

Magistrate Judge Virginia M. Morgan on April 28, 2004 (the “**2004 DISTRIBUTION ORDER**”);¹

- (ii) Authorizing the CONSERVATOR to revise the BEAR Investor List most recently approved by this Court in the 2004 DISTRIBUTION ORDER (the “**FIRST REVISED FINAL BEAR INVESTOR LIST**”) to delete therefrom the interests of Investors to whom disgorgement proceeds were credited under the FIRST REVISED FINAL BEAR INVESTOR LIST but who could not be located by the CONSERVATOR, or whose distribution checks were returned or which have not been cashed within one-hundred-twenty (120) days from the date of mailing of such checks, and ruling that such Investors shall have no future right to share in any distributions, including the distribution requested in this 2005 SUPPLEMENTAL DISTRIBUTION MOTION;
- (iii) Finding that such revisions are properly reflected on the proposed revised BEAR Investor List attached as **Exhibit A** hereto (the “**PROPOSED SECOND REVISED FINAL BEAR INVESTOR LIST**”),² including the related modification of the interests of the remaining persons listed on the PROPOSED SECOND REVISED FINAL BEAR INVESTOR LIST, and approving such PROPOSED SECOND REVISED FINAL BEAR INVESTOR LIST as a final and binding determination of the BEAR investors and the amount of their claims for the purposes of this proceeding (the “**SECOND**”

¹ The 2004 DISTRIBUTION ORDER was approved by U. S. District Judge John Corbett O’Meara on April 28, 2004.

² **Exhibit A** is incorporated herein by reference. The names of Investors with deleted interests have been left on **Exhibit A**, but such Investors are given the classification of “6” —the class designation adopted by Plante & Moran, accountants retained by the CONSERVATOR with the permission of this Court, for investors who became ineligible to participate in future distributions after not cashing their distribution checks — and are shown with a *zero* “Adjusted Net Investor Claim.”

REVISED FINAL BEAR INVESTOR LIST”), which shall be binding upon all BEAR Investors;³

- (iv) Declaring such returned and/or uncashed checks void and the right to receive payments pursuant thereto terminated;
- (v) Finding that any BEAR Investor, or person claiming to be a BEAR Investor, who is not now included on the **SECOND REVISED FINAL BEAR INVESTOR LIST** shall be excluded from the BEAR Investor List for all purposes and shall be conclusively barred from participation in the distribution of disgorgement proceeds despite the fact that the failure of the alleged Investor to timely file a claim may be due to an error of the United States mail or errors of the CONSERVATOR’S Retained Personnel; and holding that no person shall have the right hereafter to object to the **SECOND REVISED FINAL BEAR INVESTOR LIST** or to any distribution of disgorgement proceeds on the basis that such person did not receive notice of any hearings or administrative determinations affecting his or her rights, or of the need for returning a Marketing Activity Affidavit, or of any hearings or orders concerning the determination of rights of purported BEAR investors, or of the need to cash his or her distribution check within any specified period, even if such person in fact received no written or other actual notice of such matters; and
- (vi) Authorizing and directing the CONSERVATOR to make an additional distribution to those persons listed on the **SECOND REVISED FINAL BEAR INVESTOR LIST**; and

³ The CONSERVATOR is aware that former BEAR Investor No. 1052, John B. and Jill C. Mannino, whose name was previously removed from the BEAR Investor List by order of this Court, may petition the Court to have their name reinstated on the BEAR Investor List. Due to the statements made by the Court at the hearing concerning the 2004 DISTRIBUTION ORDER, directing the CONSERVATOR not to add or further revise the BEAR Investor List except as directed by the Court, the CONSERVATOR has not recommended such a reinstatement.

providing that, in making such distribution, the CONSERVATOR shall be under no obligation to inquire or otherwise investigate to determine the address of an Investor for whom the address listed in the CONSERVATOR'S records proves inaccurate or incomplete, or for whom no address or current or complete address is known, but shall have complied with any obligations thereunder by mailing any checks, notices, orders or other materials to the address, if any, shown for such Investor in the CONSERVATOR'S records, and further providing that it shall be the obligation of each Investor to advise the CONSERVATOR of any change of address of such Investor and to ensure that such Investor's current address is properly reflected on the CONSERVATOR'S records.

BACKGROUND

1. The background of this case is detailed in the 2004 DISTRIBUTION ORDER and the "*Order Approving Amended Proposed Final List and Distribution of Disgorgement Proceeds*" signed by Magistrate Judge Virginia M. Morgan on August 15, 2000 (the "**2000 DISTRIBUTION ORDER**").⁴

2. The 2004 DISTRIBUTION ORDER authorized the CONSERVATOR to make a "final" distribution to Investors listed on the FIRST REVISED FINAL BEAR INVESTOR LIST in the amount of \$1,800,000. Pursuant to that order, the CONSERVATOR has issued checks in the amount of \$1,800,000 to those persons listed on the FIRST REVISED FINAL BEAR INVESTOR LIST. Of these checks, checks in the amount of \$1,653,056.06 were cashed; however, 175 checks in the amount

⁴ The 2000 DISTRIBUTION ORDER was approved by U. S. District Judge John Corbett O'Meara on September 28, 2000.

of \$146,943.94 have not been cashed.⁵ The PROPOSED SECOND REVISED FINAL BEAR INVESTOR LIST attached as **Exhibit A** hereto reflects: (i) the deletion from the FIRST REVISED FINAL BEAR INVESTOR LIST of the interests of Investors to whom disgorgement proceeds were credited under the FIRST REVISED FINAL BEAR INVESTOR LIST but who could not be located by the CONSERVATOR, or whose distribution checks were returned or which were not cashed within one-hundred-twenty (120) days from the date of mailing of such checks; and (ii) the related modification of the interests of the remaining persons listed on the PROPOSED SECOND REVISED FINAL BEAR INVESTOR LIST.

3. As of July 12, 2005, the cash or cash equivalents of the BEAR Estate amount to \$240,829. Estimated costs of conducting a supplemental distribution and closing the BEAR Estate⁶ are approximately \$70,235.⁷ Accordingly, the CONSERVATOR recommends that he be authorized to make a supplemental distribution to Investors listed on the SECOND REVISED FINAL BEAR INVESTOR LIST (as approved by the Court) in the amount of \$170,000 in the manner provided in the Plan of Distribution previously established by the Court, with any remaining funds (including funds credited on the SECOND REVISED FINAL BEAR INVESTOR LIST to Investors, if any, who cannot be located by the CONSERVATOR, or whose distribution checks are returned or which have not been cashed within ninety (90) calendar days from the date of mailing of such checks) to be paid to the United States Treasury.

WHEREFORE, the CONSERVATOR requests:

⁵ All such checks were mailed substantially prior to one-hundred-twenty (120) days from the date of filing of the 2005 SUPPLEMENTAL DISTRIBUTION MOTION.

⁶ The activities necessary to close the BEAR Estate are detailed in the 2004 DISTRIBUTION ORDER.

⁷ See the "*Analysis of Available Cash for Final Distribution*" prepared by Plante & Moran, attached as **Exhibit B** hereto and incorporated herein by reference.

- A) That the Court enter an order (the “**2005 HEARING ORDER**”):⁸
- i) Setting this matter for hearing;
 - ii) Directing the CONSERVATOR to give notice thereof by posting a copy of the 2005 SUPPLEMENTAL DISTRIBUTION MOTION and the 2005 HEARING ORDER, together with a copy of the “**2005 SUPPLEMENTAL DISTRIBUTION NOTICE**” (as approved by the Court),⁹ on the website of Stenger & Stenger, P.C., attorneys for the CONSERVATOR, www.stengerlaw.com, and by mailing a copy of the 2005 SUPPLEMENTAL DISTRIBUTION MOTION, the 2005 HEARING ORDER, and the approved 2005 SUPPLEMENTAL DISTRIBUTION NOTICE, by first class mail to the United States Securities and Exchange Commission, to John B. and Jill C. Mannino, and to all persons listed on the FIRST REVISED FINAL BEAR INVESTOR LIST whose interests would be deleted from the list of BEAR Investors under the PROPOSED SECOND REVISED FINAL BEAR INVESTOR LIST, all to the last known address of such person as shown on the CONSERVATOR’S records, such posting and mailing to occur not less than ten (10) calendar days before the date set for such hearing; and
 - iii) Directing the Court Clerk of this Court (the “**COURT CLERK**”) to make available for inspection and/or copying during normal business hours to anyone so requesting at the requesting party’s cost and expense a copy of

⁸ A copy of a “**PROPOSED 2005 HEARING ORDER**” is attached as **Exhibit C** hereto and is incorporated herein by reference.

⁹ A copy of a “**PROPOSED 2005 SUPPLEMENTAL DISTRIBUTION NOTICE**” is attached as **Exhibit D** hereto and is incorporated herein by reference.

the 2005 SUPPLEMENTAL DISTRIBUTION MOTION and the 2005 HEARING ORDER, including all exhibits thereto, subject to the COURT CLERK'S normal practices, procedures and requirements concerning the same.

B) Following such notice and hearing, that the Court enter a second order (the “**2005 SUPPLEMENTAL DISTRIBUTION ORDER**”):¹⁰

- i) Approving all distributions previously made by the CONSERVATOR pursuant to the orders of this Court, including the distribution made by the CONSERVATOR pursuant to the 2004 DISTRIBUTION ORDER;
- ii) Authorizing the CONSERVATOR to revise the FIRST REVISED FINAL BEAR INVESTOR LIST to delete therefrom the interests of Investors to whom disgorgement proceeds were credited under the FIRST REVISED FINAL BEAR INVESTOR LIST but who could not be located by the CONSERVATOR, or whose distribution checks were returned or which have not been cashed within one-hundred-twenty (120) days from the date of mailing of such checks, and ruling that such Investors shall have no future right to share in any distributions, including the distribution requested in this 2005 SUPPLEMENTAL DISTRIBUTION MOTION;
- iii) Finding that such revisions are properly reflected on the PROPOSED SECOND REVISED FINAL BEAR INVESTOR LIST (**Exhibit A** hereto), including the related modification of the interests of the remaining persons listed on the PROPOSED SECOND REVISED FINAL BEAR INVESTOR LIST, and

¹⁰ A copy of a “**PROPOSED 2005 SUPPLEMENTAL DISTRIBUTION ORDER**” is attached as **Exhibit E** hereto and is incorporated herein by reference.

approving such PROPOSED SECOND REVISED FINAL BEAR INVESTOR LIST as a final and binding determination of the BEAR investors and the amount of their claims for the purposes of this proceeding (the SECOND REVISED FINAL BEAR INVESTOR LIST), which shall be binding upon all BEAR Investors;

- iv) Declaring such returned and/or uncashed checks void and the right to receive payments pursuant thereto terminated;
- v) Finding that any BEAR Investor, or person claiming to be a BEAR Investor, who is not now included on the SECOND REVISED FINAL BEAR INVESTOR LIST shall be excluded from the BEAR Investor List for all purposes and shall be conclusively barred from participation in the distribution of disgorgement proceeds despite the fact that the failure of the alleged Investor to timely file a claim or to object to the PROPOSED SECOND REVISED BEAR INVESTOR LIST may be due to an error of the United States mail or errors of the CONSERVATOR'S Retained Personnel; and holding that no person shall have the right hereafter to object to the SECOND REVISED FINAL BEAR INVESTOR LIST or to any distribution of disgorgement proceeds on the basis that such person did not receive notice of any hearings or administrative determinations affecting his or her rights, or of the need for returning a Marketing Activity Affidavit, or of any hearings or orders concerning the determination of rights hereunder, or of the need to cash his or her distribution check within any specified period,

even if such person in fact received no written or other actual notice of such matters;

- vi) Authorizing and directing the CONSERVATOR to distribute \$170,000 from the Lewis G. Mosburg, Jr., Conservator of Basic Energy and Affiliated Resources, et al. Bank One checking account, account number 275000563195, to BEAR Investors as reflected on the SECOND REVISED FINAL BEAR INVESTOR LIST in the manner provided in the Plan of Distribution previously adopted by this Court; and providing that, in making such distribution, the CONSERVATOR shall be under no obligation to inquire or otherwise investigate to determine the address of an Investor for whom the address contained in the CONSERVATOR'S records proves inaccurate or incomplete, or for whom no address or current or complete address is known, but shall have complied with any obligations thereunder by mailing any checks, notices, orders or other materials to the address, if any, shown for such Investor in the CONSERVATOR'S records, and further providing that it shall be the obligation of each Investor to advise the CONSERVATOR of any change of address of such Investor and to ensure that such Investor's contact information is properly reflected on the CONSERVATOR'S records; and
- vii) Directing that as to those Investors to whom disgorgement proceeds are credited under the SECOND REVISED FINAL BEAR INVESTOR LIST as adopted by the Court but who cannot be located by the CONSERVATOR, or whose distribution checks are returned or which have not been cashed

within ninety (90) calendar days from the date of mailing of such checks, such checks shall be void and the right to receive such payments shall terminate and the amounts otherwise distributable to such Investors shall be disposed of as set forth below.¹¹

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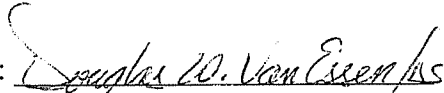
¹¹ The Conservator recommends that a letter be included with the distribution checks warning Investors of this potential loss of rights and the need promptly to cash their checks. A proposed letter is attached as **Exhibit F** to this 2005 SUPPLEMENTAL DISTRIBUTION MOTION and is incorporated herein by reference.

C) Following the completion of such distribution and the payment to the United States Treasury of any remaining funds (including funds credited on the SECOND REVISED FINAL BEAR INVESTOR LIST to Investors, if any, who cannot be located by the CONSERVATOR, or whose distribution checks are returned or which have not been cashed within ninety (90) calendar days from the date of mailing of such checks), and the completion of the remaining tasks necessary for the closing of the BEAR Estate as detailed in the 2004 DISTRIBUTION ORDER, the CONSERVATOR requests that the Court hold a final hearing at which time the CONSERVATOR shall present his final report and accounting and request that this Court approve such report and accounting, discharge the CONSERVATOR, exonerate the CONSERVATOR and his Retained Personnel, and their affiliates, from any liability in connection with the Conservatorship, and close the BEAR Estate.

Respectfully submitted,

STENGER & STENGER, P.C.
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Date: August 4, 2005

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