SXCP and SunCoke (as discussed further in paragraphs 33 through 36):¹⁸

- a. For SXCP: Adjusted EBITDA attributable to SXCP, Distributable Cash Flow, and Total Distributed Cash Flow.
- b. For SunCoke: Adjusted EBITDA, SXCP Distributions, and Cash Available for Dividends.

¹⁶ Registration Statement, p. 20.

¹⁷ Op. Cit., pp. 53-4.

¹⁸ Op. Cit., p. 46.

Figure 1: Registration Statement Omits Material Information Necessary to Value SXCP and SunCoke

	Year Ended December 31,				
	2019	2020	2021	2022	2023
	(Dollars in millions)				
SunCoke:					
Standalone SunCoke Adjusted EBITDA (1)	\$ 47	\$ 69	\$ 67	\$ 70	\$ 65
SXCP Distributions (2)	\$ 47	\$ 47	\$ 47	\$ 47	\$ 47
Cash Available for Dividends – Adjusted (3)	\$ 84	\$ 93	\$ 79	\$ 63	\$ 67
SXCP:					
Adjusted EBITDA attributable to SXCP (4)	\$219	\$227	\$232	\$237	\$217
Distributable Cash Flow (5)	\$100	\$104	\$106	\$129	\$114
Total Distributed Cash Flow (6)	\$ 75	\$ 75	\$ 75	\$ 75	\$ 75

(1) Standalone SunCoke Adjusted EBITDA is a non-GAAP measure of financial performance. Adjusted EBITDA represents earnings before interest, taxes, depreciation and amortization ("EBITDA"), adjusted for non-recurring items and excluding the impact of transaction costs related to the simplification transaction. Standalone SunCoke Adjusted EBITDA refers to adjusted EBITDA attributable to SunCoke excluding GP/LP distributions from SXCP and cash distributions made by Indiana Harbor in respect of non-controlling interests and related capital expenditure reimbursements, and includes SunCoke's 100% interests in Jewell Coke, Brazil, and Dismal River Terminal, 85.2% interest in Indiana Harbor, 2% interests in Middletown, Haverhill, and Granite City, and SunCoke's corporate and other costs.

(2) SunCoke's GP/LP distributions from SXCP.

(3) Cash Available for Dividends – Adjusted is a non-GAAP measure of financial performance and is defined as Standalone SunCoke Adjusted EBITDA, computed as described above, less standalone maintenance capital expenditures, interest expense, cash taxes, and excluding certain noncash items. Adjustment includes adding back one-time oven rebuild costs at Indiana Harbor (\$40 million of capital expenditures and \$10 million of operating expenses) in 2019.

(4) Adjusted EBITDA attributable to SXCP is a non-GAAP measure of financial performance. Adjusted EBITDA represents EBITDA, adjusted for non-recurring items and excluding the impact of transaction costs related to the simplification transaction. Adjusted EBITDA attributable to SXCP includes 100% interests in Convent Marine Terminal, Kanawha River Terminal, and Lake Terminal, 98.0% interests in Middletown, Haverhill, and Granite City, and SXCP's corporate costs.

(5) Distributable Cash Flow is a non-GAAP measure of financial performance and is defined as Adjusted EBITDA attributable to SXCP, computed as described above, less net cash paid for interest expense, ongoing capital expenditures, accruals for replacement capital expenditures, cash taxes, and adjusted for deferred revenue.

(6) Total distributions paid by SXCP to its general partner and limited partners assuming a \$0.40 per unit quarterly distribution.

29. Although the importance of omitting SXCP's unlevered free cash flows was perhaps self-evident since this information is necessary to perform a DCF analysis of the Company, the omission of SunCoke's unlevered free cash flows was equally problematic in this instance. This is true because all of the Merger Consideration paid to the Company's unitholders consisted of SunCoke common stock, which must also be valued. Accordingly, it was important for SXCP's unitholders to be made aware of the material information necessary to determine the worth of SunCoke.

30. Generally speaking, if an acquirer's stock is deemed by the target's unitholders to be overvalued, such acquirer stock will tend to be perceived, *cet. par.*, as less favorable than would otherwise be the case (and vice-versa). As such, it was as important for SXCP's unitholders to examine and understand the value of the consideration they stood to *receive* (i.e., SunCoke common stock) as the value of what they were being asked to *sell* (i.e., their units of the Company).

31. For its own DCF analyses of SXCP and SunCoke, Citi utilized management-prepared financial forecasts that:

Citi was directed to utilize in its analyses, [and] was advised by the managements of SXCP General Partner and SunCoke, and Citi assumed, with the SXCP Conflicts Committee's consent, that they were reasonably prepared on bases reflecting the best currently available estimates and judgments of such managements, as applicable, as to, and were a reasonable basis upon which to evaluate, the future financial performance of SXCP and SunCoke, the potential strategic implications and financial and operational benefits (including the amount, timing and achievability thereof) anticipated by the management of SunCoke to result from, and other potential pro forma financial effects of, the Merger and the other matters covered thereby. Citi expressed no view or opinion as to any financial forecasts and other information or data (or underlying assumptions on which any such financial forecasts and other information or data are based) provided to or otherwise reviewed by or discussed with Citi and Citi assumed, with the SXCP Conflicts Committee's consent, that the financial results, including with respect to the potential strategic implications and financial and operational benefits anticipated to result from the Merger, reflected in such financial forecasts and other information and data would be realized in the amounts and at the times projected.¹⁹

32. Furthermore, Citi failed to specify how it calculated unlevered free cash flow for SXCP and SunCoke, or even whether the same formula was used for both companies.

None of (a) Distributions, (b) Cash Available for Dividends, (c) Distributable Cash Flow, or (d) Total Distributed Cash Flow Are Equivalent to Unlevered Free Cash Flow

33. Whether individually or in combination, none of the above financial measures presented for SXCP and SunCoke in the Financial Forecasts is a substitute for unlevered free cash flow when preparing a DCF analysis. Rather, these measures were each calculated on a *levered* basis (i.e., with a deduction for interest expense). The cash flow figures used by Citi in its

¹⁹ Op. Cit., p. 48.

Discounted Cash Flow Analyses were calculated on an *unlevered* basis (i.e., unaffected by the presence or absence of interest-bearing debt).

34. Because interest expense is deducted from *levered* cash flows, but not *unlevered* cash flows, the *levered* figures included in the Financial Forecasts for (a) Distributions, (b) Cash Available for Dividends, (c) Distributable Cash Flow, or (d) Total Distributed Cash Flow all likely understate projected *unlevered* free cash flows used by Citi and necessary for SXCP's unitholders to perform a proper DCF analyses for the Company and SunCoke.

35. The use of *unlevered* free cash flows is the most common method used in corporate valuation, and is appropriate for SXCP and SunCoke as evidenced by the fact that *unlevered* DCF models were used by both Citi and Evercore²⁰ (SunCoke's financial advisor) in their respective fairness opinions.

36. Because it precludes SXCP's unitholders from being able to independently assess both the Company's value and SunCoke's value using the single-most meaningful valuation method – DCF analysis – it is my opinion that the projected unlevered free cash flows are of such singular importance that this omission alone constitutes a material shortcoming in the total mix of information available to SXCP's unitholders.

EBITDA and Other Projected Financial Measures Are Not a Substitute for Unlevered Free Cash Flow

37. Because EBITDA is another metric sometimes misunderstood to be equivalent to unlevered free cash flow, it is important to emphasize that the two are not the same and must not

²⁰ The Registration Statement indicates that the discount rate used by Evercore was based on a weighted-average cost of capital, which is consistent with an *unlevered* DCF model. See Registration Statement, p. 61.

be treated as if they are. Shannon Pratt, a longtime valuation practitioner and author, points out “this error is not a minor matter.”²¹

38. While EBITDA is widely used by financial analysts and can be useful in the appropriate context, the valuation community recognizes that the metric has its shortcomings and limitations and should not be overemphasized when other important financial information is available. According to *The Valuation Handbook*:

EBITDA can be a useful measure to assess a company’s performance, [but] has a number of shortcomings that should not be ignored when using it, including, but not limited to, the following:

- EBITDA represents debt-free firms, which is not the case for most companies...
- EBITDA also ignores tax payments, which profitable firms cannot, or cannot always, avoid...
- It does not take into account firms with different capital investments and the depreciation that comes with them...
- EBITDA does not exclude all noncash items such as the allowance for bad debts and inventory write-downs as well as the impact of investments in working capital...²²

39. The wider investment community, as well, has likewise learned to use caution when considering EBITDA. While acknowledging its merits when used appropriately, Moody’s Investors Service has long warned against overreliance on EBITDA. In a 23-page *Special Comment* dated June 2000, Moody’s indicated:

We find the ten critical failings of using EBITDA to be the following:

1. EBITDA ignores changes in working capital and overstates cash flow in periods of working capital growth
2. EBITDA can be a misleading measure of liquidity
3. EBITDA does not consider the amount of required reinvestment – especially for companies with short lived assets

²¹ “Occasionally, we find an analyst treating earnings before interest, taxes, depreciation, and amortization (EBITDA) as if it were free cash flow. This error is not a minor matter...”

Pratt, Shannon. “Net Cash Flow: The Preferred Measure of Return.” *Cost of Capital*. 16.

²² Thomas, Rawley and Benton A. Gup, *The Valuation Handbook*; John Wiley & Sons, Inc. Hoboken, NJ. pp. 529-30.

4. EBITDA says nothing about the quality of earnings
5. EBITDA is an inadequate standalone measure for comparing acquisition multiples
6. EBITDA ignores distinctions in the quality of cash flow resulting from differing accounting policies – NOT all revenues are cash
7. EBITDA is not a common denominator for cross- border accounting conventions
8. EBITDA offers limited protection when used in indenture covenants
9. EBITDA can drift from the realm of reality
10. EBITDA is not well suited for the analysis of many industries because it ignores their unique attributes²³

40. Elsewhere in the same *Special Comment*, Moody’s noted that knowledge of the limitations of EBITDA was commonplace, indicating that “[b]y all appearances, most corporate managers are aware of the limitations of EBITDA. In varying language, many financial statements contain warnings regarding the use of EBITDA.”²⁴

41. Already on record regarding the issue, Moody’s again urged caution in 2014, when it explained that “calculating EBITDA can be open to interpretation,” that “EBITDA may be calculated aggressively to portray a more favorable credit profile,” and that “issuers can have a tendency to more aggressively calculate EBITDA to improve their credit metrics and facilitate market access.” Perhaps most pointedly, one of the concluding remarks of the 2014 *Special Comment* was that “EBITDA cannot be taken at face value and generally should be evaluated alongside other liquidity and cash metrics.”²⁵

²³ Moody’s Investors Service, *Special Comment* entitled *Putting EBITDA In Perspective: Ten Critical Failings of EBITDA as the Principal Determinant of Cash Flow*; June 2000, p. 1.

²⁴ *Op. Cit.*, p. 3.

²⁵ Moody’s Investors Service, *Special Comment* entitled *EBITDA: Used and Abused*; November 20, 2014, pp. 1, 5, and 8.

Despite Acknowledging the Important Distinction Between non-GAAP and GAAP Financial Metrics, Defendants Failed to Provide the Necessary Reconciliation

42. The importance of reconciling between non-GAAP and GAAP financial measures is (and has long been) widely acknowledged. The SEC adopted “Regulation G” in 2003, in response to the mandate set forth in Section 401(b) of the Sarbanes-Oxley Act that rules be enacted to regulate the use of pro forma financial information. Regulation G states that when a publicly-traded company, such as SXCP, discloses material information that includes non-GAAP financial measures, the company also must include the most directly comparable GAAP financial measure, as well as a reconciliation of the two. 17 C.F.R. §244.100(a). Such reconciliations were deemed necessary to address the proliferation of non-GAAP financial measures lacking a uniform definition and therefore carrying the risk of misleading investors. I have been instructed for purposes of this opinion to assume that Regulation G applies in the context of a merger transaction such as the one at issue in this case.

43. The SXCP Defendants themselves emphasized in SXCP’s quarterly earnings releases (the most recent of which contains five pages of reconciliations between non-GAAP and GAAP financial measures²⁶) the importance of distinguishing between non-GAAP and GAAP financial metrics. In fact, SXCP’s definition of Adjusted EBITDA contains not one but two references alerting unitholders to the facts that:

Adjusted EBITDA does not represent and should not be considered an alternative to net income or operating income under accounting principles generally accepted in the U.S.... and may not be comparable to other similarly titled measures in other businesses.²⁷

²⁶ See SXCP Earnings Release, pp. 11-15.

²⁷ See SXCP Earnings Release, p. 4.

EBITDA and Adjusted EBITDA are not measures calculated in accordance with GAAP, and they should not be considered an alternative to net income, operating cash flow or any other measure of financial performance presented in accordance with GAAP.²⁸

44. Substantially identical language appears in Defendant SunCoke's quarterly earnings releases.²⁹ SunCoke's earnings releases also contain reconciliations between GAAP and non-GAAP financial measures,³⁰ as do other communications SunCoke makes to its shareholders.³¹

45. Despite these cautionary messages, Defendants inexplicably withheld from unitholders the financial figures necessary to reconcile the differences between non-GAAP and GAAP projected financial metrics in their consideration of the value of the Company, the value of SunCoke, and the merits and risks facing them with respect to the Proposed Merger.

46. The shortcomings of the non-GAAP metrics referred to in the Company's earnings releases and SEC filings were consistent with longstanding cautionary language appearing in guidance published for valuation and financial analysis. According to *The Valuation Handbook*:

Many have objected to the use of... so-called non-GAAP measures. The [SEC] and the International Organization of Securities Commissions ("IOSCO") are among them. At the end of the previous century and the start of this century, the SEC debated the subject in many comment letters that were sent to companies using such measures. In May 2002, the IOSCO also cautioned issuers, investors and other users of financial information to use care when presenting and interpreting non-GAAP measures.³²

²⁸ Ibid.

²⁹ See SunCoke Earnings Release, p. 4.

³⁰ Op. Cit., pp. 11-12.

³¹ See, for example, SunCoke Investor Presentation, pp. 30, 38.

³² *The Valuation Handbook*, p. 531.

47. A Law360 article indicated that “in recent years, the use of non-GAAP financial measures has become more widespread, and the magnitude of the differences between non-GAAP and GAAP... measures has grown.”³³ The article went on to say that “[t]he SEC continues to emphasize the need for caution with regard to the use of non-GAAP measures,” and to cite sources indicating that 2015 non-GAAP earnings per share (“EPS”) of companies in the Dow Jones Industrial Average were approximately 31% higher than EPS reported based on GAAP,³⁴ and that earnings for S&P 500 firms grew nearly 14% from 2012 to 2015 based on non-GAAP measures, but were essentially unchanged based on GAAP.³⁵

48. Recent growth in the appearance of non-GAAP metrics in proxy statements has been significant. According to accounting research firm Audit Analytics, “more and more proxy statements include non-GAAP language. In 2009, fewer than 20% of proxies had such language; but by 2016, nearly 60% did.”³⁶

49. Investing is always a forward-looking endeavor, and a direct examination of the benefits anticipated from a given investment provides insight that is unavailable in any other way – even from analyses as important as those based on the market approach (which entails comparison to comparable public companies and precedent merger transactions). It therefore stands to reason that a reconciliation of non-GAAP to GAAP *projected* financial metrics is of at

³³ Harwood, Elaine, Frank Mascari and Laura Simmons: *Renewed SEC Focus On Non-GAAP Measures: 1 Year Later*, May 16, 2017; Law360.com.

³⁴ John Butters, “Did DJIA Companies Report Higher Non-GAAP EPS in FY 2015?” FactSet, March 11, 2016, https://insight.factset.com/2016/03/earningsinsight_03.11.16 (accessed May 29, 2019).

³⁵ Michael Rapoport and Dave Michaels, “SEC Tightens Crackdown on ‘Adjusted’ Accounting Measures,” Wall Street Journal, May 18, 2016, <https://www.wsj.com/articles/sec-tightens-crackdown-on-adjusted-accounting-measures-1463608923> (accessed May 29, 2019).

³⁶ <http://www.auditanalytics.com/blog/use-of-non-gaap-in-proxy-statements/> (accessed May 29, 2019)

least comparable – if not greater – importance than the same information provided on an *historical* basis.

50. This is perhaps especially true in the instance of SXCP, because the fairness opinion which formed part of the basis for the Board’s recommendation to unitholders did not refer to any GAAP financial measures. The only financial measures underlying Citi’s valuation analysis were non-GAAP measures.

- a. Selected Public Companies Analysis:³⁷ Adjusted EBITDA, asset EBITDA
- b. Discounted Cash Flow Analyses:³⁸ Unlevered free cash flow, Adjusted EBITDA, asset EBITDA
- c. Has/Gets Analysis:³⁹ Unlevered free cash flow, Adjusted EBITDA, asset EBITDA, Cost Savings
- d. Certain Illustrative Pro Forma Financial Effects of the Merger Analysis:⁴⁰ Distributable Cash Flow, Cash Available for Dividends, Distributions, Cost Savings

51. Furthermore, the Registration Statement seems to imply that the Adjusted EBITDA figures used by Citi in its analysis correspond to the similarly titled figures contained in the Financial Forecasts. However, it does not specify that this is true, nor does it otherwise provide enough detail about the formulae used by Citi to enable SXCP’s unitholders to ascertain this for themselves.

³⁷ Registration Statement, pp. 51-2.

³⁸ Op. Cit., pp. 53-4.

³⁹ Op. Cit., pp. 54-5.

⁴⁰ Op. Cit., p. 55.

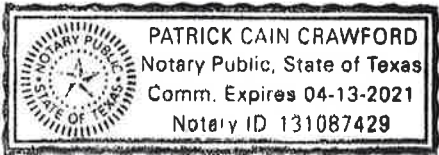
Conclusion

52. Although the Defendants made their recommendation to unitholders to vote in favor of the Proposed Merger, the final decision rests with the unitholders themselves. Unfortunately, the Disclosures suffer from material omissions with respect to the information necessary to enable SXCP’s unitholders to reach adequately informed conclusions regarding whether to follow the Board’s recommendation or to decline the offer and vote against the Proposed Merger.

M. Travis Keath, CFA, CPA/ABV

SWORN to and SUBSCRIBED
before me this 31 day of May, 2019.

NOTARY PUBLIC
My Commission Expires:



M. Travis Keath, CFA, CPA/ABV

Professional Experience

Travis Keath is a Principal with VALUE Incorporated, a premier firm in the application of valuation and economic theory. Mr. Keath has conducted valuation and financial restructuring analyses for law firms, lending institutions and clients ranging in size from small, closely held businesses to Fortune 500 companies and government agencies. He has served companies spanning a broad range of industries, including agribusiness, construction, consumer services, distribution, energy, financial institutions, health care, high-tech, hospitality, manufacturing, media, mining, professional services, restaurants, retail, telecommunications, textile, transportation and others.

The scope of Mr. Keath's work includes acquisition and financing memoranda, fairness opinions, submissions to the Securities and Exchange Commission, and valuation studies for restructuring, quantification of economic damages for commercial litigation and arbitration, acquisition/disposition of business interests or assets, tax-related issues, due diligence and preferred stock, debt instruments and loan portfolios, derivative securities, inventories, patents and unpatented technology, trademarks, customer lists, licensing agreements, software, and other assets and financial interests.

Before joining VALUE, Mr. Keath was employed in the consulting practices of a national financial valuation firm as well as two large accounting and consulting firms. Complementing his consulting experience, Mr. Keath served as the Chief Financial Officer of a software development company, with responsibility for capital raising, budgeting, implementation of the company's SAP accounting system, financial/tax reporting, and corporate risk management.

Mr. Keath has testified as an expert witness in numerous venues including federal and state district court, U.S. Tax Court, and before arbitration panels of both the National Association of Securities Dealers and the American Arbitration Association. In addition, he has assisted with valuation issues in mediations and informal negotiations between parties in dispute.

Formal Education

Master of Science in Finance - 1989
Texas A&M University, College Station
Bachelor of Business Administration in Finance - 1988
Texas A&M University, College Station

Accreditations and Designations

Chartered Financial Analyst (CFA)
Certified Public Accountant (CPA)
Accredited in Business Valuation (ABV)
Instructor, DSFA Chartered Financial Analyst Examination Review Course, 1995-2013

Organizations and Professional Associations (Past and Present)

Member, American Institute of Certified Public Accountants
Member, Texas Society of Certified Public Accountants (TXCPA)
Committee Member, TXCPA Professional Ethics Committee
Committee Member, TXCPA Business Valuations, Forensic &
Litigation Services Committee
Member, American Bankruptcy Institute (ABI)
Committee Member, ABI Financial Advisors Committee
Member, Turnaround Management Association (TMA) Dallas Chapter
Board Member, TMA Dallas Chapter
Member, CFA Institute
Member, Dallas Society of Financial Analysts (DSFA)
Treasurer, DSFA
Board Member, DSFA

Honors and Awards

Phi Kappa Phi (Honors Scholastic Society)
Beta Gamma Sigma (Business Scholastic Honors Society)
Texas A&M Distinguished Student Award – 1986, 1987, 1988
Who's Who in Finance and Industry
Who's Who in America
Who's Who in the South and Southwest

Publications

"Bankruptcy: If You Thought It Was Hard Before, Wait Until You See What's In Store" – *Value Advisory*, Winter 2003.

"Who Bears the Burden of Better Accounting?" – *Value Advisory*, Spring 2002.

"Exit Strategies: Avoiding the Pitfalls," (with Matthew Morris, CFA)

"Analysis and Valuation of Distressed Equity Securities" (with Scott D. Hakala, Ph.D.) - *Valuation Strategies*, September/October 1999.

"Analysis and Valuation of Distressed Equity Securities" (with Scott D. Hakala, Ph.D.) – Chapter 13F, *Financial Valuation: Businesses and Business Interests* 1999 Update.

"Mergers and Acquisitions: Planning and Finance" – Chapter 11, *Corporate Controller's Manual*, 1999-2 Update.

"Mergers and Acquisitions: Offensive and Defensive Strategies" – Chapter 13, *Corporate Controller's Manual*, 1999-2 Update.

"Discounts for Built-In Capital Gains Tax Liabilities of Asset-Holding C-Corporations" – Position Paper, Unpublished – February 1997

Selected Lectures and Appearances

- "Current Topics in Valuation" –IRS Estate and Gift Tax Group, Continuing Professional Education – Fort Worth, Texas – August 2002.
- "Going Public Workshop" – Entrepreneurship Institute: President's Forum of Dallas – April 1999
- "Valuation Battlegrounds and Issues in Bankruptcy" – Continuing Legal Education Seminar; Jenkins & Gilchrist; Dallas, Texas – February 1999.
- "Valuation and Bankruptcy Issues" – Continuing Legal Education Seminar, Charter Law Affiliates; Dallas, Texas – October 1998.
- "Intellectual Property Valuation" – IRS Engineers Group, Continuing Professional Education - Dallas, Texas - September 1998.
- "Estate and Gift Tax Valuation Issues" - IRS Estate & Gift Tax Division, Continuing Professional Education - Kansas City, Missouri - August 1998.
- "How Daubert and Other Evidentiary Standards Impact the Qualification of Expert Witnesses in Commercial Cases" – Texas A&M University Law Center 7th Annual Advanced Civil Trial Law Conference – College Station, Texas – March 1998.
- "Due Diligence – A Micro Perspective" - Accounting and Financial Television Network, December 1996.
- "Due Diligence – A Macro Perspective" - Accounting and Financial Television Network, November 1996.
- "Business Valuation Symposium: Living on the Edge" – Illinois CPA Society & Foundation; Chicago, Illinois – May 1996.

CERTIFICATION

I, Simon Zolotarev, declare, as to the claims asserted under the federal securities laws, that:

1. I have reviewed a complaint against SunCoke Energy Partners, L.P. (“SXCP”) and the other named defendants and authorize the filing of a complaint substantially similar to the one I reviewed.
2. I select Faruqi & Faruqi, LLP and any firm with which it affiliates for the purpose of prosecuting this action as my counsel for purposes of prosecuting my claim against defendants.
3. I did not purchase the partnership units that are the subject of the complaint at the direction of Plaintiff’s counsel or in order to participate in any private action arising under the federal securities laws.
4. I am willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
5. My transactions in SXCP publicly traded units that are the subject of the complaint during the class period specified in the complaint are set forth in the chart attached hereto.
6. In the past three years, I have not sought to serve nor have served as a representative party on behalf of a class in an action filed under the federal securities laws.
7. I will not accept any payment for serving as a representative party on behalf of a class beyond a pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

I declare under penalty of perjury under the laws of the United States that the foregoing information is correct to the best of my knowledge.

Signed this 6 day of June, 2019.

A handwritten signature in black ink, consisting of several fluid, overlapping strokes. The signature is positioned above a horizontal line.

Simon Zolotarev

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

SUNCOKE ENERGY PARTNERS, L.P., MICHAEL G. RIPPEY, P. MICHAEL HARDESTY, JOHN W. SOMERHALDER II, ALVIN BLEDSOE, FAY WEST, KATHERINE T. GATES, MARTHA CARNES, SUNCOKE ENERGY, INC., SUSAN R. LANDAHL, PETER B. HAMILTON, ROBERT A. PEISER, JOHN W. ROWE, and JAMES E. SWEETNAM

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE