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

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

STEERING COMMITTEE AND COAL ACQUISITION'S OMNIBUS OBJECTION TO (I) THE COAL ACT FUNDS' EMERGENCY MOTION FOR A STAY PENDING APPEAL AND (II) THE UMWA'S JOINDER TO THE COAL ACT FUNDS' EMERGENCY MOTION

The Steering Committee[2] and Coal Acquisition LLC ("Coal Acquisition" or the "Buyer" and together with the Steering Committee, the "Respondents") by and through their undersigned counsel, hereby file this omnibus objection (the "Objection")[3] to (i) the *Emergency Motion For a*

[1] The Debtors in these cases, along with the last four digits of each Debtors' 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).

[2] The "Steering Committee" means the informal group of certain unaffiliated (i) lenders under the Credit Agreement, dated as of April 1, 2011 (as amended, restated, amended and restated, waived, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Walter Energy, Inc. ("Walter Energy"), as U.S. borrower, Western Coal Corp. and Walter Energy Canada Holdings, Inc., as Canadian borrowers, the lenders from time to time party thereto, and Morgan Stanley Senior Funding, Inc., as administrative agent, and (ii) holders of the 9.50% Senior Secured Notes due 2019 (the "First Lien Notes") under the Indenture dated as of September 27, 2013 (as amended, waived, supplemented or otherwise modified from time to time) by and among Walter Energy, as issuer, the guarantors from time to time parties thereto, and Wilmington Trust, National Association, as successor trustee and collateral agent to Union Bank, N.A.

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Amended Final Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to Prepetition Secured Parties and (C) Granting Related Relief* [Dkt. No. 797] (the "Amended Final Cash Collateral Order"), the *Debtors' Motion for (A) an Order (I) Establishing Bidding Procedures for the Sale(s) of All, or Substantially All, of the Debtors' Assets; (II) Approving Bid Protections; (III) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Approving Form and Manner of the Sale, Cure and Other Notices; and (V) Scheduling an Auction and a Hearing to Consider the Approval of the Sale(s); (B) Order(s) (I) Approving the Sale(s) of the Debtors' Assets Free and Clear of Claims, Liens and*

Stay Pending Appeal (the "Stay Motion") [Dkt. No. 1619] filed by the United Mine Workers of America ("UMWA") Combined Benefit Fund (the "Combined Fund") and the UMWA 1992 Benefit Plan (the "1992 Plan" and together with the Combined Fund, the "Coal Act Funds" or the "Funds"); and (ii) the *UMWA Joinder to the UMWA Funds' Emergency Motion For a Stay Pending Appeal of the Sale Order* [Dkt. No. 1622] (the "Joinder") filed by the UMWA. In support of the Objection, the Respondents respectfully state as follows:

PRELIMINARY STATEMENT

By pressing to put the Court's approved sale of the Debtors' Alabama coal operations (the "Sale") on hold indefinitely, the Coal Act Funds and UMWA continue to put the continuation of the Debtors' operations at risk. The movants, without any evidentiary support, and clinging to but the slimmest of legal reeds, ask the Court to revisit an issue already litigated and ruled on and to effectively torpedo the Sale. Such action would lead to the swift wind-down of all of the Debtors' operations, and cause substantial harm to the Debtors' employees, their retirees, the local community, and the Debtors' creditors, including the very proponents of the Stay Motion.

The Sale Order (as defined below) is the result of significant concessions and intense negotiations among the Debtors and their key stakeholders. The Sale provides for the opportunity to preserve jobs for the Debtors' employees (including the opportunity for a new collective bargaining agreement that is still being negotiated between the Buyer and the UMWA), recoveries for multiple creditor constituencies, including the unsecured creditors and retirees, and the continued operation of the Debtors' coal business in Alabama.

Encumbrances; and (II) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Certain Related Relief [Dkt. No. 993] (the "Sale Motion") or the background section of this Motion, as applicable.

The undisputed evidence, as the Court has recognized, demonstrates that time has run out for the Debtors. Absent additional funding, in less than a month and before the scheduled Sale closing, the Debtors' cash balance will reach a threshold at which the Debtors can no longer operate and would have to start immediately winding down their operations, including the potentially irreversible step of filling their mines with cement. To enable the Debtors to continue to operate until the closing of the Sale, the members of the Steering Committee have agreed to backstop (the "Backstop Parties") the pending postpetition financing facility (the "DIP Facility"). Importantly, the closing of the DIP Facility is conditioned on the Sale Order not having been "reversed, amended, *stayed*, vacated, terminated or otherwise modified in any manner." *See Debtors' Motion for an Order (A) Authorizing the Debtors to Obtain Senior Secured Postpetition Financing, (B) Authorizing Continued Postpetition Use of Cash Collateral, (C) Granting Adequate Protection to Prepetition Secured Parties and (D) Granting Related Relief* [Dkt. No. 1646] at 12 (the "DIP Motion") (emphasis added). Thus, if the Sale Order is stayed, the Debtors will not have access to the DIP Facility and will hit their minimum required cash balance weeks before the February 29, 2016 Sale closing deadline. *See* Asset Purchase Agreement, dated as of November 5, 2015 [Dkt. No. 993 Ex. B] ("APA") § 11.1(b)(ii); Jan. 6 Hr'g Tr. at 59:21-62:13; *see also* Approved Budget, Ex. A to Proposed Order, Ex. A to DIP Motion. Furthermore, in order to close the sale by the February 29 deadline, Coal Acquisition will be required to expend significant time, effort, and funds in support of that goal. These are resources that will not be spent if the order is stayed. Jan. 6 Hr'g Tr. at 79:3-8.

Against this imminent harm to the Debtors, their employees, their retirees, the local community, and all creditor constituencies, the Coal Act Funds assert that they face the mere *possibility* that their appeal of the Sale Order will become moot. The Funds cannot legitimately

demonstrate any harm (let alone imminent, irreparable harm) to the group of retirees to whom the Debtors owe Coal Act obligations if the Sale Order is not stayed and the Sale proceeds to closing as currently contemplated. Their own evidence and argument shows that these retirees will continue to be provided for, in the form of the security provided by letters of credit posted by certain of the Debtors and by the automatic statutory shifting of these obligations. As a matter of Eleventh Circuit law, the mere "threat of mootness" that the Coal Act Funds supposedly face is not "irreparable harm" warranting a stay. But even if it were, it could not even move, let alone tip in their favor, the scales when set against the harms a stay would cause to various constituents by precipitating the Debtors' immediate operational wind-down. Indeed, the ripple effect of such a shutdown shows that the public interest also weighs in favor of denying the Stay Motion.

The Court, however, need not even reach the point where it is required to balance the harms involved in granting a stay, because the Coal Act Funds have not made the required "strong showing" that they are likely to succeed on appeal. Instead, they rehash the same arguments this Court has already rejected in granting the Sale Order. But there is ample case law supporting the Court's authority under Bankruptcy Code section 363(f) to approve a sale free and clear of Coal Act obligations. Nor is this authority circumscribed by the Anti-Injunction Act. The Coal Act Funds point to the absence of Eleventh Circuit precedent as if that somehow strengthens their position on the merits. In addition, the Funds have recognized in their own pleadings that, even without a free and clear order, any argument for imposing Coal Act liability on the Buyer suffers from critical weaknesses. On these grounds alone, the Stay Motion should be denied.

Despite the fact that they have come nowhere near making the "strong showing" of likely success required to justify a stay, the Coal Act Funds insist they should not be required to post security against the harms a stay of the Sale Order would cause the Debtors' estates and their creditors. If the Court somehow were able to find that the Coal Act Funds have made a strong showing of likely success on appeal and that the balance of harms tips in their favor, a bond of no less than $1.35 billion must be required to protect the Debtors and others in the event that the appeal is unsuccessful.

In sum, the Stay Motion must be denied,[4] but if it is granted, then a bond in an amount that fully protects the Debtors, their estates and their creditors must be required to protect against the likelihood that the Coal Act Funds' appeal fails.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this case and this Objection is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. On July 15, 2015 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under section 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these proceedings.

3. On November 5, 2015, the Debtors filed the Sale Motion, pursuant to which they sought authority to, among other things, sell their Alabama coal operations to the Buyer.

[4] Each of the arguments below apply equally to (1) the Funds' request for an indefinite stay and (2) the Funds' request for a stay until the end of February.

4. On November 23, 2015, the Debtors filed *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* [Dkt. No. 1094] (the "1113/1114 Motion").

5. On December 28, 2015, the Court entered the *Memorandum Opinion and Order Granting Debtors' Motion 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* [Dkt. No. 1489] (the "1113/1114 Order").

6. On January 5, 2016, the Debtors filed *Debtors' Omnibus Reply to Objections to the Debtors' Motion For (A) An Order (I) Establishing Bidding Procedures for the Sale(s) of All, or Substantially All, of the Debtors' Assets; (II) Approving Bid Protections; (III) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Approving Form and Manner of the Sale, Cure and Other Notices; and (V) Scheduling an Auction and a Hearing to Consider the Approval of the Sale(s); (B) Order(s) (I) Approving the Sale(s) of the Debtors' Assets Free and Clear of Claims, Liens and Encumbrances; and (II) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Certain Related Relief* [Dkt. No. 1552] (the "Sale Reply").

7. On January 5, 2016, the Buyer filed the *Declaration of Stephen Douglas Williams in Support of Debtors' Motion For (A) An Order (I) Establishing Bidding Procedures for the Sale(s) of All, or Substantially All, of the Debtors' Assets; (II) Approving Bid Protections; (III) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Approving Form and Manner of the Sale, Cure and Other Notices; and (V) Scheduling an Auction and a Hearing to Consider the Approval of the Sale(s); (B) Order(s)*

(I) Approving the Sale(s) of the Debtors' Assets Free and Clear of Claims, Liens and Encumbrances; and (II) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Certain Related Relief [Dkt. No. 1553] (the "Williams Declaration").

8. On January 8, 2016, the UMWA 1974 Pension Plan and Trust (the "1974 Pension Plan"), the UMWA 1993 Benefit Plan (the "1993 Plan"), the UMWA 2012 Retiree Bonus Account Plan (the "Account Plan"), the UMWA Cash Deferred Savings Plan of 1988 (the "CDSP"), and the Coal Act Funds (collectively, the "UMWA Funds") filed their *Notice of Appeal* of the 1113/1114 Order [Dkt. No. 1581].

9. On January 8, 2016, the UMWA filed its *Notice of Appeal* of the 1113/1114 Order [Dkt. No. 1579].

10. On January 8, 2016, the Court entered the *Order (I) Approving the Sale of the Acquired Assets Free and Clear of Claims, Liens, Interest and Encumbrances; (II) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Dkt. No. 1584] (the "Sale Order").

11. On January 12, 2016, the Coal Act Funds and the UMWA filed their respective notices of appeal of the Sale Order. *See* Dkt. Nos. 1605 & 1607.

12. On January 13, 2016, the Coal Act Funds filed the Stay Motion and the UMWA filed the Joinder.

ARGUMENT

13. A movant must satisfy each of the following four elements in order to secure a stay pending appeal: "(1) a strong showing that he is likely to succeed on the merits; (2) . . . irreparabl[e] injur[y] absent a stay; (3) . . . [no] substantial[] injur[y] [to] the other parties interested in the proceeding; and (4) . . . public interest [in a stay]." *Nken v. Holder*, 556 U.S.

418, 426 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); *In re Gen. Motors Corp.*, 409 B.R. 24, 32 (Bankr. S.D.N.Y. 2009) (4-factor test applicable to motion for stay pending appeal of a section 363 sale); *Warhurst v. One Twenty Foot Bertran*, No. CIV.A. 14-00245-N, 2015 WL 1885103, at *1 (S.D. Ala. Apr. 24, 2015) (same); *In re F.G. Metals, Inc.*, 390 B.R. 467, 471 (Bankr. M.D. Fla. 2008) (same).

14. A stay under Rule 8007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") "is an extraordinary remedy and requires a substantial showing on the part of the movant." *In re F.G. Metals, Inc.*, 390 B.R. 467, 471 (Bankr. M.D. Fla. 2008). Moreover, the movant must make the required "substantial showing" on each of the four elements. *Id.* at 472 ("The party requesting the stay must show satisfactory evidence on all four criteria."); *In re Davis*, 373 B.R. 207, 210 (Bankr. N.D. Ga. 2007) ("The moving party must show satisfactory evidence on all four criteria.") (quoting *In re Bilzerian*, 276 B.R. 285, 296 (M.D. Fla. 2002)); *In re Land Ventures for 2, LLC*, No. 2:10CV839-MHT, 2010 WL 4176121, at *2 (M.D. Ala. Oct. 18, 2010) (denying motion for stay pending appeal, stating that "the grant of a stay pending appeal is an exceptional response granted only upon a showing of four factors").

15. As set forth below, the Coal Act Funds fail to satisfy any of the four required elements, let alone all four. Thus, the Stay Motion must be denied.

I. The Stay Motion Must Be Denied Because The Coal Act Funds Have Failed To Show That They Are Likely To Succeed On The Merits.

16. The Coal Act Funds have failed to make the required "strong showing" that their Sale Order appeal is likely to succeed on the merits. "Normally, this first factor is the most important, and it requires demonstrating a probable likelihood of success on the merits on appeal." *Belton v. Georgia*, No. 1:10-CV-0583-RWS, 2013 WL 4551307, at *1 (N.D. Ga. Aug. 27, 2013) (quoting *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986)).

17. The Coal Act Funds principally rehash arguments made in their briefing in connection with, and at the hearing on the Sale Motion. *In re W.R. Grace & Co.*, 475 B.R. 34, 206 (D. Del. 2012) (no likelihood of success where stay applicant "once again rehashes the allegations it previously argued at length").

18. As the Debtors have already demonstrated in detail in connection with the 1113/1114 Motion and the Sale Motion,[5] and as they have demonstrated again in their just-filed reply to the Stay Motion, there is ample case law (1) supporting the Court's authority under section 363(f) to enter a Sale Order under which the Buyer takes free and clear of Coal Act obligations, and (2) refuting the Coal Act Funds' position that the Anti-Injunction Act prevents the Court from entering such an order. *See, e.g.*, *United Mine Workers of Am. 1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573, 582, (4th Cir. 1996) (authorizing sale free and clear of Coal Act obligations and rejecting Anti-Injunction Act jurisdictional bar); *In re HNRC Dissolution*, 2005 WL 1972592 (E.D. Ky. Aug. 16, 2005) (approving sale free and clear of Coal Act liabilities); *In re WP Steel Venture LLC*, No. 12-11661 (KJC) ECF No. 849, pp. 5-6. 8. 16-17 (Bankr. D. Del. Aug. 10, 2012 (same); *In re Patriot Coal*, No. 15-32450-KLP, ECF No. 1615, pp. 39-42, 125 (Bankr. E.D. Va. Oct. 9, 2015) (same); *In re Ormet Corp.*, 2014 WL 3542133 (Bankr. D. Del. July 17, 2014) (approving sale free and clear of successor pension liabilities); *In re Dixie Pellets*, *LLC*, 2009 WL 8189341 (Bankr. N.D. Ala. Sept. 13, 2009) (approving sale free and clear of liens, including based on successor liability theories); *In re Trans World Airlines, Inc.*, 322 F.3d 283 (3d Cir. 2003) (approving sale free and clear of successor employment liabilities); *In re USA United Fleet Inc.*, 496 B.R. 79, 84 (Bankr.

[5] *See, e.g.*, Sale Reply ¶¶ 37 (Anti-Injunction Act), 40-42 and n.66 (free-and-clear orders), and 43-48 (section 363(f)).

E.D.N.Y. 2013) (sale order that affects taxing authority's ability to assess taxes not barred by Anti-Injunction Act).

19. For the reasons stated in the Debtors' briefing, and in the Debtors' and Buyer's arguments at the January 6, 2016 hearing,[6] the Coal Act Funds' arguments on the merits fail, including the arguments regarding the applicability of the Anti-Injunction Act and the Debtors' ability to sell free and clear of Coal Act liabilities under Bankruptcy Code section 363(f). This Court has already given full and careful consideration to all of these arguments and has rejected them in its decision to approve the Sale. *See generally* Sale Order. Moreover, in their just-filed objection to the Stay Motion, the Debtors have presented further compelling reasons why the Coal Act Funds cannot succeed on the merits of their appeal. *See* Debtors' Obj. § I.A.

20. This Court expressly overruled the Coal Act Funds' arguments that the Anti-Injunction Act precludes the Court's entry of the Sale Order. The Sale Order contains injunctive provisions that include Coal Act liabilities, and rejects arguments that section 363(f) does not allow the Debtors to sell free and clear of all Coal Act liabilities. These provisions are based on the case law cited by the Debtors in the Sale Motion and the Sale Reply, and are further supported by the case law cited in the Debtors' just-filed reply to the Stay Motion. *See* ¶ 18 *supra*. In addition, the Coal Act Funds have recognized in their own pleadings that, even without a free and clear order, any argument for imposing Coal Act liability on the Buyer is weak. *See* UMWA Funds' Sale Obj. [Dkt. No. 1373] ¶ 32.

21. In light of the ample case law supporting the Court's entry of the Sale Order, as well as the arguments the Debtors have advanced here,[7] the Coal Act Funds have not come

---

[6] *See* Jan. 6 Tr. at 173:9-174:15; 177:12-23;179:5-180:7;187:6-13; 210:2-25.

[7] The Coal Act Funds are unlikely to succeed on the merits of their appeal for a number of other reasons, which the Steering Committee and Coal Acquisition reserve the right to raise at the hearing and elsewhere.

anywhere near making the required "strong showing" that their appeal is likely to succeed on the merits. They themselves acknowledge that major elements of the arguments they will be required to make have no 11th Circuit precedent to support them. *See* Stay Motion ¶ 11. The Stay Motion should be denied on these grounds alone.

II. The Stay Motion Must Be Denied Because The Balance Of Harms Strongly Favors Denying the Stay Motion.

A. There is no harm to the Funds or the UMWA from denying the Stay Motion.

22. The Coal Act Funds focus heavily on the possibility that they could "lose their right to appeal," *i.e.* that they face a "threat of mootness." *See* Stay Motion ¶¶ 17, 18. Eleventh Circuit courts have repeatedly held, in accord with the majority of courts, that "the risk that an appeal may become moot does not by itself constitute irreparable harm." *In re Scrub Island Dev. Grp. Ltd.*, 523 B.R. 862, 878 (Bankr. M.D. Fla. 2015); *McDermott Gulf Operating Co. v. Con-Dive, LLC*, No. CIV A 09-0206-WS-B, 2009 WL 1855929, at *10 (S.D. Ala. June 29, 2009) ("[a] majority of courts have held that a risk of mootness, standing alone, does not constitute irreparable harm'") (quoting *In re Adelphia Commc'ns Corp.*, 361 B.R. 337, 347 (S.D.N.Y. 2007); *see also In re F.G. Metals*, 390 B.R. at 477 ("The irreparable harm must be neither remote nor speculative, but actual and imminent.").

23. The Funds also suggest, without a shred of evidentiary support, that (1) their "fiscal integrity" faces "irreparable damage" and (2) "continued healthcare benefits for the nation's coal miners" are at risk. There is simply no evidence before the Court from which it could determine that the Coal Act Funds' fiscal integrity is at risk by JWR and Taft's failure to pay Combined Fund premiums which total $147,000 per annum. On the second issue, the risk to the retired coal miners, the Funds themselves have acknowledged that "if the[] [Debtors] are permitted to avoid payment of per beneficiary premiums, the cost of providing these benefits

would be shifted to the federal government." *See* Stay Motion Ex. 2 (Stover Decl.) ¶ 10; *see also Holland*, 256 F.3d at 821 ("there is no chance of the miners being denied their benefits").[8]

24. Furthermore, evidence solicited by the UMWA Funds and presented at the hearing on the Sale Motion shows that there are letters of credit securing the 1992 Plan obligations that will remain in place until after the Sale Closing and that are intended to secure performance on a year's worth of 1992 Plan obligations. Jan. 6 Tr. at 124:18-125:4 (Mesterharm); 160:15-161:1 (Willett, referring to Stay Motion Ex. 2 (Stover Decl.) ¶ 11); Sale Hearing Trial Exs. 6 and 7.

25. Thus, the Coal Act Funds have shown no cognizable harm, let alone imminent irreparable harm, that would justify granting the requested stay. The Stay Motion should be denied on this ground as well.[9]

B. The harm that a stay would cause to the Debtors, the Debtors' employees, Coal Acquisition, the Debtors' secured and unsecured creditors and other creditors (including the UMWA and the Coal Act Funds) is far greater than any harm the Coal Act Funds could face.

26. The Debtors have presented undisputed evidence and testimony that there were no bids, and no indications of interest, from buyers, other than Coal Acquisition, for the Debtors' core Alabama assets, including Mines 4 and 7. Jan. 6 Hr'g Tr. at 65:21-66:2; Dec. 15 Hr'g Tr. at 83:20-84:13. Furthermore, a wealth of evidence the Court has heard recently shows that the coal

[8] The Debtors spend approximately $6.4 million for retiree medical benefits with respect the individual employer plan for the 572 coal miner retirees. *See* Disclosure Statement for Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Dkt. No. 567] at Article IV Section D. The Buyer simply is not willing to assume these substantial liabilities that JWR and Taft have under the Coal Act.

[9] The Coal Act Funds argue that the Third Circuit's decision in *In re Revel AC, Inc.*, 802 F.3d 558 (3d Cir. 2015) justifies relief here. *See* Stay Motion ¶ 7. But *Revel* is easily distinguishable. First, in *Revel* the Third Circuit found that the movant's harm was irreparable because without a stay it faced the imminent shutdown of its business. *In re Revel AC, Inc.*, 802 F.3d at 572. As noted above, the Coal Act Funds have presented no evidence from which this Court could conclude they face the imminent shutdown of their "business." Second, in *Revel* the Third Circuit found that the movant's victory on the merits "was all but assured." *Id.* at 575. Here, simply on the basis of the lack of Eleventh Circuit precedent, there is no possibility the Court could conclude that the Coal Act Funds' victory on the merits is "all but assured."

mining industry continues to decline and that there are no signs of recovery on the horizon. *See, e.g.*, Dec. 15 Hr'g Tr. at 135:21-136:13 (Scheller testimony regarding the benchmark price of met coal from 2011 to the present). The Court also heard evidence and testimony that, in light of these conditions, without additional infusion of cash the Debtors will be forced to shut down operations by the middle of February. Stay Motion Ex. 4; Jan. 6 Hr'g Tr. at 59:21-62:13; Dec. 15 Hr'g Tr. at 47:14-51:3; Dec. 16 Hr'g Tr. at 37:22-38:14.

27. Coal Acquisition is moving forward with the Sale and the Backstop Parties have worked diligently with the Debtors to negotiate the DIP Facility and the related documents to ensure that the Debtors' operations survive through the anticipated Sale closing date. *See* DIP Motion ¶¶ 3-6, 14. As the motion highlights, the availability of the DIP Facility is conditioned on the Sale Order not being stayed. DIP Motion at 12; DIP Term Sheet, Ex. B to DIP Motion at 7. Moreover, the Backstop Parties simply will not carry out the financing without a fully-effective Sale Order that remains un-stayed. Jan. 6 Hr'g Tr. at 81:25-83:12. Without the cash infusion that the DIP Facility would provide, the Debtors will be forced to proceed to wind down their operations, causing substantial harm to numerous constituencies. Jan. 6 Hr'g Tr. at 59:21-62:13; Stay Motion Ex. 4; 1113/1114 Order ¶ 100 and Conclusion.

28. Furthermore, Coal Acquisition will be required to expend significant time, effort and money in pursuit of accomplishing a closing by the deadline set forth in the APA. Jan. 6 Hr'g Tr. at 31:11-15; APA § 11.1(b)(ii). Among the most pressing of these expenditures are efforts to be made in connection with reaching a new collective bargaining agreement with Coal Acquisition's future employees. Jan. 6 Hr'g Tr. at 146:4-15. The Buyer also must spend significant time, effort and money toward meeting certain bonding and permitting requirements.

Jan. 6 Hr'g Tr. at 74:13-75:13. These are resources that will not be spent absent an effective Sale Order. Jan. 6 Hr'g Tr. at 79:3-8.

29. The Coal Act Funds assert, without support, that the First Lien Secured Parties would not "permit the Debtors to effectively destroy their collateral . . . ." *See* Stay Motion ¶ 30. This is pure speculation, based entirely on the Coal Act Funds' assumption of what constitutes "economic interests or rational behavior." *Id.* ¶¶ 26-30. Moreover, it cannot stand up against the testimony at the hearing on the Sale Motion, *see* Jan. 6 Hr'g Tr. at 82:17-83:12 (Zelin testimony that he "believe[s]" the lenders will not "give us the money" without a Sale Order), nor the explicit provisions of the DIP financing documents. DIP Motion at 12; DIP Term Sheet, Ex. B to DIP Motion at 7. *In re Gen. Motors Corp.*, 409 B.R. at 32 (crediting evidence that "[t]he U.S. Government is not willing to keep funding GM while creditors block the 363 transaction to improve upon their individual recoveries").

30. The losses that would be caused by the Debtors' operational wind down include, among other things, the total loss of all jobs at the Alabama and other mines, losses for local vendors and businesses and the total loss of value to the settlement parties expecting recoveries (including the Unsecured Creditors' Committee and the Retiree Committee). 1113/1114 Order ¶ 100. Indeed, the shutdown of the Debtors' businesses, considered alone, is both imminent (because it will occur by mid-February absent the additional cash infusion from the First Lien Secured Parties) and likely irreparable (in light of the measures that must be taken to safely wind down the Debtors' operations). Simply put, the balance of harms is clear. It tilts decisively in favor of denying the Coal Act Funds' Stay Motion. *See, e.g.*, *In re Calpine Corp.*, No. 05–60200 (BRL), 2008 WL 207841, at *5 (Bankr. S.D.N.Y. Jan. 24, 2008) (where debtors' exit financing stated as a condition of closing that the court's confirmation order could not be stayed or

modified, finding that "a stay would cause potentially substantial, irreversible injury to the Debtors, their creditors, and other stakeholders"); *In re Gen. Motors Corp.*, No. 09-50026REG, 2009 WL 2033079, at *1 (S.D.N.Y. July 9, 2009) (denying stay where "the entry of a stay likely would give the government the right to withdraw its financing . . . [and] GM would be forced into liquidation with disastrous consequences . . . ."); *In re Pub. Serv. Co. of N.H.*, 116 B.R. 347, 350 (Bankr. D.N.H. 1990) (recognizing as harm, fact that stay would jeopardize $1.5 billion in financing currently being negotiated).

III. The Stay Motion Must Be Denied Because Public Interest Strongly Weighs Against the Stay

31. The Coal Act Funds have also failed to make the required showing that the issuance of a stay would serve the public interest. To the contrary, consideration of the public interest decisively weighs against the stay in these cases.

32. In considering this factor, courts have considered the impact of a stay on a debtor's ability to continue as a going concern and the consequences for a debtor's employees, vendors, creditors, and the business community. As noted, the granting of the Stay Motion would almost certainly cause the Debtors to have to liquidate by the middle of next month, and to begin winding down operations (including the potentially irreversible process of pouring cement into the mines). *See* DIP Motion at 11; Stay Motion Ex. 4; Jan. 6 Hr'g Tr. at 59:21-62:13, 81:25-83:12; Dec. 15 Hr'g Tr. at 47:14-51:3; Dec. 16 Hr'g Tr. at 37:22-38:14. As this Court has long recognized, if the Debtors are forced to liquidate, "the value of the Debtors' estates will plummet, all of the Debtors' stakeholders will suffer, all of the Debtors' employees will lose their jobs, all of the Debtors' key vendors will lose a business partner, and the Central Alabama community will lose a valuable contributor to its economy and corporate life." 1113/1114 Order ¶ 100. The Sale, however, allows the Debtors the chance to maintain their Alabama coal

operations as a going concern, keep the mines open, offer future job opportunities and continue to be a productive member of the business community. *Id.* Conclusion p. 56. Faced with a similar dilemma in the GM bankruptcy, Judge Gerber found that "the damage to the public interest would be irreparable . . . . incalculable" and that "the public interest [did] not favor a stay; it compel[ed] the denial of one." *In re Gen. Motors Corp.*, 409 B.R. at 33; *see also In re Gen. Motors Corp.*, 2009 WL 2033079, at *1 ("At the very least, the entry of a stay likely would give the government the right to withdraw its financing . . . [and] GM would be forced into liquidation with disastrous consequences for GM, its creditors (including the Committee and its constituents), and our country."); *Triple Net Inv. IX, LP v. DJK Residential, LLC (In re DJK Residential, LLC)*, Nos. 08-10375 (JMP), M-47 (GEL), 2008 WL 650389, at *4 (S.D.N.Y. Mar. 7, 2008) (denying stay where a "continued smooth operation of [the debtor's] business . . . [wa]s beneficial not only to the parties to the bankruptcy proceedings, but also to the broad consuming public"); *In re CPJFK, LLC*, 496 B.R. 65, 69 (Bankr. E.D.N.Y. 2011) (noting that the public interest weighed against a stay where consummation of a sale would allow the debtors to continue in business, providing jobs to its employees, and ending labor disputes).

33. Courts have also recognized that the public interest is served by the expeditious administration of bankruptcy cases and the finality of decisions in bankruptcy proceedings, as well as the desirability of implementing the legitimate expectations of creditors. *See In re Gulf States Steel, Inc. of Ala.*, 285 B.R. 739, 744 (Bankr. N.D. Ala. 2002) (finding the public interest would be harmed by a delay in closing a sale, and there was a public interest in having the matter resolved); *In re Chemtura Corp.*, No. 09-11233 REG, 2010 WL 4638898, at *8 (Bankr. S.D.N.Y. Nov. 8, 2010) (public interest favors the expeditious administration of bankruptcy

cases, and recognizes the desirability of implementing the legitimate expectations of creditors to get paid). All of these considerations militate against a stay here.

34. Despite the tangible and widespread hardship that will result from a stay, the Coal Act Funds argue that the public interest will nevertheless be served by issuance of a stay because the public has an interest in ensuring that the Coal Act Funds are well-financed, harmonizing federal statutes, and resolving the "mostly unanswered" questions about how future Coal Act tax assessments can be treated in bankruptcy proceedings. Stay Motion ¶¶ 32-34. These arguments have no merit. None of the "public interest" cases cited by the Coal Act Funds involved the stay of a bankruptcy court order or the possible demise of a company. *Id.*[10] To the extent such considerations are even relevant, however, they do not support issuance of a stay. The Court has already found that the Debtors will not have any money to pay for the Coal Act Funds obligations after the Sale closes (and no credible evidence was offered that the information was incomplete or unreliable), *see* 1113/1114 Order ¶ 63, and it goes without saying that the Debtors will not be able to contribute to the Coal Act Funds if they are forced to liquidate. The federal statutes at issue, moreover, include section 363(f) of the Bankruptcy Code, the very essence of which is to provide debtors the ability to sell assets "free and clear of any interest in such property." 11 U.S.C. § 363(f). If the Debtors are not allowed to do so here, such an outcome will undermine an important and critical provision of the Bankruptcy Code.

[10] *See Marshall v. Super. Sand & Gravel, Inc*., 492 F. Supp. 1195 (W.D. Mich. 1980) (regarding access to mine by a federal mine inspector); *Johnson v. U.S. Dep't of Agric*., 734 F.2d 774 (11th Cir. 1984) (class action regarding non-judicial foreclosure process under a federal loan program for rural housing); *K.G. ex rel. Garrido v. Dudek*, 839 F. Supp. 2d 1254 (S.D. Fla. 2011) (regarding Medicaid coverage for applied behavioral analysis therapy); *Chemetron Corp. v. Crane Co.*, No. 77-2800, 1977 WL 1491 (N.D. Ill. Sept. 8, 1977) (preliminary injunction seeking to restrain tender offer as violative of the Securities Exchange Act of 1934); *Kentucky ex rel. Educ. & Workforce Dev. Cabinet Ky. Office for the Blind v. United States*, No. 12-0132, 2015 WL 1541987 (W.D. Ky. Apr. 7, 2015) (dispute regarding military submission for bids to supply dining facility attendant services and whether bidder had priority for the contract pursuant to the Randolph–Sheppard Vending Stand Act).

IV. Even If The Court Grants The Stay Motion, The Coal Act Funds And UMWA Must Post A Bond Of At Least $1.35 Billion.

35. Even if the Court were to find that a stay is warranted (which it is not), the Coal Act Funds and the UMWA must post a *supersedeas* bond in an amount sufficient to protect the non-moving parties—the Debtors, their creditors (including the First Lien Secured Parties), and other stakeholders—against any loss that might be sustained as a result of an ineffectual appeal. *In re Weinhold*, 389 B.R. 783, 787 (Bankr. M.D. Fla. 2008); *In re Adelphia Commc'ns Corp.*, 361 B.R. 337, 350 (S.D.N.Y. 2007).

36. Where an appellant "seeks the imposition of a stay without a bond, the applicant has the burden of demonstrating why the court should deviate from the ordinary full security requirement." *In re Land Ventures for 2*, 2010 WL 4176121, at *3 (M.D. Ala. Oct. 18, 2010); *see also In re W.R. Grace & Co.*, 475 B.R. 34 (D. Del. June 11, 2012) ("It has been recognized that if the movant seeks the imposition of a stay without a bond, the applicant has the burden of demonstrating why the court should deviate from the ordinary full security requirement."); *In re Weinhold*, 389 B.R. at 788 (same). The Coal Act Funds have not met their burden.

37. The Coal Act Funds argue that no bond should be required, suggesting that no injury will occur if the Sale Order is stayed pending appeal through February. Stay Motion ¶¶ 35-39. As set forth *supra*, this is manifestly incorrect and contradicted by the weight of the evidence. Rather, the evidence shows that if a stay is imposed (whether through February only, or for a longer period), the Backstop Parties will not provide the necessary financing, wind down of the Debtors' operations will commence, jobs will be lost, the value of the secured creditors' collateral will be significantly diminished, and the Debtors' estates will be liquidated.

38. The Coal Act Funds request, in the alternative, that only a "small" bond be required. Stay Motion ¶ 38. However, a small bond will not protect the non-moving parties

from the massive harm that would result from an ineffectual appeal. Indeed, here, as in GM, the fact that "the cost of a bond would be prohibitive in light of the magnitude of the potential loss to the Debtors. . . *only serves to highlight the substantial risk of dramatic injury to Debtors and other creditors if the Bankruptcy Court's orders were erroneously stayed. Absent a bond, such injuries would be substantial and irreparable*." *In re Gen. Motors Corp.*, 409 B.R. at 34 (emphasis in original).

39. Here, no bond can adequately compensate for the loss threatened by an ineffectual appeal. But, at a minimum, a bond of at least $1.35 billion is required to protect the First Lien Secured Parties' and Coal Acquisitions' interests, as well as the Debtors' employees, their retirees, their trade vendors, their unsecured creditors and all other creditor constituencies.[11] If the stay is imposed and the Debtors are liquidated, the Sale will not proceed. In addition to the aforementioned incalculable harm, the massive losses that will result will include at a minimum the purchase price for the assets included in the foregone sale ($1.15 billion as a credit bid and $8.4 million in cash consideration and a wind down trust), the amount of liabilities that will no longer be assumed and trust funding that will no longer be provided ($177.1 million, *i.e.* $185.5 million minus the cash consideration included the purchase price), and the proposed DIP Facility that will not be extended ($50 million) and which would be repaid at closing with additional cash consideration provided by Buyer. *See* Asset Purchase Agreement, dated as of November 5, 2015 [Dkt. 993 Ex. B] § 3.1; Stay Motion Ex. 3; DIP Motion. This amount would be greater if the excluded assets were unable to be sold on a going concern basis. Furthermore, since the $1.35

[11] Courts have upheld bonds of this magnitude in other cases where the threatened harm was significant. *See, e.g.*, *In re Tribune Co.*, 477 B.R. 465, 483 (Bankr. D. Del. 2012) (requiring a bond of $1.5 billion); *In re Calpine Corp.*, 2008 WL 207841, at *7 (denying motion for stay, but noting that if appellants had met the burden necessary for the grant of a stay, a bond in the range of $900 million to $1 billion would have been required); *In re Chemtura Corp.*, No. 09-11233 REG, 2010 WL 4638898, at *10 (Bankr. S.D.N.Y. Nov. 8, 2010) (bond would have to be no less than $8.5 million, and very possibly considerably higher); *Adelphia*, 361 B.R. at 354 (imposing a $1.3 billion bond).

billion amount does not account for the incalculable harms a stay would cause to the Debtors' employees, vendors, landlords and others, for a bond to be sufficient it should actually be significantly greater than $1.35 billion.

V. The Stay Motion Must Be Denied Because It Is Functionally A Motion For Reconsideration That Cannot Meet The Reconsideration Standards.

40. The Stay Motion is functionally a motion for reconsideration, because the issue of a stay pending appeal was previously litigated in connection with the Sale Motion and disposed of by the Court. In their objection to the Sale Motion and at the Sale Motion Hearing, the Funds argued in favor of a Rule 6004(h) stay. *See* UMWA Funds Sale Obj. ¶ 4; Jan. 6 Hr'g Tr. at 32:13-33:1; 197-98. In their Sale Reply and at the Sale Motion Hearing, the Debtors argued against a Rule 6004(h) stay. Coal Acquisition joined in the argument against a stay at the hearing on the Sale Motion. *See* Sale Reply ¶¶ 74-76; Jan. 6 Tr. at 26:12-15; 211:22-212:8. In the Sale Order, the Court specifically rejected the Funds' request for a stay, found no need for delay in the Sale Order's implementation, and appropriately overrode the Rule 6004(h) stay. *See* Sale Order ¶¶ FF, 39.

41. The Stay Motion must be denied because it does not meet the stringent standards for reconsideration. *In re White*, 243 B.R. 515, 517 (Bankr. N.D. Ala. 1999) (explaining that "motions to alter or amend are to be allowed only for extraordinary circumstances, serv[ing] to correct manifest errors of law or fact, or to consider the import of newly discovered evidence") (quotation and citation omitted).

42. There has been no intervening change in the law. Indeed, the rule 8007 standards applicable to a stay on appeal are more stringent than the Rule 6004(h) "automatic" stay, and none of the stay standards (whether Rule 6004(h) or 8007) have changed.

43. The Coal Act Funds have put on no new evidence, because there is none. As noted above, the Stay Motion merely rehashes the unsupported and speculative arguments the Funds already presented in briefing and oral arguments in connection with the 1113/1114 Motion and the Sale Motion. *Sierra Equity Grp., Inc. v. White Oak Equity Partners, LLC*, 687 F. Supp. 2d 1322, 1324 (S.D. Fla. 2009) ("[M]otions to reconsider are not a platform to relitigate arguments previously considered and rejected.") (quotation and citation omitted).

44. Finally, there were no manifest errors of law or fact in the Sale Order, which is supported by ample evidence, including in part the evidence cited above. In sum, if the Court did not see fit to grant even a 14-day temporary stay, it certainly cannot find it appropriate to grant a longer stay. The Stay Motion should therefore be denied as it does not meet the standards for reconsideration of the Court's refusal to stay the Sale Order under Rule 6004.

CONCLUSION

45. For the reasons set forth above and to be presented at the hearing on the Stay Motion, this Court should deny the Stay Motion. Alternatively, solely in the event the Court grants the Stay Motion, the Court should condition any stay on the requirement that the Coal Act Funds and the UMWA post an appeal bond in an amount sufficient to protect the Debtors, the Steering Committee, and the Debtors' other creditors and stakeholders, which in any event should not be less than $1.35 billion. The Court should also grant such further relief as is just and proper.

Dated: January 18, 2016
Birmingham, Alabama

Respectfully submitted,

/s/ Michael Leo Hall
Michael Leo Hall
D. Christopher Carson

Hanna Lahr

BURR & FORMAN LLP
420 North 20th Street, Suite 3400
Birmingham, AL 35203
Phone: (205) 251-3000
Fax: (205) 458-5100
Email: mhall@burr.com
ccarson@burr.com
hlahr@burr.com

and

AKIN GUMP STRAUSS HAUER & FELD LLP
Ira S. Dizengoff, Esq. (*pro hac vice*)
Marty L. Brimmage, Jr., Esq. (*pro hac vice*)
Kristine G. Manoukian, Esq. (*pro hac vice*)
One Bryant Park
Bank of America Tower
New York, NY 10036-6745
Phone: (212) 872-1000
Fax: (212) 872-1002
Email: idizengoff@akingump.com
mbrimmage@akingump.com
kmanoukian@akingump.com

AKIN GUMP STRAUSS HAUER & FELD LLP
James Savin, Esq. (*pro hac vice*)
1333 New Hampshire Avenue, N.W.
Washington, DC 20036
Phone: (202) 887-4000
Fax: (202) 887-4288
Email: jsavin@akingump.com

Attorneys for the Steering Committee and Coal Acquisition LLC

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document via ECF, which provides notice to all interested parties who have made an ECF appearance in this case, on this 18th day of January, 2016.

/s/ Michael Leo Hall
OF COUNSEL