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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	**Chapter 11**
JAMES RIVER COAL COMPANY, *et al.*,	**Case No. 14-31848 (KRH)**
Debtors.[1]	**(Jointly Administered)**

MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE SECOND AMENDED PLAN OF LIQUIDATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE PROPOSED BY THE DEBTORS

BACKGROUND

1. The debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**") submit this Memorandum of Law in support of confirmation of the *Second Amended Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code Proposed by the Debtors* [ECF No. 1639] (as may be amended,

[1] The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule 1 attached hereto.

modified or otherwise supplemented from time to time, the "**Plan**"), pursuant to section 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "**Bankruptcy Code**").[2]

2. After due notice and a hearing held on January 26, 2015, the United States Bankruptcy Court for the Eastern District of Virginia (the "**Court**") entered its *Order (i) Approving the Disclosure Statement; (ii) Approving Solicitation and Notice Procedures; (iii) Approving Forms of Ballots; (iv) Establishing Solicitation and Voting Procedures; (v) Establishing Procedures for Allowing and Estimating Certain Claims for Voting Purposes; (vi) Scheduling a Confirmation Hearing, and (vii) Establishing Notice and Objection Procedures* [ECF No. 1630] (the "**Approval Order**") that, among other things, (i) approved the *First Amended Disclosure Statement for Debtors' First Amended Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* [ECF No. 1617] (as containing adequate information of a kind and in sufficient detail to enable a hypothetical investor of the relevant voting Classes under the Plan to make an informed judgment whether to vote to accept or reject the Plan; (ii) established March 3, 2016, at 4:00 p.m. (prevailing Eastern Time) as the deadline to vote to accept or reject the Plan (the "**Voting Deadline**"); (iii) established March 3, 2016, at 4:00 p.m. (prevailing Eastern Time) as the deadline to file and serve objections to the Plan; and (iv) scheduled a hearing to consider confirmation of the Plan for March 10, 2015, at 1:00 p.m. (prevailing Eastern Time). Thereafter, the Debtors commenced their solicitation of votes to accept or reject the Plan.

3. On February 26, 2016, the Debtors filed the *Notice of Filing of Plan Supplement* [ECF No. 1676], to which the Plan Administrator Agreement was attached as

[2] Capitalized terms used herein, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Plan.

Exhibit A. On March 8, 2016, the Debtors filed the *Notice of Filing of Amended Plan Supplement* [ECF No. 1687], to which an amended version of the Plan Administrator Agreement was attached as Exhibit A (the "**Plan Supplement**").

4. On March 7, 2016, the Debtors filed the *Declaration of Stephenie Kjontvedt on Behalf of Epiq Bankruptcy Solutions, LLC Regarding Voting and Tabulation of Ballots and Accepting and Rejecting the First Amended Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code Proposed by the Debtors* [ECF No. 1686] (the "**Vote Certification**"). All of the facts contained in the Vote Certification are incorporated herein by reference.

5. In further support of confirmation of the Plan, the Debtors have filed their *Proposed Order Confirming Debtors' Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* (the "**Proposed Confirmation Order**") contemporaneously with this Memorandum of Law.

6. The Plan is the product of a highly negotiated agreement among the Debtors and the Committee.

7. All Classes receiving distributions under the Plan have voted to accept the Plan. Thus, as explained below, the Debtors submit that the Plan satisfies all of the confirmation requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and should be confirmed.

ARGUMENT

I. THE PROVISIONS OF THE BANKRUPTCY CODE NECESSARY FOR CONFIRMATION OF THE PLAN HAVE BEEN SATISFIED

A. The Plan Satisfies the Applicable Requirements of the Bankruptcy Code in Accordance with Section 1129(a)(1).

8. Section 1129(a)(1) of the Bankruptcy Code requires that a plan comply with the "applicable provisions" of the Bankruptcy Code. 11 U.S.C. § 1129(a)(1); *see also In re Smith*, 58 B.R. 652, 654 (Bankr. W.D. Va. 1985) *aff'd sub nom. In re Architectural Design, Inc.*, 59 B.R. 1019 (W.D. Va. 1986) ("Section 1129(a) of the Bankruptcy Code authorizes confirmation of a plan of reorganization if all of the requirements of the listed subsections are met."). The legislative history of section 1129(a)(1) of the Bankruptcy Code explains that this provision encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code, which governs classification of claims and contents of a plan, respectively. *See, e.g.*, H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 98-989 at 126 (1978); *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 648-49 (2d Cir. 1988) ("[T]he legislative history of subsection 1129(a)(1) suggests that Congress intended the phrase 'applicable provisions' in this subsection to mean provisions of Chapter 11 that concern the form and content of reorganization plans[,] . . . such as section 1122 and 1123, governing classification and contents of plan.") (citations and emphasis omitted). As demonstrated below, the Plan complies fully with the requirements of sections 1122 and 1123 of the Bankruptcy Code, as well as with all other applicable provisions of the Bankruptcy Code.

1. 11 U.S.C. § 1122: Classification of Claims and Interests

9. Section 1122 of the Bankruptcy Code, in pertinent part, provides:

> (a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to other claims or interests of such class.

11 U.S.C. § 1122(a). Under this section, a plan may provide for multiple classes of claims or equity security interests as long as each claim or equity security interest within a class is substantially similar to other claims or equity security interests in that class. *See Aetna Cas. & Sur. Co. v. Clerk, United States Bankruptcy Court* (*In re Chateaugay Corp.),* 89 F.3d 942, 949 (2d Cir. 1996) ("[C]lassification is constrained by two straight-forward rules: [d]issimilar claims may not be classified together; similar claims may be classified separately only for a legitimate reason"). In evaluating a plan's proposed classification scheme, courts generally recognize that plan proponents have significant flexibility in placing similar claims into different classes, provided there is a rational basis to do so. *See, e.g., John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.*, 987 F.2d 154, 158–59 (3d Cir. 1993) (finding classification proper as long as each class represents a voting interest that is "sufficiently distinct and weighty to merit a separate voice in the decision whether the proposed reorganization should proceed"); *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1061 (3d Cir. 1987) (recognizing that separate classes of claims must be reasonable and allowing a plan proponent to group similar claims in different classes).

10. The Plan provides for the separate classification of Claims and Interests in the Debtors. Collectively, the Plan designates 306 Classes of Claims against and Interests in the Debtors based upon differences in the legal nature and/or priority of such Claims and Interests. Administrative Claims and Priority Tax Claims (collectively, the "**Unclassified Claims**") are not classified and are separately treated. The Classes are as follows:

- Classes 1A-34A (Other Priority Claims)
- Classes 1B-34B (Secured Claims)
- Class 1C (7.785% Senior Notes Parent Claims) and Classes 2C-34C (7.785% Senior Notes Guarantee Claims)
- Class 1D (10.00% Convertible Senior Notes Parent Claims) and Classes 2D-34D (10.00% Convertible Senior Notes Guarantee Claims)
- Classes 1E-34E (PBGC Claims)
- Classes 1F-34F (General Unsecured Claims)
- Classes 1G-34G (Subordinated Claims)
- Class 1I (Interests in James River)

11. In light of the foregoing classification scheme, it is indisputable that each of the Claims or Interests in each particular Class under the Plan is substantially similar to the other Claims or Interests in such Class. In addition, valid business, legal and factual reasons justify the separate classification of the particular Claims or Interests in the Classes created under the Plan, and no unfair discrimination exists between or among Holders of Claims and Interests. Namely, the Plan separately classifies the Claims because each Holder of such Claims or Interests may hold rights in the Debtors' Estates that are legally dissimilar to the Claims or Interests in other Classes or because substantial administrative convenience resulted from such classification. For example, Claims are separately classified from Interests. Secured Claims are classified separately from General Unsecured Claims because the Debtors' obligations with respect to the former are secured by collateral. Additionally, the Notes Claims and the PBGC Claims are further grouped into separate classes based on the characteristics that distinguish

those claims and consideration of various issues relating to how the distributable value should be allocated amongst the creditors of the various Debtors, including, without limitation, (a) whether the elements necessary to obtain an order of substantive consolidation are satisfied in these Chapter 11 Cases; (b) the value of the Estates on a consolidated and a non-consolidated basis, and the proper method of determining such value; (c) the projected recoveries of Creditors on a consolidated basis with and without implementation of substantive consolidation, in whole or in part; (d) whether and how to attribute the value of the proceeds of the various sales of the Debtors' assets to specific Debtors; (e) the probability of avoidance of certain prepetition transactions; and (f) the nature and treatment of Intercompany Claims. Accordingly, the Debtors' classification of Claims or Interests in the Plan does not prejudice the rights of the Holders of such Claims and Interests. *See Olympia & York Fla. Equity Corp. v. Bank of New York (In re Holywell Corp.)*, 913 F.2d 873, 880 (11th Cir. 1990) (holding that the plan proponent is allowed considerable discretion to classify claims and equity interests according to the facts and circumstances of the case so long as the classification scheme does not violate priority rights or manipulate class voting). The classification of Claims and Interests in the Plan complies with section 1122 of the Bankruptcy Code.

2. 11 U.S.C. § 1123: Contents of the Plan

12. Section 1123(a) of the Bankruptcy Code sets forth seven requirements that are applicable to the Plan.[3] As demonstrated herein, the Plan complies fully with each such requirement. Section 1123(b) of the Bankruptcy Code sets forth the permissive

[3] The requirement set forth in section 1123(a)(8) of the Bankruptcy Code is only applicable to individual debtors and, therefore, does not apply to the Plan.

provisions that may be incorporated into a chapter 11 plan. Each such provision of the Plan is consistent with section 1123(b) of the Bankruptcy Code.

(a) 11 U.S.C. § 1123(a)(1): Designation of Classes of Claims and Interests

13. Section 1123(a)(1) of the Bankruptcy Code requires that the Plan must designate Classes of Claims and Interests subject to section 1122 of the Bankruptcy Code. *See* 11 U.S.C. § 1123(a)(1). As discussed above, Article III of the Plan designates 306 Classes of Claims and Interests subject to section 1122 of the Bankruptcy Code. Section 1123(a)(1) of the Bankruptcy Code excludes Claims specified in sections 507(a)(2), 507(a)(3) and 507(a)(8) of the Bankruptcy Code from the classification requirement. The unclassified Claims set forth in Article II of Plan need not be classified. *See In re Armstrong World Indus., Inc.*, 348 B.R. 136, 159 (Bankr. D. Del. 2006) (section 1123(a)(1) of the Bankruptcy Code does not require a plan to classify classes of administrative claims and priority tax claims). Accordingly, the Plan complies with the requirements of section 1123(a)(1) of the Bankruptcy Code.

(b) 11 U.S.C. § 1123(a)(2): Classes That Are Not Impaired Under the Plan

14. Section 1123(a)(2) of the Bankruptcy Code requires the Plan to specify which Classes of Claims or Interests are Unimpaired under the Plan. *See* 11 U.S.C. § 1123(a)(2). Article III of the Plan specifies that Classes 1A-34A (Other Priority Claims) and Classes 1B-34B (Secured Claims) are Unimpaired under the Plan. Accordingly, the Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code.

(c) 11 U.S.C. § 1123(a)(3): Treatment of the Classes That Are Impaired under the Plan

15. Section 1123(a)(3) of the Bankruptcy Code requires that the Plan specify how the Classes of Claims or Interests in the Debtors that are Impaired under the Plan will be treated. *See* 11 U.S.C. § 1123(a)(3). Article III of the Plan specifies that each of Class 1C (7.785% Senior Notes Parent Claims), Classes 2C-34C (7.785% Senior Notes Guarantee Claims), Class 1D (10.00% Convertible Senior Notes Parent Claims), Classes 2D-34D (10.00% Convertible Senior Notes Guarantee Claims), Classes 1E-34E (PBGC Claims), Classes 1F-34F (General Unsecured Claims), Classes 1G-34G (Subordinated Claims) and Class 1I (Interests in James River) are Impaired under the Plan and specifies the treatment of Claims and Interests in those Classes. Accordingly, the Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code.

(d) 11 U.S.C. § 1123(a)(4): Equal Treatment within Each Class

16. Section 1123(a)(4) of the Bankruptcy Code requires that the Plan provide the same treatment for each Claim or Interest within a particular Class unless the Holder of such Claim or Interest agrees to less favorable treatment than other Class members. *See* 11 U.S.C. § 1123(a)(4). Under the Plan, the treatment of each Claim or Interest, in each respective Class, is the same as the treatment of each other Claim or Interest in such Class. Accordingly, the Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code.

(e) 11 U.S.C. § 1123(a)(5): Adequate Means for Implementation

17. Section 1123(a)(5) of the Bankruptcy Code requires that chapter 11 plans provide adequate means for their own implementation. *See* 11 U.S.C. § 1123(a)(5). Article V of the Plan provides adequate and proper means for implementation of the Plan. Other articles of the Plan set forth means for the implementation of the Plan as well, including resolution of disputed, contingent and unliquidated Claims (Article VIII),

distributions under the Plan (Article VI), and the continuing jurisdiction over matters arising out of, or related to, the Chapter 11 Cases and the Plan (Article XII). Additionally, the Plan Supplement provides further detail regarding implementation of the Plan through the retention of the Plan Administrator. Accordingly, the Plan satisfies section 1123(a)(5) of the Bankruptcy Code.

(f) 11 U.S.C. § 1123(a)(6): Prohibition on the Issuance of Nonvoting Equity Securities

18. Section 1123(a)(6) of the Bankruptcy Code requires that a plan for a corporate debtor provide for the inclusion in the debtor's charter of "a provision prohibiting the issuance of nonvoting equity securities" and "as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes." 11 U.S.C. § 1123(a)(6). Section 5.1(b) of the Plan provides that the certificate and articles of incorporation and bylaws of James River will be deemed amended and shall include, among other things, a provision prohibiting the issuance of non-voting equity securities to the extent prohibited by section 1123(a)(6) of the Bankruptcy Code. Accordingly, the Debtors submit that the Plan fully complies with and satisfies section 1123(a)(6) of the Bankruptcy Code.

(g) 11 U.S.C. § 1123(a)(7): The Plan's Provisions regarding Directors, Managers and Officers Are Consistent with the Interests of Creditors and Interest Holders and Public Policy

19. Section 1123(a)(7) of the Bankruptcy Code provides that chapter 11 plans must set forth provisions for the selection of directors, managers and officers that are consistent with the interests of creditors and equity security holders and public policy. *See* 11 U.S.C. § 1123(a)(7). Section 5.1(a) of the Plan provides that, immediately following the occurrence of the Effective Date, the members of the boards of directors of

the Debtors shall be deemed to have resigned. The Plan's provisions for the selection and appointment of the Plan Administrator are consistent with the interests of creditors and equity security holders and with public policy. Specifically, pursuant to section 1129(a)(5) of the Bankruptcy Code, the Plan provides that (i) the Plan Administrator shall be the sole shareholder, director, officer, and, to the extent the sole member does not act as the sole manager, the sole manager, of James River and each of the other Debtors, as applicable. Accordingly, the Plan satisfies section 1123(a)(7) of the Bankruptcy Code.

(h) 11 U.S.C. § 1123(b)(1): The Plan Appropriately Impairs or Leaves Unimpaired Each of the 306 Classes

20. Section 1123(b)(1) of the Bankruptcy Code provides that a plan may "impair or leave unimpaired any class of claims, secured or unsecured, or of interests." 11 U.S.C. § 1123(b)(1). The Plan is consistent with section 1123(b)(1) of the Bankruptcy Code. Article III of the Plan specifies that Classes 1A-34A (Other Priority Claims) and Classes 1B-34B (Secured Claims) are Unimpaired and that the remaining Classes are Impaired.

(i) 11 U.S.C. § 1123(b)(2): The Plan Provides for the Assumption or Rejection of Executory Contracts or Unexpired Leases

21. Section 1123(b)(2) of the Bankruptcy Code provides that a plan may "subject to section 365 of [the Bankruptcy Code], provide for the assumption of any executory contract or unexpired lease of the debtor not previously rejected under such section." 11 U.S.C. § 1123(b)(2). Consistent with section 1123(b)(2) of the Bankruptcy Code, Article IX of the Plan provides that unless an Executory Contract or Unexpired Lease (i) was previously assumed rejected by Debtors; (ii) expired or terminated pursuant to its own terms; or (iii) is the subject of a motion to assume or reject pending before the Court as of the Confirmation Date, each Executory Contract and Unexpired Lease shall

be deemed automatically rejected, without the need for any further notice to or action, order, or approval of the Court, as of the Effective Date under section 365 of the Bankruptcy Code. Accordingly, the Plan satisfies section 1123(b)(2) of the Bankruptcy Code.

(j) 11 U.S.C. § 1123(b)(3)(A): Settlement

22. Section 1123(b)(3)(A) of the Bankruptcy Code permits the debtor to settle or adjust any claim or interest belonging to the debtor and its estate. *See* 11 U.S.C. § 1123(b)(3)(A). Consistent with section 1123(b)(3)(A) of the Bankruptcy Code, the Article XI Provisions of the Plan provide for the settlement of certain claims and interests belonging to the Debtors. Accordingly, the Court should approve the Article XI Provisions.

(k) 11 U.S.C. § 1123(b)(6): Retention of Jurisdiction

23. Article XII of the Plan provides that, among other things, the Court shall retain jurisdiction as to all matters involving the Plan and the Claims allowance and disallowance process. These provisions are appropriate because the Court would have otherwise had jurisdiction over all of these matters during the pendency of the Chapter 11 Cases. Moreover, case law establishes that a bankruptcy court may retain jurisdiction over the debtor or property of the estate following confirmation. *See Universal Oil Ltd. v. Allfirst Bank (In re Millennium Seacarriers, Inc.),* 419 F.3d 83, 96 (2d Cir. 2005) (holding that "a bankruptcy court retains post-confirmation jurisdiction to interpret and enforce its own orders, particularly when disputes arise over a bankruptcy plan of reorganization") (internal quotation marks and citation omitted). Accordingly, the continuing jurisdiction of the Court is consistent with applicable law and therefore permissible under section 1123(b)(6) of the Bankruptcy Code.

24. Based upon the foregoing, the Plan complies fully with the requirements of sections 1122 and 1123 of the Bankruptcy Code, as well as all other provisions of the Bankruptcy Code and thus satisfies the requirement of section 1129(a)(1) of the Bankruptcy Code.

B. 11 U.S.C. § 1129(a)(2): The Debtors Have Complied with the Applicable Provisions of the Bankruptcy Code

25. Section 1129(a)(2) of the Bankruptcy Code requires that the plan proponent, the Debtors in this case, comply "with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(2). The legislative history to section 1129(a)(2) of the Bankruptcy Code reflects that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code. *See* H.R. Rep. No. 95-595 at 412 (1977); S. Rep. No. 98-989 at 126 (1978) ("Paragraph 2 of [§ 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); *In re Drexel Burnham Lambert Group*, 138 B.R. 723, 759 (Bankr. S.D.N.Y. 1992) (stating that the "legislative history to § 1129(a)(2) explains that this provision embodies the disclosure and solicitation requirements under §§ 1125 and 1126"); *In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984) (same). The Debtors have complied with the applicable provisions of the Bankruptcy Code, including the provisions of sections 1125 and 1126, as well as Bankruptcy Rules 3017 and 3018, regarding disclosure and solicitation by distributing the Disclosure Statement and soliciting acceptances of the Plan through the Solicitation Agent pursuant to the Approval Order.

1. Compliance with 11 U.S.C. § 1125

26. Section 1125 of the Bankruptcy Code, in pertinent part, provides:

> (b) An acceptance or rejection of a plan may not be solicited after the commencement of the case under [the Bankruptcy Code] from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information. . . .
> . . . .
>
> (c) The same disclosure statement shall be transmitted to each holder of a claim or interest of a particular class, but there may be transmitted different disclosure statements, differing in amount, detail, or kind of information, as between classes.

11 U.S.C. § 1125(b), (c).

27. The purpose of section 1125 of the Bankruptcy Code is to ensure that parties in interest are fully informed regarding the condition of the debtor, the means for implementation of the plan and related transactions and the treatment of all classes of claims and equity security interests, all so they may make an informed decision whether to vote to accept or reject a chapter 11 plan. *See Momentum Mfg. Corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994) (finding that section 1125 of the Bankruptcy Code obliges a debtor to engage in full and fair disclosure that would enable a hypothetical reasonable investor to make an informed judgment about the plan).

28. The Debtors have satisfied section 1125 of the Bankruptcy Code. Before the Debtors began their solicitation of votes on the Plan, the Court, in the Approval Order, approved the Disclosure Statement pursuant to section 1125(b) of the Bankruptcy Code as containing "adequate information" of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of the Debtors' Creditors in the relevant voting

Classes to make an informed judgment whether to accept or reject the Plan. *See* Approval Order, ¶ A.

29. Thereafter, the Debtors commenced their solicitation of votes to accept or reject the Plan. The manner in which votes were solicited in respect of the Plan is described in the Affidavit of Service, dated February 12, 2016 [ECF No. 1658] (the "**Solicitation Affidavit**") prepared by Epiq Bankruptcy Solutions, LLC. Specifically, the Solicitation Affidavit provides that the Disclosure Statement and Plan, together with the additional solicitation materials approved by the Court in the Approval Order, were transmitted to each Holder of a Claim entitled to vote to accept or reject the Plan (the "**Solicitation Package**"). As set forth in the Solicitation Affidavit, certain non-voting materials approved by this Court in the Approval Order were provided to Holders of Claims and Interests that are not entitled to vote to accept or reject the Plan, in compliance with the Approval Order. The Debtors did not solicit acceptances of the Plan by any Holder prior to the transmission of the Solicitation Packages. The Debtors also published voting notice in the print editions of *The Wall Street Journal, National Edition* and the *Richmond Times-Dispatch* on February 5, 2016. This notice contained information regarding the Voting Deadline, the Confirmation Hearing, and instructions on how to obtain copies of the Plan and Disclosure Statement through the Debtors' Case Information Website and the Court's PACER website.

30. Pursuant to the Approval Order, the Voting Deadline was on March 3, 2016. The Debtors filed an initial version of the Plan Supplement on February 26, 2016, prior to the Voting Deadline. The Vote Certification describes the methodology for the

tabulation and certifies the results of the voting with respect to the Plan. The results of the vote in respect of the Plan are discussed herein in more detail.

2. Compliance with 11 U.S.C. § 1126

31. Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a chapter 11 plan. Under section 1126 of the Bankruptcy Code, only Holders of Allowed Claims in Impaired Classes of Claims that will receive or retain property under the Plan on account of such Impaired Claims may vote to accept or reject the Plan. As set forth in section 1126:

> (a) The holder of a claim or interest allowed under section 502 of [the Bankruptcy Code] may accept or reject a plan. . . .
> . . . .
>
> (f) Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.
>
> (g) Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.

11 U.S.C. § 1126(a), (f), (g).

32. As set forth in the Solicitation Affidavit and the Vote Certification, in accordance with the Approval Order and section 1126 of the Bankruptcy Code, the Debtors solicited acceptances of the Plan from Holders of Allowed Claims against the Debtors in the Classes of Impaired Claims that are to receive distributions of property under the Plan. The Impaired Classes entitled to vote on the Plan are Class 1C (7.785% Senior Notes Parent Claims), Classes 2C-34C (7.785% Senior Notes Guarantee Claims), Class 1D (10.00% Convertible Senior Notes Parent Claims), Classes 2D-34D (10.00%

Convertible Senior Notes Guarantee Claims), Classes 1E-34E (PBGC Claims), Classes 1F-34F (General Unsecured Claims). The Plan reflects that (i) Classes 1A-34A (Other Priority Claims) and Classes 1B-34B (Secured Claims) are Unimpaired and thus, are conclusively presumed to have accepted the Plan; and (ii) Classes 1G-34G (Subordinated Claims) and Class 1I (Interests in James River) are Impaired and the members thereof will not receive or retain any interest in property or property under the Plan, and thus, are deemed to have rejected the Plan. Consequently, Classes 1A-34A, Classes 1B-34B, Classes 1G-34G and Class 1I are not entitled to vote to accept or reject the Plan. Based upon the foregoing, the Debtors have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code as they relate to the nonvoting Classes.

33. As to Impaired Classes entitled to vote to accept or reject the Plan, section 1126(c) of the Bankruptcy Code specifies the requirements for acceptance by such Classes of Impaired Claims:

> (c) A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c).

34. As evidenced in the Vote Certification, the Plan has been accepted by Holders holding in excess of two-thirds in amount and one-half in number of the Allowed Claims voted in each of Class 1C, Classes 2C-34C, Class 1D, Classes 2D-34D, Classes 1E-34E and Classes 1F-34F. Based upon the foregoing, the Debtors submit that the requirements of section 1129(a)(2) of the Bankruptcy Code have been satisfied.

C. 11 U.S.C. § 1129(a)(3): The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law

35. Pursuant to section 1129(a)(3) of the Bankruptcy Code, a court shall only confirm a plan that has been proposed in good faith and not forbidden by law. 11 U.S.C. § 1129(a)(3). Although the Bankruptcy Code does not define good faith, courts in the Fourth Circuit and elsewhere have held that "[t]he overriding standard for good faith within the meaning of 11 U.S.C. § 1129(a)(3) is whether 'there is a reasonable likelihood that the plan will achieve a result consistent with the standards prescribed under the Code.'" *In re Walker*, 165 B.R. 994, 1001 (E.D. Va. 1994) (quoting *Hanson v. First Bank of South Dakota, N.A.*, 828 F.2d 1310, 1315 (8th Cir. 1987)). Bankruptcy courts in the Fourth Circuit have found that "[a] further refinement of the test for whether a plan is proposed in good faith is found in the notion that the plan must provide for fundamental fairness in dealing with creditors." *In re Eagan*, No. 12-30525, 2013 WL 237812, at *4 (Bankr. W.D.N.C. Jan. 22, 2013). Whether a plan satisfies this test is a question of fact assessed on a case-by-case basis in light of the totality of the circumstances. *In re Manchester Oaks Homeowners Ass'n, Inc.*, No. 11-10179-BFK, 2014 WL 961167, at *11 (Bankr. E.D. Va. Mar. 12, 2014) (citing *In re Walker*, 165 B.R. 994, 1001 (E.D. Va. 1994)) ("[W]hether a plan is filed in good faith is a matter to be assessed in view of the totality of the circumstances which necessitated the plan, in perspective of the purposes of the Bankruptcy Code."). As a general rule, where a plan maximizes the economic return to creditors in light of the totality of the facts and circumstances of the case, the good faith standard is satisfied. *In re Bennett*, No. 07-10864-SSM, 2008 WL 1869308, at *2 (Bankr. E.D. Va. Apr. 23, 2008) (finding the good faith requirement met where "no evidence was presented at the [confirmation] hearing to show that the debtor had the

financial ability to pay more on account of unsecured claims than proposed in his plan."). Bankruptcy courts evaluate the fairness of a plan's proposed treatment of creditors in light of the debtor's ability to pay. *See Deans v. O'Donnell*, 692 F.2d 968, 970 (4th Cir. 1982) (examining the legislative history of the good faith requirement and stating that "[w]e conclude that the plain language of the statute precludes importation of a per se rule of substantial repayment into the "good faith" requirement in every case").

36. The Debtors, as the proponents of the Plan, have met their good faith obligation under the Bankruptcy Code. The Plan was proposed with the legitimate and honest purpose of liquidating and distributing the proceeds of the Debtors' assets. The Plan (including all documents necessary to effectuate the Plan, including, but not limited to, the Plan Supplement) is the result of extensive arm's-length negotiations among the Debtors and the Committee. These negotiations took place over many weeks, through telephone calls, meetings and proposals and regular correspondence among the parties and their advisors. Thus, the Plan contains a series of compromises that represent a good-faith effort on behalf of the Debtors and is in the best interests of the Debtors and the Debtors' creditors.

37. Moreover, the Plan achieves two of the primary objectives underlying a chapter 11 bankruptcy—the resolution of disputes and distribution of value to creditors for amounts owing. *See Crestar Bank v. Walker (In re Walker)*, 165 B.R. 994, 1001 (E.D. Va. 1994) (recognizing that the "prompt payment of creditors is a primary objective of a [c]hapter 11 reorganization"); *In re Hoosier Hi-Reach, Inc.*, 64 B.R. 34, 38 (Bankr. S.D. Ind. 1986) (stating that among the objectives of the Bankruptcy Code are "the expeditious resolution of disputes and speedy payment of creditors").

38. The Plan accomplishes these goals by providing the means through which the Debtors may effectuate a prompt distribution to Holders of Allowed Claims. Inasmuch as the Plan promotes the objectives and purposes of the Bankruptcy Code and has garnered the overwhelming support of all of Holders voting on the Plan, the Plan and all documents necessary to effectuate the Plan, including, but not limited to, the Plan Supplement, have been filed in good faith and the Debtors have satisfied their obligations under section 1129(a)(3) of the Bankruptcy Code.

D. 11 U.S.C. § 1129(a)(4): The Plan Provides that Payments by the Debtors for Services or Costs and Expenses are Subject to Court Approval as Reasonable

39. Section 1129(a)(4) of the Bankruptcy Code requires that certain professional fees and expenses paid by the plan proponent, by the debtor or by a person receiving distributions of property under the plan, be subject to approval of the Court as reasonable. *See* 11 U.S.C. § 1129(a)(4). Section 1129(a)(4) of the Bankruptcy Code has been construed to require that all payments of professional fees and expenses that are made from estate assets be subject to review and approval as to their reasonableness by the Court. *See In re Drexel Burnham Lambert Group*, 138 B.R. at 760.

40. Pursuant to the interim compensation procedures established in the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Retained Professionals* [ECF No. 247] and section 331 of the Bankruptcy Code, the Court has authorized and approved the payment of certain fees and expenses of professionals retained by the Debtors and the Committee in the Chapter 11 Cases. All such fees and expenses, as well as all other accrued fees and expenses of retained professionals through the Confirmation Date, remain subject to final review by the Court

for reasonableness under section 330 of the Bankruptcy Code. In addition, pursuant to subsections (b)(3) and (b)(4) of section 503 the Bankruptcy Code, the Court must review any application for substantial contribution to ensure compliance with the statutory requirements and that the fees requested are reasonable.

41. Section 7.1 of the Plan requires that all requests for payment of Professional Claims, which include compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 328, 330 or 331 of the Bankruptcy Code, be filed and served in accordance with the Compensation Procedures approved by the Court no later than 45 days after the Effective Date.

42. The foregoing procedures for the Court's review and ultimate determination of the professional fees and expenses to be paid by the Debtors satisfy the requirements of section 1129(a)(4) of the Bankruptcy Code. *See In re Elsinore Shore Assocs.*, 91 B.R. 238, 268 (Bankr. D. N.J. 1988) (holding that requirements of section 1129(a)(4) of the Bankruptcy Code are satisfied where the plan provided for payment of only "allowed" administrative expenses and such payments were subject to court approval); *see also In re Texaco, Inc.*, 84 B.R. 893, 903 (Bankr. S.D.N.Y. 1988) (holding that requirements of section 1129(a)(4) of the Bankruptcy Code are satisfied where final applications for the payment of fees and expenses are subject to court approval).

E. 11 U.S.C. § 1129(a)(5): The Debtors Have Disclosed All Necessary Information regarding Directors, Managers and Officers and the Employment of Such Directors, Managers and Officers Is Consistent with the Interests of Creditors and Interest Holders and Public Policy

43. Section 1129(a)(5) of the Bankruptcy Code requires that (i) the plan proponent disclose the identity and affiliations of the proposed directors and officers of

the debtor; (ii) that the appointment or continuance of such directors and officers be consistent with the interests of creditors and equity security holders and public policy; and (iii) that there be disclosure of the identity and the nature of the compensation of any insiders to be retained or employed by the debtor. *See* 11 U.S.C. § 1129(a)(5). Section 1129(a)(5) of the Bankruptcy Code requires such disclosures to be made to the extent known. *See In re American Solar King Corp.*, 90 B.R. 808, 815 n.8 (Bankr. W.D. Tex. 1988) ("If there is no proposed slate of directors as yet, there is simply nothing further for the debtor to disclose under subsection (a)(5)(A)(i).").

44. Section 1129(a)(5) of the Bankruptcy Code has been satisfied. The Plan Supplement provides that the Plan Administrator shall serve as the sole officer and director of each of the Liquidating Debtors. The identity of the Plan Administrator has been disclosed in the Plan Supplement as Byron Advisors, LLC; the affiliations of the Plan Administrator have been disclosed in the *Declaration of William B. Murphy in Support of the Debtors' Motion for Entry of an Order Pursuant to Bankruptcy Code §§ 105(a) and 363(b) Authorizing the Debtors, Retroactive to July 31, 2014, to (i) Retain Byron Advisors, LLC to Provide the Debtors a Chief Restructuring Officer and (ii) Designate William B. Murphy as Chief Restructuring Officer for the Debtors* [ECF No. 564]; and the compensation proposed to be paid to the Plan Administrator pursuant to the Plan Administrator Agreement is disclosed in the Plan Supplement. The appointment of the Plan Administrator is consistent with the interests of Holders of Claims against, and Interests in, the Debtors and with public policy.

F. 11 U.S.C. § 1129(a)(6): The Plan Does Not Contain Rate Changes Subject to the Jurisdiction of Any Governmental Regulatory Commission

45. Section 1129(a)(6) of the Bankruptcy Code requires that any regulatory commission having jurisdiction over rates charged by a debtor in the operation of its business approve any rate change provided for in the plan. *See* 11 U.S.C. § 1129(a)(6). This provision is inapplicable to the Debtors. The Plan does not contain any rate changes subject to the jurisdiction of any governmental regulatory commission and does not require approval by any governmental regulator.

G. 11 U.S.C. § 1129(a)(7): The Plan Satisfies the Best Interests Test

46. Section 1129(a)(7) of the Bankruptcy Code requires that a plan be in the best interests of creditors and equity security interest holders. Specifically, section 1129(a)(7) of the Bankruptcy Code provides:

> With respect to each impaired class of claims or interests—(A) each holder of a claim or interest of such class—
>
> (i) has accepted the plan; or
>
> (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date . . .

11 U.S.C. § 1129(a)(7)(A). This section is often referred to as the best interests test.

47. The best interests test requires that each holder of a claim or equity security interest either accept the plan or receive or retain property having a present value, as of the effective date of the plan, not less than the amount such holder would receive or retain if the debtors were liquidated in a hypothetical liquidation under chapter 7 of the Bankruptcy Code. *See In re Leslie Fay Cos.,* 207 B.R. 764, 787 (Bankr. S.D.N.Y. 1997).

48. Under the best interests test, the court must find that each non-accepting creditor or equity security interest holder under a chapter 11 plan will receive or retain value that is "not less than the amount that such holder would receive . . . if the debtor were liquidated." *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship.*, 526 U.S. 434, 441-42 n.13 (1999); *see also In re Leslie Fay Cos.*, 207 B.R. at 787. The best interests test concerns individual creditors and equity security holders rather than classes of claims or interests. *See In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. at 761.

49. By its express terms, section 1129(a)(7) of the Bankruptcy Code does not apply to Unimpaired Classes under the Plan, and the best interests test is satisfied to the extent each Holder of an Impaired Claim votes to accept the Plan. *See* 11 U.S.C. § 1129(a)(7). Under the Plan, Classes 1A-34A and Classes 1B-34B are Unimpaired and deemed to accept the Plan. The best interests test, therefore, is inapplicable to the members of Classes 1A-34A and Classes 1B-34B. Likewise, all Holders of Claims in Class 1C, Classes 2C-34C, Class 1D, Classes 2D-34D, Classes 1E-34E and Classes 1F-34F that returned ballots voted to accept the Plan. Therefore, the best interests test is satisfied with respect to all Holders of Claims in Class 1C, Classes 2C-34C, Class 1D, Classes 2D-34D, Classes 1E-34E and Classes 1F-34F.

50. Under the Plan, Classes 1G-34G and Class 1I will not receive or retain any property under the Plan and therefore are deemed to reject the Plan. However, Holders of Claims in Classes 1G-34G and Class 1I would do no better under a hypothetical dissolution of the Debtors' Estates under chapter 7 of the Bankruptcy Code, as the value of the Debtors' assets is less than the total value of the Debtors' debts and liabilities and a chapter 7 liquidation would not increase the value of the assets available for distribution

to creditors. The Debtors request that the Court make a finding that Interests in Class 1I have no value for purposes of the best interests test under section 1129(a)(7) of the Bankruptcy Code.

51. Based on the foregoing, the Debtors believe that the Plan meets the best interests test provided in section 1129(a)(7) of the Bankruptcy Code.

H. 11 U.S.C. § 1129(a)(8): The Plan Has Been Accepted by the Impaired Voting Classes and the Unimpaired Classes, and, as to Such Classes, the Requirements of Section 1129(a)(8) of the Bankruptcy Code Have Been Satisfied

52. Section 1129(a)(8) of the Bankruptcy Code requires that each class of impaired claims or equity interests accept the plan. *See* 11 U.S.C. § 1129(a)(8) ("With respect to each class of claims or interests—(A) such class has accepted the plan; or (B) such class is not impaired under the plan."). Holders of Claims in Classes 1A-34A and Classes 1B-34B are Unimpaired under the Plan, and, pursuant to section 1126(f) of the Bankruptcy Code, are collectively presumed to have voted to accept the Plan. Thus, the requirements of section 1129(a)(8) of the Bankruptcy Code are satisfied with respect to Classes 1A-34A and Classes 1B-34B.

53. As to the Impaired Classes entitled to vote to accept or reject the Plan, sections 1126(c) and 1126(d) of the Bankruptcy Code specify the requirements for acceptance or rejection of the Plan by Classes of Claims and Interests, respectively. Class 1C, Classes 2C-34C, Class 1D, Classes 2D-34D, Classes 1E-34E and Classes 1F-34F are the Impaired Classes of Claims eligible to vote on the Plan. As set forth above, the Holders of Allowed Claims in Class 1C, Classes 2C-34C, Class 1D, Classes 2D-34D, Classes 1E-34E and Classes 1F-34F affirmatively have voted to accept the Plan.

54. The tabulation of votes is discussed in more detail in the Vote Certification. As to the Unimpaired Class and the Impaired and accepting Classes, the requirements of section 1129(a)(8) of the Bankruptcy Code have been satisfied.

55. The holders of Claims and Interests in Classes 1G-34G and Class 1I will not receive any distributions of property under the Plan and therefore are deemed to have rejected the Plan. Because the requirements of section 1129(a)(8) of the Bankruptcy Code have not been satisfied with respect to these Classes, section 1129(b) of the Bankruptcy Code applies to these Classes. Nonetheless, as set forth below, the Plan may be confirmed under the "cram-down" provisions of section 1129(b) of the Bankruptcy Code with respect to these Classes.

I. 11 U.S.C. § 1129(a)(9): The Plan Provides for Payment In Full of Allowed Administrative Claims and Allowed Priority Claims

56. Section 1129(a)(9) of the Bankruptcy Code requires that certain priority claims be paid in full on the effective date of a plan and authorizes the holders of certain other priority claims to be paid the value of their allowed claim through deferred cash payments. In particular, pursuant to section 1129(a)(9)(A) of the Bankruptcy Code, holders of claims of a kind specified in section 507(a)(2) of the Bankruptcy Code—administrative expenses allowed under section 503(b) of the Bankruptcy Code—must receive on the effective date cash equal to the allowed amount of such claims.

57. In accordance with sections 1129(a)(9)(A) and (B) of the Bankruptcy Code, Article II of the Plan provides that all Allowed Administrative Claims under section 503(b) of the Bankruptcy Code, unless the Holder of such Claim agrees to less favorable treatment, will be paid in full in Cash either: (a) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date (or, if not then due, when

such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter) or (b) if such Administrative Claim is not Allowed as of the Effective Date, on the date on which such Administrative Claim becomes an Allowed Administrative Claim, or as soon as reasonably practicable thereafter.

58. Article II of the Plan provides that all Allowed Priority Tax Claims will receive (i) the treatment provided by section 1129(a)(9)(C) of the Bankruptcy Code; (ii) be paid in full in Cash on the Effective Date; (iii) such other amounts and in such other manner as may be determined by the Court to provide such Holder deferred Cash payments having a value, as of the Effective Date, equal to such Allowed Priority Tax Claim; or (iv) such other treatment as may be agreed upon between the Holder of such an Allowed Priority Tax Claim and the applicable Debtor.

59. Article VII of the Plan provides that the Liquidating Debtors will pay Professional Claims in Cash in the amount the Court allows, including from the Professional Fee Reserve, which the Plan Administrator will establish in trust for the Professionals and fund with Cash equal to the Professional Fee Claims on the Effective Date.

60. Thus, for these reasons, Articles II and VII of the Plan satisfies the requirements of sections 1129(a)(9)(A) and (B) of the Bankruptcy Code.

J. 11 U.S.C. § 1129(a)(10): At Least One Class of Impaired Claims Has Accepted the Plan

61. Section 1129(a)(10) of the Bankruptcy Code requires the affirmative acceptance of the Plan by at least one class of impaired claims, "determined without including any acceptance of the plan by any insider," if a class of claims is impaired under the Plan. 11 U.S.C. § 1129(a)(10); *see also In re Martin*, 66 B.R. 921, 924 (Bankr.

D. Mont. 1986) (holding that where three classes of impaired claims accepted the plan, exclusive of insiders, requirements of section 1129(a)(10) are satisfied); *see also In re Drexel Burnham Lambert Group*, 138 B.R. at 771 (holding that the plan satisfied section 1129(a)(10) of the Bankruptcy Code where at least one class of claims, exclusive of insiders, had accepted the plan). As demonstrated below, the Plan satisfies this requirement.

62. As discussed above, Class 1C, Classes 2C-34C, Class 1D, Classes 2D-34D, Classes 1E-34E and Classes 1F-34F are Impaired under the Plan. The members of Class 1C, Classes 2C-34C, Class 1D, Classes 2D-34D, Classes 1E-34E and Classes 1F-34F received ballots that enabled those Holders to vote on the Plan. The voting results demonstrate that, despite their impairment under the Plan, members of each of Class 1C, Classes 2C-34C, Class 1D, Classes 2D-34D, Classes 1E-34E and Classes 1F-34F voted to accept the Plan in accordance with section 1126 of the Bankruptcy Code. Class 1C, Classes 2C-34C, Class 1D, Classes 2D-34D, Classes 1E-34E and Classes 1F-34F therefore qualify as impaired accepting Classes and satisfy the requirements of section 1129(a)(10) of the Bankruptcy Code.

K. 11 U.S.C. § 1129(a)(11): The Plan Is Feasible

63. Section 1129(a)(11) of the Bankruptcy Code requires that, as a condition precedent to Confirmation, the Court determine that the Plan is feasible, meaning:

> Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

11 U.S.C. § 1129(a)(11). As described below, the Plan is feasible within the meaning of this provision. The feasibility test set forth in section 1129(a)(11) of the Bankruptcy

Code requires the Court to determine whether the Plan is workable and has a reasonable likelihood of success. *See In re River End Apartments, Ltd.,* 167 B.R. 470, 476 (Bankr. S.D. Ohio 1994) ("To establish feasibility under § 1129(a)(11), a proponent must demonstrate that its plan offers a reasonable prospect of success and is workable") (internal quotation marks and citation omitted).

64. In the Fourth Circuit, "the standard for feasibility is whether there is a 'reasonable assurance of success. Success need not be guaranteed.'" *Quality Inns Int'l, Inc. v. L.B.H. Assocs. Ltd. P'ship*, 911 F.2d 724 (4th Cir. 1990) (citing *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988), *cert. denied*, 488 U.S. 868, 109 S. Ct. 176 (1988)). Importantly, "the feasibility inquiry is peculiarly fact intensive and requires a case-by-case analysis, using as a backdrop the relatively low parameters articulated in the statute. . . . There is a relatively low threshold of proof necessary to satisfy the feasibility requirement." *See Mercury Cap. Corp. v. Milford Conn. Assocs., L.P.*, 354 B.R. 1, 9 (D. Conn. 2006) ("[A] 'relatively low threshold of proof' will satisfy the feasibility requirement.") (quoting *In re Brotby,* 303 B.R. 177, 191-92 (B.A.P. 9th Cir. 2003)). Indeed, "a court is never presented with a plan that is guaranteed to succeed. Nevertheless, the plan proponent—here the debtor—must demonstrate 'a reasonable prospect that the plan of reorganization will succeed.'" *In re DeLuca*, No. 95-11893-AM, 1996 WL 910908, at *18 (Bankr. E.D. Va. Apr. 12, 1996) (quoting *In re Adamson Co., Inc.*, 42 B.R. 169, 176 (Bankr. E.D. Va. 1984)).

65. Here, there is no doubt that the Plan is feasible, and the Plan has not drawn any feasibility objections. The Plan provides for the merger and dissolution of the Debtors and the designation of the Plan Administrator to distribute Cash or other

consideration to Holders in accordance with the Plan Administrator Agreement and the terms of the Plan. The Debtors submit that adequate sources of Cash exist to implement the Plan, fund the liquidation of the Debtors and make all Distributions contemplated under the Plan. Thus, because the Plan is workable and has a reasonable likelihood of success, the feasibility requirement of section 1129(a)(11) of the Bankruptcy Code is satisfied.

L. 11 U.S.C. § 1129(a)(12): All Statutory Fees Have Been or Will Be Paid

66. Section 1129(a)(12) of the Bankruptcy Code requires the payment of "[a]ll fees payable under section 1930 [title 28, the United States Code], as determined by the court at the hearing on confirmation of the plan. . . ." 11 U.S.C. § 1129(a)(12). Section 507 of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930,] chapter 123 of title 28" are afforded priority as administrative expenses. 11 U.S.C. § 507(a)(2). In accordance with sections 507 and 1129(a)(12) of the Bankruptcy Code, the Plan provides that the Plan Administrator shall pay, from and after the Effective Date, statutory fees due to the U.S. Trustee in accordance with 28 U.S.C. § 1930 until the Chapter 11 Cases are closed or converted or final decrees are entered. Thus, the Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code.

M. 11 U.S.C. §§ 1129(a)(13), (a)(14), (a)(15) and (a)(16)

67. Section 1129(a)(13) of the Bankruptcy Code requires a plan to provide for retiree benefits at levels established pursuant to section 1114 of the Bankruptcy Code. *See* 11 U.S.C. § 1129(a)(13). Section 1129(a)(13) of the Bankruptcy Code is inapplicable as the Debtors provide no retiree benefits (as defined in Section 1114 of the Bankruptcy Code). Section 1129(a)(14) of the Bankruptcy Code is inapplicable because

the Debtors are not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. Moreover, section 1129(a)(15) of the Bankruptcy Code is inapplicable because the Debtors are not individuals. Finally, none of the Debtors is a corporation or trust that is not a moneyed, business or commercial corporation or trust. Therefore, section 1129(a)(16) of the Bankruptcy Code is inapplicable to the Plan.

N. 11 U.S.C. § 1129(d): The Principal Purpose of the Plan Is not Avoidance of Taxes

68. Section 1129(d) of the Bankruptcy Code states "the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933." 11 U.S.C. § 1129(d). The purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933. Moreover, no Governmental Unit, or any other entity, has objected to the Plan on those grounds. The Debtors therefore submit that the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

II. THE PLAN SATISFIES THE "CRAM-DOWN" REQUIREMENTS OF SECTION 1129(B) BECAUSE THE PLAN DOES NOT DISCRIMINATE UNFAIRLY AND IS FAIR AND EQUITABLE

69. Classes 1G-34G and Class 1I are receiving no distributions under the Plan, and thus, are deemed to reject the Plan. No filed Claims in Classes 1G-34G have been allowed in these Chapter 11 Cases. Therefore, as Classes 1G-34G are an empty Class, the cram-down requirements of section 1129(b) of the Bankruptcy Code are only applicable to Class 1I. Here, cram-down of the holders of Class 1I Interests is appropriate under the Bankruptcy Code.

70. Section 1129(b) of the Bankruptcy Code provides a mechanism for confirmation of a plan in circumstances where the plan is not accepted by all impaired

classes of claims and interests. This mechanism is commonly referred to as "cram-down." Section 1129(b) provides in pertinent part:

> Notwithstanding section 510(a) of [the Bankruptcy Code], if all of the applicable requirements of [section 1129(a) of the Bankruptcy Code] other than [the requirement contained in section 1129(a)(8) that a plan must be accepted by all impaired classes] are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph *if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.*

11 U.S.C. § 1129(b)(1) (emphasis added).

71. Under section 1129(b) of the Bankruptcy Code, the Bankruptcy Court may cram down a plan over a dissenting impaired class or classes of claims or interests so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to the dissenting class or classes. *See In re Armstrong World Indus., Inc.*, 432 F.3d 507, 512 (3d Cir. 2005) (quoting 11 U.S.C. § 1129(b)(1)); *Travelers Ins. Co. v. Bryson Porps., XVIII (In re Bryson Props., XVIII),* 961 F.2d 496, 503 (4th Cir. 1992); *see also In re Dura Auto Sys., Inc.*, 379 B.R. 257, 270 (Bankr. D. Del. 2007) (discussing unfair discrimination); *In re Catron*, 186 B.R. 194, 197 (Bankr. E.D. Va. 1995). The Plan does not "discriminate unfairly" and is "fair and equitable" with respect to Class 1I.

72. Section 1129(b)(1) does not prohibit discrimination between classes, only discrimination that is unfair. *See In re Cypresswood Land Partners, I*, 409 B.R. 396, 434 (Bankr. S.D. Tex. 2009) ("Section 1129(b)(1) prohibits only unfair discrimination, not all discrimination. The mechanical approach threatens the vitality of the word 'unfairly' in § 1129(b)(1)."); *In re Salem Suede, Inc.*, 219 B.R. 922, 933 (Bankr. D. Mass. 1998); *In re 11,111, Inc.*, 117 B.R. 471, 478 (Bankr. D. Minn. 1990). The overwhelming weight of

judicial authority holds that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if similar claims are treated differently without a reasonable basis for the disparate treatment, or a class of claims receives consideration of a value that is greater than the amount of its allowed claims. *See In re Kennedy*, 158 B.R. 589, 599 (Bankr. D. N.J. 1993); *In re Buttonwood Partners, Ltd.*, 111 B.R. 57, 63 (Bankr. S.D.N.Y. 1990); *In re Future Energy Corp.*, 83 B.R. 470, 492-93 (Bankr. S.D. Ohio 1988); *In re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986), *aff'd in part, rev'd in part*, 78 B.R. 407 (S.D.N.Y. 1987). Accordingly, as between two classes of claims or two classes of interests, there is no unfair discrimination if (i) the classes are comprised of dissimilar claims or interests, *see, e.g.*, *Johns-Manville*, 68 B.R. at 636; or (ii) taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment. *See, e.g.*, *Buttonwood Partners*, 111 B.R. at 63. As the foregoing standards demonstrate, the Plan does not "discriminate unfairly" because all Interest holders are treated the same under the Plan.

73. Under the Plan, the "fair and equitable" standard, known as the "absolute priority rule," is satisfied as to each holder of a an Interest in Class 1I. Although holders of Interests in Class 1I shall neither receive nor retain any property under the Plan, Holders of claims in Class 1C, Classes 2C-34C, Class 1D, Classes 2D-34D, Classes 1E-34E and Classes 1F-34F are not being paid in full, and no holder, if any, that is junior to their Interests will receive or retain property under the Plan on account of their junior Claims or Interests. Thus, the Plan is "fair and equitable" with respect to Holders of Interests in Class 1I. Based on the foregoing, the Plan satisfies the cram-down requirements of section 1129(b) of the Bankruptcy Code.

CONCLUSION

74. For the foregoing reasons, the Plan complies with and satisfies all applicable requirements of section 1129 of the Bankruptcy Code, and thus, should be confirmed.

Dated: March 8, 2016
Richmond, Virginia

Respectfully submitted,

/s/ Henry P. (Toby) Long, III

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SCHEDULE 1

Debtor Entities

1. James River Coal Company (2012)
2. BDCC Holding Company, Inc. (3200)
3. Bell County Coal Corporation (0806)
4. Bledsoe Coal Corporation (4821)
5. Bledsoe Coal Leasing Company (6654)
6. Blue Diamond Coal Company (3812)
7. Buck Branch Resources LLC (1459)
8. Chafin Branch Coal Company, LLC (7873)
9. Eolia Resources, Inc. (0587)
10. Hampden Coal Company, LLC (4334)
11. International Resource Partners LP (8669)
12. International Resources Holdings I LLC (9838)
13. International Resources Holdings II LLC (1567)
14. International Resources, LLC (2522)
15. IRP GP Holdco LLC (5380)
16. IRP Kentucky LLC (1454)
17. IRP LP Holdco Inc. (4447)
18. IRP WV Corp. (6050)
19. James River Coal Sales, Inc. (3417)
20. James River Coal Service Company (2577)
21. James River Escrow Inc. (0314)
22. Jellico Mining, LLC (4545)
23. Johns Creek Coal Company (9412)
24. Johns Creek Elkhorn Coal Corporation (9199)
25. Johns Creek Processing Company (4021)
26. Laurel Mountain Resources LLC (1458)
27. Leeco, Inc. (4176)
28. Logan & Kanawha Coal Co., LLC (5716)
29. McCoy Elkhorn Coal Corporation (8373)
30. Rockhouse Creek Development, LLC (9583)
31. Shamrock Coal Company, Incorporated (1843)
32. Snap Creek Mining, LLC (6858)
33. Triad Mining Inc. (9005)
34. Triad Underground Mining, LLC (9041)