

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

In re SAMSON RESOURCES CORPORATION, Reorganized Debtor.	Chapter 11 Case No. 15-11934 (BLS)
PETER KRAVITZ, as Settlement Trustee of and on behalf of the SAMSON SETTLEMENT TRUST; Plaintiff, v. SAMSON ENERGY COMPANY, LLC, <i>et</i> <i>al.</i> , Defendants.	Adv. Pro. No. 17-51524 (BLS)

REVISED PRETRIAL ORDER

An initial pretrial conference occurred on May 10, 2022. Pursuant to the Seventeenth Amended Case Management Plan and Scheduling Order [Adv. Pro. D.I. 362] (the “Scheduling Order”), Peter Kravitz, as Settlement Trustee of and on behalf of the Samson Settlement Trust (the “Trustee”),¹ hereby files this Initial Pretrial Order, which includes only the contents set forth hereinafter notwithstanding the provisions of Local Rule 7016-2(d). Pursuant to Paragraph 2(g)(iii) of the Scheduling Order, the parties have conferred on an appropriate timetable for the

¹ Peter Kravitz is the Settlement Trustee of and acts on behalf of the Samson Settlement Trust (the “**Settlement Trust**”) established pursuant to the *Global Settlement Joint Chapter 11 Plan of Reorganization of Samson Resources Corporation and Its Debtor Affiliates (with Technical Modifications)* [Bankr. D.I. 2009].

filing of all other contents required by Local Rule 7016-2(d) and have agreed to the dates set forth on **Exhibit A** hereto. The final pretrial is set for September 6, 2022 at 11:00 a.m. Eastern.

I. Statement of the Nature of the Action

This is a fraudulent conveyance action, brought pursuant to 11 U.S.C. §§ 544 and 550, and applicable state laws, including the Uniform Fraudulent Transfer Act as enacted in Delaware, Nevada, and/or Oklahoma, arising out of the acquisition of Samson Investment Company (“SIC” or “Samson”) by a consortium of equity sponsors led by Kohlberg Kravis Roberts & Co. (“KKR”; collectively, “Sponsors”) on December 21, 2011 (the “Closing Date”). At some point following the acquisition, Samson began to experience financial difficulties, and it eventually filed for bankruptcy on September 16, 2015 (the “Petition Date”). Under Samson’s confirmed plan of reorganization in the above-captioned chapter 11 cases (the “Plan”), Samson’s unsecured creditors—collectively holding a total of \$2.5 billion in unsecured debt—received a cash distribution in an amount less than the amount of their unsecured claims and interests in the Settlement Trust. The confirmed plan transferred to the Trustee the right to bring this fraudulent conveyance action on behalf of the unsecured creditors. Accordingly, by this action, the Trustee seeks to avoid and recover certain cash and asset transfers (listed below) made to Defendants in connection with the acquisition (the “Challenged Transfers”), which the Trustee alleges constitute constructive fraudulent transfers. Defendants allege that the transfers do not constitute constructive fraudulent transfers.

Relevant pleadings are set forth in the Complaint [Adv. Pro. D.I. 1] and Samson Defendants’ Answer and Specific Defenses [Adv. Pro. D.I. 80]. Defendants do not assert any counterclaims or crossclaims.

Defendants have filed seven dispositive motions in this case.² As a result of the first five motions: (i) Counts II and IV and the correlative portions of Count V (relating to intentional fraudulent transfer) were dismissed;³ (ii) claims against Defendants Jerome “Jay” Schusterman, Mary Lee (named as Mary Lee Schusterman in the Complaint), Haley Schusterman, Dale Schusterman, Judy Poznik (spelled Poznick in the Complaint), Shane Froebel, Tamara Salkin (formerly Froebel), Deborah Morrison, Renee Morrison, Carol Wilson, and Steven Dow were dismissed without prejudice by stipulation of the parties;⁴ and (iii) all claims against Defendants Stacy Family Delaware Trust and Schusterman 2008 Delaware Trust were dismissed.⁵ Counts I, III, and the correlative parts of Count V (relating to constructive fraudulent transfer) remain pending against the remaining Defendants. On March 11, 2022, Defendants filed their sixth and

² They are (1) Samson Defendants’ Motion to Dismiss, filed on January 12, 2018 [Adv. Pro. D.I. 20]; (2) Family Relatives Motion to Dismiss and Memorandum in Support of Motion to Dismiss Pursuant to [Federal Rule of Civil Procedure 12\(b\)\(6\)](#), as Incorporated into This Adversary Proceeding by [Federal Rule of Bankruptcy Procedure 7012\(b\)](#), filed on January 12, 2018 [Adv. Pro. D.I. 23]; (3) Motion of Defendants Stacy Family Trust, SFT (Delaware) Management, LLC, ST 2008 (Delaware) Management, LLC, Schusterman 2008 Delaware Trust, Stacy Family Delaware Trust, Samson Exploration, LLC, Samson Offshore, LLC, and Samson Energy Company, LLC for Summary Judgment Based on Plan Release, filed on May 23, 2018 [Adv. Pro. D.I. 45]; (4) Motion of Defendant Stacy Schusterman for Summary Judgment as to Counts III, IV and Correlative Portions of Count V of the Complaint, filed on May 23, 2018 [Adv. Pro. D.I. 48]; (5) Samson Defendants’ Motion for Summary Judgment under Bankruptcy Code Section 546(e), filed on March 9, 2020 [Adv. Pro. D.I. 193]; (6) Samson Defendants’ Motion for Partial Summary Judgment under Bankruptcy Code Section 546(e), filed on March 11, 2022 [Adv. Pro. D.I. 346]; and (7) Motion of Defendants SFT (Delaware) Management, LLC, ST 2008 (Delaware) Management, LLC, Samson Exploration, LLC, Samson Offshore, LLC, Stacy Family Trust, Stacy Schusterman, Lynn Schusterman, C. Philip Tholen, and Wilmington Savings Fund Society, FSB, for Summary Judgment, filed on March 11, 2022 [Adv. Pro. D.I. 350].

³ Order, issued on June 15, 2018 [Adv. Pro. D.I. 61].

⁴ Order Approving Stipulation of Partial Dismissal without Prejudice, filed on May 10, 2018 [Adv. Pro. D.I. 42]; *see also* Notice of Dismissal, filed on August 24, 2018 [Adv. Pro. D.I. 81]; Notice of Dismissal, filed on October 17, 2018 [Adv. Pro. D.I. 112].

⁵ Order Granting in Part and Denying in Part Moving Defendants’ Motion for Summary Judgment, issued on September 13, 2018 [Adv. Pro. D.I. 86].

seventh dispositive motions [Adv. Pro. D.I. 346, 350]. The briefing for these two motions for partial summary judgment are now complete. The Court heard oral argument on May 19, 2022 and issued its Opinion on August 4, 2022.

II. Basis of Federal Jurisdiction

The jurisdiction of the Court is not in dispute. This Court has subject matter jurisdiction pursuant to [28 U.S.C. §§ 157 and 1334](#). Venue of this proceeding is proper under [28 U.S.C. § 1409](#). This action is a core proceeding within the meaning of [28 U.S.C. § 157\(b\)](#). The parties have consented to this Court rendering final orders and judgments in this proceeding.

III. Basis of Bankruptcy Court's Adjudicatory Authority

Not included at this time pursuant to the Scheduling Order.

IV. Statement of Stipulated Facts

Not included at this time pursuant to the Scheduling Order.

V. Statement of Issues of Fact to be Litigated

Not included at this time pursuant to the Scheduling Order.

VI. Statement of Issue of Law to be Litigated

Not included at this time pursuant to the Scheduling Order.

VII. List of Exhibits

Not included at this time pursuant to the Scheduling Order.

VIII. List of Witnesses

Not included at this time pursuant to the Scheduling Order.

IX. Brief Statement of What the Trustee Intends to Prove in Support of His Claims

As set forth in more detail in the Complaint, the Trustee intends to present evidence proving the following:

1. At the time of the Challenged Transfers, the Debtors who made such transfers had at least one creditor with an allowable unsecured claim who also had an unsatisfied claim as of the Petition Date. In addition, the Debtors who made such transfers also had at least one creditor with an allowable unsecured claim as of the Petition Date.
2. The Challenged Transfers were made in exchange for less than fair consideration and less than reasonably equivalent value.
3. The Debtors who made the Challenged Transfers were insolvent at the time of, or became insolvent as a result of, the Challenged Transfers.
4. At the time of the LBO, Debtors who made the Challenged Transfers were engaged or were about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to their business.
5. At the time of the LBO, Debtors who made the Challenged Transfers believed or reasonably should have believed that they would incur debts beyond their ability to pay such debts as they became due.
6. Therefore, the Challenged Transfers are avoidable under applicable state laws, and the Trustee is entitled to avoid and recover the Challenged Transfers under sections 544 and 550 of the Bankruptcy Code.

In particular, the Trustee seeks to recover damages from Defendants in an amount equal to the dollar value of each of the following Challenged Transfers as of the date of the transfers,

together with interest on that amount from the date of the transfers, attorneys' fees, and costs of suit and collection allowable by law:

No.	Transferee	Amount	Transferor and the Stated Purpose of the Initial Transfer
1	ST 2008 (Delaware) Management, LLC ("ST 2008")	\$750,014,761	From Samson Investment, for stock redemption
2	SFT (Delaware) Management, LLC ("SFTDM")	\$1,044,062,838	From Samson Investment, for stock redemption
3	Charles and Lynn Schusterman Family Foundation (the "Foundation")	\$955,922,401	From Samson Investment, for stock redemption
4	ST 2008	\$981,038,692	From Samson Resources Corporation, for stock purchase
5	SFTDM	\$1,440,306,523.50	From Samson Resources Corporation, for stock purchase
6	Foundation	\$1,145,016,554.50	From Samson Resources Corporation, for stock purchase
7	Samson Energy Company	Membership Interests in Samson Exploration and Samson Offshore	From various Debtors, in exchange for transfer/cancellation of certain subordinated notes with a collective outstanding principal amount of approximately \$553 million

The foregoing statement of what the Trustee intends to prove is without prejudice to, and shall not constitute a waiver of, any of Defendants' arguments or rights.

X. Statement of What Defendants Intend to Prove as Defenses

In addition to presenting facts disputing the Plaintiff's case (including, without limitation, fair consideration, reasonably equivalent value, solvency, adequate capitalization, defendants are not initial or subsequent transferees of any of the Challenged Transfers, etc.), and without waiver

of defenses available as a matter of law, Defendants intend to present evidence proving the following:

1. Because the Stock Purchase Agreement was assumed in the Plan, all of Plaintiff's claims are barred.

2. Because some or all of the property, the transfer of which the Complaint seek to avoid, would not have been available to creditors in the absence of the transactions undertaken pursuant to the Stock Purchase Agreement, Plaintiff cannot avoid transfers of such otherwise unavailable property.

3. Because some or all of the property transferred to the Defendants was either not made by a Debtor nor from any interest in property of a Debtor, Plaintiff cannot avoid transfers of such property.

4. To the extent not resolved in the dispositive motions, *supra*, Samson Investment Company is a financial participant and thus any and all Challenged Transfers made by it are safe-harbored pursuant to Bankruptcy Code section 546(e). In addition, all of the other alleged transferors are financial participants by virtue of their guarantees of Samson Investment's swap agreements.

5. To the extent one or more transfers qualify either as settlement payments or transfers made in connection with a securities contract made by or to or for the benefit of a financial institution or financial participant, Plaintiff cannot avoid such transfers.

6. The Plaintiff's remedies and recoveries, if any, are barred or precluded, in whole or in part, or must be reduced or impressed with a lien in favor of the Samson Defendants by reason of section 8(d) of the Uniform Fraudulent Transfer Act, as enacted in any state whose law is applicable herein, section 9(2) of Uniform Fraudulent Conveyance Act, as enacted in any state

whose law is applicable herein, section 8(d) of the Uniform Voidable Transactions Act, as enacted in any state whose law is applicable herein, and/or any similar or analogous applicable federal, state or local law.

7. Recovery, if any, on some or all of the claims in the Complaint should be barred, reduced, impressed with a lien or otherwise adjusted in the interests of equity.

8. The Plaintiff's remedies and recoveries, if any, are barred or precluded, in whole or in part, or must be impressed with a lien or adjusted by reason of section 550(e) of the Bankruptcy Code, section 8(c) of the Uniform Fraudulent Transfer Act, as enacted in any state whose law is applicable herein, section 8(c) of the Uniform Voidable Transactions Act, as enacted in any state whose law is applicable herein, and/or any similar or analogous applicable federal, state or local law.

9. To the extent not resolved in the dispositive motions, *supra*, the claims in the Complaint against all of the Defendants other than the Charles and Lynn Schusterman Family Foundation and Stacy Schusterman (in her individual capacity) were released pursuant to the Plan.

10. Plaintiff's claims are barred or limited by the doctrines of unjust enrichment, waiver, estoppel and laches.

11. Plaintiffs' claims are barred, in whole or in part, by the doctrine of ratification.

12. Plaintiffs' claims are barred in whole or part, to the extent the alleged transfers were not made to or for the benefit of the Defendants.

The foregoing statement of what Defendants intend to prove is without prejudice to, and shall not constitute a waiver of, any of Plaintiff's arguments or rights.

XI. Statement by Counterclaimants/Crossclaimants

Not applicable.

XII. Amendments of the Pleadings

Not included at this time pursuant to the Scheduling Order.

XIII. Certification of Parties' Good Faith Effort for Settlement

On February 17, 2022, the parties held a non-binding mediation pursuant to the February 7, 2022 Order Regarding Mediation and Appointing Mediator [Adv. Pro. D.I. 343], and the February 8, 2022 Order Assigning Adversary Proceeding to Mediation and Appointing Mediator [Adv. Pro. D.I. 344]. The initial mediation session did not result in a resolution, but the Parties have the option of resuming the mediation if they agree to do so.

XIV. Other Matters

The Court has scheduled a ten-day trial to begin on September 12, 2022. The Parties have agreed to limit the trial to 60 (sixty) total hours of trial time, exclusive of motions and closing arguments, to be divided equally between each side (30-hours per side), with the clock kept by the parties. For purposes of computation, the Parties will each be charged with time their attorneys spend making argument, offering evidence or questioning a witness, whether on direct examination, cross-examination, redirect examination or otherwise. Any trial time used by the Court shall be divided equally between Plaintiff and Defendants.

Pursuant to Local Rule 7016-2(d)(xiv), the parties reserve the right to supplement this order with additional matters that they deem appropriate in the later iterations of the pretrial order.

THIS ORDER SHALL CONTROL THE SUBSEQUENT COURSE OF THE ACTION UNLESS MODIFIED BY THE COURT TO PREVENT MANIFEST INJUSTICE. Such modification may be made either on application of counsel for the parties or by the Court.

Dated: August 15, 2022

Agreed to as to form and substance:

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Dated: August 15, 2022

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Attorneys for the Defendants

SO ORDERED.

Dated: August 17, 2022


Brendan Linehan Shannon
United States Bankruptcy Judge

EXHIBIT A

- i. **June 1, 2022**, is the date by which the Parties shall exchange any proposed amended pleadings.
- ii. **June 1, 2022**, is the date by which the Parties shall exchange proposed statements of facts that are admitted and require no proof and issues of law that remain to be litigated.
- iii. **June 10, 2022** is the date by which the Parties shall inform each other whether they intend to object to any amended pleading proposed by the other Party.
- iv. **June 15, 2022**, is the date by which the Parties shall meet and confer to (i) agree upon a proposed statement of facts that are admitted and require no proof and (ii) attempt to resolve any disputes regarding proposed amendments to the pleadings
- v. **June 30, 2022**, is the date by which the Parties shall file any amendments of the pleadings desired by any party with a statement whether it is unopposed or objected to and, if objected to, the grounds thereon.
- vi. **July 6, 2022**, is the date by which the Parties shall file any motions in limine.
- vii. **July 22, 2022**, is the date by which the Parties shall exchange: (1) a list of exhibits, including designations of interrogatories and answers thereto, requests for admissions and responses, and deposition excerpts that each party intends to offer at trial as part of its case in chief; and (2) the names of all witnesses each party intends to call to testify, either in person or by deposition, at the trial as part of its case in chief.
- viii. **August 4, 2022**, is the date by which the Parties shall file oppositions to any motions in limine.
- ix. **August 8, 2022**, is the date by which the Parties shall exchange: (1) a list identifying which exhibits, interrogatories, requests for admissions, and deposition excerpts proposed by the opposing Party may be admitted in evidence without objection, and for those which are objected to, the grounds for objection; (2) a list of any additional exhibits, interrogatories, requests for admissions, and deposition excerpts that each Party intends to offer at trial as part of its case in chief that have been identified by the Party as being responsive to items identified by the opposing party in the July 15, 2022 exchange; and (iii) any additional deposition excerpts consistent with Federal Rule of Civil Procedure 32(a)(6) to supplement the opposing Party's **July 22, 2022** submission.
- x. **August 15, 2022**, is the date by which the Parties shall exchange a list identifying which of those additional exhibits, interrogatories, requests for admissions, and deposition excerpts identified by the opposing Party on **August 1, 2022** may be admitted in evidence without objection, and for those which are objected to, the grounds for objection.
- xi. **August 22, 2022**, is the date by which the Parties shall exchange a final list of exhibits, interrogatories, requests for admissions, and deposition excerpts that each party intends to offer at trial, with a specification as to those that may be admitted in evidence without objection,

those to which there are objections and the grounds for objection, and the grounds for admission relied on by the proponent of the exhibit.

- xii. **August 15, 2022**, is the date by which the Parties shall file any replies in further support of motions in limine.
- xiii. **September 1, 2022**, is the date by which the Parties shall file their Joint Pre-Trial Filing. The Joint Pre-Trial Filing shall include:
 - 1. A statement of facts that are admitted and require no proof.
 - 2. The Parties' Joint Exhibit List, consisting of exhibits that any party offers in its case in chief as to which there are no objections.
 - 3. A copy of the excerpts of each deposition that any Party will offer in its case in chief, submitted in video and written format so as to show the testimony offered by each side, and identifying the position of each Party as to any such testimony whose admission is objected to.
 - 4. A copy of each premarked exhibit on the Joint Exhibit List will be provided to the Court in the manner designated by Local Rule 7016-2(d)(vii).
- xiv. **September 1, 2022**, is the date by which each Party shall file its Party Pre-Trial Filing. The Party Pre-Trial Filing shall include the Party's:
 - 1. Trial brief, of no more than 50 (fifty) pages, which shall include, inter alia, summaries of the disputed issues of fact and law that the party contends remain to be litigated.
 - 2. Party Exhibit List, identifying in chart form (i) each exhibit the Party seeks to offer in its case in chief as to which an opposing Party has objected, (ii) the asserted grounds for objection supplied by the objecting Party, (iii) the offering Party's grounds for admission. A copy of each exhibit on the Party Exhibit List will be provided to the Court in the manner designated by Local Rule 7016-2(d)(vii).
- xv. **September 6, 2022 at 11:00 a.m.**, shall be the date and time of the Final Pre-Trial Conference
- xvi. The parties shall submit proposed findings of fact and conclusions of law post-trial on a schedule agreed to by the parties and/or directed by the Court at the conclusion of the trial.