



the Alberta Clipper pipeline (the “Pipeline Interest”), whereby, in exchange for the Pipeline Interest, EEP issued 18,114,975 shares of a new Class E partnership interest (the “Class E Units”) to EEP GP and repaid an outstanding loan made by EEP GP to EEP, and the publicly announced nominal consideration for the Transaction was approximately \$1 billion;

WHEREAS, original plaintiff Peter Brinckerhoff made a demand for books and records of EEP, and on July 20, 2015, he filed the original complaint on behalf of EEP against EEP GP, Enbridge, EEQ, Enbridge Pipelines (Alberta Clipper) L.L.C., Enbridge Energy, Limited Partnership, and certain individuals (the “Director Defendants”), and such original complaint included a class claim respecting a tax aspect of the Class E Units (the “Special Tax Allocation”);

WHEREAS, Defendants moved to dismiss, and the Court of Chancery granted Defendants’ motions to dismiss on April 29, 2016;

WHEREAS, Brinckerhoff appealed to the Delaware Supreme Court, and on March 20, 2017, the Delaware Supreme Court issued an opinion reversing in part the Court of Chancery’s dismissal;

WHEREAS, Brinckerhoff commenced discovery upon remand of the case to the Court of Chancery;

WHEREAS, on November 15, 2017, Brinckerhoff filed a Verified Second Amended Complaint, which added as a defendant Piper Jaffray & Co. as successor

to Simmons & Company International (“Simmons”), the financial advisor to the special committee in 2014 that evaluated the Transaction on behalf of EEP (the “2014 Special Committee”);

WHEREAS, Defendants moved to dismiss all of Brinckerhoff’s claims;

WHEREAS, on February 28, 2018, Judy Mesirov moved to intervene as a plaintiff, on March 23, 2018, Brinckerhoff moved to voluntarily withdraw as the plaintiff, and after oral argument on May 18, 2018, the Court of Chancery granted Brinckerhoff’s motion to withdraw, conditioned on his producing additional discovery, and granted Mesirov’s motion to intervene conditioned on her production of certain documents, both Brinckerhoff and Mesirov made the requisite document productions, and Mesirov became the sole plaintiff in the Derivative Action (“Plaintiff”);

WHEREAS, in the spring of 2018, the parties briefed Defendants’ motions to dismiss the Verified Third Amended Complaint, dated March 23, 2018;

WHEREAS, over 209,000 pages of documents were produced by Defendants and third parties in response to discovery demands, subpoenas, and follow-up requests of Friedlander & Gorris, P.A. (“F&G”), Bragar Eigel & Squire, P.C. (“BE&S”), Rosenthal Monhait & Goddess, P.A., and The Law Office of Debra S. Goodman (collectively, “Derivative Counsel”);

WHEREAS, F&G and BE&S deposed the following thirteen individuals on the following dates in the following cities:

Carlos Vasquez Enbridge Manager	Houston	June 27, 2018
William Johnson Enbridge Manager	Houston	June 29, 2018
Dan Westbrook EEP Special Committee	Houston	July 17, 2018
Jeffrey Connelly EEP Special Committee	Houston	July 19, 2018
Ron Elkounovitch E&Y Senior Manager	New York	July 19, 2018
Mark Maki EEP GP President; EEP GP Director	Houston	July 24, 2018
James Baker Simmons Managing Director	Houston	July 26, 2018
Richard Bird Former Enbridge EVP & CFO; EEP GP Director	Calgary	August 1, 2018
Jonathan Morgan Enbridge Senior Manager	Calgary	August 21, 2018
Wanda Opheim Enbridge SVP	Calgary	August 23, 2018
Al Monaco Enbridge President and CEO	Calgary	September 5, 2018
John Whelen Enbridge CFO; EEP GP Director	New York	September 12, 2018
Rebecca Roberts EEP Special Committee	Houston	September 14, 2018

WHEREAS, on July 20, 2018, Defendants deposed Plaintiff Judy Mesirov;

WHEREAS, on August 29, 2018, this Court issued a Memorandum Opinion granting in part and denying in part Defendants' motions to dismiss (the "August 29 Mesirov Decision"), dismissing the direct class claim respecting the Special Tax Allocation, and allowing to proceed the derivative claims for breach of Section 6.6(e) of the limited partnership agreement, and against Simmons for aiding and abetting a breach of contractual fiduciary duties (the "Derivative Claims");

WHEREAS, on September 28, 2018, Plaintiff filed a Verified Fifth Amended Complaint;

WHEREAS, on October 1, 2018, the parties exchanged expert reports; and

WHEREAS, on October 12, 2018, Defendants moved for summary judgment and filed opening briefs.

### **The Merger**

WHEREAS, the Schedule 14A Definitive Proxy Statement filed on November 9, 2018, with respect to the merger described below describes how:

(a) On May 17, 2018, representatives of Enbridge delivered a proposal to acquire all of the outstanding Class A common units of EEP not already owned by Enbridge and its affiliates, at an exchange ratio of 0.3083 Enbridge common shares for each issued and outstanding publicly held Class A common unit of EEP (the "Merger");

(b) On May 17, 2018, the board of directors of EEM, in its capacity as the board of directors of the delegate of EEP GP, formally constituted a special committee of directors of EEP (the “EEP Special Committee”), appointed Jeffrey Connelly, Dan Westbrook and William Waldheim to serve on the EEP Special Committee, and authorized the EEP Special Committee to, among other things, review, evaluate, consider and negotiate the proposed Merger;

(c) On July 23, 2018, the EEP Special Committee adopted a resolution forming a sub-committee (the “Derivative Action Subcommittee”) of the committee comprised solely of Mr. Waldheim, who is not a party to the Derivative Action, in order to review, evaluate and consider the Derivative Action and to determine the value, if any, of the Derivative Claims and materiality thereof and to make such recommendations to the EEP Special Committee as it deems appropriate;

(d) Over the course of the EEP Special Committee’s consideration of the Merger and the Derivative Action Subcommittee’s consideration of the Derivative Action, representatives of F&G and BE&S met with, provided memoranda to, and discussed their views respecting the Derivative Action with, the EEP Special Committee and their legal and financial advisors, including their views respecting the merit and value of the Derivative Claims;

(e) On August 9, 2018, the Derivative Action Subcommittee determined a risk adjusted range of values for the Derivative Claims of \$88.4 million to \$111.2 million (with a midpoint of \$99.8 million) (such midpoint, the “Estimated Derivative Claims Value”);

(f) On August 9, 2018, the EEP Special Committee accepted the range of values determined by the Derivative Action Subcommittee for the Derivative Claims and directed their legal counsel to request that the financial advisors to the EEP Special Committee factor the Estimated Derivative Claims Value into their analysis of the proposed Merger;

(g) On August 13, 2018, representatives of the EEP Special Committee shared with representatives of Enbridge a letter communicating a responsive proposal for the proposed Merger that included, among other things, an exchange ratio of 0.4000 Enbridge common shares for each issued and outstanding publicly held EEP Class A common unit (the “August 13 Proposal”);

(h) The August 13 Proposal noted, among other things, (i) the EEP Special Committee’s belief that Enbridge’s initial proposal undervalued EEP, and did not attribute appropriate value to the Derivative Action, and (ii) that the Derivative Action Subcommittee, in consultation with its legal and financial advisors, determined that an estimated value of the Derivative Claims was \$111.2

million, which value the EEP Special Committee included in the August 13 Proposal upon the recommendation of the Derivative Action Subcommittee;

(i) On August 17, 2018, Enbridge made a counteroffer to the EEP Special Committee of 0.3160 Enbridge common shares in exchange for each issued and outstanding publicly held Class A common unit (the “August 17 Proposal”);

(j) The August 17 Proposal communicated, among other things, that Enbridge did not believe that the EEP Special Committee’s identified value for the Derivative Claims was supported by relevant facts or applicable law, and that Enbridge ascribed no value to the Derivative Claims other than costs associated with the defense of the Derivative Action;

(k) In a responsive proposal dated August 27, 2018 (“August 27 Proposal”), the EEP Special Committee noted that they did not believe the August 17 Proposal appropriately valued EEP, including, among other things, the value of the Derivative Claims, which was reflected in the August 27 Proposal;

(l) In a counteroffer dated August 30, 2018 (“August 30 Proposal”), Enbridge communicated its position that the value of the Derivative Claims was, at best, the costs associated with the defense of such Derivative Action, particularly given Enbridge’s assessment of the August 29 Mesirov Decision;

(m) In a responsive proposal dated September 1, 2018 (“September 1 Proposal”), the EEP Special Committee noted that the Derivative Action Subcommittee had reviewed the August 29 Mesirov Decision and did not agree with Enbridge’s characterization of such decision, and that the August 29 Mesirov Decision did not change the Derivative Action Subcommittee’s prior determination of an estimated value of the Derivative Claims, which was reflected in the exchange ratio counterproposal presented in the September 1 Proposal;

(n) In a counteroffer dated September 3, 2018, Enbridge maintained its position that the value of the Derivative Claims was, at best, the costs associated with defending such Derivative Action;

(o) The EEP Special Committee and Enbridge exchanged further counteroffers and counterproposals dated September 5, 2018, September 11, 2018, and September 13, 2018;

(p) On September 13, 2018, representatives of Enbridge delivered to representatives of the EEP Special Committee a counterproposal of 0.335 Enbridge common shares in exchange for each issued and outstanding publicly held EEP Class A common unit (the “September 13 Proposal”);

(q) It was the consensus of the EEP Special Committee that, based on the totality of the factors and circumstances considered by the EEP Special Committee and taking into account the advice of their financial advisors, Enbridge’s

September 13 Proposal represented the best terms that the EEP Special Committee would be able to negotiate with Enbridge in respect of the proposed Merger;

(r) The financial advisors to the EEP Special Committee considered the Estimated Derivative Claims Value in their analysis;

(s) On September 17, 2018, the parties entered into an Agreement and Plan of Merger on terms consistent with the exchange ratio reflected in the September 13 Proposal (the “Merger Agreement”);

WHEREAS, Derivative Counsel contend that (i) the determination made by the Derivative Action Subcommittee concerning the value of the Derivative Claims and (ii) the negotiation of an increased exchange ratio by the EEP Special Committee were benefits to EEP and its public investors that were causally related to Derivative Counsel’s prosecution of the Derivative Claims, and the EEP Special Committee acknowledge that they used the existence of the Derivative Action and the value ascribed to the Derivative Action to obtain higher consideration payable in the Merger; and

WHEREAS, Derivative Counsel contend that the Derivative Claims became moot upon the closing of the Merger as a consequence of Plaintiff’s loss of standing to pursue the Derivative Claims, *see General Motors Corp. v. New Castle County*, 701 A.2d 819, 823 (Del. 1997) (“A proceeding may become moot in one

of two ways: if the legal issue in dispute is no longer amenable to a judicial resolution; or, if a party has been divested of standing.”).

**Attorneys’ Fees**

WHEREAS, prior to the closing of the Merger, Derivative Counsel engaged in negotiations with counsel for the Enbridge Defendants respecting potential applications by Derivative Counsel for (i) an award of attorneys’ fees and reimbursement of expenses, on the basis that the prosecution of the Derivative Claims caused the Derivative Action Subcommittee to value the Derivative Claims and caused the EEP Special Committee to use the Derivative Claims as an effective negotiation tool to increase the consideration payable in the Merger (and to increase the consideration payable in the merger with EEM), and (ii) a temporary restraining order requiring Enbridge to withhold payment of merger consideration to public investors in EEP (and EEM) as to a pro-rata portion of the proposed fee application;

WHEREAS, EEP agreed, in its business judgment, that EEP would pay Derivative Counsel a fee of \$14,500,000 in the event that the Merger closed in order to avoid the potential applications by Derivative Counsel described in the recital above and the litigation risk associated therewith;

WHEREAS, no defendant opposes the payment by EEP of \$14,500,000 to resolve the potential applications by Derivative Counsel described above;

WHEREAS, the Court has not passed on the amount of the fee; and

WHEREAS, the parties now seek an order from the Court closing the action.

IT IS HEREBY STIPULATED AND AGREED, subject to the approval of the Court, that:

1. Derivative Counsel shall, within five days of the entry of this Stipulation and Order (the “Order”), cause the notice substantially in the form annexed hereto as Exhibit 1 to be published on Business Wire (the “Notice”). Such Notice constitutes adequate notice for purposes of Court of Chancery Rule 23.1.

2. Derivative Counsel shall file with the Court an affidavit that the Notice has been made (the “Affidavit”) in accordance with paragraph 1 above no later than three calendar days after the Notice is published;

3. Upon the filing of the Affidavit,

a. The action will be dismissed with prejudice as to the Plaintiff;

b. The Court will no longer retain jurisdiction over the action, with the exception that Derivative Counsel may file an application for a special award, payable out of the fees paid to Derivative Counsel; and

c. Under Court of Chancery Rule 54, the dismissal will be final.

4. EEP shall pay Derivative Counsel a total of \$14,500,000, inclusive of costs, within 21 calendar days of the filing of the Affidavit to an account designated by Derivative Counsel.

As Stipulated: December 20, 2018

ROSENTHAL, MONHAIT &  
GODDESS, P.A.

/s/ Jessica Zeldin

Jessica Zeldin (Del. Bar #3558)  
919 N. Market Street, Suite 1401  
Wilmington, Delaware 19801  
(302) 656-4433

*Attorneys for Plaintiff*

MORRIS NICHOLS ARSHT &  
TUNNELL, LLP

/s/ Thomas W. Briggs, Jr.

Thomas W. Briggs, Jr. (Del. Bar #4076)  
Richard Li (Del. Bar #6051)  
1201 N. Market Street, Suite 1800  
Wilmington, DE 19801  
(302) 658-9200

*Attorneys for Defendants Enbridge Energy Company, Inc., Enbridge Energy Management, L.L.C., Jeffrey A. Connelly, Rebecca B. Roberts, Dan A. Westbrook, Enbridge Energy, Limited Partnership and Enbridge Energy Partners, L.P.*

FRIEDLANDER & GORRIS, P.A.

/s/ Joel Friedlander

Joel Friedlander (Del. Bar #3163)  
Jeffrey M. Gorris (Del. Bar #5012)  
Christopher P. Quinn (Del. Bar #5823)  
1201 N. Market Street, Suite 2200  
Wilmington, DE 19801  
(302) 573-3500

*Attorneys for Plaintiff*

RICHARDS LAYTON & FINGER, P.A.

/s/ Raymond J. DiCamillo

Raymond J. DiCamillo (Del. Bar #3188)  
Sarah T. Andrade (Del. Bar #6157)  
One Rodney Squire  
920 N. King Street  
Wilmington, DE 19801  
(302) 651-7700

*Attorneys for Defendants Enbridge Inc., J. Richard Bird, J. Herbert England, C. Gregory Harper, D. Guy Jarvis, Mark A. Maki, John K. Whelen and Enbridge Pipelines (Alberta Clipper) L.L.C.*

SO ORDERED this 21<sup>st</sup> day of December, 2018.

*/s/ Joseph R. Slights III*

Vice Chancellor

## EXHIBIT 1

### Notice of Dismissal of Enbridge Energy Partners, L.P. Derivative Litigation and Agreement on Attorneys' Fees

NEW YORK, December \_\_, 2018 /Business Wire/-- Notice is hereby provided to all persons who held Class A common units of Enbridge Energy Partners, L.P. ("EEP") immediately preceding the consummation of the Merger (as defined herein). The purpose of this notice is to inform you about developments with respect to the litigation in the Delaware Court of Chancery (the "Delaware Court") captioned *Mesirov v. Enbridge Energy Co., Inc.*, C.A. No. 11314-VCS (Del. Ch.) (the "Derivative Action") previously described in the Schedule 14A Definitive Proxy Statement filed by EEP on November 9, 2018 (the "Proxy Statement"), including dismissal of the Derivative Action and an agreement by EEP to pay attorneys' fees and expenses to counsel for Plaintiff ("Derivative Counsel") in the Derivative Action.

On July 20, 2015, Peter R. Brinckerhoff, individually and as trustee of the Peter R. Brinckerhoff Trust, filed a Verified Class Action and Derivative Complaint in the Delaware Court against nominal defendant EEP and defendants Enbridge Inc. ("Enbridge"), Enbridge Energy Company, Inc. ("EEP GP"), Enbridge Energy Management, L.L.C. ("EEM"), Jeffrey A. Connelly, Rebecca B. Roberts, Dan A. Westbrook, J. Richard Bird, J. Herbert England, C. Gregory Harper, D. Guy Jarvis, Mark A. Maki, John K. Whelen, Enbridge Pipelines (Alberta Clipper) L.L.C., and Enbridge Energy, Limited Partnership (collectively, "Defendants"). Brinckerhoff subsequently withdrew as the plaintiff and Judy Mesirov intervened as the plaintiff. The Derivative Action challenges a January 2, 2015 transaction (the "Transaction") by which EEP purchased from EEP GP, an Enbridge-controlled entity that serves as EEP's general partner, EEP GP's 66.67% interest in the Alberta Clipper pipeline (the "Pipeline Interest") in exchange for EEP's issuance of 18,114,975 shares of a new Class E partnership interest (the "Class E Units") to EEP GP and EEP's repayment of an outstanding loan made by EEP GP to EEP. The publicly announced nominal consideration for the Transaction was approximately \$1 billion. A Verified Second Amended Complaint added as a defendant Piper Jaffray & Co. as successor to Simmons & Company International ("Simmons"), the financial advisor to the special committee that evaluated the Transaction on behalf of EEP. On August 29, 2018, the Delaware Court issued a Memorandum Opinion granting in part and denying in part Defendants' motions to dismiss (the "August 29 Mesirov Decision"), dismissing the direct class claim respecting a tax aspect of the Transaction and allowing to proceed the derivative

claims for breach of Section 6.6(e) of EEP's limited partnership agreement, and against Simmons for aiding and abetting a breach of contractual fiduciary duties (the "Derivative Claims"). The parties engaged in extensive discovery. Over 209,000 pages of documents were produced by Defendants and third parties to Plaintiff's counsel. Plaintiff's counsel deposed thirteen individuals. On October 1, 2018, the parties exchanged expert reports. On October 12, 2018, Defendants moved for summary judgment and filed opening briefs.

As more fully explained in the Proxy Statement, on May 17, 2018, representatives of Enbridge delivered a proposal to acquire all of the outstanding Class A common units of EEP not already owned by Enbridge and its affiliates (the "Merger"). On May 17, 2018, the board of directors of EEM, in its capacity as the board of directors of the delegate of EEP GP, formally constituted a special committee of directors of EEP (the "EEP Special Committee"), appointed Jeffrey Connelly, Dan Westbrook and William Waldheim to serve on the EEP Special Committee, and authorized the EEP Special Committee to, among other things, review, evaluate, consider and negotiate the proposed Merger. On July 23, 2018, the EEP Special Committee adopted a resolution forming a sub-committee (the "Derivative Action Subcommittee") of the committee comprised solely of Mr. Waldheim, who is not a defendant in the Derivative Action, in order to review, evaluate and consider the Derivative Action and to determine the value, if any, of the Derivative Claims and materiality thereof and to make such recommendations to the EEP Special Committee as it deems appropriate. On August 9, 2018, the Derivative Action Subcommittee determined a risk adjusted range of values for the Derivative Claims of \$88.4 million to \$111.2 million (with a midpoint of \$99.8 million) (such midpoint, the "Estimated Derivative Claims Value"). On August 9, 2018, the EEP Special Committee accepted the range of values determined by the Derivative Action Subcommittee for the Derivative Claims and directed their legal counsel to request that the financial advisors to the EEP Special Committee factor the Estimated Derivative Claims Value into their analysis of the proposed Merger. Representatives of EEP and Enbridge subsequently engaged in price negotiations respecting the Merger. On September 17, 2018, the parties entered into an Agreement and Plan of Merger. On December 20, 2018, the Merger closed.

On December \_\_, 2018, the Delaware Court entered a Stipulation and Order of Dismissal dismissing the Derivative Action, with the claims being dismissed with prejudice as to the Plaintiff (the "Order"). The Order provides that EEP will pay Plaintiff's counsel \$14,500,000 in attorney's fees and costs. Because EEP has agreed to undertake this payment, there will be no direct costs to EEP's Class A Unitholders. The Delaware Court has not and will not pass on the fee payment. A

copy of the Order can be accessed on the website of co-counsel for Plaintiff at <https://bespc.com/>.

Any former unitholder of EEP seeking additional information about this matter should contact Lawrence P. Egel, co-counsel for Plaintiff, at [egel@bespc.com](mailto:egel@bespc.com) or 212.308.5888, or Michael Steinberg, counsel for Enbridge, at [steinbergm@sullcrom.com](mailto:steinbergm@sullcrom.com) or 310.712.6670.