

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

In re:

NEW WEI, INC., et al.,

Debtors.

Chapter 11

Case No. 15-02741-TOM7

Jointly Administered

**WARRIOR MET COAL, INC.'S DOCUMENTARY
SUBMISSION IN SUPPORT OF 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 this documentary submission in support of *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* [Dkt. No. 3497].

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

EXHIBIT A

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

In re:	)	
	)	Chapter 11
	)	
WALTER ENERGY, INC., <i>et al.</i>	)	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
Case: 15-02741-TOM11

User: scallies
Form ID: pdf000

Date Created: 1/8/2016
Total: 240

Recipients submitted to the BNC (Bankruptcy Noticing Center) without an address:

cr Delaware Trust Company, as Indenture Trustee
aty Lisa Beckerman

TOTAL: 2

Recipients of Notice of Electronic Filing:

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cr	G. R. Harsh Sr., Real Estate Holdings, LLC	c/o Milton Harsh	110 Malaga Avenue	Homewood, AL
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	35201			
cr	CONSOLIDATED PIPE & SUPPLY CO., INC.	c/o Marvin E. Franklin	Najjar Denaburg, P.C.	2125
	Morris Avenue Birmingham, AL 35203			
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cr	Automotive Rentals, Inc.	c/o McGlinchey Stafford	10407 Centurion Pkwy. N.	Suite
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cr	Jefferson County Department of Health	and/or Mark E. Wilson, MD	1400 Sixth Avenue	
	South Birmingham, AL 35233			
cr	Wesley West Minerals, Ltd.	c/o Robert A. Morgan	ROSEN HARWOOD, PA	2200 Jack Warner
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intp	Ramsay McCormack Land Co. Inc.	c/o Lee R. Benton	Benton & Centeno, LLP
	North	Birmingham, AL 35203	2019 3rd Avenue
intp	Dominion Resources Black Warrior Trust by and through its Trustee, Southwest Bank	c/o Lee R.	
	Benton	Benton & Centeno, LLP	2019 3rd Avenue North
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cr			Birmingham, AL 35222
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	20037		Washington, DC
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	Tower	New York, NY 10036-6745		

TOTAL: 150

EXHIBIT B

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION

JAMELL TREADWELL,

Plaintiff,

VS.

ALABAMA WORKERS COMPENSA-
TION
SELF-INSURERS GUARANTY
ASSOCIATION,

Defendant.

CIVIL ACTION NO. CV-2016-903643

FILED IN OFFICE CIRCUIT CIVIL DIVISION OCT 13 2017 ANNE-MARIE ADAMS CLERK

SETTLEMENT AGREEMENT AND JOINT PETITION
FOR APPROVAL OF SETTLEMENT

1. This cause came before the Court to hear and approve if appropriate the settlement reached between the parties. The parties appeared, together with their counsel of record, and informed the Court that they had reached a settlement of this disputed and contested claim.

2. As a preliminary matter, the Court notes that prior to filing of this settlement agreement, the Jim Walter Resources, Inc. (hereinafter "JWR"), filed for bankruptcy and was eventually declared insolvent by the Department of Labor, State of Alabama. Thereafter, the Alabama Worker's Compensation Self-Insurers Guaranty Association ("Guaranty Association") assumed the defense of claims for Workers Compensation benefits regarding previous JWR employees.

3. The parties, Jamell Treadwell (hereinafter the "plaintiff"), and the defendant Alabama Worker's Compensation Self-Insurers Guaranty Association (hereafter the "Guaranty Association") are subject to the provisions of the Workmen's Compensation Act of the State of

Alabama as last amended, and that the plaintiff is over the age of nineteen (19) years and can read and understand the English language.

4. At the time of plaintiff's alleged injury, plaintiff was employed by JWR. On or about to-wit: December 30, 2014, the plaintiff, while employed by JWR, did allegedly sustain an injury to his head when working for JWR. At the time of the plaintiff's accident, his average weekly wage was approximately \$1,810.44.

5. The plaintiff has had paid to date medical and surgical benefits as provided by said Workmen's Compensation Act on behalf of the plaintiff in an amount equal to or greater than \$42,571.04. The plaintiff has received temporary total disability benefits in the amount of \$8,187.92.

6. The plaintiff understands that this is a disputed and contested claim as to the extent of any permanent loss of ability to earn, if any, sustained by the plaintiff.

7. In the spirit of compromise the parties have agreed upon a lump sum settlement whereby the Guaranty Association will pay to the plaintiff the sum of Twenty Five Thousand and 00/100 Dollars (\$25,000.00), which the Guaranty Association is willing to pay and the plaintiff is willing to accept, in full payment, satisfaction and accord of any and all claims for and on account of said alleged injury to plaintiff's head under the Workmen's Compensation Law of the State of Alabama, including any claims for temporary or permanent disability compensation benefits, claims for vocational disability, claims for vocational rehabilitation, claims for retaliatory discharge, wrongful discharge, claims under the Americans with Disabilities Act, and any other claims for personal injury and/or mental disease arising out of plaintiff's employment with JWR whether or not now known to the plaintiff and whether in Workers Compensation, contract or tort. **Future reasonable and necessary medical benefits**

are to remain open as to the injury alleged in plaintiff's Complaint. Proceeds from any subrogation are waived.

8. When the payment herein above referred to has been made, the Defendant, Guaranty Association shall be and is hereby released and discharged from any and all claims and liabilities for compensation benefits on account of said alleged and disputed injury of the plaintiff under the Workmen's Compensation Act of the State of Alabama as last amended or otherwise, including but not specifically limited to the claim for compensation benefits under said Workmen's Compensation Act of the State of Alabama, as to the alleged injury to plaintiff's low back, including any claims for temporary or permanent disability compensation benefits, claims for vocational disability, claims for vocational rehabilitation, claims for retaliatory discharge, wrongful discharge, claims under the Americans with Disabilities Act, and any other claims of any type whether now known or unknown arising out of his employment with JWR.

9. Defendant waives any rights of subrogation and/or reimbursement with respect to plaintiff's third party claim wherein he seeks damages from co-employees and others arising out of the accident referred to herein occurring on December 30, 2014.

10. By entry into this agreement, employee acknowledges that his release of rights herein is knowing and voluntary, and that his release of claims herein has been exchanged for the consideration described herein, and that Plaintiff has no entitlement to this consideration other than in exchange for his release of claims in this agreement.

11. This settlement is substantially in accordance with Ala. Code §25-5-56 and §25-5-57. A judgment will be rendered by the Court in this disputed and contested case in accordance with the settlement agreement and, pursuant to the terms of that judgment, Guaranty Association shall be and is hereby released from any and all claims against the defendant.

12. Plaintiff declares and believes that this settlement is in his best interest and requests the Court to approve this settlement and Plaintiff has thoroughly discussed this settlement with his counsel and understands same including the closure of any and all medical benefits.

13. Subsequent to his alleged accident and injury, Plaintiff has been consulting with Attorney Oscar W. Adams, III, Jefferson County, Alabama. Said attorney has advised Plaintiff of his rights in this matter and approved of the Plaintiff's acceptance of the matters herein. Plaintiff now requests that the Court set the fee of his attorney for legal services, as in regard to the compensation payable under Article III of the Alabama Worker's Compensation statutes, as amended, in the amount of fifteen (15%) percent of said compensation payable as provided by Ala. Code Section 25-5-90 (1975), plus reimbursement of reasonable expenses incurred.

14. The parties have entered into a compromise settlement whereby the Defendant agrees to pay and the Plaintiff agrees to accept, the lump sum of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) in full and final settlement of this case as specified herein. The Alabama Mortality Tables provide that the Plaintiff will have another 42.08 years of life expectancy, Plaintiff being 35 years of age. Fifty-two weeks at 42.08 years equals 2,188.16 weeks of life expectancy. The lump sum settlement figure of \$25,000.00 is being paid based on Plaintiff's life expectancy of 2,188.16 weeks, and after reduction of attorney's fee (\$3,750.00) and expenses (\$540.60), a balance of \$20,709.40 is left remaining, and is being paid a lump sum in lieu of weekly benefits of \$11.425 per week during Plaintiff's above-mentioned life expectancy.

15. Court costs to be taxed against Defendants.

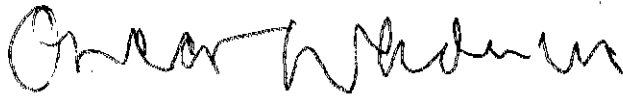
16. This settlement agreement contains the entire agreement between the parties hereto and is substantially in accordance with the Workers Compensation Act of the State of Alabama.

DONE and DATED at Birmingham, Alabama, on this the 13th day of Oct, 2017.



JAMELL TREADWELL

Plaintiff, who has read this agreement and understands its content and meaning



OSCAR W. ADAMS, III

Plaintiff's Attorney



J. GLYNN TUBB

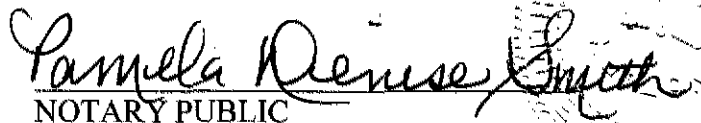
Attorney for Alabama Worker's Compensation Self-Insurers Guaranty Association

STATE OF ALABAMA

COUNTY OF JEFFERSON

Personally appeared before me, the undersigned authority, a Notary Public in and for aforesaid county and state, Jamell Treadwell, who is known to me and who, being by me first duly sworn, deposes and says that he has read the foregoing petition, that the statements contained therein are true and correct, and that he executes said petition of his own free will.

GIVEN under my hand and official seal of office this 13th day of October 2017.



NOTARY PUBLIC

MY COMMISSION EXPIRES SEPTEMBER 12, 2020

EXHIBIT C



ELECTRONICALLY FILED
10/13/2017 4:29 PM
01-CV-2016-903643.00
CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
ANNE-MARIE ADAMS, CLERK

IN THE CIRCUIT COURT OF JEFFERSON COUNTY,
BIRMINGHAM DIVISION

JAMELL TREADWELL,

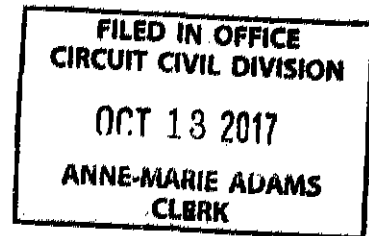
Plaintiff,

VS.

ALABAMA WORKERS COMPENSA-
TION
SELF-INSURERS GUARANTY
ASSOCIATION,

Defendant.

CIVIL ACTION NO. CV-2016-903643



FINDINGS OF FACT AND JUDGMENT

Upon a reading of the above and foregoing settlement agreement and being fully advised of the premises, and it appearing that the allegations of said settlement agreement are true and truly represent the facts surrounding the plaintiff's alleged injury on December 30, 2014 while an employee of Jim Walter Resources, Inc. (hereafter "JWR"), and that the Alabama Workers Compensation Self-Insurers Guaranty Association (hereinafter referred to as "Guaranty Association") assumed the defense of claims for Workers Compensation benefits regarding previous JWR employees and the said plaintiff appearing in person before the Court with his attorney and being examined by the Court, and evidencing thus assent to said settlement, and recognizing that the settlement of this contested and disputed claim as to the degree of disability suffered by plaintiff is in substantial conformity with the provisions of the Workmen's Compensation Act of the State of Alabama, as last amended, and that settlement is in the best interest of the plaintiff;

It is therefore ORDERED, ADJUDGED and DECREED by the Court that said settlement agreement be and the same is hereby approved as if fully set forth herein and the parties are to and all conform to all things therein.

It is further ORDERED, ADJUDGED and DECREED by the Court that upon the Guaranty Association paying to the plaintiff the sum of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) as outlined in said settlement agreement, that the Guaranty Association shall be and is hereby discharged from any and all liability in this matter, whether thereunder the Workmen's Compensation laws of the State of Alabama as last amended or otherwise, and shall specifically be relieved of any obligation to pay any compensation benefits of whatever kind or character, claims for vocational disability, claims for vocational rehabilitation, claims for retaliatory discharge, wrongful discharge, claims under the Americans with Disabilities Act, and any other claims whether known or unknown arising out of plaintiff's employment with JWR. **Future reasonable and necessary medical benefits are to remain open as to the injury alleged in plaintiff's Complaint. Proceeds from any subrogation are waived.**

Defendant waives any rights of subrogation and/or reimbursement with respect to plaintiff's third party claim wherein he seeks damages from co-employees and others arising out of the accident referred to herein occurring on December 30, 2014.

Subsequent to his alleged accident and injury, Plaintiff has been consulting with Attorney Oscar W. Adams, III, Jefferson County, Alabama. Said attorney has advised Plaintiff of his rights in this matter and approved of the Plaintiff's acceptance of the matters herein. Plaintiff now requests that the Court set the fee of his attorney for legal services, as in regard to the compensation payable under Article III of the Alabama Worker's Compensation statutes, as amended, in the amount of fifteen (15%) percent of said compensation payable as provided by

Ala. Code Section 25-5-90 (1975) in the amount of \$3,750.00, plus reimbursement of reasonable expenses incurred in the amount of \$540.60.

The parties have therefore entered into a compromise settlement whereby the Defendant agrees to pay and the Plaintiff agrees to accept, the lump sum of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) in full and final settlement of his workers compensation claims and any other claims of whatever type or character plaintiff might have arising out of his employment with JWR. The Alabama Mortality Tables provide that the Plaintiff will have another 42.08 years of life expectancy, Plaintiff being 35 years of age. Fifty-two weeks at 42.08 years equals 2,188.16 weeks of life expectancy. The lump sum settlement figure of \$25,000.00 is being paid based on Plaintiff's life expectancy of 2,188.16 weeks, and after reduction of attorney's fee (\$3,750.00) and expenses (\$540.60), a balance of \$20,709.40 is left remaining, and is being paid a lump sum in lieu of weekly benefits of \$11.425 per week during Plaintiff's above-mentioned life expectancy.

It is further ORDERED, ADJUDGED and DECREED by the Court that court costs are taxed against Defendants.

DONE and ORDERED this 13th day of Oct., 2017.

Michael G. Graffes
CIRCUIT JUDGE

EXHIBIT D

Michael Leo Hall
mhall@burr.com
Direct Dial: (205) 458-5367
Direct Fax: (205) 244-5651

420 North 20th Street
Suite 3400
Birmingham, AL 35203

Office (205) 251-3000
Fax (205) 458-5100

BURR.COM

July 29, 2019

ATTORNEY WORK PRODUCT
PERSONAL AND CONFIDENTIAL

VIA EMAIL, ORIGINAL TO FOLLOW BY U.S. MAIL

Lloyd Gathings
Gathings Law
2204 Lakeshore Dr.
Birmingham, AL 35209

Re: *Treadwell v. Fowler*, Civil Action No. 2016-901264 - Warrior Met Coal, Inc.

Dear Lloyd:

Burr & Forman LLP represents Warrior Met Coal, Inc. (the "Company"), which received your Memorandum to File dated July 25, 2019 (the "July 25th Memorandum") concerning the above-captioned litigation. In the July 25th Memorandum, Jamell Treadwell ("Treadwell"), through counsel, states his belief that the Company is liable, in whole or in part, for the injuries complained of in the Amended Complaint. This is not the case.

On November 5, 2015, the Debtors and Warrior Met executed the Warrior Met Coal Asset Purchase Agreement (the "APA"), pursuant to which the Debtors agreed to sell substantially all of the Debtors' Alabama coal and methane gas operations, subject to higher or better offers. [Dkt. No. 993]. The Alabama coal operations include the historic number 4 and 7 mines, related methane gas operations, and certain additional assets incidental thereto. [Dkt. No. 993]. The same day, the Debtors filed the Sale Motion, seeking, among other things, approval of the sale of the Acquired Assets to Warrior Met Coal on the terms set forth in the APA, free and clear of all liens, claims, interests and encumbrances. [Dkt. No. 993].

The hearing on the Sale Motion took place on January 6, 2016. The Core Asset Sale was contingent upon an order of the Court approving the sale of the assets free and clear of any liens, claims, interests, and encumbrances, "including, for the avoidance of doubt, all successor liability." [Dkt. No. 993], at 131 (defining "Sale Order"); *see* [Dkt. No. 2235], at 34 (defining "Sale Order"); *id.* at 104-105 (discussing the Sale Order). On January 8, 2016, the Court entered the Sale Order approving the Core Assets Sale. *See* [Dkt. No. 1584]. The Sale Order approved the Warrior Met Coal APA in its entirety. Pursuant to the Sale Order, Warrior Met purchased the Acquired Assets,

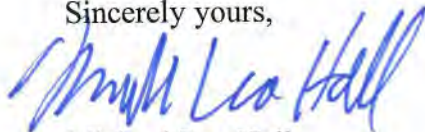
Lloyd Gathings
July 29, 2019
Page 2

as defined in the APA. *See* [Dkt. No. 2235], at 40–44. Warrior Met assumed only a very narrow and limited set of liabilities, and, excepting these liabilities, purchased the Acquired Assets free and clear of all Claims and Encumbrances, as those terms are broadly defined in the APA. *See* [Dkt. No. 2235], at 22, 24. Pursuant to Paragraph 37 of the Sale Order, the Court expressly retained jurisdiction and authority to interpret, implement and enforce the terms and provisions of the Sale Order and the Warrior Met Coal APA, and to “protect the Stalking Horse Purchaser, or the Acquired Assets, from and against any of the claims, liens, interests or encumbrances.” [Dkt. No. 1584], at 29.

The protections provided to the Company, as purchaser of the Debtors’ assets, preclude Treadwell from maintaining an action against the Company for Treadwell’s injuries incurred both prior to the Debtors’ bankruptcy and the Closing Date. Any contrary attempt to hold the Company liable for Treadwell’s injuries expressly violates 11 U.S.C. 363(f), as well as the Sale Order, as the Court has found in a recent dispute between the Company and the Alabama Department of Labor. *See 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].¹ The Company is hopeful that the foregoing clarifies that Treadwell cannot hold the Company responsible for his injuries, and that any attempt to do so violates the Sale Order.

Finally, Burr & Forman LLP is counsel for the Company, and we have been retained to bring this matter to a close. If further communications are necessary, please refrain from contacting any employees of the Company and direct any and all communications to me at the address and phone number provided above in the letterhead.

Sincerely yours,



Michael Leo Hall

MLH

¹ A copy of the Order Granting Motion to Enforce Sale Order is attached.

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

In re:

NEW WEI, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 15-02741-TOM7

Jointly Administered

**ORDER GRANTING WARRIOR MET'S MOTION TO ENFORCE THE SALE ORDER
AGAINST THE ALABAMA DEPARTMENT OF LABOR**

This matter came on to be heard before the Court upon the *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. 2942] (the "Motion to Enforce") of Warrior Met Coal, LLC, f/k/a Coal Acquisition LLC ("Warrior Met" or "Purchaser")². A response entitled *ADOL Response to Warrior Met Coal, LLC f/k/a Coal Acquisition LLC's Motion to Enforce Order Authorizing and Approving Sale of Substantially all of the Debtor's Assets and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* (the "Objection") [Dkt. No. 2961] was filed by the Alabama Department of

¹The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: New WEI, Inc. (f/k/a 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); New WEI 7, Inc. (f/k/a J.W. Walter, Inc.) (0648); Jefferson Warrior Railroad Company, Inc. (3200); New WEI 2, LLC (f/k/a Jim Walter Homes, LLC) (4589); New WEI 13, Inc. (f/k/a 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); New WEI 19, LLC (f/k/a Walter Black Warrior Basin LLC) (5973); New WEI 18, Inc. (f/k/a Walter Coke, Inc.) (9791); New WEI 22, LLC (f/k/a Walter Energy Holdings, LLC) (1596); New WEI 20, LLC (f/k/a Walter Exploration & Production LLC) (5786); New WEI 1, Inc. (f/k/a Walter Home Improvement, Inc.) (1633); New WEI 6 Company (f/k/a Walter Land Company) (7709); New WEI 16, Inc. (f/k/a Walter Minerals, Inc.) (9714); and New WEI 21, LLC (f/k/a Walter Natural Gas, LLC) (1198). The location of the Debtors' corporate headquarters is 2100 Southbridge Parkway, Suite 650, Birmingham, Alabama 35209.

²Warrior Met Coal Gas, LLC and Warrior Met Coal Mining, LLC joined the *Motion to Enforce* by virtue of a joinder filed on April 3, 2017. References in this Order to Warrior Met shall include Warrior Met Coal, LLC, Warrior Met Coal Gas, LLC, and Warrior Met Coal Mining, LLC.

Labor ("ADOL").³ At the hearing, the Court heard testimony in open court from Senior Counsel for Warrior Met, Mitchell Mataya and its Payroll Manager, Laura Crawford, and also admitted into evidence certain exhibits offered by both Warrior Met and ADOL. The Court considered all of the evidence offered at the hearing as well as prior proceedings in this case.

The Court finds that due and timely notice of the Motion to Enforce was given to ADOL and others pursuant to the Federal Rules of Bankruptcy Procedures and the Local Bankruptcy Rules which notice is adequate for all purposes so that no other or further notice need be given. All interested parties, including ADOL, had due and proper notice and an opportunity to be heard, and ADOL appeared and participated at the hearing.

FINDINGS OF FACT

After due consideration and good cause appearing therefor, the Court hereby FINDS AND CONCLUDES THAT:

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

I. THE 363(F) SALE OF THE DEBTORS' ASSETS TO WARRIOR MET

2. On November 5, 2015, the Debtors and Warrior Met (f/k/a Coal Acquisition, LLC) executed the Asset Purchase Agreement, pursuant to which the Debtors agreed to sell substantially all of the Debtors' Alabama methane gas and core underground coal operations, subject to higher or better offers. The Alabama core underground coal operations include the historic number 4 and 7 mines, related methane gas operations, and certain additional assets incidental thereto. The same

³ A second objection was filed on a pro se basis, but that objection was not directly applicable to the Motion to Enforce and was overruled by a separate order.

day, the Debtors filed the *Debtors' Motion for (A) an Order (I) Establishing Bidding Procedures for the Sale(s) of all, or substantially all, of the Debtors' Assets; (II) Approving Bid Protections; (III) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Approving Form and Manner of the Sale, Cure, and Other Notices; and (V) Scheduling an Auction and a Hearing to Consider the Approval of the Sale(s); (B) Order(s) (I) Approving the Sale(s) of the Debtors' Assets Free and Clear of Claims, Liens and Encumbrances; and (II) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Certain Related Relief* [Dkt. No. 993] (the "Sale Motion"). The Sale Motion consisted of a copy of the motion and a copy of a proposed asset purchase agreement between Warrior Met f/k/a/ Coal Acquisition, LLC, as the stalking-horse bidder and the Debtors (the "APA", as amended). *See Sale Motion*, Ex. B at 107-233.

3. Notice of the Sale Motion was given to all parties in interest, including ADOL. *See Affidavit of Service* [Dkt. No. 1173].

4. Pursuant to the APA, Warrior Met would acquire the Acquired Assets, as defined therein. APA § 2.1. Warrior Met only agreed to assume a very narrow and limited set of liabilities. *See* APA § 2.3. The only tax liabilities Warrior Met agreed to assume were certain transfer taxes and secured taxes. The definition of "Excluded Liabilities" in the APA specifically includes "all liabilities with respect to Taxes that are not expressly assumed by Buyer pursuant to Section 2.3(k)." APA § 2.4.

5. Pursuant to the APA, Warrior Met would also acquire the Acquired Assets free and clear of all Encumbrances, as broadly defined in the APA. APA § 2.1. The purchase and sale of the Acquired Assets (the "Core Asset Sale") was contingent upon an order of the Court approving

the sale of the assets free and clear of any liens, claims, interests, and encumbrances, “including, for the avoidance of doubt, all successor liability.” APA §§ 10.6; 1.1 (Definition of “Sale Order”).

6. ADOL did not file any objection to or otherwise participate in the contentious proceedings and hearing on the Sale Motion.

7. Following the hearing on the Sale Motion on January 6, 2016, the Court entered 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] (the “Sale Order”) on January 8, 2016, which approved the sale of the Acquired Assets pursuant to the APA. *See e.g., Sale Order* at 1-2. Warrior Met made the highest and only bid at the auction.

8. The Sale Order provides in pertinent part as follows:

- 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 . . . (j) state unemployment compensation laws or any other similar state laws . . . Sale Order, ¶ Q.
- 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). Sale Order, ¶ R.
- 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. Sale Order, ¶ U.

- 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. Sale Order, ¶ CC.
- 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: . . . (j) state unemployment compensation laws or any other similar state laws. Sale Order, ¶ 6.

- 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. Sale Order, ¶ 7.
- Except as expressly provided in the Stalking Horse Agreement or by this Order, all persons and entities, including, but not limited to . . . governmental, tax and regulatory authorities. . . 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. Sale Order, ¶ 9.
- 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). Sale Order, ¶ 16.
- 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. Sale Order, ¶ 17 (emphasis added).

9. Pursuant to Paragraph 37 of the Sale Order, the Court expressly retained jurisdiction and authority to interpret, implement and enforce the terms and provisions of the Sale Order and the APA, and to “protect the Stalking Horse Purchaser, or the Acquired Assets, from and against any of the claims, liens, interest or encumbrances.”

10. Other parties appealed the Sales Order. *United Mine Workers of America vs. Walter Energy Inc.*, Case No. 16-00065-RDP; *United Mine Workers of America Combined Benefit Fund and the United Mine Workers of America 1992 Benefit Plan vs. Walter Energy Inc.*, Case No. 16-00064-RDP. In each appeal the District Court for the Northern District of Alabama, Southern Division affirmed the Sale Order and dismissed the appeal. *Order Dismissing Appeal*, Case No. 16-00065-RDP (February 19, 2016); *Order Dismissing Appeal*, Case No. 16-00064-RDP (March 8, 2016). ADOL filed neither a motion to reconsider the Sale Order nor an appeal of the same.

11. Closing of the sale took place on March 31, 2016 (the "Closing Date"). On April 1, 2016, the Debtors filed the *Notice of Amended Stalking Horse Agreement and Closing of "Core" Asset Sale Transaction* [Dkt No. 2235].

II. ADOL'S POST-SALE SUCCESSORSHIP DETERMINATION

12. On July 12, 2016, Warrior Met completed ADOL's Form SR-2, "Report to Determine Liability Under the Alabama Unemployment Compensation Law" (the "SUI Rate Application(s)"), to establish State Unemployment Insurance Rates (the "SUI Rate") for Warrior Met, Warrior Met Coal Mining, LLC ("Warrior Mining"), and Warrior Met Coal Gas, LLC (individually, "Warrior Gas" and together with Warrior Met and Warrior Mining, the "Warrior Companies"). On the SUI Rate Applications, the Warrior Companies answered "yes" to question 5, which asked "[d]id you start a new business[.]"

13. Three days later on July 15, 2016, the Warrior Companies received ADOL's Official Notification of Registration (the "Registration Notice(s)") for each of the Warrior Companies. Each of the Registration Notices provided that "[t]he rate of your tax as the Employer will be 2.70 (the "Contribution Rate"), Employee .00 and Employment Security Assessment .00, until such time as you qualify for a revision under the experience rating provisions of the Law."

14. Between receipt of the Registration Notices and August 30, 2016, Melanie Grant ("Grant") an employee of ADOL, contacted Warrior Met's Payroll Manager Laura Crawford by phone to discuss the Warrior Companies' status in relation to certain Debtors. During that phone call, Grant informed Crawford that credits approximating \$208,574.26 and \$11,117.60 were due to Debtors Jim Walter Resources, Inc. and Walter Energy, Inc. on account of their unemployment tax accounts (the "Debtor Credits"), respectively. Grant stated that the Warrior Companies could receive both a lower Contribution Rate and the Debtor Credits, if the Warrior Companies would

indicate that they were a successor to certain Debtors, namely Walter Energy, Inc., Jim Walter Resources, Inc., and Walter Black Warrior Basin, LLC. Crawford informed Grant that the Warrior Companies were not successor companies, and that she needed to involve Warrior Met's legal department in order to respond.

15. On August 30, 2016, Counsel for the Debtors sent a letter to ADOL concerning the Debtor Credits (the "August 30th Letter"). In that letter counsel for the Debtors suggested that ADOL could either refund the Debtor Credits to the Debtors, or transfer the Debtor Credits to Warrior Met at the express direction of the Debtors.

16. On September 14, 2016 Grant drafted and executed a replacement SUI Rate Application for the Warrior Companies (the "ADOL SUI Rate Application"). On ADOL SUI Rate Application, Grant answered "no" to question 5, which asked "[d]id you start a new business" and selected "yes" to question 5a., which asked "[i]f no, did you acquire an ongoing business?" Grant also included information on question 6, which the Warrior Companies had previously not completed as the Warrior Companies were new businesses. This document was not sent to Warrior Met.

17. After the August Letter and before October 5, 2016, multiple conversations occurred between ADOL and Warrior Met, with the participants from Warrior Met including its senior counsel, Mitchell Mataya. Mataya testified credibly that he told ADOL in those conversations that Warrior Met was entitled to the Debtor Credits because Warrior Met had purchased all refunds, credits, and assets of this type from the Debtors. Mataya also stated to ADOL that the Warrior Companies were not successors to the Debtors due to the express provisions of the Bankruptcy Court's Sale Order. ADOL stated that for ADOL's internal purposes, in order to transfer the Debtor Credits it needed to say internally that the Warrior Companies were

successor companies. Mataya stated that he was not concerned about ADOL's internal workings, so long as ADOL imposed no liabilities or increased costs on the Warrior Companies as the result of ADOL's internal designation. ADOL did not disagree with Mataya's statement that this internal decision would impose no liabilities or costs on Warrior Met.

18. Following these conversations, on October 6, 2016, Warrior Met, Warrior Mining, and Warrior Gas, each received a "Correction Letter" to the Registration Notices (individually, the "Correction Notice", and together, the "Correction Notices") that each provide that "[t]he Employer tax rate for this unit is .94, Employee .00, and Employment Security Assessment tax rate is .06[.]" The Correction Notices also stated that the Warrior Companies were either full or partial successors to certain Debtors. Mataya credibly testified that Warrior Met did not respond to these notices based on its prior conversations with ADOL.

19. Sometime in October of 2016, ADOL transferred the Debtor Credits to Warrior Met.

20. Between December 5, 2016 and early January of 2017, ADOL posted on its limited access website the Form UC-216, the annual tax rate notice applicable to the Warrior Companies for calendar year 2017 (the "Tax Rate Notice(s)"). Under the Tax Rate Notices, the tax rate to be charged for 2017 was 6.74%. The notice states that the rate was based on three fiscal years prior unemployment experience, running from July 1, 2013, through June 30, 2016. Those ratings show substantial unemployment compensation activity, as well as the taxable payroll for each of those years. The amounts listed in relation to the unemployment compensation activity and the taxable payrolls are based upon the employment history of the Debtors.

21. According to the Tax Rate Notices, the fiscal year begins July 1st and ends June 30th. The Warrior Companies began operations on April 1, 2016 and could only have been

evaluated in 2016 for the second quarter of calendar year 2016, which coincides with the last quarter for purposes of the Tax Rate Notices.

22. ADOL provided no notice of the December 5, 2016 posting of the Tax Rate Notices to Warrior Met.

23. On January 11, 2017, Warrior Met reviewed the Tax Rate Notice to Warrior Gas issued by ADOL. On January 23, 2017, after registering and receiving new log-in information, Warrior Met first reviewed the Tax Rate Notice for Warrior Coal and Warrior Mining.

24. The Warrior Companies continued to take the position that they are not successor companies to the Debtors. On February 7, 2017, the Warrior Companies sent a letter to ADOL reiterating their position that they were not successors to the Debtors due primarily to the Sale Order issued by this Court. Warrior Met maintained that its experience ratings should not be based on Debtors' experience, but only on Warrior Met's own experience beginning April 1, 2016.

25. ADOL rejected Warrior Met's efforts. ADOL sent a letter to Warrior Met stating its conclusion on February 22, 2017 (the "February 22nd Letter"). In the February 22nd Letter, ADOL states that "[the Warrior Companies] account succeeds to the unemployment experience (benefit charges and taxable payrolls) of [Walter Energy, Inc. and Jim Walter Resources, Inc.] on April 2, 2016." The letter also states, "Please consider this your administrative review which is final."

26. Warrior Met then filed its Motion to Enforce against ADOL, to which ADOL filed a response which objects to the Motion to Enforce.

CONCLUSIONS OF LAW

27. Warrior Met contends that ADOL's objection is due to fail for three independent reasons. First, Warrior Met contends that because ADOL did not object to the entry of the Sale

Order it cannot now collaterally attack the Sale Order, which has already been finally resolved. Second, Warrior Met contends that Section 363(m) of the Bankruptcy Code bars ADOL's attempt to impose successor liability on Warrior Met. Third, Warrior Met contends that even if ADOL had made these arguments as an objection to the then proposed Sale Order, ADOL's position would be incorrect as a matter of law. ADOL disagrees with all of Warrior Met's positions. ADOL also argues that Warrior Met's conduct from September 2016 through January of 2017 constitutes a waiver of Warrior Met's right to object to ADOL's treatment of Warrior Met as a successor to the Debtors. Warrior Met disagrees with ADOL on the waiver issue.

28. By its plain terms, the Sale Order provides that the assets that Warrior Met purchased from the Debtors were to be transferred to Warrior Met free and clear of any interests in that property. Under applicable precedent, the right held by ADOL to determine an employer's contribution rate against a purchaser of the Debtors' assets based on the pre-sale unemployment experience of the Debtors was such an interest. *United Mine Workers of Am. Combined Benefit Fund v. Walter Energy, Inc.*, 551 B.R. 631, 641 (N.D. Ala. 2016), *appeal dismissed* (May 4, 2016) ("while a minority of courts initially interpreted the phrase 'interest in such property' in this narrow way, Section 363(f) has more often (and more correctly) been given a broad reading to effectuate the purposes of the Bankruptcy Code."). Thus, ADOL's efforts to impute the Debtors' unemployment experience rating to Warrior Met and use that experience rating to collect additional unemployment contributions from Warrior Met are barred by the Sale Order.

I. ADOL'S FAILURE TO TIMELY OBJECT TO THE SALE MOTION PROHIBITS ADOL FROM TAKING A POSITION CONTRARY TO THE SALE ORDER.

29. In *Gray v. Brignardello*, the Supreme Court found that:

It is a well settled principle of law that the decree of a court which has jurisdiction of the person and the subject matter is binding until reversed, and cannot be collaterally attacked. The court may have mistaken the law or

misjudged the facts, but its adjudication, when made, concludes all the world until set aside by the proper appellate tribunal; and, although the judgment or decree may be reversed, yet all right acquired at a judicial sale, while the decree or judgment was in full force, and which it authorized, will be protected. It is sufficient for the buyer to know that the court had jurisdiction and exercised it, and that the order, on the faith of which he purchased, was made and authorized the sale. With the errors of the court he has no concern.

68 U.S. 627, 634 (1863) (emphasis added). This general understanding, which has existed for well over 100 years, establishes the general prohibition of collateral attacks on sale orders.

30. Here, ADOL was served with a notice of the Sale Motion through First Class Mail. ADOL never filed an objection or any response thereto. *See* Affidavit of Service, Ex. G at 37 [Dkt. No. 1173]. Following the entry of the Sale Order, ADOL failed to file an appeal, a Rule 59 motion for reconsideration, or a Rule 60 motion to vacate the judgment. Instead, almost a year after the sale to Warrior Met closed, ADOL seeks a determination from this Court that it be permitted to deem Warrior Met a successor to certain Debtors, *see Objection*, at 8, despite the Sale Order's language to the contrary. *See* Sale Order at 11 ¶U ("Upon the Closing, except as included in the Assumed Liabilities, the Stalking Horse Purchaser shall not, and shall not be deemed to . . . 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 . . . state unemployment laws, including any unemployment compensation or tax laws, or any other similar . . . state laws[.]"). ADOL's actions in this respect represent a collateral attack on the Sale Order, rendered impermissible by the ancient and immutable law announced in *Brignardello*. For this reason alone, the Motion to Enforce is due to be granted.

31. In addition to the foregoing, while collateral attacks are generally prohibited and considered impermissible under *Brignardello*, some courts have found that such challenges are also prohibited by application of the doctrine of estoppel. This issue, specifically in relation to a

failure of a party-in-interest to object, has been addressed in both *In re Newport Offshore, Ltd.*, 86 B.R. 325 (Bankr. D.R.I. 1998) and *In re Calore Express Co., Inc.*, 288 F.3d 22 (1st Cir. 2002).

32. In *Newport Offshore*, the Court held that the Army was estopped from objecting to the debtor's confirmation order given the failure of the Army to assert a setoff in or object to confirmation of the debtor's plan of reorganization despite ample notice. 86 B.R. at 326. The Court found that consummation of the plan would be jeopardized and several parties would be prejudiced were the modification of the confirmation order to be heard. *Id.* Estoppel was particularly appropriate as the Court found that parties to the transaction reasonably relied on the finality of the confirmation order that did not itself preserve the setoff rights of the Army. *Id.*

33. In *Calore Express*, the debtor argued that where the creditor failed to object to numerous orders or motions that impacted the creditor's rights to set off, the creditor had waived its set off rights by conduct. 288 F.3d at 27-28. The First Circuit recognized that a court may imply waiver through conduct provided the conduct fairly demonstrates intent. *Id.* at 37-39. In addition, the Court found that although waivers are not typically irrevocable, when "another party to the proceedings has relied on the waiver to its detriment, the court may invoke estoppel and rule that the waiver has become irrevocable." *Id.* at 39. This being the case, the Court held that "silence at a specific time may be unequivocally inconsistent with the assertion of the setoff right." *Id.* at 40.

34. In the present case, it certainly can be said that the failure of ADOL to object to the Sale Motion induced Warrior Met to rely on the Sale Order, close the transaction and pay the purchase price. Indeed this Court recognized the extent of the Warrior Met's reliance when, in the Sale Order, this Court found that:

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 . . . (j) *state unemployment compensation laws or any other similar state laws*[.]

Sale Order, at ¶Q (emphasis added). This Court then ordered that Warrior Met would not be deemed to be a successor of the Debtor, *see* Sale Order, ¶U, and that, except as otherwise agreed, the Purchaser would "have no successor or vicarious liability of any kind or character whatsoever[.]" *Id.*

35. Relying on these terms of the Sale Order, the Warrior Met went forward with the Closing, at which time the Warrior Met remitted the Cash Consideration, in addition to other consideration, to the Debtors in exchange for their assets.

36. Warrior Met would be detrimentally impacted should the sale, now, nearly a year after the Closing Date, be subject to obligations and interests that would not otherwise have transferred to Warrior Met under the free and clear sale authorized by the Sale Order. Warrior Met paid for the Debtors' assets with, in part, Cash Consideration based on the terms of the Sale Order, including its provision that the sale would be free and clear of successor liability claims and obligations.

37. It would be manifestly unfair to now burden Warrior Met with successor liability under Ala. C. § 25-4-54(i) (the "AL Unemployment Compensation Statute"). Such a result would effectively punish Warrior Met for ADOL's failure to object to the Sale Motion. The Court finds the rationale of *Newport Offshore* and *Calore Express* persuasive, but need not reach the issue of estoppel as this collateral attack is clearly precluded under *Brignardello* and its progeny.

II. SECTION 363(M) OF THE BANKRUPTCY CODE PROTECTS THE PURCHASER'S RIGHTS UNDER AND THE VALIDITY OF THE SALE ORDER.

38. For reasons similar to the policies underlying estoppel, section 363(m) of the Bankruptcy Code (the "Code") also bars ADOL from challenging the Sale Order. Section 363(m) provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

39. The purpose behind section 363(m) is to protect the public's interest in finalizing bankruptcy sales to encourage buyers to purchase the debtor's property, to prevent injury to creditors, and to insure that adequate sources of financing remain available. *In re C.W. Mining Co.*, 641 F.3d 1235, 1238-39 (10th Cir. 2011). Section 363(m) serves to allow a good faith purchaser the comfort of relying upon the finality of the sale order by ensuring the finality of the bankruptcy sale. *See In re Trism, Inc.*, 328 F.3d 1003, 1006 (8th Cir. 2003). The principles of finality and the protection of good faith purchasers under section 363(m) of the Code apply to collateral attacks on sale orders to the same extent that they apply to appeals. *See In re Sax*, 796 F.2d 994, 998 (7th Cir.1986) ("[Section] 363(m) and the cases interpreting it have clearly held that a stay is necessary to challenge a bankruptcy sale authorized under § 363(b) [unless the challenger asserts lack of good faith]"); *In re Hagood Reserve, LLC*, No. 10-30725, 2010 WL 5067444, at *15, (Bankr. W.D.N.C. Dec. 7, 2010) (noting that § "363(m) makes any effort to unwind [a] sale untenable" in the absence of a stay before considering and denying adverse party's Rule 60 motion). *But see In re Alan Gable Oil Dev. Co.*, No. 91-1526, 1992 WL 329419, at *4 (4th Cir.1992) ("where an order authorizing a sale is challenged collaterally by motion under Fed. R. Civ. P. 60(b), section 363(m) on its face does not divest the bankruptcy court of the power to upset the sale under proper circumstances."); *see also In re Edwards*, 962 F.2d 641, 645 (7th Cir.1992) (speculating that § 363(m) "does not of its own force preclude collateral attack on such sales").

40. The sole proper method for a third-party to challenge a sale order is to file an appeal and obtain a stay of the sale order. *In re The Charter Co.*, 829 F.2d 1054, 1056 (11th Cir. 1987) ("[i]n order to protect those who purchase property from a bankrupt estate, the Bankruptcy Code provides that once a sale is approved by the bankruptcy court and consummated by the parties, the bankruptcy court's authorization of the sale cannot be effectively altered on appeal if a sale is not stayed[.]").

41. This Court explicitly found and ordered that "[t]he 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)." Sale Order, at ¶13. In fact, the Court expressly found that the Purchaser would not have entered into the Stalking Horse Agreement and would not have consummated the Core Assets Sale if not for the fact that the sale was free and clear of claims, liens, interests and encumbrances arising out of, in part, state unemployment compensation laws or any other similar state laws. *Id.*, at ¶Q. These specific terms of the Sale Order were integral to the same from the time that they first appeared in similar fashion in the Sale Motion. *Sale Motion*, ¶45 ("[t]he Debtors also submit that the Sale(s) of the Subject Assets should be free and clear of any and all claims, liens and encumbrances under Bankruptcy Code section 363(f) (other than Assumed Liabilities and Permitted Encumbrances as provided in the Stalking Horse Agreement, the Short Form APA or the Modified Asset Purchase Agreement, as applicable)").

42. It would be prejudicial to the Purchaser, and in violation of the principles and policies of reliance and finality underlying section 363(m) of the Code, to allow ADOL to belatedly challenge the protections provided under the Sale Order. ADOL failed to oppose the successor liability protections requested by the Debtor and the Purchaser. It is simply too late for ADOL to

take any position contrary to the terms of the Sale Order. The Purchaser relied in good faith upon the finality of the terms of the Sale Order. The Purchaser would be unjustly denied the benefit of its bargain if ADOL were now permitted -- nearly a year after the entry of the Sale order -- to challenge the validity of the sale free and clear of the AL Unemployment Compensation Statute and of ADOL's interest in the Debtors. Accordingly, section 363(m) bars ADOL from collaterally challenging, or now seeking to modify, reverse or obtain any other relief from the terms of the Sale Order.

III. ALTERNATIVELY, ADOL'S ATTEMPT TO BASE THE PURCHASER'S CONTRIBUTION RATE ON THE DEBTOR'S PREPETITION EXPERIENCE RATING IS PREEMPTED BY SECTION 363(F) AND BY THE FUNDAMENTAL POLICIES UNDERLYING THE BANKRUPTCY CODE.

43. Even if ADOL had timely objected to the Sale Motion, which it did not, its objection would have been overruled under principles of preemption. Article VI of the United States Constitution provides that the laws of the United States "shall be the supreme Law of the Land." U.S. Const., art. VI, § 2. When the Bankruptcy Code and state law conflict, the Code "takes precedence over state laws under the Supremacy Clause[.]" *In re Spa at Sunset Isles Condo. Ass'n, Inc.*, 454 B.R. 898, 907 (Bankr. S.D. Fla. 2011) (quoting *Stanley ex rel. Estate of Hale v. Trinchard*, 579 F.3d 515, 519 (5th Cir. 2009)); see also *In re Osejo*, 447 B.R. 352 (Bankr. S.D. Fla. 2011) (Bankruptcy Code preempted Florida's constitutional homestead exemption); *In re Old Carco LLC*, 442 B.R. 196 (S.D.N.Y. 2010) (Bankruptcy Code preempted state franchise law that interfered with debtor's power to reject contracts); *E. Equip. & Servs. Corp. v. Factory Point Nat'l Bank, Bennington*, 236 F.3d 117, 120 (2d Cir. 2001) (Bankruptcy Code preempted state law tort claims for violation of the automatic stay). Accordingly, any attempt by ADOL to base the Purchaser's Unemployment Experience Rating on the Debtors' experience rating is preempted by section 363(f) of the Code.

a. The Assignment of the Debtor's Experience Rating to the Purchaser is Preempted by Section 363(f).

44. The Sale Order was entered pursuant to, *inter alia*, sections 363(f) of the Code. Section 363(f) provides that "the trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate," if certain conditions are satisfied.⁴ The language of Section 363(f) does not limit the term "interest" to an *in rem* interest in property. *See UMWA 1992 Benefit Plan v. Leckie Smokeless Coal*, 99 F.3d 573, 582 (4th Cir. 1996); *see also In re Old Carco*, 538 B.R. 674, 682-687 (Bankr. S.D.N.Y. 2015) (approving *Leckie* court's broad interpretation of "interest in property"); *In re Ormet Corp.*, No. 13-10334, 2014 WL 3542133 at *2-3 (Bankr. D. Del. July 17, 2014); *In re PBBPC, Inc.*, 484 B.R. 860, 869 (1st Cir. 2013) (concluding that the "more expansive" reading of the terms "any interest" advanced by numerous circuit courts is "more consistent with the Bankruptcy Code and the policy expressed in § 363" and affirming sale free and clear of debtor's experience ratings for state unemployment liabilities); *In re Chrysler LLC*, 576 F.3d 108, 126 (2d Cir. 2009), *judgment vacated sub nom. Ind. State Police Pension Trust v. Chrysler LLC*, 558 U.S. 1087 (2009), *vacated sub nom. In re Chrysler, LLC*, 592 F.3d 370 (2d Cir. 2010) (affirming sale free and clear of product liability claims and agreeing with *Leckie* that "the term 'any interest in property' encompasses those claims that 'arise from the property being sold'"); *In re Trans World Airlines, Inc.*, 322 F.3d 283, 289-90

⁴ Having not timely objected to the Sale Motion, ADOL may not now challenge whether the Sale Order was properly issued. But even if the correctness of the "free and clear sale" order were open to being relitigated, the Sale Order clearly satisfied at least one of the conditions of Section 363(f). Clause (5), permitting a sale free and clear if "such entity could be compelled, in a legal or equitable proceeding" is clearly satisfied. Given that a right to assess unemployment contributions is by nature the right to collect payment of money, ADOL could be compelled in a legal or equitable proceeding to accept a money satisfaction of the interest it held in the property at the time of the sale. *In re PBBPC, Inc.*, 467 B.R. 1, 8 (Bankr. D. Mass. 2012), *aff'd*, 484 B.R. 860 (B.A.P. 1st Cir. 2013) (finding that interest in assessing unemployment contributions based on transferred unemployment experience "is a right of taxation, a right that is usually, ordinarily, preferredly [sic], and probably exclusively satisfied precisely by the payment of money" and therefore satisfied Section 363(f)(5)). In addition, Clause (2) was satisfied because the ADOL did not object to the Sale Motion. Pursuant to the Sale Order, any holders of claims, liens, interests and encumbrances against the Debtors who had not objected to the Sale Motion are deemed to have consented. Sale Order, at ¶R.

(3d Cir. 2003) (adopting *Leckie* analysis and affirming sale free and clear of successor liability for civil rights claims and travel voucher program).

45. Federal courts in Alabama have approved this expansive interpretation of “interest in property” advanced by the First, Second, Third, Fourth, and Seventh Circuits, recently affirming that the term “interest in property” as set forth in section 363(f) should be given a broad reading to effectuate the purposes of the Bankruptcy Code. See *United Mine Workers of America Combined Benefit Fund v. Walter Energy*, 551 B.R. 631, 641 (N.D. Ala. 2016) (“[w]hile a minority of courts have narrowly interpreted the term ‘interests in property’ in this narrow way, Section 363(f) has more often (and more correctly) been given a broad reading to effectuate the purposes of the Bankruptcy Code.”) As noted by Judge Proctor in *Walter Energy*, an expansive reading of “interests in property” is consistent with the Bankruptcy Code’s policy of maximizing the value of the bankruptcy estate. *Id.*

46. Numerous courts to have considered the precise issue have held that a Debtors’ unemployment experience rating is an “interest in property” within the meaning of section 363(f) that can be extinguished by a free and clear sale order. *Massachusetts Dep’t of Unemployment Assistance v. OPK Biotech, LLC*, 484 B.R. 860, 870-871 (1st Cir. BAP 2013); *In re USA United Fleet, Inc.*, 496 B.R. 79, 89 (Bankr. E.D.N.Y. 2013); *In re Tougher Indus.*, Nos. 06–12960 and 07–10022, 2013 WL 1276501, at *8 (Bankr. N.D.N.Y. Mar. 27, 2013); *Ouray Sportswear, LLC v. Industrial Claim Appeals Office*, 315 P.3d 1280, 1285 (Colo. App. 2013). In one factually identical case, the purchaser of a chapter 11 debtors’ assets in a bankruptcy court-authorized free and clear sale under section 363 of the Bankruptcy Code sought enforcement of the sale order against the Massachusetts Department of Workplace Development, Division of Unemployment Assistance

(the "DUA"), to prevent the DUA from imputing the debtor's experience rating to the purchaser as a "successor employer." *PBBPC*, 484 B.R. 860.

47. The First Circuit held that the term "any interest" should not be narrowly construed to mean only *in rem* interests in property, but should be read expansively to include any obligations that might flow from ownership of the property. *Id.* at 869. The Court concluded that "any interest" as used in section 363(f) is broad enough to encompass the Debtor's experience rating. *Id.* The court credited the bankruptcy court's view that "[t]here is good reason to view this right as an interest in estate assets: it imposes a debtor's experience rating on the buyer precisely because, and only because, the buyer purchased assets of the bankruptcy estate. By operation of state statute, the debtor's experience rating travels with the assets and encumbers their purchaser." *Id.* at 870. As noted by the court, "the transfer of an employer's contribution rate to a successor asset purchaser is really an attempt to recover the money that the predecessor employer would have paid had it continued in business." *Id.* at 869. Section 363(f) authorized the bankruptcy court to authorize the sale free and clear of that interest. *Id.* at 870; *see In re Old Carco LLC*, 551 B.R. 124, 131 (Bankr. S.D.N.Y. 2016) ("the Court concludes that paragraph 23 is not an exception to the *Sale Order* that permits Indiana to transfer Old Chrysler's Experience Rating to New Chrysler, and for the reasons explained in *Chrysler II*, the use of Old Chrysler's Experience Rating therefore violated the successor liability/free and clear provisions of the *Sale Order*") (emphasis in original); *In re Old Carco LLC*, 538 B.R. 674, 687 (Bankr. S.D.N.Y. 2015) (holding that under 11 U.S.C. § 363(f) "the *Sale Order* unambiguously extinguishes the States' right to apply Old Chrysler's Experience Rating to New Chrysler or collect increased taxes from New Chrysler as a result of Old Chrysler's discharge of its employees.") (emphasis in original); *see also In re Tougher Indus., Inc.*, No. 06-12960, 2013 WL 1276501, at *8 (Bankr. N.D.N.Y. Mar. 27, 2013) ("the right

of the DoL to tax TIE and TME, as successor to the Debtors, at the Debtors' experience rating, is an "interest" in property of the bankruptcy estate, of which Debtors' assets could be sold free and clear of").

48. Similarly, the Bankruptcy Court in *In re USA United Fleet, Inc.*, 496 B.R. 79 (Bankr. E.D.N.Y. 2013) held that the right to transfer the experience rating of a debtor to the purchaser of the debtor's assets constitutes an "interest in property" within the meaning of Section 363(f) that can be extinguished by a free and clear sale order. In so holding, the *United Fleet* court rejected the Department of Labor of the State of New York's (the "DOL") argument that the experience rating was merely a computational device used to determine prospective tax rates, and noted that the obvious reason that the DOL assigned the debtors' experience rating to the purchaser was because the purchaser acquired the debtors' assets. *Id.* at 88. Having concluded that the DOL had an interest in property within the meaning of section 363(f), the Court had no trouble concluding that the interest was extinguished by the sale order, which defined "interests" broadly, and clearly stated that the purchaser was purchasing the assets free and clear of such interests, as well as any successor, transferee, or similar liability. *Id.* at 89. The Court further noted that the DOL, as a party with notice of the sale hearing, "should have had no trouble anticipating that its right to apply the debtors' experience rating to the purchaser was implicated by the sale." *Id.*

49. ADOL argues at length that *In re Wolverine Radio*, 930 F.2d 1132 (6th Cir. 1991) suggests that the Debtors' experience rating is not an "interest" of ADOL in the Debtors' property, as that decision held that "while 11 U.S.C. § 363(f) provides that property may be sold 'free and clear of any interest in such property,' we do not perceive the experience history of Wolverine as an 'interest' that attaches to property ownership so as to cloud its title." *Id.* at 1147. The *Wolverine Radio* Court's narrow definition of the term "interest" is clearly at odds with the better reasoned

and more expansive interpretation of that term favored by this District, *see United Mine Workers of Am. Combined Benefit Fund v. Walter Energy, Inc.*, 551 B.R. 631, 642 n.10 (N.D. Ala. 2016), *appeal dismissed* (May 4, 2016) ("The Bankruptcy Code's definition of 'claim' supports the broader reading of "interest" in Section 363(f)."), as well as the First, Second, Third, Fourth, and Seventh Circuits. *In re PBBPC, Inc.*, 484 B.R. 860, 869 (B.A.P. 1st Cir. 2013) ("We conclude that the more expansive reading of the term 'any interest' advanced by the Seventh, Fourth, Third, and Second Circuits . . . is more consistent with the language of the Bankruptcy Code and the policy expressed in § 363."); *In re Chrysler LLC*, 576 F.3d 108, 126 (2d Cir. 2009), *cert. granted and judgment vacated on other grounds*, 558 U.S. 1087 (2009) (holding that the bankruptcy court was permitted to authorize the sale of substantially all of the debtor's auto manufacturing assets free and clear of product liability claims); *UMWA 1992 Benefit Plan v. Leckie Smokeless Coal*, 99 F.3d 573, 582 (4th Cir. 1996) ("while the plain meaning of the phrase 'interest in such property' suggests that not all general rights to payment are encompassed by the statute, Congress did not expressly indicate that, by employing such language, it intended to limit the scope of 363(f) to *in rem* interests, strictly defined, and we decline to adopt such a restricted reading of the statute here."); *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288 (3d Cir. 2003) (holding that the rights of flight attendants under a travel voucher program that the debtor-airline had established in settlement of a sex discrimination action qualified as an "interest in property"); *Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 545 (7th Cir. 2003) (noting that an inclusive interpretation of the phrase "any interest" is "consistent with the expansive use of that same phrase in other provisions of the Code."). *Wolverine Radio* is the first published case to address the issue of whether the 363(f)'s term "interests" includes unemployment compensation ratings. Each of the decisions this Court is aware of that have addressed this issue have declined to follow *Wolverine Radio*.

50. This Court also finds the interpretation of "interest" advanced by *Wolverine Radio* unsatisfying and at odds with the binding precedent in this case of *United Mine Workers of Am. Combined Benefit Fund v. Walter Energy, Inc.*, 551 B.R. 631 (N.D. Ala. 2016), *appeal dismissed* (May 4, 2016). As the District Court found in *Walter Energy*, the "broad interpretation is more consistent with the language of the Bankruptcy Code, and is consistent with the general policy of the Bankruptcy Code to maximize the value of the bankruptcy estate." *Id.* at 641. Section 363(f) therefore applies to the ADOL's interest. As Warrior Met argued, where Section 363(f) does apply, it preempts any state law to the contrary. The Sale Order thus preempts the application of successor status to Warrior Met under Ala. C. §§ 25-4-8, 4-54.

IV. WARRIOR MET DID NOT WAIVE ITS RIGHT TO ENFORCE THE SALES ORDER AGAINST ADOL.

51. ADOL argues that Warrior Met waived its right to enforce the Sale Order against ADOL because of its failure to respond to ADOL's notice concerning successorship in October and the unemployment ratings it posted in December based on the Debtors' unemployment experience.

52. The question of waiver is determined according to state law. *In re Sandlin*, No. 10-00048-TOM-13, 2010 WL 4260030, at *7 (Bankr. N.D. Ala. Oct. 21, 2010) ("[W]aiver is governed by state law, as opposed to uniform federal law, and turns on individualized facts."). In Alabama, waiver is defined as the voluntary, intentional relinquishment of some known right, benefit or advantage. *Hughes v. Mitchell Co.*, 49 So. 3d 192, 201 (Ala. 2010). The relinquishment of a given right, while it can be ascertained from external actions manifesting waiver, must be shown unequivocally. *Edwards v. Allied Home Mortg. Capital Corp.*, 962 So. 2d 194, 208 (Ala. 2007). In other words, it must be clear from the party's conduct that the party intended to waive that right. *Givens v. General Motors Acceptance Corp.*, 56 Ala. App. 561, 324 So. 2d 277, 279 (1975). To

qualify as a waiver, that conduct must be completely inconsistent or at odds with the assertion of the right. *Edwards v. Allied Home Mortg. Capital Corp.*, 962 So. 2d 194, 208 (Ala. 2007).

53. In this situation, WMC's interactions with ADOL do not show an unequivocal intention to submit itself to successor liability. In discussions with ADOL, Warrior Met continuously asserted and maintained that it was not willing to accept successorship liability and that it was not a successor. The undisputed credible evidence in the form of testimony from witnesses establishes, at a minimum, that Warrior Met believed ADOL when ADOL informed Warrior Met that it was calling Warrior Met a successor for ADOL's internal purposes only. The evidence does not support a conclusion that Warrior Met intentionally relinquished a known right.

54. Moreover, in this case Warrior Met was at all times relying upon a court order in a case involving both parties. Warrior Met should be able to rely on what ADOL stated to Warrior Met, particularly where if ADOL had taken the opposite position, ADOL would be in violation of a court order.

ORDER

For all of the foregoing reasons, and after due consideration and good cause appearing therefor, IT IS HEREBY ORDERED, ADJUDGED and DECREED THAT:

1. Warrior Met's Motion to Enforce is GRANTED.
2. ADOL Objection to Warrior Met's Motion to Enforce is OVERRULED.
3. ADOL shall calculate Warrior Met's Contribution Rate and Experience Rating as a new employer, and regard and treat Warrior Met as a new employer as of April 1, 2016, with respect to any and all state unemployment laws, regulations, actions, and proceedings, including any experience ratings, payroll, unemployment compensation or tax laws, or any other similar state laws and regulations.

4. ADOL shall not base any actions it takes regarding Warrior Met on any payroll, unemployment experience, or other facts which arise from the Walter Energy companies. This includes any and all of ADOL's actions to apply benefit charges to Warrior Met that arise from or relate to terminations, discharges, layoffs, or other employment decisions taken by the Walter Energy companies.

5. ADOL shall give Warrior Met the full benefit of the Debtor Credits, which Warrior Met purchased from the Walter Energy Debtors.

6. To the extent ADOL has already charged unemployment taxes to Warrior Met in excess of what Warrior Met should have been charged for 2017, ADOL shall reverse those charges.

7. ADOL shall promptly send to Warrior Met proof that it has complied and will comply with the terms of this Order.

8. This Order shall apply to all actions that ADOL has taken, including those actions taken before 2017, and all actions that ADOL takes hereafter in regard to Warrior Met, where such actions affect Warrior Met at any time on and after January 1, 2017.

9. The terms of this Order shall be immediately effective and enforceable upon its entry.

10. Even though it appears ADOL violated this Court's Sale Order, at the hearing Warrior Met did not request or seek any sanctions against ADOL. Warrior Met, however, is not precluded from making such request if there is a failure to comply with this Order.

11. The Court reserves jurisdiction over this matter to enforce this Order.

Dated: May 11, 2017

/s/ Tamara O. Mitchell
Honorable Tamara O. Mitchell
United States Bankruptcy Judge