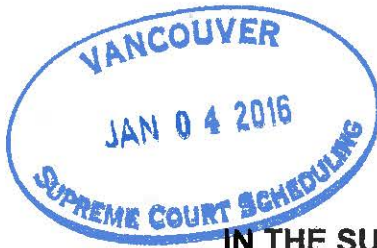


This is the 1st affidavit of
Miriam Domínguez in this case
and was made on 04/January/2016



NO. S-1510120
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*
R.S.C. 1985, c. C-36, as amended**

AND

**IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, as amended**

AND

**IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
WALTER ENERGY CANADA HOLDINGS, INC. AND THE OTHER
PETITIONERS LISTED ON SCHEDULE "A" TO THE INITIAL ORDER**

PETITIONERS

AFFIDAVIT

I, MIRIAM DOMINGUEZ, legal assistant, of 20th Floor – 250 Howe Street, in the City of Vancouver, in the Province of British Columbia, AFFIRM THAT:

1. I am a legal assistant at Dentons Canada LLP, Canadian solicitors for the United Mine Workers of America 1974 Pension Plan and Trust (the "**1974 Pension Plan**"), a claimant in this proceeding, and as such I have personal knowledge of the facts and matters deposed to in this Affidavit except where I depose to a matter based on the information from an informant I identify, in which case, I believe that both the information from the informant and the resulting statement are true.

2. Attached hereto and marked as **Exhibit "A"** is a copy of the Proof of Claim filed by the 1974 Pension Plan in the United States Bankruptcy Court for the Northern District of Alabama against Jim Walter Resources, Inc. and dated for reference October 8, 2015.

3. Attached hereto and marked as **Exhibit "B"** is a copy of the Proof of Claim filed by the 1974 Pension Plan in the United States Bankruptcy Court for the Northern District of Alabama against Walter Energy, Inc. and dated for reference October 8, 2015.

4. The Proofs of Claim state that the amount of the 1974 Pension Plan claim is not less than US\$904,408,043.28.

5. Attached hereto and marked as **Exhibit "C"** is a copy of the Memorandum Opinion and Order Granting Debtors' Motion for an Order (I) Authorizing the Debtors to (A) Reject Collective and Bargaining Agreements, (B) Implement Final Labour Proposals, and (C) Terminate Retiree Benefits; and (II) Granting Related Relief, filed in the United States Bankruptcy Court for the Northern District of Alabama Southern Division in re: Walter Energy, Inc. et al., Chapter 11 Case No. 15-02741-TOM11 and filed for reference December 28, 2015.

AFFIRMED BEFORE ME at Vancouver, BC,
on 04 / Jan / 2016.


A Commissioner for taking Affidavits within
British Columbia


MIRIAM DOMINGUEZ

JOHN R. SANDRELLI
Barrister & Solicitor
DENTONS CANADA LLP
20th Floor, 250 Howe Street
Vancouver, B.C. V6C 3R8
Telephone (604) 687-4460

SCHEDULE "A"

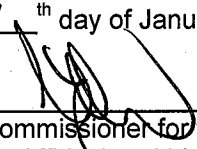
Petitioners

1. Walter Energy Canada Holdings, Inc.
2. Walter Canadian Coal ULC
3. Brule Coal ULC
4. Willow Creek Coal ULC
5. Wolverine Coal ULC
6. Cambrian Energybuild Holdings ULC
7. Pine Valley Coal Ltd.
8. 0541237 B.C. Ltd.

Partnerships

9. Walter Canadian Coal Partnership
10. Brule Coal Partnership
11. Willow Creek Coal Partnership
12. Wolverine Coal Partnership

This is **Exhibit "A"** referred to in the Affidavit of
MIRIAM DOMINGUEZ sworn before me at Vancouver
this 4th day of January 2016.



A Commissioner for taking
Affidavits within

Your claim can be filed electronically on KCC's website at <https://epoc.kccllc.net/WalterEnergy>. Your unique login information is:

B 10 Modified (Official Form 10) (04/13)

ID:

PIN:

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ALABAMA

PROOF OF CLAIM

Indicate Debtor against which you assert a claim by checking the appropriate box below. (Check only one Debtor per claim form.)

- Atlantic Development & Capital, LLC (Case No. 15-02747)
Atlantic Leaseco, LLC (Case No. 15-02773)
Blue Creek Coal Sales, Inc. (Case No. 15-02750)
Blue Creek Energy, Inc. (Case No. 15-02752)
J.W. Walter, Inc. (Case No. 15-02755)
Jefferson Warrior Railroad Company Inc. (Case No. 15-02759)
Jim Walter Homes, LLC (Case No. 15-02762)
Jim Walter Resources, Inc. (Case No. 15-02743)
Maple Coal Co., LLC (Case No. 15-02764)
Sloss-Sheffield Steel & Iron Company (Case No. 15-02766)
SP Machine, Inc. (Case No. 15-02746)
Taft Coal Sales & Associates, Inc. (Case No. 15-02751)
Tuscaloosa Resources, Inc. (Case No. 15-02753)
V Manufacturing Company (Case No. 15-02754)
Walter Black Warrior Basin, LLC (Case No. 15-02756)
Walter Coke, Inc. (Case No. 15-02744)
Walter Energy Holdings, LLC (Case No. 15-02758)
Walter Energy, Inc. (Case No. 15-02741)
Walter Exploration & Production LLC (Case No. 15-02757)
Walter Home Improvement, Inc. (Case No. 15-02760)
Walter Land Company (Case No. 15-02761)
Walter Minerals, Inc. (Case No. 15-02763)
Walter Natural Gas, LLC (Case No. 15-02765)

NOTE: This form should not be used to make a claim for an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) arising after the commencement of the case. A "request" for payment of an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property):

UMWA 1974 Pension Plan and Trust

Check this box if this claim amends a previously filed claim.

Name and address where notices should be sent:

Electronic Claim Filing ID:

PIN:

UMWA 1974 Pension Plan and Trust
Attn: Barbara E. Locklin, Assistant General Counsel
2121 K Street, N.W.
Suite 350
Washington, DC 20037

Court Claim

Number: (If known)

Filed on:

Name and address where payment should be sent (if different from above):

Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

Telephone number:

email:

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

1. Amount of Claim as of Date Case Filed: Not less than \$904,408,043.28

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges. (See attached addendum.)

Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

2. Basis for Claim: \$40,911.28 of audited unpaid pension plan contributions under collective bargaining agreements and ERISA; \$904,367,132 of contingent estimated withdrawal liability under ERISA (See attached addendum.)

Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. §507 (a)(4).

3. Last four digits of any number by which creditor identifies debtor:

3a. Debtor may have scheduled account as:

(See instruction #3a)

3b. Uniform Claim Identifier (optional):

(See instruction #3b)

Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).

4. Secured Claim (See instruction #4)

Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe:

Value of Property: \$ Annual Interest Rate % Fixed Variable

(when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim,

if any: \$

Basis for perfection:

Amount of Secured Claim: \$

Amount Unsecured: \$

Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7).

Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).

6. Claim Pursuant to 11 U.S.C. § 503(b)(9): Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ (See instruction #6)

Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(2).

7. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #7)

Amount entitled to priority:

8. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #8, and the definition of "redacted".)

See attached addendum.

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

* Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment

If the documents are not available, please explain: See attached addendum.

9. Signature: (See instruction #9)

Check the appropriate box.

I am the creditor. I am the creditor's authorized agent.

I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.)

I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

COURT USE ONLY

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Barbara E. Locklin

Title: Assistant General Counsel

Company: UMWA Health and Retirement Funds

Address and telephone number (if different from notice address above): (same as above)

(Signature)

(Date)

Telephone number: (202) 521-2227

Email: blocklin@umwafunds.org

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Claim Pursuant to 11 U.S.C. §503(b)(9):

Check this box if you have a claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of the Debtor's business. Attach documentation supporting such claim. (See Definitions.). Parties asserting claims under 11 U.S.C. §503(b)(9) must include a statement setting forth with specificity: (a) the date of the shipment of goods you contend the Debtor received in the 20 days before July 15, 2015; (b) the date, place, and method (including carrier name) of delivery of the goods you contend the Debtor received in the 20 days before July 15, 2015; (c) the value of the goods you contend the debtor received in the 20 days before July 15, 2015; and (d) whether you timely made a demand to reclaim such goods under 11 U.S.C. § 546(c), including any documentation identifying such demand.

7. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

8. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

9. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

Claim
A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)
A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Claim Pursuant to 11 U.S.C. §503(b)(9):
Any claim entitled to treatment in accordance with Section 503(b)(9) of the Bankruptcy Code. Specifically, Section 503(b)(9) claims are those claims for the "value of any goods received by the debtor, within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(9)

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

Evidence of Perfection
Evidence of perfection may include a mortgage, lien certificate of title, financing statement, or other document

INFORMATION

Acknowledgment of Filing of Claim
To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may view a list of filed claims in this case by visiting the Claims and Noticing Agent's website at <http://www.kccllc.net/WalterEnergy>.

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.

PLEASE SEND COMPLETED PROOF(S) OF CLAIM TO: Walter Energy Claims Processing Center
c/o KCC
2335 Alaska Avenue
El Segundo, CA 90245

Alternatively, your claim can be filed electronically on KCC's website at <https://epoc.kccllc.net/WalterEnergy>.

Your unique login information is:
ID: _____ PIN: _____

In re Walter Energy, Inc, et al.
Chapter 11, Case No. 15-02741 (Jointly Administered)

ADDENDUM TO PROOF OF CLAIM OF THE
UNITED MINE WORKERS OF AMERICA 1974 PENSION PLAN AND TRUST

Debtor: Jim Walter Resources, Inc. (the "Debtor")

Case No.: 15-02743

United Mine Workers of America 1974 Pension Plan and Trust (the "1974 Pension Plan" or "Claimant")

2121 K Street, N.W., Suite 350

Washington, DC 20037

Attn: Barbara E. Locklin, Assistant General Counsel

Email: blocklin@umwafunds.org

1. Claimant's claims against the Debtor arise under: (i) the United Mine Workers of America 1974 Pension Plan, effective December 6, 1974 (the "**1974 Plan Document**"); (ii) the Debtor's collective bargaining agreements with the United Mine Workers of America (the "**CBAs**") and (iii) the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.*, as amended, ("**ERISA**").¹

2. The 1974 Pension Plan was established through collective bargaining in 1974 between the United Mine Workers of America (the "**UMWA**") and the Bituminous Coal Operators' Association, Inc. (the "**BCOA**"). The 1974 Pension Plan was created in conjunction with the establishment of the United Mine Workers of America 1974 Pension Trust, which is an irrevocable trust established in accordance with section 302(c)(5) of the Labor Management Relations Act, 29 U.S.C. § 186(c)(5).² The 1974 Pension Plan is also a multiemployer, defined

¹ Due to the voluminous size and certain confidential information contained in the 1974 Plan Document, the CBAs and other related documentation, Claimant has not attached such materials to this proof of claim. By written agreement with the Debtors, Claimant will provide copies of supporting documentation directly to Debtors' counsel upon request.

² Michael Holland, Micheal Buckner, Michael McKown, and Michael Loiacono are Trustees of the 1974 Pension Plan.

benefit pension plan under section 3(37)(A) of ERISA, 29 U.S.C. § 1002(37)(A). The 1974 Plan provides pension and death benefits to approximately 90,000 eligible beneficiaries who are retired or disabled miners and their eligible surviving spouses and dependents.³ The contribution obligations of contributing employers to the 1974 Pension Plan, benefit levels provided to the ~~Plan's beneficiaries and participants, and other substantive terms of the 1974 Pension Plan are~~ established from time to time in collectively bargained National Bituminous Coal Wage Agreements (each, an "NBCWA") between the UMWA and the BCOA. The most recent NBCWA was agreed to in 2011.

3. The Debtor is a participating employer in the 1974 Pension Plan. Employers participating in the 1974 Pension Plan are subject to two forms of obligations: (i) monthly pension contributions that must be made for as long as the employer participates in the 1974 Pension Plan and (ii) as further described below, "withdrawal liability" accruing upon a partial or complete withdrawal by the employer from participation in the 1974 Pension Plan. In fiscal year 2014, the Debtor contributed \$18,881,876 to the 1974 Pension Plan.

Pre-Petition Claim

4. As of July 15, 2015, the petition date in the Debtor's bankruptcy case (the "**Petition Date**"), and based on Claimant's most recent audit, the Debtor owes monthly contributions to Claimant totaling not less than \$40,911.28.⁴

Withdrawal Liability

5. The Debtor, and each of its affiliated debtors and debtors-in-possession in these

³ These participants and beneficiaries include individuals eligible under the 1974 Pension Plan and the UMWA 1950 Pension Plan, which merged into the 1974 Pension Plan effective June 30, 2007.

⁴ The outstanding amount consists of \$27,163.64 attributable to hours worked during the period January 1, 2007 through June 30, 2013, \$9,931.32 attributable to purchased tonnage for the same period, and \$3,816.32 in interest accrued through the Petition Date.

chapter 11 cases (collectively, the “Debtors”), whether or not a participating employer in the 1974 Pension Plan, is an “employer” within the meaning of Section 3 (5) of ERISA, 29 U.S.C. § 1002(5). To date, the Debtor and its affiliated Debtors have not sought authority from this Court to reject their collective bargaining arrangements and withdraw as participating employers from the 1974 Pension Plan pursuant to the terms of the 1974 Plan Document and Sections 4201 and 4203 of ERISA, 29 U.S.C. § 1381 and 1383. Under section 4001(b)(1) of ERISA, 29 U.S.C. § 1301(b)(1), the Debtor and all trades or businesses under common control with it constitute a single employer participating in the 1974 Pension Plan. Accordingly, to the extent the Debtors reject their collective bargaining obligations and withdraw from the 1974 Pension Plan, the Debtor is jointly and severally liable for any withdrawal liability owed to the 1974 Pension Plan by any employer in its controlled group.

6. Withdrawal liability is imposed by federal statute and is based upon the portion of the 1974 Pension Plan’s unfunded vested benefits attributable to the employer. *See* Section 4211 of ERISA, 29 U.S.C. §§ 1391. Under section 4201 of ERISA, 29 U.S.C. § 1381, upon its withdrawal from a multiemployer pension plan, a previously contributing employer is immediately liable for its proportionate share of the 1974 Pension Plan’s unfunded vested pension liabilities. In the case of the 1974 Pension Plan, the full amount of an employer’s withdrawal liability obligation becomes immediately due and owing upon a “default.” Under terms adopted by the Trustees of the 1974 Pension Plan, a default occurs where an employer has: (i) become insolvent; (ii) filed for bankruptcy; (iii) assigned, pledged, mortgaged or hypothecated property; or (iv) engaged in a transaction which has as a principal purpose the evasion or avoidance of withdrawal liability.

7. The method for calculating withdrawal liability is set forth in section 4211 of

ERISA, 29 U.S.C. § 1391. The 1974 Pension Plan uses a modified version of the “rolling five” method that looks back five years from the date of the employer’s withdrawal. *See* 1974 Plan Document, Art. XIV. The Pension Benefit Guaranty Corporation (the “PBGC”) approved the 1974 Pension Plan’s use of this method on June 20, 2003.

~~8. The calculation of withdrawal liability requires two steps. The first step involves~~
determining the fraction of the total adjusted unfunded benefits that is attributable to the employer, as follows:

a) The numerator of the fraction is the total number of credited hours⁵ worked by the withdrawing employer’s employees during the five years preceding the plan year in which the withdrawal occurred. *See* 1974 Plan Document, Art. XIV (C)(2)(a). For example, the total of the Debtors’ contribution base units for the period from July 1, 2010 to June 30, 2015 is 17,108,867 hours.

b) The denominator of the fraction is the total number of hours worked by employees of all non-construction employers participating in the 1974 Plan for the same period. *See* 1974 Plan Document, Art. XIV (C)(2)(b). This denominator for the plan year ended June 30, 2015 is 104,326,000 hours. This denominator has been adjusted by subtracting the number of any contribution base units of employers which withdrew from the 1974 Plan during the five year period. *See id.*

9. The resulting fraction is then multiplied by the 1974 Pension Plan’s total unfunded vested benefits.

10. On November 16, 2004, the Trustees of the 1974 Pension Plan adopted a method for calculating the 1974 Pension Plan’s unfunded vested benefits based on the PBGC’s published

⁵ Miners receive pension credit based on their credited hours worked. The amount of a participating employee’s pension increases with each year of service.

annuity interest rates plus 1% along with the PBGC's expense assumptions which, in consultation with the 1974 Pension Plan's actuaries, the Trustees of the 1974 Plan determined reflected market interest rates for the annuities. The method is applicable to withdrawals that occur on or after July 1, 2004.

~~11. As set forth in the 1974 Pension Plan's most recent estimate of unfunded vested~~
benefits, dated as of July 21, 2015, the 1974 Pension Plan's unfunded vested benefits for the non-construction segment of the 1974 Pension Plan as of June 30, 2014 are \$4,324,417,000. This amount has been adjusted by the value of all outstanding claims for withdrawal liability which can reasonably be expected to be collected from employers withdrawing on or before June 30, 2014. The 1974 Pension Plan's adjusted unfunded vested benefits for the non-construction segment of the 1974 Pension Plan as of June 30, 2015 are estimated to be \$5,514,626,000.

12. The final amount represents the Debtors' allocable share of the 1974 Pension Plan's unfunded vested benefits. Assuming the Debtors completely withdraw during the plan year beginning July 1, 2015 and ending June 30, 2016, it is estimated that their withdrawal liability will be \$904,367,132. Portions of such liability may be entitled to treatment as an administrative expense claim.

13. To the extent any portion of the withdrawal liability is properly a pre-petition or general unsecured claim, it is hereby claimed in this proof of claim.

14. Pursuant to the 1974 Plan Document, the NBCWA and applicable law, including without limitation Section 502(g) of ERISA, 29 U.S.C. § 1132(g), Debtor is liable for (a) all outstanding contributions, (b) all interest on outstanding contributions, (c) an amount equal to the greater of interest on the outstanding contributions or liquidated damages equal to 20% of the outstanding contributions, (d) reasonable attorney's fees and costs incurred by Claimant, and (e)

such other legal or equitable relief the applicable tribunal deems appropriate in connection with the enforcement of or other efforts by Claimant to protect its rights thereunder. Portions of such interest, damages, fees and costs may be entitled to treatment as an administrative expense claim.

15. The claims set forth herein are not subject to any valid set-off or counterclaim.

~~16. Accordingly, Claimant hereby files this Proof of Claim with respect to (i) all~~
amounts currently due and owing to Claimant under the 1974 Plan Document, the NBCWA or any other applicable agreement and/or pursuant to ERISA, including without limitation any and all (A) outstanding contributions incurred prior to the Petition Date, (B) liability incurred in connection with a withdrawal from the 1974 Pension Plan (to the extent any portion of such liability is properly a pre-petition or general unsecured claim), (C) interest, (D) an amount equal to the greater of interest or liquidated damages equal to 20% of the outstanding contributions, (E) reasonable attorney's fees and costs incurred by Claimant and (F) such other legal or equitable relief the applicable tribunal deems appropriate in connection with the enforcement of or other efforts by Claimant to protect its rights in connection with the foregoing (whether accruing pre- or post-petition) and (ii) any and all contingent obligations currently owing, or which may become due and owing, to Claimant in connection with the 1974 Plan Document, the NBCWA or any other applicable agreement and/or applicable law. Claimant asserts that the portions of this Proof of Claim relating to amounts accruing prior to the Petition Date are entitled to priority pursuant to Section 507(a)(5) of the Bankruptcy Code to the extent provided thereby.


17. Claimant hereby reserves the right to further amend, restate or supplement this proof of claim as and if its claims become further liquidated or for other lawful purposes, and, without limitation, to file additional proofs of claim or to file requests for allowance of administrative expense claim(s) against any of the Debtors (including without limitation claims

relating to delinquencies, interest, liquidated damages, reasonable attorney's fees and costs), against the Debtor or one or more of its affiliated debtors and debtors-in-possession, to reflect other amounts that may be (or may become) due and owing, whether based on the respective rights and obligations arising under the 1974 Plan Document, the NBCWA or any other applicable agreement, ERISA, or otherwise.

18. ERISA requires employers to arbitrate any dispute regarding withdrawal liability. The filing of this Proof of Claim is not and shall not be deemed or construed as (a) a waiver or release of Claimant's rights against any person, entity or property (including, without limitation, any person or entity that is or may become a debtor in a case pending in this Court) who may be liable for all or part of the claims set forth herein, whether an affiliate, assignee, guarantor or otherwise, of the Debtor, or any entity that has engaged in transactions to evade or avoid withdrawal liability; (b) a consent by Claimant to the jurisdiction of this Court or any other court with respect to proceedings, if any, commenced in any case against or otherwise involving Claimant; (c) a waiver or release of Claimant's rights to arbitration, or to trial by jury in this Court or any other court in any proceeding as to any and all matters so triable herein, whether or not the same be designated legal or private rights or in any case, controversy or proceeding related hereto, notwithstanding the designation or not of such matters as "core proceedings" pursuant to 28 U.S.C. § 157(b)(2), and whether such jury trial right is pursuant to statute or the United States Constitution; (d) a consent by Claimant to a jury trial in this Court or any other court in any proceeding as to any and all matters so triable herein or in any case, controversy or proceeding related hereto, pursuant to 28 U.S.C. § 157(e) or otherwise; (e) a waiver or release of Claimant's rights to have any and all final orders in any and all noncore matters or proceedings entered only after de novo review by a United States District Court Judge; (f) a waiver of the

right to move to withdraw the reference with respect to the subject matter of this Proof of Claim, any objection thereto or other proceeding that may be commenced in this case against or otherwise involving Claimant; (g) an election of remedies; (h) a waiver of the right to seek an administrative claim; (i) a waiver or release of any right of setoff or recoupment that Claimant may hold against the Debtor.

This is **Exhibit "B"** referred to in the Affidavit of
MIRIAM DOMINGUEZ sworn before me at Vancouver
this 4th day of January 2016.



A Commissioner for taking
Affidavits within

Your claim can be filed electronically on KCC's website at <https://epoc.kccfile.net/WalterEnergy>. Your unique login information is:

B 10 Modified (Official Form 10) (04/13)

ID:

PIN:

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ALABAMA

PROOF OF CLAIM

Indicate Debtor against which you assert a claim by checking the appropriate box below. (Check only one Debtor per claim form.)

- Atlantic Development & Capital, LLC (Case No. 15-02747)
Atlantic Leaseco, LLC (Case No. 15-02773)
Blue Creek Coal Sales, Inc. (Case No. 15-02750)
Blue Creek Energy, Inc. (Case No. 15-02752)
J.W. Walter, Inc. (Case No. 15-02755)
Jefferson Warrior Railroad Company Inc. (Case No. 15-02759)
Jim Walter Homes, LLC (Case No. 15-02762)
Jim Walter Resources, Inc. (Case No. 15-02743)
Maple Coal Co., LLC (Case No. 15-02764)
Stoss-Sheffield Steel & Iron Company (Case No. 15-02766)
SP Machine, Inc. (Case No. 15-02746)
Taft Coal Sales & Associates, Inc. (Case No. 15-02751)
Tuscaloosa Resources, Inc. (Case No. 15-02753)
V Manufacturing Company (Case No. 15-02754)
Walter Black Warrior Basin, LLC (Case No. 15-02756)
Walter Coke, Inc. (Case No. 15-02744)
Walter Energy Holdings, LLC (Case No. 15-02758)
Walter Energy, Inc. (Case No. 15-02741)
Walter Exploration & Production LLC (Case No. 15-02757)
Walter Home Improvement, Inc. (Case No. 15-02760)
Walter Land Company (Case No. 15-02761)
Walter Minerals, Inc. (Case No. 15-02763)
Walter Natural Gas, LLC (Case No. 15-02765)

NOTE: This form should not be used to make a claim for an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) arising after the commencement of the case. A "request" for payment of an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) may be filed pursuant to 11 U.S.C § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property):

UMWA 1974 Pension Plan and Trust

Check this box if this claim amends a previously filed claim.

Name and address where notices should be sent:

Electronic Claim Filing ID:

PIN:

UMWA 1974 Pension Plan and Trust
Attn: Barbara E. Locklin, Assistant General Counsel
2121 K Street, N.W.
Suite 350
Washington, DC 20037

Court Claim Number: (If known)

Filed on:

Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

Name and address where payment should be sent (if different from above):

Telephone number:

email:

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

1. Amount of Claim as of Date Case Filed: Not less than \$904,367,132.00

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. Basis for Claim: contingent estimated withdrawal liability under ERISA (see attached addendum) (See instruction #2)

3. Last four digits of any number by which creditor identifies debtor:

3a. Debtor may have scheduled account as: (See instruction #3a)

3b. Uniform Claim Identifier (optional): (See instruction #3b)

Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. §507 (a)(4).

Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).

Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7).

Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).

Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(2).

4. Secured Claim (See instruction #4)

Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Describe: Value of Property: \$ Annual Interest Rate % Fixed Variable (when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ Basis for perfection:

Amount of Secured Claim: \$ Amount Unsecured: \$

6. Claim Pursuant to 11 U.S.C. § 503(b)(9): Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ (See instruction #6)

7. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #7)

8. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #8, and the definition of "redacted")

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain: See attached addendum.

9. Signature: (See instruction #9)

Check the appropriate box.

I am the creditor. I am the creditor's authorized agent.

I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.)

I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Barbara E. Locklin

Title: Assistant General Counsel

Company: UMWA Health and Retirement Funds

(Signature)

(Date)

Address and telephone number (if different from notice address above): (same as above)

Telephone number: (202) 521-2227

Email: blocklin@umwafunds.org

COURT USE ONLY

Amount entitled to priority:

See attached addendum.

* Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Claim Pursuant to 11 U.S.C. §503(b)(9):
Check this box if you have a claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of the Debtor's business. Attach documentation supporting such claim. (See Definitions.) Parties asserting claims under 11 U.S.C. §503(b)(9) must include a statement setting forth with specificity: (a) the date of the shipment of goods you contend the Debtor received in the 20 days before July 15, 2015; (b) the date, place, and method (including carrier name) of delivery of the goods you contend the Debtor received in the 20 days before July 15, 2015; (c) the value of the goods you contend the debtor received in the 20 days before July 15, 2015; and (d) whether you timely made a demand to reclaim such goods under 11 U.S.C. § 546(c), including any documentation identifying such demand.

7. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

8. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

9. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

Claim
A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)
A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Claim Pursuant to 11 U.S.C. §503(b)(9):
Any claim entitled to treatment in accordance with Section 503(b)(9) of the Bankruptcy Code. Specifically, Section 503(b)(9) claims are those claims for the "value of any goods received by the debtor, within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(9)

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

Evidence of Perfection
Evidence of perfection may include a mortgage, lien certificate of title, financing statement, or other document

INFORMATION

Acknowledgment of Filing of Claim
To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may view a list of filed claims in this case by visiting the Claims and Noticing Agent's website at <http://www.kccllc.net/WalterEnergy>.

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.

PLEASE SEND COMPLETED PROOF(S) OF CLAIM TO: Walter Energy Claims Processing Center
c/o KCC
2335 Alaska Avenue
El Segundo, CA 90245

Alternatively, your claim can be filed electronically on KCC's website at <https://epoc.kccllc.net/WalterEnergy>.

Your unique login information is:
ID: **PIN:**

In re Walter Energy, Inc, et al.
Chapter 11, Case No. 15-02741 (Jointly Administered)

**ADDENDUM TO PROOF OF CLAIM OF THE
UNITED MINE WORKERS OF AMERICA 1974 PENSION PLAN AND TRUST**

Debtor: Walter Energy, Inc. (the "Debtor")

Case No.: 15-02741

United Mine Workers of America 1974 Pension Plan and Trust (The "1974 Pension Plan" or "Claimant")

2121 K Street, N.W.

Suite 350

Washington, DC 20037

Attn: Barbara E. Locklin, Assistant General Counsel

Email: blocklin@umwafunds.org

1. Claimant's claims against the Debtor arise under: (i) the United Mine Workers of America 1974 Pension Plan, effective December 6, 1974 (the "**1974 Plan Document**"); (ii) the Debtors' collective bargaining agreements with the United Mine Workers of America (the "**CBAs**") and (iii) the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.*, as amended, ("**ERISA**").¹

2. The 1974 Pension Plan was established through collective bargaining in 1974 between the United Mine Workers of America (the "**UMWA**") and the Bituminous Coal Operators' Association, Inc. (the "**BCOA**"). The 1974 Pension Plan was created in conjunction with the establishment of the United Mine Workers of America 1974 Pension Trust, which is an irrevocable trust established in accordance with section 302(c)(5) of the Labor Management Relations Act, 29 U.S.C. § 186(c)(5).² The 1974 Pension Plan is also a multiemployer, defined

¹ Due to the voluminous size and certain confidential information contained in the 1974 Plan Document, the CBAs and other related documentation, Claimant has not attached such materials to this proof of claim. By written agreement with the Debtors, Claimant will provide copies of supporting documentation directly to Debtors' counsel upon request.

² Michael Holland, Micheal Buckner, Michael McKown, and Michael Loiacono are Trustees of the 1974 Pension Plan.

benefit pension plan under section 3(37)(A) of ERISA, 29 U.S.C. § 1002(37)(A). The 1974 Pension Plan provides pension and death benefits to approximately 90,000 eligible beneficiaries who are retired or disabled coal miners and their eligible surviving spouses and dependents.³ The contribution obligations of contributing employers to the 1974 Pension Plan, benefit levels provided to the Plan's beneficiaries and participants, and other substantive terms of the 1974

Pension Plan, are established from time to time in collectively bargained National Bituminous Coal Wage Agreements (each, an "NBCWA") between the UMWA and the BCOA. The most recent NBCWA was agreed to in 2011.

3. Employers participating in the 1974 Pension Plan are subject to two forms of obligations: (i) monthly pension contributions that must be made for as long as the employer participates in the 1974 Pension Plan and (ii) as further described below, "withdrawal liability" accruing upon a partial or complete withdrawal by an employer from participation in the 1974 Pension Plan.

4. Each of the debtors and debtors-in-possession in these chapter 11 cases (collectively, the "Debtors"), whether or not a participating employer in the 1974 Pension Plan, is an "employer" within the meaning of Section 3 (5) of ERISA, 29 U.S.C. § 1002(5). To date, the Debtors, including the their affiliates that are participating employers in the 1974 Pension Plan, have not sought authority from this Court to reject their collective bargaining arrangements and withdraw as participating employers from the 1974 Pension Plan pursuant to the terms of the 1974 Plan Document and Sections 4201 and 4203 of ERISA, 29 U.S.C. § 1381 and 1383. Under section 4001(b)(1) of ERISA, 29 U.S.C. § 1301(b)(1), the Debtor and all trades or businesses under common control with it constitute a single employer participating in the 1974

³ These participants and beneficiaries include individuals eligible under the 1974 Pension Plan and the UMWA 1950 Pension Plan, which merged into the 1974 Pension Plan effective June 30, 2007.

Pension Plan. Accordingly, to the extent the applicable Debtors reject their collective bargaining obligations and withdraw from the 1974 Pension Plan, the Debtor is jointly and severally liable for any withdrawal liability owed to the 1974 Pension Plan by any employer in its controlled group.⁴

~~5. Withdrawal liability is imposed by federal statute and is based upon the portion of~~
the 1974 Pension Plan's unfunded vested benefits attributable to the employer. *See* Section 4211 of ERISA, 29 U.S.C. §§ 1391. Under section 4201 of ERISA, 29 U.S.C. § 1381, upon its withdrawal from a multiemployer pension plan, a previously contributing employer is immediately liable for its proportionate share of the 1974 Pension Plan's unfunded vested pension liabilities. In the case of the 1974 Pension Plan, the full amount of an employer's withdrawal liability obligation becomes immediately due and owing upon a "default." Under terms adopted by the Trustees of the 1974 Pension Plan, a default occurs where an employer has: (i) become insolvent; (ii) filed for bankruptcy; (iii) assigned, pledged, mortgaged or hypothecated property; or (iv) engaged in a transaction which has as a principal purpose the evasion or avoidance of withdrawal liability.

6. The method for calculating withdrawal liability is set forth in section 4211 of ERISA, 29 U.S.C. § 1391. The 1974 Pension Plan uses a modified version of the "rolling five" method that looks back five years from the date of the employer's withdrawal. *See* 1974 Plan Document, Art. XIV. The Pension Benefit Guaranty Corporation (the "PBGC") approved the 1974 Pension Plan's use of this method on June 20, 2003.

7. The calculation of withdrawal liability requires two steps. The first step involves determining the fraction of the total adjusted unfunded vested benefits that is attributable to the

⁴ Contemporaneously herewith, Claimant is filing a proof of claim against each of the other Debtors.

employer, as follows:

a) The numerator of the fraction is the total number of credited hours⁵ worked by the withdrawing employer's employees during the five years preceding the plan year in which the withdrawal occurred. *See* 1974 Plan Document, Art. XIV (C)(2)(a). For example, ~~the total of the Debtors' contribution base units for the period from July 1, 2010 to June 30, 2015~~ is 17,108,867 hours.

b) The denominator of the fraction is the total number of hours worked by employees of all non-construction employers participating in the 1974 Plan for the same period. *See* 1974 Plan Document, Art. XIV (C)(2)(b). This denominator for the plan year ended June 30, 2015 is 104,326,000 hours. This denominator has been adjusted by subtracting the number of any contribution base units of employers which withdrew from the 1974 Plan during the five year period. *See id.*

8. The resulting fraction is then multiplied by the 1974 Pension Plan's total unfunded vested benefits.

9. On November 16, 2004, the Trustees of the 1974 Pension Plan adopted a method for calculating the 1974 Pension Plan's unfunded vested benefits based on the PBGC's published annuity interest rates plus 1% along with the PBGC's expense assumptions which, in consultation with the 1974 Pension Plan's actuaries, the Trustees of the 1974 Plan determined reflected market interest rates for the annuities. The method is applicable to withdrawals that occur on or after July 1, 2004.

10. As set forth in the 1974 Pension Plan's most recent estimate of unfunded vested benefits, dated as of July 21, 2015, the 1974 Pension Plan's unfunded vested benefits for the

⁵ Miners receive pension credit based on their credited hours worked. The amount of a participating employee's pension increases with each year of service.

non-construction segment of the 1974 Pension Plan as of June 30, 2014 are \$4,324,417,000. This amount has been adjusted by the value of all outstanding claims for withdrawal liability which can reasonably be expected to be collected from employers withdrawing on or before June 30, 2014. The 1974 Pension Plan's adjusted unfunded vested benefits for the non-construction segment of the 1974 Pension Plan as of June 30, 2015 are estimated to be \$5,514,626,000.

11. The final amount represents the Debtors' allocable share of the 1974 Pension Plan's unfunded vested benefits. Assuming the Debtors completely withdraw during the plan year beginning July 1, 2015 and ending June 30, 2016, it is estimated that their withdrawal liability will be \$904,367,132. Portions of such liability may be entitled to treatment as an administrative expense claim.

12. To the extent any portion of the withdrawal liability is properly a pre-petition or general unsecured claim, it is hereby claimed in this proof of claim.

13. Pursuant to the 1974 Plan Document, the NBCWA and applicable law, including without limitation Section 502(g) of ERISA, 29 U.S.C. § 1132(g), Debtor is liable for (a) all outstanding contributions, (b) all interest on outstanding contributions, (c) an amount equal to the greater of interest on the outstanding contributions or liquidated damages equal to 20% of the outstanding contributions, (d) reasonable attorney's fees and costs incurred by Claimant, and (e) such other legal or equitable relief the applicable tribunal deems appropriate in connection with the enforcement of or other efforts by Claimant to protect its rights thereunder. Portions of such interest, damages, fees and costs may be entitled to treatment as an administrative expense claim.

14. The claims set forth herein are not subject to any valid set-off or counterclaim.

15. Accordingly, Claimant hereby files this Proof of Claim with respect to (i) all amounts currently due and owing to Claimant under the 1974 Plan Document, the NBCWA or

any other applicable agreement and/or pursuant to ERISA, including without limitation any and all (A) liability incurred in connection with a withdrawal from the 1974 Pension Plan (to the extent any portion of such liability is properly a pre-petition or general unsecured claim), (B) interest, (C) an amount equal to the greater of interest or liquidated damages equal to 20% of the ~~outstanding contributions, (D) reasonable attorney's fees and costs incurred by Claimant and (E)~~

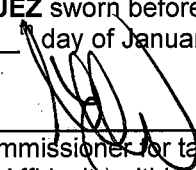
such other legal or equitable relief the applicable tribunal deems appropriate in connection with the enforcement of or other efforts by Claimant to protect its rights in connection with the foregoing (whether accruing pre- or post-petition) and (ii) any and all contingent obligations currently owing, or which may become due and owing, to Claimant in connection with the 1974 Plan Document, the NBCWA or any other applicable agreement and/or applicable law. Claimant asserts that the portions of this Proof of Claim relating to amounts accruing prior to the Petition Date are entitled to priority pursuant to Section 507(a)(5) of the Bankruptcy Code to the extent provided thereby.

16. Claimant hereby reserves the right to further amend, restate or supplement this proof of claim as and if its claims become further liquidated or for other lawful purposes, and, without limitation, to file additional proofs of claim or to file requests for allowance of administrative expense claim(s) against any of the Debtors (including without limitation claims relating to delinquencies, interest, liquidated damages, reasonable attorney's fees and costs), against the Debtor or one or more of its affiliated debtors and debtors-in-possession, to reflect other amounts that may be (or may become) due and owing, whether based on the respective rights and obligations arising under the 1974 Plan Document, the NBCWA or any other applicable agreement, ERISA, or otherwise.

17. ERISA requires employers to arbitrate any dispute regarding withdrawal liability.

The filing of this Proof of Claim is not and shall not be deemed or construed as (a) a waiver or release of Claimant's rights against any person, entity or property (including, without limitation, any person or entity that is or may become a debtor in a case pending in this Court) who may be liable for all or part of the claims set forth herein, whether an affiliate, assignee, guarantor ~~otherwise, of the Debtor, or any entity that has engaged in transactions to evade or avoid~~ withdrawal liability; (b) a consent by Claimant to the jurisdiction of this Court or any other court with respect to proceedings, if any, commenced in any case against or otherwise involving Claimant; (c) a waiver or release of Claimant's rights to arbitration, or to trial by jury in this Court or any other court in any proceeding as to any and all matters so triable herein, whether or not the same be designated legal or private rights or in any case, controversy or proceeding related hereto, notwithstanding the designation or not of such matters as "core proceedings" pursuant to 28 U.S.C. § 157(b)(2), and whether such jury trial right is pursuant to statute or the United States Constitution; (d) a consent by Claimant to a jury trial in this Court or any other court in any proceeding as to any and all matters so triable herein or in any case, controversy or proceeding related hereto, pursuant to 28 U.S.C. § 157(e) or otherwise; (e) a waiver or release of Claimant's rights to have any and all final orders in any and all noncore matters or proceedings entered only after de novo review by a United States District Court Judge; (f) a waiver of the right to move to withdraw the reference with respect to the subject matter of this Proof of Claim, any objection thereto or other proceeding that may be commenced in this case against or otherwise involving Claimant; (g) an election of remedies; (h) a waiver of the right to seek an administrative claim; (i) a waiver or release of any right of setoff or recoupment that Claimant may hold against the Debtor.

This is **Exhibit "C"** referred to in the Affidavit of
MIRIAM DOMINGUEZ sworn before me at Vancouver
this 4 day of January 2016.



A Commissioner for taking
Affidavits within

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

In re:

WALTER ENERGY, INC., et al.,¹

Debtors.

Chapter 11

Case No. 15-02741-TOM11

Jointly Administered

**MEMORANDUM OPINION AND ORDER
GRANTING DEBTORS' MOTION FOR AN ORDER
(I) AUTHORIZING THE DEBTORS TO (A) REJECT COLLECTIVE
BARGAINING AGREEMENTS, (B) IMPLEMENT FINAL LABOR PROPOSALS, AND
(C) TERMINATE RETIREE BENEFITS; AND (II) GRANTING RELATED RELIEF**

This case came before the Court for hearing on December 15 and 16, 2015 on *Debtors' Motion for an Order (I) Authorizing the Debtors to (A) Reject Collective Bargaining Agreements, (B) Implement Final Labor Proposals, and (C) Terminate Retiree Benefits; and (II) Granting Related Relief; and Establishing Other Deadlines* (hereafter "1113/1114 Motion") [Doc. No. 1094] dated November 23, 2015, and objections to the 1113/1114 Motion filed by the United Mine Workers of America (hereafter "UMWA") [Doc. No. 1189] and the United Mine workers of America 1974 Pension Plan and Trust and its Trustees, United Mine Workers of America 1992 Benefit Plan and its Trustees, United Mine Workers of America 1993 Pension Plan and Trust and its Trustees, United Mine Workers of America 2012 Retiree Bonus Account

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

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

INTRODUCTION

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

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

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

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

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

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

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

⁴ *Patriot Coal*, 493 B.R. at 78.

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

FINDINGS OF FACT⁵

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

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

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

A. The Debtors' Labor Obligations.

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

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

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

non-Union retirees and spouses represented by the statutory committee of retirees appointed in these Chapter 11 Cases (the “Section 1114 Committee”). These Retiree Benefits include those owed under: (i) the UMWA CBA (the “UMWA Retiree Medical Plan”) which, as of December 31, 2014, had approximately \$579.2 million in unfunded liabilities; (ii) a collective bargaining agreement that does not cover any active employees with the UMWA (the “Taft Retiree Medical Plan”) that, as of December 31, 2014, had approximately \$3.4 million in unfunded liabilities; (iii) the USW CBA (the “Walter Coke Retiree Medical Plan” and the “Walter Coke Retiree Life Plan”) that, as of December 31, 2014, had approximately \$11.0 million and \$0.5 million in unfunded liabilities, respectively; and (iv) the medical plan for non-Union retirees⁷ (the “Salaried Retiree Medical Plan”) that, as of December 31, 2014, had approximately \$4.3 million in unfunded liabilities. (See Scheller Decl. ¶ 4; Farrell Decl. ¶ 4; Zelin Decl. ¶ 27.)

5. The Debtors are also responsible for numerous forms of pension liabilities and retiree benefit obligations arising from the Debtors’ relationship with the UMWA, including, as defined below, the 1974 Pension Plan, the Coal Act Funds, the 1993 Benefit Plan, the Account Plan, and the CDSP (collectively, the “UMWA Funds”). Specifically, in 2014, Jim Walter Resources contributed (a) over \$17 million to the 1974 Pension Plan;⁸ (b) over \$80,000 to the CDSP⁹; and (c) approximately \$3.6 million to the 1993 Benefit Plan.¹⁰ The Debtors also have an

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. The testimony presented at this hearing indicated that the discussions between the Debtors and their advisors and the Proposed Buyer and its advisors were protracted, difficult, contentious, frustrating, but at arm's-length. [See also Zelin Decl. ¶ 15.] To facilitate continued negotiations, the Steering Committee agreed to extend the Debtors' use of Cash Collateral twice during this time: first on October 8, 2015, extending the use of Cash Collateral to November 20, 2015, and again on November 17, 2015, extending the use of Cash Collateral to December 1, 2015.¹⁵ [Doc. Nos. 857, 1053.] In response to the Debtors' deteriorating financial condition, the Steering Committee also agreed to defer the adequate protection payments due on October 15 and November 15 that the Debtors were otherwise obligated to make to the First Lien Creditors. [Doc. Nos. 890, 1037.]

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

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

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

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

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

UMWA CBA, p. 5.

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

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

Stalking Horse APA § 7.12 (emphasis added).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Successorship clause. Deletion of the successorship clause in its entirety to comply with the terms of the Stalking Horse APA and facilitate the 363 Sale process. [Scheller Decl. ¶ 24.]
- (b) Healthcare for laid-off employees. Elimination of the requirement to provide healthcare benefits for employees who are laid off for up to 12 months after the month in which the layoff occurs, providing instead that no healthcare or other welfare benefits will be provided to any active or laid-off employee after the sale of the mines under the 363 Sale closes. [Scheller Decl. ¶ 24.]
- (c) Termination of agreement. Termination effective as of the date the 363 Sale closes, on which date all of the Debtors' obligations to make any payment that arises from any contractual requirement, grievance settlement, arbitration decision or other obligation that vested or was incurred prior to the date of the sale of the mines to the Proposed Buyer under the Stalking Horse APA would also terminate. [Scheller Decl. ¶ 24.]

- (d) Effects bargaining. Continued good faith discussions regarding any proposal that the UMWA may have concerning the effects of the sale of the mines on the UMWA's members. [Scheller Decl. ¶ 24.]
- (e) Health and welfare benefits for retirees. Termination of health and welfare benefits, including the UMWA Retiree Medical Plan and Taft Retiree Medical Plan, for all of the UMWA's retirees effective no later than the closing date of the Section 363 Sale, as the Buyers are not agreeing to assume responsibility for such healthcare benefits for retirees under the Stalking Horse APA, and the Debtors will no longer have any funds available to provide any benefits to the UMWA retirees post-closing. [Scheller Decl. ¶ 24.]
- (f) Coal Act retirees. Coordination with the UMWA and with the UMWA 1992 Plan officials to arrange for the transition of retirees entitled to Coal Act Benefits to the UMWA 1992 Benefit Plan with no loss of benefits. (The Coal Act provides that when an employer becomes financially unable to provide healthcare benefits to its Coal Act-eligible retirees, the UMWA 1992 Benefit Plan will enroll the impacted retirees and provide their benefits.) [Scheller Decl. ¶ 24.]

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

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

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

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

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

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

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

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

30. The UMWA¹⁷ and the UMWA Funds,¹⁸ (collectively, the "Objectors") filed objections to the Section 1113/1114 Motion.¹⁹ The Objectors make the following

¹⁷ See *Objection of the United Mine Workers of America to Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 1113(c) and 1114(g) for an Order (I) Authorizing the Debtors to (A) Reject Collective Bargaining Agreements, (B) Implement Final Labor Proposals, and (C) Terminate Retiree Benefits; and (II) Granting Related Relief* [Doc. No. 1189] (the "UMWA Objection").

¹⁸ See *Objection of the United Mine Workers of American 1974 Pension Plan and Trust, the United Workers of America 1993 Benefit Plan, the United Mine Workers of America 2012 Retiree Bonus Account Plan, the United Mine Workers of America Cash Deferred Savings Plan of 1988, the United Mine Workers of America Combined Benefit Plan and the United Mine Workers of America 1992 Benefit Plan to (I) Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 1113(c) and 1114(g) for an Order (I) Authorizing the Debtors to (A) Reject Collective Bargaining Agreements, (B) Implement Final Labor Proposals, and (C) Terminate Retiree Benefits; and (II) Granting Related Relief* [Doc. No. 1198] (the "UMWA Funds Objection").

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

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

JURISDICTION²⁰

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

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

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

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

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

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

CONCLUSIONS OF LAW

A. Sections 1113 and 1114 of the Bankruptcy Code.

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

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

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

36. Section 1113 provides in relevant part:

(a) The debtor in possession, or the trustee if one has been appointed under the provisions of this Chapter, other than a trustee in a case covered by subChapter IV of this Chapter and by title I of the Railway Labor Act, may assume or reject a collective bargaining agreement only in accordance with the provisions of this section.

(b) (1) Subsequent to filing a petition and prior to filing an application seeking rejection of a collective bargaining agreement, the debtor in possession or trustee (hereinafter in this section “trustee” shall include a debtor in possession), shall—

(A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

(B) provide, subject to subsection (d)(3), the representative of the employees with such relevant information as is necessary to evaluate the proposal.

(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1) and ending on

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

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

the date of the hearing provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.

(c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that—

(1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);

(2) the authorized representative of the employees has refused to accept such proposal without good cause; and

(3) the balance of the equities clearly favors rejection of such agreement.

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

²⁴ *AMR Corp.*, 477 B.R. at 406.

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

²⁶ *Id.*

²⁷ *AMR Corp.*, 477 B.R. at 406.

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

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

- (1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (f);
- (2) the authorized representative of the retirees has refused to accept such proposal without good cause; and
- (3) such modification is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor, and all of the affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities;

except that in no case shall the court enter an order providing for such modification which provides for a modification to a level lower than that proposed by the trustee in the proposal found by the court to have complied with the requirements of this subsection and subsection (f)

...

40. Subsection (f) requires as follows:

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

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

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

³⁰ 11 U.S.C. § 1114(g).

those necessary modifications in the retiree benefits that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

(B) provide, subject to subsection (k)(3), the representative of the retirees with such relevant information as is necessary to evaluate the proposal.

(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1), and ending on the date of the hearing provided for in subsection (k)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such retiree benefits.³¹

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

³¹ 11 U.S.C. § 1114(f).

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

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

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

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

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

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

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

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

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

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

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

³⁷ UMWA Obj. at ¶¶ 70-76.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49. Only one published decision, *In re Horizon Natural Resources Co.*, 316 B.R. 268 (Bankr. E.D. Ky. 2004), squarely addresses whether a debtor may modify or terminate Coal Act obligations pursuant to section 1114 and concludes that it does.⁵⁰ In *Horizon*, the debtors initially pursued a plan of reorganization by which they would retain their operating assets, but later changed their focus to liquidating through Chapter 11.⁵¹ The debtors moved under sections 1113 and 1114 to reject their collective bargaining agreements and modify or terminate retiree benefits because “[t]he unrefuted evidence . . . is that the debtors’ assets cannot be sold subject to the collective bargaining agreements and retiree benefits”⁵²

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

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

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

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

⁵¹ *Id.* at 271.

⁵² *Id.* at 282.

⁵³ *See id.* at 275.

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

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

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

⁵⁴ *See id.*

⁵⁵ *Id.* at 275-76

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

⁵⁷ *Id.* at 276

⁵⁸ *Id.*

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

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

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

⁵⁹ *Lady H*, 199 B.R. at 599-600.

⁶⁰ *Id.* at 603.

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

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

⁶³ *Id.* at 279.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁷² Scheller Decl. ¶ 26 & Ex. 2.

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

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

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

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

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

⁷⁵ Contents of 67

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

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

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

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

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

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

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

⁸⁰ See Scheller Decl. ¶¶ 11, 13.

⁸¹ See Zelin Decl. ¶ 16.

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

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

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

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

⁸³ Zelin Decl. at ¶ 28.

⁸⁴ Zelin Decl. at ¶ 30.

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

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

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

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

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

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

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

⁸⁷ UMWA Obj. at ¶ 105.

⁸⁸ UMWA Obj. at ¶ 103.

⁸⁹ UMWA Obj. at ¶ 106.

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

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

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

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

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

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

⁹³ *Id.* at n.42.

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

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

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

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

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

⁹⁶ *See id.*

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

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

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

⁹⁷ See Stalking Horse APA § 7.12.

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

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

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

⁹⁹ *Karykeion*, 435 B.R. at 679.

collective bargaining agreement.¹⁰⁰

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

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

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

¹⁰⁰ *Id.* at 684.

¹⁰¹ *Id.* at 679.

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

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

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

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

¹⁰² *Id.*

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

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

¹⁰⁵ *AMR Corp.*, 477 B.R. at 408.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹¹⁷ *See Karykeion*, 435 B.R. at 681.

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

¹¹⁹ *Id.* at ¶ 9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹²⁹ See Scheller Decl. ¶ 25.

¹³⁰ See Williams Decl. ¶¶ 3-4.

¹³¹ See Williams Decl. ¶¶ 6-7.

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

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

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

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

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

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

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

(6) The Balance of the Equities Clearly Favor Rejection.

98. Finally, the balance of the equities overwhelmingly favors rejection of the UMWA CBA and termination of the Retiree Benefits, as required for approval of a motion under sections 1113 and 1114.¹³⁵ When applying this test, “bankruptcy courts ‘must focus on the ultimate goal of Chapter 11... [as the] Bankruptcy Code does not authorize freewheeling consideration of every conceivable equity, but rather only how the equities relate to the success of the reorganization.’”¹³⁶ This is a fact-specific inquiry, and courts consider the following six factors:

- (a) the likelihood and consequences of liquidation if rejection is not permitted;
- (b) the likely reduction in the value of creditors’ claims if the bargaining agreement remains in force;
- (c) the likelihood and consequences of a strike if the bargaining agreement is voided;

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

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

- (d) the possibility and likely effect of any employee claims for breach of contract if rejection is approved;
- (e) the cost-spreading abilities of the various parties, taking into account the number of employees covered by the bargaining agreement and how various employees' wages and benefits compare to those of others in the industry; and
- (f) the good or bad faith of the parties in dealing with the debtor's financial dilemma.¹³⁷

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

100. Here, the Debtors' liquidation is almost certain if this Court does not approve the rejection of the UMWA CBA; the testimony on this point was clear, convincing, unrefuted, and credible.¹³⁹ The alternative to the Debtors' requested relief will be far worse for all constituencies: the Debtors will soon run out of cash with no ability to attract additional financing. Under such a scenario, the evidence establishes that the value of the Debtors' estates will plummet, all of the Debtors' stakeholders will suffer, all of the Debtors' employees will lose their jobs, all of the Debtors' key vendors will lose a business partner, and the Central Alabama community will lose a valuable contributor to its economy and corporate life.

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

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

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

¹³⁹ See Zelin Decl. ¶ 29.

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

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

CONCLUSION

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

¹⁴⁰ See Zelin Decl. ¶ 16.

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

Even though this Court fully appreciates the enormous potential hardship on many, the Court must follow the law and in doing so must decide what is best for ALL creditors and parties, including union and non-union employees. While the Union appears willing to risk the sale by insisting the Court deny the Motion, the Court is not in position to do so. This Court must assume the terms of the APA are firm and that if any condition is not met, there will be no sale. This Court finds that maintaining the coal operations as a going concern¹⁴², keeping the mines open, offering future job opportunities and continuing to be a productive member of the business community all require this Court to overrule the UMWA and the UMWA Funds' objections.

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

¹⁴¹ *Patriot Coal*, 493 B.R. at 79.

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

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

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

Dated: December 28, 2015

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

Notice Recipients

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cr Delaware Trust Company, as Indenture Trustee
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Recipients of Notice of Electronic Filing:

aty	Patrick Darby	pdarby@babc.com
aty	Adrian Zareba	zareba.adrian@pbgc.gov
aty	Adrienne K Walker	awalker@mintz.com
aty	Albert Kass	ecfpleadings@kccllc.com
aty	Amber M. Whillock	awhillock@starneslaw.com
aty	Arthur Lee Tucker	leetucker@leetucker-law.com
aty	Benjamin Shaw Goldman	bgoldman@handarendall.com
aty	Bill D Bensinger	bdbensinger@csattorneys.com
aty	Brian R Walding	bwalding@waldinglaw.com
aty	C Taylor Crockett	taylor@taylorcrockett.com
aty	Catherine L. Steege	csteege@jenner.com
aty	Cathleen C Moore	ccmoore@babc.com
aty	Charles Howard Moses, III	melissa@mosespc.com
aty	Clark R Hammond	chammond@wallacejordan.com
aty	Clyde Ellis Brazeal, III	ebrazeal@joneswalker.com
aty	D Christopher Carson	ccarson@burr.com
aty	Daniel Pasky	dpasky@mcglinchey.com
aty	Daniel D Sparks	ddsparks@csattorneys.com
aty	Daniel D Sparks	ddsparks@csattorneys.com
aty	David B. Anderson	dbanderson@andersonweidner.com
aty	David Lewis Selby, II	dselby@baileyglasser.com
aty	David S. Maxey	dsm@spain-gillon.com
aty	Edward E. May	bankruptcy@maylegalgroup.com
aty	Edward Q Ragland	ed.ragland@usdoj.gov
aty	Edwin Bryan Nichols	bnichols@waldinglaw.com
aty	Eric L. Pruitt	epruitt@bakerdonelson.com
aty	Eric T Ray	eray@balch.com
aty	Frank A. Anderson	anderson.frank@pbgc.gov
aty	Frederick Mott Garfield	fmg@spain-gillon.com
aty	George N. Davies	gdavies@qcwdr.com
aty	Ginger D Cockrell	GINGERCOCKRELL@COMCAST.NET
aty	Glen Marshall Connor	gconnor@qcwdr.com
aty	Grady Milton McCarthy	milton.mccarthy@asmc.alabama.gov
aty	Gregory Michael Taube	greg.taube@nelsonmullins.com
aty	Ira Dizengoff	idizengoff@akingump.com
aty	James Savin	jsavin@akingump.com
aty	James Blake Bailey	jbailey@babc.com
aty	James G Henderson	JamesH@pm-j.com
aty	James H White	jwhite@bakerdonelson.com
aty	Jamie Alisa Wilson	jwilson@bcattys.com
aty	Jason Wayne Bobo	jwb@cabaniss.com
aty	Jay R. Bender	jbender@babc.com
aty	Jayna Partain Lamar	jlamar@maynardcooper.com
aty	Jennifer Brooke Kimble	jkimble@rumberger.com
aty	Jesse S Vogtle, Jr	javogtle@balch.com
aty	Joy Beth Smith	joybeth@maxpopejr.com
aty	Karl John Fingerhood	karl.fingerhood@usdoj.gov
aty	Kenneth Joe Wilson, Jr	kjwilson@wardwilsonlaw.com
aty	Kristine Manoukian	kmanoukian@akingump.com
aty	Kristofor D Sodergren	bknotice@rcslaw.com
aty	Lars A. Peterson	lapeterson@foley.com
aty	Leah M. Eisenberg	eisenberg.leah@arentfox.com
aty	Lee R. Benton	lbenton@bcattys.com
aty	Lindan J. Hill	lhill@gattorney.com
aty	Mark F. Hebbeln	mhebbeln@foley.com
aty	Mark P. Williams	mpwilliams@nwkt.com
aty	Marty L. Brimmage, Jr.	mbrimmage@akingump.com
aty	Marvin E. Franklin	mfranklin@najjar.com
aty	Matthew M Cahill	mcahill@bakerdonelson.com
aty	Max C. Pope, Jr	max@maxpopejr.com
aty	Melissa M. Root	mroot@jenner.com
aty	Michael A. Fritz, Sr	bankruptcy@fritzlawalabama.com
aty	Michael B Odum	modom@rumberger.com

aty	Michael E Bybee	mbybee1@bellsouth.net
aty	Michael Leo Hall	mhall@burr.com
aty	Norman Matt Stockman	nstockman@handarendall.com
aty	Patricia Chen	patricia.chen@ropesgray.com
aty	Patrick O'Neal Gray	pgray@sullivangraylaw.com
aty	R. Scott Williams	swilliams@rumberger.com
aty	Randolph M Fowler	rfowler@pjgf.com
aty	Richard Patrick Carmody	richard.carmody@ariaw.com
aty	Robert A Morgan	rmorgan@rosenharwood.com
aty	Robert A Morgan	rmorgan@rosenharwood.com
aty	Robert Moore Weaver	weaver@qcwdr.com
aty	S Scott Hickman	scotthickmanlaw@gmail.com
aty	Samuel Maples	sam@mtandj.com
aty	Samuel Stephens	sstephens@bcattys.com
aty	Shelley Bush Marmon	samarmon@cjmlaw.com
aty	Stephen B Porterfield	sporterfield@sirote.com
aty	Steven J. Shaw	sshaw@sjslawfirm.com
aty	Susan Reid Sherrill-Beard	sherrill-beards@sec.gov
aty	Thomas Benjamin Humphries	thumphries@sirote.com
aty	Walter F McArdle	wfm@spain-gillon.com
aty	William W Kannel	wkannel@mintz.com
aty	William (Will) Lee Thuston, Jr.	wlt@csattorneys.com

TOTAL: 85

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Walter Energy, Inc., et al.	3000 Riverchase Galleria	Suite 1700	Birmingham, AL 35244-2359
cr	WHH Real Estate, LLC	c/o Daniel D. Sparks	505 20th Street North	Suite 1800 Birmingham, AL 35203
cr	Cowin & Company, Inc.	c/o Daniel D. Sparks	505 20th Street North	Suite 1800 Birmingham, AL 35203
cr	Nelson Brothers, LLC	c/o Daniel D. Sparks	505 20th Street North	Suite 1800 Birmingham, AL 35203
ba	J. Thomas Corbett	Bankruptcy Administrator	1800 5th Avenue North	Birmingham, AL 35203
cr	United Mine Workers of America	c/o Sharon L. Levine	Lowenstein Sandler, LLP	65 Livingston Avenue & 6 Becker Farm Rd Roseland, NJ 07068
intp	Steering Committee	c/o Akin Gump Strauss Hauer & Feld LLP	One Bryant Park	Bank of America Tower New York, NY 10036-6745
intp	Wilmington Trust, National Association	Corporate Capital Markets	50 South Sixth Street Ste 1290	Minneapolis, MN 55402
intp	Scott Greissman	White & Case LLP	1155 Avenue of the Americas	New York, NY 10036
cr	Alabama State Port Authority	c/o Benjamin S. Goldman, Esquire	2001 Park Place North	Suite 1200 Birmingham, AL 35203
cr	Thompson Tractor Co., Inc.	c/o Benjamin S. Goldman, Esquire	2001 Park Place North	Suite 1200 Birmingham, AL 35203 UNITED STATES
cr	Parker Towing Company, Inc.	c/o Benjamin S. Goldman, Esquire	2001 Park Place North	Suite 1200 Birmingham, AL 35203 UNITED STATES
cr	RGS Land & Minerals, LTD., L.P.	c/o Robert A. Morgan	ROSN HARWOOD, kPA	2200 Jack Warner Parkway, Suite 200 P. O. Box 2727 Tuscaloosa, AL 35403-2727
cr	Birmingham Rail & Locomotive, Co., Inc.	Lindan J. Hill	600 University Park Place	Suite 100 Birmingham, AL 35209
cr	Arch Insurance Company	c/o C. Ellis Brazeal III	Jones Walker LLP	1819 5th Avenue North Suite 1100 Birmingham, AL 35203
cr	Aspen American Insurance Company	c/o C. Ellis Brazeal III	Jones Walker LLP	1819 5th Avenue North Suite 1100 Birmingham, AL 35203
op	Kurtzman Carson Consultants LLC	Attn: James Le	2335 Alaska Ave.	El Segundo, CA 90245
cr	Shook and Fletcher Supply Company, Inc.	c/o Stephen B. Porterfield	Sirote & Permutt, P.C.	2311 Highland Avenue S. Birmingham, AL 35205
cr	G. R. Harsh Sr., Real Estate Holdings, LLC	c/o Milton Harsh	110 Malaga Avenue	Homewood, AL 35209
intp	Janine LaDouceur	264 Commerce Street	Hawthorne, NY 10532	
cr	Hager Oil Company, Inc.	c/o Marvin E. Franklin	Najjar Denaburg, P.C.	2125 Morris Avenue Birmingham, AL 35116
cr	S.E. Belcher, Jr. Private Foundation No. 3	c/o Jesse S. Vogtle, Jr.	PO Box 306	Birmingham, AL 35201
cr	CONSOLIDATED PIPE & SUPPLY CO., INC.	c/o Marvin E. Franklin	Najjar Denaburg, P.C.	2125 Morris Avenue Birmingham, AL 35203
cr	Pension Benefit Guaranty Corporation	1200 K St., NW	Washington, DC 20005	
cr	Automotive Rentals, Inc.	c/o McGlinchey Stafford	10407 Centurion Pkwy. N.	Suite 200 Jacksonville, FL 32256
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 Parkway, Suite 200 PO Box 2727 Tusclaoosa, AL 35403-2727
intp	U.S. Securities and Exchange Commission	Atlanta Regional Office	950 East Paces Ferry Road,	N.E. Suite 900 Atlanta, GA 30326-1382
cr	George M. Phillippi	4 Office Park Circle, Suite 313	Birmingham,, AL 35223	

cr Appalachian Power Company d/b/a American Electric Power c/o Eric T. Ray, Esq. Post Office Box
 306 Birmingham, AL 35201
 intp Ramsay McCormack Land Co. Inc. c/o Lee R. Benton Benton & Centeno, LLP 2019 3rd Avenue
 North Birmingham, AL 35203
 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 Birmingham, AL 35203
 cr Comerica Bank Balch & Bingham LLP PO Box 306 Birmingham, AL 35201
 cr NATIONAL LABOR RELATIONS BOARD Region 10 Birmingham Resident Office 1130 22nd St S,
 Suite 3400 BIRMINGHAM, AL 35205 JEFFERSON
 cr Frontier Enterprises Balch & Bingham LLP PO Box 306 Birmingham, AL 35201
 crcm Mayer Electric Supply Co., Inc. Attn: Mark J. Horn 3405 4th Avenue S Birmingham, AL 35222
 crcm Delaware Trust Company, as Indenture Trustee Attn: Sandra E. Horwitz 2711 Centerville
 Road Wilmington, DE 19808
 crcm UMW 1974 Pension Plan and Trust Attn: David W. Allen 2121 K Street, N.W. Washington, DC
 20037
 crcm UMB Bank National Association Attn: Mark Flannagan 1010 Grand Blvd. Kansas City, MO 64106
 crcm United Steelworkers Attn: David R. Jury 60 Boulevard of the Allies, Room 807 Pittsburgh, PA
 15222
 crcm Hager Oil Company, Inc. Attn: Philip C. Grace P O Box 1429 Jasper, AL 35502-1429
 crcm United Mine Workers of America Attn: Grant Crandall 18354 Quantico Gateway Drive, Suite
 200 Triangle, VA 22172
 crcm Carroll Engineering Co. Attn: Greg Wolfe 227 Industrial Park Dr Harlan, KY 40831
 crcm Consolidated Pipe & Supply Co., Inc. Attn: Chris Harper 1205 Hilltop Parkway Birmingham, AL
 35124
 cr Michael Earl Carney 51140 Highway 13 Eldridge, AL 35554
 cr Caterpillar Financial Services Corporation Baker, Donelson, Bearman, Caldwell & Berkowitz,
 PC 420 20th Street North Suite 1400 Birmingham, AL 35203
 cr Sandvik Mining and Construction USA, LLC 201 17th Street NW Suite 1700 Atlanta, GA 30363
 aty Rachel L Webber ROSEN HARWOOD, PA 2200 Jack Warner Parkway, Suite 200 Post Office Box
 2727 Tuscaloosa, AL 35403-2727
 crcm Pension Benefit Guaranty Corporation Attn: Michael Strollo 1200 K St. NW Washington, DC 20005
 crcm Nelson Brothers LLC Attn: Jason K. Baker 820 Shades Creek Pkwy Ste 2000 Birmingham, AL
 35209
 intp Michael Bazley PO Box 20 Tracy, CA 95378
 intp GE Capital Information Technology Solutions, Inc f/d/b/a IKON Financial Services Bankruptcy
 Administration 1738 Bass Road P O Box 13708 Macon, GA 31208-3708
 intp WHH Real Estate, LLC c/o Lee R. Benton Benton & Centeno, LLP 2019 3rd Avenue
 North Birmingham, AL 35203
 cr Alabama Gas Corporaton c/o Brian R. Walding Walding LLC 2227 First Avenue South, Suite
 100 Birmingham, AL 35233
 cr Jewel D Chaney 2759 County Road 63 South Berry, AL 35546
 intp Robert Makohin 73280 Shadow Mountain Dr Unit D Palm Desert, CA 92260
 intp Albert Plus, LLC 407 Vantage Point Tuscaloosa, AL 35406
 cr EXLP Operating, LLC Stephen B. Porterfield Sirote & Permutt, P.C. 2311 Highland Avenue
 S. Birmingham, AL 35205
 intp University of Notre Dame c/o Lee R. Benton Benton & Centeno, LLP 2019 3rd Avenue
 North Birmingham, AL 35203
 cr KyKennKee, Inc P.O. Box 290 Vance, AL 35490
 crcm Official Committee of Retired Employees of Walter Energy, Inc. Adams and Reese LLP 1901 6th Avenue
 North, Suite 3000 Birmingham, AL 35203 UNITED STATES OF AMERICA
 cr Alabama Surface Mining Commission P. O. Box 2390 Jasper, AL 35402-2390
 cr Charles M. Cassidy Group, LLC c/o Kristofor D. Sodergren Rosen Harwood, P.A. 2200 Jack
 Warner Parkway, Suite 200 P.O. Box 2727 Tuscaloosa, AL 35403-2727
 cr Alabama Department of Conservation and Natural Resources c/o Kristofor D. Sodergren Rosen Harwood,
 P.A. P.O. Box 2727 Tuscaloosa, AL 35403-2727
 ex Direct Fee Review LLC W. Joseph Dryer 1000 N West Street Suite 1200 Wilmington, DE 19801
 ba Birmingham Water Works 3600 1st Avenue N Birmingham, AL 35222
 aty Maynard, Cooper and Gale Maynard, Cooper, & Gale, P.C. 1901 Sixth Avenue North 2400
 AmSouth Harbert Plaza Birmingham, AL 35203-2618
 cr Southeast Fabricators, Inc. c/o Kristofor D. Sodergren Rosen Harwood, P.A. P.O. Box
 2727 Tuscaloosa, AL 35403
 cr Citizens' Water Service, Inc. PO Box 670 Vance, AL 35490
 intp Frankie R. Cicero PO Box 126 Sumiton, AL 35148
 cr Preston B. Burnett S. Scott Hickman, Atty at Law, LLC c/o S. Scott
 Hickman 2600 Tuscaloosa, AL 35401
 cr Oracle America, Inc. c/o Shawn M. Christianson Buchalter Nemer 55 Second Street, 17th
 Floor San Francisco Ca, 94105 SAN FRANCISCO
 intp Barbara Ann Chism 14123 Freeman Rd Tuscaloosa, AL 35405-9579
 cr TN Dept of Revenue c/o TN Atty General, Bankruptcy Div PO Box 20207 Nashville, TN
 37202-0207
 op AixPartners LLP James A. Mesterharm, Managing Director 2000 Town Center Ste 2400 Southfield,
 MI 48075
 op The Segal Company (Eastern States), Inc. 1920 N Street NW Suite 400 Washington, DC
 cr ACE American Insurance Company (Creditor) c/o David B. Anderson 505 N. 20th Street, Suite
 1450 Birmingham
 cr United States of America Joyce White Vance United States Attorney 1801 Fourth Avenue
 North Birmingham, AL 35203
 fa Keightley & Ashner LLP 700 12th Street NW Washington, DC 20005

aud	Ernst & Young LLP	Jeffrey Blankenship	1901 6th Ave N Ste 1200	Birmingham, AL 35203
intp	Ronnie Hodges	5023 Jjim Gogganus Rd	Dora, AL 35062	
intp	Terry Eulenstein	12116 Narrow Lane	Brookwood, AL 35444	
intp	Vicki R. Craig	1801 Green Street	Selma, AL 36703	
intp	Barbara Warren	116 Davenport Dr	Calera, AL 35040	
intp	Jeffrey Brian Watts	P O Box 505	Resaca, GA 30735	
intp	Franklin Perdue	3105 29th Ave N	Birmingham, AL 35207	
intp	Regions/FNBT	c/o Robert A. Morgan	ROSEN HARWOOD, PA	PO Box 2727 Tuscaloosa, AL 35403-2727
intp	University of Notre Dame du Lac	c/o Robert A. Morgan	ROSEN HARWOOD, PA	PO Box 2727 Tuscaloosa, AL 35403-2727
intp	Regions Bank	c/o Robert A. Morgan	ROSEN HARWOOD, PA	PO Box 2727 Tuscaloosa, AL 35403-2727
fa	Berkeley Research Group LLC	1800 M St NW Ste 200	Washington, DC 20036	
cr	De-Gas	c/o Jesse S. Vogtle, Jr.	Balch & Bingham LLP	PO Box 306 Birmingham, AL 35201
cr	Pardee Minerals LLC	Baker, Donelson, Bearman	Caldwell & Berkowitz, PC	420 North 20th Street Suite 1400 Birmingham, AL 35203
cr	Airgas USA, LLC	c/o Kathleen M. Miller	Smith, Katzenstein & Jenkins, LLP	PO Box 410 Wilmington, DE 19801
cr	Alabama Power Company	c/o Eric T. Ray, Esq.	Balch & Bingham	P. O. Box 306 Birmingham, AL 35201-0306
cr	George Hunter Enis	c/o Kyle B. Fonville	Burnett Plaza, Suite 2000	801 Cherry Street, Unit 46 Fort Worth, TX 76102
cr	Kforce, Inc.	Cabaniss Johnston	2001 Park Place North	Suite 700 Birmingham, AL 35203
intp	John Jenkins	1229-15th Place SW	Birmingham, AL 35211	
cr	CSX Transportation, Inc.	c/o James H. White, IV	420 20th Street North	Suite 1400 Birmingham, AL 35203
cr	Strata Mine Services, LLC	c/o James H. White, IV	Baker Donelson	420 20th Street North Suite 1400 Birmingham, AL 35203
aty	Morrison & Foerster LLP	250 West 55th Street	New York, NY 10019-9601	
aty	Allan J. Arffa	Paul, Weiss, Rifkind, Wharton & Garrison	1285 Avenue of the Americas	New York, NY 10019-6064
aty	Amelia C. Joiner	Morgan, Lewis & Bockius LLP	One Federal St	Boston, MA 02110-1726
aty	Andrew I. Silfen	Arent Fox PLLC	1675 Broadway	New York, NY 10019
aty	Beth Brownstein	Arent Fox PLLC	1675 Broadway	New York, NY 10019
aty	Bobby H Cockrell, Jr	Cockrell & Cockrell	1409 University Blvd	Tuscaloosa, AL 35401-1633
aty	Brett Miller	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY 10019-9601
aty	Bruce D. Buechler	Lowenstein Sandler LLP	65 Livingston Avenue	Roseland, NJ 07068
aty	Charles B. Sklarsky	Jenner & Block LLP	353 North Clark Street	Chicago, IL 60654-3456
aty	Charles L. Kerr	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY 10019-9601
aty	Chris D. Lindstrom	Cooper & Scully, P.C.	815 Walker St. #1040	Houston, TX 77002
aty	Crystal R. Axelrod	Morgan, Lewis & Bockius LLP	1000 Louisiana Street, Suite 4000	Houston, TX 77002-5005
aty	Dan Youngblut	Paul, Weiss, Rifkind, Wharton & Garrison	1285 Avenue of the Americas	New York, NY 10019-6064
aty	Daniel J. Leffell	Paul, Weiss, Rifkind, Wharton & Garrison	1285 Avenue of the Americas	New York, NY 10019-6064
aty	David R. Jury	United Steelworkers	Five Gateway Center Room 807	Pittsburgh, PA 15222
aty	Eric J. Taube	Taube Summers Harrison Taylor Meinzer Br	100 Congress Avenue Suite 1800	Austin, TX 78701
aty	Erica J. Richards	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY 10019-9601
aty	Harold L. Kaplan	321 North Clark St Ste 2800	Chicago, IL 60654-5313	
aty	J. Alexander Lawrence	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY 10019-9601
aty	James A. Newton	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY 10019-9601
aty	Jennifer L. Marines	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY 10019-9601
aty	John C. Goodchild, III	Morgan, Lewis & Bockius LLP	1701 Market Street	Philadelphia, PA 19103-2921
aty	John H. Maddock, III	McGuireWoods LLP	Gateway Plaza	800 East Canal Street Richmond, VA 23219
aty	John R. Mooney	Mooney, Green, Saindon, Murphy & Welch,	1920 L Street NW Suite 400	Washington, DC 20036
aty	Julie M. Koenig	Cooper & Scully, P.C.	815 Walker St. #1040	Houston, TX 77002
aty	Kyle B. Fonville	DECKER JONES, P.C.	Burnett Plaza, Suite 2000	801 Cherry Street, Unit 46 Fort Worth, TX 76102
aty	Landon S. Raiford	Jenner & Block LLP	353 North Clark Street	Chicago, IL 60654-3456
aty	Lorenzo Marinuzzi	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY 10019-9601
aty	Mark R. Sommerstein	Ropes & Gray LLP	1211 Avenue of the Americas	New York, NY 10035-8704
aty	Melissa Y. Boey	Spain & Gillon LLC	101 Park Avenue	New York, NY 10178-0060
aty	Michael E. Collins	Manier & Hood	One Nashville Place	1500 Fourth Ave N Ste 2200 Nashville, TN 37219
aty	Nicole M. Brown	Lowenstein Sandler LLP	65 Livingston Avenue	Roseland, NJ 07068
aty	Paul Kizel	Lowenstein Sandler LLP	65 Livingston Avenue	Roseland, NJ 07068

aty	Paul A. Green	Mooney, Green, Saindon, Murphy & Welch,	1920 L Street NW Suite
	400	Washington, DC 20036	
aty	Peter E. Ferraro	1011 W 10th St	Austin, TX 78703
aty	Phillip J. Gross	Lowenstein Sandler LLP	65 Livingston Avenue Roseland, NJ 07068
aty	Rachel Jaffe Mauceri	Morgan, Lewis & Bockius LLP	1701 Market Street Philadelphia, PA
	19103-2921		
aty	Richard M Seltzer	Cohen, Weiss & Simon LLP	330 West 42nd Street New York, NY 10036
aty	Robert N. Kravitz	Paul, Weiss, Rifkind, Wharton & Garrison	1285 Avenue of the Americas New York, NY 10019-6064
aty	Ruth McFarland	Winter McFarland LLC	205 McFarland Circle North Tuscaloosa, AL 35406
aty	S. Jason Teele	Lowenstein Sandler LLP	65 Livingston Avenue Roseland, NJ 07068
aty	Sam H. Poteet, Jr.	Manier & Hood	One Nashville Place 1500 Fourth Ave N Ste 2200 Nashville, TN 37219
aty	Samantha Martin	MORRISON & FOERSTER LLP	250 West 55th Street New York, NY 10019-9601
aty	Scott C. Williams	Manier & Hood	One Nashville Place 1500 Fourth Ave N Ste 2200 Nashville, TN 37219
aty	Sharon L. Levine	Lowenstein Sandler LLP	65 Livingston Avenue Roseland, NJ 07068
aty	T. Michah Dortch	Cooper & Scully, P.C.	900 Jackson, Suite 100 Dallas, TX 75202
aty	Thomas N Ciantra	Cohen, Weiss & Simon LLP	330 West 42nd Street New York, NY 10036
smg	Thomas Corbett	BA Birmingham	1800 5th Avenue North Birmingham, AL 35203
smg	Steering Committee	c/o Akin Gump Strauss Hauer & Feld LLP	One Bryant Park Bank of America Tower New York, NY 10036-6745

TOTAL: 148