EFiled: Dec 26 2009 4:11PM EST
Transaction ID 28677955
Case No. 4589-VCN

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In re ATLAS ENERGY RESOURCES, LLC UNITHOLDER LITIGATION	Consolidated C.A. No. 4589-VCN REDACTED - PUBLIC VERSION FILED DECEMBER 26, 2009

AMENDED VERIFIED CONSOLIDATED CLASS ACTION COMPLAINT

Plaintiffs, Operating Engineers Construction Industry and Miscellaneous Pension Fund and Montgomery County Employees' Retirement Fund, through their counsel, bring the following class action on behalf of themselves and all other former Class B unitholders of Atlas Energy Resources, LLC ("Energy" or the "Company"), other than Defendants and their affiliates, against Defendants Atlas America, Inc. ("America") and certain officers and members of Energy's board of directors (the "Energy Board") for breaching their fiduciary duties in connection with America's acquisition of the remaining interest of Energy that it did not already own (the "Merger"). The allegations of the Amended Complaint are based on the personal knowledge of Plaintiffs as to themselves and on information and belief, including the investigation of counsel, review of publicly available information and documents produced by Defendants pursuant to initial discovery requests propounded as part of previous expedited proceedings, as to all other matters stated herein.

SUMMARY OF THE ACTION

1. Since the December 2006 spin-off of Energy from America, the public unitholders of Energy bore the cost and risk of significant capital expenditures to develop natural gas production in the valuable Marcellus Shale – a large geological formation

extending throughout the northeastern United States and Appalachia containing extensive untapped natural gas reserves where Energy has already identified 4 to 6 trillion cubic feet of untapped natural gas. Taking advantage of a downturn in the economy, America, Energy's indirect parent and controlling unitholder, used its majority voting power and its control and domination of Energy's Board to reap the rewards of these capital expenditures by reacquiring the Company's public units at an exchange rate that deprived Energy unitholders of the economic benefits of their investment.

2. Specifically, on April 27, 2009, America and Energy jointly announced that they had executed a definitive merger agreement in which America would acquire all the outstanding Class B units of Energy that it did not already own. The Merger, completed on September 29, 2009, was an all-stock deal that implied a value to Energy unitholders of approximately $14.40 per unit, representing a 0.3% premium to Energy's closing price of $14.35 per unit on the day prior to the deal's announcement. The Company also announced that it was suspending all cash distributions to unitholders until the Merger's completion, preemptively eliminating a valuable aspect of the unitholders' investment and providing a harbinger of things to come when cash inflow from Energy's Marcellus Shale operations is redirected to fund America's other business lines rather than being distributed to Energy's investors.

3. Even though the Merger fundamentally altered the nature of the Energy unitholders' investment and offered virtually no premium despite significant synergies for America, the public unitholders were effectively powerless to prevent the transaction from going forward. Pursuant to the Company's operating agreement, the Merger was

subject to a simple majority vote of unitholders. Because America owned 100% of the Class A units, and approximately 47.3% of the outstanding Class B units, and controlled the Energy Board (which together with Energy management collectively owned approximately 2.4% of Energy units), the Merger was a *fait accompli* that was functionally locked up by America at the time the Defendants began their alleged independent review of Energy's strategic alternatives.

4. Prior to the Merger, America's control over Energy extended beyond its dominant voting block and its control over the Energy Board. America also exercised actual control over Energy by virtue of its substantially overlapping executives and directors and its functional control over Energy's day-to-day operations and business. As a result, America and the other Defendants cannot rely on the protections of the business judgment rule and must have acted in accordance with the "entire fairness" standard, which requires that the Merger be approved through a fair process that resulted in a fair price to the Energy public unitholders. The Merger fails that test on its face.

5. America's control over the Energy Board's negotiations of the Merger, and the use of its influence to ensure that any agreement reached would be on America's terms, illustrate the extent to which the Merger resulted from an unfair process. Several of the Individual Defendants (defined herein) and all Energy officers and/or directors hold executive positions on multiple boards within the America web of entities, and all of the Individual Defendants are beholden to America for their compensation, as well as the continued tenure on the board of the surviving entity once the Merger was consummated. As a result of these connections with and dependence on America, the Merger originated

from a sham negotiating process which lacked any of the back-and-forth that is customary in the course of a real negotiation.

6. Furthermore, Defendants' actions of hiding material information from the Energy Board's Special Committee (defined herein), and providing selective information to the Special Committee as part of the approval process, were acts of bad faith. The formation of the Special Committee and the entire Merger approval process was nothing more than a formality, merely carried out to offer the false pretense of satisfying fiduciary duties in order to ratify Defendants' plan to recapture Energy's valuable assets at less than fair value for America's benefit and to the detriment of the non-affiliated Energy unitholders.

7. As detailed herein, the result of this unfair and deeply flawed process was an unfair price – also in violation of the entire fairness standard – that significantly undervalued Energy, which had traded at $16.50 per unit on February 13, 2009, over $22 per unit in November 2008, and over $44 per unit earlier in 2008. The Merger also did not compensate minority unitholders for relinquishing their Energy holdings in exchange for an interest in an entirely different company with a history of paying miniscule discretionary dividends compared to the sizeable required quarterly cash distribution that Energy unitholders bargained for. In similar situations, REDACTED REDACTED minority unitholders are often paid a significant "minority squeeze-out premium," which reaches into the 30% range. That was not the case here. Defendants blindly looked away and failed to pay a premium – to the benefit of America – and were able to recapture Energy's assets at fire sale prices. Indeed, given the

discrepancy between Energy's most recent $0.61 per unit distribution and America's $0.05 per share dividend, the nickel per unit Merger "premium" is actually a significant discount, as it does not even fairly account for Energy's suspension of unitholders' distributions before the Merger closed. The Merger also forcibly changed the nature of these unitholders' investment at an unfairly low price.

8. Section 12 of Atlas Energy's Amended and Restated Operating Agreement ("Energy's LLC Agreement") does not alter or modify the fiduciary duties of America or the other Defendants, including the Energy Board, in the context of acceptance of the Merger. Further, as a controlling unitholder, America owed traditional fiduciary duties of due care, good faith, and loyalty, as its interests were directly adverse to the interests of Plaintiffs and the controlled unitholders.

9. Defendants' act of compelling Energy unitholders to accept a transaction that substantially undervalued their investment – from both a retrospective and prospective sense – constitutes a breach of their fiduciary duties and an act of bad faith. As a result of Defendants' fiduciary breaches as set forth herein, Plaintiffs respectfully submit that damages should be awarded to the Class.

JURISDICTION

10. This Court has jurisdiction over this action pursuant to 10 Del. C. § 341.

PARTIES

A. Plaintiffs

11. Plaintiff Operating Engineers Construction Industry and Miscellaneous Pension Fund was a unitholder of Energy and had been a unitholder of Energy at all material times alleged in this complaint, and suffered damages as a result of the inadequate consideration it received as a unitholder of Energy upon consummation of the merger.

12. Plaintiff Montgomery County Employees' Retirement Fund was a unitholder of Energy and had been a unitholder of Energy at all material times alleged in this complaint, and suffered damages as a result of the inadequate consideration it received as a unitholder of Energy upon consummation of the merger.

B. Nominal Defendant

13. Nominal Defendant Energy is a Delaware limited liability company with its principal offices in Moon Township, Pennsylvania. Energy develops and produces domestic natural gas and oil and describes itself as one of the largest independent energy producers in the Eastern United States. Energy was formed and went public in December 2006 at an IPO price of $21 per unit. It was formed ostensibly to own and operate substantially all of the natural gas and oil assets and the investment partnership management business of Defendant America, which has been in the energy industry since 1968. Energy's main business includes natural gas and oil exploration and development,

and the sponsorship of investment partnerships to finance such exploration and development. It has extensive drilling operations located in the Appalachian Basin, including at least 7,600 oil and gas wells in Pennsylvania, Ohio and Tennessee, and also operates significant drilling properties in northern Michigan's Antrim Basin. Subsequent to the Merger, Energy became a wholly-owned subsidiary of America.

14. Prior to the consummation of the Merger, Energy membership units traded on the New York Stock Exchange and, as of April 27, 2009, there were approximately 63 million units outstanding, with approximately 30 million units held by Defendant America. America's wholly-owned subsidiary, Atlas Energy Management, Inc. manages the business operations of Energy. Prior to the announcement of the Merger, Energy unitholders received cash distributions each quarter (last distribution at $0.61 per unit), which represented a return of invested capital to each common unitholder. These distributions were tax-deferred until the units were sold or the unitholder's basis went below zero, whichever occurred first. Upon announcing the Merger, the Company unilaterally suspended the distributions.

C. Defendants

15. Defendant America is a Delaware corporation that is headquartered at 712 Fifth Avenue, New York, New York. Prior to the consummation of the Merger, America owned approximately 47.3% of the Class B common units and all of the Class A units and management incentive interests in Energy. America also owns significant stakes in Atlas Pipeline Partners LP and Atlas Pipeline Holdings LP, which provide substantial services to Energy. Atlas Energy Management ("Manager"), which manages the

business operations of Energy, is also a wholly-owned and controlled subsidiary of America and owns 100% of the outstanding Class A units of Energy. In the Merger, America acquired the outstanding 33.4 million Class B common units of Energy previously not held by America in exchange for 38.8 million shares of America common stock (a ratio of 1.16 shares of America for each Class B unit of Energy), and the 30.0 million Class B units held by America were cancelled. America and its affiliates continue to own all of Energy's Class A units which continue to remain outstanding after the Merger and which were entitled to 2% of all quarterly cash distributions by the Company without any requirement for future capital contributions by the holder of such Class A units. America was renamed Atlas Energy, Inc. upon the consummation of the Merger.

16. Defendant Edward E. Cohen ("E. Cohen") has served as Chairman of the Energy Board and Chief Executive Officer of Energy since its formation in 2006. He has also served as the Chairman and Chief Executive Officer of America since its formation in September 2000. He has been Chairman of the Board of Resource America, Inc. (a publicly-traded specialized asset management company) since 1990 and was its Chief Executive Officer from 1988 until 2004, and President from 2000 until 2003. In addition, E. Cohen has been Chairman of the Managing Board of Atlas Pipeline Partners GP, LLC, the general partner of Atlas Pipeline Partners LP since its formation in 1999, and Chairman of the Board and Chief Executive Officer of Atlas Pipeline Holdings GP, LLC, the general partner of Atlas Pipeline Holdings LP, since its formation in January 2006.

17. Defendant Jonathan Z. Cohen ("J. Cohen") is the son of E. Cohen. J. Cohen has been Vice Chairman of the Board of Energy since its formation in 2006 and has been the Vice Chairman of the Board of America since its formation in 2000. He has been a senior officer of Resource America since 1998, serving as the Chief Executive Officer since 2004, President since 2003 and a Director since 2002. J. Cohen has been Vice Chairman of the Managing Board of Atlas Pipeline Partners GP since its formation in 1999, Vice Chairman of the Board of Atlas Pipeline Holdings GP since its formation in 2006, and Chief Executive Officer, President and a Director of Resource Capital Corp. since its formation in 2005.

18. Defendant Richard D. Weber ("Weber") has been the President, Chief Operating Officer and a Director of Energy since its formation in 2006. He is currently President of Defendant America. Weber served from 1997 to 2006 as Managing Director and Group Head of the Energy Group of KeyBanc Capital Markets, a division of KeyCorp, and its predecessor, McDonald & Company Securities, Inc. As part of his duties, he oversaw the bank's activities with oil and gas producers, pipeline companies and utilities, with particular expertise in the Appalachian Basin, where he led more than 40 transactions, including the IPOs of America and Atlas Pipeline Partners, L.P. and the sale of Viking Resources Corporation to America.

19. Defendant Matthew A. Jones ("M. Jones") has been the Chief Financial Officer of Energy since its formation in 2006. He was a director of Energy from 2006 until his resignation from the Energy Board on July 22, 2008. He has also been the Chief Financial Officer of America since 2005, of Atlas Pipeline Partners GP since 2005, and

of Atlas Pipeline Holdings GP since January 2006. M. Jones has also served as a Director of Atlas Pipeline Holdings GP since February 2006. Prior to joining the Atlas group of companies, M. Jones worked in the Investment Banking Group at Friedman Billings Ramsey, where he served as Managing Director.

20. Defendant Walter C. Jones ("W. Jones") has been a Director of Energy since its formation in 2006. He has served as the General Counsel and Senior Director of Private Equity for GRAVITAS Capital Advisors, LLC, an independent investment advisory firm since 2005. W. Jones became a member of the Board of Directors of Defendant America subsequent to the Merger.

21. Defendant Ellen F. Warren ("Warren") has been a Director of Energy since its formation in 2006. Warren is Founder and President of OutSource Communications, a marketing communications firm that serves corporate and non-profit clients. Warren became a member of the Board of Directors of America subsequent to the Merger.

22. Defendant Bruce M. Wolf ("Wolf") has been a Director of Energy since its formation in 2006. Wolf has served as President of Homard Holdings, LLC, a wine manufacturer and distributor, since 2003. Wolf has been Of Counsel with Picadio, Sneath, Miller & Norton, P.C., in Pittsburgh, Pennsylvania, since 2003. Additionally, since 1999, Wolf has been a consultant in connection with energy and securities matters, conducting research and providing expert testimony and litigation support. Wolf was a Senior Vice President of America from 1998 to 1999 and, before that, Secretary and

General Counsel of Atlas Energy Group from 1980. Wolf became a member of the Board of Directors of America subsequent to the Merger.

23. Defendant Jessica K. Davis ("Davis") was appointed to the Energy Board on March 23, 2009 to fill the vacancy caused by the death of Board member R. Randle Scarborough. Davis was formerly an associate employed with the law firm Drinker Biddle & Reath LLP ("Drinker Biddle") in Philadelphia, Pennsylvania. Prior to joining Drinker Biddle, Ms. Davis worked in corporate litigation with the law firm Stroock & Stroock & Lavan LLP in New York, New York. Davis became a member of the Board of Directors of America subsequent to the Merger.

24. Defendant Daniel C. Herz ("Herz") has been the Senior Vice President of Corporate Development for Energy since August 2007. He has also been the Senior Vice President of Corporate Development for America, Atlas Pipeline Partners, LP and Atlas Pipeline Holdings LP since August 2007. From December 2004 to August 2007, he was Vice President of Corporate Development of America and Atlas Pipeline Partners GP. He became Vice President of Corporate Development of Atlas Pipeline Holdings GP when it was formed in January 2006. Herz joined America and Atlas Pipeline Partners GP in January 2004. He was an Associate Investment Banker with Banc of America Securities from 2002 to 2003 and an Analyst from 1999 to 2002.

25. The Defendants identified in paragraphs 16 through 24 are collectively referred to herein as the "Individual Defendants." By virtue of their positions as officers and/or directors of Energy and/or America, the Individual Defendants owed fiduciary duties to Plaintiffs and the Class, including the unflinching obligations of good faith, fair

dealing, loyalty, and due care. Among these fiduciary duties are (1) the duty of the Energy Board to maximize the price by securing a fair control premium for Energy unitholders; (2) the duty of the Energy Board to scrupulously avoid conflicts of interest or divided loyalties by preferring one unitholder's or a group of unitholders' interests over another; and (3) the duty of full and complete disclosure.

26. America and the Individual Defendants' duties were not modified by Energy's LLC Agreement, and even if such agreement applied, Defendants acted in bad faith when, among other things: (1) America and the Individual Defendants failed to provide all material information to the Special Committee for its consideration of the Merger; (2) America and the Individual Defendants used their controlling power and positions of influence over the Special Committee to present the Merger as the only viable alterative; and (3) the Special Committee and its advisors did not look into potential third party offers or opportunities, but rather relied solely on America and the Individual Defendants (other than the members of the Special Committee) and other interested executives of Energy to provide them with information about financial alternatives.

SUBSTANTIVE ALLEGATIONS

I. BACKGROUND

A. Unitholders Have Financed Energy's Emergence as an Industry Leader

27. Energy is one of the leading natural gas and oil exploration and development companies in the Eastern United States. Energy was spun off by America in December 2006, raising capital from public investors for the principal purpose of developing natural gas production in the Marcellus Shale. In effect, the Energy spin-off allowed America to finance the expenditures associated with developing the Marcellus Shale with funds obtained from public investors, while still maintaining functional control of the Company and its operations.

28. Energy's success was buoyed by investments and capital expenditures that gave it inroads into what is believed to be the largest domestic natural gas reserve, the Marcellus Shale. Energy quickly grew to become one of the leading producers in the Marcellus Shale, with control of over 550,000 acres, of which 275,000 acres are delineated at the core of the resource in Southwestern Pennsylvania.

29. Along with Energy's success in the Marcellus Shale, its other exploitable resources in Michigan's Antrim Shale, Illinois' New Albany Shale, and Tennessee's Chattanooga Shale were expanding and becoming more profitable as well.

30. By February 25, 2009, Energy reported that its investments and big bets were paying off, as it posted record financial results for the full fiscal year and fourth quarter of 2008. Specifically, it reported EBITDA of $312.4 million, representing year-

over-year growth of 57%, and net income of $142.8 million, a 22% increase. Total revenues were $787.4 million, which represented 36% growth.

31. The Company's quarterly cash distributions were also on the rise. Distributions reached $0.61 per unit since the third quarter of 2008. When the Company reported its year-end and fourth quarter results in February 2009, it appeared such distributions would continue to rise as Energy reported distributable cash flow of $207.1 million, a 61% increase compared to the prior year. Indeed, for every quarter since becoming a publicly-traded company, Energy had made a distribution which either increased or stayed the same. By contrast, America has historically declared a cash dividend of a mere 5 cents per share.

32. The Company's improving financial situation was spurred by increasing production. In 2008, Energy's 34.9 billion cubic feet of natural gas and natural gas equivalents increased 59% over its prior year production. Energy's future production seemed to be secure as well, as it reported the addition of 838 wells, including 95 vertical wells drilled in its core position in the Marcellus Shale. Vast tracts of productive drilling land were still untapped and trillions of gallons of natural gas reserves were positively identified, according to the Company's reports.

33. Energy's performance also appeared to give it ready access to additional investor funds for drilling. Indeed, in 2008, despite the severe financial crisis, the Company reported record fund-raising of $438.4 million, which was 21% higher than the Company's previous record.

34. On May 7, 2009, only eleven days after announcing the Merger (which is described below) the Company reported strong operational results for the first quarter of 2009. As the Company's press release stated:

> The Company generated record average natural gas and oil production of approximately 100.5 million cubic feet of natural gas equivalents per day ("Mmcfe") [] for the first quarter 2009, including record average net daily production in Appalachia of 42.3 Mmcfe/d, up approximately 29% over the prior year first quarter.

35. Further, the Company disclosed very positive operational results related to the continued development of the Marcellus Shale:

- The Company successfully drilled and cased eight horizontal Marcellus Shale wells in southwestern Pennsylvania since commencing its horizontal drilling program in the fourth quarter of 2008. Three of these wells have been turned into line at an average peak production rate of 5 Mmcfe per day. The third well had achieved an initial 24-hour rate into a pipeline of 10.1 Mmcfe. During the remainder of 2009, the Company plans to turn into line an additional 12 horizontal Marcellus Shale wells, including the five horizontal wells already drilled and cased. The Company intends to drill at least 24 horizontal Marcellus Shale wells for its own account during 2010.

- As of March 31, 2009, the Company had drilled 135 vertical Marcellus Shale wells, of which 126 wells currently are online and producing into a pipeline.

- The Company continues to yield successful results on its two-stage completion technique on its vertical Marcellus development. The Company has drilled and completed 28 vertical Marcellus wells using a two-stage frac technique.

- As of March 31, 2009, the Company controlled approximately 546,000 Marcellus acres in Pennsylvania, New York and West Virginia, of which approximately 274,000 of these acres are located in the Company's current focus area of southwestern Pennsylvania.

36. On the May 7, 2009 conference call concerning the results released that day, Defendant E. Cohen, the Chairman and Chief Executive Officer of both America

and Energy, explained with respect to the excellent results experienced in the development of the Marcellus Shale:

> First, the quarter's results, for the first three months of 2009, Atlas Energy generated record production of approximately 100.5 million cubic feet gas equivalent per day. As you would expect from our burgeoning Marcellus completions, average net daily production in Appalachia increased approximately 29% over the prior year's first quarter, actually reaching a record 42.3 million cubic feet equivalent.

37. Company executives were candid about the Company's strong natural gas production levels experienced in the Marcellus Shale and about the likely future growth of these significant advantages. Defendant E. Cohen also stated:

> Atlas Energy has now successfully drilled and cased eight horizontal Marcellus Shale wells in Southwestern Pennsylvania since commencing our horizontal drilling program in the fourth quarter of 2008. Three of these wells have been placed into pipeline. We're not just talking about layering but actual placement in the pipeline at an average peak rate of production of approximately 5 million cubic feet of natural gas equivalence over a 24 hour period.
>
> Including our most recent and third Marcellus horizontal well which achieved a peak 24 hour sales rate of 10.1 million cubic feet equivalent, the remaining five wells will be completed and turned into line within the next 120 days or so. During the remainder of 2009, the company plans to turn into line an addition of wells horizontal Marcellus Shale wells and that includes the five horizontal wells already drilled and cased. Although all these wells will be drilled as joint ventures through the Company's drilling programs or within industry partners.

38. On that same conference call, Defendant Weber, Energy's President and Chief Operating Officer, also highlighted Energy's success related to the Marcellus Shale:

> The first quarter of 2009 was indeed an eventful period for Atlas Energy. We surpassed the 100 million cubic feet of net production for the first time in our history driven by strong results from our Marcellus Shale program. We commenced the horizontal drilling program in the Marcellus Shale by

> successfully drilling and casing eight wells. We turned into line three horizontal Marcellus wells with including what looks like is one of the largest wells drilled in a play to-date. We continue to lead the industry vertical Marcellus well results by averaging initial rates of production of approximately 2 million cubic feet per day into a pipeline over 24 hour period. We began marketing our direct, our spring direct investment drilling program and are on our way to raising our goal of $500 million of funds raised in 2009. We entered into a new gathering agreement with lower Laurel Mountain Midstream partners and the Williams Companies, which will ensure Atlas Energy will have access to market as we greatly expand our production from the Marcellus Shale.

39. In addition, Energy's Chief Financial Officer, Defendant M. Jones expressed his belief that Energy's development of the Marcellus Shale would only bring increased results in the future:

> With respect to our results this quarter, record production in natural gas is an indication of what we believe could be a long-term trend and ultimately an accelerating trend primarily caused by our Marcellus Shale development. Continued promising results most recently with our horizontal program causes us to be very excited about what lies ahead for our vast Marcellus acreage position.
>
> ...
>
> Record production highlights our continued success in developing our Marcellus position and we remain focused on preserving and enhancing liquidity and capital flexibility which will allow us to fully exploit our reserve and production potential in expedited form.

B. America's Ownership and Control of Energy

40. Prior to the Merger, America was and had been a controlling unitholder of Energy since Energy's formation in December 2006. Up until June 29, 2007, America owned approximately 80% of Energy's outstanding voting securities. At the time of the announcement of the Merger, America owned approximately 47.3% of Energy's outstanding units. America's subsidiary, Manager, owned 100% of the outstanding Class A units. Together, America and Manager constituted approximately 48% of the voting

power of all classes of Energy's voting units. After consummation of the Merger, Energy became a wholly-owned subsidiary of America.

41. America also controlled Energy's business operations. Upon completion of the spin-off that formed Energy, Manager entered into a Management Agreement with Energy, which provides that Manager is responsible for the day-to-day operations of Energy, including, *inter alia*:

a. Providing executive and administrative personnel, office space and office services;

b. Investigating, analyzing and proposing possible acquisition and investment opportunities;

c. Evaluating and recommending hedging strategies and engaging in hedging activities on behalf of the Company;

d. Negotiating agreements on the Company's behalf;

e. Communicating on behalf of the Company with holders of any equity or debt securities of the Company as required to satisfy reporting and other requirements of any governmental bodies or agencies or trading markets and to maintain effective relations with such holders;

f. Furnishing reports and statistical and economic research to the Company;

g. Monitoring the operating performance of the Company and providing periodic reports with respect thereto to the Energy Board; and

h. Advising the Company with respect to obtaining financing for its operations.

42. In addition, the Energy Board was beholden to America. The Energy Board and all executive officers of Energy held their positions and were compensated at the pleasure of America. The compensation committee of America's Board was responsible for formulating and presenting recommendations to America's Board and Energy's compensation committee concerning the compensation of Energy's executive officers. Energy did not directly compensate its named executive officers. Rather, America allocated the compensation of the executive officers between work conducted on behalf of Energy and work conducted on behalf of itself and its affiliates. Such compensation was based upon an estimate of the time spent by those executive officers doing work for Energy and for America and its affiliates. Energy then reimbursed America for the compensation allocated to Energy. America's compensation committee was also responsible for administrating Energy's employee benefit plans, including its incentive plans.

43. A substantial degree of overlap also existed among executives at Energy and America. For instance, Defendant E. Cohen was Energy's Chairman and Chief Executive Officer, as well as (i) Chief Executive Officer and President of America; (ii) Chairman and Chief Executive Officer of Manager; (iii) Chairman of Atlas Pipeline Partners GP, LLC; (iv) Chairman and Chief Executive Officer of Atlas Pipeline Holdings GP, LLC; and (v) Chairman of Resource America, Inc. (which is the former parent of America). Similarly, Defendant J. Cohen, Defendant E. Cohen's son, held the title of

Vice Chairman at Energy, America, Manager, Atlas Pipeline Partners GP and Atlas Pipeline Holdings, GP. He is also the President, CEO and a director of Resource America, Inc. Defendants Weber, M. Jones, and Herz also simultaneously occupied high-ranking positions at Energy, America and several related entities.

44. As high-ranking executives within America and its affiliates, Defendants E. Cohen, J. Cohen, Weber, M. Jones and Herz owed fiduciary duties to America and the America shareholders to get a deal at the lowest price possible for America in consummating the Merger.

45. Based on its voting power, its shared directors, and its power and controlling influence at the Energy Board level, America possessed the ability to consummate a takeover deal on terms favorable to it and detrimental to the interests of minority Energy unitholders. Indeed, pursuant to Energy's LLC Agreement, the vote of a simple majority of Energy common Class B units (approximately 47.3% owned by America, and approximately 2.4% owned by present Energy officers and directors as a group), and Class A units (100% owned by America) would carry the day in any vote, including a vote on a merger. Thus, although America did not own a majority of the outstanding units of Energy, America exercised "actual control" over the Company and could effectively assure itself of success in the vote.

46. Notably, Energy had acknowledged that America's domination and control over Energy would taint any transaction between the two entities. In the Company's December 2006 Prospectus, Energy stated, *inter alia*, that "contracts between us, on the one hand, and our manager and Atlas America and its affiliates, on the other,

will not be the result of arm's-length negotiations" (emphasis added). Energy unitholders were entitled to a Board that was loyal to them and one that could have maximized the price for their units by negotiating an arm's length deal in the absence of such conflicts of interest.

47. Energy's Form 424B3, filed August 25, 2009 (the "Final Prospectus"), similarly shows the total domination by America and acknowledges that "because the approval by holders of a simple majority of both the outstanding Atlas Energy common units and the Atlas Energy Class A Units, each voting separately as a class (of which Atlas America beneficially owns approximately 47% of the Altas common units and, through Atlas Energy Management, 100% of the Atlas Energy Class A units) would be required, Atlas America could block any third-party sale (or any joint venture involving all or substantially all of the assets of an affiliate of Atlas Energy), if America so chose...."

48. The Energy Board, including its purportedly independent directors, was controlled by America to such a degree that its discretion with respect to the Merger was neutralized. Not only were they subject to the whims of America's voting strength and Manager's controlling influence, each of the independent directors who formed the Special Committee of Energy was promised a position on the Board of the surviving Company. By ensuring that the independent directors (and only the independent directors) would retain their lucrative board seats in the Merger, the disinterest and independence of the Company's Board was compromised.

C. The Evolution of the Merger

49. Defendant E. Cohen has openly acknowledged that the driving force behind the Merger was America's desire to take control of Energy's strong growth position in the Marcellus Shale:

> I want to emphasize that the overwhelming important driver for the merger is Atlas' desire, I would say obligation – Atlas' obligation and ***desire to accelerate and expand most important and most exciting natural gas play*** and an area where Atlas should be and we're determined that we will be the leading independent player.

(emphasis added).

50. Defendant E. Cohen further explained that the purpose of the Merger was to enable Atlas Resources to form a single entity that could exploit Energy's success in the Marcellus Shale:

> Upon closing of the recently announced merger with Atlas America, Atlas Energy intends ***to commence horizontal Marcellus Shale well drilling program solely for its own account***. The company intends to drill at least 24 horizontal Marcellus Shale wells ***for its own account*** during 2010.

(emphasis added).

51. According to the Form S-4 filed by America with the Securities and Exchange Commission on June 18, 2009 in connection with the Merger (the "Preliminary Proxy") and later echoed by the Final Prospectus filed August 25, 2009, throughout 2007 and 2008, Energy expanded its position in the Marcellus Shale as the value of that resource became clearer. This prompted America to begin exploring and evaluating strategic options in December 2008, in part because it desired to tap into Energy's cash flow, including distributions to Energy unitholders.

52. According to the Final Prospectus, at that time in December of 2008, America retained J.P. Morgan Securities Inc. ("J.P. Morgan") and Wachtell, Lipton, Rosen & Katz ("Wachtell") to act as its financial and legal advisors, respectively, to advise and assist its exploration and evaluation of its options.

53. The Final Prospectus states that on January 27, 2009, following a joint presentation by members of the management of America and Energy regarding the operating conditions facing both companies, America's Board of Directors met with America's management. During this meeting, E. Cohen discussed with America's Board of Directors the difficult and deteriorating economic conditions and the impact of these conditions on America and Energy. He noted that America was exploring potential strategic alternatives for Energy, including a possible merger between America and Energy. He indicated that another meeting with America's Board of Directions would be held in the coming weeks to discuss these strategic alternatives.

54. According to the Final Prospectus, on February 3, 2009, without any involvement of Energy, America developed five possible merger or strategic alternatives for Energy (the "Five Alternatives"), which were presented to the Energy Board by Defendants Weber, J. Cohen and Herz (executives of both America and Energy) a month-and-a-half later on March 17, 2009. These Five Alternatives included:

a. America and Energy remaining in their current configurations and not changing their respective cash distribution or investment policies;

b. America and Energy remaining as separate publicly-traded entities, but Energy ceasing its cash distributions to public unitholders and America (including

eliminating allocations for Energy's management incentive interest) in order to reinvest its cash in the development of the Marcellus Shale and reduce its debt;

c. America and Energy remaining as separate publicly-traded entities, but Energy converting from a publicly-traded limited liability company to a publicly-traded corporation and ceasing its cash distributions to public unitholders and to America (including eliminating allocations for Energy's management incentive interests) in order to invest cash in the Marcellus Shale and reduce its debt;

d. America and Energy remaining as separate publicly-traded entities, but Energy entering into a joint venture with a third party, in which the third party would contribute cash to the joint venture to invest in the development of the Marcellus Shale; and

e. America and Energy merging and ceasing any cash distributions to Energy's unitholders, so that the combined cash in the two companies could be used for the development of the Marcellus Shale and the reduction of debt.

55. According to the Final Prospectus, on March 13, 2009 and March 17, 2009, the Energy Board met with members of Energy's management, including E. Cohen, Weber, J. Cohen and Herz. The Energy Board was allegedly updated regarding the deteriorating economic conditions and the impact on the Company, and was informed that Energy's management was exploring possible strategic alternatives. Due to the fact that some of the possible alternatives involved transactions with America, the Energy Board authorized the Conflicts Committee to consider strategic alternatives. However, reflecting the interrelated nature of virtually all aspects of Energy and America, even a

member of the Conflicts Committee, Wolf, had to recuse himself due to his ownership interest in America.

56. No action was taken at the March 17, 2009 Energy Board meeting, but it was agreed that management should continue to explore available alternatives, including possible investment of cash flow in the development of the Marcellus Shale and a possible merger transaction between America and Energy. In reality, management was busying itself with presenting a single option for the Energy Board: acceptance of a merger with America.

57. According to the Final Prospectus, the Board of Directors formed a Special Committee of the Energy Board consisting of Defendants Warren, W. Jones and Davis to consider America's Five Alternatives (the "Special Committee"), and the Special Committee engaged K&L Gates LLP ("K&L Gates) as its legal advisor, and UBS Securities LLC ("UBS") as its financial advisor.

58. On April 2, 2009, the Special Committee held a meeting, which K&L Gates and Weber attended. During that meeting, Weber made a presentation regarding Energy's business plan, prospects, and various possible financial scenarios. Recognizing that Energy was constrained by the fact that America could exercise its voting control to block any transaction America deemed contrary to its own best interests – including conversion from an LLC into a corporation, or any third-party sale or joint venture involving all or substantially all of the assets of Energy – the Special Committee allegedly approached Defendant J. Cohen later that day to explore a possible merger between Energy and America.

59. According to the Final Prospectus, on April 7, 2009, America's management, including J. Cohen (supposedly wearing his hat as an America officer and not his hat as an Energy officer or Board member) and Herz (also supposedly wearing his hat as an America officer and not his hat as an Energy officer or Board member), and America's advisors, J.P. Morgan and Wachtell, met with Energy's advisors, UBS and K&L Gates. At that meeting America's management informed Energy's advisors that America was not interested in the alternatives of selling its interests or converting Energy into a publicly traded corporation.

60. The following day K&L Gates and UBS allegedly informed the Special Committee of America's position that it was not interested in selling its interests or allowing Energy to convert into a corporation. Less than a week later the Special Committee concluded that a merger with America was the proper alternative for Energy.

61. According to the Final Prospectus, on April 17, 2009 the Special Committee considered whether it should adopt a "majority of the minority" voting requirement to approve any proposed transaction, as has become common when controlling unitholders, such as America, effectuate transactions with controlled companies. However, this idea was quickly abandoned when America indicated that it would not accept any standard of approval by the Energy unitholders higher than a simple majority class vote. As a result, the transaction's approval was a mere formality.

62. On April 19, 2009, America, once again dictating the course of the process, had its legal advisor, Wachtell, provide the Special Committee and its advisors with an outline of possible legal terms of a taxable merger transaction in which Energy

would become a wholly owned subsidiary of America, with Energy's public unitholders receiving shares of America as consideration. Separately, America's financial advisors contacted the Special Committee's financial advisors suggesting as an exchange ratio of 0.96 of a share of America common stock for each outstanding Energy common unit as a means to facilitate discussion.

63. Although the Special Committee did not "accept" America's original suggestion to acquire Energy at an exchange ratio that implied a value of Energy at a discount to its publicly traded market price, it exhibited no independence or good faith negotiation by simply acquiescing to America's proposal to acquire Energy virtually equal to the publicly traded price (0.3% premium notwithstanding). Indeed, beyond simply accepting what America was willing to pay, the Special Committee did not seek third party deals or offer Energy's units to non-affiliated third parties, nor did the Special Committee test the waters in any way to determine whether a higher price was available.

64. With the terms of the deal firmly established and allegedly no viable alternatives, the Special Committee did not attempt to negotiate any further or seek third party alternatives, but rather determined by unanimous vote that the Merger was advisable, fair and reasonable to and in the best interests of Energy and its public unitholders, and recommended the Merger to the full Energy Board.

D. The Final Terms of the Merger

65. Thus, on April 27, 2009, Energy and America jointly announced that they had entered into a definitive merger agreement (the "Merger Agreement") whereby each Class B common unit of Energy not currently held by America would convert into 1.16

shares of America stock. In this all stock deal, which was consummated on September 29, 2009, America was renamed "Atlas Energy, Inc." and Energy became a wholly-owned subsidiary of America.

66. The announcement indicated that the combination of America and Energy would result in a single class of equity, with the Energy unitholders owning approximately 49.6% of the combined company. The combination of America and Energy would also result in one board of directors, consisting of the ten outside directors of America and Energy serving at the time of the Merger consummation, as well as Defendants E. Cohen and J. Cohen, who are CEO and Vice Chairman, respectively, of both America and Energy. Thus, Defendants Davis, W. Jones, Warren and Wolf all became members of the board of America.

67. In keeping with America's demands, the Company also announced that it was immediately suspending its payment of cash distributions, beginning with the quarterly distribution due for the first quarter ending March 31, 2009. Section 4.15 of the Merger Agreement provided that:

> With respect to the quarter ended March 31, 2009, the ATN Board has, in accordance with the Operating Agreement, made such determinations (including as to Available Cash (as defined in the Operating Agreement) and cash reserves and other deductions to Available Cash) such that ***ATN shall not, and shall not permit any of its Subsidiaries*** (except for upstream distributions to ATN made by such Subsidiaries or, with respect to any of ATN's Subsidiaries that are not wholly owned, distributions to any third party required pursuant to any contractual or fiduciary duty or obligation) ***to, declare, set aside, make or pay any dividend or other distribution payable in cash, units, property or otherwise, with respect to any of its equity interests.*** (emphasis added).

68. Further, Section 6.1 of the Merger Agreement provided that "ATN covenants and agrees that, between the date of this Agreement and the earlier of the Effective Time and the termination of this Agreement . . . (e) ATN shall not, and shall not permit any of its Subsidiaries to, (A) declare, set aside, make or pay any dividend or other distribution, payable in cash, units, property or otherwise, with respect to any of its equity interests. . . ."

69. The Merger Agreement required approval of a majority of all Energy common unitholders, not exclusive of America's units. Section 8.2 of the Merger Agreement, entitled "ATN Equityholder Approval," provided that: "[t]he Merger and this Agreement and the other transactions contemplated hereby shall have been approved and adopted by the affirmative vote of (a) a Class A Unit Majority [defined as at least a majority of the outstanding Class A units, voting together as a single class separate from the common units and any other interests or securities] and (b) an ATN Common Unit Majority [defined as at least a majority of the outstanding common units, voting together as a single class separate from the Class A Units and any other interests or securities]." The Merger Agreement also required approval of a majority of America's shareholders as well as approval of 51% of Energy's creditors.

II. THE MERGER WAS NOT ENTIRELY FAIR TO ENERGY UNITHOLDERS

A. The Merger Consideration Was Unfairly Low and Undervalues Energy

70. The Merger offered Energy unitholders an unfair and inadequate price that failed to comport with the fiduciary duties of America and the Individual Defendants. The exchange ratio of 1.16 shares of America stock for each unit of Energy represented a mere 0.3 % premium from the stock price at the time of the announcement of the Merger. This exchange ratio was grossly inadequate and attempted to capitalize on recent volatility in the financial and energy markets, as well as the recent decline in natural gas prices which impacted Energy's unit price. At the same time the exchange ratio ignored the historical performance, the underlying value, and the future prospects of the Company.

71. More importantly, the meager premium offered to Energy unitholders did not take into account that this was, in effect, a "minority squeeze-out" by America of the non-affiliated Energy unitholders as a result of the controlling voting interest of America, which allowed America to veto or vote down any alternative transactions. In such situations, the normal course of business would have been for the Special Committee to demand a "minority squeeze-out premium." Minority squeeze-out premiums are often significant and run into the 30% range.

REDACTED

REDACTED

72. Despite the well documented control of Energy by America and admissions that America could block any third party transaction, the Special Committee did not press for the minority squeeze-out premium or any premium at all,

REDACTED

73. In addition to the failure of the Merger price to contain any minority squeeze-out premium, the price is deficient for several additional reasons.

74. First, Energy units have consistently traded well in excess of the 1.16 exchange ratio. On September 5, 2008, before the tumultuous drop in the stock market, Energy traded at over $30.00 per unit and reached a 52-week high of over $45 per unit. In fact, in May 2008, America itself purchased units of Energy at $42 per unit, more than three times the price implied by the Merger. Even as recently as February 2009, Energy traded at $16.50 per unit, significantly in excess of the paltry 0.3% "premium" at the time of the consummation of the Merger.

75.

REDACTED

REDACTED

76.

REDACTED

REDACTED

77. Yet, the Special Committee failed to pursue a premium above the paltry 0.3% settled on in the final Merger terms.

78. Second, the "premium" offered in the Merger does not even fairly compensate unitholders for the loss of significant quarterly cash distributions, which the Company suspended during the pendency of the Merger. Those tax-deferred quarterly cash distributions provided a strong incentive for unitholders to invest in Energy and to bear the risk of exploration and development projects since Energy's inception. Moreover, cash distributions to unitholders had steadily grown since January 2007, from $0.06 per unit to $0.61 per unit in February 2009, as those projects began to generate increasing revenues and profits. Based on Energy's growth prospects, those cash distributions were expected to continue increasing.

79. However, the Merger enabled America to shut down Energy unitholders' return on their investment. According to the Final Prospectus, after consummation of the Merger, those cash distributions will be retained and diverted for reinvestment and repayment of debt of the combined company. Thus, America will secure a valuable cash flow stream without compensating Energy unitholders for their loss.

80. The Merger likewise failed to offer fair compensation for forcing unitholders, through a locked up transaction, to accept a fundamental change in the nature of their investment in the Company, from a Marcellus Shale-oriented natural gas production play with significant required cash yield, to a plain vanilla equity investment in a broader natural gas business offering a comparatively insignificant discretionary dividend.

81. Additionally, America expects to achieve numerous benefits in connection with the Merger for which Energy unitholders will not be compensated. For instance, America anticipates that after the Merger, the combined company will have a stronger balance sheet, simplified organizational structure and greater liquidity than America could achieve on a stand-alone basis. The Merger is also expected to provide America with improved access to capital markets.

82. Finally, to ensure that the proposed exchange ratio was locked up, the Merger Agreement did not provide any kind of price adjustment mechanism to protect Energy's unitholders from either declines in America's stock or increases in the price per Energy unit.

83. Essentially, America wielded its position as controlling unitholder to push aside Energy's public unitholders so that it could reap the rewards of the controlled unitholders' investment. Energy's public unitholders, on the other hand, were forced to accept a fundamentally different investment with none of the tax advantages and lower expected yields, just as they stood on the cusp of significant gains. The Merger consideration is entirely unfair, because it fails to provide unitholders with, among other things, a minority squeeze-out premium or a premium commensurate with the historical value and future prospects of the Company, as well as the numerous benefits that will inure to America in connection with the Merger.

B. The Merger Is the Product of an Unfair Process

84. As discussed above, America exercised actual control over Energy by virtue of its ownership of 47.3% of Energy's Class B units and 100% of Energy's Class A units, its indirect management of day-to-day operations through Manager, and its power over interconnected and overlapping officers and directors, who were beholden to America for their compensation and future positions on the board of the surviving entity after the Merger closed.

85. America exercised its domination and control over Energy to time and structure the Merger to its own benefit, including by dictating the terms of the Merger, presenting the Energy Board with several "take it or leave it" conditions and eviscerating the Energy Board's power to negotiate or resist. The process through which the Merger was negotiated was not the product of fair dealing. Rather, America skewed the process to its own benefit and the benefit of America's existing stockholders at the expense of the

Energy public unitholders by, among other things, shutting off their access to cash distributions.

1. America Used its Position to Dictate and Control the Timing, Structure and Negotiations of the Merger

America's Influence Via Its Development of the Five Alternatives

86. America first exerted its control over the structure of the process with the development and dissemination of its desired strategy for Energy to cease paying distributions to the Energy unitholders and to consummate a merger with America resulting in America's 100% ownership of Energy, which America had acknowledged would unfairly benefit America stockholders to the detriment of pure Energy unitholders.

87. America's intention to cease Energy distributions and push through a merger between America and Energy were clear several months before any alternatives were presented to the Energy Board.

REDACTED

88.

REDACTED

REDACTED

89.

REDACTED

REDACTED

90. America then employed a strategy of "selling" the Merger to the Special Committee and the Energy unitholders that emphasized the impact the Merger would have going forward on America stock rather than whether Energy unitholders would be receiving a fair price. Per this strategy, only those unitholders who held both America shares and Energy units would truly benefit, while those who held only Energy units would be damaged.

REDACTED

REDACTED

91. Of the Five Alternatives that America developed and eventually presented to the Energy Board, four of those alternatives would benefit America to the detriment of Energy. Only the first alternative, which would have maintained the status quo, allowed the Energy unitholders to continue to reap the returns on their investment in Energy and its increasing success. This first alternative – the only one that would maintain the unitholders' distributions – the only alternative that was quickly dismissed, is indicative of America's aggressive pursuit of a strategy that would allow it best to exploit its control over Energy for America's benefit at the expense of Energy's public unitholders.

America's Influence Via Conflicted Members of the Energy Board and Management

92. Throughout the process, America and those beholden to America – especially J. Cohen and Herz, purportedly in their capacities as officers of America and not as officers (or in J. Cohen's case, also a Board member) of Energy – were the conduits of information for the Energy Board and the Special Committee, enabling America to spin its desired story regarding Energy's financial condition and prospects, which does not qualify as fair dealing. The process described in the Preliminary Proxy is

replete with this "hat switching" by which conflicted management figures purport to switch their loyalty to Energy unitholders on and off like a faucet to serve their other master, America.

93. For example, on April 7, 2009, a meeting was held among America management, including J. Cohen (supposedly wearing his hat as an America officer and not his hat as an Energy officer or Board member) and Herz (likewise purportedly wearing his hat as an America officer and not his hat as an Energy officer), and representatives of both America's and Energy's legal and financial advisors.

94. Additionally, on April 13, 2009, the Special Committee and its legal and financial advisors, held due diligence meetings with America's management, including J. Cohen, M. Jones and Herz (each supposedly acting in his capacity as an officer of America and certainly not as an officer of Energy), and America's legal and financial advisors.

REDACTED

95. America, and those beholden to America, framed all of the information that was given to Energy and its directors in such a way as to highlight America's objectives to cease paying distributions to Energy unitholders and to effect a merger between America and Energy. As a result, even though several strategic alternatives

were presented to the Energy Board, a merger between America and Energy appeared to be the only clear choice.

96.

REDACTED

97. Additionally, by framing alternatives that required Energy to continue paying distributions in a negative light, America and those beholden to America emphasized or deemphasized certain alternatives in ways which made its objectives the "clear" choice.

REDACTED

98. Not only did America use its control to guide the Special Committee toward its desired alternative – an America/Energy merger – but it also used its control, namely its blocking ownership stake, to dissuade the Special Committee from considering other alternatives that might otherwise be desirable.

REDACTED

REDACTED

99. Additionally, America was attempting to dissuade Energy from pursuing a joint venture to develop the Marcellus Shale as one of its strategic alternatives, but at the same time was itself pursuing the joint venture alternatives just weeks prior to the formation of the Special Committee.

REDACTED

REDACTED

REDACTED

America's Influence Over Conflicted Members of the Energy Board and Management Purportedly Unaffiliated with America

100. America also used its control and influence over members of the Energy Board and Energy Management who were purportedly not otherwise currently affiliated with America to control the process. Wolf as a former Senior Vice President of America from 1998 to 1999 and, before that, Secretary and General Counsel of Atlas Energy Group from 1980, was not independent when it came to evaluating a transaction with America, and America used its control over Wolf to taint and control the Special Committee's deliberations to achieve its desired transaction. Wolf was privy to confidential information regarding America's plans for Energy even prior to America's presentation of the Five Alternatives to the Energy Board. Additionally, Weber (who

purportedly only worked for Energy) had been in contact with America management, without prior Energy Board consent, regarding Energy's strategic alternatives.

101.

REDACTED

102.

REDACTED

103. America also used its control to influence the members of the Special Committee who were uneasy about the Merger to ultimately approve the transaction between America and Energy.

REDACTED

REDACTED

America and Those Beholden to America Exerted Control Over UBS

104. UBS's advising of the Special Committee and its fairness opinion regarding the price also bears the taint of conflict in this transaction. UBS has regularly performed work for the Atlas family of entities and likely hopes that trend of steady work to continue. If it were to issue an opinion unfavorable to America UBS would jeopardize a regular source of income. Indeed, not only did UBS advise representatives of America while it was advising Energy and its Special Committee, but the same players at UBS were advising and in constant contact with both Energy and America representatives.

105. America and others beholden to America, including UBS, were exerting their influence over the process by selectively providing information to the Special Committee about joint venture opportunities possibly available to exploit the Marcellus Shale assets.

REDACTED

REDACTED

106.

REDACTED

REDACTED

107. REDACTED

REDACTED

REDACTED

But UBS never pressed this option before the Special Committee and it is clear that critical information on REDACTED was not conveyed to the Special Committee, but withheld in order to facilitate the Merger with America at valuations that benefitted America.

108.

REDACTED

This critical information was not relayed by Weber, J. Cohen, E. Cohen, Herz or M. Jones to the Special Committee. Instead, the Special Committee was informed by Energy management, Energy's advisors (i.e. UBS), and America's management and advisors that America would use its controlling vote to block any such third party transactions.

REDACTED

109.

REDACTED

REDACTED

110. Despite UBS' conflict of interest, given America's insistence that the Merger be agreed to prior to the time the quarterly distributions were to be declared, as discussed next, and UBS' obvious knowledge of the Atlas family of companies, UBS was able to sell itself as the "best" choice as financial advisor to the Special Committee in evaluating its strategic alternatives.

2. America Demanded and Obtained a Cessation of Energy's Cash Distributions

111. America also dictated that cash distributions be eliminated. Prior to America's presentation on March 17, 2009, Energy had identified no need to eliminate the distribution, and, in fact, Energy had touted its ability to both exploit its exploratory opportunities and pay a regular cash distribution. Only after America had established *its* goal to acquire Energy, and only at America's insistence and through the presentations of

interested Energy management figures, did the Special Committee ultimately come to the conclusion that Energy should stop paying a distribution.

112. One of the Special Committee's main considerations regarding a potential merger with America was timing of the Merger in light of the fact that the Energy Board was obligated to determine no later than April 27, 2009 if a quarterly cash distribution would be declared. All of America's proposed alternatives involved a cessation of Energy's cash distributions, and as such, a reasonable inference exists that America was the cause of Energy's rush to come to an agreement prior to April 27, 2009, the date that the Merger was ultimately agreed to and announced. Indeed, America even indicated that any continuation of cash distributions would result in an even lower exchange ratio.

113. The timing of this quarterly cash distribution was on America's mind from the very beginning and it was stressed to Energy even prior to the presentation of the Five Alternatives to the Energy Board.

REDACTED

114. As a result of this pressure, the Special Committee accepted America's desired timing to come to an agreement regarding the potential merger prior to the April 27, 2009 deadline, which greatly accelerated and abbreviated the deliberative process. Indeed, the Special Committee appears to have passed this deadline on to the companies making pitches to act as the committee's financial advisor.

115.

REDACTED

116.

REDACTED

117.

REDACTED

118.

REDACTED

119.

REDACTED

120. America dictated that cash distributions be eliminated in order to reap the benefit of Energy's continued and increasing success for itself, and it was only at its insistence that the Special Committee came to the conclusion that Energy should stop paying a distribution. The Special Committee caved to America's control, despite the fact that eliminating or reducing distributions would be harmful to Energy's unitholders.

REDACTED

3. America Insisted that the Merger Not Include a Majority of Minority Vote Provision

121. The Merger required the approval of a simple majority of Energy's outstanding units. The Merger was not conditioned on any requirement that a majority of the minority Energy unitholders approve it. Such a provision, a standard hallmark of a transaction that is the product of fair dealing, was absent here at America's insistence.

122. America imposed its will on the Energy Board by refusing to consider any transaction that would require any heightened voting standard. Although the Preliminary Proxy was not forthcoming with the material details of the exchange, it did indicate that the Special Committee considered seeking a majority of the minority provision and that, subsequently, America stated it would not agree to such a term. This conduct illustrates

America's abuse of its control to ensure approval of its self-dealing scheme. Rather than consider a deal structure that would empower and enfranchise Energy's public unitholders, America demanded a Merger in which it could assure itself that the approval would be a *fait accompli* by virtue of its voting control.

123. Indeed, from the very beginning of America's pursuit of a merger with Energy, America viewed a majority of the minority provision negatively.

REDACTED

124. The Special Committee minutes do not reflect any deliberation, discussion or effort to obtain such a provision nor any deliberation, discussion or rationale for accepting a simply majority vote besides a mere mention of America's unwillingness to agree to a majority of the minority provision. This lack of any deliberation on this critical issue evidences America's abuse of control by forcing the Special Committee to accept a transaction on the terms it had contemplated from the beginning.

REDACTED

REDACTED

C. The Energy LLC Agreement

125. Although the process and pricing of the sham approval of the Merger was so fundamentally flawed to render it a de-facto "unfair" process and breach of fiduciary duties on equitable principles alone, Energy is a Delaware limited liability company and, therefore, the duties and obligations of its officers, directors and America as Energy's controlling unitholder and indirect manager are purportedly set forth in Energy's LLC Agreement.

126. Article 12 of Energy's LLC Agreement applies to "Merger Consolidation or Conversion" and defines the Energy Board's duties and procedures to be followed in connection with a merger. Notably, the applicable procedures and the Energy Board's duties vary depending on whether a merger is approved or rejected. For instance, Section 12.2(a) provides:

> [T]o the fullest extent permitted by law, ***the Board of Directors shall have no duty or obligation to consent to any merger***, consolidation or conversion of the Company ***and may decline to do so free of any fiduciary duty or obligation whatsoever to the Company or any Member and, in declining to consent to a merger, consolidation or conversion, shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement***, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity.
>
> (Emphasis added)

127. Section 12.2(a) therefore only releases the Board of Directors from any fiduciary duties "in ***declining*** to consent to a merger," not with respect to acceptance or approval of a particular merger transaction including the terms of the Merger in this case. (emphasis added).

128. In contrast, Section 12.2(b) provides:

> If the Board of Directors shall determine to consent to a merger or consolidation, the Board of Directors shall approve the Merger Agreement, which shall set forth:
>
> (i) the names and jurisdiction of domicile of each of the business entities proposing to merge or consolidate;
>
> (ii) the name and jurisdiction of the domicile of the business entity that is to survive the proposed merger or consolidation (the "*Surviving Business Entity*");
>
> (iii) the terms and conditions of the proposed merger or consolidation;
>
> (iv) the manner and basis of exchanging or converting the rights or securities of, or interests in, each constituent business entity for, or into, cash, property, rights or obligations of, securities or interests in, the Surviving Business Entity; and (A) if any rights or securities of, or interests in, any constituent business are not exchanged or converted solely for, or into, cash, property, rights, or obligations of, securities of or interests in, the Surviving Business Entity, the cash, property, rights or obligations of, securities or interests in,

> any limited liability company or other business entity in which the holders of such rights, securities or interests are to receive in exchange for, or upon conversion of their interests, securities or rights, and (b) in the case of securities represented by certificates, upon the surrender of such certificates, which cash, property, rights or obligations of securities of or interests in, the Surviving Business Entity or any other business entity or any other business entity (other than the Surviving Business Entity) or evidences thereof, are to be delivered;
>
> (v) a statement of any changes in the constituent documents or the adoption of new constituent documents (the certification of formation or limited liability company agreement, articles or certificates of incorporation, articles of trust, declaration of trust, certificate or agreement of limited partnership or other similar charter or governing document) of the Surviving Business Entity to be effected by such merger or consolidation;
>
> (vi) the effective time of the merger or consolidation, which may be the date of the filing of the certificate of merger pursuant to Section 12.4 or a later date specified or determinable in accordance with the Merger Agreement (*provided*, that if the effective time of the merger or consolidation is to be later than the date of the filing of the certificate of merger, the effective time shall be fixed at a date no later than the time of the filing of the certificate of merger and stated therein); and
>
> (vii) such other provisions with respect to the proposed merger or consolidation that the Board of Directors determines to be necessary or appropriate.

129. Thus, Section 12.2(b), unlike Section 12.2(a), does not specifically eliminate or modify the fiduciary duties owed to Energy unitholders by the Energy Board or its officers in connection with the *approval* of a transaction. Nor does it modify any duties owed by America to Energy's non-affiliated unitholders under Delaware law in regard to approval of the Merger.

130. No other provisions of Energy's LLC Agreement apply in the context of the elimination of the fiduciary duties in connection with the acceptance of a merger. As

a result, America and the Individual Defendants cannot rely on the protections of the business judgment rule or any terms of Energy's LLC Agreement and must act in accordance with the "entire fairness" standard.

131. As detailed herein, America (as controlling unitholder) owes the utmost fiduciary duties of due care, good faith, and loyalty. In violation of these duties, America and the Individual Defendants (other than the Special Committee), among other things, withheld material information from the Special Committee and the Energy unitholders in bad faith. Knowing that the Merger with America was a *fait accompli*, the Energy Board, including the Special Committee, acted in bad faith in consenting to the Merger – thereby breaching their fiduciary duties of due care, good faith, and loyalty owed under Delaware law – when they failed to fully investigate all aspects of the proposed Merger and simply conceded to America's terms.

CLASS ACTION ALLEGATIONS

132. Plaintiffs bring this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all others holders of Energy's Class B common units at the time the Merger was consummated (except defendants herein and any persons, firm, trust, corporation or other entity related to or affiliated with them and their successors in interest) who were injured as a result of Defendants' wrongful actions, as more fully described herein (the "Class").

133. This action is properly maintainable as a class action for the following reasons:

a. The Class is so numerous that joinder of all members is impractical. As of May 5, 2009, and at all relevant times herein, Energy had outstanding over 63 million common Class B units, held by individuals and entities too numerous to bring separate actions. Over 30 million units were owned by non-America interests. It is reasonable to assume that the non-America unitholders are geographically dispersed throughout the United States.

b. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual class member. The common questions include, inter alia,

- whether America, as controlling unitholder, breached its fiduciary duties and other common law duties to the controlled unitholders of Energy, by abusing its power to compel the merger of the Company at an unfair price;
- whether the Individual Defendants breached their fiduciary duties and other common law duties by entering into the Merger Agreement;
- whether the Individual Defendants put their own financial interests ahead of the interests of Energy's controlled unitholders;
- whether the Individual Defendants breached their fiduciary duties by failing to engage in any good faith negotiation to maximize the exchange price for the remaining units of the Company;
- whether certain Individual Defendants failed to make adequate disclosures to, or conceal information from the Special Committee concerning interested third parties that would have revealed that units of Energy were worth substantially more than the $14.40 exchange price offered by America;
- whether the Individual Defendants breached their fiduciary duties by ignoring or undervaluing Energy's most valuable assets and accepting an unfairly-priced deal to benefit themselves and the controlling unitholders at the expense of the Company and its controlled unitholders;

- whether the Individual Defendants breached their fiduciary duties by agreeing to improper deal protection provisions with America, while at the same time seeking to advance the controlling unitholders' interests above those of the controlled unitholders; and

- whether the Individual Defendants have fulfilled their fiduciary duties to Plaintiffs and the other members of the Class, including their duties of entire fairness, fair dealing, fair price, loyalty, due care, and candor.

c. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Plaintiffs are members of the Class, and Plaintiffs' claims are typical of the claims of the other members of the Class. Accordingly, Plaintiffs are adequate representatives and will adequately protect the interests of the Class.

d. Plaintiffs anticipate that there will be no difficulty in the management of this litigation as a class action.

e. 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.

f. Plaintiffs and the Class have suffered damages and will continue to suffer additional damages as a result of the acts and conduct of America and of the Individual Defendants as alleged herein.

g. The prosecution of separate actions would create the risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the Defendants, and/or adjudications which would as a practical matter be dispositive of the interests of other members of the Class.

CLAIMS FOR RELIEF

COUNT I

BREACH OF FIDUCIARY DUTY AGAINST AMERICA

134. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

135. America (as controlling unitholder) owed the Class the utmost fiduciary duties of due care, good faith, and loyalty. America also owed the Class the duty to disclose all facts material to Energy unitholders' interests as unitholders, and the merger consideration proposed by America.

136. As the controlling unitholder of Energy, America's financial interests were directly adverse to the financial interests of Energy's controlled unitholders in connection with America's offer to acquire all Energy units that it did not own. America wanted to pay the lowest possible price to purchase the remaining units of the Company. The Class of controlled unitholders wanted to obtain the maximum value for their units.

137. America did not act in accordance with Delaware's stringent "entire fairness" standard in connection with its buyout of Energy's controlled minority unitholders. Under this standard, America must (but cannot) establish that the Merger was the result of a fair process that returned a fair price to the controlled minority. America's proposed merger consideration was inadequate and unfair, and since America dominated and controlled the process, effectively controlling the Boards of both merging entities and/or stripping it of its powers, America has breached its fiduciary duties.

138. America (as controlling unitholder) has failed to fulfill its fiduciary duties in connection with the Merger with Energy.

139. Plaintiffs and the Class have been harmed by these breaches of fiduciary duty by America in the form of insufficient consideration for their units of Energy and are entitled to monetary damages.

COUNT II

BREACH OF FIDUCIARY DUTY AGAINST THE INDIVIDUAL DEFENDANTS

140. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

141. The Individual Defendants owe the Class the utmost fiduciary duties of due care, good faith, and loyalty.

142. The Individual Defendants have breached those fiduciary duties by entering into an improper agreement, or series of agreements, whereby the Energy Board (including the Special Committee) ceded control over any fair merger process or negotiation with America to America, as the controlling unitholder, and/or to Defendants J. Cohen and E. Cohen, who dominate and control the Board.

143. The Individual Defendants were obligated by their fiduciary duties to maximize the price paid for Energy units in connection with the Merger, and were bound by the entire fairness standard to ensure that any merger with a controlling unitholder was accomplished by a fair process that returned a fair price. The Individual Defendants have breached these duties.

144. The Individual Defendants also are obligated by their fiduciary duties to act in good faith. Notwithstanding this obligation, the Individual Defendants (other than the Special Committee) withheld critical information from the Special Committee material to the approval for the Merger. All Individual Defendants allowed the approval of the Merger Agreement on less than full investigation as to all relevant and material facts, and allowed the consummation of the Merger which excluded Plaintiffs and the Class from their fair share of Energy's valuable assets and businesses and provided an insufficient premium for their units, and/or benefitted America in the unfair manner complained of herein. The Merger is unfair, and thus the Individual Defendants have acted disloyally and in bad faith.

145. Plaintiffs and the Class have been harmed by these breaches of fiduciary duty by the Individual Defendants in the form of insufficient consideration for their units of Energy and are entitled to monetary damages.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for judgment, as follows:

(a) Determining that this action is a proper class action and that Plaintiffs are proper class representatives;

(b) Appointing Plaintiffs' Counsel as Class Counsel;

(c) Awarding the Class compensatory damages, together with pre- and post-judgment interest;

(d) Declaring that the Merger is not entirely fair and constitutes a breach of the fiduciary duties of the Defendants and, therefore, any agreement arising therefrom is unlawful and unenforceable;

(e) Directing that Defendants account to Plaintiff and the Class for all damages caused to them and account for all profits and any special benefits obtained by Defendants as a result of their unlawful conduct;

(f) Awarding Plaintiffs the costs and disbursements of this action, including attorneys', accountants', and experts' fees; and

(g) Awarding such other and further relief as is just and equitable.

Dated: December 15, 2009

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