IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	
THE HEARTLAND GROUP VENTURES, LLC; HEARTLAND PRODUCTION AND RECOVERY LLC; HEARTLAND PRODUCTION AND RECOVERY FUND LLC; HEARTLAND PRODUCTION AND RECOVERY FUND II LLC; THE HEARTLAND GROUP FUND III, LLC; HEARTLAND DRILLING FUND I, LP; CARSON OIL FIELD DEVELOPMENT FUND II, LP; ALTERNATIVE OFFICE SOLUTIONS, LLC; ARCOOIL CORP.; BARRON PETROLEUM LLC; JAMES IKEY; JOHN MURATORE; THOMAS BRAD PEARSEY; MANJIT SINGH (AKA ROGER) SAHOTA; and RUSTIN BRUNSON,	§	**No. 4-21CV-1310-O-BP**
Defendants,	§	
and	§	
DODSON PRAIRIE OIL & GAS LLC; PANTHER CITY ENERGY LLC; MURATORE FINANCIAL SERVICES, INC.; BRIDY IKEY; ENCYPHER BASTION, LLC; IGROUP ENTERPRISES LLC; HARPRIT SAHOTA; MONROSE SAHOTA; SUNNY SAHOTA; BARRON ENERGY CORPORATION; DALLAS RESOURCES INC.; LEADING EDGE ENERGY, LLC; SAHOTA CAPITAL LLC; and 1178137 B.C. LTD.,	§	
Relief Defendants.	§	

DECLARATION OF CAROLYN BREMER, CPA, AHUJA & CLARK, PLLC N/K/A AHUJA & CONSULTANTS, INC., IN SUPPORT OF *RECEIVER'S MOTION FOR ORDER APPROVING DISTRIBUTION PLAN AND INTERIM AND/OR FINAL DISTRIBUTION* [ECF NO. 534][1]

I, CAROLYN BREMER, CPA, do hereby declare as follows:

1. I am over the age of 18 years old and possess personal knowledge with which I am able to submit this Declaration.

2. I received a B.A. in English and Business Administration from Louisiana State University and a M.S. in Accountancy from San Diego State University. I am a Certified Public Accountant licensed in Texas and Virginia.

3. I am the Managing Director of the Advisory Department at Ahuja & Clark, PLLC n/k/a Ahuja & Consultants, Inc. ("A&C"). I have over 24 years of experience in public accounting and forensic accounting. I specialize in fraud investigations, business disputes, data analytics, receivership support, and compliance consulting. I work with a wide range of clients and industries to include legal counsel, private and public companies, public sector and governmental agencies. I have experience with receiverships as a forensic accountant tracing assets, tracing flow of funds, and calculating investor losses.

4. A&C is the Court-approved tax and forensic accountants to Deborah D. Williamson, Receiver, in the Receivership. *See generally* ECF No. 187. Since its retention by the Receiver, A&C has determined the population of investors (those who deposited investment funds with one of the Heartland Receivership Parties included in the Receivership), the amount of funds invested, the type of investments, and any return of funds back to investors by

[1] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed in the *Receiver's Motion for Entry of an Order Setting Claims Bar Date, Establishing Claims Procedure, and Approving Notification Process* [ECF No. 408] (the "Claims Motion") or the *Receiver, Deborah D. Williamson's Motion for Order Approving Distribution Plan and Interim and/or Final Distribution* [ECF No. 534] (the "Distribution Motion"), as appropriate.

one of the Heartland Receivership Parties. All of the information collected by A&C was used to calculate the Net Transaction Amount or net claim amount for each Known Investor to support the overall Claims Procedure for the Receiver.

5. A&C was provided access to the Heartland Receivership Party books and records, which appear to have tracked the investor activity through or around the end of September 2021. The books and records contained information such as investor contact information, advisor information, custodian information (if applicable), investment funds received, parent fund receiving investments, date received, effective and maturity dates for investments, rollover funds (if applicable), interest rates, investment status, payment of funds, specific notes related to investments, and other related documentation. Based on a review of other supporting documentation, A&C found that the information maintained in Heartland Receivership Party records regarding investors appeared to be accurate. A&C was also provided access to and reviewed bank statements for the Receivership Parties, interest payment schedules, Schedule K-1 documentation for the two equity investment funds, 1099-INT documentation, accounting records, and other files and reports from Heartland Receivership Parties.

6. A&C has assessed various methodologies for the distribution of funds to creditors in this Case with an emphasis on treating creditors, particularly Heartland investors, as equitably and fairly as possible while minimizing expenses. The two most commonly applied distribution methods are the "Net Investment" method and the "Rising Tide" method.

7. The "Net Investment" method (also referred to as the "Net Loss" method) focuses on the difference between the amount of funds invested into the scheme reduced by the amount paid back to the investor (commonly coined "Cash In/Cash Out"). With the Net Investment method, investors who invested more into the scheme than they withdrew from the scheme would

receive a *pro rata* distribution based on their net investment (here, their Net Transaction Amount approved pursuant to the Claims Procedure).

8. Under the "Rising Tide" method, the investor's percentage of loss is calculated, and distributions are made first to those investors with the greatest percentage of loss. When all investors reach a plateau with the same loss percentage, funds are then distributed to those investors ratably with the investors exceeding that plateau receiving nothing.

9. A&C has compared the "Net Investment" and "Rising Tide" distribution methods in order to determine the more appropriate one considering this Case's circumstance and facts. Both methods appear widely accepted by courts in other receivership cases. Each method will be discussed below, including examples of calculations based on samples. A&C has taken into consideration the number of investors in this Case, the equitableness of the distribution among investors, the amount of the distribution, and the cost related to the distribution. Based on all of the factors considers, A&C supports the Receiver's proposed utilization of the "Net Investment" or "Net Loss" method.

"Net Investment" or "Net Loss" Method

10. The "Net Investment" or "Net Loss" method seeks to distribute funds on a *pro rata* basis to allowed claimants, based on their net remaining loss that the claimant is owed by the entity[2] at the date of the Case's commencement: December 2, 2021. The Net Investment method is perceived as the most common means of allocating loss among defrauded investors because it is the simplest and, thus, least costly method to apply. All returned funds, regardless of whether characterized as a repayment of principal or interest and regardless of whether the funds were

[2] For clarity, the Receiver is not proposing to distinguish between Heartland investors in a particular investment fund. So long as funds were actually received by Heartland-related Receivership Parties, Heartland investor claims fall into Class 4a.

earned legitimately or illegitimately, are assumed to functionally represent a return of the investor's principal. Any pre-receivership withdrawal simply reduces the investor's claim amount without affecting their eligibility to receive a distribution. This approach would pay all Heartland investors with allowed claims (Class 4a claimants) on a *pro rata* basis based on the dollar amount of their allowed claim compared to the total dollar amount of all allowed claims in the respective distribution.

11. The "Net Investment" or "Net Loss" method utilizes a two-step formula.

$$\text{Step 1: Actual Dollars Invested} - \text{Pre– Receivership Withdrawals or Interest Payments}$$
$$= \text{Net Investment (here, Net Transaction Amount)}$$

$$\text{Step 2: Net Investment (here, Net Transaction Amount) x } \textit{Pro Rata} \text{ Percentage} = \textbf{Actual Distribution}$$

12. Step one includes prior withdrawals (here, return of any principal and/or interest payments made) being subtracted from the total investment amount, which results in the Net Transaction Amount. Next, the distribution made to each investor is then allocated ratably based on the investor's Net Transaction Amount. The *pro rata* percentage is calculated as the recovered assets to be distributed by the Receiver divided by all investors' total net investment losses (here, the total of all investors' Net Transaction Amounts or such other allowed claim amounts determined by the Court). Only those investors with a net loss are included in the "Net Investment" distribution process. Net winners who recovered their full investment with pre-receivership withdrawals are <u>not</u> included in a proposed distribution.

<u>"Rising Tide" Method</u>

13. The "Rising Tide" method seeks to distribute funds in a way that leaves as many investors as possible with the same percentage recovery of their total investment, after the consideration of any prior withdrawals. The investors would only receive a distribution where the overall amount that can be distributed on a *pro rata* basis is more than the amount that has been

previously distributed to the investor. Unlike the "Net Investment" method, pre-receivership withdrawals may affect the investor's eligibility to participate in the distribution. Thus, not all investors would be eligible to receive a distribution in this Case if the "Rising Tide" method is utilized.

14. The "Rising Tide" method also utilizes a two-step formula to calculate distributions.

$$\text{Step 1: Actual Dollars Invested x } \mathit{Pro\ Rata} \text{ Percentage} = \text{Calculated Distribution}$$

$$\text{Step 2: Calculated Distribution} - \text{Pre– Receivership Withdrawals (here, Net Transaction Amount)} = \textbf{Actual Distribution}$$

15. Step one includes the actual dollars invested multiplied by the *pro rata* percentage equaling the calculated distribution. Creditors with the largest percentage of loss are paid first. It could be necessary to calculate multiple layers of distribution to determine which investors participate in the distribution. Determining the *pro rata* percentage is also a complex calculation. Again, distributions are made only to investors who received withdrawals or interest payments that were less than the percentage distribution to be made by the Receiver. No distributions are made to investors who have already received withdrawals and/or interest payments greater than the percentage distribution to be made. Step two calculates the actual distribution by subtracting the pre-receivership withdrawals (including interest payments) from the calculated distribution amount.

16. The "Rising Tide" method favors investors who lose the highest percentage of their principal investment. The goal of this method is to attempt to treat each investor as equally as possible and not penalize those investors who did not withdraw money or receive interest payments from the scheme prior to this Case.

<u>Comparison of "Net Investment" and "Rising Tide" Methods Based on Sample Data</u>

17. The main difference in the calculation between the "Net Investment" and "Rising Tide" methods is the way in which pre-receivership withdrawals and/or interest payments are treated and accounted for in calculating the amounts to be distributed to investor claimants.

18. Under the Net Investment method, pre-receivership withdrawals and/or interest payments are subtracted from the total investment amount to determine the investor's net investment amount (here, their Net Transaction Amount). *All* investors who suffered a net loss receive a *pro rata* distribution from the Receivership following their Net Transaction Amount or such other allowed amount determined by the Court. Investors who have already received back their total principal investment through pre-receivership withdrawals and/or interest payments (*i.e.*, those investors who have 100% recovery) would not be entitled to participate in any planned distribution until other investors' final recovery also reaches 100%.

19. Under the 'Rising Tide" method, pre-receivership withdrawals and/or interest payments for each investor are credited against the investor's *pro rata* distributions from the Receivership. Specifically, investors who previously received withdrawals and/or interest payments would receive a smaller *pro rata* distribution from the Receivership than those who received no prior withdrawals and/or interest payments. Additionally, investors who previously received withdrawals and/or interest payments exceeding their *pro rata* amount of the total distribution would receive no initial distribution from the Receivership. This methodology results in those investors who received the largest pre-receivership withdrawals and/or interest payments (on a percentage basis) potentially receiving <u>no</u> distribution.

20. A&C has selected a sample of six (6) Heartland investor claimants to illustrate the effects of using the "Net Investment" method versus the "Rising Tide" method. The objective of

this sample selection is to represent the investor pool's range of net investments. Given that only six (6) Heartland investor claimants are used for this illustration, an artificially low distribution amount of $50,000.00 has been used to show the outcomes for each investor.

Net Investment Distribution Calculation

Name	Investment	Pre-Receivership Withdrawals (including Interest Payments)	Net Investment (Investment – Pre-Receivership Withdrawals, including Interest Payments)	% to be Applied for Investor Distribution Calculation (Recovered Assets/ Total Net Investment Loss)	Receivership Distribution Amounts (Individual Investor Net Investment x %)
Investor 1	$ 400,000	$-	$400,000	6%	$24,309
Investor 2	$ 25,000	$354	$24,646	6%	$1,498
Investor 3	$ 100,000	$2,125	$97,875	6%	$5,948
Investor 4	$ 252,000	$33,775	$218,225	6%	$13,262
Investor 5	$ 71,000	$10,344	$60,656	6%	$3,686
Investor 6	$ 53,371	$32,022	$21,348	6%	$1,297

Rising Tide Distribution Calculation

Name	Investment	Pre-Receivership Withdrawals (including Interest Payments)	Prior % Recovery (Pre-Receivership Withdrawals, including Interest Payments / Investment)	Distribution Amounts at % recovery calculated (10%) less Pre-Receivership Withdrawals
Investor 1	$ 400,000	$-	0.0%	$39,984
Investor 2	$ 25,000	$354	1.4%	$2,145
Investor 3	$ 100,000	$2,125	2.1%	$7,871
Investor 4	$ 252,000	$33,775	13.4%	$-
Investor 5	$ 71,000	$10,344	14.6%	$-
Investor 6	$ 53,371	$32,022	60.0%	$-

21. The distribution amounts and the final recovery percentages for each investor utilizing the "Net Investment" and "Rising Tide" methods are summarized below.

Final Recovery Percentage Comparison

Name	Distribution Amounts under Net Investment Method	Final Recovery % under Net Investment (Pre-Receivership Withdrawals including Interest Payments + Receiver Distribution) / Original Investment	Distribution Amount under Rising Tide Method	Final Recovery % under Rising Tide (Pre-Receivership Withdrawals including Interest Payments + Receiver Distribution) / Original Investment
Investor 1	$24,309	6.1%	$39,984	10.0%
Investor 2	$1,498	7.4%	$2,145	10.0%
Investor 3	$5,948	8.1%	$7,871	10.0%
Investor 4	$13,262	18.7%	$-	13.4%
Investor 5	$3,686	19.8%	$-	14.6%
Investor 6	$1,297	62.4%	$-	60.0%

22. In the "Net Investment" calculation chart above, all[3] sample investor claimants are eligible to receive a distribution—i.e., 6% of their Net Transaction Amount, despite the amount of any pre-receivership withdrawals and/or interest payments. However, in the "Rising Tide" calculation chart above, only three (3) sample investor claimants are eligible to receive a distribution, as the distribution amount has been exhausted through raising the investors with the lowest recovery amount to meet the next highest investor's final recovery percentage threshold. That is, the recovery percentage rises to reach investors who received pre-receivership withdrawals and/or interest payments, and those investors in that pool share in *pro rata* distributions until the next allowed investor is reached and added to the *pro rata* distribution pool.

23. Despite the discrepancies in the distribution amount, the range of final recovery percentages under the "Rising Tide" method is slightly narrower than the range of percentages under the "Net Investment" method. As such, the "Net Investment" method may be deemed more equitable in that all sample investors (who have recovered less than 100%) are eligible to

[3] Save and except any investor who previously recovered 100%.

participate in the distribution, while the "Rising Tide" method may be deemed more equitable in that it results in a more level range of final recovery percentages among the sample investors.

24. The "Rising Tide" method seeks to treat all similarly-situated investors the same by using the distribution process to equalize the losses suffered by the victims throughout the entire Heartland oil and gas offering fraud and not favoring those who received larger pre-receivership withdrawals and/or interest payments earlier in the fraudulent scheme. The "Rising Tide" methodology favors investors who lost the highest percentage of their principal investment and ensures the most-harmed investors receive distributions before those who lost a lower percentage of their principal investment.

Comparison of "Net Investment" and "Rising Tide" Methods Based on Actual Investor Population Data

25. The Receiver has identified 734 investors in Heartland-related Receivership Parties in this Case. Total investments among the Heartland investors comprise $126,426,358.00. Total pre-receivership withdrawals (including interest payments) comprise $27,630,188.00, resulting in a total net investment loss of $98,796,170.00. Of those 734 Heartland investors, 84 investors have received 100% return of their original principal investments—namely, net winners. Thus, 650 investor claimants have a net loss amount of $98,796,170.00.

26. Utilizing an estimated distribution of $12,000,000.00, A&C compared the outcomes of each method's calculations as depicted below.

Based on Estimated Distribution of $12,000,000 (12.1% of Total Net Loss)

	Net Investment Method	**Rising Tide Method**
Average Distribution Amount:	$16,348.77	$22,263.45
Median Distribution Amount:	$8,968.16	$11,917.78
# of Investor Claimants Receiving Payout:	650	539
# Investor Claimants Receiving Payout / Total # Investor Claimants:	100%	83%
Average Receivership Recovery %	22.9%	23.9%
Range of Final Recovery %	12.1% - 88.3%	20.1% - 86.6%

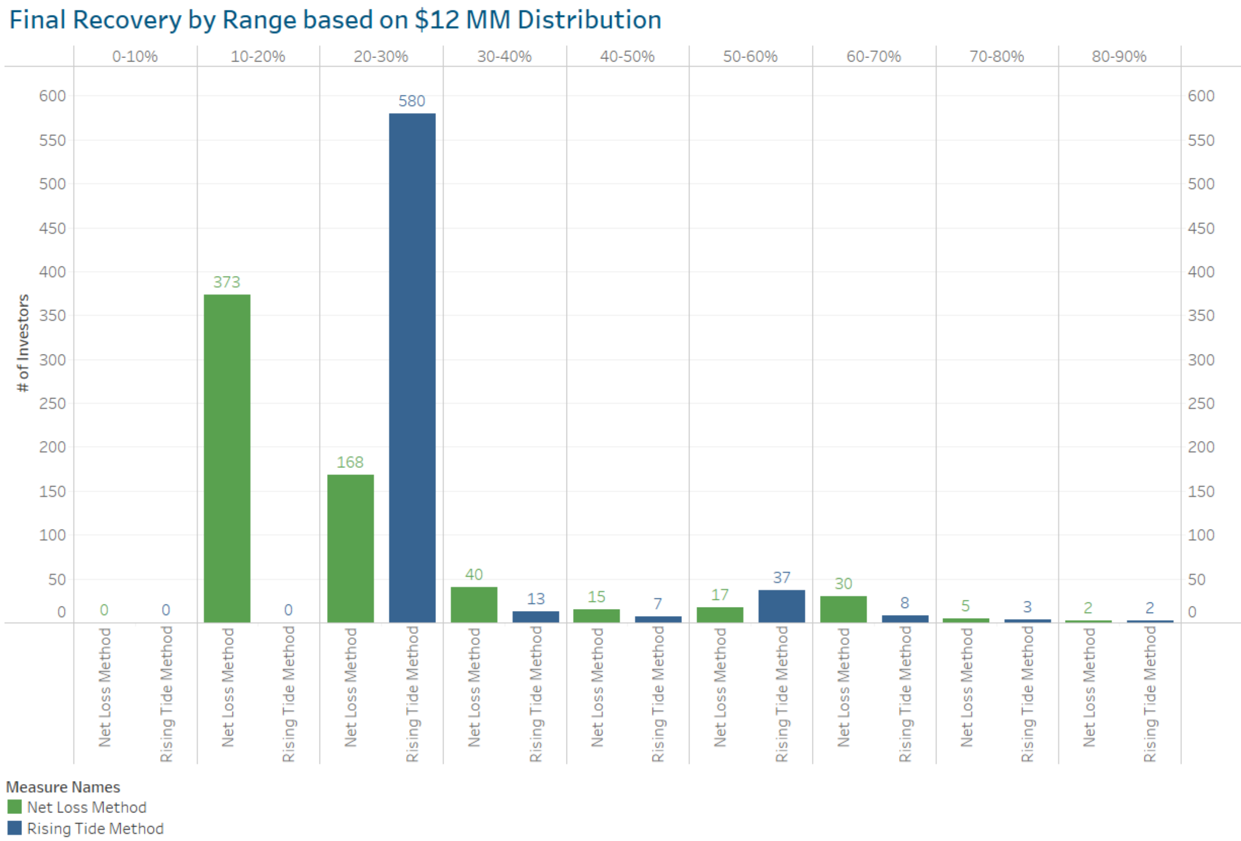
27. As illustrated above, 17% of investor claimants would not be entitled to a distribution payment under the “Rising Tide” method when compared to the “Net Investment” method, which equates to 111 investor claimants not receiving a distribution payment in this Case due to previously-received withdrawals and/or interest payments exceeding their *pro rata* amount of the total distribution.

28. When comparing the average final recovery percentages under both methods (22.9% for “Net Investment” and 23.9% for “Rising Tide”), there is very little difference for each method.

29. When comparing the final recovery percentages (pre-receivership withdrawal and/or interest payments received) divided by an investor’s total investment made, A&C noted:

a. The “Rising Tide” method raises the lowest percentage of recovery by a total of 8%.

b. There is negligible impact on the range of final recovery percentages between the “Net Investment” and “Rising Tide” methods.



30. In this Case, the majority of investor claimants (600 total) lost 50% or more of their principal investment, including 158 investor claimants losing 100%. Out of the $126.4 million received from Heartland investors with allowed claims, only $27.6 million has been returned as pre-receivership withdrawals and/or interest payments.

31. Under the "Rising Tide" method, 380 investor claimants would recover more compared to 270 recovering more under the "Net Investment" method. Therefore, only 110 investor claimants (17%) out of the 650-investor claimant population with a net loss claim amount would have a more favorable impact if the Receiver utilized the "Rising Tide" method.

<u>Recommendation of the "Net Investment" Method for Distribution in This Case</u>

32. Based on my analysis of the two methods, A&C supports the Receiver's recommendation of utilizing the "Net Investment" method in this Case. Here, the Receiver has already calculated the Net Transaction Amounts (net investment) for each of the 650 investor

claimants with a net loss claim as part of the Court-approved Claims Procedure. A relatively small number of investor claims remain in dispute, primarily relating to the netting of interest payments and/or funds never received by a Heartland-related Receivership Party. Therefore, it would be the most cost effective for the Receiver to utilize the "Net Investment" method.

33. Additionally, the "Net Investment" method proves to be more beneficial when there is a larger number of investors involved in a distribution. All investor claimants with less than 100% recovery would receive some distribution amount, which could be viewed as more equitable.

34. Conversely, the "Rising Tide" method is more complex and would require further analysis by A&C if utilized as the distribution method in this Case. Further, it would not have a significant impact on equalizing the lowest percentage of return. Specifically, under the "Rising Tide" method, 111 investor claimants would not be entitled to a distribution payment due to previously-received withdrawals and/or interest payments exceeding their *pro rata* amount of the total distribution. The advantage of using the "Rising Tide" method is not present in this Case because it only increases the lowest percentage of return by 8%.

35. The range of final recovery percentages among investor claimants after the distribution is comparable between the two methods: 12.1 – 88.3% for "Net Investment" method versus 20.1 – 86.6% for "Rising Tide" method. The advantage of using the "Rising Tide" method to foster a much smaller range of final recovery percentages among investor claimants is not present in this Case.

36. Here, the average recovery for investor claimants is very comparable under both methods—22.9% for "Net Investment" method versus 23.9% for "Rising Tide" method.

37. Due to the greater cost associated with the "Rising Tide" method and little impact on the increasing of the lowest percentage of return, A&C recommends utilizing the "Net Investment" method in this Case.

Non-Investor Distribution

38. Here, any distribution to non-investor claimants with allowed claims in this Case should be calculated on a *pro rata* basis, similar to the calculation in the "Net Investment" method. There is no "net" calculation to do on these claims; thus, payment on a *pro rata* basis of an allowed claim amount is the most equitable distribution method for treatment of non-investor claims. The "Rising Tide" method is not applicable in this Case with respect to non-investor claims. As such, A&C supports the Receiver's recommendation to pay non-investor claims on a *pro rata* basis in this Case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of May, 2024.

Carolyn Bremer

Carolyn Bremer, CPA
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