

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:)	
	)	Chapter 11
)	
WALTER ENERGY, INC. ¹	)	Case No. 15-02741 (TOM11)
)	
Debtors.	)	(Jointly Administered)
)	
)	

EMERGENCY MOTION FOR A STAY PENDING APPEAL

1. Pursuant to Bankruptcy Rule 8007(a), the United Mine Workers of America Combined Benefit Fund and the United Mine Workers of America 1992 Benefit Plan (together, the “Coal Act Funds”), by and through their undersigned attorneys, respectfully request – on an emergency basis – a stay pending appeal of this Court’s January 8, 2016 *Order (I) Approving the Sale of the Acquired Assets Free and Clear of Claims, Liens, Interests, and Encumbrance; (II) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* (the “Sale Order”) (Doc. No. 1584). On January 12, 2016, pursuant to 8 U.S.C. § 158 and Federal Rules of Bankruptcy Procedure 8002 and 8003, the Coal Act Funds filed a Notice of Appeal of the Sale Order with the Clerk of this Court. (Doc. No. 1605).

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors’ corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.



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2. Because the Sale Order contains a waiver of the 14-day stay under Rule 6004(h), the Coal Act Funds require emergency review of their stay request in order to avoid the risk that their appeal is rendered statutorily or equitably moot.

3. The Sale Order came close on the heels of the Memorandum Opinion and Order of this Court, dated December 28, 2015, terminating the Debtors' collective bargaining agreement with the United Mine Workers of America and authorizing the modification of certain retiree benefits, pursuant to Sections 1113 and 1114 of the Bankruptcy Code (the "1113/1114 Order") (as amended, Doc. No. 1510). On January 8, 2016, pursuant to 28 U.S.C. § 158 and Federal Rules of Bankruptcy Procedure 8002 and 8003, the United Mine Workers of America 1974 Pension Plan and Trust (the "1974 Pension Plan"), the United Mine Workers of America 1993 Benefit Plan (the "1993 Plan"), the United Mine Workers of America 2012 Retiree Bonus Account Plan (the "Account Plan"), the United Mine Workers of America Cash Deferred Savings Plan of 1988 (the "CDSP"), and the Coal Act Funds (together, the "UMWA Funds"), filed a Notice of Appeal of the 1113/1114 Order with the Clerk of this Court. (Doc. No. 1581).

4. The Coal Act Funds' objection to the free-and-clear sale raises significant legal questions of first impression in this Circuit that should be heard and decided by an appellate court. The Funds are the only multiemployer health benefit funds in the country created by an Act of Congress, and they are the only such entities that are funded by federal taxes. *See, e.g., In re Chateaugay Corp.*, 53 F.3d 478, 496 (2d Cir. 1995) (Coal Act assessments are taxes); *In re Sunnyside Coal Co.*, 146 F.3d 1273, 1277–80 (10th Cir. 1998) (same); *Pittson Co. v. United States*, 199 F.3d 694, 704 (4th Cir. 1999) (same); *Unity Real Estate Co. v. Hudson*, 178 F.3d 649, 675 (3d Cir. 1999) (same). The Coal Act was enacted to stabilize retired coal miners' healthcare benefits with a tax-based financing system. Only one federal Court of Appeals has had the

chance to reconcile the Coal Act with the free-and-clear sale provisions of Section 363 of the Bankruptcy Code, and in the twenty years since, the underpinnings of that court's opinion have eroded, if they were ever solid. The Eleventh Circuit should have the opportunity to address the legal questions the Coal Act Funds' appeal presents and to reconcile the Coal Act with Section 363. Likewise, the UMWA Funds' appeal of the 1113/1114 Order raises significant questions of statutory interpretation which are unresolved in this Circuit and which should be heard by an appellate court. So that the Coal Act Funds can pursue their appeals without hindrance, and because of the public interest in resolution of these issues, this Court should stay the Sale Order pending appeal.

ARGUMENT

5. The Coal Act Funds are appealing the Court's Sale Order because it authorizes the Debtors to sell their mining business, mining assets, and mining contracts free and clear of future Coal Act taxes that might be assessed against the purchaser after the sale. Doc. No. 1584 at 16-17. As the Coal Act Funds explained in their objection, Doc. No. 1373 at 8, 15, the Anti-Injunction Act jurisdictionally bars pre-assessment challenges to taxes, and 11 U.S.C. § 363(f), properly construed and applied, does not apply to future "interests" that cannot be satisfied at the time of sale. The Court's conclusions as to those issues present important and substantial legal questions, which the Coal Act Funds should be permitted to appeal before the sale takes place. Accordingly, the Coal Act Funds respectfully request that this Court stay the Sale Order pending appeal.

6. In the alternative, given that it is undisputed that the sale will not close before the end of February, the Coal Act Funds respectfully request that this Court stay the Sale Order at least through the end of February. The Coal Act Funds intend to seek expedited review of their

appeal, so as to complete the appellate process as soon as possible. There is no reasonable argument that a limited stay through the end of February would harm the Debtors or their estates.

I. A Stay Pending Appeal Is Warranted.

7. Stays pending appeal are a vital “means of ensuring that appellate courts can responsibly fulfill their role in the judicial process.” *Nken v. Holder*, 556 U.S. 418, 427 (2009). A court may grant a stay pending appeal when an appellant is likely to prevail on appeal, when the balance of harms weighs in favor of a stay, and when a stay will serve the public interest. *See In re Shunnarah*, 273 B.R. 671, 672 (M.D. Fla. 2001). This familiar equitable standard does not require the Court to find it more likely than not that its Sale Order will be reversed; indeed, that would effectively keep trial courts from ever staying their own orders. *See In re Hoekstra*, 268 B.R. 904, 906 (Bankr. E.D. Va. 2000) (noting that “it would be a rare judge who makes a ruling he or she thinks is ‘likely’ to be reversed on appeal,” and granting a stay to allow the Court of Appeals to weigh in on a substantial legal question). “[O]n motions for stay pending appeal the movant need not always show a ‘probability’ of success on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay.” *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981)²; *see also In re Revel AC, Inc.*, 802 F.3d 558, 568–69 (3d Cir. 2015) (noting that “likelihood” of success is a misnomer, since “the likelihood of winning on appeal need not be more likely than not” for this factor to favor a stay); *Lair v. Bullock*, 697 F.3d 1200, 1204 (9th Cir. 2012) (noting that the “reasonable probability,” “fair

² Fifth Circuit decisions, “as that court existed on September 30, 1981, handed down by that court prior to close of business on that date, shall be binding as precedent in the Eleventh Circuit, for [the Court of Appeals], the district courts, and the bankruptcy courts in the circuit.” *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981).

prospect,” “substantial case on the merits,” and “serious legal questions” formulations of stay-pending-appeal standard “are largely interchangeable” and still good law).

8. The Coal Act Funds’ appeals raise important concerns regarding federal law, are focused on specific legal issues, and are at risk of mootness absent a stay. The Third Circuit recently reversed bankruptcy and district court orders denying a request for stay under similar circumstances. *See In re Revel AC, Inc.*, 802 F.3d at 575. In *Revel*, the Court of Appeals found that the appellant was likely to succeed on its focused challenge, and emphasized that the appellant had “not[ed] the risk that, if the decision were not stayed, its appeal would be moot under 11 U.S.C. § 363(m) once the sale closed.” *Id.* at 564.

A. The Coal Act Funds Are Likely To Succeed On Appeal Because Their Objections Raise Serious Legal Questions Warranting Appellate Review.

9. The Coal Act Funds’ arguments concerning this Court’s jurisdiction (under the Anti-Injunction Act), the types of “interests” this Court can extinguish (under Section 363(f)), and whether Coal Act obligations may be extinguished under Section 1113 or 1114, raise important questions of first impression in this Circuit. These arguments are sufficiently likely to succeed that a stay pending appeal is warranted (especially because the other three factors tip decidedly in favor of granting a stay, as explained later in this motion). The Coal Act Funds have a substantial case on the merits of their appeals, which weighs heavily in favor of a stay pending appeal. *See Nken*, 556 U.S. at 434 (noting that the merits factor, along with the irreparable injury factor, is the “most critical”).

10. **Anti-Injunction Act.** The Coal Act Funds have raised a substantial, serious legal argument that the Anti-Injunction Act, 26 U.S.C. § 7421(a), bars the Court from restraining (indeed, extinguishing via a free-and-clear sale order) future Coal Act tax assessments. The text of the Act is broad enough to support the Funds’ position: “no suit for the purpose of restraining

the assessment or collection of *any tax* shall be maintained in *any court by any person, whether or not such person is the person against whom such tax was assessed.*” 26 U.S.C. § 7421(a) (emphases added). The Funds’ position also effectuates the Act’s fundamental purpose—expeditious assessment and collection of taxes to fund federal programs and endeavors uninhibited by premature challenges and interference. *Bob Jones Univ. v. Simon*, 416 U.S. 725, 736 (1974). Further, it is undisputed that Anti-Injunction Act’s prohibition applies to bankruptcy courts. *See In re Am. Bicycle Ass’n*, 895 F.2d 1277, 1279-80 (9th Cir. 1990).

11. Thus the Eleventh Circuit, exercising *de novo* review of this jurisdictional question on appeal, *see In re NICA Holdings, Inc.*, No. 14-14685, 2015 WL 9241140, at *3 (11th Cir. Dec. 17, 2015), can reasonably sustain the Coal Act Funds’ objection. There is every reason to believe the appellate courts will consider the question deeply. It is a question of first impression in this Circuit. And the Eleventh Circuit enforces the Anti-Injunction Act vigorously. *See, e.g., Taliaferro v. Freeman*, 595 Fed. App’x 961, 962–64 (11th Cir. 2014) (affirming dismissal for lack of subject-matter jurisdiction and imposing sanctions for prosecuting a frivolous appeal); *Stevens v. Colt*, No. 10-14387, 2011 WL 1500599, at *1 (11th Cir. Apr. 20, 2011) (Anti-Injunction Act barred suit); *Gulden v. United States*, 287 Fed. App’x 813, 817 (11th Cir. 2008) (affirming dismissal for lack of subject matter jurisdiction where “the relief ... requested would have restrained the IRS from eventually assessing or collecting ... unpaid tax liability” and thus the “suit was barred by the Anti-Injunction Act”).

12. Even the Fourth Circuit in *In re Leckie Smokeless Coal*, 99 F.3d 573 (4th Cir. 1996), recognized that the Funds’ position was substantial. It agreed that the text of the Anti-Injunction Act bars Section 363(f) orders pertaining to future, unassessed Coal Act liabilities, but held that the bankruptcy court nevertheless had jurisdiction only because of an expansive view of

the narrow exception to the Anti-Injunction Act set forth in *South Carolina v. Regan*, 465 U.S. 367 (1984). *See id.* at 584–85. Since *Leckie*, the Supreme Court has clarified that the *South Carolina* exception is not generally applicable because that case involved “unique” circumstances, *Hibbs v. Winn*, 542 U.S. 88, 104 n.6 (2004), and has held that federal courts are not empowered to craft equitable exceptions to jurisdictional statutes like the Anti-Injunction Act, *see Bowles v. Russell*, 551 U.S. 205, 214 (2007); *Enochs v. Williams Packing & Nav. Co.*, 370 U.S. 1, 5 (1962) (Anti-Injunction Act’s bar is jurisdictional). Also since *Leckie*, the Fourth Circuit has joined the Seventh, Eighth, and Ninth Circuits in holding *South Carolina* inapplicable to a litigant that “does not challenge the *validity* of any provision of the [Tax] Code, but only seeks to avoid” an assessment of tax liability. *Judicial Watch, Inc. v. Rossotti*, 317 F.3d 401, 408 (4th Cir. 2003) (emphasis added).

13. There is, in short, a substantial basis to believe that the Eleventh Circuit will hold that the Debtors cannot obtain a free-and-clear sale order with respect to the purchaser’s future Coal Act tax liability.

14. **Section 363(f).** Whether Section 363(f) can be applied to extinguish future Coal Act tax assessments is also a serious and unresolved question of law in this Circuit. The operative term in Section 363(f)—“interest in such property”—is undefined in the Bankruptcy Code, and while there are some textual indications as to what Congress meant, the Eleventh Circuit has not authoritatively construed the term. The Eleventh Circuit, therefore, could adopt the narrow *in rem* definition, or the slightly broader definition the Funds proposed (*i.e.*, something that can be satisfied at the time of sale), or the more expansive definition the Court adopted.

15. After defining the term “interest in such property,” the Court of Appeals must decide whether future Coal Act taxes are post-petition assessments on post-petition activity, like the taxes, homeowners’ association dues, and fees that other courts have held cannot be extinguished under Section 363(f). *See, e.g., In re Wolverine Radio*, 930 F.2d 1132, 1147–48 (6th Cir. 1991); *In re Eveleth Mines, LLC*, 312 B.R. 634, 655 (Bankr. D. Minn. 2004). The Fourth Circuit in *Leckie* concluded that Coal Act taxes are “interests in such property,” but that court based that decision on a unique aspect of that case—the appellants had failed to appeal the lower court’s holding that they had an immediate right to relief against the debtor for all future Coal Act taxes. *See In re Leckie Smokeless Coal*, 99 F.3d at 585. The Coal Act Funds have not conceded that erroneous point in this case. And since *Leckie*, other courts (including a different panel of the Fourth Circuit) have correctly recognized that a claim for Coal Act taxes arises only when assessed, *i.e.* that the Coal Act Funds have no immediate right to relief against a debtor for all future Coal Act taxes. *See In re Sunnyside Coal Co.*, 146 F.3d 1273, 1277–80 (10th Cir. 1998); *Adventure Resources, Inc. v. Holland*, 137 F.3d 786, 794–95 & n.11 (4th Cir. 1998) (characterizing *Leckie*’s conclusion that “a debtor’s liability for future Coal Act premiums may attach prior to the filing of the bankruptcy petition” as “speculat[ion],” and holding post-petition Coal Act assessments are entitled to administrative priority).

16. **Sections 1113/1114.** Whether Sections 1113 and 1114 are applicable to liquidating companies and their statutory obligations are also serious, unresolved questions in this Circuit. Under their plain language, Sections 1113 and 1114 do not apply to liquidating companies like the Debtors, but apply only to reorganizing companies, *see* 11 U.S.C. §§ 1113, 1114, and the Eleventh Circuit has not addressed the issue. Furthermore, as a matter of law, Section 1114 does not apply to statutory obligations, and thus Coal Act obligations cannot be

rejected under that Section. *See In re Sunnyside Coal Co.*, No. 94-12794-CEM (Bankr. D. Colo. July 29, 1994) (declining to terminate Coal Act statutory obligation to provide ongoing benefits under Section 1114); *In re Westmoreland Coal Co.*, 213 B.R. 1, 19-20 (Bankr. D. Colo. 1997) (“retiree benefits” subject to section 1114 relief applies only to voluntary retiree benefit plans). *But see In re Horizon Natural Resources Co.*, 316 B.R. 268, 277-79 (Bankr. E.D. Ky. 2004) (allowing rejection of Coal Act obligations pursuant to section 1114 of the Bankruptcy Code). Because the case law is divided and the Eleventh Circuit has not spoken to whether Section 1114 applies to a statutory obligation, there is a substantial basis for believing that the appellate court will conclude that Coal Act obligations are not subject to modification under Section 1114. Doc. No. 1489 at 27–31.

B. The Balance Of Hardships Favors A Stay.

17. Neither a showing of irreparable harm to the stay proponent (in the absence of a stay), nor a showing of harm to the stay opponent (if a stay is granted) is alone dispositive. What matters is where the balance of these burdens tips. *See Thomas v. Heckler*, 598 F. Supp. 492, 497 (M.D. Ala. 1984) (balance of conflicting harms favors a stay); *In re Whitaker*, 341 B.R. 336, 348 (Bankr. S.D. Ga. 2006) (same). The Coal Act Funds will likely lose their right to appeal if a stay is not granted, irreparably damaging their fiscal integrity and interfering with their mandate to ensure continued healthcare benefits for the nation’s coal miners. There is no counterbalancing harm. Steven Zelin of PJT Partners, the investment banker retained by the Debtors, testified that the sale would not close until the end of February, at the earliest. *See Declaration of George N. Davies in Support of Emergency Motion for a Stay Pending Appeal (“Davies Decl.”)*, Ex. 1 (Jan. 6, 2016 Hr’g Tr. at 78:10–15), attached hereto as **Exhibit A**. It is undisputed that the Debtors must obtain debtor-in-possession financing from the bidding

creditors *before* they can be assured of a closing. *Id.* at 81:25–82:12. Thus, there is no argument that a temporary stay through the end of February would delay closing the nearly exclusively credit-bid driven, “going concern sale” of the Debtors’ assets to their first-lien creditors (collectively, the “First-Lien Creditors”).³ Rather, such a stay, accompanied by an expedited appeal, will have no effect on the Debtors’ bankruptcy estates. The balance of hardships weighs heavily in favor of a stay.

1. The Coal Act Funds and the retired coal miners who obtain healthcare benefits from them will be irreparably harmed without a stay.

18. A stay pending appeal is necessary to protect the Coal Act Funds’ right and ability to appeal. Section 363(m) often moots appeals of Section 363 sale orders. While some courts have held that Section 363(m) does not moot appeals of free-and-clear orders under Section 363(f), *see In re PW, LLC*, 391 B.R. 25, 37 (B.A.P. 9th Cir. 2008), others have held the opposite, *see In re Nashville Senior Living, LLC*, 407 B.R. 222, 231 (B.A.P. 6th Cir. 2009). The Eleventh Circuit has not addressed that precise question but has held that Section 363(m) moots other appeals. *See In re The Charter Co.*, 829 F.2d 1054, 1056 (11th Cir. 1987) (Section 363(m) “prevents an appellate court from granting effective relief if a sale is not stayed”); *In re MacNeal*, 308 Fed. App’x 311, 316 (11th Cir. 2009) (citing 11 U.S.C. § 363(m) and dismissing appeal as “moot”). That threat of mootness is *bona fide* irreparable injury warranting a stay pending appeal. *See In re Adelpia Commc’ns*, 361 B.R. 337, 352 (S.D.N.Y. 2007); *In re Tex. Equip. Co.*, 283 B.R. 222, 228-29 (Bankr. N.D. Tex. 2002) (granting stay because of “the likelihood that [appellants] will lose an opportunity to obtain appellate review if this court’s decision is not stayed”); *see also Garrison v. Hudson*, 468 U.S. 1301, 1302 (1984) (“When . . .

³ The First-Lien Creditors are the: (i) lenders under the Credit Agreement, dated as of April 1, 2011, by and among various parties, including Walter Energy, Inc., and (ii) holders of the 9.50% Senior Secured Notes due 2019 issued under the Indenture dated as of September 27, 2013.

the normal course of appellate review might otherwise cause the case to become moot, issuance of a stay is warranted.”).

19. Section 363(m) does not affect the Coal Act Funds’ appeal of the Court’s Section 1113/1114 Order. But a shadow of mootness nevertheless hangs over that appeal, too. For once the sale closes, the Court of Appeals could hold that the appeal is equitably moot. *See In re Ormet Corp.*, 355 B.R. 37, 41 (S.D. Ohio 2006) (“A court should examine three factors in determining whether the doctrine of equitable mootness applies: “(1) whether a stay has been obtained; (2) whether the plan has been ‘substantially consummated’; and (3) whether the relief requested would affect either the rights of parties not before the court or the success of the plan.”) (citation omitted).

20. The interests the Coal Act Funds need to protect on appeal are significant and largely unmeasurable. The Debtors presently pay taxes to fund the healthcare benefits of thirty-two beneficiaries (Combined Fund), and when the Debtors terminate their IEPs, they likely will be obligated to pay taxes for 572 more beneficiaries (1992 Plan). *See Davies Decl.*, Ex. 2 (Stover Decl. ¶¶ 8–9). But for the Court’s free-and-clear sale order, the purchasers of the Debtors assets could be assessed these related taxes in the future. These monetary interests are real and substantial, but not readily calculable. Coal Act taxes vary based upon the number of Combined Fund and 1992 Plan beneficiaries, their healthcare needs, and the costs of healthcare. These sums may be small when compared to the full price of the Debtors’ mining business and assets, but they are critical to the stability of the Coal Act Funds. *See In re Adelphia Commc’ns*, 361 B.R. at 354 n.76 (monetary loss sufficient irreparable injury where “alleged loss will never be recouped if [parties] do not obtain a stay because their appeal will be moot and the merits will never be heard”). Congress provided for assessment of Coal Act taxes on certain successors in

interest in order to stabilize the system for providing promised healthcare benefits to retired coal miners financing of the benefits plans for retired coal miners. *See In re Chateaugay Corp.*, 53 F.3d 478, 484–85 (2d Cir. 1995). Permanently extinguishing the possibility that the purchaser may be statutorily required to pay taxes post-closing under the Coal Act threatens the Coal Act Funds’ financial stability, and the Coal Act Funds will be irreparably harmed by the loss of this potential taxpayer.

21. The Coal Act directs the Coal Act Funds (and specifically, their Trustees) to fulfill Congress’s vision for realizing the coal industry’s promises of healthcare benefits for retired miners. That task is complicated every time the pool of Coal Act taxpayers shrinks. The Coal Act Funds have a systemic interest in protecting the integrity of the federal taxation regime and in efficiently managing (and maximizing) the resources used to finance the healthcare benefits of the nation’s coal miners. The Coal Act Funds need the issues in their objections authoritatively decided *now* particularly because they will arise in future bankruptcies. By a recent estimate, more than 25% of the nation’s coal production capacity is in bankruptcy *today*. John W. Miller & Peg Brickley, *Pressure on Coal Industry Intensifies*, WALL ST. J. at B1 (Jan. 12, 2016). Immediate appellate review will give the appellate courts the opportunity to decide the issues once and for all and thus provide greater certainty (and fewer objections and concomitant emergency motions) for future bankruptcies where the same issues arise. Conversely, without a stay pending appeal, the Coal Act Funds, future debtors, and future bankruptcy courts in this circuit will have to re-litigate the same legal questions over and over again.

2. Neither the Debtors nor the purchaser will be significantly harmed by a stay of the credit-only sale.

22. The record is clear: the sale cannot close before the end of February, and may require an extension into March. *See* Davies Decl., Ex. 1 (Jan. 6, 2016 Hr’g Tr. at 74:5–6, 75:7–9, 77:16–24, 78:13–15 (testimony of Steven Zelin); *id.* at 152:9–13 (testimony of Douglas Williams); *id.* at 120:4–7 (testimony of James Mesterharm)). The Coal Act Funds are going to seek an expedited review of their appeal, in order to minimize any risk that the appeal extends beyond February. The Coal Act Funds principally seek a stay of the sale pending appeal, but if this Court is concerned that an extended stay will unduly affect the closing, the Coal Act Funds seek, in the alternative, a time-limited stay through the end of February. There is no danger that such a limited stay will interfere with the closing. *See id.* at 74:5–6, 75:7–9, 77:16–24, 78:13–15 (Zelin); *id.* at 152:9–13 (Williams); *id.* at 120:4–7 (Mesterharm).

23. The First-Lien Creditors acquiring the Debtors’ assets will have to fund the Debtors’ working capital prior to the closing of the anticipated sale, and they always expected to do so. For that reason, a stay of the sale imposes no measurable harm on Debtors or their estates. In fact, a stay would not cause measurable harm even if the closing were imminent.

24. Underlying Congress’s rationale for Section 363(m), and the rationale of courts in addressing stays of sale orders, is a Chapter 11 debtor’s compelling interest in attracting fresh cash to the estate. A third-party buyer offering new money for an estate asset has no reason to tie itself up in litigation. The estate faces a real risk of losing that cash if the putative buyer abandons a transaction knotted in appeals. Section 363(m) protects against this risk.

25. The rationale for Section 363(m) falls away in cases like this one, where the “sale” is simply a credit bid—*i.e.*, a bid by one or more secured creditors to exchange their debt claims, secured by estate assets, for possession of those assets. That is exactly what is happening

here. There is no fresh cash to lose during an appeal. Sale or no sale, the estate will receive no cash (save for amounts put in specific, non-estate trusts for cherry-picked obligations that the First-Lien Creditors and the Debtors favored). Sale or no sale, the credit bidders will have the same economic interest in preserving the value of their collateral.

26. The equity holders of Coal Acquisition LLC (“Coal Acquisition” or the “Purchaser”), the buyer here, are the Debtors’ First-Lien Creditors. They did not bid new money.⁴ They bid their own secured credit – the money they already spent to acquire their debt claims. To recover on that investment, these creditors have nowhere else to turn except to the collateral they would be buying in the sale. Regardless of when—or even whether—the sale closes, these creditors will have precisely the same economic interest in preserving the mines and in maintaining business operations.⁵ A stay pending appeal is not going to alter the First-Lien Creditors’ economic interests or rational behavior.

27. Undisputed evidence at the sale hearing proved this point. Because of the depressed coal market, the Debtors’ current operations lose money and eat into cash on hand. When the Debtors’ cash diminishes to a certain point, the Debtors must commence safety and environmental measures to close the mines—measures that would essentially destroy the collateral value of the mines as future money-makers for the First-Lien Creditors and make future operations and jobs infeasible. *See* Davies Decl., Ex. 1 (Jan. 6, 2016 Hr’g Tr.at 73:13–23,

⁴ There is only trivial fresh cash in their bid (designed to pay professional fees, in the main), and the undertakings enumerated by the Debtors at the sale hearing mainly are costs of (i) contracts they regard as valuable, (ii) obtaining permits that they need to operate the mines, and (iii) avoiding personal liability. *See* Davies Decl., Ex. 1 (Jan. 6, 2016 Hr’g Tr. 129:24–130:17 (Mesterharm, contracts), 131:3–21 (Mesterharm, permits), 132:8–13 (Mesterharm, personal liabilities); *id.*, Ex. 3 (Mesterharm Ex. 2 (liabilities assumed under the asset purchase agreement)).

⁵ The sale does not guarantee that any mine will be preserved or operated. The point is that those decisions will be governed by the same economic facts that have guided the Debtor’s decision-making, and will be unaffected by a sale closing or the grant of a temporary stay.

83:22–25 (Zelin)). At the sale hearing, the Debtors admitted that they would certainly reach this tipping point—a cash balance of \$30 million—before any possible closing of the sale. *See* Davies Decl., Ex. 1 (Jan. 6, 2016 Hr’g Tr. at 74:5–8 (Zelin)), *id.*, Ex. 4 (Zelin Ex. 1 (Debtors’ cash balance)). Thus, the First-Lien Creditors have already committed in concept to provide a loan to protect their collateral until the sale can close. *See* Davies Decl., Ex. 1 (Jan 6, 2016 Hr’g Tr.) at 75:14–23, 81:25–82:12 (Zelin)).

28. The First-Lien Creditors have committed to providing this loan even though, at the time the loan financing must be extended, the buyer still will face closing uncertainties, including whether it can obtain the necessary permits to operate the mines. *Id.* at 74:13–24 (Zelin); *id.* at 131:3–14 (Williams). At least twice before, the same creditors have done effectively the same thing—committed to working capital support of their collateral without any assurance of a closing—by deferring adequate protection payments. *Id.* at 81:5–24 (Zelin) (testifying that the First-Lien Creditors have deferred adequate protection payments at least twice); Doc. No. 1489 ¶ 9. The purchase agreement between the Debtors and Coal Acquisition provides that any remaining cash and cash equivalents will be transferred to the Purchaser, *see* Stalking Horse APA § 2.1(n); that is, that the Purchaser is effectively paying for working capital requirements and general corporate payments either way.

29. None of this is surprising. The First-Lien Creditors have no economic alternative but to protect their investment, regardless of the timing of the sale or of the pendency of an appeal over the limited issue of Coal Act liability. Otherwise, the First-Lien Creditors would lose any prospect of recovery on their investment. The undisputed trial evidence showed that the First-Lien Creditors made some of these investments in 2015, *see* Davies Decl., Ex. 1 (Jan. 6,

2016 Hr'g Tr. at 80:8–25 (Zelin)), a time when they knew that current mining operations could not support costs.

30. The First-Lien Creditors made a bet on the long-term recovery of the coal market, and at every turn so far, the creditors have demonstrated economic rationality by supporting their bet. No one has explained—least of all the buyers themselves, who did not testify at the hearing—how the First-Lien Creditors could ever permit the Debtors to effectively destroy their collateral over the Coal Act portions of the Court's Orders.

31. It is highly unlikely that the employed miners would be harmed by a stay, and a stay will not harm the bankruptcy estate. If the sale closes, little or no money will change hands, and business operations are not expected to be interrupted. Given that the First-Lien Creditors intend to purchase the operations as a going concern without any interruption in business operations, the currently employed miners will continue to have jobs until the sale closes. This Court should grant a stay pending appeal.

C. The Public Interest Favors Staying The Sale Order Pending Appeal.

32. The public has a strong interest in ensuring that the Coal Act Funds are well-financed and able to provide for the healthcare needs of retired coalminers. *Cf. Marshall v. Super. Sand & Gravel, Inc.*, 492 F. Supp. 1195, 1199 (W.D. Mich. 1980) (granting injunctive relief in light of Congress' "indisputable ... continuing concern over the health and welfare of miners"). Congress confirmed this compelling interest by enacting the Coal Act. Pub. Law 102-486 § 19142(b). As Representative Murtha (PA) remarked:

[W]e must keep in mind that we are talking about people; people who took the physical risk to work in the mines of America; people who made a major contribution to our energy growth and the prosperity of this great Nation; people who exposed themselves to conditions that in some cases created health problems directly related to their professions; people who lived, worked, and retired with the expectation that they and their families would have health benefits—health benefits backed by a financially stable trust fund.

137 Cong. Rec. 35,886 (1991). That expression of “[c]ongressional intent and statutory purpose can be taken as a statement of public interest.” *Johnson v. Dep’t of Agric.*, 734 F.2d 774, 788 (11th Cir. 1984); *K.G. ex rel. Garrido v. Dudek*, 839 F. Supp. 2d 1254, 1279 (S.D. Fla. 2011) (“In assessing the public interest, courts may look to congressional intent.”); *Chemetron Corp. v. Crane Co.*, No. 77-2800, 1977 WL 1491, at *11 (N.D. Ill. Sept. 8, 1977) (“[C]ongressional intent . . . itself manifests the public interest.”).

33. The public interest is also furthered when federal statutes are harmonized. There is a “robust public interest in ensuring that the law is effectuated properly—that is, in accordance with congressional intent.” *Kentucky ex rel. Educ. & Workforce Dev. Cabinet Ky. Off. for the Blind v. United States*, No. 12-0132, 2015 WL 1541987, at *3 (W.D. Ky. Apr. 7, 2015). “[T]he public is served when social welfare laws are implemented as evidenced by the policy in the Act,” *Johnson*, 734 F.2d at 788, and the Coal Act does not evidence any congressional intent to permit Debtors or their successors to escape their obligations through a bankruptcy loophole.

34. And lastly, as noted above, with the increasing number of coal-company bankruptcies throughout the United States, the public has a compelling interest in finally resolving the important, yet mostly unanswered, questions of how future Coal Act tax assessments can be treated in bankruptcy proceedings.

II. A BOND IS UNNECESSARY TO PROTECT THE DEBTORS’ INTERESTS AND SHOULD NOT BE REQUIRED.

35. This Court should not require a bond as a prerequisite to a stay pending appeal. Bonds protect the financial interests of prevailing parties, and the Court has discretion to not require a bond. *See Fed. R. Bankr. P. 8007(c)*.

36. Here, a bond is not necessary because Debtors have not identified a concrete injury they will suffer if the sale is stayed pending appeal. *See supra*. It is undisputed that this

sale will not close before late February; thus, at a minimum, it would be premature to require a bond at this time.

37. When determining whether to require a bond, this Court should consider the “special nature of suits to enforce important federal rights or ‘public interests,’ arising ‘out of comprehensive federal health and welfare statutes.’” *Temple Univ. v. White*, 941 F.2d 201, 220 (3d Cir. 1991) (affirming waiver of Rule 65(c) bond where party sought to enforce rights under the federal Medicaid statute) (citation omitted). This Court “should consider the impact that a bond requirement would have on enforcement of such a right, in order to prevent undue restriction of it.” *Id.* Here, the Coal Act Funds seek to protect their rights to tax assessments. The Coal Act Funds have limited resources, and use the taxes assessed and collected to provide healthcare benefits to retired coalminers. If saddled with a bond requirement, the Coal Act Funds may be unable to appeal; because they are the only parties that enforce the Coal Act, such a result would leave no one to champion an important federal statute and the public interests it represents.

38. Alternatively, if the Court concludes that some bond is appropriate, the bond should be small, reflecting the disparate financial interests at issue and taking into account the financial status of the Coal Act Funds. “[T]he form, amount, and sufficiency of security required by the bankruptcy court as a prerequisite to staying its own order pending appeal are matters generally within the discretion of the bankruptcy court.” *In re Land Ventures for 2*, No. 2:10CV839, 2010 WL 4176121, at *1 (M.D. Ala. Oct. 18, 2010) (citations omitted). Courts have noted that discrepancies like this arise frequently in appeals of Section 363(f) orders, which counsels in favor of leniency for appellants. *See In re PW LLC*, 391 B.R. at 37 (“[W]hen a bond

staying the consummation of the deal would have been far in excess of the lien that Clear Channel is trying to protect, we question whether that remedy is exclusive.”).

39. Furthermore, as it is undisputed that the sale will not close before the end of February, at a minimum, the Coal Act Funds should not be required to post a bond prior to the end of February. The Coal Act Funds are neither the cause nor arguably responsible for any harm to the Debtors that may arise between now and the end of February. The projected closing date stems from regulatory and financial concerns that are completely unrelated to the Coal Act Funds’ appeals. Thus, at a minimum, this Court should not require any bond for the next seven weeks.

CONCLUSION

For the foregoing reasons, the Court should stay the Sale Order pending resolution of the Coal Act Funds’ appeal and should not require the Coal Act Funds to post a bond. In the alternative, the Court should stay the Sale Order until at least February 29, 2016, without a bond.

Dated: January 13, 2016

Respectfully submitted,

/s/ Glen M. Connor

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Attorneys for the Coal Act Funds

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:)	
	)	Chapter 11
)	
WALTER ENERGY, INC. ⁶	)	Case No. 15-02741 (TOM11)
)	
Debtors.	)	(Jointly Administered)
)	
)	

ORDER GRANTING EMERGENCY MOTION FOR A STAY PENDING APPEAL

Upon consideration of the Emergency Motion for a Stay Pending Appeal [Dkt. No. ____] (the “**Motion**”) of the United Mine Workers of America Combined Benefit Fund and the United Mine Workers of America 1992 Benefit Plan (together, the “**Coal Act Funds**”), dated January 12, 2016 for, among other things, entry of an order (the “**Order**”) granting a stay pending appeal; and the Court having held a [telephonic] hearing on January [__], 2016 (the “**Hearing**”) on the Motion; and the Court having reviewed and considered the relief sought in the Motion, any objections to the Motion, and the arguments of counsel made, and the testimony and evidence proffered or adduced, during the Hearing; and all parties in interest having been heard or having had the opportunity to be heard regarding the relief requested in the Motion and in this Order; and due and sufficient notice of the Hearing and the relief sought therein having been

⁶ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors’ corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.

given under the particular circumstances; and it appearing that no other or further notice need be provided; [and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest]; and upon the record of the Hearing and these Chapter 11 Cases, and after due deliberation thereon, and good cause appearing therefor, it is hereby

ORDERED, THAT:

1. The Motion is **GRANTED**.
2. The effectiveness of the Sale Order [Dkt. No. 1584] is hereby **STAYED** [pending appeal] [through and including February 29, 2016]; all other parties in interest shall refrain from taking any steps to consummate the transaction authorized by the Sale Order [pending appeal] [through and including February 29, 2016].
3. The Coal Act Funds shall not be required to post a bond.
4. This Court shall retain jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Dated: January [___], 2016

TAMARA O. MITCHELL
United States Bankruptcy Judge

EXHIBIT A

GEORGE N. DAVIES DECLARATION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:)	
	)	Chapter 11
)	
WALTER ENERGY, INC.	)	Case No. 15-02741 (TOM11)
)	
Debtors.	)	(Jointly Administered)
)	
)	

**DECLARATION OF GEORGE N. DAVIES IN SUPPORT OF
EMERGENCY MOTION FOR A STAY PENDING APPEAL**

I, George N. Davies, an attorney duly admitted to practice law before the courts of the State of Alabama and the United States Bankruptcy Court for the Northern District of Alabama, and not a party to the above-captioned action, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury as follows:

1. I am a partner of the law firm Quinn, Connor, Weaver, Davies & Rouco LLP, counsel to the United Mine Workers of America Combined Benefit Fund and the United Mine Workers of America 1992 Benefit Plan (together, the “**Coal Act Funds**”), parties-in-interest and creditors in the above-captioned matter.

2. I submit this declaration in support of the *Emergency Motion for Stay Pending Appeal*.

3. The following is based on my own personal knowledge and, where appropriate, a review of the relevant case files. The facts set forth herein are true and correct to the best of my knowledge and belief.

4. Attached hereto as **Exhibit 1** is a true and correct copy of the transcript of the sale hearing held on January 6, 2016 in these Chapter 11 cases.

5. Attached hereto as **Exhibit 2** is a true and correct copy of the *Declaration of Dale Stover in Support of the Objection of the United Mine Workers of America 1974 Pension Plan and Trust, the United Mine Workers of America 1993 Benefit Plan, the United Mine Workers of America 2012 Retiree Bonus Account Plan, the United Mine Workers of America Cash Deferred Savings Plan of 1988, the United Mine Workers of America Combined Benefit Fund and the United Mine Workers of America 1992 Benefit Plan to (1) the Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 1113(c), and 1114(g) for an Order (I) Authorizing the Debtors to (A) Reject Collective Bargaining Agreements, (B) Implement Final Labor Proposals, and (C) Terminate Retiree Benefits; and (II) Granting Related Relief* (the "**Stover Declaration**") which was filed on December 9, 2015 (Dkt. No. 1198-1). The Stover Declaration was accepted as part of the record of the January 6, 2016 sale hearing. See Jan. 6, 2016 Hr'g Tr. at 160:1-7; 162:15-22.

6. Attached hereto as **Exhibit 3** is a true and correct copy of a document titled "Liabilities Assumed and Funding Obligations Agreed to by the Buyer under the APA," which was marked as "**Mesterharm Exhibit 2**" and was accepted as part of the record of the January 6, 2016 sale hearing. See Jan 6, 2016 Hr'g Tr. at 13:22-14, 105:8-14.

7. Attached hereto as **Exhibit 4** is a true and correct copy of a document titled "Debtors' Actual and Projected Cash Balance (Sale Hearing)," which was marked as "**Zelin Exhibit 1**" and was accepted as part of the record of the January 6, 2016 sale hearing. See Jan. 6, 2016 Hr'g Tr. at 13:22-14, 59:21-60:14.

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

Dated: January 13, 2016

/s/George N. Davies
George N. Davies

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA

IN RE: . Case No. 15-02741-TOM
. .
WALTER ENERGY, INC., . Robert S. Vance Federal Building
et al., . 1800 Fifth Avenue North
. Birmingham, AL 35203
. .
Debtors. . January 6, 2016
. 8:58 a.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE TAMARA O. MITCHELL
UNITED STATES BANKRUPTCY COURT JUDGE

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1 THE COURT: Good morning.

2 UNIDENTIFIED ATTORNEY: Good morning.

3 UNIDENTIFIED ATTORNEY: Good morning, Your Honor.

4 THE COURT: We're here this morning in the Walter
5 Energy case on various matters. As we've done in the past, if
6 I could first get appearances of the attorneys who are present
7 in the courtroom, for the attorneys that are present on the
8 telephone, we will use the CourtCall list. I know you all have
9 gotten used to this by now, but if you'll recall I try to mark
10 everybody that's here on my list. Sometimes I have to struggle
11 because there are a couple of pages of lists, but if you will
12 give me time to make sure that I mark everybody's appearance,
13 I'd appreciate your patience. Mr. Darby?

14 MR. DARBY: Thank you, Your Honor. Patrick Darby on
15 behalf of the debtors. I have with me from my firm John
16 Watson. From the Paul Weiss firm we have Steve Shimshak, Alan
17 Arffa, Kelley Cornish and others. And Mr. Ozols is also here
18 from the Maynard Cooper firm on behalf of the debtor.

19 THE COURT: All right. Mr. Ozley (sic)?

20 MR. OZOLS: Ozols.

21 THE COURT: Ozols? Spell it for me again?

22 MR. OZOLS: O, z as in zebra, o, l, s.

23 THE COURT: Thank you.

24 MR. OZOLS: Thank you.

25 MR. DARBY: Thank you, Judge.

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1 MR. CARSON: Good morning, Your Honor. Chris Carson
2 and Mike Hall on behalf of the steering committee. Also
3 present, Mr. Marty Brimmage, Ms. Lisa Beckerman, and James
4 Savin from Akin Gump.

5 THE COURT: Thank you.

6 MR. CARSON: Your Honor, I'm being corrected. On
7 behalf of Coal Acquisition, not the steering committee.

8 UNIDENTIFIED ATTORNEY: There's a huge difference.

9 THE COURT: Oh.

10 (Laughter)

11 MR. SPARKS: Good morning, Your Honor. Dan Sparks
12 and Bill Bensinger for the Official Committee of Unsecured
13 Creditors. And I believe some Morrison & Foerster people
14 should be on the phone.

15 THE COURT: Okay. Thank you.

16 MR. BARRETT: Good morning, Your Honor. Kevin
17 Barrett, Bailey & Glasser, here as Special Assistant Attorney
18 General for the State of West Virginia and the Department of
19 Environmental Protection.

20 THE COURT: Thank you.

21 Good morning, Your Honor. Carl Fingerhood from the
22 U.S. Department of Justice on behalf of Department of Interior
23 and EPA. Also with me is my colleague --

24 THE COURT: Hang on. Mr. Fingerhood. Okay. And
25 it's -- Page 4. Okay. Hang on. Page 4. There we go.

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1 Department of -- from DOJ, correct?

2 MR. FINGERHOOD: Right.

3 THE COURT: Okay. And who is with you?

4 MR. FINGERHOOD: Alan Tenenbaum.

5 THE COURT: Okay.

6 MR. FINGERHOOD: From DOJ.

7 THE COURT: Thank you.

8 MR. FINGERHOOD: Thank you.

9 MR. GOODCHILD: Good morning, Your Honor.

10 THE COURT: Mr. Goodchild?

11 MR. GOODCHILD: Good morning, Your Honor. It's nice
12 to see you. John Goodchild.

13 THE COURT: Hang on. Let me find the right page
14 here. Hmm. All right. We're going to make a page. Okay.
15 Okay. We'll put him up here. Mr. Goodchild, who is with you?

16 MR. GOODCHILD: From my firm, Your Honor, Rachel
17 Mauceri is here.

18 THE COURT: M-a-u-c-e-r-i?

19 MR. GOODCHILD: That's correct.

20 THE COURT: Okay.

21 MR. GOODCHILD: And also my partner, Sabin, S-a-b-i-n
22 Willett, W-i-l-l-e-t-t. And, Your Honor, this morning we filed
23 a pro hac vice motion for Mr. Willett.

24 THE COURT: Okay.

25 MR. GOODCHILD: And also with me representing the

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1 Coal Act Funds is John Mooney of the Mooney Green firm.

2 THE COURT: Mooney? M-o-o-n-e-y?

3 MR. GOODCHILD: That's correct, Your Honor.

4 THE COURT: Okay.

5 MR. GOODCHILD: And George Davies of the Quinn Connor
6 firm.

7 THE COURT: Thank you.

8 MR. GOODCHILD: Thank you, Your Honor.

9 MS. KIMBLE: Good morning, Your Honor. Jennifer
10 Kimble, Rumberger Kirk and Caldwell. I'm here today on behalf
11 of G.R. Harsh Senior Real Estate Holding LLC, as local counsel
12 for Air Gas USA, LLC, and also as local counsel for the United
13 Mine Workers of America. And then with me from the Lowenstein
14 Sandler firm is Sharon Levine, Paul Kizel, and Nicole Brown.

15 THE COURT: Thank you.

16 MS. CHUNG: Good morning, Your Honor. Patti Chung
17 from Ropes & Gray on behalf of the first lien indenture
18 trustee.

19 THE COURT: Okay. Hang on. I know you're on my
20 list. I went the wrong direction. There we go. Thank you. I
21 know where Mr. Corbett is.

22 MR. CORBETT: Thank you, ma'am.

23 THE COURT: Thank you.

24 MR. MCCARTHY: Good morning, Your Honor. Milton
25 McCarthy for the State of Alabama Surfacing Mining Commission.

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1 The last time I was on Page 3.

2 THE COURT: Okay.

3 MR. McCARTHY: Thank you, Judge.

4 THE COURT: Thank you, Mr. McCarthy. Mr. Vogtle, I'm
5 not sure, since you're a little late to the party, whether
6 you're on my list or not. Yes. Here we are. You're here for?

7 MR. VOGTLE: De-Gas.

8 THE COURT: Thank you.

9 MR. VOGTLE: Yes, ma'am.

10 THE COURT: Mr. Humphries?

11 MR. HUMPHRIES: I apologize for being late. Thomas
12 Humphries for Dominion Resources.

13 THE COURT: Let's see. Okay. There we go. Thank
14 you. Any other counsel in the courtroom who wish to make an
15 appearance on the record? Are there any individuals who filed
16 objections who are present in the courtroom who wish to make
17 their appearance known? Hang on one second. I'll get to
18 everybody. Come on.

19 MS. CRAIG: Good morning, Your Honor. Vicki R.
20 Craig. I'm representing myself on behalf of Mr. Willie D.
21 Craig, my father.

22 THE COURT: Okay. Hang on. Slower. One more time.

23 MS. CRAIG: Vickie R. Craig.

24 THE COURT: Vickie Craig.

25 MS. CRAIG: Vickie R. Craig.

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1 THE COURT: Okay. Ms. Craig. I've seen your
2 objection. And you're here on behalf of your dad?

3 MS. CRAIG: Yes.

4 THE COURT: Thank you.

5 MS. CRAIG: Thank you.

6 THE COURT: Are you also an attorney, Ms. Craig?

7 MS. CRAIG: Yes. But I'm not licensed in Alabama.

8 So I'm here as a non -- in a capacity that's not an attorney.

9 THE COURT: I understand. But you're --

10 MS. CRAIG: I'm licensed in --

11 THE COURT: -- licensed somewhere?

12 MS. CRAIG: -- in Pennsylvania. Yes.

13 THE COURT: Okay.

14 MS. CRAIG: The Supreme Court, Tax Court, B.S.
15 Federal Court, District of Columbia, U.S. Federal Claims Court.

16 THE COURT: I take your word for it.

17 MS. CRAIG: Okay.

18 THE COURT: Thank you. Yes, sir?

19 MR. BONNER: Kenneth Bonner representing myself.

20 THE COURT: I'm sorry. One more time?

21 MR. BONNER: Kenneth Bonner.

22 THE COURT: Mr. Bonner. Okay.

23 MR. BONNER: B-o-n-n-e-r.

24 THE COURT: I've seen your claim and your objection,
25 Mr. Bonner.

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1 MR. BONNER: Thank you.

2 THE COURT: Yes, sir?

3 MR. LYNCH: Good morning, Your Honor. Tom Lynch, on
4 Page 6, representing myself.

5 THE COURT: Former V.P.?

6 MR. LYNCH: Former V.P.

7 THE COURT: I've seen your documents, as well.

8 MR. LYNCH: Okay. Very good.

9 THE COURT: Thank you, Mr. Lynch. Any other
10 individuals who are here as objecting parties who filed written
11 objections who wish to make an appearance? Any counsel who are
12 coming in who wish to make an appearance? Yes? Come on up.

13 MS. McFARLAND: Good morning, Your Honor. I'm Race
14 McFarland (phonetic). I'm here for --

15 THE COURT: Several individuals?

16 MS. McFARLAND: Yes, ma'am.

17 THE COURT: We'll just leave it at that, Ms.
18 McFarland. I've seen the objections you've filed on behalf of
19 various employees, retirees, land owners, etcetera, etcetera.

20 MS. McFARLAND: Yes, ma'am.

21 THE COURT: Thank you, Ms. McFarland. Any other
22 counsel? Okay. All right, Mr. Darby, how do you want to
23 proceed this morning?

24 MR. DARBY: Thank you, Your Honor. Patrick Darby on
25 behalf of the debtors. We're here today seeking approval of

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1 the sale of the core Alabama mining assets to Coal Acquisition
2 LLC, the proposed buyer in the stalking horse under the
3 stalking horse asset purchase agreement. That's Item 1 on the
4 agenda, and what follows is, I think, all objections to that
5 motion.

6 We have resolved or deferred most of the objections.
7 We filed an omnibus reply yesterday, and Exhibit A, lists the
8 status of each of the objections to the sale. We are deferring
9 essentially all of the objections based on cure amounts and
10 assignment of contracts to a later hearing date. The only
11 substantive objections remaining are those filed by the United
12 Mine Workers, the Coal Act Funds, and then the West Virginia
13 Department of Environmental Protection and the DOJ on behalf of
14 the EPA. We're still talking to the DOJ about some language
15 and hope to have that resolved, but we don't have it resolved
16 soon.

17 We have addressed each of these objections in our
18 omnibus reply. For the reasons stated therein we feel they
19 should be overruled and the sale approved. I will reserve,
20 responding to individual objections until the end when the
21 Court takes those up.

22 With respect to the hearing today, we propose to
23 proceed as follows. I'd like to give the Court a very brief
24 report on the auction that occurred yesterday. The Court has
25 stated in prior hearings that it will take judicial notice of

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1 prior filings, pleadings, hearings and other proceedings in the
2 Chapter 11 case. We've identified -- we've identified a
3 significant volume of evidence supporting the sale from the
4 existing record that we would hope to rely on in support of
5 this motion.

6 We compiled that evidence into a binder, which we
7 submitted this morning. That is nothing new, those are not new
8 exhibits. That's all materials that are in the Court's record
9 And I would propose to summarize that briefly, and then we have
10 two witnesses, Mr. Zelin and Mr. Mesterharm, who will testify
11 on events that have happened since the last hearing, and will
12 otherwise supplement the record. So, with the Court's
13 permission we'll proceed in that fashion.

14 THE COURT: All right. Mr. Darby, I have two sort of
15 general housekeeping questions that are not -- just to clarify.
16 There are a couple of individual objections and a couple of
17 claims that are really related to the former Jim Walter home
18 building portion. And as I understand Mr. Harvey's declaration
19 from day one, and of course we all are familiar with the fact
20 that that entity was part of the old Hillsborough Holdings that
21 was part of the Middle District of Florida Chapter 11 back I
22 think in the '80s, I think it --

23 MR. DARBY: Late '80s, early '90s.

24 THE COURT: -- carried into the '90s, but in any
25 case, my point being I understood his declaration to indicate

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1 that, A, the home building business has long since closed, but
2 B, the -- I think his -- and I'm paraphrasing here, that the
3 financing portion had been spun off I think was the language in
4 the declaration. So, when you -- what does spun off mean?
5 Sold? Being serviced? Outsourced? What does that mean?

6 MR. DARBY: It was sold. The debtors no longer hold
7 any interest in Gibraltar Homes, it was sold and those
8 mortgages are being serviced by what used to be called Green
9 Tree, which is now Ditech --

10 MR. WATSON: I think, if I could, Your Honor?

11 THE COURT: Sure, Mr. Watson.

12 MR. WATSON: The old Walter Industries spun off
13 Walter Investment Management Corporation as a separate
14 publicly-traded company. The Jim Walter Homes portfolio went
15 with Walter Investment Management Corporation. And those
16 mortgages are being serviced by now Ditech, formerly Green
17 Tree, which is a subsidiary of Walter Investment Management
18 Corporation.

19 THE COURT: I think my question is, for those few
20 individuals who either have objected to the sale or who have
21 filed proofs of claim, does -- do any one of the current
22 debtors that are in this court have any remaining interest in
23 either what was the home building business, the collection of
24 those mortgages? One of the claimants, for example, claims
25 that there has been some overcharging or some of that, but if

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1 all of that has been sold and gone and no longer belongs to any
2 of these entities, I think it would be helpful if those people
3 understood that as a part of this hearing this morning. So is
4 that what I'm hearing is that you all don't benefit from those
5 mortgages anymore, that whatever was this package, the whole
6 thing was sold, lock, stock and barrel years ago, and you all
7 -- you all being Walter Energy and related entities, don't get
8 any money, you don't have any involvement in it?

9 MR. WATSON: That's my understanding, Your Honor,
10 that the entire portfolio that was a company, Mid State Homes,
11 that whole portfolio was spun off, I believe in 19 -- I mean,
12 2009, to Walter Investment Management Corporation. Jim Walter
13 Homes, Inc. is one of the debtors. That was the entity that
14 actually constructed the homes, and -- but that business has
15 been shut down for the last four or five years.

16 THE COURT: So, to the extent that somebody has a
17 dispute about their mortgage, that is with some other entity
18 and no longer with any of these entities. If, for example, one
19 of these folks may have some dispute as to how the home was
20 built originally, then that client or issue may continue to
21 reside here for determination at a later time as to whether or
22 not there is any potential claim for a home that was built
23 incorrectly, improperly, on the wrong lot, or whatever?

24 MR. WATSON: And/or with warranty claims, those types
25 of things --

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1 THE COURT: Okay.

2 MR. DARBY: That's right.

3 MR. WATSON: -- Your Honor.

4 MR. DARBY: The debtors' position is that the sale
5 does not affect any assets or any claims. Now, we're not
6 trying to get the Court to rule today for those people who
7 don't have claims against us, but that's certainly our
8 position.

9 THE COURT: So I just want to make -- I'm just going
10 to see if I can summarize and make it clear for -- Mr. Bonner
11 happens to be one of those people, but to the extent they have
12 a claim against the structure of the home, the way it was
13 built, where it was built, how it was built, warranty claims,
14 anything with respect to that, that would be something that may
15 ultimately be resolved, but later down the road has nothing to
16 do with this sale. Coal Acquisition is not buying anything
17 that has to do with the old Jim Walter Homes entity, and
18 whatever happens as a result of the sale, whether I grant the
19 motion or deny the motion, whether the coal mines are sold or
20 not, any claim with respect to a Jim Walter home is unaffected,
21 not impacted, and is still out there, and will be dealt with at
22 some point further down the road?

23 MR. DARBY: That's correct, Your Honor. And I would
24 also just say for the record I have gotten calls from
25 individuals who were under the impression that the sale of the

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1 debtor's assets might affect their home, that we were somehow
2 trying to sell their home or their mortgage or some interest
3 related to their fee ownership of their homes, and obviously
4 that is a misunderstanding. Nothing we are selling today
5 affects anybody's ownership in their home, or the mortgage. We
6 are not selling -- in fact, we've already sold those assets,
7 but in any event, we're not selling any of that today.

8 THE COURT: And then the second part of that would be
9 what you're saying, which is to the extent that any of these
10 individuals have a dispute with what is being charged as to the
11 mortgage, how that is being collected, any additional charges,
12 that would be with some other entity, probably now through
13 Ditech, but has, again nothing to do with these entities or
14 this debtor?

15 MR. DARBY: That's correct, Your Honor.

16 THE COURT: All right. Then my second question,
17 completely unrelated, there are a couple of individuals who
18 either have claims and/or who have filed individual objections
19 that at least allege, or purport to be part -- under the
20 workmen's comp umbrella. And early on in the case I believe
21 the motion was filed in late July, and an order was entered in
22 mid-August that to the extent people have workmen's
23 compensation claims, those would continue to be handled and
24 processed in the ordinary course as if no bankruptcy had been
25 filed.

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1 Now, in our legal mumbo jumbo, there was an order
2 granting relief from stay basically to say those claims would
3 continue on in the normal course, but for the individuals who
4 have an interest, am I correct that that order that was entered
5 some time in mid-August basically said those -- if it truly is
6 a workmen's comp claim, and I think it also included the black
7 lung claims, would continue on even though the bankruptcy had
8 been filed?

9 MR. DARBY: Well, we have continued to pay -- process
10 and pay those in the ordinary course of business as part of our
11 cash collateral agreement with the lenders.

12 THE COURT: Ah.

13 MR. DARBY: Which is still in effect. So to date
14 those have been paid. Now, in the future, ultimately when the
15 case is sold and our ability to use cash collateral is
16 terminated, the debtor will not be around to process those.
17 Now, we have been in touch with the Alabama Guaranty Fund, who
18 is picking up those claims, and we are transitioning those
19 claims over to that fund. But that's how those will be paid in
20 the future as to the workers' comp --

21 THE COURT: As to the workmen's comp and the black
22 lung?

23 MR. DARBY: The black lung --

24 THE COURT: They're assuming black lung.

25 MR. DARBY: Correct. Black lung is different.

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1 THE COURT: That's carved out, and that's different -
2 -

3 MR. DARBY: Correct.

4 THE COURT: -- but as to the folks who are either
5 drawing workmen's compensation or have a claim, I think there
6 was one individual, I think it was Mr. Vincent (phonetic), who
7 claimed that he was at the eve of a settlement and that the
8 bankruptcy stopped it, but it shouldn't have based on that
9 order that was entered in mid-August.

10 MR. DARBY: The bankruptcy shouldn't have -- my firm
11 doesn't handle those claims directly, so I don't know the
12 status of the particular claim. But, yes, the bankruptcy has
13 not prevented the processing and payment of those in the
14 ordinary course of business.

15 THE COURT: Okay. But you think that there will be
16 some entity that may come in and process those claims? And
17 will there be funds to pay those workmen's comp claims after
18 the sale, if there is a sale?

19 MR. DARBY: There are. It's a closing transition
20 item that will occur between now and the closing, which will
21 hopefully happen in February. But the -- I'm sorry, Your
22 Honor. It's the Alabama Workers' Comp. Guaranty --

23 THE COURT: Something.

24 MR. DARBY: -- Assurance -- something or other.
25 They're represented by Brian Walding, who I don't think is here

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1 today, but we are already in contact with him.

2 THE COURT: Okay.

3 MR. DARBY: And our worker's comp. lawyers, who
4 unfortunately I'm not one of those, but we are discussing with
5 them the transition of all of those claims over to that
6 guaranty fund.

7 THE COURT: Okay. Thank you. I apologize for the
8 diversion and the distraction. Now you --

9 MR. DARBY: That's quite all right, Your Honor.

10 THE COURT: -- continue on with your notes and plan,
11 Mr. Darby.

12 MR. DARBY: I hope you will interrupt me at any time.
13 Your Honor, we'll hear a little bit more about this, but just
14 to dissipate any suspense, we did receive three bids yesterday.
15 None of them were qualified bids under the terms of the bid
16 procedures order. They were in various states of incompleteness.
17 They either didn't have an asset purchase agreement, or they
18 didn't have a deposit. They were all late. They were all
19 after the deadline. But we considered the bids anyway. We
20 shared them with the consultation parties. Each of the bids
21 was for miscellaneous assets, miscellaneous real estate assets,
22 for the most part that are not part of the core coal mining
23 operations. None contemplated any kind of going concern sale,
24 or value.

25 The debtors considered and rejected each of the bids

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1 as not being the highest or best bid. Each of them were for
2 less than the debtors' opinion of the liquidation value of the
3 subject assets. We informed each of the bidders of that. They
4 had an opportunity to increase or address our concerns. None
5 of them did. We convened the auction yesterday. No other
6 competing bidder showed up, so we announced at the auction our
7 -- the debtors' decision to reject those bids, and we concluded
8 the auction. So, we are here today to seek the Court's
9 approval of the asset purchase agreement that is before the
10 Court to the stalking horse bidder, Coal Acquisition LLC.

11 Your Honor, with respect to the existing record, we
12 submit that the Court should approve the sale under Section
13 360(b) of the Bankruptcy Code because a defined and proper
14 business purpose exists for the sale. The record in this case
15 is really uncontroverted on these points. In particular, the
16 testimony at the hearing on the -- the rejection hearing under
17 Sections 1113 and 1114, that evidence establishes that a sound
18 business purpose exists for the sale. First, the stalking
19 horse APA is the only alternative for a going concern sale.
20 That's been confirmed by the auction. It presents the best
21 chance, really the only chance for preserving the debtors'
22 Alabama mines to provide future employment for union and non-
23 union employees.

24 If the sale is not approved, or if it fails to close,
25 the testimony before the Court is that the debtors will have no

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1 choice but to shut down the mines or convert to a Chapter 7,
2 which will destroy the going concern value of the mines and
3 eliminate future employment opportunities. The Court made
4 findings to this effect in its order approving relief under
5 Sections 1113 and 1114.

6 I will note, and the Court will hear testimony that
7 if the sale is approved the debtors' plan to seek future
8 approval from the Court for a debtor-in-possession financing,
9 we are in discussion with the lenders on that. It has not been
10 finalized, and the approval of the sale as a condition that the
11 lenders have insisted upon before they will fund the debtor-in-
12 possession financing. But if the sale is approved, that is --
13 will be the debtors' means to have sufficient liquidity to
14 operate pending the sale.

15 Secondly, Your Honor, no other alternative exists to
16 the sale. No other buyer has come forward to express a
17 willingness or an ability to operate the debtors' mines as a
18 going concern.

19 Third, the sale maximizes the value for the estates,
20 and all state coalers. You'll hear some additional testimony
21 today, but the existing record shows that in addition to the
22 credit bid, the stalking horse will assume over \$117 million in
23 obligations under the APA, and that includes accrued payroll,
24 contract cure amounts, trade payables, tax obligations, and
25 reclamation liabilities.

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1 In addition to that, the sale provides for the buyer
2 to fund various wind down trusts with cash and other assets
3 totaling another \$68 million in value. That's a total of
4 approximately 800 -- I'm sorry -- \$185 million on top of the
5 credit bid, and so it's just simply not true to say that no one
6 is benefitting from the sale other than the lenders. No one
7 else has come forward, and there is no one else who is willing
8 or able to assume these obligations in a Chapter 7 or estate
9 foreclosure process. Obviously none of this would be
10 forthcoming for the benefit of unsecured creditors or other
11 parties in interest.

12 And the Court will also recall that we have
13 negotiated global settlements with the non-union retiree
14 committee, the official committee, and also the unsecured
15 creditors' committee, and those settlements, pursuant to their
16 terms, will be funded at closing.

17 Fourth, Your Honor, the sale price is fair, including
18 the credit bid. The validity and perfection of the pre-
19 petition liens is undisputed. These claims exceed \$1.9
20 billion. And the Court has found that the first lien
21 creditors' diminution claim exceeds \$140 million.

22 As part of our reply, Your Honor, we submitted
23 declarations that the value of the assets that are
24 unencumbered, and to which that diminution lien attaches total
25 at most \$90 million. These assets are secured -- are pledged

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1 to secure the diminution claim, and it's appropriate to allow
2 credit bid for those assets. Your Honor, we're not asking the
3 Court to rule on the value of those assets specifically, but
4 the valuations support the business judgment of the debtors to
5 accept the credit bid on those pre-petition unencumbered assets
6 in the absence of any other going concern bids.

7 Finally, Your Honor, the debtors provided adequate
8 and fair notice of the sale. We complied with the bid
9 procedures in all respects. Mr. Zelin will flesh out our
10 evidence on the sale process. But the existing record shows
11 that the notice of the sale and the auction was widely
12 circulated. To many parties it was published in multiple media
13 outlets and generated a substantial response establishing that
14 there was sufficient notice.

15 So all of those facts that are in the record
16 demonstrate the necessary business justifications for the sale
17 under Section 363.

18 As to the good faith of the parties, Your Honor, the
19 evidence in the record already shows that the asset purchase
20 agreement, now the sale, the proposed sale, is a result of
21 extended, intense, arm's length negotiations among
22 sophisticated parties, with adequate representation extended
23 over a period of several weeks and months. The whole process
24 has been open and transparent. No one was denied access or
25 turned away. The stalking horse offer was always subject to

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1 higher and better offers, and none came in.

2 Two other procedural points, Your Honor. The record
3 supports our finding that the proposed buyer is not a successor
4 in interest to the debtors by virtue of the sale. Coal
5 Acquisition LLC is a separate entity from the debtors. It was
6 formed by the first lien creditors. It has no overlapping
7 officers or directors, and it operates separately and
8 independently from the debtors. It is acquiring certain assets
9 of the debtors, but not substantially all or -- all of the
10 assets. Significant assets will remain with the debtors and
11 the estate if this sale is closed.

12 Regarding the 14-day stay, Your Honor, the evidence
13 is overwhelming that the debtors need to have the sale approved
14 quickly. We need to get to closing as expeditiously as
15 possible before we -- before we run out of cash.

16 Lastly, Your Honor, I'll save my comments on the
17 other objections until the end, but I do want to address the
18 individual objections that are before the Court I know are of
19 great concern to the Court and to all of us. I have read all
20 of them, as the Court obviously has, as well. They're hard
21 reading. We all understand that and regret that. They're
22 filed by union workers. They're filed by non-union workers.
23 They're retirees, individual bondholders, homeowners, as the
24 Court has mentioned, and also our vendors and suppliers. And
25 they all turn on the theme of broken promises, that the company

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1 made promises that the company is now not able to keep. That's
2 true, and it's terrible. But the broken promises are not the
3 choice or action of the debtors or of this Court. The promises
4 can't be kept because the debtor cannot generate sufficient
5 cash to meet its obligations. That's a function of the market,
6 the global market, and the price of coal. And even if you take
7 away all of the debt the company has, as we have here, because
8 the lenders are converting their debt into equity, and even if
9 you close all of the mines outside of Alabama, as we have, and
10 just focus on the core assets, the company still loses money on
11 an operational basis. And that's why we're not able to fulfill
12 all of the company's obligations. This sale, if the Court
13 approves the sale, is not taking anything away from the
14 individual objectors or from any party in interest. It's the
15 market, global market conditions for coal that have affected
16 these parties. The sale is an opportunity to restore at least
17 some of those benefits to some of the stakeholders by
18 continuing operations by a party that is able to fund the
19 operational losses of the mines.

20 So in sum, Your Honor, the Court cannot improve the
21 conditions or the complaints of any of the objectors by denying
22 the sale. Denial of the sale can only make those conditions
23 worse.

24 So, Your Honor, unless you have questions we think
25 the existing record satisfies the burden for the sale. We

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1 offer the -- the binder, which again is all in the record.
2 Unless Your Honor has questions I'd turn it over to Mr. Arffa
3 to call our witnesses.

4 THE COURT: Thank you. Before we do that, let me see
5 if any of the other attorneys have any opening remarks. Mr.
6 Brimmage?

7 MR. BRIMMAGE: Your Honor, if I may? Your Honor,
8 Marty Brimmage with Akin Gump Strauss Hauer & Feld here on
9 behalf of the stalking horse bidder, also Coal Acquisition, and
10 yes, the steering committee, as well.

11 I just want to make a couple of brief remarks, Your
12 Honor. I think when the Court looks at the evidentiary record
13 at the end of today, well, certainly leading up to today and by
14 the end of today, you will see that there's absolutely no
15 evidence that supports many of the arguments that are being set
16 forth in the objections to the sale motion. In fact, it's to
17 the contrary.

18 All the evidentiary requirements for the Court to
19 grant the motion have been met, and the Court will see clearly
20 that there's really no dispute about that. We did engage in
21 some discovery at the request of some of the objecting parties,
22 and we had two depositions yesterday of representatives related
23 to Coal Acquisition. One was Mr. Williams, Doug Williams, who
24 is the CEO of Coal Acquisition. The Court heard from him on
25 the 15th, December the 15th. And the other one was a

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1 representative of Lazard, its involvement in the day-to-day
2 activities.

3 And the objecting parties wanted to hear about a
4 couple things. One of the things they wanted to hear was did
5 Lazard or Coal Acquisition or the steering committee, did they
6 play a role in the bidding process? Did they interfere with
7 prospective bidders and so forth? And nothing came out of
8 those depositions that would in any way indicate that there was
9 any interference at all. And in fact, what Mr. Cowan said on
10 behalf of Lazard, he said he did get a couple of calls, inbound
11 calls is what he called them, from people that were interested
12 in the assets, and he sent them over to PJT and said that's who
13 you talk to. People had heard that Lazard was involved, so
14 they called him. There's zero evidence that there was
15 interference of any kind. In fact, there's zero evidence of
16 any bad faith, any bad faith acts of any kind.

17 We also put Mr. Williams up for deposition yesterday,
18 and what you'll see in his declaration and what you'll see in
19 his testimony today is he talks about -- and Mr. Darby already
20 talked about it, there is simply no connection between the
21 debtors and their directors and their members and their
22 shareholders and Coal Acquisition. There's simply no
23 connection at all. And so, we would set that forth, Your
24 Honor. But also, he talked about post-closing plans, and it's
25 the same plans that he's been talking to the union about.

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1 So, I don't think it's really relevant, frankly, a
2 lot of the things that have been asked for in discovery. And
3 it's certainly not relevant, the union negotiations. But to
4 the extent the Court wants to hear the status of them, we are
5 prepared to talk to the Court about that. And I'm going to
6 give the Court a very brief update, and then Mr. Williams will
7 take the stand and the Court can ask him whatever the Court
8 wants, and so can anybody else.

9 But when Mr. Williams was here on the 15th he talked
10 to the Court about the process that was underway. And he said
11 from that stand right there that he hoped by that Friday, the
12 18th, the next meeting with the union, they were able to make a
13 proposal on healthcare. I know the Court remembers the
14 healthcare issue.

15 And in fact, on that Friday they worked diligently,
16 and on that Friday they did make a full healthcare proposal.
17 And since that day, the 18th of December, the union and Coal
18 Acquisition representatives have met frequently, many, many
19 meetings. I can't count them. Phone calls through the
20 holidays to try to get to a deal. And I'm happy to announce
21 that while no deal has been made they have certainly narrowed
22 the gap. I believe yesterday the union submitted yet another
23 proposal, and in less than 24 hours Coal Acquisition has turned
24 it back around. Some time this morning they sent back a
25 counterproposal. I don't know exactly what time. But the

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1 bottom line there is, Your Honor, progress is being made. I
2 think what you will hear from Mr. Williams is both parties are
3 negotiating in good faith.

4 But I do want to highlight in a way, Your Honor, I
5 don't think that's relevant to the sale motion, but it
6 certainly is of interest to the Court, and it's of interest to
7 everybody. So I wanted the Court to know about that.

8 Last but not least, I think, Your Honor, there is
9 simply no rational basis or reasons in the law or in fact to
10 deny this motion. All the evidence supports the motion being
11 granted. There's a lot to do once the motion is granted to
12 effectuate and close this deal and put this company going
13 forward on a basis that it can succeed on a standalone basis,
14 and that it can thrive hopefully into the future regardless of
15 what coal prices do.

16 Your Honor, I'm struck by something that Mr. Zelin
17 said yesterday in his deposition, and I wasn't in there, but I
18 heard about it, and I read it, and I've paraphrased it. But
19 what he said was the sale continues to provide the best
20 opportunity for jobs and the continuation of the business.
21 What the UMWA and the funds are asking the Court to do is a
22 game of chicken that Mr. Zelin said he is certainly not willing
23 to play. Your Honor, we suggest that no one should be willing
24 to play that game of chicken, all the evidentiary requirements
25 and the legal requirements to grant the motion are there, and

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1 we would respectfully request that the Court grant the motion.

2 THE COURT: Thank you.

3 MR. BRIMMAGE: Thank you, Your Honor.

4 THE COURT: All right. Objecting counsel? Mr.
5 Goodchild, do you want to go first?

6 MR. GOODCHILD: Yes, Your Honor. Good morning. John
7 Goodchild on behalf of the two Coal Act Funds. Those are the
8 combined benefit fund and the 1992 benefit plan. Your Honor,
9 the Coal Act Funds do not object to the notion of a sale. Our
10 difficulty is with some of the provisions in the sale order.
11 And I thought it would be useful to talk a little bit about
12 that before we get started with the evidence.

13 Before I get to that I also wanted to just mention
14 that when it comes to the evidence itself the debtors are
15 proposing to eliminate the 14-day automatic stay of any order
16 that Your Honor might issue. We will participate in the
17 evidentiary part of the hearing for a number of reasons, but
18 the primary reason is because we oppose the debtor's request to
19 eliminate that 14-day automatic stay. We believe the evidence
20 will show that there is no cause to eliminate that 14-day stay
21 and that the sale closing is not scheduled until February at
22 the very earliest, and that in the interim there is adequate
23 resources either within the hands of the debtors already or
24 committed to by the lenders already for the mines to continue
25 to operate or remain idle, depending upon whatever state

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1 they're in today.

2 So, I wanted to give Your Honor just a bit of that
3 housekeeping as to why we we're rising with respect to
4 examining the witnesses. Before I leave that topic I had
5 introduced earlier, Your Honor, my colleague, Mr. Willett. I
6 had mentioned that we had filed a motion for pro hac vice
7 admission for Mr. Willett. We did that this morning. If Your
8 Honor is willing to permit us to proceed in this fashion, I
9 would propose to have Mr. Willett handle the examination of the
10 witnesses. I want to make it clear, however, Your Honor, that
11 we're prepared to go forward even if Your Honor is not
12 comfortable with that.

13 THE COURT: Any objection?

14 UNIDENTIFIED ATTORNEY: No objection.

15 UNIDENTIFIED ATTORNEY: No objection.

16 THE COURT: No problem, Mr. Goodchild.

17 MR. GOODCHILD: Thank you, Your Honor. We appreciate
18 that. With respect to the terms of the order it -- what we are
19 objecting to is the request that the Court predetermine that
20 Coal Acquisition will not become obligated under the Coal Act
21 no matter what it does after the closing.

22 When we talk about sales free and clear oftentimes
23 professionals will talk about successor liability as if that
24 had a unitary meaning and here the law, in my view, requires
25 that we take a more detailed approach to the topic. And why do

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1 I say that? Your Honor heard me talk at some length, and I
2 apologize again for that length, heard me talk at some length
3 in the last hearing about the nature of what the Coal Act
4 obligates certain employers to do. And Walter is -- Jim Walter
5 Resources is a signatory employer under the Coal Act. There
6 are two obligations under the Coal Act that are currently at
7 issue. One of them is the obligation to maintain a single
8 employer plan, and there are 572 people who are receiving their
9 healthcare as a result of the debtors' doing that. And in the
10 last hearing we were focused on that 572 people and the
11 maintenance of the individual employer plan.

12 But for purposes of today, it is important to
13 understand that there are two distinct obligations. One of
14 them is the obligation to maintain a plan, and the second is an
15 obligation to pay premiums on a periodic basis. The last part
16 of that statement is the most important. The Coal Act provides
17 that under certain circumstances an entity that is obligated
18 under the Coal Act must pay premiums to one or both of the two
19 Coal Act funds. If we're talking about the combined fund,
20 those premiums arise on an annual basis each year separately.
21 And if we're talking about the 1992 benefit plan, which is the
22 plan that would absorb the 572 beneficiaries if the IEP is not
23 maintained, that's the entity, the 1992 plan is the entity that
24 is going to take over providing healthcare benefits to those
25 572 people.

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1 Once the people come into the plan federal law
2 provides that the 1992 plan will assess monthly premiums for
3 each month that those people are in the plan. Every Court to
4 have reviewed the nature of Coal Act premium obligations has
5 held that those obligations are taxes. The fact that they are
6 taxes has one extraordinarily profound implication, and that is
7 that they are incurred and arise periodically, and that in each
8 period it is a separate debt. The entire legal argument over
9 which we are fighting has to do with the character of Coal Act
10 premium obligations.

11 The debtors appear to be arguing that the entirety of
12 the obligation to pay premiums in the future for any of these
13 people is a single claim that is before Your Honor and should
14 be treated in this bankruptcy. Our position is that for
15 periods that occur post-closing that is a new obligation and a
16 new debt. Whether it arises or not is not a question for Your
17 Honor, whether it is payable or not by Coal Acquisition is not
18 before Your Honor. And for Your Honor to prejudge and to
19 enjoin the Coal Act Funds from prosecuting any such obligation
20 against anyone who is liable under the statute would exceed the
21 Court's jurisdiction under the Anti-Injunction Act. Our
22 position is that the Anti-Injunction Act prohibits Your Honor
23 from exercising her jurisdiction to enjoin the Coal Act Funds
24 from collecting for periods that occur after the bankruptcy is
25 over. That is the entire legal issue right there.

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1 If you look at Coal Act obligations as one big
2 obligation payable in installments stretching out into the
3 future beyond this bankruptcy as you would an installment loan,
4 then what the debtors are saying has some legal soundness to
5 it. You would treat it as one claim even though it might be
6 payable in the future, and of course that claim would stay with
7 the debtors and it wouldn't transmit to the -- to Coal
8 Acquisition. And of course if it were one debt before this
9 Court, subject to this Court's jurisdiction then Your Honor
10 might be able to say that Coal Acquisition is not a successor
11 in interest to the debtors' liability. And that is exactly
12 what the debtors are arguing, at least as far as I can tell.

13 But our position is with respect to obligations that
14 have arisen already for periods that are occurring now or in
15 the past, those are legitimately claims. They may be entitled
16 to priority. They may not be entitled to priority. That's a
17 question for a different day. But periods, it's the issue of
18 separate debts arising in each period that is really the
19 notion. And for us what is no before Your Honor is whether in
20 the future Coal Acquisition may have a tax obligation arising
21 under the Coal Act.

22 And so, as you contemplate the legal issue, Your
23 Honor, to our way of thinking for Your Honor to say in advance
24 that the Coal Act Funds cannot attempt to collect against Coal
25 Acquisition would be in excess of what the Court is permitted

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1 to do under the law and would be exercising jurisdiction over
2 obligations that have not arisen yet and are not cognizable as
3 a claim in this bankruptcy. We've cited a lot of law. I don't
4 want to rehash it unless Your Honor has questions about it.
5 But I did want to flag the issue relating to are we talking
6 about one obligation that's before Your Honor or are we talking
7 about periodic obligations, because that is really the crux of
8 the issue for us.

9 So, I -- depending upon what happens in the
10 evidentiary portion of the hearing I may have some argument
11 when we're all finished. I did want to identify for Your Honor
12 though how we see the law, so that as Your Honor contemplates
13 the issues Your Honor is -- has at least some benefit of what
14 we've had to say.

15 Before I sit down though, Your Honor, in our view the
16 resolution of the issue -- what we think ought to happen is
17 that Your Honor should approve the sale but should refuse to
18 enjoin the Coal Act Funds. And we took a little bit of time to
19 go through the sale order and mark it in the way that we
20 thought would be appropriate if our view of the world
21 prevailed. I don't -- unless Your Honor wants it I'll hold
22 onto it for now, but what struck me about the exercise was how
23 little we had to take out of the order. And the reason why we
24 had to take so little out of the order is because let's not
25 forget the issue of whether Coal Acquisition actually would be

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1 obligated under the Coal Act, while it is something we can't
2 know for certain today and have argued that that is one reason
3 why you ought not to do this, Your Honor, but we can't know
4 today for certain what Coal Acquisition is going to do and
5 whether it may have Coal Act obligations in the future, but the
6 test for whether an entity has Coal Act obligations is a
7 relatively narrow one, and it is wide open question from my
8 perspective whether under the facts as I think they will unfold
9 Coal Acquisition even would be obligated under the statute.
10 And so, what we have here is a request by the debtors for you
11 to prejudge whether that entity may have Coal Act obligations
12 and if so to extinguish them. We believe that is beyond of the
13 power of the Court.

14 We believe that with a relatively small change to the
15 order our objection could be resolved, and we believe the state
16 of affairs is unfortunate because as I think I mentioned to
17 Your Honor the last time we were together the cost of complying
18 with the Coal Act is not very great, and if this were on the
19 agenda, if Your Honor were to say no, this federal statute is
20 not something that's open for elimination without at least some
21 discussion, we could have a different result here. And I don't
22 believe personally that given the numbers that Your Honor will
23 be presented with, and that all the other obligations that Coal
24 Acquisition is assuming, that when you put that next to what it
25 would cost to comply with the Coal Act, I don't think it would

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1 be reasonable to assume that asking Coal Acquisition to at
2 least be open to whether it was liable under the Coal Act, I
3 don't think that's the difference between a scenario in which
4 the sale closes and the scenario in which it doesn't. And so
5 -- and I think you'll see in some of the evidence some of these
6 numbers that we're talking about.

7 Unless Your Honor has questions, I'll sit down.

8 THE COURT: Thank you.

9 MR. GOODCHILD: Thank you.

10 THE COURT: Have you shared your version of a
11 proposed order with Mr. Darby's folks?

12 MR. GOODCHILD: I have not, Your Honor, and I'm happy
13 to.

14 THE COURT: If you'll share it with them, then I will
15 look at it, either on a break or at lunch, but not until
16 they've had an opportunity to see it.

17 MR. GOODCHILD: I understand, Your Honor.

18 THE COURT: I'm hoping you have a redlined version
19 that they can review.

20 MR. GOODCHILD: I do, Your Honor, right here.

21 THE COURT: Okay. Thank you.

22 MR. GOODCHILD: Thank you.

23 THE COURT: Okay. Ms. Levine, do you want to go
24 next? I'm not picking on you. If you'd rather wait for
25 somebody else to go you're not --

1 MS. LEVINE: Your Honor, actually I was proposing to
2 go after any of the individuals who wanted to speak so that we
3 wouldn't repeat --

4 THE COURT: I think I'd rather have all the lawyers
5 go first, but if you want to wait until the end and let them do
6 that, then you may.

7 MS. LEVINE: Thank you.

8 THE COURT: All right. Any other counsel? Mr.
9 Barrett?

10 MR. BARRETT: Good morning, Your Honor. Kevin
11 Barrett for the State of West Virginia, for the record. We are
12 concerned about one thing, and one thing only, and that is that
13 after this sale the debtor comply with its legal obligations
14 and reclaim its West Virginia properties, which are being left
15 behind. The question is whether or not the debtor will have
16 sufficient assets or anything else with which to perform those
17 reclamation obligations and to comply with the law, which they
18 are obligated to do and which they seem to acknowledge they are
19 obligated to do, even after this sale.

20 The debtors and the hedge funds point to a provision
21 of the stalking horse purchase agreement that essentially says
22 the hedge funds have agreed to fund that reclamation to the
23 extent that the surety bond issuers do not fund it. We're not
24 really asking for anything more. But for whatever reason the
25 hedge funds have not been willing to say that to us, the

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1 regulatory authority here.

2 And quite frankly, Your Honor, given the discussions
3 and the words that are put into that agreement we're not
4 entirely sure that the hedge funds have agreed to do what they
5 purport to have agreed to do.

6 I only rise, Your Honor, now -- I'm anxious to hear
7 more about this. We may have some questions of witnesses, but
8 Your Honor, by and large I will reserve until the end and
9 address the issues at that point in argument. Thank you, Your
10 Honor.

11 THE COURT: Thank you. Mr. Brazeal?

12 MR. BRAZEAL: Thank you, Your Honor. Your Honor, I'm
13 here as local counsel for two sureties, Arch and Aspen. Scott
14 Williams with the Manier Herod firm I believe, Your Honor, is
15 appearing telephonically on behalf of Arch. I understand from
16 Mr. Williams, and I just wanted to confirm with debtors'
17 counsel, and then I maybe can be excused. But I believe
18 they've agreed to some changes in the order.

19 THE COURT: That's what their pleadings say. Their
20 pleadings say that the issues with the sureties are resolved
21 and that they're going to accordingly revise the order to take
22 care of the problem.

23 MR. DARBY: Correct, Your Honor. And we have done
24 so.

25 MR. BRAZEAL: Thank you. Thank you, Your Honor.

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1 THE COURT: Thank you, Mr. Brazeal.

2 MR. BRAZEAL: Thank you, Mr. Darby.

3 THE COURT: Any other counsel?

4 MR. FINGERHOOD: Good morning, Your Honor. Carl
5 Fingerhood from the Department of Justice again. We'd like to
6 defer our objection on the EPA issues. We think we're very
7 close to perhaps reaching an agreement on some language there.
8 We also join with West Virginia. They're the lead regulatory
9 agency on the mining issue, and so we're going to reserve,
10 along with them, to raise any arguments later on those issues,
11 but we would like to have some time to see if we can resolve
12 the EPA concerns.

13 THE COURT: Thank you.

14 MR. FINGERHOOD: Thank you.

15 THE COURT: Any other counsel other than Ms. Levine,
16 who is reserving and will come at the end? Those of you --
17 where is Ms. McFarland? Where did I -- anything to add?

18 MS. McFARLAND: No, ma'am, Your Honor.

19 THE COURT: Thank you. Ms. Craig? Anything to add
20 at this point?

21 MS. CRAIG: Could I state my objections? Or --

22 THE COURT: You can if you'll do it concisely and
23 briefly, because we haven't even heard the testimony yet, so
24 I'm just allowing each of you a few minutes as far as any
25 opening comments.

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1 MS. CRAIG: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MS. CRAIG: According to the information that I was
4 sent, Jim Walter Homes is listed with a case number, so
5 therefore I think my objections should still stand. He is --
6 they indicated earlier that it had been sold, but they are
7 listed as one of the debtors, and therefore that's why I
8 submitted my objection.

9 I'm objecting to the fact -- I'm objecting to prevent
10 the assignment of my father's mortgage by the debtors. I'm
11 objecting to the debtors' motion to allow them to sell by
12 auction substantially all of their assets free and clear of
13 Claim Number 1123 regarding said mortgage. This objection is
14 based on the egregious conduct of Jim Walter Homes in the form
15 of misrepresentation as delineated in the previously submitted
16 fact sheet and supporting documents. My father, Mr. Willard E.
17 Craig, entered into a mortgage with Jim Walter Homes --

18 THE COURT: Ms. Craig, if I could interrupt you, I --
19 the point of my comments early on, and I thought it was clear,
20 what's proposed to be sold today will have no impact on
21 whatever claim you may have on behalf of your father or that
22 your father may have. This is about selling the coal mines and
23 the coal mining operations.

24 MS. CRAIG: All right.

25 THE COURT: So, Mr. Darby, am I -- did I correctly

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1 understand the discussion we had earlier that to the extent
2 they have a claim, it will be dealt with on further down the
3 road? It doesn't mean they'll ever get any money. It doesn't
4 mean it will come out the way they want, but this proposed sale
5 today is not going to help her, it's not going to hurt her,
6 it's not going to change in any way, shape or form whatever
7 claims she may have or her father may have. Am I correct?

8 MR. DARBY: That is correct, Your Honor. And in
9 addition I would point out that we are not trying to sell her
10 father's mortgage. In fact, that mortgage probably was sold in
11 2009. But in any event, we're not here today trying to sell or
12 assign the mortgage, or effect any claim related hereto.

13 THE COURT: So, Ms. Craig, I don't want to cut you
14 off and I don't want to take away from your time, but we have a
15 lot of people in the room --

16 MS. CRAIG: I understand.

17 THE COURT: -- and with all due respect, at the
18 hourly rates of many of these suits in here --

19 MS. CRAIG: I understand that, too.

20 THE COURT: -- I think this is for another day

21 MS. CRAIG: All right.

22 THE COURT: I don't think that whether I approve this
23 sale or disapprove this sale is going to impact to the good or
24 to the bad what happens to you --

25 MS. CRAIG: My claim will not be barred forever.

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1 THE COURT: I don't think your claim is impacted in
2 any way, shape or form.

3 MS. CRAIG: I thank you.

4 THE COURT: Thank you, Ms. Craig. I appreciate it.

5 MS. CRAIG: Thank you.

6 THE COURT: Mr. Bonner, I think the same is true with
7 respect to you. Do you have anything to add at this point?

8 MR. BONNER: No, Your Honor. I would --

9 THE COURT: If you would come up to the podium, sir?
10 We have folks on the phone who can't hear unless you're at the
11 podium.

12 MR. BONNER: Yes, ma'am.

13 MR. SPARKS: That's my question. May I interrupt?
14 We -- my constituents in New York say they were cut off.

15 MR. BONNER: Okay.

16 THE COURT: Okay. Hang on one second. Let us try to
17 re -- thank you, Mr. Sparks. One of the advantages of
18 technology is we've had this happen before, that somebody sends
19 a text or an e-mail. Okay. Hang tight, Mr. Bonner. We have a
20 number of people on the phone --

21 MR. BONNER: Okay.

22 THE COURT: -- because of the interest, so let us try
23 to -- thank you, Mr. Sparks. We'll see if we can reconnect
24 everybody.

25 (Connecting to CourtCall)

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1 THE COURT: Mr. Sparks, if you would either text or
2 e-mail whoever you heard from to see if they are now getting --

3 MR. SPARKS: I suggest everyone else does the same.

4 THE COURT: Okay. All right, Mr. Bonner. You
5 started to say?

6 MR. BONNER: Yes. I would like to, before I leave
7 today, I came from Wisconsin down here. I would like to know
8 at least a set date and time that they can deal with this
9 matter because they built this property, my house on the wrong
10 property, and then since that time they've sent this -- the
11 note and everything to a Green Tree, and these people from
12 Green Tree have constantly harassed, threatened, come in, move
13 this house, and then to sell it to someone else. And that's my
14 property and I would like a clear deed to my property. They
15 didn't build it where they promised to build it, and I paid for
16 that property for several years thinking it was sitting right.
17 Come to find out it was sitting wrong.

18 I sent the Court a copy of the survey. And I would
19 like my property back, and I want this matter settled. I'm
20 tired of these people calling me in Wisconsin, threatening me
21 that they're going to come in and move the house back on my
22 property where it should have been, and then sell it to someone
23 else. These are treacherous people, and this matter needs to
24 be resolved.

25 THE COURT: Mr. Bonner, I know exactly how you feel

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1 and what you're going through. I used to represent individuals
2 like you 20-plus years ago when I used to represent
3 individuals, besides the fact that on my regular days I deal
4 with individuals like you who owe home mortgages and are paying
5 for their vehicles. A Walter Energy case is not an everyday
6 occurrence. Cases like yours are an everyday occurrence, and
7 I'm sorry that you are having such trouble. I will tell you
8 that unfortunately the state of the consumer mortgage industry,
9 hard stories like yours are way more common than we would all
10 like to admit, but they are. In terms of you would like a
11 specific day and time for this to be resolved, I don't want to
12 discourage you, but I have to tell you that on several
13 occasions I have asked Walter Energy's lawyer if he could tell
14 me this or that, and he would say to me to be honest, Judge,
15 we're just not there yet. I would say to you that they are
16 fighting so many fires, there are so many hundreds of thousands
17 of issues and people that they are dealing with, I know how
18 many hours I have invested since this case was filed on July
19 the 15th. There are many more of them than there are of me,
20 but they are dealing with many more issues than I. And I will
21 tell you that if they have put in, each of them, one tenth of
22 the time that I have, they are sleeping little and they are
23 working seven days a week as hard and fast as they can.

24 I would love to give you an answer and send you back
25 to Wisconsin with a day and time when we are going to resolve

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1 your issue, and I am very sorry to tell you I just don't think
2 that's possible today. They have got to deal with the bigger
3 issues. We have coal mines that are operating. You've heard
4 -- we've got people here from the Department of Justice, people
5 here from West Virginia, here from Alabama mining folks. If
6 they don't operate those mines correctly, safely, and like
7 they're supposed to, A, we could have miners hurt, B, we could
8 have all sorts of pollution and other problems. They've got to
9 deal with all of those issues first.

10 So the answer is I don't know when we're going to get
11 to your issue. I don't know if your issue will ever be
12 resolved to your liking. But it's not going to happen today.

13 MR. BONNER: I understand.

14 THE COURT: Mr. Darby?

15 MR. DARBY: Your Honor, I don't want to belabor this,
16 but just in hopes of bringing clarity, this gentleman, his
17 claim is not against the debtor. It's Jim Walter Homes. Jim
18 Walter Homes has no assets. It sold its assets to Walter
19 Investment Management Company -- Corporation in 2009. The
20 debtors and that entity are not the same, and we're, in fact,
21 we're pursuing each other. So this gentleman's problem,
22 unfortunately, is with Walter Investment Management
23 Corporation, which is not Walter Energy and it's not the debtor
24 in these cases.

25 So I apologize for the confusion. Jim Walter Homes

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1 is a debtor, but it has no assets. This property and all of
2 the problems and claims associated with it were sold to a third
3 party in 2009 and are not in front of this Court.

4 THE COURT: So what he's essentially saying, Mr.
5 Bonner, is back in 2009 the entity that built your home sold
6 all of its assets to some other big company, and that big
7 company is really who you need to pursue as opposed to Jim
8 Walter Homes. It is still a name, has no money, has no assets,
9 no bank account, and is not operating. So I think you need to
10 pursue and see if you can figure out who those folks are and
11 whether or not you have a claim against them.

12 MR. BONNER: I understand, Your Honor, but in 2011
13 their attorney called me and asked if I would just pay them so
14 much money and call it a day.

15 THE COURT: Mr. Bonner, that may have been some
16 entity with a name very similar to Jim Walter, but it would not
17 have been this Jim Walter. It was probably this Walter
18 Investment Corporation, or whatever it's called. If you would
19 like that specific name, Mr. Watson, if you could perhaps write
20 down the full and complete name of that entity and provide that
21 to Mr. Bonner, and perhaps wherever their home base is,
22 whatever city it's located in?

23 MR. WATSON: I'll do that, Your Honor. If the call
24 he got was from Green Tree --

25 MR. BONNER: I received information from the Court to

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1 be here.

2 MR. WATSON: That was because Jim Walter Homes called
3 the people who had potential claims for identifying --

4 THE COURT: Perhaps the Court in Florida? This Court
5 would have had no -- there would have been nothing from this
6 Court in 2011. This case did not exist here in this court in
7 2011, Mr. Bonner.

8 MR. BONNER: The only way I knew about being here
9 today is communication from the Bankruptcy Court.

10 THE COURT: And that would have been since July of
11 2015.

12 MR. BONNER: Yes.

13 THE COURT: Not in -- and trust me, there are
14 hundreds of thousands of people who are getting notices from
15 these cases every day. It doesn't mean they're all going to
16 get anything or entitled to anything. I don't want to cut you
17 off, Mr. Bonner, but I think your avenue that you need to
18 pursue is somewhere else.

19 MR. BONNER: I understand. I was saying that an
20 attorney from General Home contacted me in 2011.

21 MR. WATSON: Your Honor, I'll -- if it pleases the
22 Court, I'll go talk to Mr. Bonner outside and see if we can --
23 I can help him.

24 THE COURT: I would appreciate that, Mr. Watson.

25 MR. BONNER: Thank you so much.

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1 THE COURT: Thank you, Mr. Bonner. Okay. Mr. Lynch,
2 I know you have an individual objection, but I don't know that
3 you have received all the pleadings. But as I understand the
4 pleading that was filed by the debtor, the reply yesterday, the
5 response from the debtor is that whatever claims you have,
6 whatever obligation you think there is, that is not part of the
7 sale, and whatever it is you think you may be entitled to,
8 again, like Ms. Craig, unimpacted, whether the sale goes
9 through or the sale doesn't go through, is that a fair
10 representation, Mr. Darby?

11 MR. DARBY: Yes, Your Honor. That's correct.

12 THE COURT: So I'm trying to get sort of this sorted
13 out with some of you towards the beginning of this hearing, so
14 if you want to stay you're more than welcome. This is an open
15 public proceeding. If you don't want to stay, that's fine.
16 But whatever happens to you is not going to be impacted whether
17 I approve the sale or disapprove the sale.

18 MR. LYNCH: Can I be heard just for maybe one minute,
19 Your Honor?

20 THE COURT: Yes. And I've already read everything.
21 I understand you're a former V.P. and you claim they didn't pay
22 your severance, yackety, yackety. I've read it. Trust me.
23 I've read every pleading that every person has filed.

24 MR. LYNCH: Thank you, Your Honor. I appreciate
25 that. Now, my only concern, until this morning I was under the

1 impression that my agreement was going to be assumed and
2 assigned. I learned that that's not going to be the case now.
3 And like, I think, some of the other parties my concern now is
4 will there be sufficient assets in the existing Walter Energy
5 after the sale to be able to provide the compensation that's
6 due under the severance payment?

7 THE COURT: I will say to you that based on my
8 experience in Chapter 11 cases in 20-plus years most of you
9 will probably get -- not get paid. If anything at all, it will
10 be small. There are too many of you with too many claims.
11 There's too much money owed and not enough money coming in.
12 That's why this is Bankruptcy Court. So, I wouldn't sit at
13 home watching the mailbox. Does that answer your question?
14 And that comes from me, not the debtors' representation or
15 anybody else's. That's based solely on my experience in
16 Chapter 11 cases. If they had plenty of money they wouldn't be
17 a customer of mine.

18 MR. LYNCH: Okay. All right.

19 THE COURT: Thank you, sir.

20 MR. LYNCH: Thank you, Your Honor.

21 THE COURT: I appreciate your coming. Let's see who
22 else I have that may want -- I think I have addressed those --
23 is there anybody else that has any questions or issues before
24 Ms. Levine goes next? Ms. Levine?

25 MS. LEVINE: Thank you, Your Honor. Briefly, Your

1 Honor.

2 THE COURT: Ms. Levine, I will remind you, you are --
3 I know you're going to find this shocking and amazing, but
4 you're a little soft spoken.

5 MS. LEVINE: Okay.

6 THE COURT: So if you would, please be sure, because
7 I want to protect the record as well as I want to be sure that
8 we all hear everything.

9 MS. LEVINE: Thank you. Is that better?

10 THE COURT: Yes.

11 MS. LEVINE: Your Honor, just briefly. The UMWA
12 obviously would like to see a successful sale of the mines and
13 an ongoing business operation if that were what -- if that were
14 what was being presented to the Court today, but we would
15 respectfully submit that the motion as presented should be
16 denied or at best is premature.

17 We would respectfully submit that at the -- following
18 the hearing on the 1113 and 1114 motions Your Honor made
19 substantial findings with regard to the fact that it was your
20 view that this was the best opportunity for protecting jobs and
21 for moving forward.

22 We would note that the very day that Your Honor's
23 opinion was issued Mine 4 was idled and over 300 miners were
24 sent home. We would respectfully submit that there continues
25 to be a painting of the UMWA as simply trying to use objections

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1 to create leverage. That, Your Honor, is not true. What we
2 really want more than anything else is a successful conclusion
3 to these Chapter 11 cases, but what we're being -- but we're
4 not. We're not being part of that process.

5 We would respectfully submit that the APA does not
6 provide anywhere expressly for the continued operations of the
7 mines. It doesn't actually contain financing. It doesn't
8 actually contain any indication of whether any of the current
9 miners will receive jobs post-closing. And what we actually
10 saw following the 1113 and 1114 was a substantial reduction in
11 the workforce, and a lot of discussion with regard to further
12 idling of the mines.

13 One of the things that debtors' counsel said during
14 the opening is that if the Court approves the sale today, then
15 there will be discussions with regard to DIP financing to get
16 through to a closing.

17 Your Honor, this is a credit bid by the lenders who
18 have been involved in this case since July 15th. They should
19 be in court today with actual disclosure of what the financing
20 is, of whether it's committed, of what the financing terms are,
21 of whether and to what extent the \$100 million dollars of
22 assumed obligations, or actually the \$185 million of assumed
23 obligations can and will be paid. And in addition to that,
24 Your Honor -- too soft?

25 And in addition to that, Your Honor, the idea that

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1 this is not a sub rosa plan is belied by the facts. The
2 official committee gets distributions or treatment as the
3 result of a closing of the sale. The non-union retirees get
4 treatment as the result of a closing of the sale. The only
5 group -- the KERP was implemented and gets treatment in order
6 to arguably facilitate and then as a result of the closing of
7 the sale. The only disenfranchised group, Your Honor, are the
8 existing -- is the existing miner workforce, and those
9 retirees.

10 And we would respectfully submit that if we were at
11 least in a plan process, or at least in a sale process with
12 disclosure of the go forward business opportunity and business
13 plan we would have an understanding of the feasibility of the
14 transaction. The idea that if we have a closing we preserve
15 jobs or we preserve economics for the community doesn't exist
16 without appropriate financing, and frankly doesn't exist for
17 the actual employee creditors of these debtors without an
18 opportunity to know that they, like the other selected
19 constituents, would participate in that post-closing. Thank
20 you, Your Honor.

21 THE COURT: Ms. Levine, if I could just ask you a
22 hypothetical question. And this is not your first time to be
23 in cases such as this one, if the motion were denied what do
24 you see would happen? What do you think would happen?

25 MS. LEVINE: Your Honor, I would respectfully submit

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1 that the first thing that -- I don't know. That would be up to
2 the lenders, and they would make a choice. It would be one of
3 a number of possible scenarios, and I'm sure as I'm sitting
4 here today I'm not thinking of all of them. But either they
5 would get their financing in place fast, which I know these
6 lenders would have the ability to do if they really thought
7 that that was what they wanted to do because they've been in
8 this case since July 15th. They know the assets. They've been
9 working on the business plan. And I would respectfully submit
10 that if they really needed to be here today with projections
11 and financing in place that they would do that.

12 Or Your Honor would convert, and there would be stay
13 relief motions and/or other motions to preserve the collateral,
14 which would be another way of putting on the table quickly
15 exactly how the financing would get played in order to make the
16 assets viable.

17 What we keep on hearing is that there's this \$30
18 million threshold, and when you hit that number we're going to
19 pour cement down the mines, but nobody has actually stood up
20 here and said yes, we're actually pouring cement down the
21 mines. And what -- and the discussion that we haven't really
22 had is what it costs to idle the mines and how long those mines
23 would be idled, and who gets to work in those mines, if
24 anybody, if in fact they come back on line.

25 So all we're saying, Your Honor, is that what we'd

1 like to see is a path forward that provides certainty to the
2 people that are currently working on the mines either with
3 regard to an ability to go back to work, or to at least
4 understand if it's over that it's over. But to say that under
5 363 they've met their burden, which is really the question
6 that's before the Court, by showing up with an asset purchase
7 agreement that does not by its own terms require the continued
8 operations of the mines, require that the mines not be shut
9 down, require that the mines not be idled, and frankly by its
10 own terms is subject to a financing contingency which if Your
11 Honor hasn't heard yet you'll probably hear through the course
12 of the testimony, is likely not to be done until some time in
13 mid-February is not really the certainty that is being
14 presented. And what we did hear at the 1113 and at the 1114 is
15 that you absolutely had to enter those orders because that was
16 the only way to move forward constructively with the rest of
17 this Chapter 11 case.

18 And, Your Honor, following the entry of that order we
19 stayed at the negotiating table while those miners were fired.
20 So we would respectfully submit that while it appears that this
21 is a difficult case, and we're not arguing that it's not, the
22 path that it's going down right now, quite frankly, is just
23 disproportionately unfair to the most disenfranchised group of
24 creditors before this Court. Thank you.

25 THE COURT: Anyone else? Mr. Darby or Mr. Brimmage,

1 anything else to add, or are we ready to call our first
2 witness?

3 MR. DARBY: Your Honor, I believe we're ready to call
4 our witnesses.

5 THE COURT: All right. It's about 10:20. Do you all
6 want to take a quick break before we start with the witnesses?

7 MR. DARBY: We could. Or Mr. Zelin's testimony is
8 not lengthy, so the other way to do it is to have him at least
9 start his testimony?

10 THE COURT: It's up to you all.

11 MR. DARBY: Okay. The debtors would like to call
12 Steve Zelin as our first witness.

13 STEVEN MARK ZELIN, DEBTORS' WITNESS, SWORN

14 COURT CLERK: Please state your name and address for
15 the record?

16 MR. ZELIN: Steven Mark Zelin. 22 Bonnie Briar Lane,
17 Larchmont, New York.

18 DIRECT EXAMINATION

19 BY MR. ARFFA:

20 Q Good morning, Mr. Zelin.

21 A Good morning.

22 Q You have testified here twice before, including three
23 weeks ago at the 1113 and 1114 hearing, correct?

24 A Yes.

25 Q Okay. So I'm not going to repeat in full your background

1 qualifications. Could you just remind everyone by whom are you
2 currently employed?

3 A A firm called PJT Partners.

4 Q And what's your position there?

5 A I am a partner in the firm's Restructuring and Special
6 Situations Group.

7 Q And what kind of work do you do?

8 A I advise companies creditors acquire in all sorts of
9 distressed transactions, both in Chapter 11 and outside of
10 Chapter 11.

11 Q And how long have you been doing that work?

12 A Since 1988, for about 27 years.

13 Q Were you and your firm retained to work on this matter for
14 Walter Energy?

15 A Yes.

16 Q And when was that?

17 A In February of 2015.

18 Q And have you been working on it continuously since then,
19 up to today?

20 A Yes.

21 Q Mr. Zelin, I'd like to update -- use your testimony to
22 update the Court as to two subjects, the first being the cash
23 position of the company, and the second being the marketing
24 efforts. Both are topics on which you've testified before.
25 Why don't we start with updating on the cash position? If you

1 could turn to Tab 1 of your binder?

2 A I have it.

3 Q And what is that document? Here. There's a blow up of it
4 which I'm also going to show. What is that document?

5 A This is an updated version of the chart that was presented
6 to the Court at the hearing on December 15th which just
7 summarizes the debtors' actual cash positions since its filed
8 the Chapter 11 in July, and then has a projection of that cash
9 position into the end of March -- through the end of March
10 under two separate scenarios, one in which the debtors continue
11 to get the benefit of the deferral of adequate protection,
12 which is the bluish dashed line, and then one in which the
13 debtors do not get the benefit of the deferral of adequate
14 protection, which is the darker line -- dashed line down below.

15 Q Just to establish the background for the document, who
16 prepared that document?

17 A This was prepared by colleagues of mine at PGT with the
18 assistance of both the debtors, its management, and colleagues
19 from AlixPartners.

20 Q Thank you. I think you explained what the blue, solid,
21 and then dashed line is. Could you remind the Court, what is
22 the dashed red line across?

23 A The dashed red line is the \$30 million number that I
24 testified to. It's the debtor's estimate of how much cash it
25 would need to safely shut down the mines in the event that

1 there is no alternative to finance the operations. And so
2 while the debtor would still have \$30 million, in essence
3 that's the point where the debtor would have to change what its
4 plans are and go and move to shut down the mines. So we cannot
5 see cash dip below \$30 million.

6 Q So looking at -- using the chart, if you read it, what was
7 the debtors' total actual cash balance as of the petition date?

8 A Approximately \$200 million.

9 Q And what was the last actual cash figure reported by the
10 company as of -- for the end of December?

11 A When this chart was prepared as of December 26th the
12 actual cash balance was approximately \$94 million.

13 Q And based on the projections how much cash is projected to
14 exist at the debtors this week?

15 A As of the end of this week we would expect to have
16 approximately \$75 million.

17 Q And at the beginning is it approximately --

18 A \$84 million.

19 Q -- 84?

20 A That was the estimate then.

21 Q Okay. Have you done anything to verify whether those
22 projections are, in fact, accurate with the company this week?

23 A We -- I just inquired as to what the actual cash balance
24 was as of the end of day Monday, close of business Monday, and
25 it was approximately 85.5 million, so slightly higher, but

1 consistent with the \$84 million on the chart.

2 Q And based on that fact and the projections, how much
3 longer will it be before the debtors' cash balance hits the 30
4 million threshold? And you can describe under each contingency
5 you've described.

6 A On the scenario which the debtors continue to get the
7 benefit of the deferrals of adequate protection we would expect
8 to -- our cash balances to drop to \$30 million by that first --
9 by that second week in February.

10 Q And what if the lenders do not defer the adequate
11 protection payments?

12 A Then we would expect the debtors' cash balance to
13 deteriorate to \$30 within the next week to ten days.

14 Q Mr. Zelin, now turning to efforts to sell the debtors'
15 assets. You testified at the 1113/1114 hearing about the
16 efforts PJT had made to date to market the debtors' assets,
17 correct?

18 A Yes.

19 Q Why don't you just briefly summarize the efforts that were
20 made up to that hearing, please?

21 A As was agreed to and required pursuant to the
22 restructuring support agreement that was entered into at the
23 beginning of the case, as of August 19th we began to make phone
24 calls to third parties, in excess of 80 third parties who we
25 thought would have an interest in some or all of the debtors'

1 assets, not just the underground mines, but any and all assets
2 of the debtors. In anticipation of making those phone calls we
3 embark upon an internal process which is consistent with every
4 other asset sale process. We prepare information and direct
5 memorandums, teasers, establish data rooms, and otherwise get
6 the company prepared to embark upon a sales process. And since
7 the 19th we have been out into the market looking for buyers
8 for all of the debtors' assets, including the underground
9 Alabama mines.

10 Q And when did that process begin?

11 A We started making phone calls on the 19th of August.

12 Q Okay. What -- can you summarize what has occurred in the
13 sales and marketing process since the last hearing three weeks
14 ago?

15 A So we continued since I was here in court last to engage
16 with third parties who have interest, expressed interest in the
17 debtors' assets. Actually those parties increased, a number of
18 new parties joined the process. We have actually created some
19 momentum with certain of the debtors' assets, in particular the
20 Walter Coke assets, and some of the West Virginia assets. So
21 as a result we recommended and the company has extended the bid
22 deadline for select assets, including Walter Coke and West
23 Virginia to next week on January 12th. The deadline for those
24 assets had been January 4th, this past Monday. For the balance
25 of the assets, in particular the core assets, the core

1 underground Alabama mines, as well as some of the related
2 assets we preserved the deadline for the auction as of this
3 past Monday at 12 noon.

4 Q Then let's talk about what happened on Monday. If you can
5 flip to Tab 2? What is that in your binder? It's titled
6 Exhibit A to Bidding Procedures. What is that document?

7 A This was an exhibit that was attached to the bidding
8 procedures. In order to facilitate the sale of the assets
9 pursuant to the bidding process that was approved by the Court
10 we organized the assets into what we refer to as lots, Lots 1
11 through 9, as a way of just giving the market guidance as to
12 how we would like the market to bid, or evaluate their interest
13 in the various assets.

14 Q So can you describe what are the -- and what's the
15 significance of the shading there, that light blue shading
16 versus the white for different lots?

17 A The version I have in my book actually doesn't have
18 shading, but I think I know what's intended to be shaded, so I
19 can go from memory, if that's okay?

20 (Laughter)

21 Q Okay. Or I'll give you mine. How about that?

22 A Thank you. So, the blue shaded lots, Lots Number 1, 2, 5,
23 6 and 7 represent those assets for which the bid deadline
24 remained January 4th. To put it in other terms, Lot Number 1
25 where the core is -- what we call the core acquired assets, or

1 the Alabama underground mines and related assets, Lot Number 2,
2 Blue Creek, is contiguous land that one day could be mined, but
3 has not yet been mined. And Lots Number 5, 6 and 7, the
4 remaining three shaded blue lots are just unmined land and
5 mineral interests that exist both in Louisiana, Alabama and
6 West Virginia that have not been mined but for which the bid
7 deadline was retained as January 4th.

8 By definition the unshaded lots, Lots Number 3, 4, 8
9 and 9, are the assets for which the lots -- I'm sorry, the
10 deadline was extended as I described a few minutes ago to
11 January 12th, and they are predominantly Lot 3, which are the
12 West Virginia mines, and Lot Number 9, which are the Walter
13 Coke assets, and then some other miscellaneous assets in Lots
14 Number 4 and 8. So again, the unshaded lots are -- the bids
15 for those have been deferred until January 12th and we continue
16 to have active interest in those assets.

17 Q And the core acquired assets as it's listed here on the
18 exhibit or the Alabama underground coal operations, that
19 deadline remained at Monday?

20 A Monday. Yes.

21 Q Correct. Okay. How many additional bids other than --
22 put aside the asset purchase agreement and the potential
23 purchase by the -- by Coal Acquisition, apart from that how
24 many additional bids did you receive for the Alabama
25 underground coal operations?

1 A We received no bids for the underground coal operations,
2 Lots Number 1 and Number 2.

3 Q On Monday did you receive any bids for any other property?

4 A Yes, we did.

5 Q And what did you receive?

6 A We received three bids. We received one bid for Lot
7 Number 5, one bid for Lot Number 6, and we actually received a
8 third bid for Lots Number 5, 6 and 7, as well as Lot Number 8.
9 It was a joint bid for all four of those lots. So even though
10 Lot 8, the bid deadline for that was extended until next week,
11 the bid that we received from this party included the three
12 lots, 5, 6 and 7, as well as Lot Number 8.

13 Q And what, if anything, did you do to determine whether
14 those bids were conforming with the bid procedures?

15 A None of those bids were actually conforming in that they
16 all received after the 12 noon deadline -- did not have APAs,
17 did not have the required deposit, so they did not meet the
18 definition of a conforming bid that was agreed to as part of
19 the bidding procedures.

20 Q Despite that what did you do with the bids?

21 A Well --

22 Q What happens with the bids thereafter?

23 A You know, as is often the case, because the bids came in,
24 we did not only circulate them to the various consultation
25 parties that were required to receive the bids when they arise,

1 so that included the various creditors' committees in the case
2 and their advisors, to the first lien lenders and their
3 advisors, to the trustees, and I believe to the unions, as
4 well, but those parties are defined in the bid procedures
5 order, so the consultation parties received copies of the bids,
6 but we also spent a fair amount of time evaluating those bids
7 and understanding what the value of those bids were relative to
8 the value of those assets that were in our judgment implicit in
9 the overall Coal Acquisition Corporation transaction, the APA
10 that's of interest or being discussed today.

11 We actually had conversations with Coal Acquisition
12 to get their view of those bids. The debtors concluded,
13 management concluded that those bids for a number of reasons
14 including their value and their ability to be executed quickly
15 was not anywhere near as --

16 Q -- favorable.

17 A Favorable. Thank you -- favorable to the Coal Acquisition
18 bids for those particular assets. Coal Acquisition agreed with
19 that analysis. We actually reached out to each of the parties
20 who had submitted bids, informed them of our decision and our
21 views. And none of those parties expressed their willingness
22 to actually increase the value of their bid, change their
23 purchase or engage further on the transactions, understood that
24 their bids therefore would not be selected as the new winning
25 bid or stalking horse bid for those assets.

1 And with that conversation, we opened the auction
2 yesterday at 10 a.m. as required and informed those who showed
3 up to the auction that in our judgment the Coal Acquisition bid
4 for those assets was still the highest and best offer for those
5 assets and concluded the auction by declaring Coal Acquisition
6 corporation not only the winning bidder for Lots 5, 6, and 7,
7 but also for Lots 1 and 2 which were the core underground
8 Alabama operations.

9 Q And is it your view as advisor to the debtors that the
10 Coal Acquisition bid remains the highest and best bidder?

11 A Yes.

12 Q Let me call your attention, if you go to Tab 3 to just to
13 summarize then all the work. Just tell --

14 MR. ARFFA: I don't think we have a book for that,
15 Your Honor.

16 Q Why don't you just turn to Tab 3 then which is -- what is
17 Tab 3?

18 A Tab 3 is an updated version of the chart that was again
19 presented back in December, just summarizing the status of the
20 number of parties that we had reached out too and the various
21 levels of interest that we have received.

22 Q Sorry to interrupt. We do have a blow up of that, so let
23 me put that up. What does that chart represent?

24 A Again, it's an updated version of the chart that we
25 presented at the December 15th hearing which summarizes the

1 activity with respect -- the interest in each of the various
2 groups of assets that we had put out for market and the status
3 as of Monday for those assets for which bids were received.

4 Q Who prepared this chart?

5 A It was prepared by PJT.

6 Q So let's go through it from the left. How many contacts
7 all together up to today has PJT made in efforts to obtain
8 buyers for the assets of the debtors?

9 A Eighty-nine.

10 Q And how many NDAs were signed?

11 A Twenty-six.

12 Q And I guess there's a number that -- for the number that
13 were withdrawn or expressions of interest that were
14 withdrawn, how many indications ultimately of interest were
15 received in the assets other than the Alabama underground coal
16 operations?

17 A Fifteen indications of interest were received.

18 Q Okay. And then how many formal bids were received on
19 assets beyond the Alabama underground coal operations?

20 A We received three -- the three actual indications or bids
21 that were received on Monday that I described earlier.

22 Q And looking at the last column, other than Coal
23 Acquisition were any other bids for the Alabama underground
24 coal operations received?

25 A There were no bids.

1 Q So there is no bidder other than Coal Acquisition for
2 those mines?

3 A That's correct.

4 Q In terms of the -- is the sale -- I understand that there
5 are certain assets, you mentioned West Virginia for example and
6 Walter Coke that are not before the Court at this time and
7 there's a deadline for those that's been moved. Does the sale
8 -- does the process with respect to those assets in anyway
9 affect, or hold up, or delay the sale of the underground coal
10 operations pursuant to the APA?

11 A No.

12 Q In light of the result of the auction and the company's
13 current cash position, what is your recommendation to the
14 company as its -- to the debtors as their financial advisor?

15 A It's our view and advice that the pursuit and the closing
16 of the sale provides the debtors with the greatest opportunity
17 to maximize the value of their business as a going concern.
18 Absent the sale, the debtors would have no choice without --
19 but to move to safely shut down the mines as its cash position
20 continues to deteriorate.

21 Q Thank you, Mr. Zelin. I have no further questions.

22 THE COURT: Mr. Brimmage?

23 MR. BRIMMAGE: Yes, Your Honor.

24 THE COURT: I sort of do all the proponents of the
25 motion first and then I come to the objecting parties.

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1 CROSS EXAMINATION

2 BY MR. BRIMMAGE:

3 Q Good morning, Mr. Zelin.

4 A Good morning.

5 Q I'll be brief. You've had a lot of experience with the
6 various representatives on behalf of the Steering Committee and
7 Coal Acquisition, correct?

8 A Yes.

9 Q Negotiating the APA, right?

10 A Yes.

11 Q The sale process, the whole thing, right?

12 A Yes.

13 Q Do you have an opinion on whether or not the
14 representatives of the Steering Committee and Coal Acquisition
15 have acted in good faith regarding the entire process?

16 A Yes.

17 Q Can you tell us what that is?

18 A I believe they have acted in good faith.

19 Q Thank you.

20 MR. ARFFA: Your Honor, if I may -- I'm sorry, I
21 apologize, I forgot to move into evidence the exhibits that I
22 used that's the Tabs 1, 2, 3 of the binder, cash balance, the
23 exhibit to the bidding procedures, and the sale process and
24 results.

25 THE COURT: Any objection to admission of Tabs 1, 2,

1 3 in the notebook?

2 UNIDENTIFIED ATTORNEY: No objection from the Funds,
3 Your Honor.

4 THE COURT: Thank you.

5 UNIDENTIFIED ATTORNEY: No objection, Your Honor.

6 THE COURT: Thank you all. I'll mark those three in.

7 MR. ARFFA: And one last thing, just so the record's
8 complete, we had submitted declarations with the reply papers
9 that has to do with the valuation of the unsecured, initially
10 unsecured assets. We would like to make sure that's part of
11 the record here as well.

12 THE COURT: Anybody have any objection to the
13 declarations -- there were two declarations attached to the
14 reply filed by the debtor yesterday afternoon. I think they
15 are already a part of the record. I think the Court can take
16 judicial notice of them, but does anybody have any objection to
17 them being specifically a part of this record?

18 UNIDENTIFIED ATTORNEY: No objection from the Funds,
19 Your Honor.

20 THE COURT: Thank you.

21 UNIDENTIFIED ATTORNEY: No, Your Honor.

22 THE COURT: Thank you.

23 MR. ARFFA: Thank you, Judge.

24 THE COURT: So noted. Now, Mr. Willett, do you want
25 to go next?

1 MR. WILLETT: Good morning, Your Honor. And thank
2 you for allowing my tardy pro hac motion.

3 CROSS EXAMINATION

4 BY MR. WILLETT:

5 Q Good morning, Mr. Zelin.

6 A Good morning.

7 Q Let's go back to Exhibit 1, this chart. And I want to
8 focus -- we've had some questions and some statements this
9 morning about the timing. So I wanted to focus on that first.
10 The red line, that's the \$30 million line that you discussed in
11 direct examination, right?

12 A Yes.

13 Q \$30 million is your estimate of what it costs to close the
14 mines forever, right?

15 A To safely shut down the mines, yes.

16 Q To pour concrete down them?

17 A Whatever it takes to shut down the mines safely.

18 Q And those mines are the collateral of the first lien
19 lenders who back Coal Acquisition, right?

20 A Yes.

21 Q So you would be pouring concrete down their collateral if
22 that happens, right?

23 A Yes.

24 Q Okay. Now Mr. -- I think it was Mr. Darby earlier this
25 morning said when the counsel were discussing the 14 day stay

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1 if Judge Mitchell were to allow the motion said we need to get
2 to an expeditious closing before we run out of cash, that's a
3 paraphrase. It's a fact though that you will not get to
4 closing before you run out of cash whatever happens, right?

5 A The closing date as I understand it is targeted for the
6 end of February. And the debtors' projected cash balances in
7 either scenario would fall below \$30 million before the end of
8 February.

9 Q So at a point in time -- let's suppose for the moment that
10 the Court allows the motion and enters an order but there
11 hasn't been a closing yet, right?

12 A That's correct.

13 Q And there are conditions, there are contingencies to
14 closing, are there not?

15 A I believe there are, yes.

16 Q Among them, the buyer has to satisfy you that it's
17 obtained bonds, so-called reclamation bonds, right?

18 A I'd have to go back and look at the APA, but the
19 conditions are spelled out in the APA.

20 Q Okay. And the buyer itself is entitled not to close if
21 it's unable to obtain the necessary permits to operate the
22 mines, right?

23 A If the permits aren't obtained, the buyer I don't think
24 would be able to close.

25 Q Right. And we won't know when your dotted blue lines

1 cross the \$30 million threshold, we won't know whether they've
2 obtained those permits yet?

3 A We'll know at the time whether they have or have not.

4 Q I'm sorry. It is quite possible, in fact it's likely that
5 you'll cross the \$30 million threshold before they've obtained
6 the permits?

7 A Again, as I testified, I don't know when the permits will
8 be obtained, but the target is for the closing to occur at the
9 end of February.

10 Q Right.

11 A It's possible therefore that the closing might not have
12 occurred by the time cash balances fall below the \$30 million
13 number.

14 Q And so the first lien lenders at a time when they have not
15 closed are going to have to provide money to the debtor in
16 order to prevent you putting concrete in their collateral,
17 right?

18 A And in fact, we are in conversations with the lenders to
19 provide such financing.

20 Q And they've already expressed a willingness to do that,
21 haven't they?

22 A They have expressed -- subject to certain conditions being
23 met, they have expressed a willingness.

24 Q Okay. So there was a question from the Court earlier
25 about you know what -- again what the timing, what happens if

1 the motion weren't allowed. But is it fair to say that under
2 all circumstances, whether the motion is allowed, whether it's
3 not allowed, the lenders are going to reach a point when they
4 have to provide capital to prevent you from putting concrete in
5 the mines before they own them?

6 A What I know as the debtors' advisor is that if the sale is
7 approved, a going concern -- and the ability to preserve a
8 going concern is maximized. And what I do know is that the
9 lenders have expressed a willingness to finance the company
10 subsequent to the approval of the sale. I do not know what the
11 lenders will do if the sale is not approved. They may decide
12 this is no longer worth the effort. I'm not going to sit here
13 and take that chance. What I do know is I can obtain financing
14 and move the company to a sale transaction that maximizes the
15 option to preserve jobs and preserve value. That's what I
16 know. I'm not going to speculate what the lenders will do if
17 the sale is approved.

18 Q Okay.

19 A I can only know what the lenders will do once the sale is
20 approved.

21 Q I don't want to cut you off, Mr. Zelin, are you finished?

22 A For now.

23 Q Because I think I asked you a different question. Isn't
24 it a fact that before whatever happens today, before they
25 actually own these mines, the first lien lenders are going to

1 reach the point when they have to fund cash into the debtor or
2 you will have no choice but to put concrete into the mines?

3 A I think I answered that question. What I know is that the
4 lenders understand they have to finance the company. They have
5 told us that they will finance the company if the sale is
6 approved. What I do not know is whether they will finance that
7 company if the sale is not approved. And that's a game of
8 chicken that Mr. Brimmage referred to earlier that I'm not
9 prepared to play.

10 Q Right.

11 A We have a sale transaction that will maximize the going
12 concern value of the business. It will result in financing be
13 offered to the debtors. That will keep the debtors' cash
14 balance above the 30 million so the mines can be operated post-
15 closing. That's what I know.

16 Q Now the post -- you talk about the end of February. It's
17 actually February 29th that the parties are projecting for a
18 closing, right?

19 A As a target, yes.

20 Q And that date itself is subject to an extension?

21 A Yes.

22 Q How far can it be extended if the parties agree?

23 A Another 30 -- to the end of March --

24 Q Right.

25 A -- if there are certain regulatory conditions that have

1 not been met.

2 Q All right. And so if there -- if we don't resolve Coal
3 Act disputes either because there's an order that satisfies
4 everyone or there's no other ruling that resolves the issue,
5 there's no way that a sale order is going to reach closing in
6 January, isn't that fair?

7 A I'm not too sure I understand.

8 Q Strike that. I'll ask it again.

9 A Sure.

10 Q Whatever happens today, you're not going to be able to
11 close the sale in January, right?

12 A I believe that to be the case.

13 Q And you might not close the sale in February?

14 A That's the target date. But there are reasons why it
15 might extent into March, that's correct.

16 Q So if there were to be some dispute about the Coal Act
17 that carried on after today, it's not going to interfere with
18 the closing as long as it takes place in January, right?

19 A I don't think -- you're a smarter lawyer than I am because
20 I'm not a lawyer, but I'm not too sure --

21 Q I think that's setting the bar kind of low, isn't it?

22 (Laughter)

23 A I'm not too sure I understand your question. When you say
24 that there's a dispute with the Coal Act, as I understand the
25 order, the order requires the assets to be acquired free and

1 clear.

2 Q Right. And if there were --

3 A So there should be no -- if the Court finds in its
4 judgment to issue that order, that's the order that the lenders
5 or Coal Acquisition is requiring to move forward with the
6 closing. If the order is not entered in a way that satisfies
7 Coal Acquisition Corporation, I don't know that there'll be a
8 closing.

9 Q Right. But if the order is entered in a way that does
10 satisfy them, that perhaps doesn't satisfy some other people in
11 the room, there's a little time to proceed with stays and other
12 remedies with regard to that before you would ever get to a
13 closing anyway?

14 A That is well above my expertise --

15 Q Okay.

16 A -- in terms of what will happen if the parties who are not
17 happy with the Court's ruling, what they will do and what the
18 times are. I'm not prepared to answer that question.

19 Q Okay. Now talking of the lenders themselves and their own
20 motivations here, I think we heard earlier today that today the
21 debtor loses money on a cash flow basis, right?

22 A Yes.

23 Q Has that always been true during the Chapter 11 case?

24 A Yes.

25 Q Okay. Now if we go back to your chart, Exhibit 1, between

1 the petition date and approximately October 19th or 20th, it
2 looks like the debtor had lost -- had moved down from about
3 \$200 million in cash to about 120, is that right?

4 A I think that's about right, yes.

5 Q Okay. Now you and I met yesterday for a deposition,
6 right?

7 A We did.

8 Q And one of the little interesting facts we explored
9 yesterday was that on October 19th, Kohlberg, Kravis, and
10 Roberts, one of the members of the Steering Committee signed up
11 a confi order in order to see some information, right?

12 A Yes. It's not a confi order, it's a confidentiality
13 agreement.

14 Q Right. And in that agreement was a notation that they
15 were still waiting to close on buying some more first lien
16 debt, right?

17 A I believe that's true.

18 Q So they knew that they would be buying first lien debt in
19 a company that had lost money, right?

20 A Yes.

21 Q \$80 million over the course of the case, right?

22 A Yes.

23 Q And at that point, mid-October, the only thing people were
24 talking about anymore was a sale, right?

25 A Yes.

1 Q But they had no assurance of any Coal Act relief in such a
2 sale at the time they bought that debt?

3 A They had no assurance that the sale would actually occur
4 at all.

5 Q Right. It's also the case that all of the first lien
6 lenders, not just Kohlberg, Kravis, and Roberts, have twice
7 agreed to defer adequate protection payments, right?

8 A I don't know that twice is right, but are we saying at
9 that point in time?

10 Q No, no, no, sir. I mean before today.

11 A Before today. I think there have been a number of
12 payments that have been due before today that have been
13 deferred. I don't know if it's just two. I think it may be
14 more than two.

15 Q Okay. They have agreed to defer all of their adequate
16 protection payments?

17 A For the last few months, yes.

18 Q Okay. And when they agreed to defer those payments, of
19 course they had a collateral interest in the mines at that
20 time, right?

21 A Yes.

22 Q But they had no assurance of getting any Coal Act relief,
23 isn't that right?

24 A Again, they had no assurance that anything would happen.

25 Q They've also had discussions with you where they've

1 expressed willingness, subject to the contingencies you
2 mentioned, to provide a DIP loan to get you past a sale order
3 and into a closing, right?

4 A You're saying as of what date?

5 Q I'm saying you've been having recent conversations to
6 address the point we discussed earlier, which is that you will
7 run out of cash before you get to the closing?

8 A Yes.

9 Q And they've expressed a willingness to provide that
10 capital, correct?

11 A The first lien group, the existing first lien group has
12 expressed a willingness to provide that capital.

13 Q Okay. And -- but they, at the time of your discussions
14 where they expressed that willingness, they didn't have any
15 assurance of getting any Coal Act relief from the Court, did
16 they?

17 A Well, again, while we've had discussions and negotiations
18 around such a financing, the willingness to enter into that
19 financing was in essence conditioned upon the Court entering an
20 order in a form and substance satisfactory to Coal Acquisition
21 Corporation and the lenders that would lead to the ultimate
22 sale of the assets.

23 Q Right.

24 A So the willingness to finance the company only occurs if
25 an order is entered that meets their satisfaction. One of the

1 requirements is that the Court find that Coal Acquisition will
2 not be bound by certain obligations including Coal Act
3 obligations.

4 Q All right. That's certainly --

5 A So the financing really doesn't come until they are aware
6 of the outcome.

7 Q My question though is simpler. They have engaged in these
8 negotiations with you at a time when it remains uncertain
9 whether they will ultimately get that relief?

10 A But they will not give us the money until they do.

11 Q That's what they say, right?

12 A I believe them.

13 Q But whatever they say -- well, Mr. Zelin --

14 THE COURT: I think therein lies the basic issue that
15 we talked about at the 1113, 1114 motion is who believes whom.

16 MR. WILLETT: Well --

17 THE COURT: But thank you for sharing that, Mr.
18 Zelin.

19 (Laughter)

20 Q Whatever they say --

21 THE WITNESS: Whatever I can do to help, Your Honor.

22 Q Whatever they say and whatever they believe, those mines
23 will be their collateral, the thing that supports the chance of
24 them ultimately getting a return on their investment, right?

25 A Yes.

1 Q Since the 1113, 1114 proceedings, has the debtor made any
2 analysis of what Coal Act compliance would cost going forward?

3 A I do not know. I've not seen one.

4 Q If one had been prepared, it's likely that you would have
5 seen it, right?

6 A I might have. There are people who are certainly
7 smarter about coal than I am who are more intimately involved.
8 I'm sure it would have been shared, but I haven't seen
9 anything.

10 Q But you have see, for example, a list of all of the items
11 that the buyer proposes to assume, right?

12 A Yes.

13 Q And so a number of those items -- I think I've seen a
14 number in the range of \$185 million that they total to, right?

15 A That sounds about right.

16 Q Nobody has looked at the Coal Act obligations to say,
17 well, how much more or less would they be if we added that to
18 the 185 million?

19 A I think there are employees of the company and third party
20 advisors and lawyers that the company has hired that are very
21 familiar with what the Coal Act obligation costs are. So
22 that's not a number that is not unknown to people inside the
23 company and I believe the third parties outside the company.

24 Q But it's not known to you?

25 A I have not spent a lot of time looking at the -- recently

1 looking at the Coal Act dollars. I don't know that it's
2 millions of dollars, but I don't have the exact number.

3 MR. WILLETT: Your Honor, may I have just a moment?

4 THE COURT: Sure.

5 Q Thank you, Mr. Zelin.

6 MR. WILLETT: Thank you, Your Honor.

7 THE COURT: Thank you.

8 CROSS EXAMINATION

9 BY MS. LEVINE:

10 Q Good morning, Mr. Zelin.

11 A Good morning.

12 Q Just briefly. In the asset purchase agreement, there's no
13 provision that requires Coal Acquisition to hire any amount of
14 the employees, correct?

15 A Not that I'm aware of.

16 Q Okay. But it's not unusual in an asset purchase agreement
17 that you fire all of the employees right before the closing
18 with the right to rehire them immediately after the closing to
19 protect yourself against certain claims, correct?

20 A I'm not too sure I follow that question.

21 Q Well, ordinarily when you do an asset purchase agreement
22 one of the things that the purchaser considers is whether and
23 to what extent they want to hire the workforce, correct?

24 A Yes.

25 Q And one of the things they also consider is whether they

1 hire the workforce by just assuming the workforce as of the
2 closing or whether they take the workforce after that workforce
3 has been terminated and then rehired, correct?

4 A I'm not too sure I understand the sequence. What I
5 understand the case to be here is that Coal Acquisition is in
6 the negotiations with the mine workers --

7 Q No, no, what --

8 A -- on the terms upon which they'd be prepared to offer
9 employment by Coal Acquisition to the mine workers.

10 Q My question actually is directed towards your general
11 experience in investment banking and doing mergers and
12 acquisitions in these asset purchase agreements generally.

13 A Okay.

14 Q As a general matter when you negotiate an asset purchase
15 agreement one of the things that you look to is whether and to
16 what extent the purchaser is going to want the existing
17 workforce, correct?

18 A Correct.

19 Q And when you do that one of the things you look at is
20 under what terms and conditions will the new purchaser take the
21 existing workforce, correct?

22 A Yes.

23 Q And one of the things that purchasers often look at is
24 whether and to what extent there are existing employment
25 agreements and benefit plans and other things and then you

1 draft the asset purchase agreement to make sure that the
2 purchaser, to the extent they want the workforce, has the
3 ability to take the employees without some of the liabilities,
4 correct?

5 A Yes, they'll determine which employees and which contracts
6 they want in general, that's correct.

7 Q And that's part of your negotiation leading up to the
8 signing the of asset purchase agreement, correct?

9 A Ordinarily, yes.

10 Q In this case is there -- is it your understanding that
11 they're going to be taking some of the existing miners
12 post-closing?

13 A All that I understand is that Coal Acquisition would like
14 to employ the miners, but under terms and conditions that make
15 sense for the overall viability of the enterprise and that
16 there are ongoing negotiations with the miners and their
17 representatives around the terms in which Coal Acquisition will
18 be comfortable employing those miners post-closing of the
19 transaction.

20 Q When did you become aware that the debtors intended to
21 idle Mine 4?

22 A I believe a public Warn Act notice was filed about the
23 potential for idling Mine 4. I don't recall the exact date,
24 but I think it was in September or October. So, the Warn Act
25 notice for Mine 4 I think was made public earlier in the fall.

1 Q Right. But isn't it not uncommon in 363 transactions to
2 issue Warn Act notices prophylactically so that you have the
3 option, but not the obligation to terminate employees?

4 A I don't recall the exact -- but I believe the Warn Act
5 notice --

6 Q Generally. I'm not talking about this particular case.

7 A Well, I don't know what's general. The debtor had issued
8 a Warn Act notice before it actually executed the APA.

9 Q And they did it with regard to all the other mines as
10 well, correct?

11 A I -- they may have. I just don't recall.

12 Q So they've issued Warn Act notices with regard to every
13 single one of their miner employees?

14 A I don't know if they've done it. Mine 7 East is still
15 operating today from my understanding. I don't know if they've
16 issued a Warn Act notice for Mine 7 East. I don't recall.

17 Q Is it your understanding that the debtor intends to
18 continue to -- that Coal Acquisition intends to continue
19 operating all of Mine 7 post-closing?

20 A I don't know what the Coal Acquisition Corp.'s intentions
21 are. What I do know is that their intentions to negotiate with
22 the mine workers to come upon terms that would allow the mines
23 to cooperate profitably is a going concern. Those negotiations
24 are ongoing. I don't know exactly what Coal Acquisition
25 Corporation's intentions are, but that's part of, I assume, the

1 discussions going on now between the mine workers and al
2 Acquisition.

3 Q I understand that you want to get into evidence that there
4 are ongoing negotiations. We got that.

5 A That's not my intent.

6 Q That's not my question.

7 A That's not my intent though.

8 Q Obviously, if those negotiations were successful you and I
9 wouldn't be chatting right now. So, my question is this -- and
10 I'll be blunt.

11 A Sure.

12 Q How many miners do you expect will be employed at Mine 7
13 post-closing?

14 A I do not know.

15 MR. ARFFA: Judge, I'm just going to -- I've allowed
16 the testimony so far, but at some point-- I mean, you're asking
17 the wrong person. She's asking someone who is not the buyer.

18 THE COURT: I understand that, Mr. Arffa, but with
19 all due respect, Mr. Zelin is a very sophisticated witness and
20 he seems to be handling --

21 MR. ARFFA: He is.

22 THE COURT: -- the questions just fine.

23 MS. LEVINE: Your Honor, just in response to the
24 objection. It's the debtor's motion and one of the things
25 that the debtor is saying to the Court --

1 THE COURT: You don't need to respond. I don't have
2 a problem with the questions you're asking, Ms. Levine, but
3 thank you anyway.

4 Q Have you seen a go forward -- have you seen post-closing
5 projections for Coal Acquisition?

6 A Not prepared by Coal Acquisition, no.

7 Q Have you seen post-closing projections for Coal
8 Acquisition prepared by anybody else, prepared by Lazard,
9 prepared by Alix, prepared by you?

10 A Just to be clear, the company has prepared projections for
11 all of 2016 and beyond based upon the operations. That's the
12 company's projections. I have not seen anything prepared by
13 Coal Acquisition.

14 Q Do you have any understanding with regard to what Coal
15 Acquisition's business plan is post-closing?

16 A To be in the mining business.

17 Q Have you seen financing in -- well, the asset purchase
18 agreement has a -- does not have a financing condition per se,
19 but based upon your testimony today it's our understanding that
20 the -- in order to close there has to be financing in place and
21 that's not expected to occur until, at the earliest, the end of
22 February, correct?

23 A Well, the lenders are in negotiations with the debtors
24 about providing a DIP financing which will be finalized I think
25 in the next few days subsequent to the hearing on the sale

1 motion. That financing is being provided by parties who will
2 be the ultimate owners of Coal Acquisition as well.

3 Q That's not my question. The question is to close, to
4 close on the APA --

5 A Oh, I'm sorry.

6 Q -- is that conditioned on post-closing financing being in
7 place?

8 A Monies will be required to close the APA, yes.

9 Q Have you seen a commitment letter with regard to that
10 financing --

11 A I have not.

12 Q -- in order to allow that closing to happen?

13 A I have not.

14 Q Have you seen loan documents that would indicate that the
15 debtors and Coal Acquisition would be ready to close with
16 financing in place?

17 A I have not.

18 Q Who's involved in those negotiations, do you know?

19 A When you say negotiations, you mean with respect to the
20 DIP financing?

21 Q No, with -- in other words, you're the debtor's investment
22 banker, correct?

23 A Yes.

24 Q And one of the things you're here talking about is the
25 fact that you think that this particular asset purchase

1 agreement is in the best interest of the debtor estates?

2 A Yes.

3 Q And I'm assuming one of the reasons why you believe that
4 is because you believe that it can close?

5 A Yes.

6 Q And one of the things that's necessary for it to close is
7 for there to be financing in place at the time of the closing,
8 correct?

9 A Yes.

10 Q And in order for it to close successfully it has to be
11 able to fund the assumed liabilities and probably some
12 operations post-closing, correct?

13 A Well, all the assumed liabilities won't be funded day one,
14 they'll be assumed and funded in the ordinary course, but it
15 has to have the resources to meet the cash requirements to
16 close, yes.

17 Q Right. And based upon the charts and all of the lines
18 below the red dotted line that we've been talking about,
19 without additional funding it would not be able to meet those
20 obligations, correct?

21 A Correct.

22 Q And as we sit here today there is no financing commitment,
23 correct?

24 A Well, there is evidence though of the -- in my judgment
25 the owners of Coal have had the ability to finance it and we've

1 seen evidence of that already in the discussions around the DIP
2 financing. So there's nothing sitting here today that gives me
3 any concern that the lenders won't -- that Coal Acquisition,
4 excuse me, won't be ready with the financing to close when it's
5 time to close, subject to all of the other conditions being
6 met.

7 Q I'll try again. Have you seen a commitment letter?

8 A For a DIP financing, yes.

9 Q Have you seen a commitment letter that will fund the
10 closing of the asset purchase agreement?

11 A I have not.

12 Q Have you seen loan documents that would provide the
13 financing necessary to fund the closing of the asset purchase
14 agreement?

15 A I have not.

16 MS. LEVINE: Thank you. No further questions, Your
17 Honor.

18 THE COURT: Thank you.

19 MR. WILLET: Your Honor, I'm sorry, I did have one
20 as a result of what we just heard.

21 CROSS EXAMINATION

22 BY MR. WILLET:

23 Q Mr. Zelin, you have seen a commitment letter for the DIP
24 facility?

25 A A draft of a commitment letter, yes.

1 Q What's the amount of the commitment?

2 A It's a \$50 million financing.

3 Q Five zero?

4 A Five zero.

5 MR. WILLETT: Thank you.

6 MR. BARRETT: Your Honor, Kevin Barrett again for the
7 State of West Virginia. And I'm gong to openly risk asking the
8 wrong questions of the wrong person, but I'll try.

9 CROSS EXAMINATION

10 BY MR. BARRETT:

11 Q Mr. Zelin, are you familiar with the debtor's operations
12 in West Virginia in particular?

13 A Generally, yes.

14 Q Okay. Do they have any current operations in West
15 Virginia?

16 A They do have mines, but they're on idle right now.

17 Q They are idled. Are they doing -- performing reclamation
18 on those sites?

19 A I do not know if they're performing -- they're maintaining
20 the sites, but I don't know if they're performing reclamation.

21 Q Okay. Do you have any idea of the number of sites in
22 which they're performing reclamation?

23 A Well, there are two sites -- predominantly two sites up in
24 West Virginia --

25 Q Okay.

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1 A -- that are currently in idle.

2 Q Okay. Do you have any sense of the ongoing reclamation
3 costs that are associated with those two sites?

4 A I have seen estimates of what it would take to reclaim
5 those sites. I just don't recall the numbers sitting here
6 today.

7 Q And is that full reclamation or is that just the ongoing
8 maintenance reclamation?

9 A I believe it's full reclamation.

10 Q Any sense of that number is it --

11 A I can see the schedule where that number was listed. I
12 just don't have a memory of it right now.

13 Q Okay. Do you have any idea whether there are any ongoing
14 water treatment operations at these two sites?

15 A I don't recall.

16 Q And no idea of the current costs of water treatment on
17 those sites, I guess?

18 A I do not know.

19 Q Do you know what happens to the West Virginia permits
20 after the sale?

21 A Well, we -- as you know, we are in the process of
22 marketing the West Virginia assets and there could be a
23 potential buyer for those assets that submits an APA next week.
24 What I do know under the APA is that if the sale were to close
25 Coal Acquisition Corporation is assuming the reclamation

1 obligations and will fund the reclamation of the environmental
2 obligations and will fund the closing -- the proper closing of
3 those mines, if there is no other buyer for those mines.

4 Q Understood.

5 MR. BARRETT: But -- and maybe this is really way too
6 technical for this witness, Your Honor.

7 Q But the question is on the permits. Do you know what
8 happens to the permits? They're not going with Coal
9 Acquisition, we understand that. Where are they going? Are
10 they going to be transferred to a wind-down trust? Are they
11 going to remain in Walter as an entity? Any idea of what is
12 happening with the permits themselves?

13 A It's not an issue I focused on.

14 Q Okay. Are you familiar with the concept of the wind-down
15 trust that's to be put in --

16 A Yes. In general, yes.

17 Q Do you know what obligations are going to be dealt with in
18 the wind-down trust?

19 A From what I -- the current assets of the West Virginia
20 business will be transferred into the trust -- into a trust and
21 those proceeds are going to be used to invest in the successful
22 wind-down and reclamation of the West Virginia mines, again to
23 the extent that there is no third party buyer who's willing to
24 assume those obligations.

25 Q Do you have any understanding as to what the available

1 assets will be in the wind-down trust?

2 A I think it's in excess of -- well, I may be calling it the
3 wrong term. There is a schedule that shows what the dollar
4 amount that's going into that wind-down trust, but there are --
5 will be in excess of \$20 million or so of cash available to
6 finance the wind-down. Are we talking about the West Virginia
7 assets or --

8 Q Yes.

9 A Okay, yes.

10 Q That's all we care about.

11 A There are other trusts as well that are being established.
12 That will go to fund the reclamation and the wind-down of the
13 West Virginia operations.

14 Q So your understanding is that there are going to be \$20
15 million of assets that are available to perform that
16 reclamation?

17 A I believe that's the current AR inventory balance, plus
18 there's also some surety bonds as well that may be available. I
19 think there are some AR in inventory that will be available to
20 fund the West Virginia wind-down.

21 Q Okay. And am I correct that there's \$3 million that's
22 going to be provided by Coal Acquisition and go into the
23 wind-down trust?

24 A There are approximately \$8.4 million of total payments
25 that are being made that will be allocated to the various

1 trusts to wind down the remaining operations of the debtors to
2 the extent assets remain behind as a result of the -- after the
3 closing of the sale.

4 Q I'm obviously concerned only about the West Virginia wind-
5 down trust.

6 A Right.

7 Q Do you have any sense of how much of that --

8 A I don't -- again, I may be misunderstanding terms. Money
9 is going to be set aside to reclaim and wind down the West
10 Virginia operations. There's a schedule that shows the dollar
11 amount that's expected to go into those trusts.

12 Q Okay.

13 MR. ARFFA: Judge, just for -- I'm sorry to
14 interrupt, but just for Your Honor's information and for the
15 information of the gentlemen from West Virginia, the next
16 witness, Mr. Mesterharm, will be testifying about the money
17 going into the trust.

18 MR. BARRETT: Excellent. Okay. So I think I will
19 cut through and perhaps finish. Let me ask you this. Is he
20 going to be prepared to testify as to the surety bond
21 financing?

22 MR. ARFFA: Yes.

23 MR. BARRETT: Okay. Your Honor, I think I can finish
24 with this witness and wait for the next.

25 THE COURT: Thank you, Mr. Barrett.

1 MR. BARRETT: Thank you, Your Honor.

2 THE COURT: Any other cross examination of Mr. Zelin?

3 (No audible response)

4 THE COURT: Any redirect of Mr. Zelin?

5 MR. ARFFA: No, Your Honor.

6 THE COURT: No.

7 MR. BRIMMAGE: Your Honor, may I have one moment?

8 THE COURT: Sure, Mr. Brimmage.

9 RECCROSS EXAMINATION

10 BY MR. BRIMMAGE:

11 Q Mr. Zelin, just a couple of followup questions, if I
12 could. You were asked questions about what Coal Acquisition is
13 planning to do in doing -- in plans for the Court entering a
14 sale order, correct?

15 A Yes.

16 Q You're not really involved in that process, are you?

17 A No.

18 Q Okay. That's the representatives of Coal Acquisition,
19 right?

20 A That's correct.

21 Q Okay. So there might be things going on that you wouldn't
22 be aware of?

23 A That's correct.

24 Q Wouldn't surprise you?

25 A Would definitely not surprise me.

1 Q Okay. One of those things, you recall the Court entering
2 the bid procedures order, do you recall that?

3 A Yes.

4 MR. BRIMMAGE: And I don't have the docket number,
5 Your Honor. We were looking for it. I didn't find it in time.
6 But it's in the record somewhere.

7 Q Do you recall, and if you don't that's okay -- do you
8 recall as part of the bid procedures order there was a
9 requirement to provide adequate --

10 MR. ARFFA: It's Docket Number 1119.

11 MR. BRIMMAGE: Thank you, Mr. Arffa.

12 Q Do you recall that there was a requirement for a filing
13 regarding adequate assurance, does that ring a bell at all?

14 A It does, yes.

15 Q Okay. And do you -- are you aware that yesterday by the
16 deadline in that order that Coal Acquisition did, in fact, file
17 the adequate assurance filings that were required in the order?

18 A I was not aware.

19 Q Okay. You haven't seen the sources and uses of cash that
20 were filed yesterday?

21 A I did not see them.

22 Q Okay. And again that wouldn't be part of your deal
23 because that's looking forward, right, after the sale?

24 A Sure, yes.

25 Q Okay. And if there was a balance sheet included in that

1 you wouldn't have seen that either?

2 A I have not seen that.

3 MR. BRIMMAGE: Okay. Pass the witness, Your Honor.

4 THE COURT: Thank you. Any other questions of Mr.
5 Zelin at this point?

6 (No audible response)

7 THE COURT: Mr. Zelin, are you planning to stay in
8 case anybody has questions later today?

9 THE WITNESS: I am, Your Honor.

10 THE COURT: Okay. You may step down. You all want
11 to take a break before we call the next witness?

12 MR. ARFFA: Sure.

13 THE COURT: All right, let's take about a ten minute
14 break until 11:25. How long will that witness take, do you
15 think, Mr. Arffa?

16 MR. ARFFA: He may be a little bit longer, but not
17 too much longer than Mr. Zelin.

18 THE COURT: All right. So my question would be
19 timing wise do you want to do his direct then take a lunch
20 break then let him come back and do the cross examination after
21 lunch?

22 UNIDENTIFIED ATTORNEY: Your Honor, I don't think
23 there will be a lot of cross examination.

24 THE COURT: All right. Well then let's just wait and
25 see. And have you all reviewed the funds red line order? I

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1 know it was handed to you. I don't know that any one of you
2 has had a chance to look at it.

3 UNIDENTIFIED ATTORNEY: We're looking at it, Your
4 Honor.

5 THE COURT: Okay. Thank you.

6 (Recess)

7 MR. ARFFA: The debtor would now like to call Jim
8 Mesterharm as their next witness.

9 JAMES ALLAN MESTERHARM, DEBTOR'S WITNESS, SWORN

10 COURTROOM DEPUTY: Please state your name and
11 address for the record.

12 THE WITNESS: James Allan Mesterharm, 960 Eastwood
13 Road, Glencoe, Illinois.

14 THE COURT: Mr. Mesterharm, I know you have testified
15 before, but if you would spell your name one more time for the
16 record, please.

17 THE WITNESS: Sure. M-e-s-t-e-r-h-a-r-m.

18 THE COURT: Thank you.

19 DIRECT EXAMINATION

20 BY MR. ARFFA:

21 Q And, Mr. Mesterharm, you testified in this court a few
22 weeks ago in connection with the debtor's KERP motion, correct?

23 A That is correct.

24 Q Okay. I'm not again going to go through your full
25 background and qualifications, but just to remind everyone, by

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1 whom are you currently employed?

2 A I am employed by the consulting firm AlixPartners.

3 Q And what's your position there?

4 A I'm a managing director and I'm co-head of the firm's
5 turnaround and restructuring services practice for the
6 Americas.

7 Q And what do you do in that position?

8 A I'm a managing director. I work on a variety of cases,
9 manage the group, and assist companies in working through
10 restructuring programs as part of my normal assignments.

11 Q And how long have you been assisting clients with respect
12 to restructuring services?

13 A I've been with AlixPartners a little over 19 years and
14 prior to that was with Ernst & Young providing similar
15 consulting services for about six years.

16 Q Are you currently a CPA?

17 A I passed the CPA exam.

18 Q Have you and AlixPartners been retained by Walter Energy
19 in connection with this proceeding?

20 A Yes.

21 Q And when were you first retained?

22 A We started working for Walter back in March of 2015.

23 Q And are you still retained today?

24 A Yes, we are.

25 Q And can you describe just generally what kind of work you

1 and your firm have performed for Walter Energy and the other
2 debtors?

3 A Sure. My colleagues and I involved in the assignment have
4 been involved in assisting the company to prepare for a Chapter
5 11 filing, so things like assisting with the preparation of the
6 financial support for motions. For the first day motions we
7 assisted the company for things like cutoff for their pre and
8 post-petition balance sheet, bankruptcy reporting, the --
9 managing the claims process, maintaining -- building and
10 maintaining the company's cash flow forecast, have assisted
11 with a variety of other ad hoc analyses, including assisting
12 with the negotiations of the APA with the -- with Coal
13 Acquisition.

14 Q Speaking of the APA, can you turn to Tab 1 of your exhibit
15 binder there, what is that document?

16 A It's the APA between Coal Acquisition and Walter Energy.

17 Q And are you familiar with this APA?

18 A I'm generally familiar with it.

19 Q In particular, are you familiar with the provisions of the
20 asset purchase agreement that concerned the liabilities that
21 the buyer has committed to assume under the APA and the trust
22 the buyer has agreed to fund?

23 A Yes, I am generally familiar.

24 Q And what role did you and AlixPartners play in the
25 negotiations over those provisions?

1 A We were part of the negotiating team working with the
2 company in the negotiations with Coal Acquisition to help
3 determine which liabilities they would assume as well as the
4 basis for trusts that we -- the sellers felt needed to be
5 funded to cover certain costs as well as had responsibility for
6 estimating what the potential costs could be of those
7 liabilities as well as the needs for the trusts.

8 Q And if you could -- I could ask you to turn to Tab 2 in
9 the binder, that's a chart. I've put a blowup version of that
10 on the easel to the right, but if you could just describe
11 generally what is the chart that's at Tab 2?

12 A The chart is a summary of the liabilities assumed and
13 funding obligations agreed to by the buyer under the asset
14 purchase agreement.

15 Q Okay. And who prepared that chart?

16 A It's prepared by my team.

17 Q Okay. So I'm going to walk through -- we're going to
18 spend your testimony walking through the chart. It's divided
19 up into three areas. I'd like to just start with what is this
20 first block on top?

21 A It is the assumed liabilities related to the acquired
22 assets.

23 Q Okay. And the column entitled APA Section, what's that?

24 A It's intended to indicate the section of the APA related
25 to the specific type of liability issued or identified to the

1 left.

2 Q And the final column, estimated costs, what is that?

3 A That was our estimate of what the costs of that liability
4 would be based on a variety of assumptions.

5 Q And in terms of the estimated costs for the liabilities
6 the buyer has agreed to assume as to the acquired assets, are
7 those fixed figures in the APA, the estimated costs on the
8 right?

9 A No, these numbers do not show up in the APA, specifically
10 these are estimates. It's my understanding that they're taking
11 the liability no matter what it is.

12 Q So if it turns out the costs are greater than the
13 estimates you prepared, what is your understanding of what
14 happens?

15 A That they would be taking them higher or lower.

16 Q Coal Acquisition?

17 A Coal Acquisition, yes.

18 Q So let's go through these now one at a time. What are the
19 cure costs?

20 A Cure costs are the costs associated with how the buyer has
21 the option to have certain contracts assumed and assigned and
22 they have agreed to fund the costs associated with curing those
23 contracts to enable them to be assumed and assigned.

24 Q And actually, if you -- and that's where in the APA?

25 A Section 2.3(b).

1 Q And if you'd look at -- just to show how these all work,
2 if you go to the Tab 3, what is that?

3 A It's a callout from section 2.3 of the APA indicating
4 which liabilities were assumed and 2.3(b) is that all cure
5 costs are to be assumed and then further there's the definition
6 of what cure costs means.

7 Q And the estimate, what was your estimate or AlixPartners'
8 estimate for the total cure costs being assumed by the buyer
9 with respect to the acquired assets?

10 A Eight point six million dollars.

11 Q And how did you arrive at that figure?

12 A We went through a process of reviewing all the contracts
13 related to the operating assets that they were acquiring and
14 looked at which of those contracts were ones that we felt that
15 the buyer would want to have assumed for the ongoing operations
16 of the business and these are the pre-petition costs
17 outstanding related to those contracts that would need to be
18 paid to cure those contracts or our estimation of them. There
19 may be post-petition amounts outstanding under those contracts,
20 but those are getting paid in the ordinary course.

21 Q And again, what is your understanding if it turns out the
22 cure costs are higher than your estimate of 8.6 million?

23 A Whatever contracts they want to assume and have assigned
24 they're going to pay the cure costs for them no matter what
25 that is or under operation of law they can't be assumed and

1 assigned is my understanding.

2 Q What's your understanding of the -- what is the next item,
3 what does that represent, pre-close Steering Committee
4 professional fees?

5 A Under the cash collateral order the debtors are obligated
6 to pay the professional fees of the Steering Committee, so the
7 firms like Akin Gump, Lazard and among others, and this is the
8 estimate of what would be outstanding as of a close date around
9 the end of February, including any back-end completion fees
10 owed to any of the advisors of the Steering Committee.

11 Q And I think you testified this was an obligation of the
12 buyers, but what's your -- but is it your understanding under
13 the APA, is -- I'm sorry, but this is currently an obligation
14 of the debtors, but is it your understanding under the APA that
15 the buyer is assuming that liability?

16 A That is correct.

17 Q Okay. And what is your estimate of the costs of those
18 fees?

19 A Nine point five million dollars.

20 Q And, again, is that cap on what the buyer will pay?

21 A It is not a cap.

22 Q What is the next item, post-petition trade accounts
23 payable, what does that represent?

24 A Really the next two items, post-petition trade accounts
25 payable and accrued post-petition operating expenses, are both

1 the amount of trade support that the company has gotten or
2 bills that have not been submitted yet, but the company has
3 received services for from a variety of trade suppliers to the
4 company for goods and services, power, transportation services,
5 other sorts of services to operate the business.

6 Q And the buyer has agreed to assume those liabilities as
7 well under the APA?

8 A That is correct.

9 Q Okay. And what is your estimate of the cost of those
10 liabilities?

11 A The post-petition trade is estimated to be 13.4 million
12 and the accrued post-petition operating expenses 6.8 million.

13 Q And the next item is titled accrued post-petition taxes,
14 what are those?

15 A Under the APA certain taxes are being assumed by the
16 buyer, those relate to either taxes that if they are not paid
17 could give rise to a lien on assets or they are taxes that if
18 unpaid could trigger personal liability for directors and
19 officers or some form of responsible person for the company.

20 Q And what is your estimate for the cost of those taxes?

21 A Related to the assumed assets, 2.4 million.

22 Q And that's something, again, the buyer has agreed to
23 assume under the APA?

24 A That is correct.

25 Q Black lung liabilities, what does that item represent?

1 A That represents the company's estimate of its black lung
2 liability related to the assumed assets.

3 Q Okay. Let's look at that one in a little more detail. If
4 you go to Tab 4 titled asset purchase agreement assumed
5 liabilities black lung, can you describe what that chart
6 represents?

7 A Again, it's again a blowout of the APA of Section 2.3
8 assumed liabilities, Sub (d)(2) says that all -- any and all
9 black lung liability is an assumed liability. And further in
10 the definitions, black lung assumed liabilities means all black
11 lung liabilities of the seller, whether now existing or
12 hereafter arising, and all black lung liability of the buyer
13 arising after the closing.

14 Q And black lung liability is defined, as well?

15 A Yeah.

16 Q And that includes any liability or benefit obligations
17 related to black lung claims and benefits, correct?

18 A That's correct.

19 Q And what was your estimate for the black lung liabilities
20 the buyer is assuming that are associated with the acquired
21 assets?

22 A Eighteen point seven million dollars.

23 Q How did you arrive at that figure?

24 A That's an estimate based on actuarial analyses the company
25 does. They have a liability on their books that they maintain

1 and they have an actuary on an annual basis review the accrual,
2 the reserve, to make sure it's sufficient. It's based on a
3 combination of current obligations that the company is aware of
4 as well as potential anticipated based on its actuarial
5 estimates that could be triggered by the workforce that the
6 company has employed.

7 Q The next category is reclamation obligations, what are
8 those?

9 A This is -- in short form on their books it's referred to
10 as ARO. It's the retirement obligations associated with the
11 assets that are triggered by mining up -- mining operations.
12 It's the cost of reclaiming the land back to its pre-mined
13 state in accordance with its permits.

14 Q And that is where in the APA?

15 A Section 2.3(g) related to the assumed or the acquired
16 assets.

17 Q And just to show that to everyone can you flip under Tab 1
18 to Page 29 of the APA, which is the assumed liability section,
19 that's 2.3(g), which you just referred to, and can you point
20 out what you're referring to in the chart there?

21 A On Page 29, 2.3(g) says all liabilities of the seller to
22 the extent arising out of or related to the transferred
23 permits, including all liabilities for reclamation and
24 post-mining and post-gas well operating liabilities.

25 Q And this is just with -- so far with respect to the assets

1 there the buyer is acquiring under the APA, correct?

2 A That's correct.

3 Q Okay. And what's your estimate for that amount, for the
4 reclamation obligations being assumed by the buyer?

5 A Thirty-seven point one million dollars.

6 Q Okay. And I think you explained how you came to those.

7 A It's also an accounting estimate that the company does
8 based on evaluating the requirements under the permits for how
9 they would have to reclaim the properties.

10 Q So what is the total estimated cost for the liabilities --
11 sorry, what is the total estimated cost that you have estimated
12 for the liabilities the buyer is assuming in connection with
13 the acquired assets?

14 A The estimated cost of these liabilities is \$96.5 million.

15 Q And that's all being assumed by the buyer?

16 A All being assumed by Coal Acquisition.

17 Q And is that a cap again or a ceiling?

18 A No, it is not.

19 Q Now let's turn to the middle portion of the chart titles
20 assumed liabilities non-core assets, can you explain what that
21 represents?

22 A These are liabilities related to assets that the -- that
23 Coal Acquisition is not buying, but nonetheless the fact that
24 they're not buying them, we got them to agree to assume those
25 liabilities, as well.

1 Q Could you just describe generally what are these assets
2 that the buyer is not buying and yet they're assuming
3 liabilities as to?

4 A These are primarily the West Virginia mining assets of the
5 company as well as certain non-core Alabama assets not related
6 to the core operations in Jim Walter Resources of Mines 4 and
7 7.

8 Q So now let's talk about what are the net reclamation
9 obligations with respect to the non-core assets, what are
10 those?

11 A In this case these are shown net of surety bonds that
12 exist outstanding to cover those bonds, so there is 14.2
13 million of reclamation costs associated with the non-core
14 assets that is in excess of the surety bonds.

15 Q So to be clear, what is it that the buyers agreed to
16 assume in this regard in Section 2.3(m), with respect to the
17 reclamation obligations of non-core assets?

18 A I believe the buyer has agreed to assume that in the event
19 there is no other buyer of those assets that they would assume
20 any reclamation costs that exceed the bonds posted to secure
21 that reclamation activity.

22 Q What provision is that in?

23 A Two point three (m).

24 Q If you go to the last tab there, Tab 5 in your binder, can
25 you describe what that document is?

1 A Again, it's another callout from the APA of Section 2.3,
2 which is the assumed liability section, and 2.3(m) spells out
3 what I just said in more legal language here, but that the
4 buyers are assuming the -- if there is no other acquirer who
5 assumed those reclamation liabilities that the buyer will step
6 in and cover any excess that exists over the surety bonds.

7 Q So let's be clear about that, if there is another buyer
8 for West Virginia what happens as you understand it?

9 A If there is another buyer who assumes those liabilities,
10 which would be likely if a buyer is buying it to operate it as
11 a mining property, then if that occurred then this wouldn't --
12 this provision would not apply. They wouldn't put up the money
13 because somebody else would have taken it on.

14 Q And if there isn't another buyer what happens?

15 A If there isn't another buyer and there is reclamation
16 costs that are required to be funded that to the extent those
17 costs exceed the bonds which have been posted with the
18 permitting authorities that Coal Acquisition Company would be
19 on the hook for any costs in excess of those surety bonds.

20 Q Well, you've been saying in excess of those bonds. What
21 would -- what is your understanding as to what would happen if
22 there's some problem with those bonds and they're not able to
23 obtain the benefit of those bonds?

24 A My understanding would be if the bonds didn't pay out for
25 whatever reason that Copal Acquisition would still be on the

1 hook for all of the costs them.

2 Q Okay. And how much is your estimate of the net
3 reclamation obligations the buyer is assuming in case of the
4 non-core assets, such as West Virginia?

5 A Fourteen point two million.

6 Q Okay. Again, is that a cap?

7 A I do not believe it to be a cap.

8 Q And how did you arrive at that figure?

9 A Again, it was based on the company's internal reporting of
10 its ARO liabilities, which were generated by the use of third
11 party consultants and then internal engineering resources of
12 the company, scheduling out the various activities related to
13 closure to be in compliance with the permits, those costs are
14 oftentimes spread over time, and then we looked at what were
15 the bonds associated with those permits and just did a simple
16 subtraction exercise.

17 Q Okay. And to the best of your knowledge, are the debtors
18 still attempting to sell the West Virginia and other non-core
19 assets the buyer is not acquiring?

20 A Yes, it's my understanding that the debtors are still
21 marketing those assets and that there is interest in them.

22 Q Let's go to the next item, technical professionals
23 reclamation, what does that represent?

24 A Under the APA the reclamation activities related to the
25 properties have both direct and indirect reclamation costs that

1 would require third party support. This represents the third
2 party support related to the Alabama properties that in the
3 event they're not sold, those spare Alabama properties I
4 referred to, that the buyer has agree to assume those
5 liabilities.

6 Q And what's your estimate for that?

7 A One point five million dollars.

8 Q And what's the basis for that estimate?

9 A Same analyses that the company prepares on the cost of
10 reclamation and the assumed third party technical consultants
11 they would require to assist in that effort.

12 Q What's the next item, accrued post-petition taxes?

13 A These are accrued post-petition taxes related to the
14 non-core, non-acquired assets. In this case it does not refer
15 to the secured taxes, which are only related to the acquired
16 assets, but this does pick up taxes that if left unpaid would
17 trigger a potential liability of an officer, director or
18 responsible party of the seller.

19 Q And as you understand it under the APA, the buyer agreed
20 to assume those?

21 A Yes.

22 Q And what's your estimate for those taxes?

23 A One million dollars.

24 Q Okay. And the last item under assumed liabilities,
25 non-core assets that are the black lung liabilities, what are

1 those?

2 A As discussed before about the acquired assets, this is the
3 black lung liabilities associated with the non-acquired assets
4 that they've also agreed under 2.3(d). It was any and all. It
5 didn't have a qualification as to whether it was related to
6 only acquired or non-acquired, it was all, so it was the
7 component related to the non-acquired assets.

8 Q And what's your estimate for the cost of the black lung
9 liabilities associated with the non-core assets?

10 A Four point one million dollars.

11 Q And that's something else the buyer has agreed to assume
12 in the APA?

13 A Yes.

14 Q So what's your total for the assumed liabilities the
15 buyer's agreed to assume under the APA with respect to non-core
16 assets it is not acquiring?

17 A Twenty point eight million dollars.

18 Q And so what's your estimate of the total assumed
19 liabilities?

20 A Roughly a hundred and seventeen million.

21 Q Finally, there's a section at the bottom of the chart
22 called trust funding, what is that?

23 A In addition to liabilities that the buyer agreed to
24 assume, we also got the buyer to agree to fund certain trusts
25 to help cover liabilities of the debtors.

1 Q Okay. And what was the idea behind requiring these
2 trusts?

3 A The feeling was that there would be -- if there were
4 assets that were not acquired, that there would be activities
5 that needed to be done to attempt to wrap up what is left of
6 Walter Energy and that the company would need some funding to
7 assist with that.

8 Q So the first trust listed is the wind-down trust. What is
9 that?

10 A It is the trust that's established to provide for
11 assistance in supervising, managing and completing closure of
12 assets that are not acquired.

13 Q Can you give the Court a sense of what kind of costs are
14 in there?

15 A It includes estimated costs of a trustee, of trustee
16 professionals, of technical professionals related to the
17 closure, in particular the West Virginia operations, as well as
18 the -- some estimate of labor costs of employees that might
19 need to be kept for a brief period of time to help liquidate
20 any assets that are left behind in a small contingency.

21 Q Now that one, the 8.4 million figure for that trust, is
22 that one a fixed amount that's established in the APA?

23 A That is a fixed amount. It is made up of two payments,
24 one payment of \$3 million, which is called the wind-down trust
25 amount, I believe, and then a payment of 5.4 million, which is

1 called cash considerations. The sum of the two get to the 8.4.

2 Q But again, that's all to be contributed by the buyer?

3 A Yes.

4 Q Okay. And by the way, why is there an asterisk I see next
5 to that number?

6 A Because some of those costs identified have been
7 identified as they're defined in the wind-down trust. You
8 know, there could be -- some of those dollars could be also
9 covering some of these things that are assumed, so there's some
10 possibility that it's not additive, that some of it is
11 potentially duplicative, I think a very small portion. And the
12 other point is that if the buyer -- the buyer retained the
13 right to assume all of the technical professional fees related
14 to West Virginia as well and if they do they get to reduce this
15 amount from 8.4 by \$3 million. But that's just a movement of
16 the liability from one they're funding into the trust versus
17 assuming directly.

18 Q What is the next item, payroll trust?

19 A That's the estimated payroll that would exist as of the
20 closing date for all active employees, the wages.

21 Q Meaning the wages that are due as of the closing date?

22 A Yes.

23 Q Okay. And they've agreed to fund that?

24 A Correct.

25 Q Now that one, I assume -- how did you reach -- the number

1 there is 6.6 million, right?

2 A Correct.

3 Q And how did you reach that number?

4 A Since the close date is not known specifically, we have
5 rolled forward payroll for every possible day between February
6 and the end of March and we picked the highest day that payroll
7 could possibly be and we added a ten percent cushion on to it.

8 Q The next trust is the Walter Coke Trust. What is that?

9 A Walter Coke Trust. That's established in the event the
10 buyers elect the Walter Coke option, which they did, which in
11 effect made Walter Coke a non-acquired asset, they agreed to
12 establish a trust to help with the closure of Walter Coke in
13 the event that it is not acquired by another buyer. It is made
14 up of a \$1.4 million cash contribution plus in this case in
15 addition to the cash they have also agreed that all of the
16 working capital assets of Walter Coke, which they have a lien
17 on, that they would contribute all of those assets into the
18 trust as well, so things like supplies, accounts receivable and
19 inventory.

20 Q So what's your calculation for how much the buyer would be
21 funding for the Walter Coke Trust?

22 A Twenty-two point nine million.

23 Q And again, I think you covered this, but just to be clear,
24 what happens if another buyer -- a different buyer is found for
25 Walter Coke?

1 A If a different buyer is found then those would not need to
2 be -- would not -- the closure wouldn't occur so these costs
3 wouldn't exist, they wouldn't need -- and they would likely be
4 buying that AR inventory and supplies, so the funding of this
5 trust wouldn't need to occur.

6 Q And what's the last item there, estate routine
7 professional fees trust and committee member indentured trustee
8 fee trust?

9 A The buyers agreed to fund a trust to cover the cost of all
10 the professionals of the estate, so that would include the
11 debtor's professionals, it would include the UCC professionals,
12 the retiree committee professionals, the bankruptcy
13 administrator. All of those costs would be provided for by
14 this trust.

15 Q And the indentured trustee fees, as well?

16 A The indentured trustee fees, as well, yes.

17 Q And what's your total estimate for all of those costs?

18 A Thirty point three million.

19 Q And what's that based on?

20 A That's based on a estimate of roll forward of professional
21 fees that we have maintained based on the activities of the
22 case.

23 Q So what's your estimate for the total trust funding that
24 the buyers agreed to under the APA --

25 A Sixty --

1 Q -- and again, assuming no other buyer was found for Walter
2 Coke?

3 A Sixty-eight point two million.

4 Q So finally, what's your estimate of the total commitment
5 the buyer has made with respect to assumed liabilities and with
6 respect to the funding of trusts under the APA?

7 A Again, assuming that some of these assets are not acquired
8 by other third parties, assuming those liabilities are sort of
9 set up as the backstop, so to speak, it would be 185.5 million.

10 Q Just a couple follow up questions. One, there was a chart
11 that was used, I believe with Mr. Zelin, at the 11/13-11/14
12 hearing, it has somewhat different figures for assumed
13 liabilities, could you just explain for the record why some of
14 these numbers may be different?

15 A This is an update of that analysis and also to be more
16 reflective of all of the obligations that the buyer has taken
17 on, so in come cases we have used revised estimates based on
18 newer balance sheets as a starting place, in some instances
19 we've included the liquidation value of the Walter Coke working
20 capital assets to indicate that that was value of the lenders
21 or that's being contributed as well to support this and it also
22 now includes the reclamation obligations related to the assumed
23 liabilities, which the prior report did not.

24 Q So which chart is more complete and up to date?

25 A This one.

1 Q In addition to what is listed on this chart, does the
2 proposed sale to Coal Acquisition provide any other benefits to
3 other constituencies?

4 A Yes, it does.

5 Q What are those?

6 A In addition to being the -- if the sale is approved, being
7 the highest probability to maintain this business as a going
8 concern and maintaining employment in the community as well as,
9 you know, a viable customer for suppliers, this is also -- if
10 the sale is approved, this also provides a mechanism for
11 recovery to the unsecured creditors in the case as they receive
12 equity in Coal Acquisition as part of their recovery and also
13 the settlement with the retiree committee, non-union retiree
14 committee, for their funding of their trust for transition
15 benefits of 400,000 is funded upon the closing of this
16 transaction.

17 Q And in terms of the liabilities and trusts that are listed
18 on the chart, the 185 plus million, without the sale to the
19 debtors what would happen with respect to those liabilities and
20 costs?

21 A Well I think as we've discussed, you know, the company is
22 heading towards a liquidity event where we won't have the funds
23 to continue to operate the business, which, you know, could
24 possibly then result in a liquidation of the business and under
25 a liquidation of the business it's unlikely that any of these

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1 costs would be covered.

2 Q There's one last item I wanted to cover. Inside the
3 sleeve I stuck a couple new exhibits, which I've handed out to
4 other parties of interest. They're both entitled irrevocable
5 standby letter of credit. Can you just describe for the record
6 what those are?

7 A These are two letters of credit that have been posted with
8 the 1992 Act or 1992 plan under the Coal Act. One is related
9 to Jim Walter Resources in the amount of 4.3 million,
10 approximately. The other is in regards to Taft Coal --

11 THE COURT: Hang on one second. I'm wondering if
12 that means that just cut off again.

13 UNIDENTIFIED SPEAKER: Checking, Your Honor. Just
14 hand tight. Let's call them back.

15 (Connecting to CourtCall)

16 UNIDENTIFIED SPEAKER: Okay. Mr. Arffa, if you could
17 repeat your question, please.

18 MR. ARFFA: Sure. I was just asking the witness to
19 describe what these two letters of credit are.

20 A I described the one for Jim Walter Resources as a letter
21 of credit that's posted with the 1992 benefit plan and it is in
22 the amount of approximately 4.3 million. And the other is a
23 letter of credit posted on behalf of Taft Coal to the 1992
24 benefit plan in the amount of approximately 240,000.

25 Q And to the best of your knowledge, would those remain in

1 place following the sale of the company's assets?

2 A I don't believe they're being acquired by the buyer, so I
3 believe that they would remain in place. They have expiration
4 dates, but you know, the holder can obviously draw on it.

5 MR. ARFFA: No further questions for this witness. I
6 do want to offer into evidence the five documents that were in
7 the binder plus the two letters of credit.

8 THE COURT: Okay. So we'll mark them six and seven.

9 MR. ARFFA: Sure.

10 THE COURT: Any objection to coming into evidence
11 Tabs 1 through 5 plus 6 and 7, which will be marked, which are
12 the two letters of credit?

13 MR. WILLETT: No objection.

14 THE COURT: All right, we'll mark them in. Thank
15 you.

16 MR. ARFFA: Thank you, Your Honor.

17 THE COURT: Mr. Brimmage.

18 CROSS EXAMINATION

19 BY MR. BRIMMAGE:

20 Q Good afternoon, Mr. Mesterharm.

21 A Good afternoon.

22 Q Marty Brimmage here on behalf of Coal Acquisition. I just
23 have a couple of questions for you on a topic that I talked to
24 Mr. Zelin about. Were you in the courtroom when Mr. Zelin was
25 on the stand this morning?

1 A Yes, I was.

2 Q Okay. So you heard my questions to him about the adequate
3 assurance filing from yesterday, is that correct?

4 A Yes, I did.

5 Q Just, I've got a little more specifics here. Are you
6 aware that the bid procedures order, it's Document Number 1119,
7 required by ten o'clock yesterday for Coal Acquisition to file
8 a description of the stalking horse -- I'm sorry -- a
9 description of the stalking horse purchaser and information as
10 to the stalking horse purchase's ability to perform the
11 debtor's obligations under the stalking horse purchaser
12 designed contracts, do you recall that?

13 A Yes, I do.

14 MR. BRIMMAGE: And, Your Honor, just for your
15 reference it's Paragraph 42 of the bid procedures order.

16 Q And were you aware that that filing actually took place?

17 A Yes, I am.

18 Q And have you seen it?

19 A Yes, I have.

20 Q Okay. If you've seen it you know that it included a
21 sources and uses statement, is that correct?

22 A That is correct.

23 Q Can you tell the Court what a sources and uses statement
24 is?

25 A It's a statement of a document that's kind of the pluses

1 and minuses of a transaction, so what money is coming in to
2 fund the transaction and for what costs is it going to be used.

3 Q Okay. And I know you don't have it in front of you so
4 this is not a memory test, but do you recall that the courses
5 and uses was assuming a February 27th, 2016 closing?

6 A You know, I would have to see it to see what the date was.

7 Q Okay.

8 A I don't recall the date.

9 Q Do you recall that the adequate assurance filing also had
10 a consolidated balance sheet?

11 A I do.

12 Q And just for the record, no offense, Your Honor, can you
13 tell the Court what a consolidated balance sheet is?

14 A It was a proposed or pro forma opening balance sheet of
15 what the company would look like upon closing of the
16 transaction.

17 Q Okay. As --

18 A Consolidated meaning all the legal entities aggregated
19 into one.

20 Q As of the date of closing?

21 A As of the date of closing.

22 MR. BRIMMAGE: Okay. That's all I have. Thank you,
23 Your Honor.

24 THE COURT: Thank you. Mr. Willett.

25 MR. WILLETT: Thank you and good afternoon, Your

1 Honor.

2 CROSS EXAMINATION

3 BY MR. WILLETT:

4 Q Good afternoon, Mr. Mesterharm.

5 A Good afternoon.

6 Q Can you just take a quick look again at Exhibit 6 and 7?

7 A Yes.

8 Q Do you understand that there is such a thing as an
9 individual employee plan, which is part of the debtor's current
10 Coal Act obligation?

11 A I believe I understand that concept, yes.

12 Q And the two exhibits that we're looking at, six and seven,
13 are standby letters of credit that secure the debtor's
14 obligations for one year running from at some point under last
15 year under that plan?

16 A I'm not sure they represent one year. What I understand
17 is that there are letters of credit that are posted to the 1992
18 plan that in the event that the company fails to perform its
19 obligations and participants then become members or
20 beneficiaries of the '92 plan that this is to help cover that
21 cost.

22 Q And so by looking at the amounts of these bonds we can get
23 a sense of what the annual cost is for Coal Act compliance?

24 A I don't know if the amount of these bonds represent an
25 annual cost or if it was to represent more than an annual cost,

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1 that I do not know.

2 Q Okay. Well maybe we can establish that through another
3 witness. But, would you agree with me that the bonds total
4 about \$4.7 million?

5 A Yes.

6 Q And there is then an annual premium that is paid with
7 regard to the Coal Act of about \$147,000, is that right?

8 A It's about a little under 12,000 a month that the company
9 is currently paying in regards to the Coal Act.

10 Q Okay. So if -- assume for the moment that we have
11 evidence later that these bonds represent an annual cost, the
12 total all-in costs to the company for Coal Act compliance going
13 forward is in the range of 4.7 or eight million dollars?

14 A Again, I'm not -- are you saying the total liability
15 period?

16 Q I'm asking if we can quantify what the annual Coal Act
17 compliance would be -- would cost going forward from these
18 bonds and from your knowledge of the premium cost?

19 A I'm not sure I can because again, I'm not sure if the 4.6
20 million represents an annual number or not.

21 Q Okay. And that would be the only question in your mind on
22 this point, right?

23 A Yes.

24 Q Now, can you turn back to Exhibit 2, your summary of the
25 assumed liabilities? Just a couple of quick points on these.

1 The first one, the cure costs, those are costs with regard to
2 contracts that the buyer wants, right?

3 A It's contracts that we believe the buyer should want in
4 regards to the operation of the business. They still have the
5 ability. The buyer has to make that decision of which
6 contracts they're going to have assumed and assigned. This was
7 our assumption of --

8 Q Okay.

9 A -- which contracts they would take.

10 Q If they don't take any of them do they have these cure
11 costs?

12 A If they don't take any of them they would not have those
13 cure costs.

14 Q All right. So it's up to them. They'll have the cure
15 costs for those contracts that they think are beneficial to
16 them, right?

17 A That's correct.

18 Q The trade accounts payable, I think you said relate to
19 value that's been given by the trade to the assets that they
20 are buying, but not yet paid for during the course of this
21 case, right?

22 A I'm not sure if that's what I said. What it represents is
23 these are vendors that have provided service or goods to the
24 company to which the company has not yet paid those bills.

25 Q And the services have been provided to that aspect of the

1 company that's being purchased?

2 A Correct.

3 Q On the reclamation obligations, those have to be paid in
4 order to get the permits that the buyer needs to operate the
5 business, is that right?

6 A They're not necessarily costs that are going to have to be
7 paid to get the permits. These would be just ultimately if
8 you're going to have the permits you have to be able to provide
9 for a plan --

10 Q I see.

11 A -- to ultimately reclaim the operation when its operation
12 has ceased or when there is appropriate actions to be taken --

13 Q So the logic of the --

14 A -- so it's not going to be due day one.

15 Q I didn't mean to cut you off. The logic of assuming the
16 obligation that may occur in the future is that you need to do
17 that to get the permits that you need to operate the business,
18 right?

19 A Again, I just -- I believe it's -- I guess you could say
20 it's part and parcel of having the permits that you have this
21 obligation.

22 Q Now there are also a number of items you identified on the
23 chart that they may not have to pay if somebody buys other
24 assets, correct?

25 A Correct.

1 Q That includes the first two items under assumed
2 liabilities non-core assets, correct?

3 A If there is another buyer for those they may not have to
4 pay those.

5 Q And it also includes the Walter Coke trust item further
6 down, right?

7 A Correct.

8 Q Which of the items on this chart would involve the
9 imposition of personal liability on officers or directors if
10 they were not paid?

11 A I'm not a lawyer. I can tell you my general understanding
12 is that it is the tax liabilities and potentially the black
13 lung liabilities.

14 MR. WILLETT: Thank you, Mr. Mesterharm.

15 CROSS EXAMINATION

16 BY MS. LEVINE:

17 Q Good afternoon.

18 A Good afternoon.

19 Q Just a couple of questions. The sources and uses of cash
20 we were discussing earlier, that wasn't attached to a
21 certification from you, was it?

22 A Pardon?

23 Q That was not attached to a certification from you, was it?

24 A No, it was not.

25 Q Okay. The sources that were outlined in that statement

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1 include financing, correct?

2 A They included a source of funds for my financing, yes.

3 Q And as we sit here today you don't have a commitment
4 letter for that financing, correct, or you haven't seen a
5 commitment letter for that financing, correct?

6 A No, I have not.

7 Q And you haven't seen loan documents that evidence that
8 that financing is in place, correct?

9 A No, I have not.

10 Q And the sources and uses of cash that was submitted to the
11 Court was not submitted to the Court attached to a declaration
12 or a certification from the lenders promising that the
13 financing would be in place, correct?

14 A I'm not sure how it was -- what it was attached to. I
15 just know that it was filed and I saw it.

16 MS. LEVINE: No further questions. Thanks.

17 THE COURT: Thank you.

18 MR. BARRETT: Your Honor, I have to keep it under
19 five.

20 CROSS EXAMINATION

21 BY MR. BARRETT:

22 Q Mr. Mesterharm, just want to clarify, does the -- and I'm
23 focused on the net reclamation obligations under the assumed
24 liabilities and only those. That does include water treatment
25 liabilities as well?

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1 A The estimates we put in there, yes.

2 Q Okay. And those are shown net of bonds. Do you know --
3 have a sense of what the total amount of the reclamation
4 obligations is?

5 A Are you referring to West Virginia?

6 Q Yes.

7 A I believe the shortfall related to West Virginia was in
8 the ballpark of ten of the 14 million and I believe that there
9 was something like 11 million of bonds associated with West
10 Virginia, so I would assume then the gross amount related to
11 West Virginia was in the low twenties.

12 Q Okay. You said that if there is no funding whatsoever
13 provided by the surety bond issuers that the stalking horse
14 purchaser had agreed to pay all of those reclamation
15 obligations, is that correct?

16 A I think if we -- do you mind if I reference the APA
17 section?

18 Q No, that's fine.

19 A So in 2.3(m), which I believe was Tab 5, my read of this,
20 you know, it says all liabilities of the sellers for
21 reclamation and if applicable post-mining and post-gas well
22 operation liabilities set forth in Schedule 2.3(m), to the
23 extent that such liabilities are not funded by the issuers of
24 sellers surety bonds, unless such liabilities are assumed by
25 any successful bidder. I'm not going to read all of it, but my

1 reading -- my interpretation of that is if it's not funded by
2 the surety bonds they're taking it.

3 Q And I think you've answered my next question, which is
4 that is -- is that based solely on your reading of this
5 agreement?

6 A It is.

7 Q Okay. Had no other discussions with anyone else about the
8 terms of that agreement?

9 A I mean, I was involved in the negotiation of it with
10 counsel and the other side.

11 Q Okay. So based upon your involvement in those
12 negotiations it is your understanding that they agreed to pay
13 them -- pay the full amount of the reclamation obligations if
14 the surety bond issuers do not fund?

15 A They agreed to cover anything that the surety bond issuer
16 -- anything above the surety bond.

17 MR. BARRETT: Okay. I have no further questions,
18 Your Honor.

19 THE COURT: Thank you. Any other cross examination
20 of this witness?

21 MR. FINGERHOOD: Your Honor, with the Court's
22 indulgence, because we are close to trying to resolve the EPA
23 objection, could we defer our cross examination until after the
24 lunch break? I think, you know, keeping our fingers crossed we
25 may be able to work things out.

1 THE COURT: Mr. Arffa?

2 MR. ARFFA: That's fine with us.

3 THE COURT: Okay. Thank you.

4 MR. FINGERHOOD: Thank you.

5 THE COURT: Any redirect?

6 MR. ARFFA: No, Your Honor.

7 UNIDENTIFIED ATTORNEY: No, Your Honor.

8 THE COURT: Thank you. You may step down, Mr.
9 Mesterharm.

10 THE WITNESS: Thank you.

11 THE COURT: All right, Mr. Darby, you all have any
12 additional witnesses?

13 MR. DARBY: No, Your Honor.

14 THE COURT: Anybody on the objecting side anticipate
15 the calling of any witnesses?

16 MR. WILLETT: Your Honor, we understood Mr. Brimmage
17 was going to call a witness.

18 THE COURT: Oh, maybe so. I'm sorry, I forgot to ask
19 him sitting over there in the corner. Mr. Brimmage, I'm
20 assuming maybe Mr. Williams is going to testify?

21 MR. BRIMMAGE: Yes, Your Honor, exactly.

22 THE COURT: Okay. Is that -- will that be the only
23 witness?

24 MR. BRIMMAGE: That will be the only witness. I
25 think there was a deposition of Mr. Callan (phonetic), who's

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1 with Lazard, yesterday, and I think we're working on an
2 agreement to submit designations to you, and I think we'll have
3 that after lunch, but it will not be a live witness.

4 THE COURT: Okay. Do you all want to disclose at
5 this point whether or not you anticipate any witnesses?

6 MR. WILLETT: Oh, we absolutely want to disclose that
7 we don't.

8 (Laughter)

9 THE COURT: Okay. Thank you. Then, Mr. Brimmage, do
10 you want to take a lunch break now, and we'll call Mr. Williams
11 after lunch?

12 MR. BRIMMAGE: Yes, Your Honor, I would.

13 THE COURT: For my convenience I have my lunch, so
14 you all tell me how much time you want. There are a big group
15 of you and we have limited places, Mr. Darby?

16 MR. DARBY: One hour, I think, Your Honor.

17 THE COURT: All right. Then we'll be back at 1:30.
18 Mr. Watson, thank you for talking to those people.

19 (Recess)

20 THE COURT: Okay. Mr. Brimmage?

21 MR. BRIMMAGE: Yes, Your Honor. We'd like to call
22 Doug Williams to the stand please.

23 THE COURT: Okay.

24 STEVEN D. WILLIAMS, WITNESS FOR THE STEERING COMMITTEE, SWORN

25 COURT CLERK: State your name and address for the

1 record.

2 THE WITNESS: Steven Douglas Williams, 104 Old
3 Carriage Lane, Daniels, West Virginia.

4 MR. BRIMMAGE: Your Honor, just as a matter of
5 housekeeping first, yesterday a declaration was filed of Mr.
6 Williams that we would like admitted into evidence. We've got
7 copies here if the Court would like to do that or the Court can
8 take judicial notice of what was filed.

9 THE COURT: Anybody have any objection to the
10 declaration that was actually filed into the ECF System
11 yesterday being designated as a part of the record?

12 UNIDENTIFIED ATTORNEY: No objection. We just need a
13 copy of it, Your Honor.

14 MR. BRIMMAGE: Absolutely. And Your Honor, that was
15 Docket Number 1553.

16 THE COURT: Okay. Then we'll note it. I don't need
17 a copy. I've got one here, Mr. Brimmage. Thank you.

18 MR. BRIMMAGE: Thank you, Your Honor. We've got
19 copies if anybody wants them.

20 THE COURT: Okay. If anybody else needs one, let Mr.
21 Brimmage know.

22 DIRECT EXAMINATION

23 BY MR. BRIMMAGE:

24 Q Good afternoon, Mr. Williams, how are you doing?

25 A I'm doing well.

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1 Q Good and you've stated your full name for the Court I
2 think.

3 A I have.

4 Q All right. I want to just in a couple of questions go
5 over your background. The Court has seen and heard from you
6 before.

7 MR. BRIMMAGE: And we did an extensive background on
8 Mr. Williams before, Your Honor, so we'll just touch some
9 highlights and move on and incorporate the record from last
10 time.

11 Q Can you remind the Court what your position is with Coal
12 Acquisition?

13 A I'm the chief executive officer.

14 Q And how many years of experience do you have in the coal
15 industry?

16 A Oh, 30 plus.

17 Q Can you just run through the types of -- I mean the
18 positions that you've held, the roles that you've played?

19 A Sure. Anything from -- I'm a graduate in mining engineer.
20 So I started in the engineering department but shortly
21 thereafter went into all different types of management roles
22 from front line supervisor to mine superintendent and beyond up
23 until -- I've had a couple more executive roles in the recent
24 years, chief operating officer. Most recently chief executive
25 officer of a small coal company in West Virginia.

1 Q Okay. And you recall the declaration that you signed and
2 was filed yesterday, correct?

3 A I do.

4 Q And now it's been admitted into evidence. You heard that
5 just a few seconds ago?

6 A I heard it, yes.

7 Q I don't want to go over in detail what is in your
8 declaration because everybody can read it, but I do want to hit
9 a couple of main points, does that sound okay?

10 A Fine.

11 Q All right. You reviewed -- well, they're cited in
12 declaration, a bunch of documents, right?

13 A Correct.

14 Q Did you review those documents in preparing your
15 declaration?

16 A I did.

17 Q Okay. And did you come to a conclusion regarding the
18 officers and directors of Coal Acquisition compared to those of
19 the debtors in your review of all those documents?

20 A I did.

21 Q Can you tell us what that is?

22 A There are -- there's no overlap between the two.
23 Actually, there's no directors to my knowledge that the Coal
24 Acquisition of -- and the directors of the debtors are -- named
25 them, I'm not familiar with them.

1 Q Okay. Are any of the members of Coal Acquisition in any
2 way related to the debtors?

3 A Not that I'm aware of, no.

4 Q Did you come to any conclusions when you compared
5 shareholders between Coal Acquisition or members of Coal
6 Acquisition and the debtors, other than what we've just said?

7 A Again, I didn't see any overlap.

8 Q Okay. Did you -- you have become familiar with the
9 operations of a little bit of the debtors, correct?

10 A That's correct.

11 Q Because you've been observing and consulting with various
12 people that report to the debtors, right?

13 A Since late July, yes.

14 Q Okay. And is it fair to say -- well, does Coal
15 Acquisition look to do things exactly the same way that the
16 debtors are doing?

17 A No.

18 Q Okay. Can you just briefly describe whether or not you
19 want to do things differently?

20 A Well, I think we will tend to operate a little leaner and
21 meaner than they -- what my experiences with them. Now, we
22 will certainly operate less things. In other words, we will
23 not operate West Virginia. We won't worry about Canada. Our
24 focus will be in the old JWR operations located in Brookwood,
25 Alabama.

1 Q All right. The last time you were in court, I believe,
2 was on December the 15th. Do you recall that?

3 A I do.

4 Q And you testified it was related to the 1113-1114 motion,
5 is that right?

6 A I'll take your word for it.

7 Q Okay.

8 A I know I testified.

9 Q Okay. I would like to just briefly talk to you -- were
10 you in the court when I gave my opening statement to the Court?

11 A I was.

12 Q All right. I'd briefly like to talk to you about what has
13 happened since you left here on the 15th with regard to
14 negotiations on a collective bargaining agreement.

15 A Okay.

16 Q Okay?

17 A Yep.

18 Q You left here on the 15th. There was a meeting scheduled
19 for the 18th. Did that occur?

20 A That did occur.

21 UNIDENTIFIED ATTORNEY: Your Honor, we've been
22 letting a lot of leading go here. But I think the witness
23 should --

24 THE COURT: I'm sorry?

25 UNIDENTIFIED ATTORNEY: The witness is being led here

1 and he really shouldn't be on this.

2 THE COURT: I appreciate the heads up, but what I
3 will do is ask that the witness delay in answering each
4 question. Mr. Brimmage ask your question. If you'll give a
5 couple of seconds, Mr. Williams, and if you have an objection
6 if you will then formulate your objection as to each question,
7 I'll deal with each one specifically.

8 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

9 Q Mr. Williams, do you recall when you were here last on the
10 15th that there was a meeting scheduled for the 18th between
11 Coal Acquisition and the Union, UMWA?

12 A Yes, there was.

13 Q And did that meeting occur?

14 A Yes, it did.

15 Q Can you just briefly describe for the Court what happened
16 at that meeting?

17 A Well, it was not unlike previous meetings we've had with
18 the Union. We met our negotiating team, I guess which is me
19 and several others, met with their negotiating team, at least
20 four people, I think four people from their team. We met in
21 our counsel's office in Washington D.C. on Friday the 18th.
22 And it was a pretty lengthy day. It was -- I think we met at
23 ten o'clock and I think we were done around 5:15 in the
24 evening.

25 Q On the 15th, do you recall your testimony to the Court

1 regarding a health care plan?

2 A Yes, I do.

3 Q Do you recall what you told the Court regarding what you
4 hoped might happen by the 18th?

5 A I think my testimony was that we had hoped to proffer a
6 health care plan for their consideration by the 18th. I wasn't
7 sure at that point, but we were hopeful that would happen.

8 Q And what happened on the 18th with regard to that, if
9 anything?

10 A We were able to finalize that part of our proposal and we
11 actually handed them a kind of I guess a summary document of
12 our healthcare proposal.

13 Q Please describe for the Court generally what has happened
14 since the 18th to today regarding meetings, discussions between
15 you and the UMWA and representatives of Coal Acquisition and
16 the UMWA. I don't want to walk through every single thing. I
17 just want the Court to get a feel and an understanding for
18 generally what has been happening.

19 A Sure. Since the 18th?

20 Q Yes, please.

21 A Well, the next week was Christmas week. We did not meet
22 Christmas week. However, I'm aware that the Union's counsel
23 and our counsel had multiple telephone conversations based on
24 kind of where we left it on the 18th. And then the following
25 week, the week of New Years, I think it was the 29th and 30th,

1 we again met with their negotiating team or most of their
2 negotiation team in our counsel's office in New York City.

3 I had kind of an off the record conversation with
4 what I refer to the local guys that are on the Union's
5 negotiating committee here in Alabama Monday evening. Seen
6 them out in the hall and talked to them a little bit today
7 actually. But that's -- and I know there's been a lot of
8 conversations between counsel that I've not been involved in
9 but I've been made aware that those are going on.

10 Q Okay. And I want to get the status of the proposals.
11 It's my understanding, but you correct me if this is wrong,
12 that the Union submitted a proposal or counter-proposal -- I'm
13 not sure what the right term is -- sometime yesterday, is that
14 right?

15 A That's correct.

16 Q And did you have a chance to review it?

17 A We did.

18 Q And what was your response to it and when did you respond?

19 A Well, the --

20 Q Not the substance of it, but just --

21 A Okay. Well, the response was --

22 Q What did you do?

23 A -- we took their proposals and either countered or
24 accepted or maybe not accepted, but we ended up with a document
25 which I would call a counter-proposal to their proposal of

1 yesterday and sent that to their attorney.

2 Q And when was that sent?

3 A This morning.

4 Q Okay. How would you describe the tenor of the
5 negotiations and the discussions, the meetings, the phone calls
6 since December the 15th?

7 A I think my previous testimony was that they were
8 productive or have been productive. And I still believe they
9 are very productive. You know we haven't gotten an agreement
10 yet, but I can see where we can get that agreement. So I'm
11 very hopeful, assuming that we keep doing what we have been
12 doing in the past.

13 Q Do you have an intention to continue doing what you've
14 been doing?

15 A Absolutely.

16 Q I want to talk to you briefly about the operational plan
17 and the status of that with Coal Acquisition. You were deposed
18 yesterday, correct?

19 A I was.

20 Q And were you asked some questions about the operational
21 plans and the status of all that in your deposition?

22 A I was.

23 Q Okay. Let's go over that, if we could, some of the stuff
24 that came out yesterday. Can you please tell the Court what
25 the status is of putting together operational plans and

1 business plans?

2 A Well, the status is we have not finalized a business plan,
3 but we are working diligently to come up with that plan. We
4 have some ideas of what we want to do, but we have not
5 finalized it. And part of the issue is we have -- or I have
6 spent a lot of time on the Union negotiations. And that's
7 really a big piece of what that operating plan will look like.
8 So we're trying to tie that -- in my view, it's the most
9 important of that operation plan. So we're trying to tie that
10 down first. Then I think shortly thereafter, we can better
11 refine the operating plan I guess is the best way I can --

12 Q Can you tell the Court why that's a really important piece
13 according to you, the collective bargaining agreement?

14 A Well, the operating plan is really a financial model.
15 Labor and labor costs are certainly a big driver of what your
16 ultimate cost and viability is. So we have to know that these
17 -- to factor into the model so we can determine how we want to
18 -- what to operate.

19 Q Okay. Yesterday, there was a lot of discussion regarding
20 Mines 4 and 7 and your thoughts regarding the operations at
21 those mines, do you recall that?

22 A I do.

23 Q I'd like to walk through that or have you walk through
24 that with the Court so that the Court understands kind of what
25 your current thinking is. Does that sound okay?

1 A Sure.

2 Q And then I also want to -- have you shared with the Union
3 what your current thinking is regarding operations?

4 A Yeah, I think I have. Actually, that came up in New York
5 I think really for the first time, they just point blank asked
6 me, you know, what's my current thought on the operation.

7 Q All right. Let's talk about your current thought on the
8 operations.

9 A Sure.

10 Q If you would, I'm just going to kind of let you -- I'll
11 guide you a little bit, but kind of free wheel with the Court,
12 please tell the Court what your current thoughts are on
13 operations with the mines.

14 A Okay. We are very confident that we will operate what is
15 referred to as the 7 East Mine where it's really the east side
16 of the Number 7 mine. We feel good about that. We're pretty
17 confident that we will not run the 7 West or the west side of
18 the Number 7 mine. And really I think the big issue today as
19 we sit here is what do we do about Mine Number 4? And we are
20 somewhere between keeping the mine on idle status to full
21 production. And we just don't know that answer yet.

22 Q Okay. What are some of the factors that will go into that
23 answer?

24 A Labor costs, the market, you know what the benchmark price
25 will be or what we anticipate it to be. Those are the two big

1 things. Productivity of the mine, the geology of the mine,
2 there's a lot of things that go into that.

3 Q Okay. If the Court approves the sale motion and if the
4 sale is consummated, and if your current thinking regarding
5 operating the mine stays where it is, can you tell the Court
6 what level of employees that you would be looking at to operate
7 along the lines that you're currently thinking?

8 A I can tell you a range.

9 Q That's fine.

10 A I think if we only run the 7 East side of the mine, total
11 employment's going to be in the 500 range give or take 15, 20
12 guys or girls. If we operate 4, I think we're going to be more
13 in the range of up to 800 people total. 4 could be something
14 less, but you know if we ran 4 full out, we could push 400
15 people there maybe. So it's somewhere between like 50 or 60 to
16 400 for 4. So you know five to 800 right now would be my
17 range.

18 Q Okay. Thank you, Mr. Williams.

19 MR. BRIMMAGE: Your Honor, that's all the questions I
20 have right now.

21 THE COURT: Thank you. Mr. Arffa, anybody in your
22 group have questions?

23 MR. ARFFA: No, Your Honor.

24 THE COURT: Thank you.

25 MR. BARRETT: Good afternoon, Your Honor.

1 THE COURT: Good afternoon.

2 CROSS EXAMINATION

3 BY MR. WILLETT:

4 Q Good afternoon, sir.

5 A Good afternoon.

6 Q I only have a couple of questions for you. You are the
7 CEO of the acquisition vehicle here, Coal Acquisition, right?

8 A That's correct.

9 Q Now to be an effective CEO, you're going to have to be
10 here in Alabama, right?

11 A I believe to be effective, you will, yes.

12 Q You have to be onsite?

13 A Yes.

14 Q You live in West Virginia?

15 A That's correct.

16 Q With your family?

17 A That's correct.

18 Q You have not moved, you or your family, to Alabama yet,
19 right?

20 A That's right.

21 Q You haven't found a house or personal arrangements for you
22 and your family to live here?

23 A That's correct.

24 Q So that's all things that'll have to be done in your
25 personal life before we're ready to close this deal, is that

1 right?

2 A No, not necessarily. I mean you know I have a son in
3 school, so my guess is I won't deal with that until the
4 summertime. But I'm certainly not going to deal with it until
5 we have an operation to close on. I don't think my wife would
6 appreciate me coming down here not knowing if there's an
7 operation that I'm going to be the head of. So there's a
8 little more time involved than that.

9 Q Right. It's just -- I understand that. The question is
10 really -- there's been some discussion during the day about how
11 long it's going to take to get between a sale order and a
12 closing.

13 A Yes.

14 Q So one of the things that has to happen between those two
15 things is you have to make personal arrangements for your
16 family, right?

17 A I don't think in that time period I have to do that. What
18 I'm saying is I wouldn't do that given my wife's a school
19 teacher, my son's in school. So I would probably keep them
20 right where they are until the summertime and then deal with
21 that.

22 Q All right. You don't yet have an employment agreement, is
23 that right?

24 A That's correct.

25 Q So one of the things you'll have to accomplish before you

1 are ready for the closing to happen is for there to be an
2 employment agreement for yourself, right?

3 A Well, I think I could expect one. But I don't necessarily
4 believe it has to happen before closing. But I would expect
5 one eventually, yes.

6 Q You haven't started to negotiate that yet, is that right?

7 A My negotiations have been with the Union only, not with
8 the owners of Coal Acquisition.

9 Q And you have right along the way been targeting a closing
10 of February 29th, I think you told us yesterday, is that right?

11 A That's what I understand --

12 Q Okay.

13 A -- would be the goal.

14 Q During your association with this project, you have seen
15 various iterations of a business plan, right?

16 A Yes.

17 Q And I think you just told us it's not complete yet, there
18 are still many variables to do with what that business plan
19 will be?

20 A That's correct.

21 Q But you have never seen any version of the business plan
22 that contemplated putting concrete down the mines to shut them,
23 have you?

24 A Never, no.

25 Q Thank you, sir.

1 CROSS EXAMINATION

2 BY MS. LEVINE:

3 Q Good afternoon, Mr. Williams.

4 A Good afternoon. In the negotiations that you were
5 discussing with the Union, who do you consult with on your side
6 with regard to what goes into a counter-proposal to the Union?7 A It would depend, but primarily it would be my labor
8 counsel and a member from Lazard. That's kind of our
9 negotiating team. If it's something that we would seek
10 authority to do or to change the authority we have, then we
11 would stick to the Steering Committee.

12 Q And labor counsel is Akin?

13 A That's correct.

14 Q Who on the Steering Committee do you speak with?

15 A There's lots of people. I don't know all their names.

16 Q Which particular funds do you primarily interact with?

17 A All of them.

18 Q Do you speak to them directly or does that happen through
19 Lazard and Akin?20 A Well, I have spoken to them directly. Normally, we're all
21 -- Lazard, Akin, and the Steering Committee are on the phone at
22 the same time.

23 Q Coal Acquisition, do you know who's on your board yet?

24 A I think I testified earlier that I don't think there is a
25 board. No, I do not.

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1 Q With regard to the closing of Coal Acquisition, have you
2 seen any financing commitment yet from the Steering Committee?

3 A I've heard it discussed. Are you saying, have I seen a
4 document?

5 Q Correct. There -- one of the -- there'd be a like a
6 letter of intent or a financing commitment or a term sheet.
7 Have you seen any of those documents?

8 A I have not.

9 Q Have you seen loan documents for closing financing?

10 A I have not.

11 Q Do you believe there could be a closing without financing
12 in place?

13 A I believe we have to have financing in place to do what
14 we're committing to do.

15 MS. LEVINE: No further questions, Your Honor.

16 THE COURT: Thank you.

17 MR. BARRETT: Your Honor, Kevin Barrett again for the
18 record.

19 CROSS EXAMINATION

20 BY MR. BARRETT:

21 Q Mr. Williams, you and I have never met before, correct?

22 A I don't believe we have.

23 Q But you know my firm very well I understand.

24 A I didn't hear your firm.

25 Q Bailey Glasser.

1 A I do know them very well, yes.

2 Q And in fact, just -- I want to get it out on the record,
3 Bailey and Glasser has represented Mechel Bluestone of which
4 you were an officer, correct?

5 A That is correct.

6 Q And that representation was in connection with litigation
7 with Jim Justice, is that correct?

8 A That's correct.

9 Q And that litigation is complete at this point, is that
10 correct?

11 A I hope so, yes.

12 Q Many people in West Virginia do, as well. And just to
13 complete that thought, Mechel Bluestone was actually sold back
14 to Mr. Justice, isn't that correct?

15 A That's correct.

16 Q And that ended your relationship with Mechel Bluestone?

17 A That's correct.

18 Q Okay. You indicated that Coal Acquisition is not going to
19 operate in West Virginia. And I understand that. Is it your
20 understanding however that Coal Acquisition is assuming the
21 reclamation obligations at the two West Virginia sites?

22 A That's my understanding.

23 Q And is it your understanding that that assumption is
24 independent of whether the surety bond issuers fund that
25 reclamation?

1 A I heard that testimony earlier today. I don't think I
2 knew that so that was kind of news to me I guess.

3 Q Is that inconsistent with what your understanding is?

4 A No. I think Coal Acquisition has made a commitment to the
5 State of West Virginia is what I think. And if they don't get
6 cooperation from the bondholders, I think they are -- sounds
7 like they're stepping up to the plate is how I take it.

8 Q Do you have any understanding as to whether or not Coal
9 Acquisition will pay for those reclamation obligations or
10 perform them?

11 A I don't know for sure. But I think in West Virginia, it
12 would be more of a pay for as opposed to the reclamation
13 obligations here in Alabama where they could oversee and maybe
14 perform.

15 Q And that's largely because you don't have the equipment
16 and personnel and so on up in West Virginia in order to do that
17 kind of work?

18 A I really don't know --

19 Q Okay.

20 A -- because I've not looked at those operations.

21 Q Okay. You understand the way surety bonds work, I take
22 it, correct?

23 A I wouldn't claim to be an expert, but I understand the
24 concept.

25 Q They're fundamental in connection with any coal mining

1 operation, isn't that correct?

2 A You have to have them to have a permit, yes.

3 Q Okay. And to whom are those surety bonds issued for the
4 benefit of?

5 A In this case or in general?

6 Q In general.

7 A I don't know that I can answer that question.

8 Q Well --

9 A They're issued in case you cannot perform the obligations
10 of reclamation. But who are they to the benefit of, I don't
11 know if its to the State or to the bondholder or the permit
12 holder.

13 Q Okay. Do you have any understanding as to how -- strike
14 that. do you have any understanding as to whether or not there
15 is an agreement in place with the surety bond issuers to
16 provide funding for the reclamation in West Virginia?

17 A I don't know that.

18 Q Have you had any discussions with any of the surety bond
19 issuers about providing funding for the reclamation in West
20 Virginia?

21 A I have not.

22 Q Okay. Do you have any understanding as to how or what
23 mechanism by which the surety bond issuers would finance the
24 reclamation in West Virginia?

25 A Other than there has to be some kind of forfeiture of the

1 bond and beyond that, I don't know. Fortunately, I've never
2 had a bond forfeiture, so I don't know how that exactly works.

3 Q We wish we could say the same thing. In the case of a
4 bond forfeiture, how does a bond forfeit, to your
5 understanding?

6 A You know if a company just is here today and gone tomorrow
7 and walks off of the property, again, I don't know how that
8 happens, I don't know if that's a State instigated thing or
9 not, but basically there's no work being done and you have all
10 this unreclaimed property and somehow gets forfeited, and
11 hopefully the property gets reclaimed.

12 Q But in essence, it is a coal mine operator who defaults in
13 the performance of its reclamation obligations. And that is
14 what ends up causing the bond forfeiture, isn't that --

15 A I think that's a fair statement.

16 MR. BARRETT: Okay. Your Honor, I have no further
17 questions.

18 THE COURT: Thank you. Any other cross examination?
19

20 (No audible response)

21 THE COURT: Any redirect?

22 MR. BRIMMAGE: No, Your Honor. Nothing from us.

23 THE COURT: Thank you, Mr. Williams, you may step
24 down.

25 THE WITNESS: Thank you.

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1 MR. BRIMMAGE: Your Honor, may I ask, Mr. Williams
2 has a flight this afternoon. He can stay in the court if the
3 Court would like. But if not, maybe he could please be
4 excused?

5 THE COURT: Does anybody anticipate any further need
6 for Mr. Williams this afternoon?

7 UNIDENTIFIED ATTORNEY: No, Your Honor.

8 THE COURT: I think he's excused.

9 MR. BRIMMAGE: Thank you, Your Honor.

10 THE COURT: Thank you.

11 MR. BRIMMAGE: Thank you, Mr. Williams.

12 THE COURT: Mr. Darby, Mr. Arffa, Mr. Brimmage,
13 anything else from the movants or the proponents of the motion?

14 MR. DARBY: No, Your Honor. We rely on the evidence
15 and the record presented to the Court.

16 THE COURT: Do I understand there are not going to be
17 any witnesses called on behalf of any of the objecting parties?

18 (No audible response)

19 THE COURT: Mr. Brimmage?

20 MR. BRIMMAGE: Your Honor, as a matter of evidentiary
21 procedure, I'm not sure how you want to deal with this. They
22 took the deposition of -- you're going to deal with it? Never
23 mind, Your Honor, we have no further witnesses.

24 THE COURT: Thank you.

25 MR. WILLETT: Thank you, Your Honor, Sabin Willett

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1 again for the Funds. We have two evidentiary pieces that don't
2 involve a witness. The first is to call your attention to --
3 to your attention a declaration that's in the record. It's the
4 Stover Declaration, 1189-1, file --

5 THE COURT: 1189?

6 MR. WILLETT: Yes.

7 THE COURT: Okay.

8 MR. WILLETT: Yes, Your Honor. Filed December 9th at
9 Paragraph 11. This is on the point that Mr. Mesterharm was
10 clear about, about did the bonds cover a year. At Paragraph 11
11 --

12 THE COURT: Mr. Mesterharm?

13 MR. WILLETT: Yes, Your Honor.

14 THE COURT: Okay.

15 MR. WILLETT: You may recall there was some
16 questioning about Exhibits 6 and 7 and whether they properly
17 estimated a year's cost of Coal Act compliance. Mr. Stover did
18 declare under oath in testimony that is undisputed as far as
19 I'm aware that those two bonds that were offered in evidence do
20 represent an estimate of a year's compliance with the IEP piece
21 of the obligation. And that totals in rough numbers, \$4.5
22 million. There is then the additional piece that Mr.
23 Mesterharm testified to of the premium which is approximately
24 \$147,000. So we think that declaration provides you with that
25 evidence, what this Coal Act compliance would likely cost each

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1 year.

2 The second thing is the one that Mr. Brimmage was
3 alluding to. And that is that at least with regard to the
4 parties that he represents, I hope the debtors are in agreement
5 as well, we have counter-designated portions of the deposition
6 testimony of Mr. Tyler Cowan of Lazard who was deposed
7 yesterday. And I would offer that as funds Exhibit 1 to this
8 hearing now.

9 THE COURT: Any objection from the debtor?

10 MR. ARFFA: We have no objection.

11 THE COURT: Ms. Levine, any objection?

12 MS. LEVINE: No, Your Honor, we actually coordinated
13 with the funds and understand that our designations are part of
14 those designations.

15 THE COURT: Thank you. Anyone else? Yes? Anything
16 else?

17 MR. WILLETT: I'm sorry, Your Honor, I need to
18 clarify something for Mr. Brimmage.

19 THE COURT: What would we do without our staff,
20 whoever they might be.

21 MR. WILLETT: What you're being handed in that Cowan
22 Exhibit has highlights in it. The highlights represent both
23 the designations by the funds and the counter-designations by
24 Mr. Brimmage's firm.

25 THE COURT: So I don't know who designated which,

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1 it's just --

2 MR. WILLETT: It's just all in.

3 THE COURT: So the highlighted portions are the parts
4 that somebody wants me to read or that multiple of you want me
5 to read?

6 MR. WILLETT: That we both agree you may read as
7 evidence, yes.

8 THE COURT: Okay.

9 MR. WILLETT: That's right.

10 THE COURT: And it's in its entirety, it's not that
11 long, it does not appear -- I assume this is not the entire
12 deposition. It looks like it is only certain selected pages.

13 MR. WILLETT: That's correct, Your Honor.

14 THE COURT: Okay.

15 MR. WILLETT: The other thing was, evidently I
16 misspoke about the Stover Declaration. The Docket Number is
17 1198-1 not 1189.

18 THE COURT: Okay. Thank you.

19 MR. WILLETT: Thank you, Your Honor.

20 THE COURT: I'm assuming that was one of the
21 declarations that was offered prior to the December 15th and
22 16th hearings?

23 (No audible response)

24 THE COURT: Okay. No other testimony or evidence?

25 MR. WILLETT: There's no other evidence from our

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1 client, Your Honor.

2 THE COURT: Okay. So Mr. Darby, I guess everybody
3 wants to now do whatever summaries they want?

4 MR. DARBY: I don't know, Your Honor. I'll be very
5 brief. We intend to rely on our papers. We think --

6 THE COURT: Can I --

7 MR. DARBY: Yes.

8 THE COURT: Before you start, can I ask -- since this
9 is being handed up to me and obviously I'm not a speed reader,
10 although I do try to read everything, is there any portion of
11 this in particular that would be helpful to me or that any of
12 you want to necessarily summarize for me before I hear the
13 closing arguments? I mean you all sat through the deposition
14 yesterday and you heard it from beginning to end. I did have
15 an opportunity to briefly review a notebook that was provided
16 by debtor's counsel. Somebody obviously put in some long hard
17 hours before you all got here this morning to provide me -- I'm
18 assuming they have the same notebook, Mr. Darby, that is a
19 summary of the prior record that provides all sorts of quotes
20 and then it actually provides the backup documentation. So I'm
21 assuming you all had seen that notebook as well?

22 (No audible response)

23 THE COURT: No?

24 MR. WILLETT: We have them here, Your Honor.

25 UNIDENTIFIED ATTORNEY: We've been here all day.

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1 THE COURT: Okay.

2 MR. WILLETT: It's all stuff that's in the record.

3 THE COURT: Trust me, for those of you who sat
4 through the 12/15 and the 12/16 hearing, there are no
5 surprises. So it's pretty much a summary of what we all heard
6 during those two painstaking days. But I'm just curious as to
7 whether or not there any portions of this that you all
8 particularly want me to know about before I hear whatever
9 closings you may have. Here are the notebooks if you all want
10 them.

11 MR. WILLETT: Your Honor, speaking for the Fund, the
12 portions that we designated went to three points as I
13 understand it. And on each of those points, I believe there's
14 been other evidence in the hearing. One point was that the
15 Lazard obviously had been involved with the preparation of lots
16 of models. There has never been a model, a financial model,
17 prepared that would contemplate the pour the concrete down the
18 mines scenario.

19 I'm going to need a little help, I'm sorry, because I
20 wasn't in that deposition myself.

21 THE COURT: Okay.

22 MR. WILLETT: I'm sorry. The other two points you've
23 heard about, one was that they didn't have an ADL facility
24 committed yet.

25 THE COURT: They didn't have?

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1 MR. WILLETT: They didn't have financing committed
2 yet.

3 THE COURT: Okay.

4 MR. WILLETT: And a second was that they expect not
5 to be able to close until the end of February.

6 THE COURT: Which I think is consistent with
7 testimony that we heard at the December 15th, December 16th
8 hearing. For some reason, before we ever walked in here today,
9 I remembered somebody talking about at that prior hearing that
10 the anticipated closing was late February if there was a
11 closing. That was my recollection. I could go back to my
12 notes which are unfortunately not in here, but that is the
13 recollection I had. So that part is consistent. Do you
14 remember something different, Mr. Goodchild?

15 MR. GOODCHILD: Your Honor, I have only a very slight
16 difference in my recollection. My recollection is that at the
17 hearing on the 15th and 16th, the testimony was that they
18 expected to -- the projected closing was near the end of
19 February. I think the nuance is the testimony for today's
20 hearing is establishing that they expect that they will not be
21 able to close before the end of February.

22 THE COURT: Slight variation, but similar?

23 MR. GOODCHILD: Thank you, Your Honor.

24 THE COURT: Thank you. Anything else, Mr. Willett?

25 MR. WILLETT: That's it on the evidence, Your Honor.

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1 THE COURT: Okay. Thank you. Mr. Brimmage?

2 MR. BRIMMAGE: Your Honor, may I give you a couple
3 points --

4 THE COURT: Sure.

5 MR. BRIMMAGE: -- from Mr. -- thank you, Your Honor.
6 Couple things. One, I think you'll find in there that it's
7 uncontroverted and undisputed that Mr. Cowan said Lazard nor
8 anybody else that he was aware had any interference in the
9 bidding or chilling of bidding or chilling of bidders or
10 anything. He did admit, as I told you in the opening, that he
11 received inbound calls regarding potential interest in certain
12 assets and he forwarded them onto the debtors' financial
13 advisor.

14 He also talks about what Lazard was engaged to do for
15 Coal Acquisition. And that was to line up letters of credit
16 and surety bonds to replace those and be prepared to get those
17 done when needed. And I think he estimated that assuming the
18 sale motion were granted and the order entered relatively soon,
19 he thought that that would be locked down by mid-February.

20 And then last but not least, and I couldn't find it,
21 but I think it's in here, he talks about -- they're not -- they
22 weren't going out to lenders to raise capital, but it was a
23 rights offering. And that's set forth in the filing that was
24 in -- that was uploaded on the website yesterday pursuant to
25 the procedures order.

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1 And Your Honor, I think with that, we can save you a
2 little bit of reading.

3 THE COURT: Thank you.

4 MR. BRIMMAGE: You bet.

5 THE COURT: I think that in part, maybe I'm being
6 optimistic here, but there seems to be a slight difference in
7 the understanding or interpretation of the APA and/or a
8 proposed order on a potential sale if a sale were to be
9 approved. The Funds seem to have some concern or great
10 concern, I guess I should say, that as part of this proposed
11 sale, the debtor is attempting to establish whether or not Coal
12 Acquisition might have, could have, will have liability in the
13 future as to the Coal Act.

14 My understanding, perhaps incorrectly, was that like
15 any other 363 sale, it was the debtors' intent to sell it free
16 and clear of any liability of the debtor, any tax owed by the
17 debtor, any trade vendor owed by the debtor, any a former
18 employee, former retiree. In other words, any other claim or
19 debt or obligation that arose under the debtors' watch would
20 not by virtue of the sale be the responsibility of the
21 purchaser under what we all know in the real world as successor
22 liability.

23 I never interpreted the proposed motion to say
24 whether or not Coal Acquisition, whether they hired union
25 employees or not, would have a liability or not under the Coal

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1 Act. So I'm concerned and I actually fended a little bit of
2 the reply from the debtor, two pages, and two pages actually
3 from the objection of the Funds. And it seems to me that
4 there's a completely different interpretation here and I'm a
5 little concerned about that. I think you all cite, for
6 example, Paragraph 6 of their proposed order which there have
7 been various iterations of the proposed order, and I just tried
8 to reread Paragraph 6 of their proposed order, and it would
9 help me if you all could show me -- I don't read this paragraph
10 -- now maybe there's another paragraph I need to read, I don't
11 read this paragraph as saying what liabilities, if any, from
12 date of closing forward Coal Acquisition might have, could
13 have, will have, or should have. I read it to say that if I
14 grant this motion and if I approve this sale that what they're
15 not getting is any debt, claim, liability, responsibility, or
16 obligation that exists up until the date of closing that belong
17 to any one of these twenty some odd debtors.

18 Now that's the way I read it which is extremely
19 typical, as we all know, of a 363 sale. If that weren't the
20 language of 363, I would venture to say we wouldn't have 363
21 sales and many of you would not have jobs and perhaps my case
22 load would be limited to consumer cases.

23 So tell me what I'm missing here from the Funds' view
24 point.

25 MR. GOODCHILD: Your Honor, what you're missing is

1 that if you read the debtors' reply, the debtors take the
2 position that the entirety of all Coal Act obligations related
3 to all of these beneficiaries constitutes a single claim that
4 is before Your Honor today. And our view is that the
5 obligations under the Coal Act arise periodically such that
6 what is before you today are only the obligations up to today.
7 And that to the extent there are premiums due after the
8 closing, those are new obligations.

9 THE COURT: Okay. Mr. Goodchild, if that's what you
10 think this proposed -- I'm trying to get to the end to find out
11 -- 30-page proposed order, tell me which paragraph you think
12 says that because I'd like to read it. I want to -- that's
13 what I need to know.

14 MR. GOODCHILD: I understand, Your Honor. If I could
15 have one second, I'm just going to get the red-line --

16 THE COURT: Take as long as you need.

17 MR. GOODCHILD: -- because you got your finger right
18 on the precise issue that must be decided.

19 THE COURT: And Ms. Levine, please understand, I
20 know your issues are completely different. I haven't gotten to
21 you yet. I haven't forgotten you, I just haven't gotten to you
22 yet.

23 And I'll interrupt you to say, I did take your
24 version back. And the only thing I would disagree with you is
25 that your proposed changes are not, in my view, a few in

1 number. So we do disagree on what few in number means, Mr.
2 Goodchild.

3 MR. GOODCHILD: I apologize, Your Honor. There are
4 different colors in the red-line.

5 THE COURT: I get that. But if you could just --

6 MR. GOODCHILD: And not all of those are ours.

7 THE COURT: If you could try to pinpoint for me the
8 paragraphs that are of concern to you so that we could look at
9 those, it would be very helpful to me. And I hate to take
10 everybody's time, I'm sure lots of you are wanting to get out
11 of here, but I think this is an important issue. And if you
12 want me to go to something else while you look, I can do that.

13 MR. GOODCHILD: No, no, no, Your Honor, I want to
14 make -- there a couple of different places in the order that
15 purport to establish that Coal Acquisition will not have
16 liability under the Coal Act for future periods post-closing,
17 all right? One of them, I think is Paragraph S. Now I'm
18 looking at the red-line. And --

19 THE COURT: All right. Well now Paragraph --
20 anything that is a lettered paragraph is not an ordered that.

21 MR. GOODCHILD: All right.

22 THE COURT: So I mean clearly --

23 MR. GOODCHILD: I understand, Your Honor. All right.

24 THE COURT: I think their concern to me is where we
25 start on Page 15 or Paragraph 1 because that's what I'm

1 ordering --

2 MR. GOODCHILD: Yes, Your Honor, I understand.

3 THE COURT: -- if I grant this motion.

4 MR. GOODCHILD: Paragraph 9, Your Honor.

5 THE COURT: Okay. Hang on. Okay. Any particular
6 portion of that?

7 MR. GOODCHILD: Well, Your Honor, it's a little
8 difficult to parse the paragraph just because it's one of those
9 very long, accept as otherwise provided, kind of things. So
10 no. I think what's going on here is paragraph -- at least
11 Paragraph 9 is an order establishing a status of Coal
12 Acquisition and it's at least one of the paragraphs in which
13 there's an injunction against -- action post-closing against
14 Coal Acquisition.

15 THE COURT: Okay. But it does go on to say -- and
16 I'm at the top of Page 20, again, language that was not new to
17 us that any such claims, liens, interests being transferred and
18 attached to the proceeds of the sale, which routinely happens
19 of course in bankruptcy that to the extent somebody asserts a
20 claim or a lien that it may be -- the assets may go free and
21 clear, but if there is a lien later to be determined, it would
22 attach to any proceeds.

23 MR. GOODCHILD: Yes, Your Honor. But again -- and I
24 do appreciate that the Coal Act -- and my view is the Coal Act
25 creates a legal scheme that is a little different than the

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1 typical claim scheme.

2 THE COURT: Oh, I understand that's your argument.

3 MR. GOODCHILD: Yes, Your Honor.

4 THE COURT: Okay. I'll reread Paragraph 9.

5 MR. GOODCHILD: So in response to you, Your Honor, we
6 do not have a situation in which all of the projected premiums
7 stretching out into the future under the Coal Act constitute in
8 my view a single claim. If we did, if we did, then the Coal
9 Act Funds would have a really big unsecured claim and we would
10 assert that against whatever the remaining assets are of the
11 estate. That's typically what would happen in a 363.

12 THE COURT: Okay. So let me ask Question 1. If Coal
13 Acquisition does not become -- what do you all call it, a
14 signatory or whatever?

15 MR. GOODCHILD: Well, there are two terms. There's a
16 signatory operator which is the primary obligee under the --
17 obligated party under the Coal Act. And then the Coal Act
18 imposes or also makes liable those who are successors in
19 interest to signatory operators.

20 THE COURT: But if they never become the signatory,
21 they would not have obligations under that part?

22 MR. GOODCHILD: That's right, Your Honor.

23 THE COURT: But what you want them to have
24 responsibility for is to the extent there are obligations --
25 let's assume they close if there is an order approving the --

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1 granting the motion or approving the sale. If this sale were
2 approved and it closed on February the 29th, you want to be
3 able to say that on or after March the 1st, Coal Acquisition
4 could have potential liability under the Coal Act?

5 MR. GOODCHILD: Yes, but only for periods of time
6 beginning on March 1st, not for any obligations that the
7 debtors may have had in prior time periods that the debtors may
8 not have satisfied.

9 THE COURT: Is that different from what Coal
10 Acquisition is expecting to get as a part of this motion and
11 proposed sale?

12 MR. BRIMMAGE: Your Honor --

13 THE COURT: I need you to come to the podium if you
14 don't mind, Mr. Brimmage, to make sure that (A) the record is
15 good and (B) that the folks on the phone can hear.

16 MR. BRIMMAGE: If I'm following it correctly, I
17 believe what he's saying is any obligation that is still
18 continuing after March 1st, he wants us to be obligated for.

19 THE COURT: I think that's what he's saying.

20 MR. BRIMMAGE: And that is not the way we want it nor
21 do we read it. It cuts off all past obligations as of, in our
22 scenario, March 1st, they're all gone, they're free and clear,
23 they're no more. Now we can't prevent new obligations from
24 arising and we're not talking about that. We understand that.
25 But any obligation as of March 1st is gone.

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1 THE COURT: So that if there are folks out there that
2 are currently beneficiaries under the Coal Act, Coal
3 Acquisition is intending not to acquire any responsibility or
4 liability for those folks. But if on March 2nd, there has been
5 a CBA and there are now union employees at Coal Acquisition and
6 then somebody on March 2nd, or 3rd, or 5th, or 10th, or
7 whatever becomes a beneficiary under the Coal Act, then that
8 person would then -- the Coal Acquisition would have liability
9 for that person?

10 MR. BRIMMAGE: Yes. With the qualifier that I don't
11 know how the Coal Act works exactly. But to the extent what
12 you're saying would impose Coal Act obligations after March
13 1st, we wouldn't be a successor, unrelated to what happened
14 before, I think the answer's yes.

15 THE COURT: Okay.

16 MR. BRIMMAGE: Am I not saying it right?

17 THE COURT: I think part of the problem is is that
18 there are a lot of us in the room who don't fully understand
19 all of this and there are a lot of us in the room. But I think
20 I understand -- I think I understand what Mr. Goodchild and Mr.
21 Willett's concerns are, which is they want you all to be
22 responsible for those people regardless of when they retired,
23 regardless of which fund -- you're saying no?

24 MR. GOODCHILD: I'm sorry to shake my head at you,
25 Your Honor. And I just don't want this to go too far. No, not

1 exactly, Your Honor.

2 THE COURT: Okay. But I want to be clear --

3 MR. GOODCHILD: I know.

4 THE COURT: -- as to what everybody's arguments are
5 before I take this under submission.

6 MR. GOODCHILD: Yes. And I understand and I really
7 do appreciate that, Your Honor. And I know that the Coal Act
8 is not the typical thing that we deal with everyday.

9 Two things. One is the Coal Act only provides taxing
10 obligations to provide for a closed set of beneficiaries.

11 THE COURT: So there will be no new beneficiaries?

12 MR. GOODCHILD: There can be no new beneficiaries.

13 THE COURT: Okay. These are people who ended up with
14 no benefits based on various acts that occurred years before.
15 And so as a result, you now have the 74 Fund and the 92 Act or
16 whatever you all call those two funds that these people now get
17 to draw under?

18 MR. GOODCHILD: Not exact, Your Honor. The 1974
19 Pension Plan is a collectively bargained pension plan. The
20 Coal Act is only healthcare.

21 THE COURT: Okay.

22 MR. GOODCHILD: And the Coal Act Funds are
23 statutorily created under the Coal Act which is a part of the
24 Internal Revenue Code. And those Coal Act Funds are financed
25 pursuant to the statute in the nature of taxes that are

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1 incurred, period by period.

2 THE COURT: But these are healthcare benefits that
3 are provided under one of the two funds solely for people who
4 are already retired and obviously would not -- not obviously,
5 likely would not become an active working member at the new
6 coal mines if they opened under Coal Acquisition and if there
7 is a CBA?

8 MR. GOODCHILD: Yes.

9 THE COURT: Okay.

10 MR. GOODCHILD: And that's why perhaps council's
11 having just a tiny bit of trouble getting you a clear answer to
12 the question. It's just that there's no possibility that
13 there'll be new beneficiaries for which really any company
14 becomes liable for. We're talking about a closed set. The
15 Coal Act provides a funding vehicle, a tax-driven funding
16 vehicle to provide health benefits to a specific class of
17 beneficiaries who have ben protected by Congress. And what I'm
18 saying is the taxing obligation imposed under that statute
19 first of all, nobody ought to be messing with that.

20 Second of all, if we are going to modify that kind of
21 an obligation, you would modify it in the way you would modify
22 any other tax. A tax that is due, fine. We can treat that as
23 a claim. A tax that hasn't become due yet, a tax that hasn't
24 been assessed for new period, like next year's property taxes
25 or next year's income taxes, that's not part of the bankruptcy.

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1 That arises later.

2 And we're saying is we believe it is beyond the power
3 of this Court to order that Coal Acquisition is not going to be
4 liable for tax obligations for periods that occur after the
5 closing. Those obligations simply do not exist and they are
6 not a claim of which we can have a clear and sale.

7 THE COURT: I understand it much better now, Mr.
8 Goodchild.

9 MR. GOODCHILD: Thank you, Your Honor.

10 THE COURT: Thank you. Mr. Brimmage, you have
11 something to add?

12 MR. BRIMMAGE: Briefly, Your Honor. Back to your
13 hypothetical which hopefully is not too hypothetical. On March
14 1st, Coal Acquisition would not be a successor in interest to
15 the prior debtors. On March 1st, those prior obligations,
16 those prior funds for those prior retirees as far as Coal
17 Acquisition is concerned are wiped out never to be returned.
18 And I think that's what you were asking. And I wasn't saying
19 it very well.

20 THE COURT: I don't think I asked it very well. But
21 in any case, I think I have a clearer understanding of what the
22 problem is at this point.

23 MR. BRIMMAGE: Okay. Thank you, Your Honor.

24 THE COURT: Thank you.

25 MR. GOODCHILD: Your Honor, I apologize. I have one

1 more --

2 THE COURT: Sure.

3 MR. GOODCHILD: -- thing to just add on that point.

4 I apologize for continuing to pop up. But Your Honor, as I
5 said at the very beginning of the hearing, the contents of Your
6 Honor's order are different from the question of whether under
7 the Coal Act, Coal Acquisition would be an obligated party.
8 And as we said in our papers, the issue of whether Coal
9 Acquisition actually would have statutory liability is an
10 unresolved question. And I'm not representing to Your Honor
11 that in my mind it has been decided that Coal Acquisition
12 absolutely would have Coal Act obligations. We're simply
13 saying we don't believe Your Honor can prejudge that.

14 That's all we are -- now I hear counsel. Counsel is,
15 I think, looking for certainty one way or the other. Our
16 argument is that that -- we can't -- there's no way to provide
17 that certainty. We don't know yet what Coal Acquisition is
18 going to do or not do. Coal Acquisition is not taking all of
19 the assets of these debtors. Coal Acquisition is a different
20 business after an asset sale. There is a lot of jurisprudence
21 out there over whether an entity that acquires assets is
22 actually obligated under the Coal Act. And we don't believe
23 that that question is before Your Honor. We simply want the
24 opportunity to have that question resolved later to the extent
25 it becomes relevant.

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1 THE COURT: Thank you, Mr. Goodchild.

2 MR. GOODCHILD: Thank you, Your Honor.

3 THE COURT: And before you all do your closings, you
4 have something else, Mr. Brimmage?

5 MR. BRIMMAGE: Yes. I want to say no, but the
6 answer's yes. I just want to address -- I don't want to leave
7 it lingering. That issue is relevant right now. It's not
8 relevant tomorrow or at another day. The order we need from
9 the Court is exactly what you asked about and you and I talked
10 about. That's not for another day, that's for right here,
11 right now. Otherwise, this sale is not free and clear. And I
12 didn't want that to pass, I wanted to go ahead and address it.

13 MR. DARBY: But Your Honor, Your Honor has the
14 proposed order. And from my perspective, Your Honor is reading
15 the order correctly. And it says what you say it says, it
16 doesn't say what they say it says. And we went through this
17 exercise, but nobody has pointed out anything that's wrong with
18 the proposed order. I think the language in the proposed order
19 is fine.

20 Whatever happens in the future, they're not on the
21 hook for our liabilities. And it's not just the Coal Act. If
22 you look at the order, it's ERISA, it's the Civil Rights Act,
23 it's all sorts of stuff. Nobody's asking Your Honor to figure
24 out what might arise under any of those statutes in the future.
25 But to the extent we're liable for, they're not. They take the

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1 assets free and clear of any of our liabilities or obligations
2 under those statutes. I don't think anybody is asking the
3 Court to rule on what may or may not happen in the future, that
4 it won't arise or that it will arise.

5 But I still didn't hear any comments or responses to
6 your question, what's wrong with this order. The language says
7 what it says. I think the Court's reading it correctly.

8 THE COURT: Thank you, Mr. Darby. Now before we get
9 to closing arguments, Ms. Levine -- and you don't necessarily
10 have to answer this for me now, but here is sort of my to the
11 point question, I guess, to the Union. Based primarily on
12 arguments, objections, the cross examination of the witnesses
13 called by the motion proponents, if the motion is denied and
14 there is no sale, the unions have no certainty. They don't
15 know what will happen. None of us know what will happen. I
16 mean we've been told from the witness stand by Mr. Sheller
17 (phonetic) at the last hearing what will happen.

18 I understand that there is some thought -- and the
19 argument, I thought was an extremely creative argument, but I
20 don't know, I think we talked about it briefly at the last
21 hearing, is if there is no sale, then what will the lenders do
22 which of course is pure speculation on any of our parts as to
23 whether the lender will say, in this group of investors whether
24 they be new investors or old investors, whether they will say,
25 we're going to take possession of these mines and we're going

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1 to do something with them because we have a lot of money
2 invested and we don't want them just shut down and concrete
3 poured in the hole and water fill up the holes and yakety
4 yakety.

5 So my point being, if there is no sale, the Union has
6 no certainty as to what will happen at these mines. That seems
7 where we are on that issue, correct?

8 MS. LEVINE: Yes, Your Honor. But the assumption is
9 that there's some certainty on the -- you can't kill me twice,
10 okay? You're saying that there's no certainty if there's no
11 sale. What we're saying to you is there's equally no certainty
12 and perhaps less certainty if there --

13 THE COURT: That was Question 2.

14 MS. LEVINE: -- if there is a sale.

15 THE COURT: You have no certainty either way. And I
16 understand that the Union feels strongly, as you did at the
17 last hearing, that the chances are better for the Union and the
18 Union employees without this deal. Do you think there is more
19 incentive for the lenders to do something and to operate than
20 to protect their investment?

21 MS. LEVINE: Yes, Your Honor. We believe -- or at a
22 minimum, if Your Honor's struggling with that, at a minimum,
23 the ruling should be adjourned so that they can come before
24 this Court with more specificity for all of us with regard to
25 financing in place and with regard to what they really truly

1 intend to do with these mines.

2 With a stroke of a pen at the last hearing, you put
3 us in a much worse place at the bargaining table and we stayed
4 there anyway. And with a stroke of a pen here, Your Honor,
5 you're going to put us in an even worse place. So for us to
6 say, do we do better if there's a Chapter 7 Trustee and a third
7 party fiduciary that's overseeing this process? We think maybe
8 we do.

9 Do we do better if the lenders actually have to come
10 forward and say to everybody with specificity like they would
11 if this were a plan context? We think that we do. There's a
12 -- you know everybody keeps talking about the fact that we're
13 meeting 24/7 and we're doing everything that we're doing, but
14 there's a thin line between good faith negotiations and
15 filibuster. And for whatever reason, Your Honor, we have not
16 been able to get it done here and we've been trying really,
17 really hard. And --

18 THE COURT: I understand that, Ms. Levine. And if it
19 appears to you and others that I struggled then and I'm
20 struggling now, then that would be an accurate portrayal. But
21 as the debtors note in a less than kind way, I will note for
22 you as I hope I have otherwise noted, it is not -- it is a lot
23 about the Union, it is a lot about the people who work there,
24 but it is not just about the employees and not just about the
25 Union. That is your only client and your only concern. But

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1 from my perspective, there are lots and lots of other
2 stakeholders.

3 MS. LEVINE: And we understand that, Your Honor, but
4 there is also you know -- and going back and just looking at
5 this objectively, almost like it was a law school exam, there's
6 still the burden of proof. And a hope and a prayer that
7 something good could happen works perhaps if everybody is
8 sharing in the sacrifice.

9 But doing away with the criteria that the debtor has
10 to meet under 363 when it's only the most vulnerable and
11 disenfranchised, not the management, not the management
12 retirees, not the Creditors' Committee with separate -- they
13 went through a laundry list of professionals, all of who are
14 getting paid, we weren't on the list, okay? There's a whole
15 bunch of people here that are better able to take care of
16 themselves than this most disenfranchised work force and this
17 most vulnerable retiree group. And for whatever reason in this
18 particular case in a way that we've never seen before, we are
19 being isolated, singled out, and left off to the side.

20 So maybe the argument is not that this is a sub rosa
21 plan, Your Honor, maybe the argument is it just isn't sub rosa
22 enough.

23 The bottom line is either, either we're going to say
24 we're not really going to look at 363 because we're in a
25 desperate situation or we're going to say you haven't met the

1 criteria under 363 because it really isn't in the best interest
2 of all the stakeholders because they're all not being treated
3 fairly.

4 THE COURT: With all due respect, Ms. Levine, I can
5 assure you I'm going to be very objective and look at all the
6 requirements of 363. But that would kind of give you an
7 idea --

8 MS. LEVINE: But I didn't mean that in a
9 disrespectful way, Your Honor. In other words, if they solved
10 all the objections, it makes it much easier for the Court to
11 rule. I wasn't implying that the Court wasn't handling the
12 situation appropriately. What I meant is you know hard cases
13 make a much more difficult process. So you're asking of us a
14 very difficult question. And we're trying to be very
15 straightforward in our answer because it's obvious that the
16 Court's struggling and we appreciate the fact that the Court is
17 struggling.

18 But we find ourselves in a situation that's getting
19 more and more precarious in a way where all of these
20 observations that people keep saying will possibly make it
21 better, aren't. And so that's really where we are. Thank you.

22 THE COURT: Thank you, Ms. Levine. I apologize for
23 the diversion. But anyway, all right, so now if I could hear
24 from each of you in a much more orderly fashion?

25 MR. DARBY: Your Honor, I'm not going to repeat all

1 the stuff about the Coal Act because I think we've covered that
2 sufficiently. I'll answer any other questions the Court has.

3 THE COURT: Mr. Darby, you do it based on your notes.

4 MR. DARBY: Okay.

5 THE COURT: I mean if that works better for you, the
6 fact that there's some repetition on the part of any of the
7 lawyers does not offend me.

8 MR. DARBY: I appreciate that, Your Honor. But I
9 really just want to rely on our opening and the evidence and
10 our brief. And just in response to the last exchange,
11 certainty is not a requirement of Section 363. We are not
12 required to prove that the transaction is certain to close.
13 That's never something that can be proved in any sale. Sales
14 are always contingent upon various conditions that may or may
15 not come true. So I don't want to get sidetracked by this
16 issue that we are somehow required to prove that this sale is
17 going to be consummated before this Court can approve it.
18 That's just not the law.

19 But on the issue of certainty, the evidence in front
20 of the Court is overwhelming and uncontroverted that between
21 two different scenarios that present uncertainty, the sale is
22 by far the most certain option and the best option to provide
23 for an ongoing operation and jobs. We can't prove that it is
24 certain beyond a reasonable doubt. But we can prove that it's
25 more certain than any other alternative before the Court. And

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1 we have proved that.

2 The evidence is overwhelming and unchallenged. And I
3 just don't know what else to say about that. But I think
4 that's very important for the Court to know. I think it's
5 important for the workers. I think it's important for all
6 constituencies who are all taking a haircut. There is no
7 constituency in this case that's not being adversely affected
8 by this outcome. The only difference with the Union is that
9 they haven't agreed to it yet. But every constituency in this
10 case is being hurt including management, shareholders, and the
11 lenders who are losing substantial economic value in this
12 transaction.

13 So that's really all I have to add. I just wanted to
14 clarify that point. It's important to us that this is a going
15 concern sale that provides for operations, provides for jobs.
16 That's very important to us. And that's why we've talked about
17 it so much.

18 We understand that it's important to the Court. But
19 it is not a requirement of Section 363 that we have to prove
20 that the sale will be consummated, that the business will
21 operate or that all the employees will be hired. That's just
22 simply not a legal requirement. But to the extent it's
23 relevant, it's obvious that this is a much more certain
24 alternative for any of those outcomes than any other presented
25 to the Court.

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1 THE COURT: Thank you, Mr. Darby. Mr. Brimmage?

2 MR. BRIMMAGE: Thank you, Your Honor. I'm going to
3 do some quick hits because we've talked about a lot already and
4 I don't want to repeat myself either because who knows, I might
5 say something inconsistent. I don't want to do that.

6 Let me start with the Coal Act obligation. I just
7 want to clarify I don't want to make any more argument unless
8 the Court has questions. We've heard a lot of discussion and
9 I've heard the Funds' counsel talk about this \$147,000
10 obligation. I know the Court has heard it too. I round it to
11 150. But we went back and looked at the disclosure statement.
12 That's for one fund. The other fund obligation is \$530,000 a
13 month which is 6.5 annually. That's a lot of money.

14 And what we heard, Your Honor, is we heard a lot of
15 testimony about -- both prior and today -- about the APA was
16 negotiating at arms' length. It was a very tough negotiation
17 Mr. Zelin testified last time. And what we see up here on the
18 board, it's from Mr. Masterham's (sic) Tab 2 in his notebook.
19 And I think it was entered in as evidence. And I said the name
20 wrong, and I apologize. That's the snickering. I'm terrible
21 with names.

22 But what you see is clearly, there's a lot of
23 obligations there that Coal Acquisition wasn't crazy about
24 taking over. But that's the result of arms' length
25 negotiation, very tough negotiation. And that's where they

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1 came to and that's where it ends.

2 The Steering Committee Coal Acquisition is not
3 interested in taking on any more obligations. So they need a
4 free and clear order from the Court. And that includes Coal
5 Act obligations exactly as the order is written.

6 I want to talk about the Steering Committee and Coal
7 Acquisition's conduct in the case and certainly in the sale
8 motion. There is zero evidence before the Court that any bad
9 faith anything has gone on. And in fact, it's quite the
10 opposite. Not only did Mr. Zelin say that he's been involved
11 with the Steering Committee and Coal Acquisition in dealing
12 with all these issues, but he -- in his opinion, they've all
13 acted in good faith. There's simply no evidence otherwise.

14 And then if you look at all the things that have
15 taken place, the Steering Committee and Coal Acquisition have
16 lived up to every obligation that they have had to date and
17 more, and then some. The Court recalls how this case started
18 off, a little rocky with the Creditors' Committee. As we stand
19 here today, we have an agreement.

20 We're working hard to get an agreement with the
21 Union. There are no guarantees and there are no promises, but
22 a lot of work has been done and we are optimistic. All the
23 things that were required to do by us, including the adequate
24 assurance filing yesterday, was done and it was done timely,
25 and it was done well. We're doing all the background work to

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1 get the permits transferred. We're doing the background work
2 to get financing, rights offering issue set up, letters of
3 credit, surety issues arranged, dealing with the Department of
4 Justice which there was an agreement today, dealing with other
5 entities including many of the objectors in the sale motion.

6 And I bring that up because there's only so much we
7 can and so much we're willing to do until we get a sale order.
8 And that's just reasonable.

9 I was a little surprised at the cross examination of
10 Mr. Williams about he hasn't moved here yet. Well, he doesn't
11 have a future yet. Nobody does with Coal Acquisition. And
12 until we get a sale order and then we go down the road and
13 consummate the deal and close it, that's what we've got.

14 So I think everything that reasonably could be done
15 and have been done, has been done. What we need now is we need
16 a sale order from the Court in the form that's been submitted
17 by the debtors and then we need to move forward.

18 Your Honor, from an evidentiary standpoint, all the
19 363 elements have been met, every single one. I didn't hear of
20 an element in any argument yet, we may hear it, that hasn't
21 been met. And if it hasn't been met, I haven't heard
22 specifically why. I submit to the Court there's evidence to
23 support each and every element required. And this is a 363
24 sale. This was not a Chapter 11 plan of reorganization.
25 There's a difference.

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1 Last but not least, I agree with Mr. Darby.
2 Certainty is not a requirement under 363. But let's talk about
3 it. And by the way, Your Honor, you stole my thunder.
4 Certainty is where -- I was going to close with certainty. And
5 then you already went there. It's not a requirement, but let's
6 talk about what the best certainty is. Is the best certainty
7 to not grant this sale motion and let's just see what happens?

8 At the beginning of this hearing, you asked Ms.
9 Levine what would happen if you denied the motion. I remember
10 her response. She said, I don't know. Well, I don't know
11 either, but I know it's not good.

12 What happens if the sale motion is granted? Well,
13 there's not certainty, there's not a guarantee, but every
14 action by Coal Acquisition and its backers indicates they want
15 to close this deal. They want to make this happen. And they
16 have the wherewithal to do it. They're not running around,
17 trying to scrounge pennies to pay for it. There's going to be
18 a rights offering. And Mr. Zelin testified he has every
19 confidence that they could pull this off and so does everyone
20 else. So Your Honor, the way to get certainty is to grant this
21 motion.

22 And now I want to leave this with jobs. The Court
23 asked last time at the 1113/1114 hearing, the Court is
24 concerned about jobs. Understandably so. A lot of people are
25 worried about jobs. Just because we're trying to buy this in

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1 the 363 sale, doesn't mean we're not worried about jobs, we in
2 fact are. But the only way to save jobs is for this motion to
3 be granted and the sale to be consummated.

4 You heard what Mr. Williams said about the current
5 operational plan. And of course the operational plan -- one of
6 the things he didn't mention, but we all know it's impacted by
7 coal prices. Well, we know what they are today, but we don't
8 know what they're going to be the next quarter or the next
9 quarter after that. But if the mine is sold and it's
10 operational and it can stay operational and stay profitable,
11 then someday, more and more operations can open up and more and
12 more jobs can be had. But by this sale being consummated,
13 there's going to be a lot of jobs and a lot of jobs soon.

14 So, Your Honor, we would respectfully request the
15 Court grant the motion in its entirety in the exact form of
16 order that was submitted by the debtors and in doing so,
17 recognize that every single element of 363 has been met and
18 that the only way to provide certainty and the best opportunity
19 for jobs is to grant that motion. Thank you, Your Honor.

20 THE COURT: Thank you, Mr. Brimmage.

21 MR. GOODCHILD: Thank you, Your Honor. For the
22 record, John Goodchild on behalf of the Coal Act Funds. Your
23 Honor asked a question about what the problem was from our
24 perspective with the order as written. And I guess the flip
25 side of that is why is it that the proponents would like the

1 order to be entered exactly the way it is written? Nine and 17
2 are really the two provisions that are problematic. Nine
3 because it enjoins, language is extraordinarily broad. It
4 would prohibit at least under a conservative reading, it would
5 prohibit the Coal Act Funds from pursuing Coal Acquisition for
6 post-petition Coal Act obligations if Coal Act Funds felt that
7 there were such.

8 And 17 because 17 I think under a literal reading
9 would be the Court's finding and conclusion that Coal
10 Acquisition is not a successor in interest to the debtors as
11 defined under the federal statute. Now at least with respect
12 to Paragraph 17, there's a real problem. Put the legal issue
13 aside, there's simply no evidence to support any finding or
14 conclusion about the status of Coal Acquisition. That wasn't
15 part of the hearing today. There's nothing about the elements
16 of what would constitute a successor in interest to the
17 debtors. There's been no briefing submitted to Your Honor
18 about what that terms means under the statute. There is quite
19 a bit of case law on it.

20 So if what we're looking for is a conclusion based
21 upon evidence that an entity that doesn't yet have these assets
22 does not qualify under a test under a federal statute, I think
23 we have a failure to prove.

24 But to answer your question, it's 9 and 17, Your
25 Honor.

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1 THE COURT: Thank you.

2 MR. GOODCHILD: All right. I don't want to belabor
3 the Coal Act arguments. There has been a lot of back and forth
4 on it and I really appreciate Your Honor's patience with those.
5 From our perspective, there is -- we have no choice but to
6 defend the federal statute. In our view the legal question of
7 whether the Court has the power to do what is being asked of it
8 must be answered in the negative. And it is not negotiable.

9 In other words, we're not standing here telling Your
10 Honor to stop a sale. We're standing here telling Your Honor
11 not to put something illegal in the order. And that is our
12 perspective. So to the extent that words to the effect of
13 playing chicken have been thrown around over the last couple
14 days of hearings, including on the 15th and 16th. I want to
15 make it clear that we're talking about a federal statutory
16 obligation. We're not talking about something that we can sit
17 around the bargaining table and deal with, we can't. The issue
18 of whether Coal Acquisition may or may not be liable for
19 premiums that may arise in the future is not a negotiable
20 question as it relates to the character of the obligations.

21 What is an open question is what I've been coming
22 back to which is in the future will the facts and circumstances
23 make it so that Coal Acquisition is a successor in interest
24 under the statute. And that is a question on which no one can
25 really reach a conclusion.

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1 I won't go back through the whole Coal Act
2 obligations that arise periodically point it is the lynchpin of
3 the entire legal question, Your Honor. And so our view on that
4 is that the case law is legion on this at the circuit level,
5 not this circuit, Your Honor. This circuit is a blank slate.
6 But at the circuit level, the legal conclusion reached by the
7 circuit courts, in many cases overruling bankruptcy courts, is
8 that Coal Act premium obligations are taxes and that they are
9 incurred on a periodic basis and that tax obligations that may
10 arise for future periods are not within the power of the
11 Bankruptcy Court to discharge. And that means they are not
12 part of a single claim. Acceptance of that legal proposition
13 must lead to a change in order that has been submitted to Your
14 Honor.

15 We've also made a jurisdictional argument related to
16 the Anti-Injunction Act. It's the same argument using a
17 different legal pathway which is that if a future tax
18 obligation may be enforced anything in this order purporting to
19 enjoin us from enforcing it violates the Anti-Injunction Act.
20 Either way, you're really talking about whether Coal Act
21 premium obligations for post-closing time periods are really
22 part of anything that can be determined by this Court today.

23 All right. So let me move to some of the other
24 things that have come up during the day. One thing that has
25 rung through the last hearing and this hearing is the question

1 of what will happen if. And what we have here are lenders
2 whose collateral consist of coal mines. Those coal mines are
3 currently generating less cash than they need to -- for their
4 upkeep. So right now, you have a situation in which the
5 debtors have to use their free cash, which is the lender's cash
6 collateral, we've established that. And even above that, the
7 lenders have had to forego payments to which they were
8 otherwise entitled by way of adequate protection and have even
9 begun to talk about putting new cash into the estate all for
10 purposes of preserving the value of their collateral. And Your
11 Honor, our view is that is rational because the lenders will
12 stand to lose everything if the cement is poured into the
13 mines.

14 In fact, that's what really what the evidence shows.
15 The lenders are entitled to fundamentally all of the value of
16 the mines. The value of the mines is undisputedly a lot
17 greater if the mines do not have cement poured down them even
18 though right now they don't make any money. And so there
19 really is no evidence to support the idea that the lenders will
20 permit the pouring of concrete down their collateral.

21 That's not to suggest that the mines shouldn't be
22 sold. I want to make that clear. I made it clear at the
23 beginning, I'll say it again. It's not -- we are not
24 suggesting the mines should not end up in the hands of the
25 lenders. We're simply saying, it's really not plausible to

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1 believe that there is this thread hanging over the head of the
2 proceeding associated with the failure to do every little thing
3 that the lenders want for fear that the lenders will allow the
4 mines to be destroyed. The mines are not going to be
5 destroyed.

6 You have a credit bid situation. We're not playing
7 with new money. We're not talking about new investors who
8 could decide to invest in something new. We're talking about
9 entities that have put their money in already and are simply
10 trying to salvage whatever value remains in that investment.
11 And so for all of those reasons, I don't believe that the
12 direst of consequences is really plausible.

13 I do think it is the right result that we maximize
14 what's left of the value of the estate through a sale. And
15 that's why I've said we don't oppose the sale. But again, our
16 view is that doesn't justify the threat.

17 And the reason why I focus on that point is that
18 there's been some suggestion that the lenders have reached the
19 end of their negotiating rope, that they're willing to do
20 whatever they're willing to do today, but not a penny more.
21 And I understand that a party in the lender's position would
22 not want to spend one more dollar than they've already
23 committed to spend. This, so far, hasn't been the best
24 investment apparently. But our position is that does not give
25 you the ability to insist that the debtors propose an element

1 in an order that may exceed what the Court is legally permitted
2 to do.

3 And so my first point and my second point link
4 together. It's not appropriate to put these terms in the
5 order. And it's not appropriate to give credence to the
6 argument that if you don't do these things that we think are
7 not legally permitted, that something terrible will happen on
8 the practical front.

9 Okay. Last point. With respect to the stay, we have
10 not heard any evidence to support a decision by Your Honor not
11 to have the usual 14-day stay apply to Your Honor's order,
12 whatever it is. We believe that there is no cause for the
13 waiver of the 14-day stay requirement. We think the evidence
14 is entirely to the contrary. This is a sale that now cannot
15 close before the end of February. This is a sale that could
16 not be moved up. There's no good reason why there ought not to
17 be the usual stay that comes along with Your Honor's order.

18 And there's a good reason why we have stays like
19 that. It allows parties to come back to Your Honor and ask
20 Your Honor to clarify or amend judgments. You've seen just
21 with the last order, Your Honor entertained a motion like that.
22 It allows people to go to take appeals if they feel that
23 appeals are justified and to ask in an orderly fashion for
24 further stays if they believe further stays are warranted.
25 This is a situation in which from our perspective, the debtors

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1 are asking for something that violates the law.

2 If Your Honor agrees with the debtors -- and I mean
3 this with respect, Your Honor, it's not intended as anything
4 else -- we will be forced to prosecute an appeal. And we
5 believe that that is our duty under the law. And we would like
6 to be able to do that in an orderly way and we would also like
7 the opportunity to the extent it we feel it is justified to ask
8 Your Honor to reconsider depending upon what's in the order,
9 especially given that some of these issues are complicated and
10 are not usually dealt with by counsel and courts. And again, I
11 don't mean any disrespect by that, Your Honor, I just mean to
12 suggest that we're all human.

13 And so for those reasons, I would ask Your Honor to
14 amend the proposed order to take out the provisions that would
15 prejudge whether Coal Acquisition could possibly have Coal Act
16 obligations, to remove the injunction against the Coal Act
17 funds that would stop us from pursuing Coal Acquisition if we
18 believed that Coal Acquisition owed premiums for post-petition
19 periods. And we would ask Your Honor not to grant the debtors
20 for a waiver of the automatic 14-day stay of Your Honor's
21 order. Thanks very much, Your Honor.

22 THE COURT: Thank you, Mr. Goodchild.

23 MS. LEVINE: Thank you, Your Honor. Without
24 rehashing some of the stuff that we've discussed before, I
25 would ask the Court to consider the fact that this is in fact a

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1 sub rosa plan. All of the lenders are doing here are cherry
2 picking the administrative and priority claims to pay, not
3 following the distribution scheme that would otherwise be
4 available in a Chapter 11 or a Chapter 7. And there's been no
5 testimony or other evidence that administrative and priority
6 claims would be paid in full if in fact the debtors and Coal
7 Acquisition do in fact close. 363 does not allow them to
8 recreate the priority schemes under the Bankruptcy Code nor
9 does any other provision in the Bankruptcy Code.

10 We've heard a lot about certainty, Your Honor. The
11 problem here is that the certainty is by choice and a choice
12 which appears to us as arbitrary because it seems to be a
13 choice for certain trust funds, certain settlements, all of
14 which benefit others, none of which benefit what we view as the
15 most disenfranchised creditors in the estate.

16 Talking about benefits, we haven't seen what those
17 benefits are yet, Your Honor. All we've actually seen is
18 idling of the minds and additional threats of idling of the
19 minds.

20 The other thing that we find frankly confusing is
21 that this is rescue financing. In other words, it's a credit
22 bid by the existing lenders. The idea that they are coming to
23 this Court and asking for this Court to approve a sale where
24 there's a closing conditioned on whether or not the purchaser
25 is in fact going to lend itself money to close, that that

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1 remains an uncertainty that we won't know the answer to until
2 February, is hard to swallow, Your Honor. We don't believe
3 that that's a condition that should remain open if in fact the
4 benefit here is that all of these obligations that are being
5 assumed are going to get funded at closing and in fact that
6 there's going to be this elusive job preservation that we
7 haven't seen and in fact, we've seen the contrary, particularly
8 with the idling of the Number 4 Mine the day that Your Honor
9 issued the 1113 and 1114 ruling.

10 We thank the Court for your time and we appreciate
11 the difficulty of this decision. Thank you.

12 THE COURT: Thank you, Ms. Levine. Mr. Barrett?

13 MR. BARRETT: Thank you, Your Honor. Your Honor,
14 after this sale, Walter is going to be left with its West
15 Virginia mining permits. It can't walk away from those
16 obligations or those permits. As the operator under the
17 permits, Walter has a legal obligation to reclaim the permitted
18 sites even if it rejects the leases, SMCRA still requires that
19 Walter reclaim the sites and it actually requires the lessor to
20 allow Walter onto the property in order to do that.

21 And Your Honor, you can't make any mistake about it.
22 We're talking about the potential for unreclaimed mines and the
23 potential for untreated water pollution that's coming off of
24 those mines that present very real environmental problems to
25 the people of the State of West Virginia and do as Congress and

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1 the State legislature both recognized, create imminent and
2 identifiable risks to the public health and safety.

3 THE COURT: With all due respect, Mr. Barrett, I
4 didn't hear any evidence to suggest that they're going to walk
5 away and let that happen.

6 MR. BARRETT: I'm getting there, Your Honor.

7 THE COURT: Okay.

8 MR. BARRETT: Your Honor, I think it is true and
9 based upon their papers, I think it is true that Walter has not
10 claimed otherwise that it's obligated presumably under 959(b),
11 under the Midlantic decision, and the MP Mining decision of the
12 Eleventh Circuit, they're not claiming otherwise. The real
13 question comes down to how are they going to comply with those
14 obligations.

15 There appears to be no real question that Walter is
16 going to be left with inadequate resources in order to do that,
17 save one perhaps. In fact, their own evidence shows that
18 pretty clearly that -- and I believe this is putting the two --
19 the chart and Mr. Mesterharm's -- I think I said that right --
20 testimony together that they're roughly \$20 million of
21 reclamation obligations in the State of West Virginia that are
22 providing for a wind-down trust. It's going to be funded with
23 at most \$8.4 million. On its face, that's inadequate in
24 addition to the fact that there are many, many other expenses
25 that I don't even believe the reclamation obligations are

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1 included in the \$8.4 million.

2 So the only thing that Walter is doing here today is
3 relying upon the agreement by Coal Acquisition to assume the
4 reclamation obligations. That's the only way that they have to
5 comply.

6 THE COURT: So if the sale is not approved, how would
7 you propose that they comply?

8 MR. BARRETT: Your Honor, I'm not standing here
9 saying you should not approve the sale at all. We're never
10 really --

11 THE COURT: Well, I guess that's my question. What
12 is it you're --

13 MR. BARRETT: And I'll get to that too, Your Honor.

14 THE COURT: Okay.

15 MR. BARRETT: We heard a lot about the terms of that
16 agreement today. It's important to note we're not asking the
17 hedge funds to do anything other than to live up to the terms
18 of that agreement and actually assume those obligations.

19 We've only asked -- we've asked them to do that
20 directly and to us. We are the regulatory authority. We are
21 the entity to or the State of West Virginia is the entity to
22 whom these obligations are owed. For whatever reason, the
23 hedge funds have refused to make that kind of commitment to the
24 State of West Virginia. They will make it to Walter, but not
25 to the State of West Virginia.

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1 Your Honor, that doesn't give us a whole lot of
2 comfort. As you can imagine, the status of Walter is greatly
3 at issue here. Quite frankly based upon the discussions, I
4 don't know that anyone has a very clear understanding of what
5 is going to happen to these permits, who is going to hold them,
6 who is going to be responsible under SMCRA as they must be to
7 perform those services. And ultimately the question in the
8 DEP's mind is how are the obligations that Coal Acquisition is
9 undertaking going to be enforceable by DEP to whom they are
10 owed ultimately?

11 Your Honor, I can't stand here and suggest to you
12 that you have the authority to order them to make that kind of
13 a commitment to us. And so really, Your Honor, what I am left
14 with is the statement that the State of West Virginia is
15 relying upon those -- the assumption by Coal Acquisition of
16 those obligations and it is going to continue to watch very,
17 very carefully to ensure that whoever the permittee ends up
18 being in this case has adequate resources available to it in
19 order to complete that reclamation. And I think that's
20 essentially it, Your Honor.

21 We're not opposing the sale. We do not oppose the
22 sale of the properties to Coal Acquisition. We just want to
23 make sure that our situation is taken care of. It looks as
24 though it might be in the agreement. But for whatever reason
25 Coal Acquisition has been unwilling to commit to the State of

1 West Virginia that it will in fact perform those obligations.
2 So all we're left with is a statement that we're going to do
3 everything within our power to ensure that these obligations
4 are performed and essentially reserve our rights to continue to
5 regulate these permits and enforce the law in the State of West
6 Virginia.

7 THE COURT: Thank you.

8 MR. BARRETT: Thank you, Your Honor.

9 THE COURT: Mr. Fingerhood, if you're -- are your
10 negotiations complete at this point?

11 MR. FINGERHOOD: Yes, thank you, Your Honor. And we
12 appreciate the Court's patience. I know on our end, we were
13 doing a lot of cat herding. But I think we got everything
14 together. Our objection on behalf of the EPA really related to
15 the Walter Coke facility. We hope there is a successful sale
16 of that facility. And we previously negotiated some language
17 in the sale order that provides that any new owner -- it's in
18 Paragraph 22, any new owner will be obligated to comply with
19 any RCRA obligations at the facility.

20 We've also negotiated some language today that will
21 -- that's going to be in Paragraph 27 of the revised sale order
22 that will allow us to establish an environmental response trust
23 which will fund the cleanup of the Walter Coke facility in the
24 event there is not a successful sale.

25 We've used these at other big bankruptcies, GM,

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1 ASARCO, most recently Mississippi Phosphates. And we think
2 it's an effective way to ensure the sites are cleaned up. It
3 allows EPA to be actively involved in the clean up. There is
4 going to be some funding that's going to be required both for
5 the administrative fees of the environmental response trustee
6 as well as a Chapter 7 trustee and the liquidating trust which
7 is going to sell the Walter Coke assets and then turn over the
8 net proceeds to the environmental response trust. We're going
9 to negotiate a separate agreement that will spell out all the
10 details involved in this. And so I'm pleased to report that we
11 were able to resolve our concerns with respect to Walter Coke.

12 THE COURT: Thank you.

13 MR. FINGERHOOD: Thank you.

14 THE COURT: Mr. Sparks, Mr. Bensinger, any position
15 on behalf of the Committee?

16 UNIDENTIFIED ATTORNEY: Mr. Bensinger will --

17 MR. BENSINGER: Good afternoon, Your Honor, Bill
18 Bensinger for the Committee. Your Honor, the Committee, as the
19 Court is aware, has reached an agreement, settlement agreement
20 with both the debtor and now Coal Acquisition, formerly the
21 Steering Committee. So obviously one of the conditions to that
22 agreement is that the sale goes forward. So -- and in
23 accordance with that settlement agreement, we would like to see
24 the sale go forward so that the settlement agreement can be
25 finally consummated.

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1 Nonetheless, we would certainly encourage, as the
2 Court has and continues to encourage the parties to continue to
3 talk. We hope that there can be a deal. Obviously, it's a bad
4 situation for everyone and hopefully the adverse parties here
5 in this proceeding today can get together, as many of the other
6 parties have, and reach an agreement. Thank you, Your Honor.

7 THE COURT: Thank you, Mr. Bensinger. Mr. Corbett?

8 MR. CORBETT: Judge, the bankruptcy administrator has
9 no objection to the sale.

10 THE COURT: Thank you. Any other counsel present in
11 the courtroom wish to be heard? Ms. Kimble?

12 MS. KIMBLE: Thank you, Your Honor. Jennifer Kimble
13 of Rumberger Kirk & Caldwell on behalf of Airgas USA, LLC we
14 filed an objection to the sale which has been rolled to
15 February 3rd, it being deemed a cure objection. There was
16 another part of that objection related to assets that are owned
17 by Airgas, certain cylinders that are on the debtors' property.
18 We have negotiated with the debtor and have agreed to language
19 to be included in Paragraph H of the order. I have seen a
20 revised order. I don't know that it has been actually filed on
21 the docket or circulated. So we would like to preserve our
22 right to see any final proposed order before its entered by the
23 Court to ensure that our language is included.

24 Secondly, we're working to resolve the cure
25 objection. And that's obviously an issue for a different day.

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1 But we would also -- there's a number of Airgas contracts which
2 are not being assumed and there is property that the debtor
3 related to those contracts as owned by Airgas. And so we would
4 like to preserve our right to come back to the extent we need
5 to ask the Court for any relief with respect to recovery of
6 that property if and when businesses cease operating or any
7 further time down the road. That's all I have. Thank you.

8 THE COURT: Thank you, Ms. Kimble. Any other counsel
9 present?

10 MR. OZOLS: Good afternoon, Your Honor. Robert
11 Ozols, Maynard Cooper on behalf of the debtors. Here today is
12 Mr. Vogtle. He already announced himself on behalf of De-Gas.
13 Here he is. You know Mr. Vogtle and I have discussed the De-
14 Gas objection. And we are in agreement that it is not an
15 objection to sale approval before this Court today and that it
16 relates to assumption and rejection issues which we have also
17 agreed we will address further down this process, you know soon
18 in the process as well. But accordingly, my understanding is,
19 yes, that is not objected. So --

20 MR. VOGTLE: Judge, Jesse Vogtle for De-Gas. Mr.
21 Ozol's correct. My limited objection filed on behalf of De-Gas
22 is not an objection to the sale. We understand that a motion
23 to reject concerning our overriding royalty stream is going to
24 be the vehicle will travel on before this Court as we move down
25 the road on this.

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1 We understand Your Honor's already issued an order in
2 Dominion allowing for the stripping of that overriding royalty.
3 And you know ultimately, we're going to be making the same type
4 of challenge and have an expectation it will probably go up on
5 appeal at some point.

6 THE COURT: Well, there's already -- I think there
7 are actually already three appeals, one of which is probably
8 going to go away, may go away, two will continue on. And I'm
9 sure there will be more as a result of recent orders.

10 MR. VOGTLE: Yes, ma'am. We're not here to belabor
11 any of that. But it is real money to our clients. And we
12 think it's a change under Alabama law. We will hopefully a
13 better time to address that to you.

14 THE COURT: Thank you, Mr. Vogtle.

15 MR. VOGTLE: Yes, ma'am.

16 MR. OZOLS: Thank you.

17 THE COURT: Mr. Humphries?

18 MR. HUMPHRIES: Thomas Humphries for Dominion
19 Resources. And my position echoes Mr. Vogtle's significantly.
20 We don't think we can stand in the way of the sale going
21 forward so maybe we're in the wrong place. It was really just
22 a protective objection based on the future appeal and how
23 things might change if it works out in our favor in the future.
24 So we all consent to the sale on that basis.

25 THE COURT: Thank you. Ms. McFarland?

1 MS. McFARLAND: Yes, ma'am, Your Honor. Mainly we
2 intend to rely on what we've already submitted to the Court.
3 However, we would also join in Ms. Levine's objections to the
4 sale. We represent a number of employees and former employees
5 of Jim Walter who have been injured or received injuries
6 incurred in the scope and work of their business. And I do
7 realize that the workers' comp. is continuing in its normal
8 course. However, the sale of the assets as proposed would
9 relieve Walter Energy and Jim Walter of any responsibility for
10 these injuries to their employees.

11 We also represent certain individuals who have cases
12 that are still stayed under the bankruptcy, namely some
13 neighboring landowners who have had a trespass and other
14 damages on their property that would have no redress if their
15 liability -- if the liabilities of Walter Energy and the others
16 are cut off at the point of sale.

17 So therefore, we would just again renew our objection
18 to the sale.

19 THE COURT: Thank you, Ms. McFarland. Any other
20 counsel?

21 (No audible response)

22 THE COURT: Mr. Darby or Mr. Brimmage, anything else?

23 MR. BRIMMAGE: Your Honor, I have a few quick hits.
24 Your Honor, I'll make this brief but I do have a few quick hits
25 that I want to address and in no particular order. I hope

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1 that's okay with the Court.

2 Let me start with the Coal Act discussion. A couple
3 of things, Your Honor. One, the Coal Act, free and clear of
4 its obligations, is no different than ERISA and other similar
5 law obligations. I know counsel would have you believe
6 otherwise, but it's simply not the case.

7 The debtors recite in their reply brief and in their
8 papers otherwise as well. The Fourth Circuit case of Leckie
9 Smokeless -- I hope I'm saying that correct -- but the Court
10 considered all the arguments that are being made right now
11 before the Court. And in that one, the Court entered an order
12 approving the sale to the debtors -- of the debtors assets,
13 free and clear of the Coal Act obligations and of course over
14 the objection of the exact same arguments that are being made
15 today.

16 Your Honor, for the same rationale and I know the
17 Court has seen it and the Court has read it, so we're not going
18 to go into it.

19 THE COURT: Also seen it described as an outlier
20 opinion.

21 MR. BRIMMAGE: I don't know what makes it an outlier.
22 But just calling it an outlier doesn't make it an outlier.

23 THE COURT: Nonetheless, that's their view.

24 MR. BRIMMAGE: I understand. I think it's -- there's
25 good rationale to support it.

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1 There's -- I heard speculation and conjecture about
2 what will happen if you deny the motion. But there is simply
3 no evidence before the Court about what will happen if you deny
4 the motion. Not one shred of evidence. All you have is Mr.
5 Goodchild saying, I believe or I don't believe or I think. But
6 there's no evidence. That's just argument. And it's
7 speculative and its conjecture. There's simply no evidence.

8 Also, I just want to point out this \$185 million on
9 the chart, Mr. Masterharm's (sic) chart from Tab 2 --

10 UNIDENTIFIED ATTORNEY: Mesterharm.

11 MR. BRIMMAGE: Mesterharm. I'm going to give up.
12 I'm going to give up.

13 THE COURT: The AlixPartners' dude.

14 MR. BRIMMAGE: I know, the AlixPartners' dude. That
15 is -- you can look at it a couple ways, but that is coming from
16 either the collateral of the lenders or new money from the
17 lenders. But it's the lenders' money. The lenders have
18 committed to paying those obligations. That's what the arms'
19 length negotiation said. So this isn't some free ride for the
20 lenders. This -- the lenders are putting in real dollars to
21 back this thing.

22 Your Honor, we would also contend that the Court
23 should not stay the order. There's two reasons, there may be
24 more. One is, obviously, there's going to be no DIP until the
25 order is final and plans can go forward. And that's not a

1 counsel, particularly those of you I know who have traveled
2 many times to be here. We'll take it all under submission and
3 get you an order as soon as possible. Thank you.

4 UNIDENTIFIED ATTORNEY: Thank you very much, Your
5 Honor.

6 UNIDENTIFIED ATTORNEY: Thank you, Judge.

7 THE COURT: I do have a big consumer docket tomorrow.
8 So if you have stuff here, we can either push it up here, put
9 it in the closet or you all can come get it later today or
10 first thing in the morning.

11 UNIDENTIFIED ATTORNEY: We're getting it today.

12 THE COURT: Okay. Thank you.

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C E R T I F I C A T I O N

We, TAMMY DeRISI, LORI AULETTA, VIDHYA VEERAPPAN,
court approved transcribers, certify that the foregoing is a
correct transcript from the official electronic sound recording
of the proceedings in the above-entitled matter, and to the
best of our ability.

/s/ Tammy DeRisi

TAMMY DeRISI

/s/ Lori Auletta

LORI AULETTA

/s/ Vidhya Veerappan

VIDHYA VEERAPPAN

J&J COURT TRANSCRIBERS, INC.

DATE: January 11, 2016

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EXHIBIT 2

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:)	
	)	Chapter 11
WALTER ENERGY, INC. ¹	)	Case No. 15-02741 (TOM11)
)	
Debtors.	)	(Jointly Administered)
)	
)	

DECLARATION OF DALE STOVER IN SUPPORT OF THE OBJECTION OF THE UNITED MINE WORKERS OF AMERICA 1974 PENSION PLAN AND TRUST, THE UNITED MINE WORKERS OF AMERICA 1993 BENEFIT PLAN, THE UNITED MINE WORKERS OF AMERICA 2012 RETIREE BONUS ACCOUNT PLAN, THE UNITED MINE WORKERS OF AMERICA CASH DEFERRED SAVINGS PLAN OF 1988, THE UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT PLAN AND THE UNITED MINE WORKERS OF AMERICA 1992 BENEFIT PLAN TO (I) THE DEBTORS’ MOTION PURSUANT TO 11 U.S.C. §§ 105(a), 1113(c), AND 1114(g) FOR AN ORDER (I) AUTHORIZING THE DEBTORS TO (A) REJECT COLLECTIVE BARGAINING AGREEMENTS, (B) IMPLEMENT FINAL LABOR PROPOSALS, AND (C) TERMINATE RETIREE BENEFITS; AND (II) GRANTING RELATED RELIEF

I, Dale Stover, hereby declare:

1. I am over eighteen years of age. I have been employed since January 2, 1980 by the United Mine Workers of America Health & Retirement Funds (the “UMWA Funds”).

2. I submit this declaration in support of the Objection of the United Mine Workers of America 1974 Pension Plan and Trust (the “1974 Pension Plan”), the United Mine Workers of

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors’ corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.

America 1993 Benefit Plan (the “1993 Plan”), the United Mine Workers of America 2012 Retiree Bonus Account Plan (the “Account Plan”), the United Mine Workers of America Cash Deferred Savings Plan of 1988 (the “CDS”), the United Mine Workers of America Combined Benefit Fund (the “Combined Fund”), and the United Mine Workers of America 1992 Benefit Plan (the “1992 Plan,” and together with the Combined Fund, the “Coal Act Funds” and the Coal Act Funds, together with the 1974 Pension Plan, the 1993 Plan, the Account Plan, and the CDS, “UMWA Funds”) to the Debtors’ Motion Pursuant to 11 U.S.C. §§ 105(a), 1113(c) and 1114(f) for an Order (I) Authorizing the Debtors to (A) Reject Collective Bargaining Agreements, (B) Implement Final Labor Proposals, and (C) Terminate Retiree Benefits; and (II) Granting Related Relief (“1113/1114 Motion”).

3. Since November 3, 2003, I have held the position of Director of Finance and General Services (previously Comptroller) of the UMWA Funds. As Director of Finance and General Services, and formerly as Comptroller, my responsibilities include monitoring the payments made by the contributing employers to the UMWA Funds – including the Plans – and taking steps to ensure contributing employers’ compliance with their contractual and statutory contribution obligations.

4. Except as otherwise indicated herein, all facts set forth in this declaration are based upon my personal knowledge, my review of relevant documents, my opinion based upon experience, knowledge and information concerning the Plans, and information provided to me by employees working under my supervision. If called upon to do so, I would testify competently to the facts set forth in this declaration.

A. The UMWA Funds

5. The UMWA Funds is a group of seven multiemployer employee benefit plans and trusts that provide health insurance and retirement income benefits to retired coal miners and their families. The UMWA Funds are jointly administered by a single staff under administrative services agreements with the 1974 Pension Plan, which serves as the master administrative entity. Each plan was established separately and has its own board of trustees, eligibility requirements, and plan of benefits.

6. Two of the seven UMWA Funds, the United Mine Workers of America 1992 Benefit Plan and the United Mine Workers of America Combined Benefit Fund, were established under the Coal Industry Retiree Health Benefit Act, 26 U.S.C. §§ 9701 et seq. (the “Coal Act”).

7. The other five UMWA Funds were established pursuant to a collectively bargained agreement between the UMWA and Bituminous Coal Operators’ Association, Inc. (“BCOA”), entitled the National Bituminous Coal Wage Agreement (“NBCWA”) of 2011. The 1974 Pension Plan, the United Mine Workers of America Retiree Bonus Account Trust, and the United Mine Workers of America Cash Deferred Savings Plan of 1988 each provide certain benefit payments to eligible retired coal miners and other beneficiaries. The 1993 Plan and the United Mine Workers of America Prefunded Benefit Plan provide health benefits to certain retired mine workers and their eligible family members.

B. The Combined Benefit Fund

8. Certain Debtors are obligated to the Combined Fund with respect to approximately 32 eligible beneficiaries, with an annual premium of approximately \$147,000. Thirty-one of these beneficiaries are assigned to Jim Walter Resources, Inc. (“Jim Walter”), and

one is assigned to Taft Coal Sales & Associates, Inc. (“Taft”).² These premium obligations to the Combined Fund accrue in October of each year and are payable on a monthly basis.

C. The 1992 Plan

9. Currently, no beneficiaries of the 1992 Plan are attributable to the Debtors. I understand that the Debtors provide retiree health benefits to approximately 572 retired coal miners and their dependents through an individual employer plan (“IEP”), which the Debtors are required to provide pursuant to Section 9711 of the Coal Act. Of these beneficiaries, 542 are attributable to Jim Walter, and 30 are attributable to Taft. If the Debtors and their related persons cease providing the statutorily-mandated benefits through an IEP, those Coal Act-eligible miners and their dependents would become eligible to receive benefits from the 1992 Plan.

10. Benefits under the 1992 Plan are paid in part by monthly per beneficiary premiums from each operator to whom beneficiaries enrolled in the Plan are attributed. Because most beneficiaries are attributed to operators that are no longer in business, however, the cost of most benefits under the 1992 Plan are funded by transfers from the federal government under the Surface Mining Control and Reclamation Act, as amended by the Tax Relief and Health Care Act of 2006. If the Debtors are permitted to cease providing the benefits required by Section 9711 of the Coal Act, and if they are permitted to avoid payment of per beneficiary premiums, the cost of providing these benefits would be shifted to the federal government.

² The following Debtors are “related persons” for purposes of the Coal Act: J. W. Walter, Inc., Jefferson Warrior Railroad Company, Inc., Jim Walter Homes, LLC, Jim Walter Resources, Inc., SP Machine, Inc., V Manufacturing Company, Walter Coke, Inc., Walter Energy, Inc., Walter Home Improvement, Inc., Walter Land Company, Walter Minerals, Inc.

11. Certain signatory operators must also provide security in an amount equal to a portion of the projected future cost to the 1992 Plan of providing health benefits for eligible and potentially eligible beneficiaries attributable to such operator. This security may take the form of a bond, a letter of credit, or another form. With respect to the 572 beneficiaries described above, Jim Walter is providing security for 542 in the amount of \$4,312,152, and Taft is providing security for the remaining 30 in the amount of \$238,680, each of which is estimated to cover the health benefits of the applicable beneficiaries for approximately one year.

D. The 1974 Pension Plan

12. The 1974 Pension Plan is a multiemployer pension plan that was established by the NBCWA of 1974. Jim Walter is a signatory to the most recent NBCWA, the 2011 NBCWA, which continues in effect until December 31, 2016 and sets forth the contribution obligations of contributing employers to the 1974 Pension Plan, benefit levels owed to the 1974 Pension Plan's beneficiaries and participants, and eligibility requirements, among other substantive terms.

13. The 1974 Pension Plan provides pension benefits to approximately 89,000 eligible participants and beneficiaries who are retired or disabled former hourly coal production employees and their eligible surviving spouses. It is a successor to the UMWA Welfare and Retirement Fund of 1950, which grew out of the 1946 Krug-Lewis Agreement between the government of the United States and the UMWA that first established the bituminous coal industry's health and retirement system. This population of participants and beneficiaries includes individuals eligible under the 1974 Pension Plan and the UMWA 1950 Pension Plan, which merged to create the 1974 Pension Plan effective June 30, 2007.

14. Jim Walter is a "participating employer" in the 1974 Pension Plan, and is obligated with respect to: (a) monthly pension contributions that must be made for as long as the

employer has operations covered by the 1974 Pension Plan and (b) “withdrawal liability” accruing upon a partial or complete withdrawal by the employer from participation in the 1974 Pension Plan. Jim Walter, together with any other commonly-owned entities (including its co-Debtors), are jointly and severally liable for the withdrawal liability described below.

15. Jim Walter made contributions to the 1974 Pension Plan over the last three plan years in approximately the following amounts: \$21.1 million in 2012, \$20.3 million in 2013, and \$18.9 million in 2014. In 2014, Jim Walter’s contributions represented approximately 18% of the total contributions received by the 1974 Pension Plan from all contributing employers. Jim Walter’s projected contributions to the 1974 Pension Plan from now through December 2016 total \$17.5 million. Jim Walter is the second largest contributor to the 1974 Pension Plan.

16. Although the 1974 Pension Plan’s aggregate benefit payments are large, the individual pensions are quite modest, with majority of beneficiaries receiving less than \$500 per month and almost 80% receiving a monthly pension of less than \$800 a month. More specifically, of the approximately 89,000 beneficiaries:

- approximately 21,000 receive a monthly pension of less than \$200 per month;
- approximately 33,000 receive a monthly pension of between \$200 and \$500 per month;
- and
- approximately 17,000 receive a monthly pension of between \$500 and \$800 per month.

Only about 3% of the 1974 Fund’s beneficiaries receive a monthly check greater than \$2,000. The average monthly pension for a regular retiree is \$680; the average monthly pension for a disabled retiree is \$568; and the average monthly pension for a surviving spouse is \$343.

17. Pursuant to section 305(b)(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), the 1974 Pension Plan’s enrolled actuary certified the 1974

Pension Plan to be in Seriously Endangered Status for the plan years beginning July 1, 2011 through July 1, 2013 and Critical Status for plan year beginning July 1, 2014. On September 28, 2015, the 1974 Pension Plan was certified as being in Critical and Declining Status for the plan year beginning July 1, 2015. See 2015 Actuarial Certification, a copy of which is attached as Exhibit 1A. This certification shows that as of July 1, 2015, the 1974 Pension Plan had an estimated funded percentage of 68.5%, and an expected accumulated funding deficiency by June 30, 2019. *Id.* The 1974 Pension Plan's investments are well diversified, but the sharp market declines during 2008-09 caused a precipitous drop in the 1974 Pension Plan's assets at precisely the same time as the demographics of its beneficiary population required the 1974 Pension Plan to pay out benefits at approximately \$650 million per year, near its projected peak rate of payments.

18. Given the 1974 Pension Plan's immediate need for cash to pay benefits, it is unlikely to have sufficient time to recoup its losses from the financial crisis through prudent investment. Moreover, the 1974 Pension Plan cannot recover its funding status through increased contributions, because the number of retirees receiving benefits is approximately 10-12 times the number of active employees whose hours worked in the industry are the basis for employer contributions to the 1974 Pension Plan.

19. Under Section 4201 of ERISA, upon their withdrawal from a multiemployer pension plan, previously contributing employers are immediately liable for their proportionate share of the 1974 Pension Plan's unfunded vested pension liabilities. If Jim Walter were to cease all covered operations or otherwise permanently terminate its obligation to contribute to the 1974 Pension Plan, the Debtors would be jointly and severally liable for approximately \$936 million in withdrawal liability. If the Debtors are unable to satisfy this withdrawal liability obligation, a

significant loss of funding will result, which will exacerbate the 1974 Pension Plan's Critical and Declining Status. This, in turn, will affect the benefit levels of future retirees, and, if the loss of funding causes the 1974 Pension Plan to become insolvent, would reduce (or render the 1974 Pension Plan unable to pay) the pension benefits provided to approximately 89,000 eligible beneficiaries. Although the Pension Benefit Guaranty Corporation ("PBGC") guarantees payment of a portion of the 1974 Pension Plan's benefits (at a reduced level), the PBGC's multiemployer insurance program currently is facing a deficit of over \$52 billion and is projected to be insolvent in the next ten years. *See, e.g., News Update: PBGC Paid Nearly \$6 Billion in Pension Benefits to Retirees in FY 2015* (Nov. 17, 2015), *available at <http://content.govdelivery.com/accounts/USPBGC/bulletins/1258748>*, a copy of which is attached as Exhibit 1B. Even if the PBGC were able to provide financial assistance to the 1974 Pension Plan, the vast majority of beneficiaries would have their already modest pensions reduced even further.

20. In addition, as a result of the loss of funding caused by Jim Walter's withdrawal, and assuming the Debtors' withdrawal liability is not paid in full, the share of the 1974 Pension Plan's unfunded liabilities attributable to each of the remaining employers that contribute to the 1974 Pension Plan would be proportionally increased.

21. I have calculated the Debtors' approximately \$936 million withdrawal liability, assuming Jim Walter were to withdraw from participation in the 1974 Pension Plan in the plan year ending June 30, 2016, based on the withdrawal liability provisions of Article XIV of the 1974 Pension Plan Document (the "1974 Plan Document"), a copy of which is attached hereto as Exhibit 2. The Debtors' withdrawal liability is their share of the 1974 Pension Plan's unfunded vested benefits ("UVBs") that are allocable to Jim Walter. To determine the amount of

withdrawal liability allocable to a withdrawing employer, the 1974 Pension Plan uses a modified version of the “rolling-five” method of allocation. This method was specifically approved for use by the 1974 Pension Plan by the PBGC on June 20, 2003.

22. To calculate liability for a withdrawal in the plan year ending June 30, 2016, the 1974 Pension Plan’s unfunded vested benefits as of June 30, 2015 are multiplied by a fraction, as follows:

a) The numerator of the fraction is the total number of hours worked by the employer’s employees in classified work under the collective bargaining agreement, which form the contribution base units of the employer’s required contributions to the 1974 Pension Plan, for the five years ended June 30, 2015. The total of Jim Walter’s contribution base units for the five year period is 17,108,867 hours.

b) The denominator of the fraction is the total number of hours worked by employees of all employers participating in the 1974 Pension Plan for the same period. This denominator is 104,186,000 hours. This denominator has been adjusted by subtracting the number of any contribution base units of employers which withdrew from the 1974 Pension Plan during that five year period. See Ex. 2 at art. XIV § C.

23. The 1974 Pension Plan’s actuary has preliminarily determined that, as of June 30, 2015, the 1974 Pension Plan’s unfunded vested benefits are \$5,769,684,300. The unfunded vested benefits have been further adjusted by the value of all outstanding claims for withdrawal liability which can reasonably be expected to be collected from employers withdrawing on or before June 30, 2015, resulting in adjusted unfunded vested benefits of \$5,701,092,000. The 1974 Pension Plan’s unfunded vested benefits are calculated using the PBGC’s valuation

assumptions for multiemployer plans terminating as of the first day of the plan year following the valuation date and the Plan's market value of assets.³

24. The Debtors' allocable share of the adjusted unfunded vested benefits is calculated by multiplying the 1974 Pension Plan's adjusted unfunded vested benefits times the fraction set forth above representing Jim Walter's share of contribution base units for the five year period. Assuming a complete withdrawal prior to June 30, 2016, the Debtors' total withdrawal liability would be \$936,202,824.00. A copy of Debtors' withdrawal liability calculation worksheet is attached as Exhibit 3.

E. The 1993 Plan

25. Pursuant to the 2011 NBCWA, and each predecessor NBCWA since 1978, signatory employers agreed to directly provide health benefits, through individual employer plans, for their active employees, as well as lifetime benefits for eligible retirees for which such employer is the last signatory operator, at an agreed level of benefits provided in the NBCWA. *See 2011 NBCWA* at art. XX §§ (c)(3)(i) & (h), relevant portions of which are attached hereto as Exhibit 4.

26. Jim Walter, the same debtor-in-possession entity obligated to contribute to the 1974 Pension Plan, is currently operating and obligated to contribute to the 1993 Plan. Jim Walter also provides health benefits to 1,429 non-Coal Act retirees (and approximately 2,629 individuals, including retirees and dependents).

27. The 1993 Plan is a multi-employer welfare benefit plan that provides health care coverage to a limited group of retirees and their eligible dependents. This group of retirees' last

³ These withdrawal liability figures have been updated since the filing of the 1974 Pension Plan's proofs of claim, based on the most recent actuarial valuations provided to the Plan.

signatory employers are no longer in business and they are not otherwise covered and receiving benefits under the Coal Act. Pursuant to the 2011 NBCWA, and each predecessor NBCWA since 1993, signatory operators agreed to contribute to the 1993 Plan for the purpose of providing health care benefits to “orphan” retirees who meet the Plan’s eligibility requirements. *See* Article IX(2) of the UMWA 1993 Benefit Plan Agreement and Declaration of Trust, amended and restated as of July 1, 2011 (the “1993 Trust Document”), a copy of which is attached hereto as Exhibit 5. Jim Walter agreed to contribute to the 1993 Plan at the rate of \$1.10 per hour worked by its active employees. Ex. 4 at art. XX § (d).

28. The Trustees of the 1993 Plan make eligibility decisions for the 1993 Plan. The eligibility rules for the 1993 Benefit Plan are set out in Article IX(2) of the 1993 Trust Document, *see* Ex. 5 at 7-9, and the applicable NBCWA. Retirees who apply to receive their health benefits from the 1993 Plan are determined to be eligible if, in addition to individually meeting criteria relating to age and retirement date, work history and pension eligibility, their last employer signatory to the Wage Agreement, among other things, satisfies the following eligibility requirements:

- the employer must have been obligated to contribute to the 1993 Plan and must have actually contributed to the 1993 Benefit Plan at the standard rate;
- the employer must be obligated to contribute at the standard rate on the date when the employer is first considered to be “no longer in business”;
- the employer must have ceased all mining operations and ceased employing individuals under the applicable NBCWA, with no reasonable expectation that such operations will start up again; and
- the employer and any of its successors and assigns and any related division, subsidiary or parent corporation (regardless of whether they have signed a wage agreement) must meet the test for being “financially unable to provide the health and other non-pension benefits.” *See* Ex. 5 at 8.

29. To determine if the foregoing test is met, the UMWA Funds’ staff and the Trustees consider all of the relevant facts and circumstances, including whether the employer has

ceased all business activity and is financially unable to provide the benefits to its eligible retirees. The initial report regarding eligibility is contained in a Business Status Investigation conducted by the Funds' field auditors.

30. Under Article IX(1) of the 1993 Plan's Trust Document, the level of benefits to be received by eligible retired miners and their families from the 1993 Plan is determined by the Trustees "based on what it is estimated the [1993 Plan] can provide without undue depletion or excessive accumulation," and "shall be only such benefits as can be provided by the assets of the Trust." *Id.* at 6-7.

31. Thus, the 1993 Plan only provides benefits that can be supported by its assets and income. The health benefits as currently provided from the 1993 Plan are significantly below the level of benefits mandated by the Coal Act. For example, the Coal Act Plans require co-pays of \$5 for physician visits, have no deductible, and an annual out of pocket maximum of \$100 per family, while the 1993 Benefit Plan requires a co-pay of \$20 for physician visits and an annual out of pocket maximum of \$400 per family for physician office visits and an annual out of pocket maximum of \$1,600 per family for hospitalizations. For drug benefits, the Coal Act plans require a \$5 co-pay for a 30-day supply at a participating area pharmacy, with an annual out-of-pocket maximum of \$50 per family, whereas the 1993 Benefit Plan requires a \$15 co-pay, with an annual out-of-pocket maximum of \$600 per family.

32. The 1993 Benefit Plan relies on two main sources of funding. The benefits provided to beneficiaries enrolled in the 1993 Plan as of December 31, 2006 are funded by annual federal transfers mandated by statute in the Surface Mining Act, as amended in 2006. 30 U.S.C. § 1232. Benefits for the remaining beneficiaries, enrolled after December 31, 2006, are paid for by the collectively bargained contributions from signatory employers.

33. To the extent that sufficient employer contribution funding is not available to the 1993 Benefit Plan to provide the collectively-bargained level of benefits, the Trustees are required to reduce or eliminate these benefits.

34. At present, there are approximately 11,000 beneficiaries receiving health benefits from the 1993 Plan, which includes retired miners and their family members. Approximately 3,500 beneficiaries were enrolled on or after January 1, 2007. For these 3,500 beneficiaries, the 1993 Benefit Plan depends solely on contributing employers such as Jim Walter.

35. Jim Walter represents one of the largest employers contributing to the 1993 Plan. In 2014, Jim Walter contributed approximately \$3.6 million to the 1993 Benefit Plan, out of total contributions that year of \$16.1 million. Through the remaining term of the 2011 NBCWA, Jim Walter would be expected to contribute an estimated \$3.2 million to the 1993 Plan, at the rate of \$1.10 per hour worked.

36. If Jim Walter were to cease contributing to the 1993 Plan, this would mean a loss of approximately 22% of the 1993 Plan's contribution revenue, which is the only means of funding the benefits for approximately 3,500 beneficiaries currently receiving health benefits from the 1993 Plan. If these contributions cease, current projections show that the 1993 Plan will not have sufficient assets to provide benefits to these orphan beneficiaries through December 31, 2016. This loss of contribution income would require the Trustees of the 1993 Plan to significantly reduce or entirely eliminate benefits for these retirees and their families.

37. If Jim Walter not only ceases contributions to the 1993 Plan, but also ceases to provide health benefits to its retired employees and their families (approximately 2,629 individuals) those retirees and their families will lose their company-provided health care and be facing substantial harm. If such individuals apply for health benefits from the 1993 Benefit Plan,

their eligibility will be determined by the Trustees of the 1993 Plan based on the Plan's eligibility requirements. If the applicants are found not to be eligible for coverage by the 1993 Benefit Plan, they will be without a substantial medical benefit. If they are found to be eligible for benefits from the 1993 Benefit Plan, it will cause the post-2006 population of the 1993 Plan to nearly double, and will require a substantial reduction in benefits, or their elimination entirely.

38. The Funds' staff has estimated the effect upon the health care benefits of the 1993 Plan beneficiaries enrolled after December 31, 2006 if Jim Walter were to cease making contributions and if the eligible beneficiaries covered by the Debtors' individual employer health care plan were enrolled in the 1993 Plan. These estimates are based upon the per-beneficiary expense levels derived from the report of the Funds' health care actuaries as of August 2015, and the assumptions for contribution and population levels were drawn from an optimistic scenario provided by the actuaries at that time. The estimates are therefore conservative. If approximately 2,629 beneficiaries from the Debtors' plans were enrolled in the 1993 Plan, the Funds estimate that this would force a reduction in benefits from present levels of at least 43% in order to prevent a complete termination of benefits during the term of the 2011 NBCWA (to the extent such benefits are not eliminated entirely).

F. The Account Plan

39. The Account Plan is a benefit plan established by the NBCWA of 2011. The Account Plan was established to fund single sum payments in 2014, 2015, and 2016 to eligible beneficiaries of the 1974 Pension Plan who are pensioners, disabled pensioners, widows, and surviving spouses who satisfy the Account Plan's eligibility criteria.

40. The Account Plan is funded by employers who are signatory to the 2011 NBCWA or any other collective bargaining agreement entered into between the UMWA and an industry

employer that provides for the required contributions to and benefits from the Account Plan. The Account Plan is funded solely by twenty (20) contributing employers.

41. Prior to the 2011 NBCWA, certain annual one-time single sum payments were made from the 1974 Pension Plan to eligible beneficiaries. See 2007 NBCWA at art. XX §§ (1)(a)-(c) (“Pensions for Miners Retired Under the 1950 Pension Plan”); (2)(c)-(d) (“Pensions For Miners Who Retired Under The 1974 Pension Plan Prior To The Effective Date”); & (3) (“Pensions for Miners Who Retire On Or After The Effective Date”), relevant portions of which are attached hereto as Exhibit 6. These payments were in addition to the pension benefits that 1974 Pension Plan beneficiaries received on a monthly basis. Under the 2007 NBCWA, the annual one-time single sum payments from the 1974 Pension Plan ranged from \$455 to \$580 in 2010 and 2011. *Id.* at art. XX §§ (1) (a)-(b); (2)(c)-(d); (3). In the 2011 NBCWA negotiations, the UMWA and the BCOA determined that the financial condition of the 1974 Pension Plan required elimination of the annual single sum payments from the 1974 Pension Plan. In the 2011 NBCWA negotiations, the UMWA and BCOA agreed to create a new plan, the Account Plan, which signatory employers would fund separately. *See* Ex. 4, 2011 NBCWA at art. XX § (c)(4). To assist in funding the Account Plan, no single sum payments were made to beneficiaries in 2012 or 2013. *Id.*

42. Approximately sixty percent (60%) of current 1974 Pension Plan beneficiaries receive monthly pension benefits of \$500 or less. Under the terms of the Account Plan, single sum payments to eligible beneficiaries are projected to be \$455 or \$580, depending upon the type of pension the individual receives under the 1974 Pension Plan. If the Account Plan’s assets are insufficient to make payments in these projected amounts, the Account Plan makes payments to eligible beneficiaries in a base amount that is calculated based on the financial condition of the

Plan. Signatory employers are obligated to make up the difference between this base amount and the projected amount in “differential payments” to their own eligible pensioners whose last signatory employment was with the employer or related entities in the same controlled group of companies that includes the signatory employer. Beneficiaries of the Account Plan whose last signatory employer is no longer operating, however, only receive the base amount.

43. On or about November 1, 2014, the Account Plan made individual payments to approximately 78,000 eligible beneficiaries, ranging from \$397 to \$506, depending upon the beneficiary’s pension type. On or about November 1, 2015, the Account Plan made payments ranging from \$392 to \$500.

44. Signatory employers currently are required to contribute \$1.56 per hour to the Account Plan for each hour worked by their active employees and \$.30 per ton of bituminous coal procured or acquired by the employer after January 1, 2012. *Id.* at art. XX §§ (d)(1)(iii)-(iv)(c).

45. Jim Walter made contributions to the Account Plan over the last three plan years in approximately the following amounts: \$5.2 million in 2012, \$5.6 million in 2013, and \$5.1 million in 2014. Because the 2014 base amounts were less than the projected amounts of \$455 and \$580, Jim Walter paid \$147,416 in differential payments to its eligible beneficiaries in 2014 and \$164,121 in differential payments in 2015. Jim Walter is projected to contribute an estimated \$4.4 million for the calendar year 2015, and \$3.9 million for calendar year 2016. This projection is based upon an assumption that hours worked by industry employers will decline at the rate of 3% per year over the course of the 2011 NBCWA.

46. As noted above, the single sum annual payments from the Account Plan are projected to be in the amount of \$455 or \$580 for each eligible 1974 Pension Plan beneficiary,

with the variance depending on the circumstances of the applicable beneficiary's retirement. If the assets of the Account Plan are insufficient to make the projected payments, all of the beneficiaries of the Account Plan whose last signatory employer is no longer operating ("orphans") will receive reduced payments. There are approximately 51,000 Account Plan eligible 1974 Pension Plan beneficiaries whose last signatory employer is no longer operating. In addition, if the assets of the Account Plan are insufficient to make the projected payments, contributing employers, including Jim Walter, will have an obligation to make up the difference by making individual employer differential payments to their own eligible beneficiaries whose last signatory classified employment was with the employer or related entities in the same controlled group of companies that includes the employer.

47. During the first two years of the NBCWA, Jim Walter contributed approximately 22% of all of the contributions received by the Account Plan from all employers. Only one controlled group of employer companies contributed more than Jim Walter contributed.

48. If Jim Walter terminates all contributions to the Account Plan, a significant loss of funding will result, which will increase the likelihood that approximately 51,000 eligible "orphan" beneficiaries of the Account Plan will not receive the full amount of their projected payments. Because the base amount of the single-sum payment will be lower, the remaining contributing employers (other than Jim Walter) will have to make greater differential payments than otherwise would be required. In addition, if Jim Walter terminates its contributions to the Account Plan, it has not been resolved by the settlors of the Account Plan whether Jim Walter's beneficiaries will be eligible to receive benefits from the Account Plan. There is no alternate source of funding for these payments.

G. The CDSP

49. The CDSP is a defined contribution (individual account) 401(k) plan qualified under Section 401(a) of the Internal Revenue Code. It was established through collective bargaining between UMWA and the BCOA.

50. Pursuant to the terms of the 2011 NBCWA and to that certain rate letter, dated November 30, 2015, from the BCOA to the Trustees of the CDSP, a copy of which is attached as Exhibit 7, Jim Walter is obligated to contribute \$0.055 per employee for each hour worked from November 1 until December 31, 2015, and \$0.0322 per hour for January through December 31, 2016 to cover the administrative expenses of the Plan. *See* Ex. 4, 2011 NBCWA at art. XXB § e; Ex. 7. In calendar year 2014, Jim Walter contributed \$93,430 to the CDSP for these administrative costs. Jim Walter is projected to contribute an estimated \$83,900 for the calendar year 2015, and \$79,500 for calendar year 2016. In addition, Jim Walter is obligated to contribute to the CDSP \$1.50 per hour worked by each new inexperienced miner hired by Jim Walter on or after January 1, 2007; \$1.50 per hour worked by each new inexperienced miner hired by Jim Walter on or after January 1, 2012; \$1.50 per hour for each miner employed by Jim Walter who has 20 or more years of credited service; and \$1.50 per hour for each miner of Jim Walter who opts out of the 1974 Pension Plan on or after January 1, 2012. *See* Ex. 4, 2011 NBCWA at art. XXB § d. If Jim Walter terminates all contributions to the CDSP, these miners will not receive these payments to their accounts.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: December 9, 2015

/s/ Dale Stover

Dale Stover

EXHIBIT 3

Liabilities Assumed and Funding Obligations Agreed to by the Buyer under the APA

<u>Assumed Liabilities – Acquired Assets</u>	APA Section	Estimated Cost
Cure Costs	2.3(b)	\$8.6 million
Pre Close Steering Committee Prof Fees	2.3(f)	\$9.5 million
Post Petition Trade Accounts Payable	2.3(c)	\$13.4 million
Accrued Post Petition Operating Expenses	2.3(c)	\$6.8 million
Accrued Post Petition Taxes	2.3(k)	\$2.4 million
Black Lung Liabilities	2.3(d)	\$18.7 million
Reclamation Obligations	2.3(g)	\$37.1 million
Total Assumed Liabilities – Acquired Assets		\$96.5 million
<u>Assumed Liabilities – Non-Core Assets</u>		
Net Reclamation Obligations	2.3(m)	\$14.2 million
Technical Professionals - Reclamation	7.8(e)	\$1.5 million
Accrued Post Petition Taxes	2.3(k)	\$1.0 million
Black Lung Liabilities	2.3(d)	\$4.1 million
Total Assumed Liabilities – Non-Core Assets		\$20.8 million
Total Assumed Liabilities		\$117.3 million
<u>Trust Funding</u>		
Wind Down Trust	1.1	\$8.4 million*
Payroll Trust	1.1	\$6.6 million
Walter Coke Trust	7.8(a)	\$22.9 million
Estate Retained Professional Fees Trust and Committee Member and Indenture Trustee Fee Trust	1.1	\$30.3 million
Total Trust Funding		\$68.2 million
Estimated Total Assumed Liabilities and Trust Funding		\$185.5 million*

EXHIBIT 4

Debtors' Actual and Projected Cash Balance (Sale Hearing)

