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

In re:	**Chapter 11**
NEW WEI, INC., et al.,	**Case No. 15-02741-TOM7**
Debtors.	**Jointly Administered**

WARRIOR MET COAL, INC.'S RESPONSE TO JAMEL TREADWELL'S MOTION FOR A DECLARATION AND/OR INTERPRETATION OF THE SALE ORDER AND STALKING HORSE AGREEMENT

COMES NOW Warrior Met Coal, Inc., f/k/a Coal Acquisition, LLC, through undersigned counsel, and submits its response (this "**Response**") to the *Motion for a Declaration and/or Interpretation of the Sale Order and Stalking Horse Agreement* [Dkt. No. 3486] (the "**Motion**").

INTRODUCTION

Warrior Met Coal, Inc., respectfully submits the following Response to explain why, as a matter of law, it cannot be held liable for the actions complained of in *Plaintiff's First Amended Complaint, Treadwell v. Fowler*, C.A. No. CV-2016-901264 (Tuscaloosa Cnty. Cir. Ct. March 9, 2017). This Response, and the attached exhibits, will conclusively demonstrate, among other things, that: (i) after Jamell Treadwell's (the "**State Court Plaintiff**") injury, Walter Energy, Inc.[1] back in 2015, declared for bankruptcy and sold its assets "***free and clear***" of any personal injury claims by current and former employees, including the State Court Plaintiff; (ii) the unrelated third party that purchased Walter Energy's assets, Warrior did so with the ***express, written understanding*** that it would not and could not be liable for any pre-sale personal injury claims filed by current or former employees, including the State Court Plaintiff; and (iii) that in

[1] Walter Energy, Inc., together with its debtor subsidiaries ("**Walter Energy**").

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accordance with the Sale Order[2] and the Asset Purchase Agreement,[3] Warrior ***cannot*** be held liable for the pre-sale personal injury claims filed by the State Court Plaintiff. Consequently, Warrior requests that the Motion be denied.

BACKGROUND

A. The Original Workers Comp. Litigation.

Walter Energy filed for bankruptcy protection on July 15, 2015 (the "**Petition Date**"). Pre-petition, the State Court Plaintiff was injured "when a rock dust machine exploded causing fragments to hit [the State Court Plaintiff] in the head." *Complaint for Workers Compensation Benefits, Treadwell v. Alabama Workers Compensation, Self-Insurers Guaranty Assoc.*, C.A. No. CV-2016-903643 (Jeff. Cnty. Cir. Ct. Sept. 30, 2016) (the "**Workers Comp. Action**").

The State Court Plaintiff filed the Workers Comp. Action against Walter Energy's insurer, the Alabama Workers Compensation Self-Insurers Guaranty Association (the "**Guaranty Association**"), seeking redress for his injuries. *See id.*, at 1 ("The Defendant, Alabama Workers Compensation Self-Insurers Guaranty Association is the entity created under Alabama law to stand in the place of insolvent self-insured companies who have been declared insolvent.").

The State Court Plaintiff settled the Workers Comp. Action, as evidenced by that certain *Settlement Agreement and Joint Petition for Approval of Settlement* (the "**Settlement Agreement**

[2] The "**Sale Order**" refers to the 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 [Dkt. No. 1584]. A submission of exhibits including the Sale Order was filed simultaneously with this Response (the "**Documentary Submission**"), and is attached thereto as **Exhibit A**.

[3] The "**Asset Purchase Agreement**" refers to that certain stalking horse asset purchase agreement (including all exhibits, schedules and ancillary agreements related thereto, and as amended and in effect, by and among Walter Energy and its debtor subsidiaries and Coal Acquisition, LLC n/k/a Warrior Met Coal, Inc. ("**Warrior**").

and Release"). C.A. No. CV-2016-903643 (Jeff. Cnty. Cir. Ct. Oct. 13, 2017).[4] By virtue of the aforementioned settlement, the State Court Plaintiff released and relieved Walter Energy, its defense having been assumed by the Guaranty Association, from any and all liability arising out of the complained of injury and the State Court Plaintiff's employment with Walter Energy, in exchange for $25,000.00 and the payment of future reasonable and necessary medical benefits. *Findings of Fact and Judgment*, at 1–2, C.A. No. CV-2016-903643 (Jeff. Cnty. Cir. Ct. Oct. 13, 2017).[5]

B. The 363 Sale to Warrior and the Sale Order.

Prior even to the State Court Plaintiff filing the Workers Comp. Action, Walter Energy and Warrior Met had executed the Asset Purchase Agreement, pursuant to which Walter Energy agreed to sell substantially all of Walter Energy's Alabama coal and methane gas operations (the "**Core Asset Sale**"), subject to higher or better offers.[6] Under the Asset Purchase Agreement, appended to the Sale Motion, Warrior agreed to purchase, in the absence of higher and better offers, Walter Energy's assets free and clear of any and all liens, liabilities, and other claims and interests at the time of closing, and without any liability as successor to Walter Energy.

Specifically, the Sale Motion and the Asset Purchase Agreement provide:

[4] A copy of the Settlement Agreement and Release is attached to the Documentary Submission as **Exhibit B**.

[5] A copy of the Findings of Fact and Judgment is attached to the Documentary Submission as **Exhibit C**.

[6] *See* Debtors Motion for (A) an Order (I) Establishing Bidding Procedures for the Sale(s) of All, or Substantially All, of the Debtors Assets; (II) Approving Bid Protections; (III) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Approving Form and Manner of the Sale, Cure and Other Notices; and (V) Scheduling an Auction and a Hearing to Consider the Approval of the Sale(s); (B) Order(s) (I) Approving the Sale(s) of the Debtors Assets Free and Clear of Claims, Liens and Encumbrances; and (II) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Certain Related Relief Fee Amount [Dkt. No. 993] (the "**Sale Motion**"). The Sale Motion was filed November 5, 2015.

> "[T]he Successful Bidder(s) should not be liable under any theory of successor liability relating to the Debtors' businesses, but should hold the Subject Assets free and clear." Sale Motion, at 37 ¶49.
>
> "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*** . . .)[.]" Asset Purchase Agreement, at 75 § 7.12 (emphasis added).
>
> [U]pon the Closing, Buyer shall not be deemed to: (a) be the successor of or successor employer . . . to Sellers . . . ; (b) have, *de facto*, or otherwise, merged with or into Sellers; (c) be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers; or (d) 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 this Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, ***the Parties intend that Buyer shall not be liable for any Encumbrances . . . against any Seller or any of its predecessors or Affiliates, and that Buyer have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date or whether fixed or contingent, existing or hereafter arising, with respect to the Business, the Acquired Assets or any Liabilities of any Seller arising prior to the Closing Date***. The Parties agree that the provisions substantially in the form of this Section 8.9 shall be reflected in the Sale Order. Asset Purchase Agreement, at 81–82 § 8.9 (emphasis added).[7]

A hearing was held on the Sale Motion in the Bankruptcy Court on January 6, 2016. The State Court Plaintiff received notice of the Sale Hearing and did not object to the Sale Motion. Following the Sale Hearing, the Bankruptcy Court entered the Sale Order on January 8, 2016, which authorized and approved Walter Energy's sale of substantially all of their assets free and clear of all liens, claims, encumbrances and other interests to Warrior pursuant to the terms of the Asset Purchase Agreement and its related amendments, and without any liability to Warrior on account of any successor or transferee liability in respect of the Acquired Assets or the Business or the operation of the Acquired Assets or the Business prior to and including the Closing Date, in

[7] Section 8.9 is titled "No Successor Liability." Asset Purchase Agreement, at 81.

each case as defined and provided for in the Asset Purchase Agreement.[8] The State Court Plaintiff did not appeal the Sale Order.

The Sale Order found, *inter alia*, that the sale to Warrior: (i) was fair and reasonable; (ii) was the highest and/or best offer for the Acquired Assets; and (iii) would provide a greater recovery for Walter Energy's estate and its creditors than would be provided by any other practical available alternative. *See* Sale Order, at pp. 5, 7–8 ¶¶ I, P–Q. In addition, the Sale Order found that "[t]he 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)." *Id.* at 7 ¶ O. Further, the Sale Order found that "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." *Id.*

The Court also found that Warrior "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 . . . 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." *Id.* 8 ¶ Q.

By virtue of the Sale Order, the Court ruled that Warrior is not a successor to Walter Energy, nor shall it have any successor or transferee liability in connection with the Business of the Debtors or any of the Acquired Assets from the Debtors. *Id*. at pg. 11 ¶ U. In the same section,

[8] *See generally*, Sale Order. In each case, Warrior's purchase of the Acquired Assets "free and clear of all liens, claims, encumbrances, and other interests" came subject to Assumed Liabilities and Permitted Encumbrances. The State Court Plaintiff believes its claim is an Assumed Liability, however, as discussed *infra* in Section C it is not.

the Court also found that Warrior "would not have acquired the Acquired Assets but for the foregoing protections against potential claims based upon "successor liability" theories. *Id.* at 12 ¶ U.

In addition to ruling that Warrior purchased the Acquired Assets free and clear of claims, liens, and encumbrances, *id.* at 10 ¶ R, the Court further ruled that the Sale Order "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[.]" *Id.* at 22 ¶18.

Following entry of the Sale Order, the Core Assets Sale closed on March 31, 2016 (the "**Closing Date**"). *See Notice of Amended Stalking Horse Agreement and Closing of "Core" Sale Transaction* [Dkt. No. 2235].

C. The Renewed State Court Litigation

On November 18, 2016, the State Court Plaintiff commenced an action (the "**Renewed State Court Litigation**") in the Circuit Court of Tuscaloosa County against sixteen (16) fictitious defendants. *See Complaint, Treadwell v. Fowler*, C.A. No. 2016-CV-901264 (Tuscaloosa Cnty. Cir. Ct. November 18, 2016) (the "**Complaint**"). The Complaint alleges six causes of action in connection with the pre-petition injury discussed above.

A trial in the Renewed State Court Litigation was scheduled for August 5, 2019 (the "**Trial Date**"). Prior to the Trial Date, counsel for the State Court Plaintiff contacted Warrior demanding that Warrior assume the liability of defending and satisfying any future judgment against the defendants in the Renewed State Court Litigation.[9] Most recently, counsel for Warrior responded

[9] Counsel for the State Court Plaintiff has contacted Warrior demanding that Warrior assume the defense of the defendants in the Renewed State Court Litigation and satisfy any eventual judgment. Warrior has informed counsel

to the State Court Plaintiff explaining that its desired imposition of liability on Warrior was in direct violation of the Sale Order, and directing the State Court Plaintiff to the *Order Granting Motion to Enforce Order Authorizing And Approving Sale Of Substantially All Of The Debtors Assets And The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases* [Dkt. No. 3032].[10] The State Court Plaintiff filed the Motion and successfully moved to stay the Renewed State Court Litigation the very next week.

ARGUMENT

A. The Court Should Enforce the Sale Order to Bar the Relief Requested in the Motion.

As noted above, by the express terms of the Asset Purchase Agreement, Warrior undertook to purchase substantially all of Walter Energy's assets without any liability as successor to Walter Energy, or on account of any merger or deemed merger with or into Walter Energy or Walter Energy's enterprises, or otherwise on account of any acts or omissions of Walter Energy occurring prior to the Closing Date. *See* Asset Purchase Agreement, at 81 §8.9. In approving the Asset Purchase Agreement, the Court made express findings of fact and conclusions of law to this effect with respect to the Sale, Walter Energy and Warrior, as more specifically set forth in the Sale Order. *See* Sale Order, at 11 ¶ U.

The State Court Plaintiff's assertions that Warrior is liable to defend and satisfy any eventual judgment against the defendants in the Renewed State Court Litigation, based solely on pre-petition conduct of Walter Energy, directly contravenes the agreement of Walter Energy and

to the State Court Plaintiff that it will not and is under no legal obligation to do so. Warrior does not believe the Motion was filed in good faith and intends to serve a sanctions motion on the State Court Plaintiff pursuant to Fed. R. Civ. P. 11.

[10] A copy of this letter, which is dated July 25, 2019 is attached to the Documentary Submission as **Exhibit D**.

Warrior in the Asset Purchase Agreement, and the express findings and rulings of this Court in the Sale Order.

Pursuant to the Sale Order, this Court specifically ruled that Warrior would have no liability or other obligation of Walter Energy arising under or related to any of the Acquired Assets or the Business, which were transferred to Warrior free and clear of all Interests.[11] This included specifically any liability in respect of "Liabilities with respect to Actions and Proceedings . . . giving rise to Liability against the Business or the Acquired Assets prior to the Closing Date even if instituted after the Closing Date other than the Acquired Actions[.]" Asset Purchase Agreement, at 30 §2.4(b). Further, with the exception discussed above, *see* fn.8, the Sale Order served as "a determination that . . . 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[.]" Sale Order, at 22 ¶18.

There is simply no ambiguity—the Court has already ruled that Warrior is not a successor-in-interest to Walter Energy and that Warrior shall have no successor or transferee liability. *See* Sale Order, at 11 ¶U, 21 ¶17. Indeed, the Sale Order sets forth in great detail the Court's findings of fact, conclusions of law, and rulings with respect to the transaction, including with respect to the finding of no successor or transferee liability, *id.*, pursuant to which the Court expressly ruled that Warrior is not a successor to Walter Energy, nor shall it have any successor or transferee liability in connection with the Business of the Debtors or any of the Acquired Assets from the Debtors. *Id.* at 11 ¶U(v).

[11] Capitalized terms not otherwise defined herein shall have the meaning set forth in the Asset Purchase Agreement.

Moreover, this Court entered the Sale Order only after proper notice and a full hearing on the Sale Motion—notice which the State Court Plaintiff received. Within two days after the close of argument and conclusion of the Sale Hearing, the Court entered the Sale Order approving the sale of the Acquired Assets to Warrior free and clear of all Interests,[12] including in respect of any Actions or Proceedings based on occurrences or events prior to the Closing Date, pursuant to the terms of the Asset Purchase Agreement.

Accordingly, the Court has fully addressed the issue of successor liability in a procedurally appropriate manner pursuant to a properly noticed Sale Hearing, at which the State Court Plaintiff had an opportunity to address any objection to the Court, and the Court's Sale Order now governs and constitutes a final order of this Court. *In re Vista Marketing Grp. Ltd.*, No. 12-B-83168, 2014 WL 1330112, at *5 (Bankr. N.D. Ill. Mar. 28, 2014) ("Sale orders . . . are final, appealable orders, and once the time for appeal has expired, a party to the sale proceeding cannot collaterally attack it.") (*citing Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 543 (7th Cir. 2003)).

Consistent with the Sale Order entered in this case, relevant case law also confirms that Warrior cannot be held liable for any alleged conduct of Walter Energy pursuant to a section 363(f) sale. *See In re Trans World Airlines, Inc.*, 322 F.3d 283, 292 (3d Cir. 2003) (hereinafter "**TWA**") ("To allow the claimants to assert successor liability claims against [the purchaser] while limiting other creditors' recourse to the proceeds of the asset sale would be inconsistent with the Bankruptcy Code's priority scheme."); *see also In re Gen. Motors Corp.*, 407 B.R. 463, 505 (Bankr. S.D.N.Y. 2009) ("[Section] 363(f) may appropriately be invoked to sell free and clear of successor liability claims."); *see also In re Christ Hospital*, No. 12-12906 (TBA), 2014 WL 2135942, at *3 (Bankr. D.N.J. May 22, 2014) (discussing TWA and "its rationale" and finding

[12] *See supra* fn.8.

that the "protection afforded by [section] 363 and the injunction contained in the Sale Order prevent plaintiff's claims[.]").

Moreover, the law is clear that debtors can sell assets free and clear of successor liability claims. In *In re Ormet Corp.*, Judge Walrath noted that "[i]t is the express provisions of section 363(f) which allow the sale of the Debtors' assets free and clear of any claims, including successor liability claims as . . . specifically held in *TWA*." No. 13-10334 (MWF), 2014 WL 3542133, at *4 (Bankr. D. Del. July 17, 2014). In specifically holding that the express language of section 363(f) of the Bankruptcy Code allows for the sale of assets free and clear of successor liability, the *Ormet* Court stated:

> Rather, the Court finds that the instant case is controlled by the Third Circuit's decision in *TWA* (and supported by the Fourth Circuit's decision in *Leckie*) both of which actually involved sales of debtors' assets free and clear under the express language of section 363(f). Both Courts concluded that section 363(f) extinguished successor liability claims. Further, both Courts expressed concern that making an exception to the provisions of section 363(f) for successor liability claims would depress the prices that parties bid for a debtor's assets. They noted the important policy inherent in the Bankruptcy Code to maximize the value of the debtor's assets for distribution to creditors in accordance with the priority scheme in the Code.

Id. at *3.

Similarly, in *In re NE Opco, Inc.*, the court reinforced the black letter law establishing that successor liability claims may be barred by section 363(f) findings stating:

> By its terms, § 363(f) cleanses the transferred assets of any attendant liabilities, and allows the buyer to acquire them without fear that an estate creditor can enforce its claim against those assets . . . . In addition, § 363(f) has been interpreted to authorize the bankruptcy court to grant *in personam* relief, similar to the discharge under Bankruptcy Code § 1141(d), that exonerates the buyer from successor liability, including liability for tort claims. As such, section 363(f)'s "free and clear" provisions serves two policies: First, it preserves the priority scheme of the Bankruptcy Code and the principle of equality of distribution by preventing a plaintiff from asserting *in personam* successor liability against the buyer while leaving other creditors to satisfy their claims from the proceeds of the asset sale. Second, it maximizes the value of the assets that are sold.

No. 13-11483 (CSS), 2014 WL 3884217, at *4 (Bankr. D. Del. Aug. 8, 2014) (internal citations omitted).

As noted by the court in *Ormet*, and reinforced in *NE Opco*, failure to enforce the sale of Walter Energy's assets free and clear of all liens, claims, encumbrances and other interests -- and allowing unhappy parties to continue to assert and pursue successor liability claims – could chill future sales of debtors' assets and conflicts with the broad and important policy goals of section 363(f). *See Ormet*, 2014 WL 3542133 at *3 (citing cases expressing "concern that making an exception to the provisions of section 363(f) for successor liability claims would depress the prices that parties bid for a debtor's assets" and noting the "important policy inherent in the Bankruptcy Code to maximize the value of the debtor's assets for distribution to creditors in accordance with the priority scheme in the Code") (internal citations omitted); *see also NE Opco*, 2014 WL 3884217 at *4 (stating that the '"free and clear' findings in section 363(f) serves two policies – both which are met here: [creditors] will not be able to circumvent the priority scheme of the Bankruptcy Code by asserting successor liability claims against [the purchaser] while other creditors satisfy their claims against the [d]ebtors; and the [d]ebtors received the maximum price for the assets because [the purchaser] was given some comfort through the injunction language contained in the Sale Order[.]") (internal citations omitted).

As courts have repeatedly held, protecting purchasers from successor liability, and the threat of ongoing and unwarranted litigation such as this, maximizes the price purchasers are willing to pay for assets and benefits all stakeholders in a bankruptcy case. *See In re Dixie Pellets LLC*, 2009 WL 8189341 (Bankr. N.D. Ala. Sept. 13, 2009) (approving sale of substantially all of Debtor's assets free and clear of all liens, including but not limited to "all rights or claims based on any theory or principle of successor liability."); *see also Molla v. Adamar of N.J., Inc.*, No. 11-

6470 (JBS/KMW), 2014 WL 2114848, at *4 (D.N.J. May 21, 2014) (granting motion to dismiss filed by section 363(f) purchaser and citing cases supporting section 363(f) sales on the basis that "[a]bsent entry of the Bankruptcy Court's order providing for a sale of [debtor's] assets free and clear of the successor liability claims at issue, [the purchaser] may have offered a discounted bid" and emphasizing that "the potential chilling effect of allowing a tort claim subsequent to the sale would run counter to a core aim of the Bankruptcy Code, which is to maximize the value of the assets and thereby maximize potential recovery to the creditors") (citing *TWA*, 322 F.3d at 292-93 and *Douglas v. Stamco*, 363 F. App'x 100, 102-03 (2d Cir. 2010)).

Here, Warrior provided substantial consideration in its purchase of the Acquired Assets and provided substantial benefit for the holders of all Interests, in consideration for, *inter alia*, the specific release of any potential claims of successor or transferee liability. Moreover, as reflected in the Sale Order, Warrior would not have entered into the Asset Purchase Agreement and would not consummate the transactions contemplated thereby if the Sale were not free and clear of all Interests, or if Warrior would have any liability whatsoever with respect to, or be required to satisfy in any manner claims based on any successor or transferee liability. *See* Sale Order, at 8 ¶ Q.

To allow the State Court Plaintiff to now assert successor liability against Warrior would be wholly inapposite of the express findings and rulings of this Court in the Sale Order and render section 363(f) meaningless in respect of the sale to Warrior. *See, e.g.*, *In re Chrysler LLC*, 405 B.R. 84, 111 (Bankr. S.D.N.Y. 2009) (holding that any potential successor or transferee liability claims against the debtors could be extinguished by the sale and commenting that "[t]he policy underlying section 363(f) is to allow a purchaser to assume only the liabilities that promote its commercial interests"), *aff'd*, 576 F.3d 108 (2d Cir. 2009), *vacated as moot sub nom. Ind. State Police Pension Trust v. Chrysler*, 558 U.S. 1087 (2009); *see also Ormet*, 2014 WL 3542133 at *4

("It is the express provisions of section 363(f) which allow the sale of the Debtors' assets free and clear of any claims, including successor liability claims[.]"); *NE Opco*, 2014 WL 3884217 at *5 (holding that "[t]his progression of cases [citing *TWA* and its progeny] leads the Court to find that . . . the Sale Order and injunction contained therein bars [plaintiff] from asserting pre-Closing claims . . . related to . . . [the] purchase of assets from the Debtors").

This Court should not allow any willful disregard of its explicit findings and rulings in respect of successor liability, or any obvious frustration of the important policy objectives that underlie section 363(f) of the Bankruptcy Code by allowing the State Court Plaintiff to continue to act in contravention of the Sale Order. It is well settled that a "Bankruptcy Court plainly ha[s] jurisdiction to interpret and enforce its own prior orders." *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009). The Sale Order itself supports the ability of the Court to enforce its terms. Specifically, in paragraph 53 of the Sale Order, this Court retained jurisdiction to, among other things, interpret, implement, and enforce the provisions of the Sale Order and the Asset Purchase Agreement[.]" *See* Sale Order, at 28 ¶ 37.

Accordingly, Warrior respectfully requests that the court confirm, once again, consistent with the Sale Order and other courts faced with this issue, that Warrior is not a successor to Walter Energy and does not have successor or transferee liability for any acts or conduct of the Debtors that occurred prior to the Closing Date, including specifically in respect to forcing Warrior to defend and satisfy any eventual judgment against the defendants in the Renewed State Court Litigation.

B. The Sale Order Enjoins the State Court Plaintiff from Asserting Successor Liability Against Warrior.

In approving the Asset Purchase Agreement, the Court made express findings of fact and conclusions of law with respect to the Core Asset Sale, Walter Energy, and Warrior, all as more

specifically set forth in the Sale Order. In this regard, according to the plain terms of the Sale Order, the State Court Plaintiff cannot now assert or pursue successor or transferee liability claims against Warrior—and is in violation of the Sale Order for asserting and pursuing such claims against Warrior—as Warrior has no liability as alleged successors of the Debtors.

In addition to the foregoing, in the Sale Order, the Court explicitly enjoined the commencement or continuation of any actions, proceedings or claims against Warrior related to any successor or transferee liability. *See* Sale Order, at 18 ¶9. Among other things, parties are specifically barred and permanently enjoined by the Sale Order from prosecuting any and all claims or obligations of Walter Energy against Warrior, including any claims on any theory of successor or transferee liability, and in respect to operation of the Acquired Assets or the Business of Walter Energy prior to the Closing Date.

The State Court Plaintiff cannot now seek to ignore the specific injunctive relief granted Warrior by the Sale Order by asserting alleged successor liability claims. *See Celotex Corp. v. Edwards*, 514 U.S. 300, 313 (1995) ("If respondents believed the Section 105 Injunction was improper, they should have challenged it in the Bankruptcy Court . . . . If dissatisfied with the Bankruptcy Court's ultimate decision, respondents can appeal . . . . Respondents chose not to pursue this course of action, but instead to collaterally attack the Bankruptcy Court's Section 105 Injunction . . . . This they cannot be permitted to do without seriously undercutting the orderly process of the law.") (citations omitted). In light of the finality of the Sale Order and the injunctive relief provided for therein, Warrior respectfully requests that this Court, once again, enjoin the State Court Plaintiff from asserting in any manner or forum any successor or transferee liability claims against Warrior.

C. Violations of MSHA do not Create a Private Cause of Action under State Tort Law.

As discussed above and throughout, the relief sought by the State Court Plaintiff, through the Motion, is tantamount to a request by this Court to impose successor liability on Warrior as a result of "Actions and Proceedings . . . giving rise to Liability against the Business . . . prior to the Closing Date even if instituted after the Closing Date"—a class of assets explicitly excluded under the Asset Purchase Agreement. *See* Asset Purchase Agreement, at 30 §2.4(b). In a transparent attempt to camouflage this knowing and willful violation of the express terms of the Sale Order authorizing the Asset Purchase Agreement, the State Court Plaintiff alleges that the obligation of Warrior to defend and satisfy any eventual judgment against the defendants in the Renewed State Court Litigation is an "Assumed Liability" under the Asset Purchase Agreement. It is not.

The Asset Purchase Agreement provides that—

> The following Liabilities of Sellers (and only the following Liabilities) shall constitute, without duplication, the Assumed Liabilities: . . . (i) all Liabilities to the extent arising out of or relating to: (i) compliance with any Mining and Mine Safety Law . . . related to the Acquired Assets[.]

Asset Purchase Agreement, at 28 §2.3(i). The pertinent part of "Mining and Mine Safety Law" as referenced in the Motion is defined under the Asset Purchase Agreement to mean, "all Legal Requirements relating to Mining and Mining safety, including (ii) MSHA[.]" Asset Purchase Agreement, at 14. However, while the State Court Plaintiff believes that he succeeds to rights through this provision, the opposite is true because alleged violations under MSHA do not create any private cause of action for the State Court Plaintiff.

In *Baines v. U.S. Pipe and Foundry Co., Inc.*, 463 F. Supp. 107 (N.D. Ala. 1978), the plaintiff was employed by an independent contractor hired by U.S. Pipe to construct a coal mine and was injured when he fell through an unguarded hole in a “work deck.” The plaintiff alleged that U.S. Pipe breached its duty to provide him with a reasonably safe place to work. *Id*. at 109.

He argued that although the owner of the premises is not normally responsible for the actions of its independent contractor, U.S. Pipe had a "nondelegable statutory duty" to provide for his safety under the Mine Act. *Id*. The court explained, "[t]hat duty, however, *was owed to the federal government and not to [the plaintiff]*." *Id*. at 110 (emphasis added). "[T]hough the duty to comply with the Act may not be delegated to an independent contractor, it is not owing to [the plaintiff]. There being no duty to [the plaintiff], plaintiffs cannot recover for its breach." *Id*.; *see also Cobos v. Stillwater Mining Co.*, CV-11-18, 2012 WL 6018147, *5 (D. Mont. Dec. 3, 2012) (MSHA Program Policy Manual does not create a duty and cannot be the basis for a state law cause of action against a mine owner).

Outside of Alabama, the same issue was also addressed in *King v. Island Creek Coal Co*., 339 F. Supp. 2d 735, 741 (W.D. Va. 2004). Administrators of the estate of the decedent -- an employee of an independent contractor -- claimed that a mine owner was liable "because it did not comply with regulations of the federal Mine Safety and Health Administration . . . and because its failure to comply caused [decedent's] death." *Id*. at 738. In granting summary judgment in favor of the mine owner, the federal court explained:

> The Mine Act does not create a private cause of action for violation of its safety regulations. Thus, while a mine operator may be responsible for the safety violations of its independent contractor when MSHA seeks to administratively enforce a withdrawal order, in a state-law negligence action such as this one, the Mine Act cannot be the source of the duty.

Id. at 741 (emphasis added).

Through the analysis provided by the above-referenced cases, the clear error in the Motion is laid bare. The State Court Plaintiff contends that—

> [T]he Underlying Action arises out of and relates to the failure to comply with Mining and Mine Safety Laws, it represents precisely the sort of action for which Warrior Met expressly assumed liability in the provision set out above.

Motion, at 7 ¶20. This is incorrect. The "Underlying Action" is a lawsuit by a private citizen against employees of Walter Energy and consequently, the "Underlying Action" cannot represent Liabilities arising out of compliance (or lack thereof) with any Mining and Mine Safety Law because such liabilities are owed to the federal government and not the State Court Plaintiff. Thus, the necessary result requires that the Assumed Liabilities related to compliance with any Mining and Mine Safety Law only be found, if at all, to refer to Liabilities owing to the federal government on account of MSHA violations. It is clear that under this result, no rights are granted to the State Court Plaintiff through the Assumed Liabilities delineated in the Asset Purchase Agreement.

It should also not be lost on this Court that while the State Court Plaintiff asserts in his motion that the "Underlying Action arises out of the defendants' failure to comply with [30 CFR § 57.13100(b)]", the State Court Plaintiff's First Amended Complaint, makes no reference to this regulation. In fact, it does not refer to a violation of any Mining and Mine Safety Law. Rather, his claim arises from Alabama Code § 25-5-11(b) which permits an employee to bring a cause of action against a co-employee where an injury results from the willful conduct of the co-employee. Even if the State Court Plaintiff could establish a Mining and Mine Safety Law violation, it is not sufficient to establish willful misconduct as required by Alabama Code § 25-5-11(b). As such, the underlying claim is not, as alleged by the State Court Plaintiff, based on a violation of Mining and Mine Safety Law.

Accordingly, Warrior respectfully requests that the court find that neither the Assumed Liabilities, nor any provision under the Asset Purchase Agreement requires Warrior to defend and satisfy any eventual judgment against the defendants in the Renewed State Court Litigation.

D. The Relief Requested in the Motion is Time-Barred Because The State Court Plaintiff Failed to File A Proof of Claim.

The State Court Plaintiff failed to file a proof of claim in Walter Energy's bankruptcy case prior to the claims bar date. Having failed to file a proof of claim for his pre-petition injury, the State Court Plaintiff may not now seek to avail himself of rights established for a narrow and circumscribed class of creditors that properly participated in Walter Energy's bankruptcy case. As a result, even if this Court finds that Walter Energy would otherwise be liable to defend and satisfy any eventual judgment against the defendants in the Renewed State Court Litigation—which it should not—the State Court Plaintiff is precluded from exercising such rights given his failure to file a proof of claim.

E. No Applicable Liability Exists following the Resolution of the Workers Comp. Action.

The State Court Plaintiff settled and released any claim with respect to liability of Walter Energy through the Settlement Agreement and Release. As a result, Walter Energy's liability was fully resolved according to the terms of this agreement. Without respect to the discussion above showing the inapplicability of the Assumed Liabilities to the Renewed State Court Litigation, there can be no successor liability or assumption of liabilities where the liability of Walter Energy, in the first place, was resolved. There being no liability remaining for Warrior to take up, Warrior cannot be held to have assumed such liability through the Asset Purchase Agreement or otherwise.

F. The State Court Plaintiff Should Pay Warrior's Attorney's Fees, Costs, and Expenses.

As stated earlier, the Court has jurisdiction to enforce its own orders. *In re Tougher Indus., Inc.*, Nos. 06-12960, 07-10022, 2013 WL 1276501, at *5 (Bankr. N.D.N.Y. Mar. 27, 2013) ("[B]ankruptcy courts have jurisdiction to enforce and interpret their own prior orders."). Moreover, section 105(a) of the Bankruptcy Code provides that this Court may take any action necessary to enforce the Sale Order and prevent an abuse of process. *See In re Chateaugay Corp.*,

213 B.R. 633, 640 (S.D.N.Y. 1997) ("[Section 105] codif[ies] the bankruptcy court's inherent power to enforce its own orders"). The State Court Plaintiff should not be allowed to circumvent the Sale Order -- once again, a clear order that was entered by this Court after notice and a hearing.

By now asserting successor liability against Warrior, the State Court Plaintiff has knowingly and willfully violated the Sale Order. Indeed, the knowledge of this violation is evidenced by the communications counsel for the State Court Plaintiff has forced Warrior to participate in, which resulted in Warrior informing counsel that such actions were precluded by virtue of the Sale Order. As such, the State Court Plaintiff should be required to pay Warrior's attorney's fees, costs, and expenses. *See In re Baker*, 195 B.R. 309, 321 (D.N.J. 1996) (holding that party in willful violation of a sale order was required to provide compensation for the total amount of damages resulting from his conduct); *see also Cont'l Airlines*, 236 B.R. at 330-31 (holding that the party seeking to enforce a claim that was discharged by a confirmed plan was required to pay fees and costs incurred for knowingly and willfully violating the confirmation order), *aff'd*, 2000 WL 1425751 (D. Del. Sept. 12, 2000), *aff'd*, 279 F.3d 226 (3d Cir. 2002); *In re Fluke*, 305 B.R. 635, 644 (Bankr. D. Del. 2004) (holding that an award of counsel's fees and expenses was appropriate given the court's finding that plaintiff "willfully attempted to 'end run' around the discharge").

Based on the provisions in the Sale Order, there can be no dispute that this Court has clearly determined that, contrary to the State Court Plaintiff's allegations and assertions, Warrior is not a successor to or continuation of Walter Energy, nor does the sale of Walter Energy's assets to Warrior amount to a consolidation, merger or deemed merger between Warrior and Walter Energy such that Warrior has successor any transferee liability. The Court's ruling could not be clearer or more precise in this regard, and the State Court Plaintiff's conduct evidences a willful disregard

thereof. Accordingly, and for the foregoing reasons, Warrior also seeks an award of attorneys' fees, costs and expenses against the State Court Plaintiff in an amount to be determined by the Court.

CONCLUSION

As previously held by this Court in the Sale Order, Warrior has no successor or transferee liability for any acts or conduct of Walter Energy that occurred prior to the Closing Date, nor on account of any consolidation, merger or *de facto* merger of Walter Energy its estate.

The State Court Plaintiffs allegations and assertions of successor or transferee liability are in direct contravention of the Sale Order, and the State Court Plaintiff has knowingly and willfully violated this Court's Sale Order by making such allegations and assertions. The integrity of the bankruptcy process, the policy behind section 363(f) sales, and the finality of court orders, all depend on the ability of section 363(f) purchasers to rely on properly entered sale orders, without having to incur the cost and expense of relitigating successor or transferee liability post-sale, and the Court's powers are expressly designed to prevent the type of manifest derogation of section 363(f) sales in which the State Court Plaintiff is now engaged.

Accordingly, Warrior respectfully requests that this Court (a) confirm that Warrior has no successor or transferee liability under any theory in respect of the Sale, (b) direct the State Court Plaintiff to comply with the Sale Order and enforce the injunctive provisions therein against the State Court Plaintiff, and (c) require the State Court Plaintiff to pay Warrior's attorneys' fees, costs and expenses incurred as a result of such conduct in an amount determined by the Court.

Dated: August 22, 2019

/s/ Michael Leo Hall

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 22, 2019, I electronically filed a true and correct copy of the foregoing with the Clerk of the United States Bankruptcy Court for the Northern District of Alabama by using the CM/ECF system and a copy of the foregoing document has been provided by electronic filing to all persons receiving notice by CM/ECF

/s/ Michael Leo Hall
Michael Leo Hall