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U.S. DISTRICT COURT
N.D. OF ALABAMA

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

UNITED MINE WORKERS OF AMERICA 1974 PENSION PLAN AND TRUST, *et al.*, Appellants, v. WALTER ENERGY INC., *et al.*, Appellees.	Civil Action No. 2:16-cv-00057-LSC

EMERGENCY MOTION FOR EXPEDITED BRIEFING AND EXPEDITED REVIEW

This appeal presents three straightforward issues that must be addressed on an expedited schedule to avoid impairing Appellants' rights. The first is whether the bankruptcy court erred in holding that sections 1113 and 1114 of the Bankruptcy Code are applicable to liquidating companies when the plain language provides otherwise. 11 U.S.C. §§ 1113, 1114. The second is whether the bankruptcy court erred in holding that sections 1113 and 1114 apply to statutory obligations, including the Coal Industry Retiree Health Benefit Act, 26 U.S.C. § 9701 *et seq.* ("**Coal Act**"), statutory obligations that are at issue here. The last is whether the bankruptcy court erred in holding that the Debtors could reject their collective bargaining agreements and terminate retiree benefits under sections 1113 and 1114. The questions presented involve statutory protections afforded by Congress for the benefit of active and retired coal miners and their spouses and dependents. The points and authorities already have been briefed extensively before the bankruptcy court

Expedited review is warranted. The Debtors have stated that once the sale of the Debtors' assets closes, there will be no assets remaining to satisfy the Debtors' statutory

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obligations, and the Debtors' bankruptcy cases will be converted to chapter 7 liquidation, leaving Appellants with little practical recourse.

In addition, some of the issues raised in this appeal overlap with the issues raised in Appellants' related appeal of the bankruptcy court's *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* (Case No. 15-02741-TOM11, Doc. No. 1584) (the "S**ale Order**").[1] Appellants are also seeking expedited review of the Sale Order and, given the overlapping statutory questions, there is efficiency in considering both appeals on an expedited schedule.

Appellants, taking the Debtors and their acquiring lending group at their word that the sale of the Debtors' assets cannot close before the end of February, have done everything possible to move quickly and to have their appeals considered on an expedited basis. They have asked the Debtors and lenders to consent to an expedited briefing schedule, and they have filed an emergency motion with the bankruptcy court for a stay pending appeal of the Sale Order. Appellants seek only a full and fair opportunity to present their arguments on appeal and to have them heard and determined before their rights, carefully implemented by congressional action, are extinguished by the closing of the credit-bid sale of the Debtors' assets to their lenders and liquidation of what remains behind. Appellants ask this Court to expedite briefing and review of their appeal so that appellate review can be completed before the end of February—the date that the Debtors' own witnesses testified is the earliest they expect the sale to close.

Appellants, 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**

[1] The appeal of the Sale Order is docketed as Case No. 16-00064-LSC.

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**"), 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, collectively with the 1974 Pension Plan, the 1993 Plan, the Account Plan, and the CDSP, the "**UMWA Funds**") were all established to provide benefits to retired coal miners and their spouses and dependents.

In the order on appeal (Case No. 15-02741-TOM11, Doc. No. 1489) (the "**1113/1114 Order**"), attached hereto as **Exhibit A**, the bankruptcy court used section 1114 of the Bankruptcy Code to terminate the Debtors' statutory obligations under the Coal Act in a chapter 11 liquidation proceeding. This ruling was in error and raises important questions of first impression in this Circuit that require prompt review. So that those questions can be considered before the Debtors liquidate, the Appellants respectfully request expedited briefing and expedited review on appeal. Fed. R. Bankr. P. 8013(a)(2)(B).[2] Specifically, the Appellants have proposed to the Appellees—and request that the Court enter—the briefing schedule set forth at the end of this motion, which is based on the timeframe within which the Debtors' witnesses' have testified that they expect the sale which would trigger the Debtor' liquidation to close.

The Coal Act Funds have also requested expedited briefing and expedited review of their appeal of the Sale Order, which is attached hereto as **Exhibit B**. The proposed schedule below

[2] Pursuant to Rule 8013(d)(2)C), the e-mail address, office addresses, and telephone numbers of moving counsel, and to the extent known, of opposing counsel, are attached as **Exhibit C**. Pursuant to Rule 8013(d)(2)(A), the *Declaration of George N. Davies in Support of Emergency Motion for Expedited Briefing and Expedited Review* (the "**Davies Decl**.") is attached hereto as **Exhibit D**.

takes into account the expedited briefing schedule proposed by the Coal Act Funds in the appeal of the Sale Order.

ARGUMENT

Appellants should be heard on the important questions raised in this appeal, each of which raises issues of first impression in the Eleventh Circuit: (a) whether the bankruptcy court erred in holding that sections 1113 and 1114 are applicable to liquidating companies, and (b) whether the bankruptcy court erred in holding that sections 1113 and 1114 apply to statutory obligations and thus permit the termination of Coal Act obligations. These are legal questions. Likewise, Appellants' overarching question as to whether the bankruptcy court erred in holding that the Debtors could reject their collective bargaining agreements and terminate retiree benefits under sections 1113 and 1114 was thoroughly briefed below and can be expeditiously resolved—not only was there no bargaining representative for the Coal Act obligations, the union never received a proposal regarding the Coal Act until the last and final proposal.

There are significant grounds for considering this "appeal ahead of other matters." Fed. R. Bankr. P. 8013(a)(2)(B). Although the Debtors have represented that the sale will not close until the end of February, they requested—and the bankruptcy court approved—a waiver of the 14-day stay under Bankruptcy Rule 6004(h) that is provided to permit a challenge to such orders. Ex. B (Sale Order, ¶ FF). Once the sale closes, the Debtors will begin liquidating and there is a significant risk that in short order no assets will be left to satisfy the Debtors' Coal Act obligations.

In their related appeal of the Sale Order, the Coal Act Funds have sought an expedited briefing schedule that will conclude before the sale of the Debtors' assets can close. At the sale hearing, the Debtors' investment banker testified that the sale would not close until the end of

February, at the earliest. Ex. D (Davies Decl., Ex. 1 (Jan. 6, 2016 Hr'g Tr. at 78:10–15)). Because of the overlap between the issues raised by this appeal and the issues raised in the appeal of the Sale Order, it will be most efficient to consider both appeals on a coordinated schedule.

On January 15, 2016, counsel for Appellants shared with opposing counsel a proposed schedule for expedited briefing and, on January 19, 2016, counsel for Appellants again contacted counsel for Appellees to ask for their consent to an expedited schedule on the timeframe set out in this Motion. *Id.* (Davies Decl., ¶ 5). Appellants have not yet received a response to the proposal. *Id*. Appellants understand that the United Mine Workers of America ("**UMWA**") joins and adopts this request to expedite as to the UMWA's related appeal of the 1113/1114 Order (Case No. 16-00056-LSC). *Id.* (Davies Decl., ¶ 6).

CONCLUSION

For the foregoing reasons, this Court should enter an expedited briefing schedule, as follows:

1. Appellants' opening brief and appendix shall be filed by **February 1, 2016**;
2. Appellees' designations of additional items to be included in the record shall be filed by **February 8, 2016**;
3. Appellees' brief in response shall be filed by **February 10, 2016**; and
4. Appellants' reply brief shall be filed by **February 17, 2016**.

Additionally, this Court should afford this appeal expedited review and set an expedited hearing, after February 17, 2016, at the Court's earliest convenience.

Dated: January 20, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2016, I filed a true and correct copy of the foregoing via the Court's CM/ECF system, which will notify and serve the following:

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N.D. OF ALABAMA

EXHIBIT A

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

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

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

This case came before the Court for hearing on December 15 and 16, 2015 on *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; and Establishing Other Deadlines* (hereafter "1113/1114 Motion") [Doc. No. 1094] dated November 23, 2015, and objections to the 1113/1114 Motion filed by the United Mine Workers of America (hereafter "UMWA") [Doc. No. 1189] and the United Mine workers of America 1974 Pension Plan and Trust and its Trustees, United Mine Workers of America 1992 Benefit Plan and its Trustees, United Mine Workers of America 1993 Pension Plan and Trust and its Trustees, United Mine Workers of America 2012 Retiree Bonus Account

[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.

Trust and its Trustees, United Mine Workers of America Cash Deferred Savings Trust of 1988 and its Trustees, United Mine Workers of America Combined Benefit Fund and its Trustees (hereafter "UMWA Funds")[Doc. No. 1198] (collectively "objections").[2]

INTRODUCTION

At the outset, the Court notes and recognizes the impact any ruling on the pending Motion and objections has on multiple stake holders in these Chapter 11 cases. As noted on the record during the hearing, the dollar or quantitative monetary impact on each employee or retiree may not be as high an amount as to other creditors. However, the impact on each employee and each retiree is huge, and may be difficult for many, if not all, to understand, much less accept as fair, equitable or just.

In *In re Patriot Coal*, the following was noted:

> [T]here is unquestionably no dispute that the lives and livelihood of Debtors' employees, both, union and non-union, current, and retired, depend on the outcome of Debtors' reorganization. "The retirees' health and access to health care depend on the outcome of these cases. Indeed, without the dedication and sacrifice of the coal miners and their families, there would be no coal, and there would be no Patriot Coal."[3]

The *Patriot Coal* court also noted, without "men and women willing to bend their knees to excavate coal" there would be no need for the Chapter 11 cases or the mines.[4]

This Court recognizes that the miners are the backbone and crucial workforce in these mining operations. Essentially, the dilemma facing the Court is whether to shut down the mines or allow the possibility that the mining operations continue in the hopes that coal prices will

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[2] Objections to the 1113/1114 Motion were also filed by the Retiree Committee and the Steel Workers, but those were resolved as noted on the record in open court.

[3] *In re Patriot Coal Corp.*, 493 B.R. 65, 78 (Bankr. E.D. Mo. 2013) (quoting *In re Patriot Coal Corp.*, 482 B.R. 718, 722 (Bankr. S.D.N.Y. 2012).

[4] *Patriot Coal*, 493 B.R. at 78.

rebound in time and the miners keep valuable jobs, and are able to benefit when better times and better coal prices occur.

FINDINGS OF FACT[5]

1. The Debtors produce and export metallurgical coal ("met coal") for the global steel industry with mineral reserves in the U.S., Canada and the United Kingdom. The Debtors also extract, process, and market thermal and anthracite coal and produce metallurgical coke and coal bed methane gas. [Zelin Decl. ¶ 7.] The No. 4 and 7 mines at Jim Walter Resources, Inc. ("Jim Walter"), with depths over 2,000 feet, are the heart of the Debtors' operations. [Zelin Decl. ¶ 8.] However, despite the high quality of met coal that the Debtors sell, the Debtors, like many other U.S. coal producers, were unable to survive the sharp decline in the global met coal industry and filed for Chapter 11 relief on July 15, 2015 (the "Petition Date"), commencing these cases (the "Chapter 11 Cases"). After a failed attempt to restructure pursuant to a Chapter 11 plan process and a restructuring support agreement, the Debtors are now liquidating their assets pursuant to a going concern sale to an entity owned by their first lien creditors (the "First Lien Creditors"). The proposed buyer, however, will not take the Debtors' assets subject to their legacy and current labor costs. Accordingly, pursuant to sections 1113 and 1114 of the Bankruptcy Code, the Debtors are seeking to reject their collective bargaining agreements (the "CBAs" as further defined below) to eliminate the successorship provisions and to implement their final proposals pursuant to which, upon the closing of the proposed sale, the Debtors will terminate their retiree benefit obligations and any other obligations remaining under the CBAs, so the Debtors' assets may be sold free and clear any obligations pursuant to the CBAs or otherwise required.

[5] Pursuant to Rule 201 of the Federal Rules of Evidence, the Court may take judicial notice of the contents of its own files. See ITT Rayonier, Inc. v. U.S., 651 F.2d 343 (5th Cir. Unit B July 1981); Florida v. Charley Toppino & Sons, Inc., 514 F.2d 700, 704 (5th Cir. 1975).

2. The Debtors' filed a motion on November 9, 2015 to approve bidding procedures and for the sale of all or substantially all of its assets. The bidding procedures have been approved, there is a Stalking Horse Bidder, an auction is scheduled for January 5, 2016 and a hearing on the sale set for January 6, 2016. The record in this case, as well as the testimony offered at this hearing, indicate the proposed going concern sale is the best chance for selling the Debtors' Alabama mines and to provide potential future employment for the Debtors' represented employees. If the sale is not approved or the sale fails to close, the Debtors will have no choice but to immediately pursue shut downs of the mines and/or convert to Chapter 7, thereby destroying the going concern value of the mines and eliminating future employment opportunities.

A. The Debtors' Labor Obligations.

3. The Debtors are party to two collective bargaining agreements and a memorandum of understanding. Specifically, (a) Jim Walter is party to the June 2011 Contract between the United Mine Workers of America and the Bituminous Coal Operators Association (the "BCOA") (together with any side letters of agreement and closing agreements and the memorandum of understanding between Jim Walter and the UMWA, the "UMWA CBA"); and (b) Walter Coke, Inc. ("Walter Coke") is party to an Agreement dated March 25, 2010, between the USW on behalf of Local Union No. 12014 and Walter Coke (the "USW CBA").[6] The UMWA CBA covers approximately 700 active employees.

4. In addition, the Debtors owe retiree benefits (as such term is defined by section 1114 of the Bankruptcy Code, the "Retiree Benefits") to approximately 3,100 retirees and spouses represented by either the UMWA or the USW, together with approximately 100

[6] As noted on the record, the Debtors' and the USW stipulated that all relief requested in the Debtors' 1113/1114 Motion was withdrawn, therefore no relief is granted in this Order as to the USW or the USW CBA.

non-Union retirees and spouses represented by the statutory committee of retirees appointed in these Chapter 11 Cases (the "Section 1114 Committee"). These Retiree Benefits include those owed under: (i) the UMWA CBA (the "UMWA Retiree Medical Plan") which, as of December 31, 2014, had approximately $579.2 million in unfunded liabilities; (ii) a collective bargaining agreement that does not cover any active employees with the UMWA (the "Taft Retiree Medical Plan") that, as of December 31, 2014, had approximately $3.4 million in unfunded liabilities; (iii) the USW CBA (the "Walter Coke Retiree Medical Plan" and the "Walter Coke Retiree Life Plan") that, as of December 31, 2014, had approximately $11.0 million and $0.5 million in unfunded liabilities, respectively; and (iv) the medical plan for non-Union retirees[7] (the "Salaried Retiree Medical Plan") that, as of December 31, 2014, had approximately $4.3 million in unfunded liabilities. (See Scheller Decl. ¶ 4; Farrell Decl. ¶ 4; Zelin Decl. ¶ 27.)

5. The Debtors are also responsible for numerous forms of pension liabilities and retiree benefit obligations arising from the Debtors' relationship with the UMWA, including, as defined below, the 1974 Pension Plan, the Coal Act Funds, the 1993 Benefit Plan, the Account Plan, and the CDSP (collectively, the "UMWA Funds"). Specifically, in 2014, Jim Walter Resources contributed (a) over $17 million to the 1974 Pension Plan;[8] (b) over $80,000 to the CDSP[9]; and (c) approximately $3.6 million to the 1993 Benefit Plan.[10] The Debtors also have an

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7 A separate Stipulation and Order has been entered (Doc. No. 1333) resolving all non-union retiree issues.

8 The United Mine Workers of America 1974 Pension Plan and Trust (the "1974 Pension Plan") is a multiemployer, defined-benefit pension plan established pursuant to 29 U.S.C. § 186(c)(5). The 1974 Pension Plan is responsible for pension and death benefits to approximately 90,000 retired or disabled miners and their eligible surviving spouses. *See Objection of UMWA Health and Retirement Funds to the Debtors' Motion for an Order (A) Approving the Debtors' Key Employee Retention Plan and (B) Granting Related Relief* (the "UMWA Funds KERP Objection")[Docket No. 1148], ¶¶ 7-8.

9 The United Mine Workers of America Cash Deferred Savings Plan of 1988 (the "CDSP") is a multiemployer savings plan established by the 1988 CBA between the UMWA and the BCOA. The CDSP is funded by both

annual premium of approximately $170,000 (payable monthly) owed to the Combined Benefit Fund,[11] and currently administer a Coal Act individual employer plan (an "IEP") that provides retiree health benefits to approximately 572 retirees and their dependents.[12] Finally, in 2014, Jim Walter contributed approximately $5.1 million to a retiree bonus Account Plan.[13]

6. In aggregate, the Debtors pay approximately $25-30 million per year on account of their Retiree Benefits.

B. The Chapter 11 Cases and Going-Concern Sale.

7. The decline of the global met coal industry since 2011 is well established and has devastated the industry. Fundamental downward shifts in the Chinese economy, coupled with the increase of low-cost supply of met coal from Australia and Russia, have driven met coal prices down from their historic high of $330 per metric ton in 2011 to their current low of $89 per metric ton. [Zelin Decl. ¶ 8.] The spot price for met coal is currently less than $80 per

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voluntary employee wage deferrals and numerous contributions from employers. *See* UMWA Funds KERP Objection, ¶ 12.

[10] The United Mine Workers of America 1993 Benefit Plan and Trust (the "1993 Benefit Plan") provides retiree health benefits to approximately 10,837 retired coal miners and dependents. *See* UMWA Funds KERP Objection, ¶ 13; Declaration of William G. Harvey in Support of First Day Motions (the "Harvey Declaration")[Docket No. 3]; ¶ 85.

[11] The United Mine Workers of America Combined Benefit Fund (the "Combined Benefit Fund") provides health and death benefits to coal industry retirees who, as of July 20, 1992, were receiving benefits from the 1950 Benefit Trust or the 1974 Benefit Trust. The Combined Benefit Fund is financed by an annual premium assessed every October and certain transfers from the federal government. UMWA Funds KERP Objection, ¶5; Harvey Declaration, ¶83.

[12] The United Mine Workers of America 1992 Benefit Plan (the "1992 Plan," and, together with the Combined Benefit Fund, the "Coal Act Funds") provides benefits to (a) those who, based on their age and service record as of February 1, 1993, could have retired and received benefits under the 1950 Benefit Trust or the 1974 Benefit Trust if those trusts had not been merged by statute, and who actually retired between July 20, 1992 and October 1, 1994; and (b) those who would be covered by an IEP maintained pursuant to the Coal Act but who no longer receive such coverage. *See* UMWA Funds KERP Objection, ¶ 6, Harvey Declaration, ¶ 83.

[13] The United Mine Workers of America 2012 Retiree Bonus Account Plan (the "Account Plan") was established in the 2011 NBCWA to make annual single-sum payments to beneficiaries on November 1, 2014, November 1, 2015, and November 1, 2016. Depending on the beneficiary's pension under the 1974 Pension Plan, a beneficiary receives either $455 or $580 from the Account Plan. *See* UMWA Funds KERP Objection, ¶ 11, Harvey Declaration, ¶ 86.

metric ton. As met coal prices began to decline, the Debtors' management responded to the changing industry environment by implementing numerous operational and cash-flow savings measures.[14] [Zelin Decl. ¶ 9.]

8. Despite these efforts, the burden on the Debtors of their funded debt obligations and labor-related liabilities was unsustainable. With cash reserves of as of July 15, 2015, of approximately $250 million, inclusive of cash at their Canadian and U.K. entities, the Debtors continued to suffer substantial losses from operations despite the far-reaching cost cuts already taken. Accordingly, the Debtors' investment banking and financial advisors began negotiating with advisors to an informal committee that comprises the holders of a majority in amount of the Debtors' first lien senior secured debt (the "Steering Committee"). The negotiations culminated in a Restructuring Support Agreement (the "RSA") and the terms of an agreed order approving the Debtors' use of the First Lien Creditors' cash collateral. [Zelin Decl. ¶ 12.]

9. The RSA created a dual-track framework for the Debtors' restructuring: the Debtors would first seek to confirm a debt-for-equity Chapter 11 restructuring plan (the "Plan"), but at the same time, the Debtors would also pursue a going-concern sale in the event that the Debtors could not confirm the Plan. [Zelin Decl. ¶ 12.] In fact, one of the milestones in the RSA mandated that the Debtors commence the marketing of their assets on or before August 19, 2015, in case a going-concern sale became the only viable option. [Zelin Decl. ¶ 12.]

10. The Court held contested hearings on the Debtors' motion to assume the RSA on September 2 and 3, 2015. On September 14, 2015, the Court entered an order approving

[14] These included a reduction of SG&A by 20% ($32 million), 25% ($33 million) and 28% ($28 million) in 2012, 2013 and 2014 respectively. The Debtors also cut their capital expenditures by 10% ($45 million), 61% ($238 million), and 28% ($28 million) in 2012, 2013 and 2014 respectively. Among other things, the Debtors idled numerous mines and implemented significant reduction in force initiatives. [Zelin Decl. ¶ 9.]

the RSA on amended terms. [Doc. No. 723.] Subsequently, on September 18, 2015, the Steering Committee filed a motion, which the Debtors later joined, seeking confirmation that the RSA had terminated on its own terms. [Doc. Nos. 746, 774.] Following a hearing on September 24, 2015, the Court entered an order confirming that the RSA had terminated. [Doc. No. 796.]

11. When the RSA terminated, the Debtors were left with its cash resources and liquidity running out and no viable source of funding. The Debtors evaluated all of their options but could not find a feasible path towards consummating a Plan. [*See* Zelin Decl. ¶ 13.] In addition, no third party buyer had come forward for the Debtors' core assets. [*See* Zelin Decl. ¶ 14.] As a result, the Debtors commenced negotiations with the Steering Committee and its advisors with respect to a going-concern sale. [*See* Zelin Decl. ¶ 14.] In particular, the Debtors were focused on (i) preserving the Debtors' Alabama Coal Operations (as defined below) to the greatest extent possible, (ii) maximizing potential for future employment for the Debtors' workers, and (iii) ensuring that the Debtors' estates after a sale closing would retain sufficient assets to wind-down in a safe and orderly manner. [*See* Zelin Decl. ¶ 15, 29.]

12. After two months of negotiations, on November 5, 2015, the Debtors executed an asset purchase agreement (the "Stalking Horse APA") with Coal Acquisition LLC, an entity owned by the First Lien Creditors (the "Proposed Buyer"). [Zelin Decl. ¶ 15.] Under the Stalking Horse APA, the Debtors will sell their core Alabama mining operations (i.e., the Jim Walter No. 4 and 7 mines, related methane gas operations, and certain additional assets incidental thereto) (the "Alabama Coal Operations") to the Proposed Buyer for $1.15 billion (the "363 Sale"). The consideration for the purchase price will be a credit bid by the First Lien Creditors of their prepetition liens and their adequate protection claims. In addition, the

Proposed Buyer will (a) purchase the Debtors' avoidance actions for $5.4 million in cash (subject to certain reductions); (b) fund various wind down trusts to safely liquidate the Debtors' assets remaining after consummation of the sale to the Proposed Buyer; and (c) assume an estimated $115 million in liabilities, including Black Lung obligations, reclamation, trade payables, cure costs and professional fees and expenses. The Stalking Horse APA is subject to higher or better offers and an open auction at which other qualified bidders may seek to purchase the Alabama Coal Operations and other assets on higher or better terms.

13. The testimony presented at this hearing indicated that the discussions between the Debtors and their advisors and the Proposed Buyer and its advisors were protracted, difficult, contentious, frustrating, but at arm's-length. [*See also* Zelin Decl. ¶ 15.] To facilitate continued negotiations, the Steering Committee agreed to extend the Debtors' use of Cash Collateral twice during this time: first on October 8, 2015, extending the use of Cash Collateral to November 20, 2015, and again on November 17, 2015, extending the use of Cash Collateral to December 1, 2015.[15] [Doc. Nos. 857, 1053.] In response to the Debtors' deteriorating financial condition, the Steering Committee also agreed to defer the adequate protection payments due on October 15 and November 15 that the Debtors were otherwise obligated to make to the First Lien Creditors. [Doc. Nos. 890, 1037.]

14. The Proposed Buyer refused to acquire the Alabama Coal Operations burdened by the Debtors' legacy and current labor costs. The Stalking Horse APA thus requires a sale "free and clear" of legacy union liabilities. [Zelin Decl. ¶ 16.] Towards that end, the Stalking Horse APA requires the elimination of any clause or provision imposing on the Debtors the requirement that any buyer assume the Debtors' CBAs or any of the Debtors' liabilities or

[15] On December 1, 2015, the Steering Committee granted an additional extension, permitting the Debtors' use of Cash Collateral to January 8, 2016. [Doc. No. 1158.]

obligations under their CBAs (collectively, the "Successorship Provisions") or alternatively, rejection of the Debtor's collective bargaining agreements.

15. Successorship clauses are contractual provisions in collective bargaining agreements that seek to require an employer to bind a purchasing employer to all the terms and conditions of an existing collective bargaining agreement in the event of a sale or assignment of the business. The UMWA CBA provides, for example:

> This Agreement shall be binding upon all signatories hereto, including those Employers which are members of signatory associations, and their successors and assigns. In consideration of the Union's execution of this Agreement, each Employer promises that its operations covered by this Agreement shall not be sold, conveyed, or otherwise transferred or assigned to any successor without first securing the agreement of the successor to assume the Employer's obligations under this Agreement. Immediately upon the conclusion of such sale, conveyance, assignment or transfer of its operations, the Employer shall notify the Union of the transaction. Such notification shall be by certified mail to the Secretary-Treasurer of the International Union and shall be accompanied by documentation that the successor obligation has been satisfied. Provided that the Employer shall not be a guarantor or be held liable for any breach by the successor or assignee of its obligations, and the UMWA will look exclusively to the successor or assignee for compliance with the terms of this Agreement.

UMWA CBA, p. 5.

16. Because the Proposed Buyer is unwilling to purchase the Alabama Coal Operations subject to the CBAs, with respect to the UMWA CBA, the Stalking Horse APA provides:

> On the Closing Date, the Acquired Assets shall be transferred to Buyer and/or one or more Buyer Designees, as applicable, free and clear of all Encumbrances and Liabilities (including, for the avoidance of doubt, all successor liability, ***including any successorship obligations under any Collective Bargaining Agreement,*** and/or with respect to any Benefit Plan that is not an Buyer Benefit Plan), other than the Permitted Encumbrances and the Assumed Liabilities, including any Reclamation obligations that are Assumed Liabilities.

Stalking Horse APA § 7.12 (emphasis added).

17. The Stalking Horse APA further requires as a closing condition that:

> (i) the Bankruptcy Court shall have determined that Sellers can sell the Acquired Assets free and clear of any successor clause in the UMWA Collective Bargaining Agreements, (ii) the UMWA shall have agreed to waive or remove the successor clause in the UMWA Collective Bargaining Agreements, or (iii) ***the Bankruptcy Court shall have granted a motion acceptable to Buyer filed by the applicable Seller pursuant to Section 1113(c) of the Bankruptcy Code authorizing the applicable Seller to reject the UMWA Collective Bargaining Agreements***.

Stalking Horse APA § 9.9(a)(i) (emphasis added).

18. Despite extensive efforts, the Debtors did not find any buyer willing to purchase the Debtors' assets subject to the CBAs. In fact, no buyer other than the Proposed Buyer expressed any interest in the Alabama Coal Operations at all. This was true even though, as of the date of the Section 1113/1114 Motion, the Debtors' investment banking advisor PJT Partners LP ("PJT") had contacted 47 strategic acquirers (including domestic coal producers, international coal producers and integrated steel companies) and 37 financial sponsors. Throughout the marketing process, PJT did not receive a single indication of interest to purchase all of the Debtors' Alabama Coal Operations although PJT did receive a few proposals with respect to certain of the Debtors' other assets. [Zelin Decl. ¶ 25; *see also* Tab 10, Zelin Trial Notebook.]

19. Today, the Debtors continue to rapidly lose cash, even excluding interest expenses and notwithstanding substantial cash conservation initiatives the Debtors implemented. If the Stalking Horse APA is not approved, and if no alternative successful bidder emerges, the Debtors will run out of cash by early 2016 and will have no choice but to liquidate. [Zelin Decl. ¶ 29; *see also* Tab 1, Zelin Trial Notebook.] In addition, if the proposed 363 Sale is

consummated, the Debtors will be left with insufficient funds to make payments on the Retiree Benefits and any ongoing obligations under the UMWA CBA. [Zelin Decl. ¶ 16.]

C. The Debtors' Labor Negotiations with the UMWA.[16]

20. Starting before the Petition Date, the Debtors have met and negotiated with the UMWA concerning proposed modifications to the UMWA CBA. [Scheller Decl. ¶ 5.] When the Chapter 11 Cases first commenced, the Debtors negotiated with the UMWA intending to reorganize and confirm a Chapter 11 plan consistent with the RSA. [Scheller Decl. ¶ 11.] Prior to the Petition Date, on July 8, 2015, the Debtors met with the UMWA to provide the UMWA with an overview of market conditions, the Debtors' historical financial performance, and the reasons and goals for the Debtors' anticipated restructuring. [Scheller Decl. ¶ 6.]

21. On August 26, 2015, the Debtors presented the UMWA with their first proposal (the "First UMWA Proposal") for a set of terms and conditions to effectuate a reorganization as contemplated in the RSA, including deletion of the Successorship Provisions. [Scheller Decl. ¶ 13.] In the First UMWA Proposal, the Debtors also sought aggregate annual savings of approximately $150 million which they then believed was the minimum needed to eventually return the Debtors to profitability. [Scheller Decl. ¶ 12.] Even with those savings, the Debtors' financial advisors projected that the feasibility of any Chapter 11 plan would require significant capital investment over a period of years. [Zelin Decl. ¶ 17.]

22. The Debtors met with the UMWA to discuss the First UMWA Proposal five times in September 2015. The First UMWA Proposal included elimination of Retiree Benefits and modifications to healthcare, all of which were discussed in these meetings.

[16] "The UMWA is a labor union which was formed in Columbus, Ohio on January 22, 1890 with the stated purpose of 'educating all mine workers in America to realize the necessity of unity of action and purpose, in demanding and securing by lawful means the just fruits of our toil.'" *Patriot Coal*, 493 B.R. at 80 (quoting Mair B. Fox, *United We Stand: The United Mine Workers of America 1890-1990* 22 (International Union, United Mine Workers of America 1990, in turn citing the UMWA Preamble, 1890).

[Scheller Decl. ¶ 14.] Following those discussions, on October 1, 2015, the UMWA made its first counter-proposal to the First UMWA Proposal. [Scheller Decl. ¶ 15.]

23. When the RSA was terminated and confirmation of a plan of reorganization proved impossible, the Debtors switched their focus to a sale path and continued to meet with the UMWA to discuss the Debtors' options in light of the sale process. [Scheller Decl. ¶ 17.] As the Stalking Horse APA was crystallizing, the Debtors engaged again with the UMWA to discuss the UMWA CBA. [*See* Scheller Decl. ¶¶ 19-21.] Specifically, the Debtors met with the UMWA twice in October to provide status reports on the Stalking Horse APA negotiations and the Debtors' deteriorating liquidity position. [Scheller Decl. ¶¶ 20-21.]

24. Five days after entering into the Stalking Horse APA, the Debtors met with the UMWA, withdrew their First Proposal and presented their final proposal (the "Final UMWA Proposal"). [Scheller Decl. ¶ 23 & Ex. 2.] The Final UMWA Proposal included the following terms:

(a) Successorship clause. Deletion of the successorship clause in its entirety to comply with the terms of the Stalking Horse APA and facilitate the 363 Sale process. [Scheller Decl. ¶ 24.]

(b) Healthcare for laid-off employees. Elimination of the requirement to provide healthcare benefits for employees who are laid off for up to 12 months after the month in which the layoff occurs, providing instead that no healthcare or other welfare benefits will be provided to any active or laid-off employee after the sale of the mines under the 363 Sale closes. [Scheller Decl. ¶ 24.]

(c) Termination of agreement. Termination effective as of the date the 363 Sale closes, on which date all of the Debtors' obligations to make any payment that arises from any contractual requirement, grievance settlement, arbitration decision or other obligation that vested or was incurred prior to the date of the sale of the mines to the Proposed Buyer under the Stalking Horse APA would also terminate. [Scheller Decl. ¶ 24.]

(d) Effects bargaining. Continued good faith discussions regarding any proposal that the UMWA may have concerning the effects of the sale of the mines on the UMWA's members. [Scheller Decl. ¶ 24.]

(e) Health and welfare benefits for retirees. Termination of health and welfare benefits, including the UMWA Retiree Medical Plan and Taft Retiree Medical Plan, for all of the UMWA's retirees effective no later than the closing date of the Section 363 Sale, as the Buyers are not agreeing to assume responsibility for such healthcare benefits for retirees under the Stalking Horse APA, and the Debtors will no longer have any funds available to provide any benefits to the UMWA retirees post-closing. [Scheller Decl. ¶ 24.]

(f) Coal Act retirees. Coordination with the UMWA and with the UMWA 1992 Plan officials to arrange for the transition of retirees entitled to Coal Act Benefits to the UMWA 1992 Benefit Plan with no loss of benefits. (The Coal Act provides that when an employer becomes financially unable to provide healthcare benefits to its Coal Act-eligible retirees, the UMWA 1992 Benefit Plan will enroll the impacted retirees and provide their benefits.) [Scheller Decl. ¶ 24.]

25. On November 20, 2015, the UMWA rejected the Debtors' Final UMWA Proposal. [Scheller Decl. ¶ 27 & Ex. 3.] The UMWA response was that it would agree to facilitate the termination or modification of the UMWA CBA obligations "as appropriate for the winding down of JWR and its exit from the coal industry" but "only upon" ratification of a new collective bargaining agreement with the Proposed Buyer that, among other things, addresses healthcare for retired Jim Walter miners. [*Id.*]

26. The testimony at the hearing showed that the UMWA has been negotiating with the Proposed Buyer. On November 6, 2015, the day after the Stalking Horse APA was signed, Mr. Doug Williams, CEO of Coal Acquisitions, LLC, sent a letter to Cecil E. Roberts, the UMWA's President, introducing himself to Mr. Roberts and hoping to set the stage for further discussions and negotiations. Further, Mr. Williams advised that Coal Acquisition

planned to begin interviewing individuals for employment after a sale and that some of the individuals who may be interviewed are currently represented by the UMWA at Jim Walter's number 4 and 7 mines, surface facilities and preparation plants. After the letter was sent to Mr. Roberts, the advisors to the Proposed Buyer exchanged numerous emails and calls and meetings with the UMWA were scheduled for and held November 16, December 2, and December 8, 2015, and another meeting is scheduled for December 18, 2015. [Williams Decl. ¶ 5 and testimony.] At the November 16th meeting, the Proposed Buyer made an initial contract proposal to the UMWA, subject to a number of conditions, including the Proposed Buyer providing offers of employment to the bargaining unit employees previously employed at Jim Walter's mines numbers 4 and 7, preparation plants and surface facilities, and a majority of those bargaining unit employees accepting such offers. [Williams Decl. ¶ 6.] A counterproposal has since been provided by the UMWA, and the hearing, the testimony indicated the parties intend to continue to negotiate.

27. Throughout the negotiation process, the Debtors provided the UMWA with full access to extensive diligence information, including approximately 75,000 pages of the relevant operational, financial, business planning and other documents. Towards that end, the Debtors established an electronic data room to facilitate information sharing on a confidential basis. The data room was made available to the UWMA on July 14, 2015. [Scheller Decl. ¶ 8.] In addition to providing access to thousands of pages of data, the Debtors and their advisors gave the UMWA numerous detailed presentations about the Company, its businesses, financial conditions, business plan and projected performance. [Scheller Decl. ¶ 9.]

D. <u>The Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 1113(c), and 1114(g).</u>

28. On November 23, 2015, the Debtors filed this Section 1113/1114 Motion pursuant to sections 105(a), 1113(c), and 1114(g) of title 11 of the United States Code for an

order (I) (A) authorizing the rejection of the collective bargaining agreements of Jim Walter and Walter Coke, (B) implementing Jim Walter's and Walter Coke's final labor proposals, and (C) terminating the Debtors' retiree benefits and related obligations; and (II) granting related relief. Along with the Motion, Debtors filed declarations of Steven Zelin, a Partner at PJT Partners, Debtors' financial advisor; Walter J. Scheller, III, the CEO of Walter Energy, Inc.; and Carol W. Ferrell, President of Walter Coke, Inc. In addition, as a proponent of the Motion, the lenders filed the declaration of Stephen Douglas Williams, the CEO of Coal Acquisitions, LLC, the Stalking Horse Bidder. In addition to these declarations admitted as evidence at the hearing, Mr. Zelin, Mr. Scheller and Mr. Williams testified.

29. In the Section 1113/1114 Motion, the Debtors request the authority to (a) reject the UMWA CBA in its entirety and (b) implement the Final Proposals pursuant to which any Successorship Provision would be eliminated and upon the closing of the 363 Sale, the UMWA CBA and the other obligations remaining under the UMWA CBA, as well as the Retiree Benefits, would terminate.

30. The UMWA[17] and the UMWA Funds,[18] (collectively, the "Objectors") filed objections to the Section 1113/1114 Motion.[19] The Objectors make the following

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[17] *See Objection of the United Mine Workers of America to 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* [Doc. No. 1189] (the "UMWA Objection").

[18] *See Objection of the United Mine Workers of American 1974 Pension Plan and Trust, the United 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 (1) 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* [Doc. No. 1198] (the "UMWA Funds Objection").

[19] The USW also filed an objection to the Section 1113/14 Motion. *See Opposition of the United Steelworkers to the Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 1113(c) and 1114(g)* [Doc. No. 1195] (the "USW Objection"). The Debtors filed a notice of withdrawal of the Section 1113/14 Motion as it relates to the USW

arguments: (a) relief under sections 1113 and 1114 of the Bankruptcy Code is not appropriate here, where the Debtors are selling substantially all of their assets only to then possibly liquidate in a Chapter 7, as opposed to restructuring or reorganizing; (b) even assuming that a liquidating debtor can seek relief under sections 1113 and 1114 of the Bankruptcy Code, at a minimum, these sections require the Debtors to demonstrate an ability to confirm a Chapter 11 plan, which the Debtors cannot do here because they lack the funding needed to satisfy accrued but unpaid administrative claims, including environmental, pension, and certain other legacy retiree/employee liabilities; (c) the Section 1113/1114 Motion inappropriately seeks to terminate the Debtors' obligations to its employees and retirees under the Coal Act statutory obligations that the Debtors cannot modify under section 1114 of the Bankruptcy Code; and (d) the Section 1113/1114 Motion fails to satisfy the substantive requirements of sections 1113 and 1114 of the Bankruptcy Code for a plethora of other reasons, including that termination of the Successorship Provisions is not necessary to permit the reorganization of the Debtors as contemplated by the Bankruptcy Code and that the requested relief is otherwise not fair and equitable.

JURISDICTION[20]

31. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b).

32. The statutory and legal predicates for the relief sought herein are sections 105(a), 1113(c), and 1114(g) of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.

[Doc. No. 1227]. The Court confirmed with USW counsel that he had no objection to the withdrawal and that essentially the withdrawal constituted a stipulation of dismissal as to the USW provisions of the Motion.

[20] This Memorandum Opinion and Order constitutes findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, applicable to adversary proceedings in bankruptcy pursuant to Federal Rule of Bankruptcy Procedure 7052.

33. On July 30, 2015, the Bankruptcy Administrator for the Northern District of Alabama appointed an eleven member Official Committee of Unsecured Creditors (the "Creditors Committee"). [Doc. No. 268.] On August 4, 2015, the Bankruptcy Administrator appointed two additional members to the Creditors Committee [Doc. Nos. 336, 342.]

34. On July 30, 2015, the Court entered an order authorizing the formation of a committee of retired employees pursuant to sections 1114(c)(2) and 1114(d) of the Bankruptcy Code (the "Section 1114 Committee"). [Doc. No. 264.] Both the UMWA and the United Steelworkers (the "USW," and, together with the UMWA, the "Unions") are members of the Creditors Committee and each serves as the authorized representative of the retirees of their respective Unions on the Section 1114 Committee. [Doc. Nos. 268, 264.] No trustee or examiner has been appointed in the Chapter 11 Cases.

CONCLUSIONS OF LAW

A. Sections 1113 and 1114 of the Bankruptcy Code.

35. Congress enacted section 1113 of the Bankruptcy Code in response to the Supreme Court's decision in *NLRB* v. *Bildisco & Bildisco*, 465 U.S. 513 (1984). In *Bildisco*, the Supreme Court "held that a debtor may unilaterally reject a collective bargaining agreement under section 365(a) of the Bankruptcy Code by showing that the agreement 'burdens the estate, and that after careful scrutiny, the equities balance in favor of rejecting the labor contract.'"[21] To address concerns that the Supreme Court's decision would permit debtors to use bankruptcy as a weapon in the collective bargain process, Congress enacted section 1113 to "replace the *Bildisco* standard with one that was more sensitive to the national policy favoring collective bargaining

[21] *In re AMR Corp.*, 477 B.R. 384, 405 (Bankr. S.D.N.Y. 2012) (quoting *NLRB* v. *Bildisco & Bildisco*, 465 U.S. 513, 526 (1984)).

agreements . . . ."[22] Section 1113 accordingly is intended "to ensure that well-informed and good faith negotiations occur in the market place, not as part of the judicial process."[23] It does so by imposing more stringent standards and rigorous procedures for rejecting a collective bargaining agreement than apply to an ordinary executory contract. Section 1113 thereby encourages the debtor-employer and the union to reach a negotiated settlement. *See* Collier on Bankruptcy ¶ 1113.01 (citing the language and history of section 1113).

36. Section 1113 provides in relevant part:

> (a) The debtor in possession, or the trustee if one has been appointed under the provisions of this Chapter, other than a trustee in a case covered by subChapter IV of this Chapter and by title I of the Railway Labor Act, may assume or reject a collective bargaining agreement only in accordance with the provisions of this section.
>
> (b) (1) Subsequent to filing a petition and prior to filing an application seeking rejection of a collective bargaining agreement, the debtor in possession or trustee (hereinafter in this section "trustee" shall include a debtor in possession), shall—
>
> > (A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and
> >
> > (B) provide, subject to subsection (d)(3), the representative of the employees with such relevant information as is necessary to evaluate the proposal.
>
> (2) During the period beginning on the date of the making of a proposal provided for in paragraph (1) and ending on

[22] *Wheeling-Pittsburgh Steel Corp.* v. *United Steelworkers of America*, 791 F.2d 1074, 1089 (3d Cir. 1986).

[23] *New York Typographical Union No. 6* v. *Maxwell Newspapers, Inc.* (*In re Maxwell Newspapers, Inc.*), 981 F.2d 85, 90 (2d Cir. 1992).

> the date of the hearing provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.
>
> (c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that—
>
> (1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);
>
> (2) the authorized representative of the employees has refused to accept such proposal without good cause; and
>
> (3) the balance of the equities clearly favors rejection of such agreement.

37. "Section 1113(b) requires that a debtor take a number of procedural steps prior to rejecting a collective bargaining agreement."[24] At the outset, the debtor must provide the union with its proposed modifications to a collective bargaining agreement prior to filing an application with the court to reject the agreement. Moreover, the proposed modifications must be (a) "based on the most complete and reliable information available at the time of the proposal," (b) "necessary to permit the reorganization of the debtor," and (c) "assure[] that all creditors, the debtor and all of the affected parties are treated fairly and equitably."[25] The debtors must also provide the union with the relevant information necessary for the union to evaluate the proposal.[26] Finally, "the debtor must bargain in good faith with the union in an attempt to reach an agreement" between the time that the section 1113 proposal is made by the debtor and the date that any section 1113 application is set to be heard.[27]

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[24] *AMR Corp.*, 477 B.R. at 406.

[25] 11 U.S.C. § 1113(b)(1)(A); *AMR Corp.*, 477 B.R. at 406 (citing 11 U.S.C. § 1113(b)(1)(A).

[26] *Id.*

[27] *AMR Corp.*, 477 B.R. at 406.

38. Section 1113(c) also requires that a debtor establish the following three substantive requirements to reject a collective bargaining agreement: (a) that the debtor's section 1113 proposal fulfills the requirements of the statute, (b) that the union refused to accept the proposal without good cause, and (c) that the balance of the equities favors rejection of the agreement.[28] "The debtor bears the burden of proof by the preponderance of the evidence on the elements of section 1113."[29]

39. Similarly, the debtor may modify or terminate retiree benefits upon satisfying the following conditions:

> (1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (f);
>
> (2) the authorized representative of the retirees has refused to accept such proposal without good cause; and
>
> (3) such modification is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor, and all of the affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities;
>
> except that in no case shall the court enter an order providing for such modification which provides for a modification to a level lower than that proposed by the trustee in the proposal found by the court to have complied with the requirements of this subsection and subsection (f) . . .[30]

40. Subsection (f) requires as follows:

> (1) Subsequent to filing a petition and prior to filing an application seeking modification of the retiree benefits, the trustee shall—
>
> (A) make a proposal to the authorized representative of the retirees, based on the most complete and reliable information available at the time of such proposal, which provides for

[28] 11 U.S.C. § 1113(c); *AMR Corp.*, 477 B.R. at 406.

[29] *AMR Corp.*, 477 B.R. at 406 (citing *Truck Drivers Local 807* v. *Carey Transp., Inc.* (*Carey Transp. II*), 816 F.2d 82, 88 (2d Cir. 1987); *In re Nw. Airlines Corp.*, 346 B.R. 307, 320-21 (Bankr. S.D.N.Y. 2006)).

[30] 11 U.S.C. § 1114(g).

> those necessary modifications in the retiree benefits that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and
>
> (B) provide, subject to subsection (k)(3), the representative of the retirees with such relevant information as is necessary to evaluate the proposal.
>
> (2) During the period beginning on the date of the making of a proposal provided for in paragraph (1), and ending on the date of the hearing provided for in subsection (k)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such retiree benefits.[31]

41. The statutory "requirements for modification of retiree benefits are . . . substantially the same as the requirements for rejection of collective bargaining agreements."[32] Thus, the nine-part analysis found in *In re American Provision Company*, discussed below, applies equally to both.[33] Courts thus routinely analyze motions for relief under sections 1113 and 1114 together, and the Court will do so here.[34] Accordingly, the following discussion relating to the requirements under section 1113 also applies to the relief the Debtors request under section 1114 and as applicable to the UMWA and UMWA Funds.[35] Applicable Standard Under Sections 1113 and 1114 of the Bankruptcy Code.

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[31] 11 U.S.C. § 1114(f)..

[32] *In re Horizon Natural Res. Co.*, 316 B.R. 268, 281 (Bankr. E.D. Ky. 2004)

[33] *In re Horizon Natural Res.*, 316 B.R. at 280-81. *See In re American Provision Co.*, 44 B.R. 907, 909 (Bankr. D. Minn. 1984).

[34] *See, e.g., Horizon Natural Res.*, 316 B.R. at 279-83; *In re Horsehead Indus., Inc.*, 300 B.R. 573, 583 (Bankr. S.D.N.Y. 2003).

[35] Thus any reference in this Opinion to the UMWA also, if applicable, shall be a reference to the UMWA Funds.

42. The requirements of section 1113 were restated in a nine-part test in *In re American Provision Co.*, 44 B.R. 907, 909 (Bankr. D. Minn. 1984).[36] The test requires that the following be met:

> (a) The debtor in possession must make a proposal to the union to modify the collective bargaining agreement;
>
> (b) The proposal must be based on complete and reliable information available at the time of the proposal;
>
> (c) The proposed modifications must be "necessary to permit the reorganization of the debtor;"
>
> (d) The proposed modifications must assure that all creditors, the debtor and all of the affected parties are treated fairly and equitably;
>
> (e) The debtor must provide to the union such relevant information as is necessary to evaluate the proposal;
>
> (f) Between the time of the making of the proposal and the time of the hearing on approval of the rejection of the existing collective bargaining agreement, the debtor must meet at reasonable times with the union;
>
> (g) At the meetings the debtor must confer in good faith in attempting to reach mutually satisfactory modifications of the collective bargaining agreement;
>
> (h) The union must have refused to accept the proposal without good cause; and
>
> (i) The balance of the equities must clearly favor rejection of the collective bargaining agreement.

43. Before turning to this nine-factor *American Provision* test, the Court addresses the Objectors' arguments that (a) relief under sections 1113 and 1114 of the Bankruptcy Code is not appropriate here where the Debtors are selling substantially all of their

[36] *In re Alabama Symphony Ass'n*, 155 B.R. 556, 573 n.38 (Bankr. N.D. Ala. 1993) ("This test is almost universally followed in the bankruptcy courts."), *rev'd on other grounds, Birmingham Musicians' Protective Ass'n, Local 256-733, of the Am. Fed. Of Musicians* v. *Alabama Symphony Ass'n* (*In re Alabama Symphony Ass'n*), 211 B.R. 65 (N.D. Ala. 1996).

assets and liquidating, (b) the Debtors must demonstrate the ability to confirm a liquidating Chapter 11 plan, which the Debtors cannot do because they lack the funding needed to satisfy accrued but unpaid administrative claims, including environmental, pension, and certain other legacy retiree/employee liabilities, and (c) the Section 1113/1114 Motion inappropriately seeks to terminate the Debtors' obligations to its employees and retirees under the Coal Act, statutory obligations that the Debtors cannot modify under section 1114.

B. Sections 1113 and 1114 Apply in a Liquidating Chapter 11 Case and the Debtors Need Not Demonstrate an Ability to Confirm a Liquidating Chapter 11 Plan.

44. The Objectors argue that sections 1113 and 1114 do not apply in a liquidating Chapter 11 case, and accordingly, the Debtors' relief should be denied.[37] The Bankruptcy Code does not limit liquidation to Chapter 7 cases.[38] To the contrary, Chapter 11 expressly provides for liquidating Chapter 11 plans of reorganization.[39] As a result, when a Chapter 11 debtor is being sold or is liquidating rather than reorganizing, courts apply the requirements for section 1113(c) relief "contextually, rather than strictly," and "with the impending liquidation of the Debtor firmly in mind."[40] And while some courts have found that

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[37] UMWA Obj. at ¶¶ 70-76.

[38] *See e.g.*, *In re Chicago Constr. Specialties, Inc.*, 510 B.R. 205, 214-16 (Bankr. N.D. Ill. 2014).

[39] 11 U.S.C. § 1129(a)(11) (enumerating as a confirmation requirement that "[c]onfirmation of the plan is not likely to be followed by . . . liquidation . . . unless such liquidation . . . is proposed in the plan"); *see also* 11 U.S.C. § 1123(b)(4) (Chapter 11 plan may "provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests[.]"); *Chicago Constr. Specialties*, 510 B.R. at 215.

[40] *Chicago Constr. Specialties, Inc.*, 510 B.R. at 217-18; *In re U.S. Truck Co. Holdings*, 2000 Bankr. LEXIS 1376, at *26-28 (Bankr. E.D. Mich. Sept. 29, 2000) ("[A]pplying § 1113 to a liquidating Chapter 11 . . . is somewhat problematic because many of the § 1113 requirements and the case law interpreting them focus on or presuppose efforts to rehabilitate an ongoing business [but] . . . these standards must necessarily be construed, if possible, in a way that gives them meaning in this liquidation setting."); *United Food & Commercial Workers Union, Local 211 v. Family Snacks, Inc. (In re Family Snacks, Inc.)*, 257 B.R. 884, 893 (8th Cir. B.A.P. 2001) ("[E]ach court that has addressed the meaning of the phrase 'reorganization of the debtor,' as found in § 1113(b)(1)(A), has held or assumed that § 1113 applies in a case where the debtor will not be engaged in business because it is selling its assets.").

"'the procedural requirements imposed by § 1113 appear ill-suited to a liquidation proceeding,'"[41] courts have routinely applied the provision in liquidating Chapter 11 cases.[42] Moreover, neither section 1113 nor 1114 require that the debtor establish the feasibility of a liquidating Chapter 11 plan as a condition precedent to relief.

45. The placement of sections 1113 and 1114 "in Chapter 11 requires its application to liquidating Chapter 11 cases."[43] Even though Congress uses the term "reorganization" in both sections 1113 and 1114, the Bankruptcy Code does not define the term.[44] Courts, however, interpret "reorganization" to include all types of debt adjustment, including going-concern asset sales pursuant to section 363 of the Bankruptcy Code.[45] Permitting a debtor to avail itself of section 1113 and 1114 relief to consummate a going-concern sale where the debtor cannot confirm a Chapter 11 comports with Congressional intent that sections 1113 and 1114 serve a rehabilitative purpose.

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41 *Chicago Constr. Specialties*, 510 B.R. at 215 (quoting *Carpenters Health and Welfare Trust Funds v. Robertson (In re Rufener Constr., Inc.)*, 53 F.3d 1064, 1067 (9th Cir. 1995).

42 *See, e.g., In re Maxwell Newspapers, Inc.*, 981 F.2d 85, 91 (2d Cir. 1992) ("The union . . . contends that the debtor has not shown that a collective bargaining agreement may be rejected to serve the interests of a purchaser of assets. The two lower courts believed that 11 U.S.C. § 1113 applied to this transaction because what is to emerge, if the sale is consummated, is the Daily News reorganized as an ongoing business. We agree."); *In re Hoffman Bros. Packing Co., Inc.*, 173 B.R. 177, 186-87 (9th Cir. B.A.P. 1994) ("We agree, and hold that § 1113 does not preclude rejection of CBAs where the purpose or plan of the debtor is to liquidate by a going concern sale of the business."); *accord Chicago Constr. Specialties*, 510 B.R. at 215; *In re Karykeion, Inc.*, 435 B.R. 663, 679 (Bankr. C.D. Cal. 2010); *Family Snacks*, 257 B.R. at 893. Indeed, this well-established proposition is even supported by a case that the UMWA cites liberally in its objection. *See In re Lady H. Coal Co.*, 193 B.R. 233, 240-43 (Bankr. S.D.W.Va. 1996) (denying the debtor's section 1113 motion but noting that "a collective bargaining agreement ('CBA') may be rejected in contemplation of the sale of a substantial portion of a debtor's assets as such sale is effectively the reorganization plan of a debtor").

43 *In re Ionosphere Club, Inc.*, 134 B.R. 515, 524 (Bankr. S.D.N.Y. 1991).

44 11 U.S.C. §§ 1113(b)(1)(a), 1114(f)(1)(A).

45 *See, e.g., In re Karykeion, Inc.*, 435 B.R. 663, 679 (Bankr. C.D. Cal. 2010) ("[T]he only reorganization option for the debtor is the sale of [its hospital] to [buyer] and that sale is contingent on the court approving the debtor's rejection of these CBAs.").

46. Sections 1113 and 1114 do not require the Debtors to establish that the requested relief will result in a confirmable Chapter 11 plan of liquidation.[46] The Objectors confuse the rehabilitative effect of a going concern sale of the Debtors' Alabama Coal Operations to a new owner with the attendant wind-down and liquidation of the remaining bankruptcy estates, a process that occurs *after* the sale of the Debtors' Alabama Coal Operations as a going concern. Applying the "necessary to permit the reorganization of the debtor" requirement of section 1113(c) relief "contextually, rather than strictly," sections 1113 and 1114 apply in a liquidating Chapter 11 case regardless of the debtor's ability to confirm a liquidating Chapter 11 plan.

C. Benefits Under the Coal Act May Be Modified or Terminated Pursuant to Section 1114 of the Bankruptcy Code.

47. The Objectors also argue that the Section 1113/1114 Motion cannot be granted because the Final Proposals are inconsistent with federal law to the extent they seek to terminate healthcare coverage for retirees and dependents eligible for such coverage under the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act").[47] Modification of Coal Act retiree benefits may be permitted if such modifications are necessary to facilitate a going concern sale, rather than a piecemeal liquidation. For the reasons set forth below, the Debtors' Final Proposals meet this standard.

48. By way of background, the Coal Act contains three "vehicles" to provide healthcare benefits for certain coal industry retirees. *First*, the Coal Act merges the 1950 and 1974 benefit plans into the "UMWA Combined Fund." *Second*, the Coal Act requires signatory operators who are obligated under the 1978 or any later NBCWA to provide benefits under an

[46] UMWA Obj. at ¶ 77; 1114 Committee Obj. at ¶ 11, 62.

[47] 26 U.S.C. §§ 9701-22. *See also Patriot Coal*, 493 B.R. at 83-84 for an explanation of the Coal Act and its predecessors.

IEP to continue to provide such coverage to certain retirees. *Third*, the Coal Act establishes the UMWA "1992 Benefit Plan to cover two classes of beneficiaries who are not covered under the Combined Fund or [an IEP]: (a) those who, based on age and service as of February 1, 1993, would otherwise have been eligible for benefits from the 1950 or 1974 plans were it not for the merger of those plans and the cut-off date set forth in the Coal Act, and (b) any person with respect to whom coverage under an [IEP] is required but is not provided."[48] The Combined Fund and the UMWA 1992 Benefit Plan are financed by monthly and annual premiums.[49]

49. Only one published decision, *In re Horizon Natural Resources Co.*, 316 B.R. 268 (Bankr. E.D. Ky. 2004), squarely addresses whether a debtor may modify or terminate Coal Act obligations pursuant to section 1114 and concludes that it does.[50] In *Horizon*, the debtors initially pursued a plan of reorganization by which they would retain their operating assets, but later changed their focus to liquidating through Chapter 11.[51] The debtors moved under sections 1113 and 1114 to reject their collective bargaining agreements and modify or terminate retiree benefits because "[t]he unrefuted evidence . . . is that the debtors' assets cannot be sold subject to the collective bargaining agreements and retiree benefits . . . ."[52]

50. The Coal Act Funds objected, arguing that regardless of section 1114 of the Bankruptcy Code, which permits modification of retiree benefits, section 9711 of the Coal Act expressly prohibits the modification of retiree benefits for as long as the employer or its successor remains in business.[53] The Coal Act Funds maintained that the term "retiree benefits"

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48 *Holland* v. *Double G Coal Co., Inc.*, 898 F.Supp. 351, 354 (S.D.W.Va. 1995).

49 *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 576-77 (4th Cir. 1996).

50 *In re Horizon Natural Res.*, 316 B.R. at 276.

51 *Id.* at 271.

52 *Id.* at 282.

53 *See id.* at 275.

as used in the Bankruptcy Code includes only benefits received pursuant to contract, not statutory benefits like those provided under the Coal Act.[54] The court disagreed, finding that the Bankruptcy Code defines "retiree benefits" to include both statutory benefits (*i.e.*, those arising under the Coal Act) and non-statutory benefits (*i.e.*, those arising under a collective bargaining agreement).[55]

51. Section 1114 expressly "contemplates the modification of non-contractual obligations, because it authorizes the appointment of a committee of retirees to serve as the authorized representative . . . of those persons receiving any retiree benefits *not covered by a collective bargaining agreement.*"[56] Moreover, in reconciling the Coal Act with the Bankruptcy Code, the *Horizon* court found that the Coal Act does not expressly contradict section 1114 of the Bankruptcy Code. Rather, section 1114 deals with "a narrow, precise, and specific subject: it governs the modification of retiree benefits only when the former employer is a debtor in a Chapter 11 case and only to the extent necessary for the reorganization effort. The Coal Act, on the other hand, . . . 'covers a more generalized spectrum' in that it does not specify whether the former employer is or is not a debtor in possession."[57] In other words, application of section 1114 to retiree benefits covered by the Coal Act "does not deprive the Coal Act of 'any meaning at all'; the Coal Act would remain fully applicable where the last signatory operator is not a Chapter 11 debtor in possession or cannot satisfy § 1114's requirements."[58]

52. The *Horizon* court relied on *In re Lady H Coal Co.*, 199 B.R. 595 (S.D.W.Va. 1996), a decision addressing the relationship between the Coal Act and section

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54 *See id.*

55 *Id*. at 275-76

56 *Id*. at 275 (emphasis in original).

57 *Id*. at 276

58 *Id*.

363(f) of the Bankruptcy Code. In *Lady H*, the Court considered the debtors' motion seeking a piecemeal liquidation of their assets free and clear of all liabilities, including those under the Coal Act.[59] The Coal Act Funds objected, but the *Lady H* court held that assets may be sold free and clear of Coal Act obligations under section 363(f) of the Bankruptcy Code.[60] The *Lady H* court reasoned that "[i]f Congress wished to exclude Coal Act liabilities from the reach of bankruptcy law, it could have done so . . . by providing express language in the Coal Act that liabilities remain unaffected by operation of the Bankruptcy Code."[61]

53. Based on *Lady H* and the reasoning above, the *Horizon* court granted the debtors' motion under section 1114 to modify retiree benefits arising under the Coal Act, holding that "the Coal Act imposes a general prohibition against certain retiree benefit modifications, [and] the Bankruptcy Code agrees with that general prohibition but establishes an extremely limited exception."[62] The *Horizon* court further justified its holding by noting that "[i]t is in the best interests of the Coal Act Plan and Fund and their beneficiaries and creditors generally that the debtors' assets be sold for the best possible price, not on a piecemeal basis. If the modification of the Coal Act retiree benefits is necessary to accomplish that goal and the other requirements of § 1114 are satisfied, modification must be permitted."[63]

54. The Objectors rely on *In re Sunnyside Coal Co.*, 146 F.3d 1273 (10th Cir. 1998) and other similar cases that consider the treatment of Coal Act claims in bankruptcy (but

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[59] *Lady H*, 199 B.R. at 599-600.

[60] *Id.* at 603.

[61] *Id.*; *see also In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 585 (4th Cir. 1996) ("[T]he Bankruptcy Court may extinguish Coal Act successor liability pursuant to 11 U.S.C. § 363(f)(5)."); *Horizon Natural Resources*, 316 B.R. at 279 ("[A]ny additional financial problems encountered by the 1992 Fund resulting from the application of § 1114 to Coal Act obligations should be addressed by Congress and do not justify 'disturb[ing] the statutory scheme as we have found it.'") (quoting *Leckie Smokeless Coal Co.*, 99 F.3d at 586).

[62] *Horizon Natural Resources*, 316 B.R. at 277.

[63] *Id.* at 279.

do not directly address whether a debtor can terminate Coal Act obligations under Section 1114), to argue that the Debtors cannot use Section 1114 here to terminate these obligations. Their reliance on these cases, none of which are binding on this Court, is misplaced. In *Sunnyside*, for example, the Court of Appeals for the Tenth Circuit held that Coal Act premiums under section 9712 of the Coal Act are "taxes incurred by the estate"[64] a conclusion with which the Court of Appeals for the Fourth Circuit agreed.[65] As is evident, these cases focus on the priority to which claims under the Coal Act are entitled in bankruptcy, an issue that is not before the Court.

55. The UMWA Funds cite to the bankruptcy court oral ruling in *Sunnyside* as "directly on point," noting that the court there denied the debtor's application under Section 1114 to terminate its Coal Act obligations.[66] This case is readily distinguishable. At the time the *Sunnyside* debtor sought termination of the Coal Act obligations, the debtor had ceased its active mining operations. It had shut off power and let the mine fill, thereby foreclosing any possibility of reopening the mine and conducting operations. Nor did the debtor intend to engage in active coal mining. In short, the *Sunnyside* debtor was liquidating and at issue in the Section 1114 application was whether the Coal Act claims could be terminated or were entitled to priority in payment from the liquidating estates. That is not the case here. Moreover, the *Sunnyside* bankruptcy court ruling does not analyze why Section 1114 cannot modify Coal Act obligations of such obligations constitute "retiree benefits." It simply states its conclusion. *Sunnyside* is not

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64 *In re Sunnyside Coal Co.*, 146 F.3d 1273, 1280 (10th Cir. 1998).

65 *Adventure Resources Inc.* v. *Holland*, 137 F.3d 786, 794 (4th Cir. 1998) (focusing primarily on "the question of whether the taxes levied by the Coal Act were . . . 'incurred by the estate[s].'" (quoting § 503(b)(1)(B)(i)).

66 *In re Sunnyside Coal Co.*, No. 94-12794-CEM (Bankr. D. Colo. July 29, 1994) (slip opinion).

helpful to the analysis here, and in any event, that ruling is not binding on this Court.[67]

56. For the reasons set forth in *Horizon*, the Debtors may use section 1114 to modify Retiree Benefits arising under the Coal Act if the other requirements of section 1114 are satisfied. For the reasons set forth below, the Debtors have met the statutory standard of sections 1113 and 1114 to terminate the Retiree Benefits on the terms set forth in the Final Proposals.

D. The Debtors Have Satisfied the Statutory Requirements of Sections 1113 and 1114 of the Bankruptcy Code.

(1) The Debtors Made Proposals to the UMWA to Modify the UMWA CBA.

57. Section 1113 requires the Debtors to provide the UMWA with proposed modifications to the UMWA CBA *prior to* filing an application to reject the agreement.[68] The bar for satisfying this requirement is low because in most cases, this factor is a "routine formality."[69] The Debtors made numerous proposals to the UMWA throughout the Chapter 11 Cases. When the RSA terminated and the Chapter 11 Cases pivoted to a sale track, the Debtors had no alternative but make the Final Proposal to the UMWA. The Debtors' Final Proposal to the UMWA post-dated the filing of the Chapter 11 Cases and pre-dated the filing of the Section 1113/1114 Motion, which was filed on November 23, 2015. The statute requires submitting a proposal before filing the Section 1113/1114 Motion, which the Debtors did. However, neither section 1113 nor 1114 require completion of negotiations before filing the motion. To the contrary, section 1114 expressly contemplates that negotiations may take place

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[67] Even the bankruptcy court was not convinced of its own conclusion. *Id.* at 18 ("The reality is that it is a point subject to argument, but you are here asking for my judgment in this proceeding and that's what you get. I'm sure that this problem will haunt other Courts . . . .").

[68] 11 U.S.C. § 1113(b)(1)(A); *see also In re Nw. Airlines Corp.*, 346 B.R. 307, 320 (Bankr. S.D.N.Y. 2006).

[69] *See, e.g.*, *Chicago Constr. Specialties*, 510 B.R. at 218.

after the filing of the motion, and the testimony and the evidence demonstrates that is what happened here,[70] so the Final Proposal to the UMWA met this requirement.

58. The Objectors argue that the Final Proposal to the UMWA was a "take it or leave it" unilateral rejection of the UMWA CBA and Retiree Benefits dictated by the Proposed Buyer under the Stalking Horse APA. Even if the Objectors are correct that the Final Proposal was necessitated by the Stalking Horse APA and the Debtors' financial circumstances, and even if these exigencies preclude further negotiations with the UMWA and Section 1114 Committee, the Final Proposal in and of itself was not improper. First, the Final Proposal included those modifications necessary to consummate the Stalking Horse APA. This includes elimination of the Successorship Provisions or rejection of the UMWA CBA. The Debtors had no choice about including these terms in the Stalking Horse APA. The Debtors' investment banker testified that after an extensive marketing process, no buyers emerged willing to purchase the Alabama Coal Operations as a going-concern, let alone as a going-concern burdened by the UMWA CBA. No contrary testimony or evidence was offered. Certainly, no entity is more familiar with coal operators than the UMWA, and if they had been aware of any potential purchasers, surely their representatives would have made that known.[71] The fact that certain terms of the Final Proposal were non-negotiable for reasons beyond the Debtors' control does not render the Final Proposals defective or proffered in bad faith.

59. Second, by its terms, the Final Proposal to the UMWA made clear that the Debtors were submitting proposals and were willing to negotiate, notwithstanding the dire

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[70] Even counsel for the UMWA noted that a court may stop the 1113/1114 hearing and request or require the parties to negotiate.

[71] *See Lady H*, 199 B.R. at 607 ("Therefore, it is now time for the UMWA and the 1992 Plan to do what every creditor has a right to do at such a sale; encourage bidders who they would like to have operate these properties, consider investing in or becoming an owner of the enterprise, or enter into an agreement with a buyer to assure that some of the profitability problems of the past are solved upon purchase of the Debtors' assets.")

circumstances in which the Debtors find themselves. Thus, for example, the UMWA Final Proposal provides:

> JWR confirms that, in addition to the foregoing [proposals], it is willing to discuss any proposal that the Union may have concerning the effects of the sale of the mines on the Union's members.[72]

60. Finally, not unlike many Chapter 11 cases, but even more so in these cases, the Debtors have had to move at "warp" speed. From day one, the Debtors, and every witness for the Debtors, at every hearing, have repeatedly made it known that the "cash burn" was occurring faster even than anticipated. Repeatedly the Debtors have advised that they had to move the cases quickly to get to an end before the cash was completely gone. Also, as in any Chapter 11, Debtors, their counsel and advisors, and the management, are not only dealing with ongoing routine business issues, but are attempting to deal with, negotiate and resolve issues on multiple fronts with multiple players. The UMWA labor issues are clearly not the only party or problems being addressed, all simultaneously.[73]

61. In sum, the Objectors ignore the express language of the Final Proposal, which clearly invites further discussion, and in fact, such discussions took place. The extent to which the Debtors' circumstances may limit the opportunity to negotiate does not, of itself, determine whether the first factor of the nine-part *American Provision* test has been satisfied.[74]

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[72] Scheller Decl. ¶ 26 & Ex. 2.

[73] The court notes that even while preparing for this hearing, the Debtors resolved the 1114 Non-Union Retiree issues. Further, a settlement was reached with the Unsecured Creditors Committee. The UMWA attorney tried to turn these accomplishments around by suggesting that everyone was getting something but the UMWA. The court disagrees, in a complex "mega" Chapter 11, every resolution counts and all help the Debtors reach the goal line.

[74] *See In re Alabama Symphony*, 155 B.R. 556, 573 (Bankr. N.D. Ala. 1993) (noting that the Bankruptcy Code "requires only that a debtor make *one* proposal, and that proposal must occur after the filing of the petition and before the application for rejection is made.") (emphasis in original); *see also Chicago Constr. Specialties*, 510 B.R. at 219 ("[I]t may indeed be the case that opportunity to negotiate is limited by the facts. That, however, is not a consideration in determining whether the first factor of the nine-factor test has been satisfied.").

Here, the Debtors submitted the Final Proposal within the timeframe the Bankruptcy Code contemplates, and the Court thus finds that the Final Proposal to the UMWA meets the standard required and that this factor is satisfied.[75]

(2) The Debtors' Final Proposal Was Based on the Most Complete and Reliable Information, and the Debtor Provided Relevant, Necessary Information to the UMWA.

62. Both the second and fifth factors of the *American Provision* test pertain to the information necessary to support rejection of a collective bargaining agreement or retiree benefits under sections 1113 and 1114. The second factor addresses the information upon which the Debtors base their decision to reject the UMWA CBA or terminate benefits. The fifth factor, on the other hand, addresses the information the Debtors provide to the union or retirees.[76] In both cases, a debtor must gather the "most complete information at the time and . . . base its proposal on the information it considers reliable," excluding "hopeful wishes, mere possibilities and speculation."[77] "The breadth and depth of the requisite information will vary with the circumstances, including the size and complicacy of the debtor's business and work force; the complexity of the wage and benefit structure under the collective bargaining agreement; and the extent and severity of modifications the debtor is proposing."[78] To satisfy the second and fifth

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[76] 11 U.S.C. §§ 1113(b)(1)(A) and (B), 1114(f)(1)(A) and (B); *Chicago Constr. Specialties*, 510 B.R. at 219; *AMR Corp.*, 477 B.R. at 409.

[77] *Chicago Constr. Specialties*, 510 B.R at 219 (*quoting AMR Corp.*, 477 B.R. at 409); *see also In re Karykeion, Inc.*, 435 B.R. 663, 678 (Bankr. C.D. Cal. 2010) ("Just as section 1113 precludes a debtor from altering union contracts based on wishful thinking and speculation, a debtor facing imminent closure cannot base its rejection of its only suitor on a speculative white knight with greater riches."); *In re Patriot Coal*, 493 B.R. 65, 119 (Bankr. E.D. Mo. 2013) (debtors must provide "*sufficient information* for the UMWA to evaluate the [p]roposals.").

[78] *AMR Corp.*, 477 B.R. at 409 (*quoting In re Mesaba Aviation, Inc.* (*Mesaba I*), 341 B.R. 693, 714 (Bankr. D. Minn. 2006), *aff'd in part, rev'd in part sub nom. Ass'n of Flight Attendants – CWA-AFL-CIO* v. *Mesaba Aviation, Inc.* (*Mesaba II*), 350 B.R. 435 (D. Minn. 2006)).

procedural requirements, a debtor need only provide that information that is within its power to provide.[79]

63. The Final Proposal to the UMWA meets the second and fifth factors of the *American Provision* test. The evidence establishes that the Debtors filed these Chapter 11 Cases fully expecting to reorganize pursuant to a Chapter 11 plan. The Debtors' proposals to the UMWA sought relief tailored to that objective.[80] Once the RSA was terminated and reorganization through a Chapter 11 plan was no longer a possibility, the Debtors formulated the Final Proposal to the UMWA based on the requirements needed to consummate the sale(s). The Final Proposal was a result of the Debtors' severe and increasingly liquidity constraints which show that the Debtors did not, and would not, have any cash to fund operations after January 2016, and that once the sale(s) closes, the Debtors will not have any money to pay for obligations remaining under the UMWA CBA.[81] No credible evidence was offered that this information is incomplete or unreliable.

64. Similarly, the Debtors provided the UMWA all the relevant information necessary to evaluate their proposals.[82] The relevant time for evaluating the sufficiency of the information is early November 2015 and thereafter, when the Chapter 11 Cases pivoted to a sale process. By the time the Debtors filed the sale motion on November 5, 2015, (a) there was no escaping the fact that reorganization under a plan was an impossibility, and (b) the Proposed Buyer had committed to purchasing the Alabama Coal Operations as a going-concern. It was not until the Debtors had no other choice but to pursue the Stalking Horse APA that they filed the

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79 *See In re Pinnacle Airlines Corp.*, 483 B.R. 381, 411 (Bankr. S.D.N.Y. 2012).

80 *See* Scheller Decl. ¶¶ 11, 13.

81 *See* Zelin Decl. ¶ 16.

82 *See* 11 U.S.C. §§ 1113(b)(1)(A) and (B), 1114(f)(1)(A) and (B).

Section 1113/1114 Motion. By this time, the "relevant information" was simple and apparent for all to see: the Debtors could not survive absent a sale in the near term, the Proposed Buyer had emerged as the only viable bidder that would purchase the Alabama Coal Operations as a going-concern, the sale of the Alabama Coal Operations as a going-concern provides the best chance for future employment of the Debtors' employees, and the Stalking Horse APA requires elimination of the Successorship Provisions or rejection of the UMWA CBA. Moreover, upon closing of the sale(s) (or outright liquidation), the Debtors will have no money to pay Retiree Benefits.

65. Under these facts and circumstances, the UMWA received from the Debtors all the relevant information necessary for them to evaluate the Final Proposal. Beginning July 2015, the Debtors provided the UMWA's members and advisors with access to an electronic data room that contains more than 75,000 pages of operational, financial, business planning and other documents relevant to the Objectors' evaluation of the Debtors' various proposals throughout these Chapter 11 Cases.[83] Once the RSA terminated, the Debtors continued to meet with the UMWA to apprise it of the status of the Chapter 11 Cases. Importantly, no party has challenged the reliability of the financial basis for the Debtors' decision to sell the Alabama Coal Operations as a going-concern, although the Objectors take issue with terms of the proposed sale(s). But no party has come forward willing to purchase all f the Debtors' Alabama Coal Operations burdened with the UMWA CBA and Retiree Benefits.[84]

66. The Objectors argue that they are entitled to "a thorough analysis of all of the incidents of income and expense that would bear on the [debtor's] ability to maintain a going-concern in the future" and that the union's objections must "go to whether the Debtor

[83] Zelin Decl. at ¶ 28.

[84] Zelin Decl. at ¶ 30.

mustered a sufficiently comprehensive, detailed portrait of its financial posture and prospects before it formulated its proposals." [85] The Objectors suggested by their cross examination of witnesses, that because no business plan for the Proposed Buyer had been provided, that the information was insufficient to evaluate the proposals. The Court finds otherwise, the Proposed Purchaser was formed almost simultaneously with the signing of the APA, little over one month ago. The Proposed Buyer, Coal Acquisitions, selected Mr. Williams as its CEO. He had been an advisor to the Lenders, and had been observing Debtors' operations. It is clear to this Court from Mr. Williams' testimony, that other than further streamlining and pairing expenses wherever it can, the operations are expected to continue much the same. Also, Objectors claim that the Debtors have failed to provide the information sections 1113 and 1114 require because the Debtors made the Final Proposal without providing a wind-down plan for the payment of accrued and/or vested administrative expenses owed under the UMWA CBA and without leaving sufficient assets to pay accrued post-petition obligations owed to represented employees and retirees.[86]

67. The Debtors formulated the Final Proposal to facilitate the 363 Sale, a going-concern sale of their Alabama Coal Operations the Debtors entered into because their only other alternative is to shut down the mines, unlikely leaving an opportunity to be reopened, and to liquidate. This alternative seems the more dire and severe – it would preclude almost to a certainty, any future job opportunities for the UMWA and its members. The Debtors provided the Objectors with clear and comprehensive financial, business and operational information detailing the Debtors' cash needs and the likelihood that the Debtors would run out of money in January 2016 unless the 363 Sale closed before then. This information was far more detailed and

[85] UMWA Obj. at ¶ 95, 99 (quoting *Mesaba I*, 341 B.R. at 712-13); 1114 Committee Obj. at ¶¶ 57-60.

[86] UMWA Obj. at ¶ 98; 1114 Committee Obj. at ¶ 63.

substantive than just a "snap-shot of current finances."[87] In these circumstances, that information suffices to demonstrate the necessity of the section 1113 and 1114 relief. The Debtors are not required to state what the "gap" is between their current financial performance and the performance needed to emerge, as the UMWA maintains, or what proportion of the gap is filled by the proposed labor concessions.[88] By definition, in a going-concern sale, the Debtors are *not* emerging from Chapter 11 in their current form, and the purpose of the proposed labor concessions is to enable the sale, not to fill some hypothetical financial void.

68. For the same reason, the Debtors need not demonstrate the cost savings necessary to fund their post-sale wind-down.[89] Sections 1113 and 1114 require only that the Debtors demonstrate that the Final Proposal is "necessary to permit the reorganization of the Debtors," which in this context means those modifications necessary to consummate the going-concern sale of their Alabama Coal Operations. Whether the labor concessions suffice to fund the subsequent wind-down of the estates, after the Debtors' Alabama Coal Operations have already been sold to a new owner, has no bearing on the section 1113 standard.

69. Here, the irrefutable evidence establishes that the Debtors have no reasonable or good alternative but to sell the Alabama Coal Operations to the Proposed Buyer. Based on the above, the Court finds that the Debtors based their Final Proposal on the most complete information available at the time and that the Debtors provided the UMWA with the relevant information necessary to evaluate the Final Proposals.

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87 UMWA Obj. at ¶ 105.

88 UMWA Obj. at ¶ 103.

89 UMWA Obj. at ¶ 106.

(3) The Final Proposals are Necessary to Permit the Going-Concern Sale and the Debtors' Reorganization.

70. A debtor's proposed modifications to its collective bargaining agreements or retiree benefits must be "necessary to permit the reorganization of the debtor."[90] In the context of a liquidation or sale of substantially all of a debtor's assets, the phrase "'necessary to an effective reorganization' means . . . necessary to the Debtor's liquidation."[91] This factor is the most debated among the nine *American Provision* factors, and its interpretation now exists in two divergent forms: the "absolutely essential" view espoused by the Court of Appeals for the Third Circuit in *Wheeling-Pittsburgh Steel Corp.* v. *United Steelworkers of America, AFL-CIO-CLC*, 791 F.2d 1074 (3d Cir. 1986), and the "necessary, but not absolutely minimal" view formulated by the Court of Appeals for the Second Circuit in *Truck Drivers Local 807, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of America* v. *Carey Transportation, Inc.*, 816 F. 2d 82 (2d Cir. 1987).

71. In *Wheeling-Pittsburgh*, the Third Circuit tracked the legislative history of section 1113 at length and concluded that the "necessary" language required that the debtor's proposal contain only the "minimum modifications . . . that would permit the reorganization."[92] The Third Circuit found this consistent with the purpose behind section 1113, which was to overturn the lenient *Bildisco* standard in favor of a more stringent standard.[93] It considered whether the modifications were intended to foster the debtor's ability to reorganize for the long-

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90 11 U.S.C. §§ 1113(b)(1)(A), 1114(g)(3).

91 *Chicago Constr. Specialties*, 521 B.R. at 221; *see also Karykeion*, 435 B.R. at 678-79 (finding rejection of the CBA is "necessary to permit the debtor's reorganization" where "the only reorganization option for the debtor is the sale of [its hospital] to [buyer] and that sale is contingent on the court approving the debtor's rejection of these CBAs"); *Ionosphere Clubs*, 134 B.R. at 522 (discussing inability to apply literally section 1114's analogous "necessary to permit the reorganization of the debtor" language to a debtor liquidating in Chapter 11).

92 *See Alabama Symphony*, 155 B.R. at 574 (*quoting Wheeling-Pittsburgh*, 791 F.2d at 1087).

93 *Id.* at n.42.

term, or whether they were only those that allowed the debtor to avoid liquidation. Based on its understanding of the legislative history, the Third Circuit determined that section 1113 required application of a stricter standard and that "necessary" modifications were only those that served the short term goal of preventing the debtor's liquidation.[94]

72. The Second Circuit, on the other hand, takes the view that "necessary" does not equate with "essential."[95] Thus, the Second Circuit's test formulates the "necessary" requirement as putting the burden on the debtor to make a proposal in good faith that includes necessary changes that will enhance the debtor's ability to successfully reorganize.[96] Under either the *Wheeling-Pittsburgh* standard or the *Carey Transportation* standard, the Debtors have satisfied their burden under the third factor of the *American Provision* test. The Final Proposal – by eliminating the Successorship Provisions – seek only those modifications necessary to consummate the sale(s), thereby selling the Alabama Coal Operations as a going-concern and preventing the Debtors' piecemeal liquidation and/or shut down of the coal mines.

73. More specifically, the unrefuted evidence before the Court is that the Debtors' Alabama Coal Operations cannot be sold subject to the collective bargaining agreements and Retiree Benefits. The Debtors have engaged in and continue to engage in active efforts to sell their assets subject to the obligations, but no such offers have been received and none are anticipated. The amount of the employee legacy costs, including the costs of medical benefits for hourly rate retirees and for Coal Act beneficiaries and the liability arising from the Debtors' withdrawal from the 1974 Pension Plan, are substantial. The testimony and evidence shows that even if the Debtors obtained savings of $150 million from the Unions, the Debtors

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94 *Id.* at 574 (*discussing Wheeling-Pittsburgh*, 791 F.2d at 1089).

95 *Id.* (*discussing Carey Transp. II*, 816 F.2d at 89).

96 *See id.*

would have required hundreds of millions of dollars in new capital on emergence to remain viable. The Court finds credible that no potential buyers have an interest in assuming such obligations, let alone assuming such obligations *and* investing such new capital. The Debtors have, accordingly, carried their burden of showing that, absent the rejection of the UMWA CBA and the termination of the Retiree Benefits, the sale(s) will not close and conversion of these cases to Chapter 7 and a piecemeal liquidation would ensue. Therefore, the relief sought is necessary to permit the Debtors' reorganization within the meaning of sections 1113 and 1114.

74. The UMWA argues that there is no way the Debtors can establish that any of their present demands are necessary to the sale(s) transaction until the UMWA concludes its negotiations with the Proposed Buyer. The UMWA submits that it is only after the UMWA and the Proposed Buyer have had sufficient time to bargain that it would be appropriate to consider whether it is necessary to eliminate the Successorship Provisions. But the Stalking Horse APA states unequivocally that termination of the Successorship Provisions in the UMWA CBA or rejection of the UMWA CBA is a condition *precedent* to completion of the sale(s).[97] Unless the Debtors' obtain the requested relief, there will be no Proposed Buyer with whom the UMWA can bargain. Moreover, the Debtors will run out of cash by early January 2016. No time exists to delay the sale(s) solely for purposes of maximizing the UMWA's leverage in their negotiations with the Proposed Buyer.

75. Sections 1113 and 1114 only require that the Debtors' Final Proposal be necessary to permit the *Debtors'* reorganization – *i.e.*, in these Chapter 11 Cases, those modifications necessary to consummate a going-concern sale. The Bankruptcy Code does not impose any obligation on the Debtors to ensure that the UMWA can negotiate the best possible

[97] *See* Stalking Horse APA § 7.12.

deal with the new owner of the Debtors' Alabama Coal Operations. The section 1113 inquiry focuses solely on the proposal made by the Debtors, not the other parties, and the UMWA is not entitled to a veto power over a going concern sale when the undisputed evidence establishes that it is the best way to maximize value for all creditors and provide the best chance for future employment for the Debtors' employees, including, but not limited to, UMWA-represented employees.[98] Section 1113 was never intended to give unions such power. Its purpose is to prevent the Debtors from unilaterally rejecting the UMWA CBA, to encourage negotiations with the UMWA, and to plainly articulate the process for seeking rejection. Here, the Debtors have complied with these requirements and established that the modifications are necessary to permit their reorganization within the meaning of sections 1113 and 1114.

76. The Debtors' situation in these Chapter 11 Cases is very similar to that of the debtor in *In re Karykeion, Inc.*, 435 B.R. 663 (Bankr. C.D. Cal. 2010), and the reasoning of that case is persuasive. In *Karykeion,* the Chapter 11 debtor operated a community hospital that was almost out of money, and moved to reject its collective bargaining agreements with its unions in order to facilitate a going-concern sale to a third party. As is the case here, in *Karykeion,* the sale of the hospital as a going-concern to a third-party buyer was the only reorganization option for the debtor, and the sale was contingent on the court approving the debtor's rejection of the collective bargaining agreements, including the successor clauses.[99] Given these circumstances, and having found that the Debtors satisfied the requirements for rejection set forth in section 1113, the *Karykeion* court authorized the debtor to reject its

[98] *See AMR Corp.*, 477 B.R. at 414 (noting that "courts have rejected attempts to focus the Section 1113 inquiry on a proposal made by a party other than the debtor")

[99] *Karykeion*, 435 B.R. at 679.

collective bargaining agreement.[100]

77. The Objectors' reliance on *In re Bruno's Supermarket, LLC*, 2009 WL 1148369 (Bankr. N.D. Ala. Apr. 27, 2009) is misplaced given the facts and circumstances of each case. The Debtors' situation differs markedly from that of *Bruno's*. As the *Karykeion* court noted:

> In *Bruno's*, the evidence showed that the debtor was seeking to reject a similar CBA successorship clause because it felt it could more effectively market itself without such a requirement. There was no specific sale identified and all buyers were still just potential suitors. While a number of prospective buyers had expressed concern about the successorship clause, there was testimony that certain potential buyers might still be willing to negotiate parts of the union contract. The debtor here is not simply seeking to "enhance the market value" of its assets, as the court concluded in *Bruno's*. The debtor tried to find a buyer who would assume the CBAs and tried to reorganize its existing structure without rejecting any CBAs. It is now pursuing the only course of action left to it other than shutting down immediately and has already exhausted negotiations with the only prospective buyer still willing to proceed. Whether the debtor could have avoided being painted into this corner can be debated, but it is now crowded into the corner along with the other interested parties in the case.[101]

78. The same reasoning articulated by the *Karykeion* court applies here. The Debtors have presented overwhelming evidence that the deal with the Proposed Buyer will collapse unless the Successorship Provisions are terminated or the UMWA CBA is rejected. The Proposed Buyer refused to agree to a sale transaction without that requirement and, given the depressed condition of the coal industry and the Debtors themselves, no other potential buyers have emerged to purchase the Debtors as a going-concern. In addition, once the sale(s) close, the Debtors will have no money to pay the Retiree Benefits or any other obligations remaining under the UMWA CBA. The "wisdom" of the Proposed Buyer's position regarding which of the

[100] *Id.* at 684.

[101] *Id.* at 679.

Debtors' liabilities it is willing to assume or pay is irrelevant.[102] The only consideration is whether the Debtors' proposed elimination of the Successorship Provisions or rejection of the CBAs is necessary to permit the going-concern sale of the Alabama Coal Operations. The 363 Sale will not close unless the Successorship Provisions are eliminated or the CBAs are rejected, and consequently, this requirement has been met.

(4) The Final Proposals Assure That All Parties Are Treated Fairly and Equitably.

79. Sections 1113 and 1114 also require that a debtor's proposed modifications affect all parties in a fair and equitable manner.[103] This requirement "spread[s] the burden of saving the company to every constituency while ensuring that all sacrifice to a similar degree."[104] "Courts take a flexible approach in considering what constitutes fair and equitable treatment due to the difficulty in comparing the differing sacrifices of the parties in interest."[105] A debtor can meet the requirement "by showing that its proposal treats the union fairly when compared with the burden imposed on other parties by the debtor's additional cost-cutting measures and the Chapter 11 process generally."[106]

80. Bankruptcy Courts display significant discretion with respect to this part of the *American Provision* test. For example, courts have found the requirement fulfilled where non-union employees and managers received increased responsibilities as a result of a reduction-

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[102] *Id.*

[103] 11 U.S.C. §§ 1113(b)(1)(A); 1114(g)(3).

[104] *See AMR Corp.*, 47 B.R. at 408 (quoting *Carey Transp. II*, 816 F. 2d at 90); *see also In re Century Brass Prods. Inc.*, 795 F.2d 265, 273 (2d Cir. 1986); *In re Elec. Contracting Servs. Co.*, 305 B.R. 22, 28 (Bankr. D. Colo. 2003) ("A debtor will not be allowed to reject a union contract where it has demanded sacrifices of its union without shareholders, non-union employees and creditors also making sacrifices."). Neither *AMR Corporation*, *Century Brass*, nor *Electric Contracting* discuss § 1114. However, as previously noted, "[t]he requirements for modification of retiree benefits are . . . substantially the same as the requirements for rejection of collective bargaining agreements." *Horizon*, 316 B.R. at 281; *see also Ionosphere*, 134 B.R. at 520.

[105] *AMR Corp.*, 477 B.R. at 408.

[106] *Nw. Airlines*, 346 B.R. at 326 (*citing Carey Transp. II*, 816 F.2d at 90).

in-force rather than pay cuts *per se*.[107] Additionally, at least one court has held that where union salaries and benefits constitute the bulk of the debtor's costs, and union employees generally earn more than their non-union counterparts, the "fair and equitable" requirement does not mandate perfectly proportionate burdens on both union and non-union employees.[108]

81. The "fair and equitable" requirement does not mean that the non-union employees must take pay reductions in equal percentages.[109] To the contrary, the Bankruptcy Code requires that the Court look to how "all of the affected parties" are treated.[110] The affected parties in this case include those who have intangible interests, such as the city, the state, the vendors who supply the Alabama Coal Operations, and most importantly, the employees who depend on the going concern sale as the best chance for future employment.

82. Here, just like the UMWA retirees, the Debtors' salaried employees are also facing termination of their Retiree Benefits upon consummation of the proposed sale(s). Other creditors are also either not getting paid or are receiving far less than the debt owed. Finally, the evidence establishes that the Debtors have undertaken aggressive cost-cutting measures across their business to address the Debtors' financial troubles and preserve jobs; management has taken steps to cut excess costs and overhead before approaching labor to request economic concessions.[111] Such cuts include significant reductions in force among

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[107] *In re Patriot Coal Corp.*, 493 B.R. 65, 131 (Bankr. E.D. Mo. 2013) (*citing Carey Transp. II*, 816 F.2d at 90).

[108] *See In re Allied Delivery System Co.*, 49 B.R. 700, 702-03 (Bankr. N.D. Ohio 1985) ("Fair and equitable treatment does not of necessity mean identical or equal treatment."); *see also Carey Transp. II*, 816 F.2d at 90-91 ("[W]here . . . the employees covered by the pertinent bargaining agreements are receiving pay and benefits above industry standards, it is not unfair or inequitable to exempt the other employees from pay and benefit reductions.").

[109] *Alabama Symphony*, 155 B.R. at 575.

[110] *Id.* (*quoting American Provision*, 44 B.R. at 909); 11 U.S.C. § 1113(b)(1)(A).

[111] *See In re Carey Transp.* (*Carey Transp. I*), 50 B.R. 203, 210 (Bankr. S.D.N.Y. 1985) ("It is rare that management approaches labor seeking economic concessions without being able to demonstrate that is has already taken steps to cut costs and overhead.")

salaried employees, renegotiating key contracts, and other creditor concessions. The Final Proposal thus does not discriminate against Union employees or retirees.

83. The Objectors argue that the Debtors' proposed key employee retention plan (the "KERP")[112] evidences that the UMWA represented parties and retirees shoulder a disproportionate share of the Debtors' financial distress. They argue that the existence of the KERP, which they claim favors senior management to the detriment of the UMWA represented employees and retirees, renders the Final Proposal inherently unfair and inequitable.[113] But the mere fact that the Debtors are pursuing the KERP does not mean that the Final Proposal is not fair and equitable with respect to employees and retirees. How the Final Proposal affects employees and retirees and whether any constituent unfairly shoulders the burden of their impact under Sections 1113 and 1114 presents a separate and distinct inquiry from whether the KERP is justified under the facts and circumstances of these Chapter 11 Cases under Section 503(c)(3). The Court will address the KERP on its own merits in the context of adjudicating the KERP motion. However, the Court notes that the evidence establishes that the overriding purpose of the KERP is to ensure the retention of twenty-six employees (not senior management generally) who the Debtors' believe are critically necessary to preserve the Alabama Coal Operations as a safe and functioning operation that can be sold as a going concern. These objectives are consistent with those of the Final Proposal, and the existence of the KERP on its own therefore does not demonstrate that the Final Proposal is not fair and equitable. Further, the testimony regarding the KERP was clear, credible and unrefuted that the funds available for the KERP are not available for any other purpose. Again, the goal of the KERP is completely consistent and

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[112] *See Debtors' Motion for an Order (A) Approving the Debtors' Key Employee Retention Plan and (B) Granting Related Relief* [Doc. No. 1032] (the "KERP Motion").

[113] UMWA Obj. at ¶ 112; UMWA Funds Obj. at ¶ 78; 1114 Committee Obj. at ¶ 63.

promotes the fair and equitable treatment in that it further ensures Debtors continue to operate as required and necessary to accomplish the sale.

84. The evidence establishes that the Alabama Coal Operations cannot be sold without rejection of the UMWA CBA and Retiree Benefits. Thus, absent the rejection, those operations would be closed and sold on a piecemeal basis. On the other hand, if the sale(s) consummate and the Alabama Coal Operations are sold as a going-concern, Debtors' employees have the best chance of future employment. Consummating the sale(s) is also necessary to achieve fairness to creditors including the unsecured creditors (trade vendors and other businesses that provided goods and/or services to the Debtors), the secured and administrative creditors who would receive considerably less as a result of a piecemeal Chapter 7 liquidation. Finally, consummating the sale(s) also serves the public interest, here, represented by the local community in which the mines operate. For example, the Proposed Buyer is assuming responsibility under various mine reclamation laws and regulations which benefits the governmental agencies charged with enforcing such laws. Further, if the mines continue to operate, the local community and its economy benefit.

85. Based on the foregoing, that the Debtors have shown that the Final Proposal treats all affected parties fairly and equitably, without placing a disproportionate burden on the Union members. The Debtors have accordingly satisfied the fourth factor of the *American Provision* test.

(5) The Debtors Met With the UMWA at Reasonable Times and in Good Faith.

86. Sections 1113 and 1114 require that a debtor "meet, at reasonable times" to confer "in good faith in attempting to reach mutually satisfactory modifications to [their

collective] bargaining agreement."[114] "'[O]nce the debtor has shown that it has met with the Union representatives, it is incumbent upon the Union to produce evidence that the debtor did not confer in good faith.'"[115] A failure to reach agreement may be "the result of the difficultness of the task, rather than the lack of 'good faith' of either party."[116]

87. "Determining what amounts to "reasonable times" to meet depends on the circumstances of the situation".[117] Here, the Debtors have met repeatedly with the UMWA to bargain and negotiate with it at every step of these Chapter 11 Cases.[118] The Debtors requested meetings on numerous occasions. Not once did the Debtors decline a single request from the UMWA to negotiate.[119]

88. The Debtors have also met in good faith with the UMWA. The good faith requirement under section 1113 has been interpreted to mean that the debtor must make a serious effort to negotiate.[120] Here, the evidence establishes that the Debtors were sincere about their efforts to plow some middle ground before resorting to the measures allowed by section 1113. Indeed, the Debtors' willingness to meet frequently with the UMWA is itself compelling evidence of the Debtors' good faith.[121]

89. The Objectors argue that the Debtors did not meet in good faith because the Final Proposal was required by the Stalking Horse APA and were not subject to

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[114] 11 U.S.C. §§ 1113(b)(2), 1114(f)(2).

[115] *Carey Transp. I*, 50 B.R. at 211 (quoting *American Provision*, 44 B.R. at 910).

[116] *Id.* (quoting *In re Salt Creek Freightways*, 47 B.R. 835, 840 (Bankr. D. Wyo. 1985)).

[117] *See Karykeion*, 435 B.R. at 681.

[118] Scheller Decl. ¶¶ 9-14, 16-17, 20-21, 23.

[119] *Id.* at ¶ 9.

[120] *Alabama Symphony*, 155 B.R. at 576 (*citing In re Ky. Truck Sales, Inc.*, 52 B.R. 797 (Bankr. W.D. Ky. 1985).

[121] *See In re Sol-Sieff Produce Co.*, 82 B.R. 787, 795 (Bankr. W.D. Pa. 1988) (concluding that the debtor negotiated in good faith where the "Debtor ha[d] at all times been ready, willing, and able to negotiate" with its union).

negotiation.[122] The evidence establishes, however, that the Debtors made multiple proposals to the UMWA and met with the UMWA throughout the Chapter 11 Cases. It was only when a sale was inevitable, and the Debtors were close to running out of money, that the Debtors submitted the Final Proposal seeking elimination of the Successorship Provisions or rejection of the UMWA CBA. The UMWA's reliance on *In re Lady H Coal, Inc.*, 193 B.R. 233 (Bankr. S.D.W.Va. 1996) is thus misplaced. In *Lady H Coal*, the court found good faith lacking where the debtors had already obligated themselves prior to initiating modification negotiations.[123] Here, however, the Debtors were not locked in at the time negotiations commenced. They approached the UMWA to discuss labor cost reductions before commencing the Chapter 11 Cases, and met with the UMWA repeatedly throughout their restructuring process.

90. Notably, once the Stalking Horse APA was executed, the Debtor encouraged the Proposed Buyer to meet and confer with the UMWA. In fact, the Proposed Buyer has met with, and continues to negotiate with, the UMWA. And while the UMWA understandably objects to the Proposed Buyer's insistence on the condition in the Stalking Horse APA requiring rejection of the UMWA CBA or termination of the Successorship Provisions, the relevant inquiry for purposes of the Section 1113/1114 Motion is the good faith of the Debtors and the UMWA, not the Proposed Buyer's negotiation of the Stalking Horse APA. The Debtors have shown that they negotiated in good faith. No evidence exists to the contrary.

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[122] *See In re Delta Air Lines*, 342 B.R. 685, 697 (Bankr. S.D.N.Y. 2006) ("[A] debtor cannot be said to comply with its obligation under Section 1113(b)(2) . . . when it steadfastly maintains that its initial proposal under subsection (b)(1)(A) is non-negotiable.").

[123] *Lady H Coal, Inc.*, 193 B.R. at 242 ("[T]he Debtors could not have bargained in good faith as the Debtors were, *prior to any negotiations with the union*, locked into at [sic] an agreement where the purchaser was not assuming the [CBA].") (emphasis added).

(5) The UMWA and Section 1114 Committee Rejected the Final Proposals without Good Cause.

91. Sections 1113 and 1114 also require a debtor to demonstrate that its unions have "refused to accept [its] proposal without good cause."[124] Once the debtor establishes that its proposal is necessary, fair, and in good faith, the unions must produce sufficient evidence to justify their refusal to accept the proposal.[125] "[A]lmost invariably, if a debtor-in-possession goes through the procedural prerequisites for its motion, and if the substance of the proposal ultimately passes muster . . . , its union(s) will not have good cause to have rejected the proposal."[126]

92. Where a proposal is necessary for the debtor's viability and the other section 1114 requirements are met, no good causes exists to reject the proposal, even if the proposal requires sacrifices by the union or retirees.[127] "Good cause" does not include demands that are not economically feasible or alternatives that would not permit the debtor to reorganize successfully.[128]

93. Here, the UMWA and Section 1114 Committee lack good cause for rejecting the Debtors' Final Proposal. The Debtors' dire circumstances require them to

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[124] 11 U.S.C. §§ 1113(c)(2), 1114(g)(2).

[125] *Nw. Airlines*, 346 B.R. at 328 (*citing Carey Transp. II*, 816 F.2d at 92).

[126] *Assoc. of Flight Attendants-CWA, AFL-CIO* v. *Mesaba Aviation, Inc.* (*Mesaba II*), 350 B.R. 435, 461 (D. Minn. 2006) (internal quotation omitted).

[127] *Mesaba II*, 350 B.R. at 462 ("While the low wages imposed by the Proposals understandably motivated the Unions to reject the Proposal, they do not constitute good cause under the Bankruptcy Code."); *see also In re Valley Steel Products Co., Inc.*, 142 B.R. 337, 342 (Bankr. E.D. Mo. 1992) ("It is clear that the Proposals would have a negative impact on the Teamster Drivers' incomes. It is equally clear that if the Debtors do not receive these concessions they will be forced to liquidate and the Teamsters will be unemployed.").

[128] *See Nw. Airlines*, 346 B.R. at 328; *see also Salt Creek Freightways*, 47 B.R. at 840 ("[T]he court must view the Union's rejection utilizing an objective standard which narrowly construes the phrase 'without good cause' in light of the main purpose of Chapter 11, namely reorganization of financially distressed businesses."); *Alabama Symphony*, 155 B.R. at 577 (union rejected the proposal without good cause where it merely insisted that the debtor comply with the terms of the CBA before beginning negotiations because the union "knew that the [debtor] did not have the funds to pay them").

undertake the 363 Sale, or else they will cease operations and all employees' jobs will be lost. And, under the terms of the Stalking Horse APA, the 363 Sale cannot be consummated unless the Successorship Provisions of the UMWA CBA are eliminated. Similarly, the other obligations remaining under the UMWA CBA and Retiree Benefits must be terminated upon closing the 363 Sale because the Debtors will not have the money to pay them.

94. When the Chapter 11 Cases pivoted from a plan to a sale process, the Debtors encouraged the UMWA and the Proposed Buyer to meet with each other to negotiate the terms of an initial collective bargaining agreement.[129] In fact, the Proposed Buyer reached out to the UMWA as a courtesy the day after the Stalking Horse APA was signed.[130] The Proposed Buyer continues to meet with the UMWA, has already made an initial contract proposal to it, and a further meeting is already scheduled with the UMWA.[131] As a result, the fact that the Stalking Horse APA requires elimination of the Successorship Provisions and the other section 1113/1114 relief as a condition to close the 363 Sale does not itself provide the UMWA with good reason to reject the Debtors' proposals.[132]

95. Nor were the Debtors required to accept the UMWA's "counter-proposal" in which the UMWA expressed a willingness to engage in further negotiations with the Debtors, but only upon ratification of a collective bargaining agreement with the Proposed Buyer, provided such agreement addresses retiree healthcare. First, given the Debtors' lack of cash, no

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[129] *See* Scheller Decl. ¶ 25.

[130] *See* Williams Decl. ¶¶ 3-4.

[131] *See* Williams Decl. ¶¶ 6-7.

[132] *Cf. In re Bruno's Supermarkets, LLC*, 2009 WL 1148369, at *18-19 (Bankr. N.D. Ala. Apr. 27, 2009) (finding that the union refused the debtor's proposal under section 1113 with good cause where the debtor failed to encourage negotiations between potential purchasers and the union); *In re Patriot Coal Corp.*, No. 15-32450 (Bankr. E.D. Va. Sept. 1, 2015), ECF No. 1043, Hearing Transcript at 145:5-10 (adjourning section 1113/1114 hearing for two days and ordering proposed buyer and union to "sit down across a table from each other" during that period).

more time exists to simply allow negotiations to proceed in the hope that all of the UMWA's demands will be met before a going concern sale is no longer possible. Second, the Debtors must eliminate the Successorship Provisions to consummate the 363 Sale. If the Successorship Provisions are not eliminated, there will be no Proposed Buyer with whom the UMWA can reach an initial collective bargaining agreement. Third, the UMWA's "counter-proposal" provides that the sale could not close and the Debtors would have to liquidate piecemeal if, despite the good faith efforts of the Proposed Buyer and the UMWA, such parties are unable to reach agreement on an initial collective bargaining agreement and/or such initial collective bargaining agreement is not ratified prior to closing. Fourth, the UMWA is already negotiating an initial collective bargaining agreement with the Proposed Buyer and nothing precludes them from continuing those negotiations.

96. The Court finds the statutory language "without good cause" troubling and previously found and held that this is not the same as nor synonymous with "in bad faith."[133] Rather, this requirement imposes on the Court an objective standard consistent with goals and purposes of Chapter 11 generally. "[T]he union must indicate a willingness to work with the debtor in its attempts to reorganize." [134] In this case, for the UMWA to make a counterproposal requiring a deal with the Proposed Buyer, which was and is completely beyond the control of the Debtors, is not a sufficient effort to work with the Debtors, and without good cause. It was not, and is not, reasonable, or good cause, for the Union to outright reject a proposal by demanding conduct or action the Debtors do not control. Further, the UMWA counterproposal did not offer,

[133] "'Without good cause' is not synonymous with 'in bad faith.'" *Alabama Symphony*, 155 B.R. at 577 (citing *In re Salt Creek Freightways*, 47 B.R. 835 (Bankr. D. Wyo. 1985)).

[134] *Alabama Symphony*, 155 B.R. at 577.

suggest, or open a door to other options or alternatives other than having a new CBA with the Proposed Buyer.

97. In the end, the Debtors and the UMWA have reached a stalemate with respect to elimination of the Successorship Provisions. The existence of a stalemate, however, does not constitute "cause" to reject the Debtors' proposal, especially when the Debtors have no other options and the UMWA is in negotiations with the Proposed Buyer to reach an initial agreement. As a result, the Debtors have demonstrated that the UMWA lacked good cause to reject the Debtors' proposal.

(6) <u>The Balance of the Equities Clearly Favor Rejection</u>.

98. Finally, the balance of the equities overwhelmingly favors rejection of the UMWA CBA and termination of the Retiree Benefits, as required for approval of a motion under sections 1113 and 1114.[135] When applying this test, "bankruptcy courts 'must focus on the ultimate goal of Chapter 11... [as the] Bankruptcy Code does not authorize freewheeling consideration of every conceivable equity, but rather only how the equities relate to the success of the reorganization.'"[136] This is a fact-specific inquiry, and courts consider the following six factors:

(a) the likelihood and consequences of liquidation if rejection is not permitted;

(b) the likely reduction in the value of creditors' claims if the bargaining agreement remains in force;

(c) the likelihood and consequences of a strike if the bargaining agreement is voided;

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[135] *See* 11 U.S.C. §§ 1113(c)(3), 1114(g)(3).

[136] *Nw. Airlines*, 346 B.R. at 329 (ellipses in original) (quoting *NLRB* v. *Bildisco & Bildisco*, 465 U.S. 513, 527 (1984)); *see also Ky. Truck Sales*, 52 B.R. at 806 ("[T]he primary question in a balancing test is the effect the rejection of the agreement will have on the debtor's prospects for reorganization.").

(d) the possibility and likely effect of any employee claims for breach of contract if rejection is approved;

(e) the cost-spreading abilities of the various parties, taking into account the number of employees covered by the bargaining agreement and how various employees' wages and benefits compare to those of others in the industry; and

(f) the good or bad faith of the parties in dealing with the debtor's financial dilemma.[137]

99. In addition, "[t]he balance of the equities . . . clearly favors rejection when it is apparent that a debtor is in need of substantial relief under a union contract and the bargaining process has failed to produce any results and is unlikely to produce results in the foreseeable future."[138]

100. Here, the Debtors' liquidation is almost certain if this Court does not approve the rejection of the UMWA CBA; the testimony on this point was clear, convincing, unrefuted, and credible.[139] The alternative to the Debtors' requested relief will be far worse for all constituencies: the Debtors will soon run out of cash with no ability to attract additional financing. Under such a scenario, the evidence establishes that 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.

101. All of the remaining factors also favor granting the requested relief. As described above, the recoveries of all parties in these Chapter 11 Cases, including the unsecured creditors, administrative creditors and the Debtors' secured creditors, are at significant risk. The Proposed Buyer and the UMWA are engaged in negotiations for an initial collective bargaining

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137 *Carey Transp. II*, 816 F.2d at 93.

138 *In re Royal Composing Room, Inc.*, 62 B.R. 403, 408 (Bankr. S.D.N.Y. 1986).

139 *See* Zelin Decl. ¶ 29.

agreement, each side has made a full contract proposal, and the parties have had three meetings and have scheduled a subsequent meeting, which minimizes the likelihood and consequences of a strike. If the Court does not grant the relief requested, employee breach claims are almost a certainty, as the Debtors will be unable to afford the remaining obligations under their UMWA CBA.[140] Finally, for the reasons discussed above, the Debtors have acted in good faith and requested only those savings and changes that they truly need, with the burden of those savings spread equitably among the Debtors' various constituencies.

102. The balance of the equities clearly favors implementing the Final Proposal and the Court finds this final factor of the *American Provision* test has been satisfied.

CONCLUSION

The Union has objected to, and strongly urges this Court to deny, the Motion. It seems the Union is hopeful that if the Motion is denied, either 1) the Proposed Buyer would close the sale anyway, or 2) the Proposed Buyer would expedite and fast track the negotiations and reach an agreed-upon CBA that could be ratified so the sale could proceed. The Court notes that the sale motion hearing is set for January 6, 2015. Many objections to the sale have been filed, some by counsel for represented parties, but many have been filed by individuals employed by or retired from Walter energy. Their concerns are legitimate and clearly they seek only to retain what they have, and hope not to lose their pay, income, medical care benefits, pension benefits, and the like. This Court has reviewed these objections, even though not filed regarding this hearing and the Court has considered these concerns, as well as those voiced by UMWA counsel at the hearing. As noted in detail in one *Patriot Coal* reported decision, these miners and retirees endured "horrendous conditions," worked hard for decades below ground, many may have

[140] *See* Zelin Decl. ¶ 16.

permanent disabilities, physical and mental limitations, and now face frightening health care issues.[141]

Even though this Court fully appreciates the enormous potential hardship on many, the Court must follow the law and in doing so must decide what is best for ALL creditors and parties, including union and non-union employees. While the Union appears willing to risk the sale by insisting the Court deny the Motion, the Court is not in position to do so. This Court must assume the terms of the APA are firm and that if any condition is not met, there will be no sale. This Court finds that maintaining the coal operations as a going concern[142], keeping the mines open, offering future job opportunities and continuing to be a productive member of the business community all require this Court to overrule the UMWA and the UMWA Funds' objections.

This result is based on the Court's conclusion that the 1) Debtors are out of time to close a sale; 2) the Proposed Buyer will not close the sale unless all the conditions are met, including rejection of the UMWA CBA and elimination of any liability for the UMWA Funds' as to the Proposed Buyer; and, 3) based on the statutory and substantial case law cited: a) the elimination of CBA obligations is not new or novel in bankruptcy cases; and, b) there is substantial and persuasive case law to support the Proposed Buyer's conditions regarding the CBA and related obligations. The relief sought in the Debtor's Motion pursuant to 11 U.S.C. §§ 1113 and 1114 is due to be granted. Accordingly, it is hereby

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[141] *Patriot Coal*, 493 B.R. at 79.

[142] The Court notes that many large businesses have been through bankruptcy and some are well known and have continued in business. Thus, many employees have retained jobs, local economies have benefited, other businesses have continued to stay in business, and consumers have continued to use and enjoy products and services produced. The following are some will recognized names of business that have emerged from bankruptcy and are still in business: General Motors, Chrysler, Kmart, Kodak, Wall Street Deli, as well as multiple companies owned and operated by Donald Trump.

ORDERED, ADJUDGED and DECREED that the objections by the UMWA and UMWA Funds are **OVERRULED**. It is further

ORDERED, ADJUDGED and DECREED that the Motion filed by the Debtor is **GRANTED**, the Collective Bargaining Agreement is **REJECTED**, and any Sale of Assets shall be free and clear of any encumbrances and liabilities under either the CBA or with respect to any UMWA Funds.

Dated: December 28, 2015

/s/ Tamara O. Mitchell
TAMARA O. MITCHELL
United States Bankruptcy Judge

EXHIBIT B

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)

ORDER (I) APPROVING THE SALE OF THE ACQUIRED ASSETS FREE AND CLEAR OF CLAIMS, LIENS, INTERESTS AND ENCUMBRANCES; (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) GRANTING RELATED RELIEF

Upon the motion [Docket No. 993] (the "**Motion**")[2] of the Debtors dated November 5, 2015 for, among other things, entry of an order (the "**Order**") (I) approving the sale of the Acquired Assets pursuant to the Stalking Horse Agreement, as amended, and which for purposes of this Order shall include all exhibits, schedules and ancillary documents related thereto, including all Transaction Documents (as defined therein) and the Escrow and Trust Agreements referred to herein (the "**Sale Transaction**") free and clear of all claims, liens, interests and encumbrances; (II) authorizing the assumption and assignment of certain executory contracts and unexpired leases (the "**Assumed Contracts**") and the assumption of the Assumed Liabilities, each as more fully described in the Stalking Horse Agreement; and (III) granting

[1] The Debtors in these cases, along with the last four digits of each of the 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] Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Motion or the Bidding Procedures Order (as defined below), as applicable.

related relief; and the Court having held a hearing on January 6, 2016 (the "**Sale Hearing**") to approve the Sale Transaction; and the Court having reviewed and considered the relief sought in the Motion, declarations submitted in support of the Motion, all objections to the Motion and the Debtors' reply thereto, and the arguments of counsel made, and the testimony and evidence proffered or adduced, at the Sale Hearing; and all parties in interest having been heard or having had the opportunity to be heard regarding the Sale Transaction and the relief requested in this Order; and due and sufficient notice of the Sale Hearing and the relief sought therein having been given under the particular circumstances and in accordance with the Bidding Procedures Order; 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 Sale Hearing and these Chapter 11 Cases, and after due deliberation thereon, and good cause appearing therefor, it is hereby

FOUND, CONCLUDED AND DETERMINED THAT:[3]

A. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409. The legal predicates for the relief requested in the Motion are Bankruptcy Code sections 105, 363, 364, 365 and 503. Such relief is also warranted pursuant to Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, and 9014.

B. Several parties filed objections to the Motion (each, an "**Objection**," and collectively, the "**Objections**") as more particularly identified and described in Exhibit A to the Debtors' Omnibus Reply to Objections to the Motion [Docket No. 1552]. The hearing on certain

[3] The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Objections based solely on 11 U.S.C. § 365 (the "**Cure Objections**") has been continued to February 3, 2016, as more particularly described in the *Notice of Continued Hearing on Certain Cure Objections* [Docket No. 1515].

C. On November 25, 2015, the Court entered an order [Docket No. 1119] (the "**Bidding Procedures Order**"), which, among other things, (i) approved the Bidding Procedures and Bid Protections, (ii) authorized the Assumption and Assignment Procedures, (iii) approved the form and manner of notice of the Sale Transaction and the other procedures, protections, schedules and agreements related thereto, and (iv) scheduled the Auction and the Sale Hearing.

D. The relief granted herein is in the best interests of the Debtors, their estates and creditors, and other parties in interest.

E. The Debtors have articulated good and sufficient business reasons for the Court to authorize (i) the Debtors' entry into the Stalking Horse Agreement and consummation of the Sale of the Acquired Assets to the Stalking Horse Purchaser or any Buyer Designee and (ii) the assumption and assignment of the Assumed Contracts and Assumed Liabilities as set forth herein and in the Stalking Horse Agreement.

F. Sound business justifications also exist for the establishment of the various escrow and trust accounts (the "**Escrow and Trust Arrangements**") pursuant to the escrow and trust agreements (the "**Escrow and Trust Agreements**") as provided in Section 4.2 of the Stalking Horse Agreement. The Escrow and Trust Arrangements will avoid a freefall shutdown of the Debtors' remaining estates, provide for, among other things, the payment of accrued and unpaid (i) professional fees and expenses and (ii) payroll and other related expenses, each in

accordance with the Stalking Horse Agreement, and provide a mechanism to assist in the orderly and responsible winddown of any Excluded Assets not otherwise sold at the Auction.

G. As evidenced by the affidavits of service [Docket Nos. 1028, 1150, 1151, 1152, 1172, 1173, 1174, 1230, 1340, 1441, 1442, 1495, 1519] and publication [Docket Nos. 1387, 1543] previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing, the Sale Transaction, the Assumption and Assignment Procedures and the assumption and assignment of the Assumed Contracts and the applicable Cure Amounts has been provided in compliance with the Bidding Procedures Order and in accordance with Bankruptcy Code sections 102(1), 363, and 365, and Bankruptcy Rules 2002, 4001, 6004, 6006, 9006, 9007 and 9014, (ii) such notice was good and sufficient, and appropriate under the particular circumstances, and (iii) no other or further notice of the Motion, the Sale Hearing, the Sale Transaction, the assumption and assignment of the Assumed Contracts or the Cure Amounts is or shall be required. With respect to entities whose identities were not reasonably ascertained by the Debtors, publication of the Sale Notice was made in *The Wall Street Journal*, National Edition and *The Tuscaloosa News* on December 1, 2015, *The Birmingham News* on December 2, 2015, and again in *The Wall Street Journal*, National Edition, *The Tuscaloosa News* and *The Birmingham News*, as well as the *USA Today*, National Edition and the *Charleston Gazette and Daily News*, on or about December 9, 2015. Such notice was sufficient and reasonably calculated under the circumstances to reach all known and unknown entities.

H. The Acquired Assets sought to be transferred and/or assigned, as applicable, by the Debtors to the Stalking Horse Purchaser pursuant to the Stalking Horse Agreement are property of the Debtors' estates and title thereto is vested in the Debtors' estates.

For the avoidance of doubt, cylinders owned by Airgas USA, LLC that are currently in the Debtors' possession are not Acquired Assets.

I. The Debtors and their professionals marketed the Acquired Assets and conducted the marketing and sale process in compliance with the Bidding Procedures and the Bidding Procedures Order. Based upon the record of these proceedings, creditors and other parties in interest and prospective purchasers were afforded a reasonable and fair opportunity to bid for the Acquired Assets.

J. On November 5, 2015, the Debtors entered into the Stalking Horse Agreement subject to higher and better offers. In accordance with the Bidding Procedures Order, the Stalking Horse Agreement was deemed a Qualified Bid and the Stalking Horse Purchaser was eligible to participate in the Auction as a Qualified Bidder.

K. The Bidding Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the Acquired Assets. The Debtors conducted the sale process without collusion and in accordance with the Bidding Procedures.

L. The Debtors and their professionals conducted the sale process in compliance with the Bidding Procedures Order, and afforded potential purchasers a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer for the Acquired Assets than that reflected in the Stalking Horse Agreement.

M. As no other Qualified Bid for the Acquired Assets was received prior to the bid deadline, no Auction was conducted.[4] Consequently, the Debtors have determined in a

[4] While indications of interest were received, in consultation with the Consultation Parties, the Debtors determined that no Qualified Bid was received for the Acquired Assets requiring an auction.

valid and sound exercise of their business judgment that the highest or otherwise best Qualified Bid for the Acquired Assets is that of the Stalking Horse Purchaser. The First Lien Creditors hold allowed secured claims, as of the Petition Date, approximately as follows: term loans in the aggregate principal amount of $978,178,601.35, outstanding letters of credit under the Credit Agreement in the aggregate face amount of US$50,688,432.80 and C$22,570,494.00 and first lien notes in the aggregate outstanding principal amount of $970,000,000, in each case, plus interest, fees, costs and expenses (collectively, the "**First Lien Obligations**"). Pursuant to the Bidding Procedures, applicable law, including Bankruptcy Code section 363(k), and in accordance with the Cash Collateral Orders, the Stalking Horse Purchaser (on behalf of the First Lien Creditors) was authorized to credit bid any or all of such First Lien Obligations as well as the First Lien Adequate Protection Obligations. Pursuant to the Stalking Horse Agreement, the Stalking Horse Purchaser credit bid (the "**Credit Bid and Release**") an amount of First Lien Obligations and First Lien Adequate Protection Obligations in the initial amount of $1,250,000,000 in the aggregate, subject to adjustment pursuant to Section 7.8 of the Stalking Horse Agreement, including the reduction thereof by $100,000,000 as a result of the Walter Coke Election being made and to being increased if certain Non-Core Assets are not sold to third parties, and cash (the "**Cash Consideration**") in an amount equal to $5,400,000. The Credit Bid and Release was a valid and proper offer pursuant to the Bidding Procedures Order and Bankruptcy Code sections 363(b) and 363(k).

N. Subject to the entry of this Order, the Debtors: (i) have full power and authority to execute the Stalking Horse Agreement and all other documents contemplated thereby; (ii) have all of the power and authority necessary to consummate the transactions contemplated by the Stalking Horse Agreement; and (iii) have taken all corporate action

necessary to authorize and approve the Stalking Horse Agreement and the Sale of the Acquired Assets, and all other actions required to be performed by the Debtors in order to consummate the transactions contemplated in the Stalking Horse Agreement. No consents or approvals, other than those expressly provided for in the Stalking Horse Agreement or this Order, are required for the Debtors to consummate the Sale of the Acquired Assets.

O. The Stalking Horse Agreement was negotiated and is undertaken by the Debtors and the Stalking Horse Purchaser at arm's length without collusion or fraud, and in good faith within the meaning of Bankruptcy Code section 363(m). The Stalking Horse Purchaser is not an "insider" of any of the Debtors as that term is defined by Bankruptcy Code section 101(31). The Stalking Horse Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring the Acquired Assets, complied with the Bidding Procedures Order, and agreed to subject its bid to the competitive Bidding Procedures approved in the Bidding Procedures Order. All releases and payments to be made by the Stalking Horse Purchaser and other agreements or arrangements entered into by the Stalking Horse Purchaser in connection with the Sale have been disclosed. The Stalking Horse Purchaser has not violated Bankruptcy Code section 363(n) by any action or inaction, and no common identity of directors or controlling stockholders exists between the Stalking Horse Purchaser and the Debtors. As a result of the foregoing, the Stalking Horse Purchaser is entitled to the protections of Bankruptcy Code section 363(m), including in the event this Order or any portion thereof is reversed or modified on appeal, and otherwise has proceeded in good faith in all respects in connection with the proceeding.

P. The total consideration provided by the Stalking Horse Purchaser for the Acquired Assets is the highest or otherwise best offer received by the Debtors, and the Purchase

Price constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and any other applicable laws, and may not be avoided under Bankruptcy Code section 363(n) or under any other law of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. No other person or entity or group of persons or entities has offered to purchase the Acquired Assets for an amount that would provide greater economic value to the Debtors than the Stalking Horse Purchaser. The Debtors' determination that the Stalking Horse Agreement constitutes the highest or otherwise best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtors' business judgment. The Court's approval of the Motion, the Sale of the Acquired Assets, the Sale Transaction and the Stalking Horse Agreement is in the best interests of the Debtors, their estates and creditors and all other parties in interest.

Q. The Stalking Horse Purchaser would not have entered into the Stalking Horse Agreement and would not consummate the Sale Transaction if the sale of the Acquired Assets to the Stalking Horse Purchaser were not free and clear of all claims, liens, interests and encumbrances (other than Permitted Encumbrances and Assumed Liabilities) pursuant to Bankruptcy Code section 363(f) or if the Stalking Horse Purchaser would, or in the future could, be liable for any of such claims, liens, interests and encumbrances. Unless expressly included in the Assumed Liabilities and Permitted Encumbrances, the Stalking Horse Purchaser shall not be responsible for any claims, liens, interests and encumbrances, including in respect of the following: (i) any labor or employment agreements; (ii) any mortgages, deeds of trust and security interests; (iii) any intercompany loans and receivables between one or more of the Sellers and any Debtor; (iv) any pension, multiemployer plan (as such term is defined in Section

3(37) or Section 4001(a)(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**")), health or welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any of the Debtors or any multiemployer plan to which the Debtors have at any time contributed to or had any liability or potential liability; (v) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) ERISA, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including, without limitation, the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code and of any similar state law (collectively, "**COBRA**"), (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, (k) the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§9701, et seq. or (l) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors; (vi) any liabilities arising under any Environmental Laws with respect to any assets owned or operated by any of the Debtors or any corporate predecessor of any of the Debtors at any time prior to the Closing Date; (vii) any bulk sales or similar law; (viii) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (ix) the Coal Act and (x) any Excluded Liabilities. There is no better available alternative for the Acquired Assets than the Sale to the Stalking Horse Purchaser. The Sale of the Acquired Assets

contemplated by the Stalking Horse Agreement is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

R. The Debtors may sell the Acquired Assets free and clear of all claims, liens, interests and encumbrances (other than Assumed Liabilities and Permitted Encumbrances) because, with respect to each creditor asserting a claim, lien, interest or encumbrance, one or more of the standards set forth in Bankruptcy Code section 363(f)(1)-(5) has been satisfied. Those holders of claims, liens, interests or encumbrances who did not object or who withdrew their objections to the Sale of the Acquired Assets or the Motion are deemed to have consented to the Motion and the Sale pursuant to Bankruptcy Code section 363(f)(2). Those holders of claims, liens, interests or encumbrances who did object fall within one or more of the other subsections of Bankruptcy Code section 363(f). Notwithstanding the foregoing, the Acquired Assets are being sold subject to the Permitted Encumbrances and the Assumed Liabilities.

S. Neither the Debtors nor the Stalking Horse Purchaser engaged in any conduct that would cause or permit the Stalking Horse Agreement or the consummation of the Sale of the Acquired Assets to be avoided, or costs or damages to be imposed, under Bankruptcy Code section 363(n) or under any other law of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law.

T. The Stalking Horse Agreement, which constitutes reasonably equivalent value and fair consideration, was not entered into, and the Sale of the Acquired Assets is not consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtors under the Bankruptcy Code or under any other law of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtors nor the Stalking Horse Purchaser has entered into the Stalking Horse Agreement or is

consummating the Sale of the Acquired Assets with any fraudulent or otherwise improper purpose.

U. Upon the Closing, except as included in the Assumed Liabilities, the Stalking Horse Purchaser shall not, and shall not be deemed to: (i) be the successor of or successor employer (as described under COBRA and applicable regulations thereunder) to the Sellers, including without limitation, with respect to any Collective Bargaining Agreements and any Benefit Plans, except for Buyer Benefit Plans, under the Coal Act, and any common law successorship liability in relation to the UMWA 1974 Pension Plan, including with respect to withdrawal liability, (ii) be the successor of or successor employer to the Sellers, and shall instead be, and be deemed to be, a new employer with respect to any and all federal or state unemployment laws, including any unemployment compensation or tax laws, or any other similar federal or state laws, (iii) have, *de facto*, or otherwise, merged or consolidated with or into Sellers, (iv) be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers, or (v) be liable for any acts or omissions of Sellers in the conduct of the Business or arising under or related to the Acquired Assets other than as set forth in the Stalking Horse Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in the Stalking Horse Agreement, the parties intend that the Stalking Horse Purchaser shall not be liable for any Encumbrance or Liability (other than Assumed Liabilities and Permitted Encumbrances) against any Seller, or any of its predecessors or Affiliates, and the Stalking Horse Purchaser shall have no successor or vicarious liability of any kind or character whatsoever, whether known or unknown as of the Closing Date, whether now existing or hereafter arising, whether asserted or unasserted, or whether fixed or contingent, with respect to the Business, the Acquired Assets or any Liabilities of any Seller arising prior to the Closing Date. The Stalking

Horse Purchaser would not have acquired the Acquired Assets but for the foregoing protections against potential claims based upon "successor liability" theories.

V. Entry into the Stalking Horse Agreement and the Sale Transaction constitutes the exercise by the Debtors of sound business judgment, and such acts are in the best interests of the Debtors, their estates and creditors, and all parties in interest. The Debtors have articulated good and sufficient business reasons justifying the Sale of the Acquired Assets to the Stalking Horse Purchaser. Additionally: (i) the Stalking Horse Agreement constitutes the highest or otherwise best offer for the Acquired Assets; (ii) the Stalking Horse Agreement and the closing of the Sale Transaction will present the best opportunity to realize the highest value of the Acquired Assets and avoid further decline and devaluation of the Acquired Assets; (iii) there is risk of deterioration of the value of the Acquired Assets if the Sale Transaction is not consummated promptly; and (iv) the Stalking Horse Agreement and the Sale of the Acquired Assets to the Stalking Horse Purchaser will provide greater value to the Debtors' estates than would be provided by any other presently available alternative.

W. Good and sufficient reasons for approval of the Stalking Horse Agreement and the Sale Transaction have been articulated by the Debtors. The Debtors have demonstrated compelling circumstances and a good, sufficient and sound business purpose for the Sale Transaction outside: (a) the ordinary course of business, pursuant to Bankruptcy Code section 363(b); and (b) a plan of reorganization, in that, among other things, the immediate consummation of the Sale Transaction is necessary and appropriate to maximize the value of the Debtors' estates. To maximize the value of the Acquired Assets and preserve the viability of the operations to which the Acquired Assets relate, it is essential that the Sale occur within the time

constraints set forth in the Stalking Horse Agreement. Time is of the essence in consummating the Sale Transaction.

X. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Assumed Contracts to the Stalking Horse Purchaser in connection with the consummation of the Sale Transaction, and the assumption and assignment of the Assumed Contracts to the Stalking Horse Purchaser is in the best interests of the Debtors, their estates and creditors and all parties in interest. The Assumed Contracts being assigned to the Stalking Horse Purchaser are an integral part of the Acquired Assets being purchased by the Stalking Horse Purchaser, and accordingly, such assumption and assignment of the Assumed Contracts is reasonable and enhances the value of the Debtors' estates. The cure amounts required to be paid pursuant to section Bankruptcy Code 365(b), whether agreed or judicially resolved (the "**Cure Amounts**"), are deemed to be the entire cure obligation due and owing under the Assumed Contracts under Bankruptcy Code section 365(b). To the extent that any non-Debtor counterparty to an Assumed Contract failed to timely file an objection to the proposed Cure Amount filed with the Bankruptcy Court, the Cure Amount listed in the Cure Notice shall be deemed to be the entire cure obligation due and owing under the applicable Assumed Contract.

Y. Each provision of the Assumed Contracts or applicable non-bankruptcy law that purports to prohibit, restrict or condition, or could be construed as prohibiting, restricting or conditioning, assignment of any Assumed Contracts has been satisfied or is otherwise unenforceable under Bankruptcy Code section 365.

Z. Upon the payment of the Cure Amount to the relevant counterparty to an Assumed Contract, there will be no outstanding default under each such Assumed Contract.

AA. The Stalking Horse Purchaser has demonstrated adequate assurance of future performance of all Assumed Contracts within the meaning of Bankruptcy Code section 365.

BB. Upon the assignment to the Stalking Horse Purchaser and the payment of the relevant Cure Amounts, each Assumed Contract shall be deemed valid and binding and in full force and effect in accordance with its terms, and all defaults thereunder, if any, shall be deemed cured, subject to the provisions of this Order.

CC. An injunction against creditors and third parties pursuing claims against, and liens, interests and encumbrances on, the Acquired Assets is necessary to induce the Stalking Horse Purchaser to close the Sale Transaction, and the issuance of such injunctive relief is therefore necessary to avoid irreparable injury to the Debtors' estates and will benefit the Debtors' creditors.

DD. With respect to any agreements entered into between the Stalking Horse Purchaser and the Debtors' management or key employees regarding compensation or future employment, if any exist, the Stalking Horse Purchaser has disclosed the material terms of such agreements.

EE. The Sale Transaction does not constitute a *sub rosa* chapter 11 plan. The Sale Transaction neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates a liquidating plan of reorganization for any of the Debtors.

FF. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of judgment as set forth herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is **GRANTED**, to the extent set forth herein.

2. Any Objection to the Motion, or any other relief granted in this Order, to the extent not resolved, adjourned for hearing on a later date, waived or withdrawn or previously overruled, and all reservations of rights included therein, is hereby **OVERRULED** and **DENIED** on the merits.

3. Pursuant to Bankruptcy Code sections 105, 363, 364, 365 and 503 and the Stalking Horse Agreement, the Credit Bid and Release and the Sale Transaction are hereby approved and the Debtors are authorized to enter into and perform under the Stalking Horse Agreement. Pursuant to Bankruptcy Code sections 105, 363, 364, 365 and 503, each of the Debtors and the Stalking Horse Purchaser are hereby authorized and directed to take any and all actions necessary or appropriate to: (i) consummate the Sale Transaction and the closing of the sale in accordance with the Motion, the Stalking Horse Agreement and this Order; (ii) assume and assign the Assumed Contracts; (iii) perform, consummate, implement and close fully the Stalking Horse Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Stalking Horse Agreement; and (iv) establish and fund the Escrow and Trust Arrangements. The Debtors and each other party to the Transaction Documents, including the Escrow and Trust Agreements, are hereby authorized and directed to perform each of their covenants and undertakings as provided in the Stalking Horse Agreement and the Transaction Documents, including the Escrow and Trust Agreements, prior to or after the Closing Date without further order of the Court. The Stalking Horse Purchaser and the Debtors shall have no obligation to close the Sale Transaction except as is contemplated and provided for in the Stalking Horse Agreement.

4. Pursuant to Bankruptcy Code section 365(f), notwithstanding any provision of any Assumed Contract or applicable non-bankruptcy law that prohibits, restricts or conditions the assignment of the Assumed Contracts, the Debtors are authorized to assume the

Assumed Contracts and to assign the Assumed Contracts to the Stalking Horse Purchaser or to any Buyer Designee, which assignment shall take place on and be effective as of the Closing or as otherwise provided by order of this Court. There shall be no accelerations, assignment fees, increases or any other fees charged to the Stalking Horse Purchaser or the Debtors as a result of the assumption and assignment of the Assumed Contracts.

5. The Debtors' assumption of the Assumed Contracts is subject to the consummation of the Sale Transaction. To the extent that an objection by a counterparty to any Assumed Contract, including all objections related to Cure Amounts, is not resolved prior to the Closing Date, the Debtors, in consultation with the Stalking Horse Purchaser or any Buyer Designee, may elect to: (i) not assume such Assumed Contract; (ii) postpone the assumption of such Assumed Contract until the resolution of such objection; or (iii) reserve the disputed Cure Amount and assume the Assumed Contract on the Closing Date. So long as the Debtors hold the claimed Cure Amount in reserve, and there are no other unresolved objections to the assumption and assignment of the applicable Assumed Contract, the Debtors can, without further delay, assume and assign the Assumed Contract that is the subject of the objection. Under such circumstances, the respective objecting counterparty's recourse is limited to the funds held in reserve.

6. Upon the Closing: (a) the Debtors are hereby authorized and directed to consummate, and shall be deemed for all purposes to have consummated, the sale, transfer and assignment of all of the Debtors' rights, title and interest in the Acquired Assets to the Stalking Horse Purchaser free and clear of all Encumbrances and Liabilities, other than the Assumed Liabilities and the encumbrances identified on Schedule 1 hereto (the "**Permitted Encumbrances**"); and (b) except as otherwise expressly provided in the Stalking Horse Agreement, all Encumbrances and Liabilities (other than the Assumed Liabilities and the Permitted Encumbrances) shall not be enforceable as against the Stalking Horse Purchaser or the Acquired Assets. Unless otherwise expressly included in the Assumed Liabilities and Permitted Encumbrances or as otherwise expressly provided by this Order, the Stalking Horse Purchaser

shall not be responsible for any claims, liens, interests and encumbrances, including in respect of the following: (i) any labor or employment agreements; (ii) any mortgages, deeds of trust and security interests; (iii) any intercompany loans and receivables between one or more of the Sellers and any Debtor; (iv) any pension, multiemployer plan (as such term is defined in Section 3(37) or Section 4001(a)(3) of ERISA), health or welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any of the Debtors or any multiemployer plan to which the Debtors have at any time contributed to or had any liability or potential liability; (v) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) ERISA, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (g) the Americans with Disabilities Act of 1990, (h) COBRA, (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, (k) the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§9701, et seq. or (l) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors; (vi) liabilities arising under any Environmental Laws with respect to any assets owned or operated by any of the Debtors or any corporate predecessor of any of the Debtors at any time prior to the Closing Date; (vii) any bulk sales or similar law; (viii) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (ix) the Coal Act and (x) any Excluded Liabilities. A certified copy of this Order may be filed with the appropriate clerk and/or recorder to act to cancel any such lien, claim, interest or encumbrance of record.

7. The transfer to the Stalking Horse Purchaser of the Debtors' rights, title and interest in the Acquired Assets pursuant to the Stalking Horse Agreement shall be, and hereby is deemed to be, a legal, valid and effective transfer of the Debtors' rights, title and interest in the Acquired Assets, and vests with or will vest in the Stalking Horse Purchaser all

rights, title and interest of the Debtors in the Acquired Assets, free and clear of all claims, liens, interests and encumbrances of any kind or nature whatsoever (other than the Permitted Encumbrances and the Assumed Liabilities), with any such claims, liens, interests and encumbrances attaching to the sale proceeds in the same validity, extent and priority as immediately prior to the Sale of the Acquired Assets, subject to the provisions of the Stalking Horse Agreement, and any rights, claims and defenses of the Debtors and other parties in interest.

8. None of the Stalking Horse Purchaser or its affiliates, successors, assigns, equity holders, employees or professionals shall have or incur any liability to, or be subject to any action by any of the Debtors or any of their estates, predecessors, successors or assigns, arising out of the negotiation, investigation, preparation, execution, delivery of the Stalking Horse Agreement and the entry into and consummation of the Sale of the Acquired Assets, except as expressly provided in the Stalking Horse Agreement and this Order.

9. Except as expressly provided in the Stalking Horse Agreement or by this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, vendors, suppliers, employees, trade creditors, litigation claimants and other persons, holding claims, liens, interests or encumbrances of any kind or nature whatsoever against or in the Debtors or the Debtors' interests in the Acquired Assets (whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these Chapter 11 Cases, whether imposed by agreement, understanding, law, equity or otherwise), including, without limitation, the non-debtor party or parties to each Assumed Contract, arising under or out of, in connection with, or in any way relating to, the Acquired Assets or the transfer of the Debtors' interests in the Acquired Assets to the Stalking Horse Purchaser, shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing claims, liens, interests and encumbrances against the Stalking Horse Purchaser or its affiliates,

successors, assigns, equity holders, employees or professionals the Acquired Assets, or the interests of the Debtors in such Acquired Assets. Following the Closing, no holder of a claim, lien, interest or encumbrance against the Debtors shall interfere with the Stalking Horse Purchaser's title to or use and enjoyment of the Debtors' interests in the Acquired Assets based on or related to such claim, lien, interest or encumbrance, and, except as otherwise provided in the Stalking Horse Agreement, the Escrow and Trust Agreements, or this Order, all such claims, liens, interests or encumbrances, if any, shall be, and hereby are transferred and attached to the proceeds from the Sale of the Acquired Assets in the order of their priority, with the same validity, force and effect which they have against such Acquired Assets as of the Closing, subject to any rights, claims and defenses that the Debtors' estate and Debtors, as applicable, may possess with respect thereto. All persons are hereby enjoined from taking action that would interfere with or adversely affect the ability of the Debtors to transfer the Acquired Assets in accordance with the terms of the Stalking Horse Agreement, the Escrow and Trust Agreements, and this Order.

10. Upon assumption of the Assumed Contracts by the Debtors and assignment of same to the Stalking Horse Purchaser, the Assumed Contracts shall be deemed valid and binding, in full force and effect in accordance with their terms, subject to the provisions of this Order. As of the Closing, subject to the provisions of this Order, the Stalking Horse Purchaser shall succeed to the entirety of Debtors' rights and obligations in the Assumed Contracts first arising and attributable to the time period occurring on or after the date the assignment of the Assumed Contracts becomes effective and shall have all rights thereunder.

11. Subject to paragraph 5 of this Order, upon the entry of this Order, (i) all defaults (monetary and non-monetary) under the Assumed Contracts through the Closing shall be deemed cured and satisfied through the payment of the Cure Amounts, (ii) no other amounts will be owed by the Debtors, their estates or the Stalking Horse Purchaser with respect to amounts first arising or accruing during, or attributable or related to, the period before Closing with respect to the Assumed Contracts, and (iii) any and all persons or entities shall be forever barred

and estopped from asserting a claim against the Debtors, their estates, or the Stalking Horse Purchaser that any additional amounts are due or defaults exist under the Assumed Contracts that arose or accrued, or relate to or are attributable to the period before the Closing.

12. The creation and funding of the Escrow and Trust Arrangements are approved pursuant to Bankruptcy Code sections 105(a) and 363(b). The Debtors and the other parties thereto are authorized, pursuant to Bankruptcy Code sections 105(a) and 363(b) and without further notice or relief from this Court, to enter into the Escrow and Trust Agreements, to take any and all actions that are necessary or appropriate in the exercise of their business judgment to implement the Escrow and Trust Arrangements, including employing third party contractors in accordance therewith, and to make or authorize the payments contemplated thereunder. Funds deposited in accordance with the Trust and Escrow Arrangements shall not constitute property of any Debtor's estate or be subject to claw back or disgorgement, and such funds (including any residual funds) may be released and applied in accordance with the terms thereof, without further order of this Court.

13. The Stalking Horse Agreement has been entered into by the Stalking Horse Purchaser in good faith and the Stalking Horse Purchaser is a good faith purchaser of the Acquired Assets as that term is used in Bankruptcy Code section 363(m). The Stalking Horse Purchaser is entitled to all of the protections afforded by Bankruptcy Code section 363(m).

14. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale Transaction. Except as otherwise provided in the Stalking Horse Agreement, the Estate Retained Professional Fee Escrow Agreement, and the Committee Member and Indenture Trustees Fee Escrow Agreement, no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment is due to any person in connection with the Stalking Horse Agreement, the other transaction documents or the transactions contemplated hereby or thereby for which the Stalking Horse Purchaser is or will become liable.

15. The consideration provided by the Stalking Horse Purchaser for the Acquired Assets under the Stalking Horse Agreement, including the portion of the consideration that consisted of the Credit Bid and Release, shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law, and the Sale of the Acquired Assets may not be avoided, or costs or damages imposed or awarded under Bankruptcy Code section 363(n) or any other provision of the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act or any other similar federal or state laws.

16. On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of all of the Debtors' rights, title and interest in the Acquired Assets or a bill of sale transferring good and marketable title in such Acquired Assets to the Stalking Horse Purchaser on the Closing Date pursuant to the terms of the Stalking Horse Agreement, free and clear of all claims, liens, interests and encumbrances (other than Assumed Liabilities and Permitted Encumbrances).

17. Upon the Closing, except as specifically included in Assumed Liabilities, the Stalking Horse Purchaser shall not and shall not be deemed to: (i) be the successor of or successor employer (as described under COBRA and applicable regulations thereunder) to the Sellers, including without limitation, with respect to any Collective Bargaining Agreements and any Benefit Plans, except for Buyer Benefit Plans, under the Coal Act, and any common law successorship liability in relation to the UMWA 1974 Pension Plan, including with respect to withdrawal liability; (ii) be the successor of or successor employer to the Sellers, and shall instead be, and be deemed to be, a new employer with respect to any and all federal or state unemployment laws, including any unemployment compensation or tax laws, or any other similar federal or state laws; (iii) have, de facto, or otherwise, merged or consolidated with or into Sellers; (iv) be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers; or (v) be liable for any acts or omissions of Sellers in the conduct of the Business or arising under or related to the Acquired Assets other than as set forth in the Stalking Horse

Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in the Stalking Horse Agreement, the parties intend and the Court hereby orders that the Stalking Horse Purchaser shall not be liable for any Encumbrance or Liability (other than Assumed Liabilities and Permitted Encumbrances) against any Seller, or any of its predecessors or Affiliates, and the Stalking Horse Purchaser shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the Business, the Acquired Assets or any Liabilities of any Seller arising prior to the Closing Date.

18. This Order: (a) is and shall be effective as a determination that other than Permitted Encumbrances and Assumed Liabilities, all claims, liens, interests and encumbrances of any kind or nature whatsoever existing as to the Acquired Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected; (b) shall be effective as a determination that, on the Closing Date, all of the First Lien Creditors, unsecured creditors and any other party receiving interests in Coal Acquisition LLC shall be deemed to be bound by the Limited Liability Company Agreement of Coal Acquisition LLC (as amended or restated from time to time) without any further court order or further action, approval or consent by the Credit Agreement Agent, Indenture Trustee, any First Lien Creditor, unsecured creditor or any other party receiving interests in Coal Acquisition LLC; and (c) is and shall be binding upon and shall authorize all entities, including, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Acquired Assets conveyed to the Stalking Horse Purchaser. Other than Permitted Encumbrances, all recorded

claims, liens, interests and encumbrances against the Acquired Assets from their records, official and otherwise, shall be deemed stricken.

19. If any person or entity which has filed statements or other documents or agreements evidencing liens, interests or encumbrances on, or claims in, the Acquired Assets shall not have delivered to the Debtors before the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all claims, liens, interests or encumbrances (other than Permitted Encumbrances) which the person or entity has or may assert with respect to the Acquired Assets, the Debtors and the Stalking Horse Purchaser are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets.

20. All counterparties to the Assumed Contracts shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the Stalking Horse Purchaser, and shall not charge the Debtors or the Stalking Horse Purchaser for any instruments, applications, consents or other documents which may be required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers in connection with the Sale of the Acquired Assets.

21. Each and every federal, state and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments in connection with or necessary to consummate the Sale contemplated by the Stalking Horse Agreement.

22. Nothing in this Order or the Stalking Horse Agreement releases, nullifies, precludes, or enjoins the enforcement of any police or regulatory liability to a governmental unit that any entity would be subject to as the owner or operator of property after the Closing Date. Nothing in this Order or the Stalking Horse Agreement authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization or

(e) approval, or the discontinuation of any obligation thereunder, without compliance with any applicable legal requirements under police or regulatory law.

23. Without limiting the provisions of paragraph 22 above, but subject to Bankruptcy Code section 525(a), no governmental unit may revoke or suspend any right, license, trademark or other permission relating to the use of the Acquired Assets sold, transferred or conveyed to the Stalking Horse Purchaser on account of the filing or pendency of these Chapter 11 Cases or the consummation of the Sale of the Acquired Assets.

24. No provision of the Bidding Procedures Order, this Order, the Stalking Horse Agreement (or any other purchase/sale agreement) shall be a ruling or is intended to be construed as a ruling on whether the Stalking Horse Purchaser (or any other purchaser) is a successor to the debtors for purposes of registration and reporting under the federal securities laws (including relevant rules and regulations promulgated thereunder) (the "**Federal Securities Laws**"); and the Stalking Horse Purchaser's (or any other purchaser's) obligation, if any, to file periodic public reports with the United States Securities and Exchange Commission shall be governed by applicable provisions of the Federal Securities Laws. Nothing in the Bidding Procedures Order, this Order, the Stalking Horse Agreement, or any other purchase/sale agreement with any other party shall relieve or excuse the Debtor, the Stalking Horse Purchaser, or any other party from complying with any and all applicable Federal Securities Laws. Further, the Stalking Horse Agreement, and this Order are not binding upon the SEC with respect to enforcement of its police or regulatory powers and shall not limit the SEC from pursuing any police or regulatory enforcement action.

25. Nothing in this Order, the Stalking Horse Agreement, the Transaction Documents or the Sale Transaction shall be deemed to express, imply or otherwise provide either: (a) that any surety has consented to the substitution of any principal on any outstanding surety bond; or (b) that any surety has consented to its bonds assuring any payment or performance obligation of any party other than the principal or principals named in such surety bond. Further, nothing in this Order, the Stalking Horse Agreement, the Transaction Documents

or the Sale Transaction shall be deemed to alter, modify, limit, impair or prejudice any rights, remedies or defenses that: (a) any surety has or may have under any indemnity agreements, surety bonds or related agreements or documents, or under any letters of credit relating thereto; or (b) the principal(s) has or may have under any indemnity agreements, surety bonds or related agreements or documents. Notwithstanding any provision of this Order to the contrary, any surety objections to any other sale or transaction under the Bidding Procedures Order are fully reserved and may be raised again or otherwise supplemented by such surety with respect to any such other sale or transaction.

26. Notwithstanding anything to the contrary in the Motion, the Stalking Horse Agreement, the Bidding Procedures Order, any Cure Notice, or this Order: (i) the Acquired Assets shall not include any insurance policies, surety bonds and any related agreements issued by ACE American Insurance Company or any of its affiliates listed on Schedule 2 (collectively and with each of their predecessors and successors, the "**ACE Companies**") to (or providing coverage to) any Seller (collectively, the "**ACE Contracts**"), and/or any rights, benefits, claims, rights to payments and/or recoveries under such ACE Contracts, other than as provided in section 2.1(o) of the Stalking Horse Agreement; (ii) the ACE Contracts, and/or any rights, benefits, claims, rights to payments and/or recoveries under such ACE Contracts, shall, except as provided in section 2.1(o) of the Stalking Horse Agreement, be Excluded Assets; (iii) nothing (including section 2.1(o) of the Stalking Horse Agreement) shall alter, modify or otherwise amend the terms or conditions of the ACE Contracts; and (iv) the ACE Companies may continue to pay any proceeds due under the ACE Contracts to the Sellers (as opposed to the Buyer) or other claimant thereunder as required under the relevant ACE Contracts, unless and until otherwise ordered by this Court.

27. On December 9, 2015 the Walter Coke Election was made, and the Walter Coke Facility is no longer part of the Sale. The United States and the Debtors and Sellers are engaged in good faith settlement negotiations in an effort to resolve the United States' concerns with respect to the Walter Coke Facility [Docket No. 1446]. In the event that there is

no Successful Bidder for the Walter Coke Assets as determined in accordance with the Bidding Procedures or the sale of the Walter Coke Assets to a Successful Bidder or Backup Bidder (if any) does not close and the relevant sale agreement is terminated, an Environmental Response Trust will be established pursuant to the execution of agreement(s) in form and substance reasonably satisfactory to the Debtors and the United States on behalf of the EPA, and approved by the Bankruptcy Court, including a trust agreement (the "**Environmental Response Trust Agreement**"). The net proceeds from the liquidation of all assets of the Walter Coke Trust (including but not limited to the Walter Coke Working Capital Assets, $1.4 million in cash, and any mobile equipment) shall be transferred to the Environmental Response Trust by the trustee of the Walter Coke Trust (the "**Walter Coke Trustee**"), after payment of all administrative costs of the Walter Coke Trust, including the Walter Coke Trustee fees, in liquidating the assets of the Walter Coke Trust, and after establishing an appropriate and reasonable reserve in the Walter Coke Trust for the payment of the fees and administrative costs of any chapter 7 trustee for Debtor Walter Coke's estate. Any loans made by Coal Acquisition LLC to the Walter Coke Trust must be repaid before the transfer of the net proceeds to the Environmental Response Trust. The Environmental Response Trust Agreement shall also contain appropriate provisions for funding of the start-up and administrative costs of the Environmental Response Trust. The trustee of the Environmental Response Trust shall be a trustee recommended by the United States on behalf of EPA and the Debtors, and appointed by the Court. Walter Coke will transfer any non-mobile equipment, remaining personal property and real property to the Environmental Response Trust. All transfers to the Environmental Response Trust shall be free and clear of all liens, claims, and interests against the estate other than any liability to governmental units as provided in the Environmental Response Trust Agreement. All funding and assets of the Environmental Response Trust shall be used solely for environmental action with respect to the Walter Coke facility and administration of the Environmental Response Trust Agreement.

28. Notwithstanding anything to the contrary in this Order, without the prior written consent of Oracle America, Inc. ("**Oracle**"), the Debtors shall not assume and assign to

the Stalking Horse Purchaser or any Buyer Designee any contract between the Debtors and Oracle which includes or relates to a license of intellectual property, nor provide access to any Oracle licensed software, products, or services to the Stalking Horse Purchaser or any Buyer Designee except as expressly permitted pursuant to the applicable contract(s). With respect to any other Sale(s) contemplated by the Sale Motion, Oracle reserves all objections to the assumption and assignment of any contracts or licenses of intellectual property between Oracle and the Debtors.

29. Caterpillar Financial Services Corporation ("**Caterpillar**") has filed a limited objection to the Motion (the "**Caterpillar Objection**") [Docket No. 1374] in which it objects to the sale of the Acquired Assets free and clear of Caterpillar's first priority lien in certain collateral more particularly described in the Caterpillar Objection (the "**Caterpillar Collateral**"). The parties continue to negotiate a resolution to the Caterpillar Objection. Notwithstanding anything to the contrary contained herein, the Sale authorized by this Order shall not be free and clear of Caterpillar's first priority liens in the Caterpillar Collateral, and all such liens shall be unaffected by this Order pending entry of a further order by this Court.

30. Notwithstanding anything else contained herein, ARP Production Company, LLC reserves any and all rights it may have under the Formation Agreement dated August 2, 1983 regarding any Debtor's transfer of its shares in Black Warrior Methane Corp., provided, that the foregoing reservation of rights shall be subject in all respects to applicable limitations set forth in the Bankruptcy Code.

31. To the extent this Order is inconsistent with any prior order or pleading filed in these Chapter 11 Cases related to the Motion, the terms of this Order shall govern. To the extent there is any inconsistency between the terms of this Order and the terms of the Stalking Horse Agreement, the terms of this Order shall govern.

32. Except as expressly provided in the Stalking Horse Agreement, nothing in this Order shall be deemed to waive, release, extinguish or estop the Debtors or their estates from asserting, or otherwise impair or diminish, any right (including, without limitation, any

right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any asset that is not an Acquired Asset.

33. All entities that are presently, or on the Closing Date may be, in possession of some or all of the Acquired Assets are hereby directed to surrender possession of the Acquired Assets to the Stalking Horse Purchaser on the Closing Date.

34. This Order shall not be modified by any chapter 11 plan of any of the Debtors confirmed in these Chapter 11 Cases.

35. This Order and the Stalking Horse Agreement shall be binding in all respects upon all creditors and interest holders of the Debtors, all non-debtor parties to the Assumed Contracts, the Official Committee of Unsecured Creditors, all successors and assigns of the Debtors and their affiliates and subsidiaries, and any trustees, examiners, "responsible persons" or other fiduciaries appointed in the Chapter 11 Cases or upon a conversion of the Debtors' cases to those under chapter 7 of the Bankruptcy Code, including a chapter 7 trustee, and the Stalking Horse Agreement, including, for the avoidance of doubt, the Escrow and Trust Agreements, shall not be subject to rejection or avoidance under any circumstances. If any order under Bankruptcy Code section 1112 is entered, such order shall provide (in accordance with Bankruptcy Code sections 105 and 349) that this Order and the rights granted to the Stalking Horse Purchaser hereunder and the rights and obligations of any trustee or escrow agent appointed under the Escrow and Trust Agreements shall remain effective and, notwithstanding such dismissal, shall remain binding on parties in interest.

36. The failure specifically to include or make reference to any particular provisions of the Stalking Horse Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Stalking Horse Agreement is authorized and approved in its entirety.

37. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order, including, without limitation, the authority to: (i) interpret, implement and enforce the terms and provisions of this Order (including the

injunctive relief provided in this Order) and the terms of the Stalking Horse Agreement, all amendments thereto and any waivers and consents thereunder; (ii) protect the Stalking Horse Purchaser, or the Acquired Assets, from and against any of the claims, liens, interests or encumbrances; (iii) compel delivery of all Acquired Assets to the Stalking Horse Purchaser; (iv) compel the Stalking Horse Purchaser to perform all of its obligations under the Stalking Horse Agreement; and (v) resolve any disputes arising under or related to the Stalking Horse Agreement or the Sale of the Acquired Assets.

38. The Stalking Horse Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented through a written document signed by the parties thereto in accordance with the terms thereof without further order of the Court; provided, however, that any such modification, amendment or supplement is neither material nor materially changes the economic substance of the transactions contemplated hereby.

39. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, including but not limited to Bankruptcy Rule 6004(h), the Court expressly finds there is no reason for delay in the implementation of this Order and, accordingly: (i) the terms of this Order shall be immediately effective and enforceable upon its entry; (ii) the Debtors are not subject to any stay of this Order or in the implementation, enforcement or realization of the relief granted in this Order; and (iii) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

40. The provisions of this order are nonseverable and mutually dependent.

Dated: January 8, 2016

/s/ Tamara O. Mitchell
TAMARA O. MITCHELL
United States Bankruptcy Judge

Schedule 1

PERMITTED ENCUMBRANCES

1. The lien for ad valorem property taxes and any assessments for any tax year beginning in 2015, and all subsequent tax years, and any current use roll-back taxes, if assessed.

2. All restrictions, reservations, easements, servitudes, rights-of-way, leases, mineral leases and encumbrances, whether or not of record, that run with the land, and riparian rights incident to the land; provided that nothing herein or in the Stalking Horse Agreement shall be deemed to constitute the Grantee's consent to or acceptance of any unrecorded instrument of which Grantee does not have actual knowledge.

3. Any encroachment, overlap, violation, variation or adverse circumstances that would be disclosed by an accurate and complete survey and inspection of the land.

4. Any reservation or conveyance of minerals and other subsurface materials of every kind and character filed in the appropriate real property records on or before July 15, 2015, including, but not limited to, coal, oil, gas, sand, ore, kaolin, clay, stone and gravel in, on and under the land, together with mining rights and all other rights, privileges and immunities relating thereto, including any release of damages.

5. All applicable laws, rules, regulations, ordinances and orders of any government or governmental body, agency or entity, including, without limitation, zoning and other land use rules, regulations and ordinances and environmental laws, rules and regulations.

Schedule 2

List of ACE Companies

1.	ACE American Insurance Company
2.	ACE Fire Underwriters Insurance Company
3.	ACE Indemnity Insurance Company
4.	ACE Insurance Company of Ohio
5.	ACE Insurance Company of Texas
6.	ACE of the Midwest Insurance Company
7.	ACE Property and Casualty Insurance Company
8.	Atlantic Employers Insurance Company
9.	Bankers Standard Fire and Marine Company
10.	Bankers Standard Insurance Company
11.	Century Indemnity Company
12.	ESIS, Inc.
13.	Illinois Union Insurance Company
14.	INA Surplus Insurance Company
15.	Indemnity Insurance Company of North America
16.	Insurance Company of North America
17.	Pacific Employers Insurance Company
18.	Westchester Fire Insurance Company
19.	Westchester Surplus Lines Insurance Company

Notice Recipients

District/Off: 1126−2	User: scallies	Date Created: 1/8/2016
Case: 15−02741−TOM11	Form ID: pdf000	Total: 240

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TOTAL: 150

EXHIBIT C

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

UNITED MINE WORKERS OF AMERICA 1974 PENSION PLAN, *et. al.*,	)	
Appellants	)	Civil Action No. 2:16-cv-57-LSC
v.	)	
WALTER ENERGY, INC., *et al.*,	)	
Appellee	)	

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EXHIBIT D

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

UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND AND UNITED MINE WORKERS OF AMERICA 1992 BENEFIT PLAN Appellants v. WALTER ENERGY, INC. Appellee	)	Case No. 16-00057-LSC

DECLARATION OF GEORGE N. DAVIES IN SUPPORT OF
EMERGENCY MOTION FOR EXPEDITED BRIEFING AND EXPEDITED REVIEW

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 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**"), 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, collectively with the 1974 Pension Plan, the 1993 Plan, the Account Plan, and the CDSP, the "**UMWA Funds**"), parties-in-interest and

creditors in the above-captioned matter.

2. I submit this Declaration in support of the UMWA Funds' *Emergency Motion for Expedited Briefing and Expedited Review*.

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. On January 8, 2016, the UMWA Funds filed a Notice of Appeal (Case No. 15-02741-TOM11, Doc. No. 1581) of the bankruptcy court's *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*) (Doc. No. 1489) (the "**1113/1114 Order**").

5. On January 15, 2016, counsel for the UMWA Funds shared with opposing counsel the proposed schedule for expedited briefing set out in the *Emergency Motion for Expedited Briefing and Expedited Review*. On January 19, 2016, counsel for the UMWA Funds again contacted opposing counsel to ask for their consent to an expedited schedule on the timeframe set out in the motion. The UMWA Funds have not yet received a response to the proposal, making necessary the filing of the motion for expedited relief.

6. Counsel for the UMWA Funds has been in contact with counsel for the United Mine Workers of America (the "**UMWA**"). I understand that the UMWA joins and adopts the relief sought in the *Emergency Motion for Expedited Briefing and Expedited Review* as to the UMWA's related appeal of the Sale Order (Case No. 16-00065 (LSC)).

7. Attached hereto as **Exhibit 1** is a true and correct copy of the transcript of the sale hearing held on January 6, 2016 in Case No. 15-02741-TOM11 before the Honorable Tamara M.

Mitchell.

8. 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. The Stover Declaration describes the Debtors' financial obligations to the UMWA Funds. Exh. 1 at ¶¶ 8-11.

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

Dated: January 20, 2016

/s/ George N. Davies
George N. Davies

FILED
2016 Jan-20 PM 12:53
U.S. DISTRICT COURT
N.D. OF ALABAMA

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA

IN RE:	.	Case No. 15-02741-TOM
	.	
WALTER ENERGY, INC., et al.,	.	Robert S. Vance Federal Building 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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I N D E X

THE COURT: Good morning.

UNIDENTIFIED ATTORNEY: Good morning.

UNIDENTIFIED ATTORNEY: Good morning, Your Honor.

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

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

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

MR. OZOLS: Ozols.

THE COURT: Ozols? Spell it for me again?

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

THE COURT: Thank you.

MR. OZOLS: Thank you.

MR. DARBY: Thank you, Judge.

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

THE COURT: Thank you.

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

UNIDENTIFIED ATTORNEY: There's a huge difference.

THE COURT: Oh.

(Laughter)

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

THE COURT: Okay. Thank you.

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

THE COURT: Thank you.

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

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

Department of -- from DOJ, correct?

MR. FINGERHOOD: Right.

THE COURT: Okay. And who is with you?

MR. FINGERHOOD: Alan Tenenbaum.

THE COURT: Okay.

MR. FINGERHOOD: From DOJ.

THE COURT: Thank you.

MR. FINGERHOOD: Thank you.

MR. GOODCHILD: Good morning, Your Honor.

THE COURT: Mr. Goodchild?

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

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

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

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

MR. GOODCHILD: That's correct.

THE COURT: Okay.

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

THE COURT: Okay.

MR. GOODCHILD: And also with me representing the

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

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

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

THE COURT: Okay.

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

THE COURT: Thank you.

MR. GOODCHILD: Thank you, Your Honor.

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

THE COURT: Thank you.

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

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

MR. CORBETT: Thank you, ma'am.

THE COURT: Thank you.

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

The last time I was on Page 3.

THE COURT: Okay.

MR. McCARTHY: Thank you, Judge.

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

MR. VOGTLE: De-Gas.

THE COURT: Thank you.

MR. VOGTLE: Yes, ma'am.

THE COURT: Mr. Humphries?

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

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

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

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

MS. CRAIG: Vickie R. Craig.

THE COURT: Vickie Craig.

MS. CRAIG: Vickie R. Craig.

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

MS. CRAIG: Yes.

THE COURT: Thank you.

MS. CRAIG: Thank you.

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

MS. CRAIG: Yes. But I'm not licensed in Alabama. So I'm here as a non -- in a capacity that's not an attorney.

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

MS. CRAIG: I'm licensed in --

THE COURT: -- licensed somewhere?

MS. CRAIG: -- in Pennsylvania. Yes.

THE COURT: Okay.

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

THE COURT: I take your word for it.

MS. CRAIG: Okay.

THE COURT: Thank you. Yes, sir?

MR. BONNER: Kenneth Bonner representing myself.

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

MR. BONNER: Kenneth Bonner.

THE COURT: Mr. Bonner. Okay.

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

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

MR. BONNER: Thank you.

THE COURT: Yes, sir?

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

THE COURT: Former V.P.?

MR. LYNCH: Former V.P.

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

MR. LYNCH: Okay. Very good.

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

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

THE COURT: Several individuals?

MS. McFARLAND: Yes, ma'am.

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

MS. McFARLAND: Yes, ma'am.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Sure, Mr. Watson.

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

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

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

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

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

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

THE COURT: Okay.

MR. DARBY: That's right.

MR. WATSON: -- Your Honor.

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

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

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

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

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

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

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

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

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

THE COURT: Ah.

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

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

MR. DARBY: The black lung --

THE COURT: They're assuming black lung.

MR. DARBY: Correct. Black lung is different.

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

MR. DARBY: Correct.

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

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

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

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

THE COURT: Something.

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

today, but we are already in contact with him.

THE COURT: Okay.

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

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

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

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

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

The debtors considered and rejected each of the bids

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

higher and better offers, and none came in.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

we would respectfully request that the Court grant the motion.

THE COURT: Thank you.

MR. BRIMMAGE: Thank you, Your Honor.

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

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

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

they're in today.

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

THE COURT: Any objection?

UNIDENTIFIED ATTORNEY: No objection.

UNIDENTIFIED ATTORNEY: No objection.

THE COURT: No problem, Mr. Goodchild.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Thank you.

MR. GOODCHILD: Thank you.

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

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

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

MR. GOODCHILD: I understand, Your Honor.

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

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

THE COURT: Okay. Thank you.

MR. GOODCHILD: Thank you.

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

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

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

MS. LEVINE: Thank you.

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

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

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

regulatory authority here.

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

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

THE COURT: Thank you. Mr. Brazeal?

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

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

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

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

THE COURT: Thank you, Mr. Brazeal.

MR. BRAZEAL: Thank you, Mr. Darby.

THE COURT: Any other counsel?

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

THE COURT: Thank you.

MR. FINGERHOOD: Thank you.

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

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

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

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

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

MS. CRAIG: Good morning, Your Honor.

THE COURT: Good morning.

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

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

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

MS. CRAIG: All right.

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

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

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

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

MS. CRAIG: I understand.

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

MS. CRAIG: I understand that, too.

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

MS. CRAIG: All right.

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

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

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

MS. CRAIG: I thank you.

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

MS. CRAIG: Thank you.

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

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

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

MR. BONNER: Yes, ma'am.

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

MR. BONNER: Okay.

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

MR. BONNER: Okay.

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

(Connecting to CourtCall)

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

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

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

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

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

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

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

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

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

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

MR. BONNER: I understand.

THE COURT: Mr. Darby?

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

So I apologize for the confusion. Jim Walter Homes

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

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

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

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

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

MR. BONNER: I received information from the Court to

be here.

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

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

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

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

MR. BONNER: Yes.

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

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

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

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

MR. BONNER: Thank you so much.

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

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

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

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

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

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

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

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

MR. LYNCH: Okay. All right.

THE COURT: Thank you, sir.

MR. LYNCH: Thank you, Your Honor.

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

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

Honor.

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

MS. LEVINE: Okay.

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

MS. LEVINE: Thank you. Is that better?

THE COURT: Yes.

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

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

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

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

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

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

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

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

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

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

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

MS. LEVINE: Your Honor, I would respectfully submit

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

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

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

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

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

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

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

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

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

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

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

THE COURT: It's up to you all.

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

STEVEN MARK ZELIN, DEBTORS' WITNESS, SWORN

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

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

DIRECT EXAMINATION

BY MR. ARFFA:

Q Good morning, Mr. Zelin.

A Good morning.

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

A Yes.

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

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

A A firm called PJT Partners.

Q And what's your position there?

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

Q And what kind of work do you do?

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

Q And how long have you been doing that work?

A Since 1988, for about 27 years.

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

A Yes.

Q And when was that?

A In February of 2015.

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

A Yes.

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

could turn to Tab 1 of your binder?
A I have it.
Q And what is that document? Here. There's a blow up of it which I'm also going to show. What is that document?
A This is an updated version of the chart that was presented to the Court at the hearing on December 15th which just summarizes the debtors' actual cash positions since its filed the Chapter 11 in July, and then has a projection of that cash position into the end of March -- through the end of March under two separate scenarios, one in which the debtors continue to get the benefit of the deferral of adequate protection, which is the bluish dashed line, and then one in which the debtors do not get the benefit of the deferral of adequate protection, which is the darker line -- dashed line down below.
Q Just to establish the background for the document, who prepared that document?
A This was prepared by colleagues of mine at PGT with the assistance of both the debtors, its management, and colleagues from AlixPartners.
Q Thank you. I think you explained what the blue, solid, and then dashed line is. Could you remind the Court, what is the dashed red line across?
A The dashed red line is the $30 million number that I testified to. It's the debtor's estimate of how much cash it would need to safely shut down the mines in the event that

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

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

A Approximately $200 million.

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

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

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

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

Q And at the beginning is it approximately --

A $84 million.

Q -- 84?

A That was the estimate then.

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

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

consistent with the $84 million on the chart.
Q And based on that fact and the projections, how much longer will it be before the debtors' cash balance hits the 30 million threshold? And you can describe under each contingency you've described.
A On the scenario which the debtors continue to get the benefit of the deferrals of adequate protection we would expect to -- our cash balances to drop to $30 million by that first -- by that second week in February.
Q And what if the lenders do not defer the adequate protection payments?
A Then we would expect the debtors' cash balance to deteriorate to $30 within the next week to ten days.
Q Mr. Zelin, now turning to efforts to sell the debtors' assets. You testified at the 1113/1114 hearing about the efforts PJT had made to date to market the debtors' assets, correct?
A Yes.
Q Why don't you just briefly summarize the efforts that were made up to that hearing, please?
A As was agreed to and required pursuant to the restructuring support agreement that was entered into at the beginning of the case, as of August 19th we began to make phone calls to third parties, in excess of 80 third parties who we thought would have an interest in some or all of the debtors'

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

Q And when did that process begin?

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

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

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

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

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

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

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

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

(Laughter)

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

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

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

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

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

A Monday. Yes.

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

A We received no bids for the underground coal operations, Lots Number 1 and Number 2.
Q On Monday did you receive any bids for any other property?
A Yes, we did.
Q And what did you receive?
A We received three bids. We received one bid for Lot Number 5, one bid for Lot Number 6, and we actually received a third bid for Lots Number 5, 6 and 7, as well as Lot Number 8. It was a joint bid for all four of those lots. So even though Lot 8, the bid deadline for that was extended until next week, the bid that we received from this party included the three lots, 5, 6 and 7, as well as Lot Number 8.
Q And what, if anything, did you do to determine whether those bids were conforming with the bid procedures?
A None of those bids were actually conforming in that they all received after the 12 noon deadline -- did not have APAs, did not have the required deposit, so they did not meet the definition of a conforming bid that was agreed to as part of the bidding procedures.
Q Despite that what did you do with the bids?
A Well --
Q What happens with the bids thereafter?
A You know, as is often the case, because the bids came in, we did not only circulate them to the various consultation parties that were required to receive the bids when they arise,

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

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

Q -- favorable.

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

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

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

A Yes.

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

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

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

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

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

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

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

Q Who prepared this chart?

A It was prepared by PJT.

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

A Eighty-nine.

Q And how many NDAs were signed?

A Twenty-six.

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

A Fifteen indications of interest were received.

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

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

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

A There were no bids.

Q So there is no bidder other than Coal Acquisition for those mines?
A That's correct.
Q In terms of the -- is the sale -- I understand that there are certain assets, you mentioned West Virginia for example and Walter Coke that are not before the Court at this time and there's a deadline for those that's been moved. Does the sale -- does the process with respect to those assets in anyway affect, or hold up, or delay the sale of the underground coal operations pursuant to the APA?
A No.
Q In light of the result of the auction and the company's current cash position, what is your recommendation to the company as its -- to the debtors as their financial advisor?
A It's our view and advice that the pursuit and the closing of the sale provides the debtors with the greatest opportunity to maximize the value of their business as a going concern. Absent the sale, the debtors would have no choice without -- but to move to safely shut down the mines as its cash position continues to deteriorate.
Q Thank you, Mr. Zelin. I have no further questions.
THE COURT: Mr. Brimmage?
MR. BRIMMAGE: Yes, Your Honor.
THE COURT: I sort of do all the proponents of the motion first and then I come to the objecting parties.

CROSS EXAMINATION

BY MR. BRIMMAGE:

Q Good morning, Mr. Zelin.

A Good morning.

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

A Yes.

Q Negotiating the APA, right?

A Yes.

Q The sale process, the whole thing, right?

A Yes.

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

A Yes.

Q Can you tell us what that is?

A I believe they have acted in good faith.

Q Thank you.

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

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

3 in the notebook?

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

THE COURT: Thank you.

UNIDENTIFIED ATTORNEY: No objection, Your Honor.

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

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

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

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

THE COURT: Thank you.

UNIDENTIFIED ATTORNEY: No, Your Honor.

THE COURT: Thank you.

MR. ARFFA: Thank you, Judge.

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

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

CROSS EXAMINATION

BY MR. WILLETT:

Q Good morning, Mr. Zelin.

A Good morning.

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

A Yes.

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

A To safely shut down the mines, yes.

Q To pour concrete down them?

A Whatever it takes to shut down the mines safely.

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

A Yes.

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

A Yes.

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

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

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

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

A That's correct.

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

A I believe there are, yes.

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

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

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

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

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

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

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

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

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

Q Right.

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

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

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

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

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

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

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

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

Q Okay.

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

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

A For now.

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

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

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

Q Right.

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

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

A As a target, yes.

Q And that date itself is subject to an extension?

A Yes.

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

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

Q Right.

A -- if there are certain regulatory conditions that have

not been met.
Q All right. And so if there -- if we don't resolve Coal Act disputes either because there's an order that satisfies everyone or there's no other ruling that resolves the issue, there's no way that a sale order is going to reach closing in January, isn't that fair?
A I'm not too sure I understand.
Q Strike that. I'll ask it again.
A Sure.
Q Whatever happens today, you're not going to be able to close the sale in January, right?
A I believe that to be the case.
Q And you might not close the sale in February?
A That's the target date. But there are reasons why it might extent into March, that's correct.
Q So if there were to be some dispute about the Coal Act that carried on after today, it's not going to interfere with the closing as long as it takes place in January, right?
A I don't think -- you're a smarter lawyer than I am because I'm not a lawyer, but I'm not too sure --
Q I think that's setting the bar kind of low, isn't it?
(Laughter)
A I'm not too sure I understand your question. When you say that there's a dispute with the Coal Act, as I understand the order, the order requires the assets to be acquired free and

clear.
Q Right. And if there were --
A So there should be no -- if the Court finds in its judgment to issue that order, that's the order that the lenders or Coal Acquisition is requiring to move forward with the closing. If the order is not entered in a way that satisfies Coal Acquisition Corporation, I don't know that there'll be a closing.
Q Right. But if the order is entered in a way that does satisfy them, that perhaps doesn't satisfy some other people in the room, there's a little time to proceed with stays and other remedies with regard to that before you would ever get to a closing anyway?
A That is well above my expertise --
Q Okay.
A -- in terms of what will happen if the parties who are not happy with the Court's ruling, what they will do and what the times are. I'm not prepared to answer that question.
Q Okay. Now talking of the lenders themselves and their own motivations here, I think we heard earlier today that today the debtor loses money on a cash flow basis, right?
A Yes.
Q Has that always been true during the Chapter 11 case?
A Yes.
Q Okay. Now if we go back to your chart, Exhibit 1, between

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

A I think that's about right, yes.

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

A We did.

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

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

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

A I believe that's true.

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

A Yes.

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

A Yes.

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

A Yes.

Q But they had no assurance of any Coal Act relief in such a sale at the time they bought that debt?
A They had no assurance that the sale would actually occur at all.
Q Right. It's also the case that all of the first lien lenders, not just Kohlberg, Kravis, and Roberts, have twice agreed to defer adequate protection payments, right?
A I don't know that twice is right, but are we saying at that point in time?
Q No, no, no, sir. I mean before today.
A Before today. I think there have been a number of payments that have been due before today that have been deferred. I don't know if it's just two. I think it may be more than two.
Q Okay. They have agreed to defer all of their adequate protection payments?
A For the last few months, yes.
Q Okay. And when they agreed to defer those payments, of course they had a collateral interest in the mines at that time, right?
A Yes.
Q But they had no assurance of getting any Coal Act relief, isn't that right?
A Again, they had no assurance that anything would happen.
Q They've also had discussions with you where they've

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

A You're saying as of what date?

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

A Yes.

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

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

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

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

Q Right.

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

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

Q All right. That's certainly --

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

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

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

Q That's what they say, right?

A I believe them.

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

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

MR. WILLETT: Well --

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

(Laughter)

Q Whatever they say --

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

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

A Yes.

Q Since the 1113, 1114 proceedings, has the debtor made any analysis of what Coal Act compliance would cost going forward?
A I do not know. I've not seen one.
Q If one had been prepared, it's likely that you would have seen it, right?
A I might have. There are people who are certainly smarter about coal than I am who are more intimately involved. I'm sure it would have been shared, but I haven't seen anything.
Q But you have see, for example, a list of all of the items that the buyer proposes to assume, right?
A Yes.
Q And so a number of those items -- I think I've seen a number in the range of $185 million that they total to, right?
A That sounds about right.
Q Nobody has looked at the Coal Act obligations to say, well, how much more or less would they be if we added that to the 185 million?
A I think there are employees of the company and third party advisors and lawyers that the company has hired that are very familiar with what the Coal Act obligation costs are. So that's not a number that is not unknown to people inside the company and I believe the third parties outside the company.
Q But it's not known to you?
A I have not spent a lot of time looking at the -- recently

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

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

THE COURT: Sure.

Q Thank you, Mr. Zelin.

MR. WILLETT: Thank you, Your Honor.

THE COURT: Thank you.

CROSS EXAMINATION

BY MS. LEVINE:

Q Good morning, Mr. Zelin.

A Good morning.

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

A Not that I'm aware of.

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

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

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

A Yes.

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

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

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

Q No, no, what --

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

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

A Okay.

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

A Correct.

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

A Yes.

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

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

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

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

A Ordinarily, yes.

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

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

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

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

Q Right. But isn't it not uncommon in 363 transactions to issue Warn Act notices prophylactically so that you have the option, but not the obligation to terminate employees?
A I don't recall the exact -- but I believe the Warn Act notice --
Q Generally. I'm not talking about this particular case.
A Well, I don't know what's general. The debtor had issued a Warn Act notice before it actually executed the APA.
Q And they did it with regard to all the other mines as well, correct?
A I -- they may have. I just don't recall.
Q So they've issued Warn Act notices with regard to every single one of their miner employees?
A I don't know if they've done it. Mine 7 East is still operating today from my understanding. I don't know if they've issued a Warn Act notice for Mine 7 East. I don't recall.
Q Is it your understanding that the debtor intends to continue to -- that Coal Acquisition intends to continue operating all of Mine 7 post-closing?
A I don't know what the Coal Acquisition Corp.'s intentions are. What I do know is that their intentions to negotiate with the mine workers to come upon terms that would allow the mines to cooperate profitably is a going concern. Those negotiations are ongoing. I don't know exactly what Coal Acquisition Corporation's intentions are, but that's part of, I assume, the

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

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

A That's not my intent.

Q That's not my question.

A That's not my intent though.

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

A Sure.

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

A I do not know.

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

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

MR. ARFFA: He is.

THE COURT: -- the questions just fine.

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

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

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

A Not prepared by Coal Acquisition, no.

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

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

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

A To be in the mining business.

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

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

motion. That financing is being provided by parties who will be the ultimate owners of Coal Acquisition as well.
Q That's not my question. The question is to close, to close on the APA --
A Oh, I'm sorry.
Q -- is that conditioned on post-closing financing being in place?
A Monies will be required to close the APA, yes.
Q Have you seen a commitment letter with regard to that financing --
A I have not.
Q -- in order to allow that closing to happen?
A I have not.
Q Have you seen loan documents that would indicate that the debtors and Coal Acquisition would be ready to close with financing in place?
A I have not.
Q Who's involved in those negotiations, do you know?
A When you say negotiations, you mean with respect to the DIP financing?
Q No, with -- in other words, you're the debtor's investment banker, correct?
A Yes.
Q And one of the things you're here talking about is the fact that you think that this particular asset purchase

agreement is in the best interest of the debtor estates?
A Yes.
Q And I'm assuming one of the reasons why you believe that is because you believe that it can close?
A Yes.
Q And one of the things that's necessary for it to close is for there to be financing in place at the time of the closing, correct?
A Yes.
Q And in order for it to close successfully it has to be able to fund the assumed liabilities and probably some operations post-closing, correct?
A Well, all the assumed liabilities won't be funded day one, they'll be assumed and funded in the ordinary course, but it has to have the resources to meet the cash requirements to close, yes.
Q Right. And based upon the charts and all of the lines below the red dotted line that we've been talking about, without additional funding it would not be able to meet those obligations, correct?
A Correct.
Q And as we sit here today there is no financing commitment, correct?
A Well, there is evidence though of the -- in my judgment the owners of Coal have had the ability to finance it and we've

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

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

A For a DIP financing, yes.

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

A I have not.

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

A I have not.

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

THE COURT: Thank you.

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

CROSS EXAMINATION

BY MR. WILLETT:

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

A A draft of a commitment letter, yes.

Q What's the amount of the commitment?
A It's a $50 million financing.
Q Five zero?
A Five zero.
MR. WILLETT: Thank you.
MR. BARRETT: Your Honor, Kevin Barrett again for the State of West Virginia. And I'm gong to openly risk asking the wrong questions of the wrong person, but I'll try.

CROSS EXAMINATION

BY MR. BARRETT:
Q Mr. Zelin, are you familiar with the debtor's operations in West Virginia in particular?
A Generally, yes.
Q Okay. Do they have any current operations in West Virginia?
A They do have mines, but they're on idle right now.
Q They are idled. Are they doing -- performing reclamation on those sites?
A I do not know if they're performing -- they're maintaining the sites, but I don't know if they're performing reclamation.
Q Okay. Do you have any idea of the number of sites in which they're performing reclamation?
A Well, there are two sites -- predominantly two sites up in West Virginia --
Q Okay.

A -- that are currently in idle.
Q Okay. Do you have any sense of the ongoing reclamation costs that are associated with those two sites?
A I have seen estimates of what it would take to reclaim those sites. I just don't recall the numbers sitting here today.
Q And is that full reclamation or is that just the ongoing maintenance reclamation?
A I believe it's full reclamation.
Q Any sense of that number is it --
A I can see the schedule where that number was listed. I just don't have a memory of it right now.
Q Okay. Do you have any idea whether there are any ongoing water treatment operations at these two sites?
A I don't recall.
Q And no idea of the current costs of water treatment on those sites, I guess?
A I do not know.
Q Do you know what happens to the West Virginia permits after the sale?
A Well, we -- as you know, we are in the process of marketing the West Virginia assets and there could be a potential buyer for those assets that submits an APA next week. What I do know under the APA is that if the sale were to close Coal Acquisition Corporation is assuming the reclamation

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

Q Understood.

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

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

A It's not an issue I focused on.

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

A Yes. In general, yes.

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

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

Q Do you have any understanding as to what the available

assets will be in the wind-down trust?
A I think it's in excess of -- well, I may be calling it the wrong term. There is a schedule that shows what the dollar amount that's going into that wind-down trust, but there are -- will be in excess of $20 million or so of cash available to finance the wind-down. Are we talking about the West Virginia assets or --
Q Yes.
A Okay, yes.
Q That's all we care about.
A There are other trusts as well that are being established. That will go to fund the reclamation and the wind-down of the West Virginia operations.
Q So your understanding is that there are going to be $20 million of assets that are available to perform that reclamation?
A I believe that's the current AR inventory balance, plus there's also some surety bonds as well that may be available. I think there are some AR in inventory that will be available to fund the West Virginia wind-down.
Q Okay. And am I correct that there's $3 million that's going to be provided by Coal Acquisition and go into the wind-down trust?
A There are approximately $8.4 million of total payments that are being made that will be allocated to the various

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

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

A Right.

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

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

Q Okay.

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

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

MR. ARFFA: Yes.

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

THE COURT: Thank you, Mr. Barrett.

MR. BARRETT: Thank you, Your Honor.

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

(No audible response)

THE COURT: Any redirect of Mr. Zelin?

MR. ARFFA: No, Your Honor.

THE COURT: No.

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

THE COURT: Sure, Mr. Brimmage.

RECROSS EXAMINATION

BY MR. BRIMMAGE:

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

A Yes.

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

A No.

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

A That's correct.

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

A That's correct.

Q Wouldn't surprise you?

A Would definitely not surprise me.

Q Okay. One of those things, you recall the Court entering the bid procedures order, do you recall that?
A Yes.
MR. BRIMMAGE: And I don't have the docket number, Your Honor. We were looking for it. I didn't find it in time. But it's in the record somewhere.
Q Do you recall, and if you don't that's okay -- do you recall as part of the bid procedures order there was a requirement to provide adequate --
MR. ARFFA: It's Docket Number 1119.
MR. BRIMMAGE: Thank you, Mr. Arffa.
Q Do you recall that there was a requirement for a filing regarding adequate assurance, does that ring a bell at all?
A It does, yes.
Q Okay. And do you -- are you aware that yesterday by the deadline in that order that Coal Acquisition did, in fact, file the adequate assurance filings that were required in the order?
A I was not aware.
Q Okay. You haven't seen the sources and uses of cash that were filed yesterday?
A I did not see them.
Q Okay. And again that wouldn't be part of your deal because that's looking forward, right, after the sale?
A Sure, yes.
Q Okay. And if there was a balance sheet included in that

you wouldn't have seen that either?

A I have not seen that.

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

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

(No audible response)

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

THE WITNESS: I am, Your Honor.

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

MR. ARFFA: Sure.

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

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

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

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

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

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

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

THE COURT: Okay. Thank you.

(Recess)

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

JAMES ALLAN MESTERHARM, DEBTOR'S WITNESS, SWORN

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

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

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

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

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. ARFFA:

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

A That is correct.

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

whom are you currently employed?
A I am employed by the consulting firm AlixPartners.
Q And what's your position there?
A I'm a managing director and I'm co-head of the firm's turnaround and restructuring services practice for the Americas.
Q And what do you do in that position?
A I'm a managing director. I work on a variety of cases, manage the group, and assist companies in working through restructuring programs as part of my normal assignments.
Q And how long have you been assisting clients with respect to restructuring services?
A I've been with AlixPartners a little over 19 years and prior to that was with Ernst & Young providing similar consulting services for about six years.
Q Are you currently a CPA?
A I passed the CPA exam.
Q Have you and AlixPartners been retained by Walter Energy in connection with this proceeding?
A Yes.
Q And when were you first retained?
A We started working for Walter back in March of 2015.
Q And are you still retained today?
A Yes, we are.
Q And can you describe just generally what kind of work you

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

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

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

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

Q And are you familiar with this APA?

A I'm generally familiar with it.

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

A Yes, I am generally familiar.

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

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

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

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

Q Okay. And who prepared that chart?

A It's prepared by my team.

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

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

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

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

left.
Q And the final column, estimated costs, what is that?
A That was our estimate of what the costs of that liability would be based on a variety of assumptions.
Q And in terms of the estimated costs for the liabilities the buyer has agreed to assume as to the acquired assets, are those fixed figures in the APA, the estimated costs on the right?
A No, these numbers do not show up in the APA, specifically these are estimates. It's my understanding that they're taking the liability no matter what it is.
Q So if it turns out the costs are greater than the estimates you prepared, what is your understanding of what happens?
A That they would be taking them higher or lower.
Q Coal Acquisition?
A Coal Acquisition, yes.
Q So let's go through these now one at a time. What are the cure costs?
A Cure costs are the costs associated with how the buyer has the option to have certain contracts assumed and assigned and they have agreed to fund the costs associated with curing those contracts to enable them to be assumed and assigned.
Q And actually, if you -- and that's where in the APA?
A Section 2.3(b).

Q And if you'd look at -- just to show how these all work, if you go to the Tab 3, what is that?
A It's a callout from section 2.3 of the APA indicating which liabilities were assumed and 2.3(b) is that all cure costs are to be assumed and then further there's the definition of what cure costs means.
Q And the estimate, what was your estimate or AlixPartners' estimate for the total cure costs being assumed by the buyer with respect to the acquired assets?
A Eight point six million dollars.
Q And how did you arrive at that figure?
A We went through a process of reviewing all the contracts related to the operating assets that they were acquiring and looked at which of those contracts were ones that we felt that the buyer would want to have assumed for the ongoing operations of the business and these are the pre-petition costs outstanding related to those contracts that would need to be paid to cure those contracts or our estimation of them. There may be post-petition amounts outstanding under those contracts, but those are getting paid in the ordinary course.
Q And again, what is your understanding if it turns out the cure costs are higher than your estimate of 8.6 million?
A Whatever contracts they want to assume and have assigned they're going to pay the cure costs for them no matter what that is or under operation of law they can't be assumed and

assigned is my understanding.
Q What's your understanding of the -- what is the next item, what does that represent, pre-close Steering Committee professional fees?
A Under the cash collateral order the debtors are obligated to pay the professional fees of the Steering Committee, so the firms like Akin Gump, Lazard and among others, and this is the estimate of what would be outstanding as of a close date around the end of February, including any back-end completion fees owed to any of the advisors of the Steering Committee.
Q And I think you testified this was an obligation of the buyers, but what's your -- but is it your understanding under the APA, is -- I'm sorry, but this is currently an obligation of the debtors, but is it your understanding under the APA that the buyer is assuming that liability?
A That is correct.
Q Okay. And what is your estimate of the costs of those fees?
A Nine point five million dollars.
Q And, again, is that cap on what the buyer will pay?
A It is not a cap.
Q What is the next item, post-petition trade accounts payable, what does that represent?
A Really the next two items, post-petition trade accounts payable and accrued post-petition operating expenses, are both

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

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

A That is correct.

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

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

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

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

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

A Related to the assumed assets, 2.4 million.

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

A That is correct.

Q Black lung liabilities, what does that item represent?

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

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

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

Q And black lung liability is defined, as well?

A Yeah.

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

A That's correct.

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

A Eighteen point seven million dollars.

Q How did you arrive at that figure?

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

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

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

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

Q And that is where in the APA?

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

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

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

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

there the buyer is acquiring under the APA, correct?
A That's correct.
Q Okay. And what's your estimate for that amount, for the reclamation obligations being assumed by the buyer?
A Thirty-seven point one million dollars.
Q Okay. And I think you explained how you came to those.
A It's also an accounting estimate that the company does based on evaluating the requirements under the permits for how they would have to reclaim the properties.
Q So what is the total estimated cost for the liabilities -- sorry, what is the total estimated cost that you have estimated for the liabilities the buyer is assuming in connection with the acquired assets?
A The estimated cost of these liabilities is $96.5 million.
Q And that's all being assumed by the buyer?
A All being assumed by Coal Acquisition.
Q And is that a cap again or a ceiling?
A No, it is not.
Q Now let's turn to the middle portion of the chart titles assumed liabilities non-core assets, can you explain what that represents?
A These are liabilities related to assets that the -- that Coal Acquisition is not buying, but nonetheless the fact that they're not buying them, we got them to agree to assume those liabilities, as well.

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

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

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

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

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

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

Q What provision is that in?

A Two point three (m).

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

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

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

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

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

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

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

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

hook for all of the costs them.
Q Okay. And how much is your estimate of the net reclamation obligations the buyer is assuming in case of the non-core assets, such as West Virginia?
A Fourteen point two million.
Q Okay. Again, is that a cap?
A I do not believe it to be a cap.
Q And how did you arrive at that figure?
A Again, it was based on the company's internal reporting of its ARO liabilities, which were generated by the use of third party consultants and then internal engineering resources of the company, scheduling out the various activities related to closure to be in compliance with the permits, those costs are oftentimes spread over time, and then we looked at what were the bonds associated with those permits and just did a simple subtraction exercise.
Q Okay. And to the best of your knowledge, are the debtors still attempting to sell the West Virginia and other non-core assets the buyer is not acquiring?
A Yes, it's my understanding that the debtors are still marketing those assets and that there is interest in them.
Q Let's go to the next item, technical professionals reclamation, what does that represent?
A Under the APA the reclamation activities related to the properties have both direct and indirect reclamation costs that

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

Q And what's your estimate for that?

A One point five million dollars.

Q And what's the basis for that estimate?

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

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

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

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

A Yes.

Q And what's your estimate for those taxes?

A One million dollars.

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

those?
A As discussed before about the acquired assets, this is the black lung liabilities associated with the non-acquired assets that they've also agreed under 2.3(d). It was any and all. It didn't have a qualification as to whether it was related to only acquired or non-acquired, it was all, so it was the component related to the non-acquired assets.
Q And what's your estimate for the cost of the black lung liabilities associated with the non-core assets?
A Four pint one million dollars.
Q And that's something else the buyer has agreed to assume in the APA?
A Yes.
Q So what's your total for the assumed liabilities the buyer's agreed to assume under the APA with respect to non-core assets it is not acquiring?
A Twenty point eight million dollars.
Q And so what's your estimate of the total assumed liabilities?
A Roughly a hundred and seventeen million.
Q Finally, there's a section at the bottom of the chart called trust funding, what is that?
A In addition to liabilities that the buyer agreed to assume, we also got the buyer to agree to funs certain trusts to help cover liabilities of the debtors.

Q Okay. And what was the idea behind requiring these trusts?
A The feeling was that there would be -- if there were assets that were not acquired, that there would be activities that needed to be done to attempt to wrap up what is left of Walter Energy and that the company would need some funding to assist with that.
Q So the first trust listed is the wind-down trust. What is that?
A It is the trust that's established to provide for assistance in supervising, managing and completing closure of assets that are not acquired.
Q Can you give the Court a sense of what kind of costs are in there?
A It includes estimated costs of a trustee, of trustee professionals, of technical professionals related to the closure, in particular the West Virginia operations, as well as the -- some estimate of labor costs of employees that might need to be kept for a brief period of time to help liquidate any assets that are left behind in a small contingency.
Q Now that one, the 8.4 million figure for that trust, is that one a fixed amount that's established in the APA?
A That is a fixed amount. It is made up of two payments, one payment of $3 million, which is called the wind-down trust amount, I believe, and then a payment of 5.4 million, which is

called cash considerations. The sum of the two get to the 8.4.
Q But again, that's all to be contributed by the buyer?
A Yes.
Q Okay. And by the way, why is there an asterisk I see next to that number?
A Because some of those costs identified have been identified as they're defined in the wind-down trust. You know, there could be -- some of those dollars could be also covering some of these things that are assumed, so there's some possibility that it's not additive, that some of it is potentially duplicative, I think a very small portion. And the other point is that if the buyer -- the buyer retained the right to assume all of the technical professional fees related to West Virginia as well and if they do they get to reduce this amount from 8.4 by $3 million. But that's just a movement of the liability from one they're funding into the trust versus assuming directly.
Q What is the nest item, payroll trust?
A That's the estimated payroll that would exist as of the closing date for all active employees, the wages.
Q Meaning the wages that are due as of the closing date?
A Yes.
Q Okay. And they've agreed to fund that?
A Correct.
Q Now that one, I assume -- how did you reach -- the number

there is 6.6 million, right?
A Correct.
Q And how did you reach that number?
A Since the close date is not known specifically, we have rolled forward payroll for every possible day between February and the end of March and we picked the highest day that payroll could possibly be and we added a ten percent cushion on to it.
Q The next trust is the Walter Coke Trust. What is that?
A Walter Coke Trust. That's established in the event the buyers elect the Walter Coke option, which they did, which in effect made Walter Coke a non-acquired asset, they agreed to establish a trust to help with the closure of Walter Coke in the event that it is not acquired by another buyer. It is made up of a $1.4 million cash contribution plus in this case in addition to the cash they have also agreed that all of the working capital assets of Walter Coke, which they have a lien on, that they would contribute all of those assets into the trust as well, so things like supplies, accounts receivable and inventory.
Q So what's your calculation for how much the buyer would be funding for the Walter Coke Trust?
A Twenty-two point nine million.
Q And again, I think you covered this, but just to be clear, what happens if another buyer -- a different buyer is found for Walter Coke?

A If a different buyer is found then those would not need to be -- would not -- the closure wouldn't occur so these costs wouldn't exist, they wouldn't need -- and they would likely be buying that AR inventory and supplies, so the funding of this trust wouldn't need to occur.

Q And what's the last item there, estate routine professional fees trust and committee member indentured trustee fee trust?

A The buyers agreed to fund a trust to cover the cost of all the professionals of the estate, so that would include the debtor's professionals, it would include the UCC professionals, the retiree committee professionals, the bankruptcy administrator. All of those costs would be provided for by this trust.

Q And the indentured trustee fees, as well?

A The indentured trustee fees, as well, yes.

Q And what's your total estimate for all of those costs?

A Thirty point three million.

Q And what's that based on?

A That's based on a estimate of roll forward of professional fees that we have maintained based on the activities of the case.

Q So what's your estimate for the total trust funding that the buyers agreed to under the APA --

A Sixty --

Q -- and again, assuming no other buyer was found for Walter Coke?
A Sixty-eight point two million.
Q So finally, what's your estimate of the total commitment the buyer has made with respect to assumed liabilities and with respect to the funding of trusts under the APA?
A Again, assuming that some of these assets are not acquired by other third parties, assuming those liabilities are sort of set up as the backstop, so to speak, it would be 185.5 million.
Q Just a couple follow up questions. One, there was a chart that was used, I believe with Mr. Zelin, at the 11/13-11/14 hearing, it has somewhat different figures for assumed liabilities, could you just explain for the record why some of these numbers may be different?
A This is an update of that analysis and also to be more reflective of all of the obligations that the buyer has taken on, so in come cases we have used revised estimates based on newer balance sheets as a starting place, in some instances we've included the liquidation value of the Walter Coke working capital assets to indicate that that was value of the lenders or that's being contributed as well to support this and it also now includes the reclamation obligations related to the assumed liabilities, which the prior report did not.
Q So which chart is more complete and up to date?
A This one.

Q In addition to what is listed on this chart, does the proposed sale to Coal Acquisition provide any other benefits to other constituencies?

A Yes, it does.

Q What are those?

A In addition to being the -- if the sale is approved, being the highest probability to maintain this business as a going concern and maintaining employment in the community as well as, you know, a viable customer for suppliers, this is also -- if the sale is approved, this also provides a mechanism for recovery to the unsecured creditors in the case as they receive equity in Coal Acquisition as part of their recovery and also the settlement with the retiree committee, non-union retiree committee, for their funding of their trust for transition benefits of 400,000 is funded upon the closing of this transaction.

Q And in terms of the liabilities and trusts that are listed on the chart, the 185 plus million, without the sale to the debtors what would happen with respect to those liabilities and costs?

A Well I think as we've discussed, you know, the company is heading towards a liquidity event where we won't have the funds to continue to operate the business, which, you know, could possibly then result in a liquidation of the business and under a liquidation of the business it's unlikely that any of these

costs would be covered.
Q There's one last item I wanted to cover. Inside the sleeve I stuck a couple new exhibits, which I've handed out to other parties of interest. They're both entitled irrevocable standby letter of credit. Can you just describe for the record what those are?
A These are two letters of credit that have been posted with the 1992 Act or 1992 plan under the Coal Act. One is related to Jim Walter Resources in the amount of 4.3 million, approximately. The other is in regards to Taft Coal --
THE COURT: Hang on one second. I'm wondering if that means that just cut off again.
UNIDENTIFIED SPEAKER: Checking, Your Honor. Just hand tight. Let's call them back.
(Connecting to CourtCall)
UNIDENTIFIED SPEAKER: Okay. Mr. Arffa, if you could repeat your question, please.
MR. ARFFA: Sure. I was just asking the witness to describe what these two letters of credit are.
A I described the one for Jim Walter Resources as a letter of credit that's posted with the 1992 benefit plan and it is in the amount of approximately 4.3 million. And the other is a letter of credit posted on behalf of Taft Coal to the 1992 benefit plan in the amount of approximately 240,000.
Q And to the best of your knowledge, would those remain in

place following the sale of the company's assets?

A I don't believe they're being acquired by the buyer, so I believe that they would remain in place. They have expiration dates, but you know, the holder can obviously draw on it.

MR. ARFFA: No further questions for this witness. I do want to offer into evidence the five documents that were in the binder plus the two letters of credit.

THE COURT: Okay. So we'll mark them six and seven.

MR. ARFFA: Sure.

THE COURT: Any objection to coming into evidence Tabs 1 through 5 plus 6 and 7, which will be marked, which are the two letters of credit?

MR. WILLETT: No objection.

THE COURT: All right, we'll mark them in. Thank you.

MR. ARFFA: Thank you, Your Honor.

THE COURT: Mr. Brimmage.

CROSS EXAMINATION

BY MR. BRIMMAGE:

Q Good afternoon, Mr. Mesterharm.

A Good afternoon.

Q Marty Brimmage here on behalf of Coal Acquisition. I just have a couple of questions for you on a topic that I talked to Mr. Zelin about. Were you in the courtroom when Mr. Zelin was on the stand this morning?

A Yes, I was.
Q Okay. So you heard my questions to him about the adequate assurance filing from yesterday, is that correct?
A Yes, I did.
Q Just, I've got a little more specifics here. Are you aware that the bid procedures order, it's Document Number 1119, required by ten o'clock yesterday for Coal Acquisition to file a description of the stalking horse -- I'm sorry -- a description of the stalking horse purchaser and information as to the stalking horse purchase's ability to perform the debtor's obligations under the stalking horse purchaser designed contracts, do you recall that?
A Yes, I do.
MR. BRIMMAGE: And, Your Honor, just for your reference it's Paragraph 42 of the bid procedures order.
Q And were you aware that that filing actually took place?
A Yes, I am.
Q And have you seen it?
A Yes, I have.
Q Okay. If you've seen it you know that it included a sources and uses statement, is that correct?
A That is correct.
Q Can you tell the Court what a sources and uses statement is?
A It's a statement of a document that's kind of the pluses

and minuses of a transaction, so what money is coming in to fund the transaction and for what costs is it going to be used.

Q Okay. And I know you don't have it in front of you so this is not a memory test, but do you recall that the courses and uses was assuming a February 27th, 2016 closing?

A You know, I would have to see it to see what the date was.

Q Okay.

A I don't recall the date.

Q Do you recall that the adequate assurance filing also had a consolidated balance sheet?

A I do.

Q And just for the record, no offense, Your Honor, can you tell the Court what a consolidated balance sheet is?

A It was a proposed or pro forma opening balance sheet of what the company would look like upon closing of the transaction.

Q Okay. As --

A Consolidated meaning all the legal entities aggregated into one.

Q As of the date of closing?

A As of the date of closing.

MR. BRIMMAGE: Okay. That's all I have. Thank you, Your Honor.

THE COURT: Thank you. Mr. Willett.

MR. WILLETT: Thank you and good afternoon, Your

Honor.

CROSS EXAMINATION

BY MR. WILLETT:

Q Good afternoon, Mr. Mesterharm.

A Good afternoon.

Q Can you just take a quick look again at Exhibit 6 and 7?

A Yes.

Q Do you understand that there is such a thing as an individual employee plan, which is part of the debtor's current Coal Act obligation?

A I believe I understand that concept, yes.

Q And the two exhibits that we're looking at, six and seven, are standby letters of credit that secure the debtor's obligations for one year running from at some point under last year under that plan?

A I'm not sure they represent one year. What I understand is that there are letters of credit that are posted to the 1992 plan that in the event that the company fails to perform its obligations and participants then become members or beneficiaries of the '92 plan that this is to help cover that cost.

Q And so by looking at the amounts of these bonds we can get a sense of what the annual cost is for Coal Act compliance?

A I don't know if the amount of these bonds represent an annual cost or if it was to represent more than an annual cost,

that I do not know.
Q Okay. Well maybe we can establish that through another witness. But, would you agree with me that the bonds total about $4.7 million?
A Yes.
Q And there is then an annual premium that is paid with regard to the Coal Act of about $147,000, is that right?
A It's about a little under 12,000 a month that the company is currently paying in regards to the Coal Act.
Q Okay. So if -- assume for the moment that we have evidence later that these bonds represent an annual cost, the total all-in costs to the company for Coal Act compliance going forward is in the range of 4.7 or eight million dollars?
A Again, I'm not -- are you saying the total liability period?
Q I'm asking if we can quantify what the annual Coal Act compliance would be -- would cost going forward from these bonds and from your knowledge of the premium cost?
A I'm not sure I can because again, I'm not sure if the 4.6 million represents an annual number or not.
Q Okay. And that would be the only question in your mind on this point, right?
A Yes.
Q Now, can you turn back to Exhibit 2, your summary of the assumed liabilities? Just a couple of quick points on these.

The first one, the cure costs, those are costs with regard to contracts that the buyer wants, right?

A It's contracts that we believe the buyer should want in regards to the operation of the business. They still have the ability. The buyer has to make that decision of which contracts they're going to have assumed and assigned. This was our assumption of --

Q Okay.

A -- which contracts they would take.

Q If they don't take any of them do they have these cure costs?

A If they don't take any of them they would not have those cure costs.

Q All right. So it's up to them. They'll have the cure costs for those contracts that they think are beneficial to them, right?

A That's correct.

Q The trade accounts payable, I think you said relate to value that's been given by the trade to the assets that they are buying, but not yet paid for during the course of this case, right?

A I'm not sure if that's what I said. What it represents is these are vendors that have provided service or goods to the company to which the company has not yet paid those bills.

Q And the services have been provided to that aspect of the

company that's being purchased?
A Correct.
Q On the reclamation obligations, those have to be paid in order to get the permits that the buyer needs to operate the business, is that right?
A They're not necessarily costs that are going to have to be paid to get the permits. These would be just ultimately if you're going to have the permits you have to be able to provide for a plan --
Q I see.
A -- to ultimately reclaim the operation when its operation has ceased or when there is appropriate actions to be taken --
Q So the logic of the --
A -- so it's not going to be due day one.
Q I didn't mean to cut you off. The logic of assuming the obligation that may occur in the future is that you need to do that to get the permits that you need to operate the business, right?
A Again, I just -- I believe it's -- I guess you could say it's part and parcel of having the permits that you have this obligation.
Q Now there are also a number of items you identified on the chart that they may not have to pay if somebody buys other assets, correct?
A Correct.

Q That includes the first two items under assumed liabilities non-core assets, correct?
A If there is another buyer for those they may not have to pay those.
Q And it also includes the Walter Coke trust item further down, right?
A Correct.
Q Which of the items on this chart would involve the imposition of personal liability on officers or directors if they were not paid?
A I'm not a lawyer. I can tell you my general understanding is that it is the tax liabilities and potentially the black lung liabilities.

MR. WILLETT: Thank you, Mr. Mesterharm.

CROSS EXAMINATION

BY MS. LEVINE:
Q Good afternoon.
A Good afternoon.
Q Just a couple of questions. The sources and uses of cash we were discussing earlier, that wasn't attached to a certification from you, was it?
A Pardon?
Q That was not attached to a certification from you, was it?
A No, it was not.
Q Okay. The sources that were outlined in that statement

include financing, correct?
A They included a source of funds for my financing, yes.
Q And as we sit here today you don't have a commitment letter for that financing, correct, or you haven't seen a commitment letter for that financing, correct?
A No, I have not.
Q And you haven't seen loan documents that evidence that that financing is in place, correct?
A No, I have not.
Q And the sources and uses of cash that was submitted to the Court was not submitted to the Court attached to a declaration or a certification from the lenders promising that the financing wold be in place, correct?
A I'm not sure how it was -- what it was attached to. I just know that it was filed and I saw it.
MS. LEVINE: No further questions. Thanks.
THE COURT: Thank you.
MR. BARRETT: Your Honor, I have to keep it under five.

CROSS EXAMINATION

BY MR. BARRETT:
Q Mr. Mesterharm, just want to clarify, does the -- and I'm focused on the net reclamation obligations under the assumed liabilities and only those. That does include water treatment liabilities as well?

A The estimates we put in there, yes.
Q Okay. And those are shown net of bonds. Do you know -- have a sense of what the total amount of the reclamation obligations is?
A Are you referring to West Virginia?
Q Yes.
A I believe the shortfall related to West Virginia was in the ballpark of ten of the 14 million and I believe that there was something like 11 million of bonds associated with West Virginia, so I would assume then the gross amount related to West Virginia was in the low twenties.
Q Okay. You said that if there is no funding whatsoever provided by the surety bond issuers that the stalking horse purchaser had agreed to pay all of those reclamation obligations, is that correct?
A I think if we -- do you mind if I reference the APA section?
Q No, that’s fine.
A So in 2.3(m), which I believe was Tab 5, my read of this, you know, it says all liabilities of the sellers for reclamation and if applicable post-mining and post-gas well operation liabilities set forth in Schedule 2.3(m), to the extent that such liabilities are not funded by the issuers of sellers surety bonds, unless such liabilities are assumed by any successful bidder. I’m not going to read all of it, but my

reading -- my interpretation of that is if it's not funded by the surety bonds they're taking it.

Q And I think you've answered my next question, which is that is -- is that based solely on your reading of this agreement?

A It is.

Q Okay. Had no other discussions with anyone else about the terms of that agreement?

A I mean, I was involved in the negotiation of it with counsel and the other side.

Q Okay. So based upon your involvement in those negotiations it is your understanding that they agreed to pay them -- pay the full amount of the reclamation obligations if the surety bond issuers do not fund?

A They agreed to cover anything that the surety bond issuer -- anything above the surety bond.

MR. BARRETT: Okay. I have no further questions, Your Honor.

THE COURT: Thank you. Any other cross examination of this witness?

MR. FINGERHOOD: Your Honor, with the Court's indulgence, because we are close to trying to resolve the EPA objection, could be defer our cross examination until after the lunch break? I think, you know, keeping our fingers crossed we may be able to work things out.

THE COURT: Mr. Arffa?

MR. ARFFA: That's fine with us.

THE COURT: Okay. Thank you.

MR. FINGERHOOD: Thank you.

THE COURT: Any redirect?

MR. ARFFA: No, Your Honor.

UNIDENTIFIED ATTORNEY: No, Your Honor.

THE COURT: Thank you. You may step down, Mr. Mesterharm.

THE WITNESS: Thank you.

THE COURT: All right, Mr. Darby, you all have any additional witnesses?

MR. DARBY: No, Your Honor.

THE COURT: Anybody on the objecting side anticipate the calling of any witnesses?

MR. WILLETT: Your Honor, we understood Mr. Brimmage was going to call a witness.

THE COURT: Oh, maybe so. I'm sorry, I forgot to ask him sitting over there in the corner. Mr. Brimmage, I'm assuming maybe Mr. Williams is going to testify?

MR. BRIMMAGE: Yes, Your Honor, exactly.

THE COURT: Okay. Is that -- will that be the only witness?

MR. BRIMMAGE: That will be the only witness. I think there was a deposition of Mr. Callan (phonetic), who's

with Lazard, yesterday, and I think we're working on an agreement to submit designations to you, and I think we'll have that after lunch, but it will not be a live witness.

THE COURT: Okay. Do you all want to disclose at this point whether or not you anticipate any witnesses?

MR. WILLETT: Oh, we absolutely want to disclose that we don't.

(Laughter)

THE COURT: Okay. Thank you. Then, Mr. Brimmage, do you want to take a lunch break now, and we'll call Mr. Williams after lunch?

MR. BRIMMAGE: Yes, Your Honor, I would.

THE COURT: For my convenience I have my lunch, so you all tell me how much time you want. There are a big group of you and we have limited places, Mr. Darby?

MR. DARBY: One hour, I think, Your Honor.

THE COURT: All right. Then we'll be back at 1:30. Mr. Watson, thank you for talking to those people.

(Recess)

THE COURT: Okay. Mr. Brimmage?

MR. BRIMMAGE: Yes, Your Honor. We'd like to call Doug Williams to the stand please.

THE COURT: Okay.

STEVEN D. WILLIAMS, WITNESS FOR THE STEERING COMMITTEE, SWORN

COURT CLERK: State your name and address for the

record.

THE WITNESS: Steven Douglas Williams, 104 Old Carriage Lane, Daniels, West Virginia.

MR. BRIMMAGE: Your Honor, just as a matter of housekeeping first, yesterday a declaration was filed of Mr. Williams that we would like admitted into evidence. We've got copies here if the Court would like to do that or the Court can take judicial notice of what was filed.

THE COURT: Anybody have any objection to the declaration that was actually filed into the ECF System yesterday being designated as a part of the record?

UNIDENTIFIED ATTORNEY: No objection. We just need a copy of it, Your Honor.

MR. BRIMMAGE: Absolutely. And Your Honor, that was Docket Number 1553.

THE COURT: Okay. Then we'll note it. I don't need a copy. I've got one here, Mr. Brimmage. Thank you.

MR. BRIMMAGE: Thank you, Your Honor. We've got copies if anybody wants them.

THE COURT: Okay. If anybody else needs one, let Mr. Brimmage know.

DIRECT EXAMINATION

BY MR. BRIMMAGE:

Q Good afternoon, Mr. Williams, how are you doing?

A I'm doing well.

Q Good and you've stated your full name for the Court I think.

A I have.

Q All right. I want to just in a couple of questions go over your background. The Court has seen and heard from you before.

MR. BRIMMAGE: And we did an extensive background on Mr. Williams before, Your Honor, so we'll just touch some highlights and move on and incorporate the record from last time.

Q Can you remind the Court what your position is with Coal Acquisition?

A I'm the chief executive officer.

Q And how many years of experience do you have in the coal industry?

A Oh, 30 plus.

Q Can you just run through the types of -- I mean the positions that you've held, the roles that you've played?

A Sure. Anything from -- I'm a graduate in mining engineer. So I started in the engineering department but shortly thereafter went into all different types of management roles from front line supervisor to mine superintendent and beyond up until -- I've had a couple more executive roles in the recent years, chief operating officer. Most recently chief executive officer of a small coal company in West Virginia.

Q Okay. And you recall the declaration that you signed and was filed yesterday, correct?
A I do.
Q And now it's been admitted into evidence. You heard that just a few seconds ago?
A I heard it, yes.
Q I don't want to go over in detail what is in your declaration because everybody can read it, but I do want to hit a couple of main points, does that sound okay?
A Fine.
Q All right. You reviewed -- well, they're cited in declaration, a bunch of documents, right?
A Correct.
Q Did you review those documents in preparing your declaration?
A I did.
Q Okay. And did you come to a conclusion regarding the officers and directors of Coal Acquisition compared to those of the debtors in your review of all those documents?
A I did.
Q Can you tell us what that is?
A There are -- there's no overlap between the two. Actually, there's no directors to my knowledge that the Coal Acquisition of -- and the directors of the debtors are -- named them, I'm not familiar with them.

Q Okay. Are any of the members of Coal Acquisition in any way related to the debtors?
A Not that I'm aware of, no.
Q Did you come to any conclusions when you compared shareholders between Coal Acquisition or members of Coal Acquisition and the debtors, other than what we've just said?
A Again, I didn't see any overlap.
Q Okay. Did you -- you have become familiar with the operations of a little bit of the debtors, correct?
A That's correct.
Q Because you've been observing and consulting with various people that report to the debtors, right?
A Since late July, yes.
Q Okay. And is it fair to say -- well, does Coal Acquisition look to do things exactly the same way that the debtors are doing?
A No.
Q Okay. Can you just briefly describe whether or not you want to do things differently?
A Well, I think we will tend to operate a little leaner and meaner than they -- what my experiences with them. Now, we will certainly operate less things. In other words, we will not operate West Virginia. We won't worry about Canada. Our focus will be in the old JWR operations located in Brookwood, Alabama.

Q All right. The last time you were in court, I believe, was on December the 15th. Do you recall that?
A I do.
Q And you testified it was related to the 1113-1114 motion, is that right?
A I'll take your word for it.
Q Okay.
A I know I testified.
Q Okay. I would like to just briefly talk to you -- were you in the court when I gave my opening statement to the Court?
A I was.
Q All right. I'd briefly like to talk to you about what has happened since you left here on the 15th with regard to negotiations on a collective bargaining agreement.
A Okay.
Q Okay?
A Yep.
Q You left here on the 15th. There was a meeting scheduled for the 18th. Did that occur?
A That did occur.
UNIDENTIFIED ATTORNEY: Your Honor, we've been letting a lot of leading go here. But I think the witness should --
THE COURT: I'm sorry?
UNIDENTIFIED ATTORNEY: The witness is being led here

and he really shouldn't be on this.

THE COURT: I appreciate the heads up, but what I will do is ask that the witness delay in answering each question. Mr. Brimmage ask your question. If you'll give a couple of seconds, Mr. Williams, and if you have an objection if you will then formulate your objection as to each question, I'll deal with each one specifically.

UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

Q Mr. Williams, do you recall when you were here last on the 15th that there was a meeting scheduled for the 18th between Coal Acquisition and the Union, UMWA?

A Yes, there was.

Q And did that meeting occur?

A Yes, it did.

Q Can you just briefly describe for the Court what happened at that meeting?

A Well, it was not unlike previous meetings we've had with the Union. We met our negotiating team, I guess which is me and several others, met with their negotiating team, at least four people, I think four people from their team. We met in our counsel's office in Washington D.C. on Friday the 18th. And it was a pretty lengthy day. It was -- I think we met at ten o'clock and I think we were done around 5:15 in the evening.

Q On the 15th, do you recall your testimony to the Court

regarding a health care plan?
A Yes, I do.
Q Do you recall what you told the Court regarding what you hoped might happen by the 18th?
A I think my testimony was that we had hoped to proffer a health care plan for their consideration by the 18th. I wasn't sure at that point, but we were hopeful that would happen.
Q And what happened on the 18th with regard to that, if anything?
A We were able to finalize that part of our proposal and we actually handed them a kind of I guess a summary document of our healthcare proposal.
Q Please describe for the Court generally what has happened since the 18th to today regarding meetings, discussions between you and the UMWA and representatives of Coal Acquisition and the UMWA. I don't want to walk through every single thing. I just want the Court to get a feel and an understanding for generally what has been happening.
A Sure. Since the 18th?
Q Yes, please.
A Well, the next week was Christmas week. We did not meet Christmas week. However, I'm aware that the Union's counsel and our counsel had multiple telephone conversations based on kind of where we left it on the 18th. And then the following week, the week of New Years, I think it was the 29th and 30th,

we again met with their negotiating team or most of their negotiation team in our counsel's office in New York City.

I had kind of an off the record conversation with what I refer to the local guys that are on the Union's negotiating committee here in Alabama Monday evening. Seen them out in the hall and talked to them a little bit today actually. But that's -- and I know there's been a lot of conversations between counsel that I've not been involved in but I've been made aware that those are going on.

Q Okay. And I want to get the status of the proposals. It's my understanding, but you correct me if this is wrong, that the Union submitted a proposal or counter-proposal -- I'm not sure what the right term is -- sometime yesterday, is that right?

A That's correct.

Q And did you have a chance to review it?

A We did.

Q And what was your response to it and when did you respond?

A Well, the --

Q Not the substance of it, but just --

A Okay. Well, the response was --

Q What did you do?

A -- we took their proposals and either countered or accepted or maybe not accepted, but we ended up with a document which I would call a counter-proposal to their proposal of

yesterday and sent that to their attorney.
Q And when was that sent?
A This morning.
Q Okay. How would you describe the tenor of the negotiations and the discussions, the meetings, the phone calls since December the 15th?
A I think my previous testimony was that they were productive or have been productive. And I still believe they are very productive. You know we haven't gotten an agreement yet, but I can see where we can get that agreement. So I'm very hopeful, assuming that we keep doing what we have been doing in the past.
Q Do you have an intention to continue doing what you've been doing?
A Absolutely.
Q I want to talk to you briefly about the operational plan and the status of that with Coal Acquisition. You were deposed yesterday, correct?
A I was.
Q And were you asked some questions about the operational plans and the status of all that in your deposition?
A I was.
Q Okay. Let's go over that, if we could, some of the stuff that came out yesterday. Can you please tell the Court what the status is of putting together operational plans and

business plans?
A Well, the status is we have not finalized a business plan, but we are working diligently to come up with that plan. We have some ideas of what we want to do, but we have not finalized it. And part of the issue is we have -- or I have spent a lot of time on the Union negotiations. And that's really a big piece of what that operating plan will look like. So we're trying to tie that -- in my view, it's the most important of that operation plan. So we're trying to tie that down first. Then I think shortly thereafter, we can better refine the operating plan I guess is the best way I can --
Q Can you tell the Court why that's a really important piece according to you, the collective bargaining agreement?
A Well, the operating plan is really a financial model. Labor and labor costs are certainly a big driver of what your ultimate cost and viability is. So we have to know that these -- to factor into the model so we can determine how we want to -- what to operate.
Q Okay. Yesterday, there was a lot of discussion regarding Mines 4 and 7 and your thoughts regarding the operations at those mines, do you recall that?
A I do.
Q I'd like to walk through that or have you walk through that with the Court so that the Court understands kind of what your current thinking is. Does that sound okay?

A Sure.
Q And then I also want to -- have you shared with the Union what your current thinking is regarding operations?
A Yeah, I think I have. Actually, that came up in New York I think really for the first time, they just point blank asked me, you know, what's my current thought on the operation.
Q All right. Let's talk about your current thought on the operations.
A Sure.
Q If you would, I'm just going to kind of let you -- I'll guide you a little bit, but kind of free wheel with the Court, please tell the Court what your current thoughts are on operations with the mines.
A Okay. We are very confident that we will operate what is referred to as the 7 East Mine where it's really the east side of the Number 7 mine. We feel good about that. We're pretty confident that we will not run the 7 West or the west side of the Number 7 mine. And really I think the big issue today as we sit here is what do we do about Mine Number 4? And we are somewhere between keeping the mine on idle status to full production. And we just don't know that answer yet.
Q Okay. What are some of the factors that will go into that answer?
A Labor costs, the market, you know what the benchmark price will be or what we anticipate it to be. Those are the two big

things. Productivity of the mine, the geology of the mine, there's a lot of things that go into that.

Q Okay. If the Court approves the sale motion and if the sale is consummated, and if your current thinking regarding operating the mine stays where it is, can you tell the Court what level of employees that you would be looking at to operate along the lines that you're currently thinking?

A I can tell you a range.

Q That's fine.

A I think if we only run the 7 East side of the mine, total employment's going to be in the 500 range give or take 15, 20 guys or girls. If we operate 4, I think we're going to be more in the range of up to 800 people total. 4 could be something less, but you know if we ran 4 full out, we could push 400 people there maybe. So it's somewhere between like 50 or 60 to 400 for 4. So you know five to 800 right now would be my range.

Q Okay. Thank you, Mr. Williams.

MR. BRIMMAGE: Your Honor, that's all the questions I have right now.

THE COURT: Thank you. Mr. Arffa, anybody in your group have questions?

MR. ARFFA: No, Your Honor.

THE COURT: Thank you.

MR. BARRETT: Good afternoon, Your Honor.

THE COURT: Good afternoon.

CROSS EXAMINATION

BY MR. WILLETT:

Q Good afternoon, sir.

A Good afternoon.

Q I only have a couple of questions for you. You are the CEO of the acquisition vehicle here, Coal Acquisition, right?

A That's correct.

Q Now to be an effective CEO, you're going to have to be here in Alabama, right?

A I believe to be effective, you will, yes.

Q You have to be onsite?

A Yes.

Q You live in West Virginia?

A That's correct.

Q With your family?

A That's correct.

Q You have not moved, you or your family, to Alabama yet, right?

A That's right.

Q You haven't found a house or personal arrangements for you and your family to live here?

A That's correct.

Q So that's all things that'll have to be done in your personal life before we're ready to close this deal, is that

right?
A No, not necessarily. I mean you know I have a son in school, so my guess is I won't deal with that until the summertime. But I'm certainly not going to deal with it until we have an operation to close on. I don't think my wife would appreciate me coming down here not knowing if there's an operation that I'm going to be the head of. So there's a little more time involved than that.
Q Right. It's just -- I understand that. The question is really -- there's been some discussion during the day about how long it's going to take to get between a sale order and a closing.
A Yes.
Q So one of the things that has to happen between those two things is you have to make personal arrangements for your family, right?
A I don't think in that time period I have to do that. What I'm saying is I wouldn't do that given my wife's a school teacher, my son's in school. So I would probably keep them right where they are until the summertime and then deal with that.
Q All right. You don't yet have an employment agreement, is that right?
A That's correct.
Q So one of the things you'll have to accomplish before you

are ready for the closing to happen is for there to be an employment agreement for yourself, right?

A Well, I think I could expect one. But I don't necessarily believe it has to happen before closing. But I would expect one eventually, yes.

Q You haven't started to negotiate that yet, is that right?

A My negotiations have been with the Union only, not with the owners of Coal Acquisition.

Q And you have right along the way been targeting a closing of February 29th, I think you told us yesterday, is that right?

A That's what I understand --

Q Okay.

A -- would be the goal.

Q During your association with this project, you have seen various iterations of a business plan, right?

A Yes.

Q And I think you just told us it's not complete yet, there are still many variables to do with what that business plan will be?

A That's correct.

Q But you have never seen any version of the business plan that contemplated putting concrete down the mines to shut them, have you?

A Never, no.

Q Thank you, sir.

CROSS EXAMINATION

BY MS. LEVINE:

Q Good afternoon, Mr. Williams.

A Good afternoon. In the negotiations that you were discussing with the Union, who do you consult with on your side with regard to what goes into a counter-proposal to the Union?

A It would depend, but primarily it would be my labor counsel and a member from Lazard. That's kind of our negotiating team. If it's something that we would seek authority to do or to change the authority we have, then we would stick to the Steering Committee.

Q And labor counsel is Akin?

A That's correct.

Q Who on the Steering Committee do you speak with?

A There's lots of people. I don't know all their names.

Q Which particular funds do you primarily interact with?

A All of them.

Q Do you speak to them directly or does that happen through Lazard and Akin?

A Well, I have spoken to them directly. Normally, we're all -- Lazard, Akin, and the Steering Committee are on the phone at the same time.

Q Coal Acquisition, do you know who's on your board yet?

A I think I testified earlier that I don't think there is a board. No, I do not.

Q With regard to the closing of Coal Acquisition, have you seen any financing commitment yet from the Steering Committee?
A I've heard it discussed. Are you saying, have I seen a document?
Q Correct. There -- one of the -- there'd be a like a letter of intent or a financing commitment or a term sheet. Have you seen any of those documents?
A I have not.
Q Have you seen loan documents for closing financing?
A I have not.
Q Do you believe there could be a closing without financing in place?
A I believe we have to have financing in place to do what we're committing to do.

MS. LEVINE: No further questions, Your Honor.

THE COURT: Thank you.

MR. BARRETT: Your Honor, Kevin Barrett again for the record.

CROSS EXAMINATION

BY MR. BARRETT:

Q Mr. Williams, you and I have never met before, correct?
A I don't believe we have.
Q But you know my firm very well I understand.
A I didn't hear your firm.
Q Bailey Glasser.

A I do know them very well, yes.
Q And in fact, just -- I want to get it out on the record, Bailey and Glasser has represented Mechel Bluestone of which you were an officer, correct?
A That is correct.
Q And that representation was in connection with litigation with Jim Justice, is that correct?
A That's correct.
Q And that litigation is complete at this point, is that correct?
A I hope so, yes.
Q Many people in West Virginia do, as well. And just to complete that thought, Mechel Bluestone was actually sold back to Mr. Justice, isn't that correct?
A That's correct.
Q And that ended your relationship with Mechel Bluestone?
A That's correct.
Q Okay. You indicated that Coal Acquisition is not going to operate in West Virginia. And I understand that. Is it your understanding however that Coal Acquisition is assuming the reclamation obligations at the two West Virginia sites?
A That's my understanding.
Q And is it your understanding that that assumption is independent of whether the surety bond issuers fund that reclamation?

A I heard that testimony earlier today. I don't think I knew that so that was kind of news to me I guess.
Q Is that inconsistent with what your understanding is?
A No. I think Coal Acquisition has made a commitment to the State of West Virginia is what I think. And if they don't get cooperation from the bondholders, I think they are -- sounds like they're stepping up to the plate is how I take it.
Q Do you have any understanding as to whether or not Coal Acquisition will pay for those reclamation obligations or perform them?
A I don't know for sure. But I think in West Virginia, it would be more of a pay for as opposed to the reclamation obligations here in Alabama where they could oversee and maybe perform.
Q And that's largely because you don't have the equipment and personnel and so on up in West Virginia in order to do that kind of work?
A I really don't know --
Q Okay.
A -- because I've not looked at those operations.
Q Okay. You understand the way surety bonds work, I take it, correct?
A I wouldn't claim to be an expert, but I understand the concept.
Q They're fundamental in connection with any coal mining

operation, isn't that correct?
A You have to have them to have a permit, yes.
Q Okay. And to whom are those surety bonds issued for the benefit of?
A In this case or in general?
Q In general.
A I don't know that I can answer that question.
Q Well --
A They're issued in case you cannot perform the obligations of reclamation. But who are they to the benefit of, I don't know if its to the State or to the bondholder or the permit holder.
Q Okay. Do you have any understanding as to how -- strike that. do you have any understanding as to whether or not there is an agreement in place with the surety bond issuers to provide funding for the reclamation in West Virginia?
A I don't know that.
Q Have you had any discussions with any of the surety bond issuers about providing funding for the reclamation in West Virginia?
A I have not.
Q Okay. Do you have any understanding as to how or what mechanism by which the surety bond issuers would finance the reclamation in West Virginia?
A Other than there has to be some kind of forfeiture of the

bond and beyond that, I don't know. Fortunately, I've never had a bond forfeiture, so I don't know how that exactly works.

Q We wish we could say the same thing. In the case of a bond forfeiture, how does a bond forfeit, to your understanding?

A You know if a company just is here today and gone tomorrow and walks off of the property, again, I don't know how that happens, I don't know if that's a State instigated thing or not, but basically there's no work being done and you have all this unreclaimed property and somehow gets forfeited, and hopefully the property gets reclaimed.

Q But in essence, it is a coal mine operator who defaults in the performance of its reclamation obligations. And that is what ends up causing the bond forfeiture, isn't that --

A I think that's a fair statement.

MR. BARRETT: Okay. Your Honor, I have no further questions.

THE COURT: Thank you. Any other cross examination?

(No audible response)

THE COURT: Any redirect?

MR. BRIMMAGE: No, Your Honor. Nothing from us.

THE COURT: Thank you, Mr. Williams, you may step down.

THE WITNESS: Thank you.

MR. BRIMMAGE: Your Honor, may I ask, Mr. Williams has a flight this afternoon. He can stay in the court if the Court would like. But if not, maybe he could please be excused?

THE COURT: Does anybody anticipate any further need for Mr. Williams this afternoon?

UNIDENTIFIED ATTORNEY: No, Your Honor.

THE COURT: I think he's excused.

MR. BRIMMAGE: Thank you, Your Honor.

THE COURT: Thank you.

MR. BRIMMAGE: Thank you, Mr. Williams.

THE COURT: Mr. Darby, Mr. Arffa, Mr. Brimmage, anything else from the movants or the proponents of the motion?

MR. DARBY: No, Your Honor. We rely on the evidence and the record presented to the Court.

THE COURT: Do I understand there are not going to be any witnesses called on behalf of any of the objecting parties?

(No audible response)

THE COURT: Mr. Brimmage?

MR. BRIMMAGE: Your Honor, as a matter of evidentiary procedure, I'm not sure how you want to deal with this. They took the deposition of -- you're going to deal with it? Never mind, Your Honor, we have no further witnesses.

THE COURT: Thank you.

MR. WILLETT: Thank you, Your Honor, Sabin Willett

again for the Funds. We have two evidentiary pieces that don't involve a witness. The first is to call your attention to -- to your attention a declaration that's in the record. It's the Stover Declaration, 1189-1, file --

THE COURT: 1189?

MR. WILLETT: Yes.

THE COURT: Okay.

MR. WILLETT: Yes, Your Honor. Filed December 9th at Paragraph 11. This is on the point that Mr. Mesterharm was clear about, about did the bonds cover a year. At Paragraph 11 --

THE COURT: Mr. Mesterharm?

MR. WILLETT: Yes, Your Honor.

THE COURT: Okay.

MR. WILLETT: You may recall there was some questioning about Exhibits 6 and 7 and whether they properly estimated a year's cost of Coal Act compliance. Mr. Stover did declare under oath in testimony that is undisputed as far as I'm aware that those two bonds that were offered in evidence do represent an estimate of a year's compliance with the IEP piece of the obligation. And that totals in rough numbers, $4.5 million. There is then the additional piece that Mr. Mesterharm testified to of the premium which is approximately $147,000. So we think that declaration provides you with that evidence, what this Coal Act compliance would likely cost each

year.

The second thing is the one that Mr. Brimmage was alluding to. And that is that at least with regard to the parties that he represents, I hope the debtors are in agreement as well, we have counter-designated portions of the deposition testimony of Mr. Tyler Cowan of Lazard who was deposed yesterday. And I would offer that as funds Exhibit 1 to this hearing now.

THE COURT: Any objection from the debtor?

MR. ARFFA: We have no objection.

THE COURT: Ms. Levine, any objection?

MS. LEVINE: No, Your Honor, we actually coordinated with the funds and understand that our designations are part of those designations.

THE COURT: Thank you. Anyone else? Yes? Anything else?

MR. WILLETT: I'm sorry, Your Honor, I need to clarify something for Mr. Brimmage.

THE COURT: What would we do without our staff, whoever they might be.

MR. WILLETT: What you're being handed in that Cowan Exhibit has highlights in it. The highlights represent both the designations by the funds and the counter-designations by Mr. Brimmage's firm.

THE COURT: So I don't know who designated which,

it's just --

MR. WILLETT: It's just all in.

THE COURT: So the highlighted portions are the parts that somebody wants me to read or that multiple of you want me to read?

MR. WILLETT: That we both agree you may read as evidence, yes.

THE COURT: Okay.

MR. WILLETT: That's right.

THE COURT: And it's in its entirety, it's not that long, it does not appear -- I assume this is not the entire deposition. It looks like it is only certain selected pages.

MR. WILLETT: That's correct, Your Honor.

THE COURT: Okay.

MR. WILLETT: The other thing was, evidently I misspoke about the Stover Declaration. The Docket Number is 1198-1 not 1189.

THE COURT: Okay. Thank you.

MR. WILLETT: Thank you, Your Honor.

THE COURT: I'm assuming that was one of the declarations that was offered prior to the December 15th and 16th hearings?

(No audible response)

THE COURT: Okay. No other testimony or evidence?

MR. WILLETT: There's no other evidence from our

client, Your Honor.

THE COURT: Okay. So Mr. Darby, I guess everybody wants to now do whatever summaries they want?

MR. DARBY: I don't know, Your Honor. I'll be very brief. We intend to rely on our papers. We think --

THE COURT: Can I --

MR. DARBY: Yes.

THE COURT: Before you start, can I ask -- since this is being handed up to me and obviously I'm not a speed reader, although I do try to read everything, is there any portion of this in particular that would be helpful to me or that any of you want to necessarily summarize for me before I hear the closing arguments? I mean you all sat through the deposition yesterday and you heard it from beginning to end. I did have an opportunity to briefly review a notebook that was provided by debtor's counsel. Somebody obviously put in some long hard hours before you all got here this morning to provide me -- I'm assuming they have the same notebook, Mr. Darby, that is a summary of the prior record that provides all sorts of quotes and then it actually provides the backup documentation. So I'm assuming you all had seen that notebook as well?

(No audible response)

THE COURT: No?

MR. WILLETT: We have them here, Your Honor.

UNIDENTIFIED ATTORNEY: We've been here all day.

THE COURT: Okay.

MR. WILLETT: It's all stuff that's in the record.

THE COURT: Trust me, for those of you who sat through the 12/15 and the 12/16 hearing, there are no surprises. So it's pretty much a summary of what we all heard during those two painstaking days. But I'm just curious as to whether or not there any portions of this that you all particularly want me to know about before I hear whatever closings you may have. Here are the notebooks if you all want them.

MR. WILLETT: Your Honor, speaking for the Fund, the portions that we designated went to three points as I understand it. And on each of those points, I believe there's been other evidence in the hearing. One point was that the Lazard obviously had been involved with the preparation of lots of models. There has never been a model, a financial model, prepared that would contemplate the pour the concrete down the mines scenario.

I'm going to need a little help, I'm sorry, because I wasn't in that deposition myself.

THE COURT: Okay.

MR. WILLETT: I'm sorry. The other two points you've heard about, one was that they didn't have an ADL facility committed yet.

THE COURT: They didn't have?

MR. WILLETT: They didn't have financing committed yet.

THE COURT: Okay.

MR. WILLETT: And a second was that they expect not to be able to close until the end of February.

THE COURT: Which I think is consistent with testimony that we heard at the December 15th, December 16th hearing. For some reason, before we ever walked in here today, I remembered somebody talking about at that prior hearing that the anticipated closing was late February if there was a closing. That was my recollection. I could go back to my notes which are unfortunately not in here, but that is the recollection I had. So that part is consistent. Do you remember something different, Mr. Goodchild?

MR. GOODCHILD: Your Honor, I have only a very slight difference in my recollection. My recollection is that at the hearing on the 15th and 16th, the testimony was that they expected to -- the projected closing was near the end of February. I think the nuance is the testimony for today's hearing is establishing that they expect that they will not be able to close before the end of February.

THE COURT: Slight variation, but similar?

MR. GOODCHILD: Thank you, Your Honor.

THE COURT: Thank you. Anything else, Mr. Willett?

MR. WILLETT: That's it on the evidence, Your Honor.

THE COURT: Okay. Thank you. Mr. Brimmage?

MR. BRIMMAGE: Your Honor, may I give you a couple points --

THE COURT: Sure.

MR. BRIMMAGE: -- from Mr. -- thank you, Your Honor. Couple things. One, I think you'll find in there that it's uncontroverted and undisputed that Mr. Cowan said Lazard nor anybody else that he was aware had any interference in the bidding or chilling of bidding or chilling of bidders or anything. He did admit, as I told you in the opening, that he received inbound calls regarding potential interest in certain assets and he forwarded them onto the debtors' financial advisor.

He also talks about what Lazard was engaged to do for Coal Acquisition. And that was to line up letters of credit and surety bonds to replace those and be prepared to get those done when needed. And I think he estimated that assuming the sale motion were granted and the order entered relatively soon, he thought that that would be locked down by mid-February.

And then last but not least, and I couldn't find it, but I think it's in here, he talks about -- they're not -- they weren't going out to lenders to raise capital, but it was a rights offering. And that's set forth in the filing that was in -- that was uploaded on the website yesterday pursuant to the procedures order.

And Your Honor, I think with that, we can save you a little bit of reading.

THE COURT: Thank you.

MR. BRIMMAGE: You bet.

THE COURT: I think that in part, maybe I'm being optimistic here, but there seems to be a slight difference in the understanding or interpretation of the APA and/or a proposed order on a potential sale if a sale were to be approved. The Funds seem to have some concern or great concern, I guess I should say, that as part of this proposed sale, the debtor is attempting to establish whether or not Coal Acquisition might have, could have, will have liability in the future as to the Coal Act.

My understanding, perhaps incorrectly, was that like any other 363 sale, it was the debtors' intent to sell it free and clear of any liability of the debtor, any tax owed by the debtor, any trade vendor owed by the debtor, any a former employee, former retiree. In other words, any other claim or debt or obligation that arose under the debtors' watch would not by virtue of the sale be the responsibility of the purchaser under what we all know in the real world as successor liability.

I never interpreted the proposed motion to say whether or not Coal Acquisition, whether they hired union employees or not, would have a liability or not under the Coal

Act. So I'm concerned and I actually fended a little bit of the reply from the debtor, two pages, and two pages actually from the objection of the Funds. And it seems to me that there's a completely different interpretation here and I'm a little concerned about that. I think you all cite, for example, Paragraph 6 of their proposed order which there have been various iterations of the proposed order, and I just tried to reread Paragraph 6 of their proposed order, and it would help me if you all could show me -- I don't read this paragraph -- now maybe there's another paragraph I need to read, I don't read this paragraph as saying what liabilities, if any, from date of closing forward Coal Acquisition might have, could have, will have, or should have. I read it to say that if I grant this motion and if I approve this sale that what they're not getting is any debt, claim, liability, responsibility, or obligation that exists up until the date of closing that belong to any one of these twenty some odd debtors.

Now that's the way I read it which is extremely typical, as we all know, of a 363 sale. If that weren't the language of 363, I would venture to say we wouldn't have 363 sales and many of you would not have jobs and perhaps my case load would be limited to consumer cases.

So tell me what I'm missing here from the Funds' view point.

MR. GOODCHILD: Your Honor, what you're missing is

that if you read the debtors' reply, the debtors take the position that the entirety of all Coal Act obligations related to all of these beneficiaries constitutes a single claim that is before Your Honor today. And our view is that the obligations under the Coal Act arise periodically such that what is before you today are only the obligations up to today. And that to the extent there are premiums due after the closing, those are new obligations.

THE COURT: Okay. Mr. Goodchild, if that's what you think this proposed -- I'm trying to get to the end to find out -- 30-page proposed order, tell me which paragraph you think says that because I'd like to read it. I want to -- that's what I need to know.

MR. GOODCHILD: I understand, Your Honor. If I could have one second, I'm just going to get the red-line --

THE COURT: Take as long as you need.

MR. GOODCHILD: -- because you got your finger right on the precise issue that must be decided.

THE COURT: And Ms. Levine, please understand, I know your issues are completely different. I haven't gotten to you yet. I haven't forgotten you, I just haven't gotten to you yet.

And I'll interrupt you to say, I did take your version back. And the only thing I would disagree with you is that your proposed changes are not, in my view, a few in

number. So we do disagree on what few in number means, Mr. Goodchild.

MR. GOODCHILD: I apologize, Your Honor. There are different colors in the red-line.

THE COURT: I get that. But if you could just --

MR. GOODCHILD: And not all of those are ours.

THE COURT: If you could try to pinpoint for me the paragraphs that are of concern to you so that we could look at those, it would be very helpful to me. And I hate to take everybody's time, I'm sure lots of you are wanting to get out of here, but I think this is an important issue. And if you want me to go to something else while you look, I can do that.

MR. GOODCHILD: No, no, no, Your Honor, I want to make -- there a couple of different places in the order that purport to establish that Coal Acquisition will not have liability under the Coal Act for future periods post-closing, all right? One of them, I think is Paragraph S. Now I'm looking at the red-line. And --

THE COURT: All right. Well now Paragraph -- anything that is a lettered paragraph is not an ordered that.

MR. GOODCHILD: All right.

THE COURT: So I mean clearly --

MR. GOODCHILD: I understand, Your Honor. All right.

THE COURT: I think their concern to me is where we start on Page 15 or Paragraph 1 because that's what I'm

ordering --

MR. GOODCHILD: Yes, Your Honor, I understand.

THE COURT: -- if I grant this motion.

MR. GOODCHILD: Paragraph 9, Your Honor.

THE COURT: Okay. Hang on. Okay. Any particular portion of that?

MR. GOODCHILD: Well, Your Honor, it's a little difficult to parse the paragraph just because it's one of those very long, accept as otherwise provided, kind of things. So no. I think what's going on here is paragraph -- at least Paragraph 9 is an order establishing a status of Coal Acquisition and it's at least one of the paragraphs in which there's an injunction against -- action post-closing against Coal Acquisition.

THE COURT: Okay. But it does go on to say -- and I'm at the top of Page 20, again, language that was not new to us that any such claims, liens, interests being transferred and attached to the proceeds of the sale, which routinely happens of course in bankruptcy that to the extent somebody asserts a claim or a lien that it may be -- the assets may go free and clear, but if there is a lien later to be determined, it would attach to any proceeds.

MR. GOODCHILD: Yes, Your Honor. But again -- and I do appreciate that the Coal Act -- and my view is the Coal Act creates a legal scheme that is a little different than the

typical claim scheme.

THE COURT: Oh, I understand that's your argument.

MR. GOODCHILD: Yes, Your Honor.

THE COURT: Okay. I'll reread Paragraph 9.

MR. GOODCHILD: So in response to you, Your Honor, we do not have a situation in which all of the projected premiums stretching out into the future under the Coal Act constitute in my view a single claim. If we did, if we did, then the Coal Act Funds would have a really big unsecured claim and we would assert that against whatever the remaining assets are of the estate. That's typically what would happen in a 363.

THE COURT: Okay. So let me ask Question 1. If Coal Acquisition does not become -- what do you all call it, a signatory or whatever?

MR. GOODCHILD: Well, there are two terms. There's a signatory operator which is the primary obligee under the -- obligated party under the Coal Act. And then the Coal Act imposes or also makes liable those who are successors in interest to signatory operators.

THE COURT: But if they never become the signatory, they would not have obligations under that part?

MR. GOODCHILD: That's right, Your Honor.

THE COURT: But what you went them to have responsibility for is to the extent there are obligations -- let's assume they close if there is an order approving the --

granting the motion or approving the sale. If this sale were approved and it closed on February the 29th, you want to be able to say that on or after March the 1st, Coal Acquisition could have potential liability under the Coal Act?

MR. GOODCHILD: Yes, but only for periods of time beginning on March 1st, not for any obligations that the debtors may have had in prior time periods that the debtors may not have satisfied.

THE COURT: Is that different from what Coal Acquisition is expecting to get as a part of this motion and proposed sale?

MR. BRIMMAGE: Your Honor --

THE COURT: I need you to come to the podium if you don't mind, Mr. Brimmage, to make sure that (A) the record is good and (B) that the folks on the phone can hear.

MR. BRIMMAGE: If I'm following it correctly, I believe what he's saying is any obligation that is still continuing after March 1st, he wants us to be obligated for.

THE COURT: I think that's what he's saying.

MR. BRIMMAGE: And that is not the way we want it nor do we read it. It cuts off all past obligations as of, in our scenario, March 1st, they're all gone, they're free and clear, they're no more. Now we can't prevent new obligations from arising and we're not talking about that. We understand that. But any obligation as of March 1st is gone.

THE COURT: So that if there are folks out there that are currently beneficiaries under the Coal Act, Coal Acquisition is intending not to acquire any responsibility or liability for those folks. But if on March 2nd, there has been a CBA and there are now union employees at Coal Acquisition and then somebody on March 2nd, or 3rd, or 5th, or 10th, or whatever becomes a beneficiary under the Coal Act, then that person would then -- the Coal Acquisition would have liability for that person?

MR. BRIMMAGE: Yes. With the qualifier that I don't know how the Coal Act works exactly. But to the extent what you're saying would impose Coal Act obligations after March 1st, we wouldn't be a successor, unrelated to what happened before, I think the answer's yes.

THE COURT: Okay.

MR. BRIMMAGE: Am I not saying it right?

THE COURT: I think part of the problem is is that there are a lot of us in the room who don't fully understand all of this and there are a lot of us in the room. But I think I understand -- I think I understand what Mr. Goodchild and Mr. Willett's concerns are, which is they want you all to be responsible for those people regardless of when they retired, regardless of which fund -- you're saying no?

MR. GOODCHILD: I'm sorry to shake my head at you, Your Honor. And I just don't want this to go too far. No, not

exactly, Your Honor.

THE COURT: Okay. But I want to be clear --

MR. GOODCHILD: I know.

THE COURT: -- as to what everybody's arguments are before I take this under submission.

MR. GOODCHILD: Yes. And I understand and I really do appreciate that, Your Honor. And I know that the Coal Act is not the typical thing that we deal with everyday.

Two things. One is the Coal Act only provides taxing obligations to provide for a closed set of beneficiaries.

THE COURT: So there will be no new beneficiaries?

MR. GOODCHILD: There can be no new beneficiaries.

THE COURT: Okay. These are people who ended up with no benefits based on various acts that occurred years before. And so as a result, you now have the 74 Fund and the 92 Act or whatever you all call those two funds that these people now get to draw under?

MR. GOODCHILD: Not exact, Your Honor. The 1974 Pension Plan is a collectively bargained pension plan. The Coal Act is only healthcare.

THE COURT: Okay.

MR. GOODCHILD: And the Coal Act Funds are statutorily created under the Coal Act which is a part of the Internal Revenue Code. And those Coal Act Funds are financed pursuant tot he statute in the nature of taxes that are

incurred, period by period.

THE COURT: But these are healthcare benefits that are provided under one of the two funds solely for people who are already retired and obviously would not -- not obviously, likely would not become an active working member at the new coal mines if they opened under Coal Acquisition and if there is a CBA?

MR. GOODCHILD: Yes.

THE COURT: Okay.

MR. GOODCHILD: And that's why perhaps council's having just a tiny bit of trouble getting you a clear answer to the question. It's just that there's no possibility that there'll be new beneficiaries for which really any company becomes liable for. We're talking about a closed set. The Coal Act provides a funding vehicle, a tax-driven funding vehicle to provide health benefits to a specific class of beneficiaries who have ben protected by Congress. And what I'm saying is the taxing obligation imposed under that statute first of all, nobody ought to be messing with that.

Second of all, if we are going to modify that kind of an obligation, you would modify it in the way you would modify any other tax. A tax that is due, fine. We can treat that as a claim. A tax that hasn't become due yet, a tax that hasn't been assessed for new period, like next year's property taxes or next year's income taxes, that's not part of the bankruptcy.

That arises later.

And we're saying is we believe it is beyond the power of this Court to order that Coal Acquisition is not going to be liable for tax obligations for periods that occur after the closing. Those obligations simply do not exist and they are not a claim of which we can have a clear and sale.

THE COURT: I understand it much better now, Mr. Goodchild.

MR. GOODCHILD: Thank you, Your Honor.

THE COURT: Thank you. Mr. Brimmage, you have something to add?

MR. BRIMMAGE: Briefly, Your Honor. Back to your hypothetical which hopefully is not too hypothetical. On March 1st, Coal Acquisition would not be a successor in interest to the prior debtors. On March 1st, those prior obligations, those prior funds for those prior retirees as far as Coal Acquisition is concerned are wiped out never to be returned. And I think that's what you were asking. And I wasn't saying it very well.

THE COURT: I don't think I asked it very well. But in any case, I think I have a clearer understanding of what the problem is at this point.

MR. BRIMMAGE: Okay. Thank you, Your Honor.

THE COURT: Thank you.

MR. GOODCHILD: Your Honor, I apologize. I have one

more --

THE COURT: Sure.

MR. GOODCHILD: -- thing to just add on that point. I apologize for continuing to pop up. But Your Honor, as I said at the very beginning of the hearing, the contents of Your Honor's order are different from the question of whether under the Coal Act, Coal Acquisition would be an obligated party. And as we said in our papers, the issue of whether Coal Acquisition actually would have statutory liability is an unresolved question. And I'm not representing to Your Honor that in my mind it has been decided that Coal Acquisition absolutely would have Coal Act obligations. We're simply saying we don't believe Your Honor can prejudge that.

That's all we are -- now I hear counsel. Counsel is, I think, looking for certainty one way or the other. Our argument is that that -- we can't -- there's no way to provide that certainty. We don't know yet what Coal Acquisition is going to do or not do. Coal Acquisition is not taking all of the assets of these debtors. Coal Acquisition is a different business after an asset sale. There is a lot of jurisprudence out there over whether an entity that acquires assets is actually obligated under the Coal Act. And we don't believe that that question is before Your Honor. We simply want the opportunity to have that question resolved later to the extent it becomes relevant.

THE COURT: Thank you, Mr. Goodchild.

MR. GOODCHILD: Thank you, Your Honor.

THE COURT: And before you all do your closings, you have something else, Mr. Brimmage?

MR. BRIMMAGE: Yes. I want to say no, but the answer's yes. I just want to address -- I don't want to leave it lingering. That issue is relevant right now. It's not relevant tomorrow or at another day. The order we need from the Court is exactly what you asked about and you and I talked about. That's not for another day, that's for right here, right now. Otherwise, this sale is not free and clear. And I didn't want that to pass, I wanted to go ahead and address it.

MR. DARBY: But Your Honor, Your Honor has the proposed order. And from my perspective, Your Honor is reading the order correctly. And it says what you say it says, it doesn't say what they say it says. And we went through this exercise, but nobody has pointed out anything that's wrong with the proposed order. I think the language in the proposed order is fine.

Whatever happens in the future, they're not on the hook for our liabilities. And it's not just the Coal Act. If you look at the order, it's ERISA, it's the Civil Rights Act, it's all sorts of stuff. Nobody's asking Your Honor to figure out what might arise under any of those statutes in the future. But to the extent we're liable for, they're not. They take the

assets free and clear of any of our liabilities or obligations under those statutes. I don't think anybody is asking the Court to rule on what may or may not happen in the future, that it won't arise or that it will arise.

But I still didn't hear any comments or responses to your question, what's wrong with this order. The language says what it says. I think the Court's reading it correctly.

THE COURT: Thank you, Mr. Darby. Now before we get to closing arguments, Ms. Levine -- and you don't necessarily have to answer this for me now, but here is sort of my to the point question, I guess, to the Union. Based primarily on arguments, objections, the cross examination of the witnesses called by the motion proponents, if the motion is denied and there is no sale, the unions have no certainty. They don't know what will happen. None of us know what will happen. I mean we've been told from the witness stand by Mr. Sheller (phonetic) at the last hearing what will happen.

I understand that there is some thought -- and the argument, I thought was an extremely creative argument, but I don't know, I think we talked about it briefly at the last hearing, is if there is no sale, then what will the lenders do which of course is pure speculation on any of our parts as to whether the lender will say, in this group of investors whether they be new investors or old investors, whether they will say, we're going to take possession of these mines and we're going

to do something with them because we have a lot of money invested and we don't want them just shut down and concrete poured in the hole and water fill up the holes and yakety yakety.

So my point being, if there is no sale, the Union has no certainty as to what will happen at these mines. That seems where we are on that issue, correct?

MS. LEVINE: Yes, Your Honor. But the assumption is that there's some certainty on the -- you can't kill me twice, okay? You're saying that there's no certainty if there's no sale. What we're saying to you is there's equally no certainty and perhaps less certainty if there --

THE COURT: That was Question 2.

MS. LEVINE: -- if there is a sale.

THE COURT: You have no certainty either way. And I understand that the Union feels strongly, as you did at the last hearing, that the chances are better for the Union and the Union employees without this deal. Do you think there is more incentive for the lenders to do something and to operate than to protect their investment?

MS. LEVINE: Yes, Your Honor. We believe -- or at a minimum, if Your Honor's struggling with that, at a minimum, the ruling should be adjourned so that they can come before this Court with more specificity for all of us with regard to financing in place and with regard to what they really truly

intend to do with these mines.

With a stroke of a pen at the last hearing, you put us in a much worse place at the bargaining table and we stayed there anyway. And with a stroke of a pen here, Your Honor, you're going to put us in an even worse place. So for us to say, do we do better if there's a Chapter 7 Trustee and a third party fiduciary that's overseeing this process? We think maybe we do.

Do we do better if the lenders actually have to come forward and say to everybody with specificity like they would if this were a plan context? We think that we do. There's a -- you know everybody keeps talking about the fact that we're meeting 24/7 and we're doing everything that we're doing, but there's a thin line between good faith negotiations and filibuster. And for whatever reason, Your Honor, we have not been able to get it done here and we've been trying really, really hard. And --

THE COURT: I understand that, Ms. Levine. And if it appears to you and others that I struggled then and I'm struggling now, then that would be an accurate portrayal. But as the debtors note in a less than kind way, I will note for you as I hope I have otherwise noted, it is not -- it is a lot about the Union, it is a lot about the people who work there, but it is not just about the employees and not just about the Union. That is your only client and your only concern. But

from my perspective, there are lots and lots of other stakeholders.

MS. LEVINE: And we understand that, Your Honor, but there is also you know -- and going back and just looking at this objectively, almost like it was a law school exam, there's still the burden of proof. And a hope and a prayer that something good could happen works perhaps if everybody is sharing in the sacrifice.

But doing away with the criteria that the debtor has to meet under 363 when it's only the most vulnerable and disenfranchised, not the management, not the management retirees, not the Creditors' Committee with separate -- they went through a laundry list of professionals, all of who are getting paid, we weren't on the list, okay? There's a whole bunch of people here that are better able to take care of themselves than this most disenfranchised work force and this most vulnerable retiree group. And for whatever reason in this particular case in a way that we've never seen before, we are being isolated, singled out, and left off to the side.

So maybe the argument is not that this is a sub rosa plan, Your Honor, maybe the argument is it just isn't sub rosa enough.

The bottom line is either, either we're going to say we're not really going to look at 363 because we're in a desperate situation or we're going to say you haven't met the

criteria under 363 because it really isn't in the best interest of all the stakeholders because they're all not being treated fairly.

THE COURT: With all due respect, Ms. Levine, I can assure you I'm going to be very objective and look at all the requirements of 363. But that would kind of give you an idea --

MS. LEVINE: But I didn't mean that in a disrespectful way, Your Honor. In other words, if they solved all the objections, it makes it much easier for the Court to rule. I wasn't implying that the Court wasn't handling the situation appropriately. What I meant is you know hard cases make a much more difficult process. So you're asking of us a very difficult question. And we're trying to be very straightforward in our answer because it's obvious that the Court's struggling and we appreciate the fact that the Court is struggling.

But we find ourselves in a situation that's getting more and more precarious in a way where all of these observations that people keep saying will possibly make it better, aren't. And so that's really where we are. Thank you.

THE COURT: Thank you, Ms. Levine. I apologize for the diversion. But anyway, all right, so now if I could hear from each of you in a much more orderly fashion?

MR. DARBY: Your Honor, I'm not going to repeat all

the stuff about the Coal Act because I think we've covered that sufficiently. I'll answer any other questions the Court has.

THE COURT: Mr. Darby, you do it based on your notes.

MR. DARBY: Okay.

THE COURT: I mean if that works better for you, the fact that there's some repetition on the part of any of the lawyers does not offend me.

MR. DARBY: I appreciate that, Your Honor. But I really just want to rely on our opening and the evidence and our brief. And just in response to the last exchange, certainty is not a requirement of Section 363. We are not required to prove that the transaction is certain to close. That's never something that can be proved in any sale. Sales are always contingent upon various conditions that may or may not come true. So I don't want to get sidetracked by this issue that we are somehow required to prove that this sale is going to be consummated before this Court can approve it. That's just not the law.

But on the issue of certainty, the evidence in front of the Court is overwhelming and uncontroverted that between two different scenarios that present uncertainty, the sale is by far the most certain option and the best option to provide for an ongoing operation and jobs. We can't prove that it is certain beyond a reasonable doubt. But we can prove that it's more certain than any other alternative before the Court. And

we have proved that.

The evidence is overwhelming and unchallenged. And I just don't know what else to say about that. But I think that's very important for the Court to know. I think it's important for the workers. I think it's important for all constituencies who are all taking a haircut. There is no constituency in this case that's not being adversely affected by this outcome. The only difference with the Union is that they haven't agreed to it yet. But every constituency in this case is being hurt including management, shareholders, and the lenders who are losing substantial economic value in this transaction.

So that's really all I have to add. I just wanted to clarify that point. It's important to us that this is a going concern sale that provides for operations, provides for jobs. That's very important to us. And that's why we've talked about it so much.

We understand that it's important to the Court. But it is not a requirement of Section 363 that we have to prove that the sale will be consummated, that the business will operate or that all the employees will be hired. That's just simply not a legal requirement. But to the extent it's relevant, it's obvious that this is a much more certain alternative for any of those outcomes than any other presented to the Court.

THE COURT: Thank you, Mr. Darby. Mr. Brimmage?

MR. BRIMMAGE: Thank you, Your Honor. I'm going to do some quick hits because we've talked about a lot already and I don't want to repeat myself either because who knows, I might say something inconsistent. I don't want to do that.

Let me start with the Coal Act obligation. I just want to clarify I don't want to make any more argument unless the Court has questions. We've heard a lot of discussion and I've heard the Funds' counsel talk about this $147,000 obligation. I know the Court has heard it too. I round it to 150. But we went back and looked at the disclosure statement. That's for one fund. The other fund obligation is $530,000 a month which is 6.5 annually. That's a lot of money.

And what we heard, Your Honor, is we heard a lot of testimony about -- both prior and today -- about the APA was negotiating at arms' length. It was a very tough negotiation Mr. Zelin testified last time. And what we see up here on the board, it's from Mr. Masterham's (sic) Tab 2 in his notebook. And I think it was entered in as evidence. And I said the name wrong, and I apologize. That's the snickering. I'm terrible with names.

But what you see is clearly, there's a lot of obligations there that Coal Acquisition wasn't crazy about taking over. But that's the result of arms' length negotiation, very tough negotiation. And that's where they

came to and that's where it ends.

The Steering Committee Coal Acquisition is not interested in taking on any more obligations. So they need a free and clear order from the Court. And that includes Coal Act obligations exactly as the order is written.

I want to talk about the Steering Committee and Coal Acquisition's conduct in the case and certainly in the sale motion. There is zero evidence before the Court that any bad faith anything has gone on. And in fact, it's quite the opposite. Not only did Mr. Zelin say that he's been involved with the Steering Committee and Coal Acquisition in dealing with all these issues, but he -- in his opinion, they've all acted in good faith. There's simply no evidence otherwise.

And then if you look at all the things that have taken place, the Steering Committee and Coal Acquisition have lived up to every obligation that they have had to date and more, and then some. The Court recalls how this case started off, a little rocky with the Creditors' Committee. As we stand here today, we have an agreement.

We're working hard to get an agreement with the Union. There are no guarantees and there are no promises, but a lot of work has been done and we are optimistic. All the things that were required to do by us, including the adequate assurance filing yesterday, was done and it was done timely, and it was done well. We're doing all the background work to

get the permits transferred. We're doing the background work to get financing, rights offering issue set up, letters of credit, surety issues arranged, dealing with the Department of Justice which there was an agreement today, dealing with other entities including many of the objectors in the sale motion.

And I bring that up because there's only so much we can and so much we're willing to do until we get a sale order. And that's just reasonable.

I was a little surprised at the cross examination of Mr. Williams about he hasn't moved here yet. Well, he doesn't have a future yet. Nobody does with Coal Acquisition. And until we get a sale order and then we go down the road and consummate the deal and close it, that's what we've got.

So I think everything that reasonably could be done and have been done, has been done. What we need now is we need a sale order from the Court in the form that's been submitted by the debtors and then we need to move forward.

Your Honor, from an evidentiary standpoint, all the 363 elements have been met, every single one. I didn't hear of an element in any argument yet, we may hear it, that hasn't been met. And if it hasn't been met, I haven't heard specifically why. I submit to the Court there's evidence to support each and every element required. And this is a 363 sale. This was not a Chapter 11 plan of reorganization. There's a difference.

Last but not least, I agree with Mr. Darby. Certainty is not a requirement under 363. But let's talk about it. And by the way, Your Honor, you stole my thunder. Certainty is where -- I was going to close with certainty. And then you already went there. It's not a requirement, but let's talk about what the best certainty is. Is the best certainty to not grant this sale motion and let's just see what happens?

At the beginning of this hearing, you asked Ms. Levine what would happen if you denied the motion. I remember her response. She said, I don't know. Well, I don't know either, but I know it's not good.

What happens if the sale motion is granted? Well, there's not certainty, there's not a guarantee, but every action by Coal Acquisition and its backers indicates they want to close this deal. They want to make this happen. And they have the wherewithal to do it. They're not running around, trying to scrounge pennies to pay for it. There's going to be a rights offering. And Mr. Zelin testified he has every confidence that they could pull this off and so does everyone else. So Your Honor, the way to get certainty is to grant this motion.

And now I want to leave this with jobs. The Court asked last time at the 1113/1114 hearing, the Court is concerned about jobs. Understandably so. A lot of people are worried about jobs. Just because we're trying to buy this in

the 363 sale, doesn't mean we're not worried about jobs, we in fact are. But the only way to save jobs is for this motion to be granted and the sale to be consummated.

You heard what Mr. Williams said about the current operational plan. And of course the operational plan -- one of the things he didn't mention, but we all know it's impacted by coal prices. Well, we know what they are today, but we don't know what they're going to be the next quarter or the next quarter after that. But if the mine is sold and it's operational and it can stay operational and stay profitable, then someday, more and more operations can open up and more and more jobs can be had. But by this sale being consummated, there's going to be a lot of jobs and a lot of jobs soon.

So, Your Honor, we would respectfully request the Court grant the motion in its entirety in the exact form of order that was submitted by the debtors and in doing so, recognize that every single element of 363 has been met and that the only way to provide certainty and the best opportunity for jobs is to grant that motion. Thank you, Your Honor.

THE COURT: Thank you, Mr. Brimmage.

MR. GOODCHILD: Thank you, Your Honor. For the record, John Goodchild on behalf of the Coal Act Funds. Your Honor asked a question about what the problem was from our perspective with the order as written. And I guess the flip side of that is why is it that the proponents would like the

order to be entered exactly the way it is written? Nine and 17 are really the two provisions that are problematic. Nine because it enjoins, language is extraordinarily broad. It would prohibit at least under a conservative reading, it would prohibit the Coal Act Funds from pursuing Coal Acquisition for post-petition Coal Act obligations if Coal Act Funds felt that there were such.

And 17 because 17 I think under a literal reading would be the Court's finding and conclusion that Coal Acquisition is not a successor in interest to the debtors as defined under the federal statute. Now at least with respect to Paragraph 17, there's a real problem. Put the legal issue aside, there's simply no evidence to support any finding or conclusion about the status of Coal Acquisition. That wasn't part of the hearing today. There's nothing about the elements of what would constitute a successor in interest to the debtors. There's been no briefing submitted to Your Honor about what that terms means under the statute. There is quite a bit of case law on it.

So if what we're looking for is a conclusion based upon evidence that an entity that doesn't yet have these assets does not qualify under a test under a federal statute, I think we have a failure to prove.

But to answer your question, it's 9 and 17, Your Honor.

THE COURT: Thank you.

MR. GOODCHILD: All right. I don't want to belabor the Coal Act arguments. There has been a lot of back and forth on it and I really appreciate Your Honor's patience with those. From our perspective, there is -- we have no choice but to defend the federal statute. In our view the legal question of whether the Court has the power to do what is being asked of it must be answered in the negative. And it is not negotiable.

In other words, we're not standing here telling Your Honor to stop a sale. We're standing here telling Your Honor not to put something illegal in the order. And that is our perspective. So to the extent that words to the effect of playing chicken have been thrown around over the last couple days of hearings, including on the 15th and 16th. I want to make it clear that we're talking about a federal statutory obligation. We're not talking about something that we can sit around the bargaining table and deal with, we can't. The issue of whether Coal Acquisition may or may not be liable for premiums that may arise in the future is not a negotiable question as it relates to the character of the obligations.

What is an open question is what I've been coming back to which is in the future will the facts and circumstances make it so that Coal Acquisition is a successor in interest under the statute. And that is a question on which no one can really reach a conclusion.

I won't go back through the whole Coal Act obligations that arise periodically point it is the lynchpin of the entire legal question, Your Honor. And so our view on that is that the case law is legion on this at the circuit level, not this circuit, Your Honor. This circuit is a blank slate. But at the circuit level, the legal conclusion reached by the circuit courts, in many cases overruling bankruptcy courts, is that Coal Act premium obligations are taxes and that they are incurred on a periodic basis and that tax obligations that may arise for future periods are not within the power of the Bankruptcy Court to discharge. And that means they are not part of a single claim. Acceptance of that legal proposition mut lead to a change in order that has been submitted to Your Honor.

We've also made a jurisdictional argument related to the Anti-Injunction Act. It's the same argument using a different legal pathway which is that if a future tax obligation may be enforced anything in this order purporting to enjoin us from enforcing it violates the Anti-Injunction Act. Either way, you're really talking about whether Coal Act premium obligations for post-closing time periods are really part of anything that can be determined by this Court today.

All right. So let me move to some of the other things that have come up during the day. One thing that has rung through the last hearing and this hearing is the question

of what will happen if. And what we have here are lenders whose collateral consist of coal mines. Those coal mines are currently generating less cash than they need to -- for their upkeep. So right now, you have a situation in which the debtors have to use their free cash, which is the lender's cash collateral, we've established that. And even above that, the lenders have had to forego payments to which they were otherwise entitled by way of adequate protection and have even begun to talk about putting new cash into the estate all for purposes of preserving the value of their collateral. And Your Honor, our view is that is rational because the lenders will stand to lose everything if the cement is poured into the mines.

In fact, that's what really what the evidence shows. The lenders are entitled to fundamentally all of the value of the mines. The value of the mines is undisputedly a lot greater if the mines do not have cement poured down them even though right now they don't make any money. And so there really is no evidence to support the idea that the lenders will permit the pouring of concrete down their collateral.

That's not to suggest that the mines shouldn't be sold. I want to make that clear. I made it clear at the beginning, I'll say it again. It's not -- we are not suggesting the mines should not end up in the hands of the lenders. We're simply saying, it's really not plausible to

believe that there is this thread hanging over the head of the proceeding associated with the failure to do every little thing that the lenders want for fear that the lenders will allow the mines to be destroyed. The mines are not going to be destroyed.

You have a credit bid situation. We're not playing with new money. We're not talking about new investors who could decide to invest in something new. We're talking about entities that have put their money in already and are simply trying to salvage whatever value remains in that investment. And so for all of those reasons, I don't believe that the direst of consequences is really plausible.

I do think it is the right result that we maximize what's left of the value of the estate through a sale. And that's why I've said we don't oppose the sale. But again, our view is that doesn't justify the threat.

And the reason why I focus on that point is that there's been some suggestion that the lenders have reached the end of their negotiating rope, that they're willing to do whatever they're willing to do today, but not a penny more. And I understand that a party in the lender's position would not want to spend one more dollar than they've already committed to spend. This, so far, hasn't been the best investment apparently. But our position is that does not give you the ability to insist that the debtors propose an element

in an order that may exceed what the Court is legally permitted to do.

And so my first point and my second point link together. It's not appropriate to put these terms in the order. And it's not appropriate to give credence to the argument that if you don't do these things that we think are not legally permitted, that something terrible will happen on the practical front.

Okay. Last point. With respect to the stay, we have not heard any evidence to support a decision by Your Honor not to have the usual 14-day stay apply to Your Honor's order, whatever it is. We believe that there is no cause for the waiver of the 14-day stay requirement. We think the evidence is entirely to the contrary. This is a sale that now cannot close before the end of February. This is a sale that could not be moved up. There's no good reason why there ought not to be the usual stay that comes along with Your Honor's order.

And there's a good reason why we have stays like that. It allows parties to come back to Your Honor and ask Your Honor to clarify or amend judgments. You've seen just with the last order, Your Honor entertained a motion like that. It allows people to go to take appeals if they feel that appeals are justified and to ask in an orderly fashion for further stays if they believe further stays are warranted. This is a situation in which from our perspective, the debtors

are asking for something that violates the law.

If Your Honor agrees with the debtors -- and I mean this with respect, Your Honor, it's not intended as anything else -- we will be forced to prosecute an appeal. And we believe that that is our duty under the law. And we would like to be able to do that in an orderly way and we would also like the opportunity to the extent it we feel it is justified to ask Your Honor to reconsider depending upon what's in the order, especially given that some of these issues are complicated and are not usually dealt with by counsel and courts. And again, I don't mean any disrespect by that, Your Honor, I just mean to suggest that we're all human.

And so for those reasons, I would ask Your Honor to amend the proposed order to take out the provisions that would prejudge whether Coal Acquisition could possibly have Coal Act obligations, to remove the injunction against the Coal Act funds that would stop us from pursuing Coal Acquisition if we believed that Coal Acquisition owed premiums for post-petition periods. And we would ask Your Honor not to grant the debtors for a waiver of the automatic 14-day stay of Your Honor's order. Thanks very much, Your Honor.

THE COURT: Thank you, Mr. Goodchild.

MS. LEVINE: Thank you, Your Honor. Without rehashing some of the stuff that we've discussed before, I would ask the Court to consider the fact that this is in fact a

sub rosa plan. All of the lenders are doing here are cherry picking the administrative and priority claims to pay, not following the distribution scheme that would otherwise be available in a Chapter 11 or a Chapter 7. And there's been no testimony or other evidence that administrative and priority claims would be paid in full if in fact the debtors and Coal Acquisition do in fact close. 363 does not allow them to recreate the priority schemes under the Bankruptcy Code nor does any other provision in the Bankruptcy Code.

We've heard a lot about certainty, Your Honor. The problem here is that the certainty is by choice and a choice which appears to us as arbitrary because it seems to be a choice for certain trust funds, certain settlements, all of which benefit others, none of which benefit what we view as the most disenfranchised creditors in the estate.

Talking about benefits, we haven't seen what those benefits are yet, Your Honor. All we've actually seen is idling of the minds and additional threats of idling of the minds.

The other thing that we find frankly confusing is that this is rescue financing. In other words, it's a credit bid by the existing lenders. The idea that they are coming to this Court and asking for this Court to approve a sale where there's a closing conditioned on whether or not the purchaser is in fact going to lend itself money to close, that that

remains an uncertainty that we won't know the answer to until February, is hard to swallow, Your Honor. We don't believe that that's a condition that should remain open if in fact the benefit here is that all of these obligations that are being assumed are going to get funded at closing and in fact that there's going to be this elusive job preservation that we haven't seen and in fact, we've seen the contrary, particularly with the idling of the Number 4 Mine the day that Your Honor issued the 1113 and 1114 ruling.

We thank the Court for your time and we appreciate the difficulty of this decision. Thank you.

THE COURT: Thank you, Ms. Levine. Mr. Barrett?

MR. BARRETT: Thank you, Your Honor. Your Honor, after this sale, Walter is going to be left with its West Virginia mining permits. It can't walk away from those obligations or those permits. As the operator under the permits, Walter has a legal obligation to reclaim the permitted sites even if it rejects the leases, SMCRA still requires that Walter reclaim the sites and it actually requires the lessor to allow Walter onto the property in order to do that.

And Your Honor, you can't make any mistake about it. We're talking about the potential for unreclaimed mines and the potential for untreated water pollution that's coming off of those mines that present very real environmental problems to the people of the State of West Virginia and do as Congress and

the State legislature both recognized, create imminent and identifiable risks to the public health and safety.

THE COURT: With all due respect, Mr. Barrett, I didn't hear any evidence to suggest that they're going to walk away and let that happen.

MR. BARRETT: I'm getting there, Your Honor.

THE COURT: Okay.

MR. BARRETT: Your Honor, I think it is true and based upon their papers, I think it is true that Walter has not claimed otherwise that it's obligated presumably under 959(b), under the Midlantic decision, and the MP Mining decision of the Eleventh Circuit, they're not claiming otherwise. The real question comes down to how are they going to comply with those obligations.

There appears to be no real question that Walter is going to be left with inadequate resources in order to do that, save one perhaps. In fact, their own evidence shows that pretty clearly that -- and I believe this is putting the two -- the chart and Mr. Mesterharm's -- I think I said that right -- testimony together that they're roughly $20 million of reclamation obligations in the State of West Virginia that are providing for a wind-down trust. It's going to be funded with at most $8.4 million. On its face, that's inadequate in addition to the fact that there are many, many other expenses that I don't even believe the reclamation obligations are

included in the $8.4 million.

So the only thing that Walter is doing here today is relying upon the agreement by Coal Acquisition to assume the reclamation obligations. That's the only way that they have to comply.

THE COURT: So if the sale is not approved, how would you propose that they comply?

MR. BARRETT: Your Honor, I'm not standing here saying you should not approve the sale at all. We're never really --

THE COURT: Well, I guess that's my question. What is it you're --

MR. BARRETT: And I'll get to that too, Your Honor.

THE COURT: Okay.

MR. BARRETT: We heard a lot about the terms of that agreement today. It's important to note we're not asking the hedge funds to do anything other than to live up to the terms of that agreement and actually assume those obligations.

We've only asked -- we've asked them to do that directly and to us. We are the regulatory authority. We are the entity to or the State of West Virginia is the entity to whom these obligations are owed. For whatever reason, the hedge funds have refused to make that kind of commitment to the State of West Virginia. They will make it to Walter, but not to the State of West Virginia.

Your Honor, that doesn't give us a whole lot of comfort. As you can imagine, the status of Walter is greatly at issue here. Quite frankly based upon the discussions, I don't know that anyone has a very clear understanding of what is going to happen to these permits, who is going to hold them, who is going to be responsible under SMCRA as they must be to perform those services. And ultimately the question in the DEP's mind is how are the obligations that Coal Acquisition is undertaking going to be enforceable by DEP to whom they are owed ultimately?

Your Honor, I can't stand here and suggest to you that you have the authority to order them to make that kind of a commitment to us. And so really, Your Honor, what I am left with is the statement that the State of West Virginia is relying upon those -- the assumption by Coal Acquisition of those obligations and it is going to continue to watch very, very carefully to ensure that whoever the permitee ends up being in this case has adequate resources available to it in order to complete that reclamation. And I think that's essentially it, Your Honor.

We're not opposing the sale. We do not oppose the sale of the properties to Coal Acquisition. We just want to make sure that our situation is taken care of. It looks as though it might be in the agreement. But for whatever reason Coal Acquisition has been unwilling to commit to the State of

West Virginia that it will in fact perform those obligations. So all we're left with is a statement that we're going to do everything within our power to ensure that these obligations are performed and essentially reserve our rights to continue to regulate these permits and enforce the law in the State of West Virginia.

THE COURT: Thank you.

MR. BARRETT: Thank you, Your Honor.

THE COURT: Mr. Fingerhood, if you're -- are your negotiations complete at this point?

MR. FINGERHOOD: Yes, thank you, Your Honor. And we appreciate the Court's patience. I know on our end, we were doing a lot of cat herding. But I think we got everything together. Our objection on behalf of the EPA really related to the Walter Coke facility. We hope there is a successful sale of that facility. And we previously negotiated some language in the sale order that provides that any new owner -- it's in Paragraph 22, any new owner will be obligated to comply with any RCRA obligations at the facility.

We've also negotiated some language today that will -- that's going to be in Paragraph 27 of the revised sale order that will allow us to establish an environmental response trust which will fund the cleanup of the Walter Coke facility in the event there is not a successful sale.

We've used these at other big bankruptcies, GM,

ASARCO, most recently Mississippi Phosphates. And we think it's an effective way to ensure the sites are cleaned up. It allows EPA to be actively involved in the clean up. There is going to be some funding that's going to be required both for the administrative fees of the environmental response trustee as well as a Chapter 7 trustee and the liquidating trust which is going to sell the Walter Coke assets and then turn over the net proceeds to the environmental response trust. We're going to negotiate a separate agreement that will spell out all the details involved in this. And so I'm pleased to report that we were able to resolve our concerns with respect to Walter Coke.

THE COURT: Thank you.

MR. FINGERHOOD: Thank you.

THE COURT: Mr. Sparks, Mr. Bensinger, any position on behalf of the Committee?

UNIDENTIFIED ATTORNEY: Mr. Bensinger will --

MR. BENSINGER: Good afternoon, Your Honor, Bill Bensinger for the Committee. Your Honor, the Committee, as the Court is aware, has reached an agreement, settlement agreement with both the debtor and now Coal Acquisition, formerly the Steering Committee. So obviously one of the conditions to that agreement is that the sale goes forward. So -- and in accordance with that settlement agreement, we would like to see the sale go forward so that the settlement agreement can be finally consummated.

Nonetheless, we would certainly encourage, as the Court has and continues to encourage the parties to continue to talk. We hope that there can be a deal. Obviously, it's a bad situation for everyone and hopefully the adverse parties here in this proceeding today can get together, as many of the other parties have, and reach an agreement. Thank you, Your Honor.

THE COURT: Thank you, Mr. Bensinger. Mr. Corbett?

MR. CORBETT: Judge, the bankruptcy administrator has no objection to the sale.

THE COURT: Thank you. Any other counsel present in the courtroom wish to be heard? Ms. Kimble?

MS. KIMBLE: Thank you, Your Honor. Jennifer Kimble of Rumberger Kirk & Caldwell on behalf of Airgas USA, LLC we filed an objection to the sale which has been rolled to February 3rd, it being deemed a cure objection. There was another part of that objection related to assets that are owned by Airgas, certain cylinders that are on the debtors' property. We have negotiated with the debtor and have agreed to language to be included in Paragraph H of the order. I have seen a revised order. I don't know that it has been actually filed on the docket or circulated. So we would like to preserve our right to see any final proposed order before its entered by the Court to ensure that our language is included.

Secondly, we're working to resolve the cure objection. And that's obviously an issue for a different day.

But we would also -- there's a number of Airgas contracts which are not being assumed and there is property that the debtor related to those contracts as owned by Airgas. And so we would like to preserve our right to come back to the extent we need to ask the Court for any relief with respect to recovery of that property if and when businesses cease operating or any further time down the road. That's all I have. Thank you.

THE COURT: Thank you, Ms. Kimble. Any other counsel present?

MR. OZOLS: Good afternoon, Your Honor. Robert Ozols, Maynard Cooper on behalf of the debtors. Here today is Mr. Vogtle. He already announced himself on behalf of De-Gas. Here he is. You know Mr. Vogtle and I have discussed the De-Gas objection. And we are in agreement that it is not an objection to sale approval before this Court today and that it relates to assumption and rejection issues which we have also agreed we will address further down this process, you know soon in the process as well. But accordingly, my understanding is, yes, that is not objectioned. So --

MR. VOGTLE: Judge, Jesse Vogtle for De-Gas. Mr. Ozol's correct. My limited objection filed on behalf of De-Gas is not an objection to the sale. We understand that a motion to reject concerning our overriding royalty stream is going to be the vehicle will travel on before this Court as we move down the road on this.

We understand Your Honor's already issued an order in Dominion allowing for the stripping of that overriding royalty. And you know ultimately, we're going to be making the same type of challenge and have an expectation it will probably go up on appeal at some point.

THE COURT: Well, there's already -- I think there are actually already three appeals, one of which is probably going to go away, may go away, two will continue on. And I'm sure there will be more as a result of recent orders.

MR. VOGTLE: Yes, ma'am. We're not here to belabor any of that. But it is real money to our clients. And we think it's a change under Alabama law. We will hopefully a better time to address that to you.

THE COURT: Thank you, Mr. Vogtle.

MR. VOGTLE: Yes, ma'am.

MR. OZOLS: Thank you.

THE COURT: Mr. Humphries?

MR. HUMPHRIES: Thomas Humphries for Dominion Resources. And my position echoes Mr. Vogtle's significantly. We don't think we can stand in the way of the sale going forward so maybe we're in the wrong place. It was really just a protective objection based on the future appeal and how things might change if it works out in our favor in the future. So we all consent to the sale on that basis.

THE COURT: Thank you. Ms. McFarland?

MS. McFARLAND: Yes, ma'am, Your Honor. Mainly we intend to rely on what we've already submitted to the Court. However, we would also join in Ms. Levine's objections to the sale. We represent a number of employees and former employees of Jim Walter who have been injured or received injuries incurred in the scope and work of their business. And I do realize that the workers' comp. is continuing in its normal course. However, the sale of the assets as proposed would relieve Walter Energy and Jim Walter of any responsibility for these injuries to their employees.

We also represent certain individuals who have cases that are still stayed under the bankruptcy, namely some neighboring landowners who have had a trespass and other damages on their property that would have no redress if their liability -- if the liabilities of Walter Energy and the others are cut off at the point of sale.

So therefore, we would just again renew our objection to the sale.

THE COURT: Thank you, Ms. McFarland. Any other counsel?

(No audible response)

THE COURT: Mr. Darby or Mr. Brimmage, anything else?

MR. BRIMMAGE: Your Honor, I have a few quick hits. Your Honor, I'll make this brief but I do have a few quick hits that I want to address and in no particular order. I hope

that's okay with the Court.

Let me start with the Coal Act discussion. A couple of things, Your Honor. One, the Coal Act, free and clear of its obligations, is no different than ERISA and other similar law obligations. I know counsel would have you believe otherwise, but it's simply not the case.

The debtors recite in their reply brief and in their papers otherwise as well. The Fourth Circuit case of Leckie Smokeless -- I hope I'm saying that correct -- but the Court considered all the arguments that are being made right now before the Court. And in that one, the Court entered an order approving the sale to the debtors -- of the debtors assets, free and clear of the Coal Act obligations and of course over the objection of the exact same arguments that are being made today.

Your Honor, for the same rationale and I know the Court has seen it and the Court has read it, so we're not going to go into it.

THE COURT: Also seen it described as an outlier opinion.

MR. BRIMMAGE: I don't know what makes it an outlier. But just calling it an outlier doesn't make it an outlier.

THE COURT: Nonetheless, that's their view.

MR. BRIMMAGE: I understand. I think it's -- there's good rationale to support it.

There's -- I heard speculation and conjecture about what will happen if you deny the motion. But there is simply no evidence before the Court about what will happen if you deny the motion. Not one shred of evidence. All you have is Mr. Goodchild saying, I believe or I don't believe or I think. But there's no evidence. That's just argument. And it's speculative and its conjecture. There's simply no evidence.

Also, I just want to point out this $185 million on the chart, Mr. Masterharm's (sic) chart from Tab 2 --

UNIDENTIFIED ATTORNEY: Mesterharm.

MR. BRIMMAGE: Mesterharm. I'm going to give up. I'm going to give up.

THE COURT: The AlixPartners' dude.

MR. BRIMMAGE: I know, the AlixPartners' dude. That is -- you can look at it a couple ways, but that is coming from either the collateral of the lenders or new money from the lenders. But it's the lenders' money. The lenders have committed to paying those obligations. That's what the arms' length negotiation said. So this isn't some free ride for the lenders. This -- the lenders are putting in real dollars to back this thing.

Your Honor, we would also contend that the Court should not stay the order. There's two reasons, there may be more. One is, obviously, there's going to be no DIP until the order is final and plans can go forward. And that's not a

threat, that's just reality. That's just the way reality works. There's going to be no more money committed to this until Coal Acquisition can go forward with the sale.

And two, there's simply no harm. There's no harm in not staying the order because they can go forward and appeal it. Nothing prevents them from appealing it. It doesn't harm them on the merits at all. So we'd respectfully request Your Honor keep that in there.

Last but not least on the certainty. The negotiations for the APA were long. They were difficult. There were sticking points according to Mr. Zelin. And at the end of the day, they came to what they came for. But there is no obligation or excuse me, there is no condition for financing. That is not a condition to close. There's no out for Coal Acquisition if it can't finance it because in fact, it can. So I think that's a little bit of a red herring to claim that for some reason they wouldn't be able to finance it and we need certainty on whether or not they can. There is no out for financing.

And Your Honor, that's all I have to say unless the Court has some questions.

THE COURT: Thank you. Anything else?

(No audible response)

THE COURT: I think you all very much. Again, I appreciate the preparedness, the professionalness of all the

counsel, particularly those of you I know who have traveled many times to be here. We'll take it all under submission and get you an order as soon as possible. Thank you.

UNIDENTIFIED ATTORNEY: Thank you very much, Your Honor.

UNIDENTIFIED ATTORNEY: Thank you, Judge.

THE COURT: I do have a big consumer docket tomorrow. So if you have stuff here, we can either push it up here, put it in the closet or you all can come get it later today or first thing in the morning.

UNIDENTIFIED ATTORNEY: We're getting it today.

THE COURT: Okay. Thank you.

* * * * *

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

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 (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

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 "CDSP"), 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 CDSP, "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 Minders 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

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

UNITED MINE WORKERS OF AMERICA 1974 PENSION PLAN AND TRUST, *et al.*, Appellants, v. WALTER ENERGY INC., *et al.*, Appellees.	Civil Action No. 2:16-cv-00057-LSC

[PROPOSED] SCHEDULING ORDER

Upon consideration of the motion [Dkt. No. ___] (the "**Motion**") of 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**"), 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, collectively with the 1974 Pension Plan, the 1993 Plan, the Account Plan, and the CDSP, the "**Apellants**") dated January 19, 2016 for, among other things, entry of an order (the "**Order**") approving an accelerated briefing schedule; 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 given under the particular circumstances; and it appearing that no other or further notice need be provided; and upon the record of the Hearing, and after due deliberation thereon, and good cause appearing therefor,

IT IS HEREBY ORDERED that:

1. Appellants' opening brief and appendix shall be filed by **February 1, 2016**;

2. Appellees' designations of additional items to be included in the record shall be filed by **February 8, 2016**;

3. Appellees' brief in response shall be filed by **February 10, 2016**; and

4. Appellants' reply brief shall be filed by **February 17, 2016**.

2. A hearing on the merits of Appellants' appeal shall be held before the Court on **February ___, 2016 at 10:00 a.m. (CST)**.

January __, 2016

_____
UNITED STATES DISTRICT JUDGE