Stephen E. Hessler (admitted *pro hac vice*)
Patrick Evans (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

- and -

James H. M. Sprayregen, P.C.
Ross M. Kwasteniet (admitted *pro hac vice*)
Justin R. Bernbrock (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Michael A. Condyles (VA 27807)
Peter J. Barrett (VA 46179)
Jeremy S. Williams (VA 77469)
KUTAK ROCK LLP
Bank of America Center
1111 East Main Street, Suite 800
Richmond, Virginia 23219-3500
Telephone: (804) 644-1700
Facsimile: (804) 783-6192

Counsel for the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	)	Chapter 11
PATRIOT COAL CORPORATION, *et al.*,	)	Case No. 15-32450 (KLP)
Debtors.	)	(Jointly Administered)

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE DEBTORS' FOURTH AMENDED JOINT PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE AND OMNIBUS RESPONSE TO OBJECTIONS

Dated: October 5, 2015

Table of Contents

PRELIMINARY STATEMENT 1

BACKGROUND 6

I. Development of the Plan..6

II. Negotiations and Achieved Settlements Regarding Employee-Related Liabilities. 10

III. The Marketing Process, the Auction, and the Selection of the Winning Bidder and the Back Up Bidder. 12

IV. Plan Confirmation Process and Solicitation...14

V. Rights Offering Subscription Results...15

VI. Voting Results...16

ARGUMENT 17

I. The Plan Should Be Confirmed over the Prepetition LC Lenders' Objection. 18

1. The Coronado Bid Would Not Be Available in a Liquidation. 19

2. The Plan Was Proposed in Good Faith and Treats the Prepetition LC Lenders Equitably. 20

3. There Are No LC Adequate Protection Obligations Because the Prepetition LC Lenders' Collateral Was Valueless as of the Petition Date..21

4. The Plan is Fair and Equitable with Respect to Class 5 within the meaning of section 1129(b) of the Bankruptcy Code. 23

II. The Plan Satisfies the Requirements of Section 1129 of the Bankruptcy Code. 28

A. The Plan Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code. 29

1. The Plan Satisfies the Seven Mandatory Plan Requirements of Section 1123(a)(1)–(7) of the Bankruptcy Code. 31

2. The Discretionary Contents of the Plan, Including the Plan's Discharge, Release, Injunction, and Exculpation Provisions, Are Appropriate and Should Be Approved...32

a. The Discharge Is Appropriate. 33

Table of Contents (cont'd)

b. The Debtor Release Is Appropriate...34

c. The Third Party Release Provisions Are Appropriate. 39

i. The Consensual Release Should Be Approved.................39

d. The Exculpation Provision Is Appropriate. 41

e. The Injunction Provision Is Appropriate. 43

B. The Debtors Have Complied with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(2))...44

1. The Debtors Complied with Section 1125 of the Bankruptcy Code. 44

2. The Debtors Complied with Section 1126 of the Bankruptcy Code. 45

C. The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law (Section 1129(a)(3)). 46

D. Payments Under the Plan Are Subject to Court Approval (Section 1129(a)(4))...52

E. The Plan Properly Discloses Post-Confirmation Management (Section 1129(a)(5))...53

F. The Plan Does Not Require Regulatory Approval of Rate Changes (Section 1129(a)(6))...54

G. The Plan Satisfies the "Best Interests of Creditors" Test (Section 1129(a)(7))...55

H. The Plan Does Not Satisfy the Requirements of Section 1129(a)(8), But Satisfies the Alternative Requirements Under Section 1129(a)(10) (Section 1129(a)(8))...57

I. The Plan Provides for the Payment of Priority Claims (Section 1129(a)(9))...57

J. The Plan Has Been Accepted by at Least One Impaired Class (Section 1129(a)(10))...58

K. The Plan Is Feasible (Section 1129(a)(11)). 59

L. The Plan Provides for the Payment of Certain Statutory Fees (Section 1129(a)(12))...62

M. The Requirements of Section 1129(a)(13) of the Bankruptcy Code Do Not Apply to the Plan. 62

Table of Contents (cont'd)

III. The Plan Satisfies the Applicable "Cram Down" Requirements of Section 1129(b) of the Bankruptcy Code WITH RESPECT TO the REMAINING rejecting CLASSES. 63

A. The Plan is Fair and Equitable with Respect to the Remaining Rejecting Classes....................64

1. The Plan is Fair and Equitable with Respect to Classes 6, 8 and 9. 64

B. The Plan Does Not Unfairly Discriminate with Respect to the Rejecting Classes....................65

IV. The Principal Purpose of the Plan Is Not Avoidance of Taxes or Section 5 of the Securities Act (Section 1129(d))....................67

V. Approval of the Disclosure Statement Is Warranted and the Debtors Complied with the Scheduling Order. 67

A. The Disclosure Statement Satisfies the Requirements of the Bankruptcy Code. 67

1. The Disclosure Statement Contains Adequate Information....................67

B. The Debtors Complied with the Scheduling Order....................70

1. The Debtors Complied with the Notice Requirements Set Forth in the Scheduling Order. 71

2. The Ballots Used to Solicit Holders of Claims Entitled to Vote on the Plan Complied with the Scheduling Order. 71

3. The Debtors' Solicitation Period Complied with the Scheduling Order and Bankruptcy Rule 3018(b)....................72

4. The Debtors' Vote Tabulation Procedures Complied with the Scheduling Order. 72

5. Solicitation of the Plan Complied with the Bankruptcy Code and Was in Good Faith. 73

CONCLUSION 74

Table of Authorities

Cases

B.D. Int'l Disc. Corp. v. Chase Manhattan Bank (In re B.D. Int'l Disc. Corp.), 701 F.2d 1071 (2d Cir. 1983) 51

Bank of America Nat. Trust and Sav. Ass'n v. 203 North La Salle Partnership, 526 U.S. 434, 119 S.Ct. 1411, 143 L.Ed.2d 607 (1999) 58, 68

Berkeley Fed. Bank & Trust v. Sea Garden Motel & Apartments, 195 B.R. 294 (D.N.J. 1996) 63

Century Glove, Inc. v. First Am. Bank of N.Y., 860 F.2d 94 (3d Cir. 1988) 72

Chase Manhattan Bank USA NA v. Stembridge (In re Stembridge), 394 F.3d 383 (5th Cir. 2004) 22

Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow Corning Corp.), 280 F.3d 649 (6th Cir. 2002) 42

Deans v. O'Donnell, 692 F.2d 968 (4th Cir. 1982) 50

Dish Network Corp. v. DBSD N. Am., Inc., 634 F.3d 79 (2d Cir. 2011) 63

Feld v. Zale Corp. (*In re Zale Corp.*), 62 F.3d 746 (5th Cir. 1995) 38

First Am. Bank of N.Y. v. Century Glove, Inc., 81 B.R. 274 (D. Del. 1988) 72

First Am. Bank of Va. v. Monica Rd. Assocs. (In re Monica Rd. Assocs.), 147 B.R. 385 (Bankr. E.D. Va. 1992) 22

Food Lion, Inc. v. S.L. Nusbaum Ins. Agency, Inc., 202 F.3d 233 (4th Cir. 2000 42

Frito-Lay, Inc. v. LTV Steel Co. (In re Chateaugay Corp.), 10 F.3d 944 (2d Cir. 1993) 30

Hanson v. First Bank of South Dakota, N.A., 828 F.2d 1310 (8th Cir. 1987) 49

Heartland Fed. Savs. & Loan Ass'n v. Briscoe Enters., Ltd. II (In re Briscoe Enters Ltd., II), 994 F.2d 1160, 1165 (5th Cir. 1993) 17, 64

ICL Holding Company, Inc., No. 14-2709, 2015 WL 5315604 (3d Cir. Sept. 14, 2015) 27, 28

Table of Authorities (cont'd)

In re 500 Fifth Ave. Assocs.,
148 B.R. 1010 (Bankr. S.D.N.Y. 1993) 30

In re Adamson Co., Inc.,
42 B.R. 169 (Bankr. E.D. Va. 1984) 63

In re Affiliated Foods, Inc., 249 B.R. 770 (Bankr. W.D. Mo. 2000) 58

In re Allegiance Telecom, Inc., No. 03-13057 (Bankr. S.D.N.Y.) 40

In re American Solar King Corp., 90 B.R. 808 (Bankr. W.D. Tex. 1988) 56

In re American Trailer & Storage, Inc.,
419 B.R. 412 (Bankr. W.D. Mo. 2009) 64

In re Aztec Co.,
107 B.R. 585 (Bankr. M.D. Tenn. 1989) 70

In re Aztec Co.,
107 B.R. 585 (Bankr. M.D. Tenn. 1989) 70

In re Baldwin United Corp.,
43 B.R. 888 (Bankr. S.D. Ohio 1984) 40

In re Bastankhah,
2012 WL 170901 (Bankr. S.D. Tex. Jan. 18, 2012) 64

In re Bate Land & Timber,
LLC, 523 B.R. 483 (Bankr. E.D.N.C. 2015)
leave to appeal granted sub nom. Bate Land Co., LP v. Bate Land & Timber, LLC,
No. 7:15-CV-22-BO, 2015 WL 3409208 (E.D.N.C. May 27, 2015) 17, 26

In re Bennett, No. 07-10864-SSM, 2008 WL 1869308 (Bankr. E.D. Va. Apr. 23, 2008) 50

In re Bond,
No. 93-1410, 1994 WL 20107 (4th Cir. 1994) 37

In re Brotby,
303 B.R. 177 (B.A.P. 9th Cir. 2003) 63

In re Castre, Inc., 312 B.R. 426 (Bankr. D. Colo. 2004) 21

In re Catron,
186 B.R. 194 (Bankr. E.D. Va. 1995) 67

In re Cheatham,
78 B.R. 104 (Bankr. E.D.N.C. 1987)
aff'd, 91 B.R. 377 (E.D.N.C. 1988) 61

Table of Authorities (cont'd)

In re Chrysler LLC, 405 B.R. 84 (Bankr. S.D.N.Y. 2009) 54

In re Cooper,
08-20473-RLJ-13, 2009 WL 1110648 (Bankr. N.D. Tex. Apr. 24, 2009) 69

In re Cypresswood Land Partners, I,
409 B.R. 396 (Bankr. S.D. Tex. 2009) 58, 69

In re DeLuca,
No. 95-11893-AM, 1996 WL 910908 (Bankr. E.D. Va. Apr. 12, 1996) 63

In re Drexel Burnham Lambert Grp. Inc.,
138 B.R. 723 (Bankr. S.D.N.Y. 1992) 30

In re Drexel Burnham Lambert Grp., Inc.,
960 F.2d 285 (2d Cir. 1992), ... 45

In re Eagan, No. 12-30525, 2013 WL 237812 (Bankr. W.D.N.C. Jan. 22, 2013) 49

In re Eagle Bus Mfg., Inc.,
134 B.R. 584 (Bankr. S.D. Tex. 1991) 70

In re Eddington Thread Mfg. Co.,
181 B.R. 826 (Bankr. E.D. Pa. 1995) 63

In re Family Christian, LLC, 533 B.R. 600 (Bankr. W.D. Mich. 2015) 21

In re Freymiller Trucking, Inc.,
190 B.R. 913 (Bankr. W.D. Okla. 1996) 70

In re Harborwalk, LP,
2010 WL 5116620 (Bankr. S.D. Tex. Oct. 25, 2010) 42

In re Harenberg, 491 B.R. 706 (Bankr. D. Md. 2013) 49

In re Hawkins,
2013 WL 663608 (Bankr. D.S.C. Feb. 21, 2013) 29

In re Heritage Highgate, Inc., 679 F.3d 132 (3d Cir. 2012) 23

In re Heritage Org., L.L.C.,
375 B.R. 230 (Bankr. N.D. Tex. 2007) 30

In re Hingham Campus, LLC,
2011 WL 3679057 44

In re Houston Regional Sports Network L.P., No. 13-35998 (Bankr. S.D.Tex. Oct. 8,
2014) 22, 43

Table of Authorities (cont'd)

In re Indianapolis Downs, LLC., 486 B.R. 286 (Bankr. D. Del. 2013) 42

In re Iridium Operating LLC, 373 B.R. 283 (Bankr. S.D.N.Y. 2007).. 54

In re Jersey City Med. Ctr.,
817 F.2d 1055 (3d Cir. 1987).. 30

In re Johns-Manville Corp.,
68 B.R. 618 (Bankr. S.D.N.Y. 1986) 55

In re Lakeside Global II, Ltd.,
116 B.R. 499 (Bankr. S.D. Tex. 1989) 64

In re Lapworth,
1998 WL 767456 (Bankr. E.D. Pa. Nov. 2, 1998).. 46

In re Lisanti Foods, Inc.,
329 B.R. 491 (D.N.J. 2005), *aff'd*, 241 F. App'x 1 (3d Cir. 2007) 73

In re Manchester Oaks Homeowners Ass'n, Inc., No. 11-10179-BFK, 2014 WL 961167
(Bankr. E.D. Va. Mar. 12, 2014) 49

In re Metrocraft Publ'g. Servs., Inc.,
39 B.R. 567 (Bankr. N.D. Ga. 1984) 74

In re Movie Gallery, Inc., No. 07-33849 (DOT) (Bankr. E.D. Va. Apr. 10, 2008)...................... 42

In re Neogenix Oncology, Inc., 508 B.R. 345 (Bankr. D. Md. 2014).. 42

In re OnCure Holdings Inc.,
No. 13-11540 (KG) (Bankr. D. Del. 2013)... 35

In re Osborne, No. 12-00230-8-SWH, 2013 WL 2385136 (Bankr. E.D.N.C. May 30,
2013) 49, 50

In re PC Liquidation Corp.,
383 B.R. 856 (E.D.N.Y. 2008) 73

In re Penson Worldwide, Inc.,
No. 13-10061 (PJW) (Bankr. D. Del. 2013).. 36

In re Phx. Petroleum Co.,
278 B.R. 385 (Bankr. E.D. Pa. 2001) 73, 74

In re River Capital Corp.,
155 B.R. 382 (Bankr. E.D. Va. 1991).. 35

In re River Village Assocs.,
181 B.R. 795 (E.D. Pa. 1995) 73

Table of Authorities (cont'd)

In re Scioto Valley Mortg. Co.,
88 B.R. 168 (Bankr. S.D. Ohio 1988) 74

In re Sea Trail Corp.,
No. 11-07370-8-SWH, 2012 WL 5247175 (Bankr. E.D.N.C. Oct. 23, 2012) 70

In re Smith,
58 B.R. 652 (Bankr. W.D. Va. 1985)
aff'd sub nom. In re Architectural Design, Inc.,
59 B.R. 1019 (W.D. Va. 1986) 29

In re Spansion, Inc.,
426 B.R. 114 (Bankr. D. Del. 2010) 37

In re SUD Properties, Inc.,
No. 11-03833-8-RDD, 2011 WL 5909648 (Bankr. E.D.N.C. Aug. 23, 2011) 24

In re Teltronics Servs., Inc.,
762 F.2d 185 (2d Cir. 1985) 40

In re Tex. Rangers Baseball Partners,
2010 WL 4106713 (Bankr. N.D. Tex. Oct. 12, 2010) 44

In re Trimm, Inc., No. B-97-16637-C-11D, 2000 WL 33673795 (Bankr. M.D.N.C. Feb. 17, 2000) 50

In re U.S. Brass Corp.,
194 B.R. 420 (Bankr. E.D. Tex. 1996) 74

In re W.T. Grant Co.,
699 F.2d 599 (2d Cir. 1983) 40

In re Walker, 165 B.R. 994 (E.D. Va. 1994) 49, 58

In re Wash. Mut., Inc.,
442 B.R. 314 (Bankr. D. Del. 2011) 37

In re WCI Cable, Inc.,
282 B.R. 457 (Bankr. D. Or. 2002) 37

In re Western Real Estate Fund, Inc.,
75 B.R. 580 (Bankr. E.D. Okla. 1987) 64

In re Worldcom, Inc.,
2003 WL 23861928 (Bankr. S.D.N.Y. Oct. 31, 2003) 46

John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.,
987 F.2d 154 (3d Cir. 1993) 30

Table of Authorities (cont'd)

Kane v. Johns-Manville Corp.,
843 F.2d 636 (2d Cir.),
cert. denied, 488 U.S. 868, 109 S.Ct. 176 (1988) 29, 55, 63

Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp.,
337 F.3d 314 (3d Cir. 2003) 72

La Jolla Mortg. Fund v. Rancho El Cajon Assocs., 18 B.R. 283 (Bankr. S.D. Cal. 1982) 23

Mercury Capital Corp. v. Millford Connecticut Assoc., L.P.,
354 B.R. 1 (D. Conn. 2006), *remanded*, 2008 WL 687266 (Bankr. D. Conn. March 10, 2008) 63

Official Comm. of Unsecured Creditors v. UMB Bank, N.A. (In re Residential Capital, LLC), 501 B.R. 549 (Bankr. S.D.N.Y. 2013) 22

Oneida Motor Freight, Inc. v. United Jersey Bank,
848 F.2d 414 (3d Cir. 1988) 72

Peltz v. Hatten, 279 B.R. 710, 737-38 (D. Del. 2002) *aff'd sub nom. In re USN Commc'ns, Inc.*, 60 F. App'x 401 (3d Cir. 2003) 54

Quality Inns Int'l, Inc. v. L.B.H. Associates Ltd. P'ship,
911 F.2d 724 (4th Cir. 1990) 63

SEC v. Drexel Burnham Grp., Inc. (In re Drexel Burnham Lambert Grp., Inc.), 960 F.2d 285 (2d Cir. 1992) 45

Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.),
844 F.2d 1142 (5th Cir. 1988) 73

Travelers Ins. Co. v. Bryson Porps., XVIII,
961 F.2d 496, 503 (4th Cir. 1992) 67

United States v. Buchman, 646 F.3d 409 (7th Cir. 2011) 55

VFB LLC v. Campbell Soup Co.,
482 F.3d 624 (3d Cir.2007) 68

Wood v. in LA Bank (In re Wood), 190 B.R. 788 (Bankr. M.D. Pa. 1996) 22

Statutes

11 U.S. C. § 1141(d)(3) 41

11 U.S. C. § 727(a) 42

11 U.S.C. § 101(31) 70

Table of Authorities (cont'd)

11 U.S.C. § 1114 .... 76, 77

11 U.S.C. § 1122 .... 29, 30

11 U.S.C. § 1122(a) 29, 31

11 U.S.C. § 1123 29

11 U.S.C. § 1123(a) 39, 40

11 U.S.C. § 1123(a)(1) 39

11 U.S.C. § 1123(a)(2) 39

11 U.S.C. § 1123(a)(3) 39

11 U.S.C. § 1123(a)(4) 40

11 U.S.C. § 1123(a)(5) 40

11 U.S.C. § 1123(a)(6) 40

11 U.S.C. § 1123(a)(7) 40

11 U.S.C. § 1123(b) 40, 41, 55

11 U.S.C. § 1123(b)(3)(A) 44

11 U.S.C. § 1123(b)(6) 41

11 U.S.C. § 1125(a)(1) 82

11 U.S.C. § 1125(b) 81

11 U.S.C. § 1125(e) 87

11 U.S.C. § 1126(a) 56

11 U.S.C. § 1126(b)(2) 84

11 U.S.C. § 1126(c) 87

11 U.S.C. § 1126(d) 56

11 U.S.C. § 1129 .... 1, 18, 77

11 U.S.C. § 1129(a)(1) 29, 55

11 U.S.C. § 1129(a)(10) 69, 70

Table of Authorities (cont'd)

11 U.S.C. § 1129(a)(11) 70, 72, 76

11 U.S.C. § 1129(a)(12) 76

11 U.S.C. § 1129(a)(13) 76, 77

11 U.S.C. § 1129(a)(14) 77

11 U.S.C. § 1129(a)(15) 77

11 U.S.C. § 1129(a)(16) 77

11 U.S.C. § 1129(a)(3) 57, 63

11 U.S.C. § 1129(a)(4) 63, 64

11 U.S.C. § 1129(a)(5) 65

11 U.S.C. § 1129(a)(6) 65

11 U.S.C. § 1129(a)(7) 20, 21, 66, 68

11 U.S.C. § 1129(a)(8) 68, 69, 77

11 U.S.C. § 1129(a)(9) 68, 69

11 U.S.C. § 1129(a)(9)(A) 69

11 U.S.C. § 1129(a)(9)(B) 69

11 U.S.C. § 1129(a)(9)(C) 69

11 U.S.C. § 1129(b) 17, 68, 77, 78

11 U.S.C. § 1129(b)(1) 77, 79, 80, 81

11 U.S.C. § 1129(b)(2)(A) 78

11 U.S.C. § 1129(b)(2)(A)(ii) 24, 25, 29

11 U.S.C. § 1129(b)(2)(A)(iii) 24

11 U.S.C. § 1129(b)(2)(B)(ii) 79

11 U.S.C. § 1129(b)(4) 42

11 U.S.C. § 1129(d) 81

11 U.S.C. § 1141(d)(3) 42

Table of Authorities (cont'd)

11 U.S.C. § 363(k) 24, 79

11 U.S.C. § 502 56

11 U.S.C. § 503 35

11 U.S.C. § 503(b) 35

11 U.S.C. § 503(b) 35

11 U.S.C. § 503(b)(1)(A) 39

11 U.S.C. § 510(a) 77

15 U.S.C.A. S. 77a et seq. 81

28 U.S.C. § 1930 76

28 U.S.C. § 1930(a) 76

29 U.S.C. § 1381 36

29 U.S.C. § 1391 36

Va. Code Ann. § 8.9A-102 27

Rules

Fed. R. Bankr. P. 3017 85

Fed. R. Bankr. P. 3018(b) 86

Fed. R. Bankr. P. 3018(c) 86

Other Authorities

7-1129 Collier on Bankruptcy P 1129.04 25

H.R. Rep. No. 95-595, (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6368 29

NATIONAL INSTITUTES OF HEALTH, Office of Dietary Supplements, *Selenium: Dietary Supplement Fact Sheet*, https://ods.od.nih.gov/factsheets/Selenium-HealthProfessional/ (last accessed July 21, 2015) 75

S. Rep. No. 95-989, (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5912 29

Patriot Coal Corporation and certain of its affiliates, as debtors and debtors in possession (collectively, the "Debtors"),[1] submit this Memorandum of Law in support of confirmation of the *Debtors' Fourth Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* (as may be further amended, modified, or supplemented from time to time, the "Plan"), filed contemporaneously herewith, pursuant to section 1129 of title 11 of the United States Code (the "Bankruptcy Code").

PRELIMINARY STATEMENT

In April of this year, the Debtors faced difficult circumstances. The historically bad coal market that had precipitated their last chapter 11 cases had only gotten worse. Their CEO and CFO had quit. They were running out of cash. And they knew that, as their Chief Restructuring Officer, Ray Dombrowski, testified at the DIP hearing, a "cold idle" of their mines would destroy the Company's assets leaving barely enough to pay off their Prepetition ABL Facility. Such a cold idle would have left their other secured lenders with a pittance of a recovery, if any, cost approximately 2,400 miners their jobs, and dumped a mess of environmental liabilities on four states and the Federal government.

The path of least resistance for the Debtors' management at that point would have been to quit. It would have been easy for them to simply throw up their hands, blame the "war on coal," and move on to other endeavors. They chose not to do that. Instead, they made battlefield promotions of a new CEO and CFO. They retained able restructuring advisors to help them conserve cash, navigate difficult next steps, and improve operations. Through the efforts of their investment banker, they located a prospective purchaser for the bulk of their assets and secured postpetition financing to allow the company to avoid a cold idle and run a managed sale and

[1] All capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Plan and the Disclosure Statement, as applicable.

marketing process. And other than resistance from the Prepetition LC Facility Lenders at the hearing to consider entry into the Debtors' proposed postpetition financing facility (resistance that did not meaningfully rebut Mr. Dombrowski's testimony that a cold idle was imminent and would devastate the value of their collateral), each of the Debtors' secured creditor constituencies has generally supported the idea of pursuing an orderly process to market and sell the Debtors' assets as a going concern. Every single party understood that the strategy of selling the assets as a going concern depended heavily on the Debtors' ability to confirm a chapter 11 plan and that any alternative was not viable.

Despite long odds, the strategy worked. The Debtors have proposed a chapter 11 plan that fully pays off the Prepetition ABL and DIP Lenders, returns $155 million in take-back paper to the Prepetition LC Lenders, saves approximately 2,400 jobs, and responsibly addresses the environmental obligations associated with the business of mining coal. There is no dispute that the results of the Debtors' auction process are vastly superior to the grim alternatives available to the Debtors at the outset of these Chapter 11 Cases.

The Prepetition LC Lenders would have this Court believe that somehow things got worse for them during these Chapter 11 Cases. They need the Court to accept this theory because they hope to establish that they are owed "diminution in value" claims, which would be entitled to administrative expense priority, and thereby block the Debtors' ability to confirm a chapter 11 plan. The Prepetition LC Lenders attempt to demonstrate diminution by pointing to the adverse changes in the terms of the Blackhawk APA during these Chapter 11 Cases. But there was no Blackhawk APA on the Petition Date. The Debtors negotiated the Blackhawk APA over the first month of these Chapter 11 Cases, and even then the agreement remained subject to financing contingencies. As it turns out, financing was not available to support the

original Blackhawk APA, and the total amount of consideration offered under the Blackhawk APA declined during the case. But that has nothing to do with the value of the Prepetition LC Lenders' collateral as of the Petition Date.

The uncontroverted testimony from Mr. Dombrowski at the final DIP hearing was that the Prepetition LC Lenders' collateral was in grave peril as of the Petition Date. This Court previously found that approval of the DIP Facility was likely to maximize value and that the LC Lenders would be protected and would do better if the DIP was approved. And that's exactly what happened. The Debtors obtained the DIP Facility, used the money to fund their operations during chapter 11 and run an orderly Court-approved sale process, and now have multiple binding offers that provide the estates with more value than was available at the outset of these Chapter 11 Cases. After conducting an auction, the Debtors, in consultation with their key creditor constituents, named Blackhawk the Winning Bidder and stand ready to confirm a chapter 11 plan predicated on the Blackhawk APA. Additionally, VCLF is prepared to purchase the assets Blackhawk is not acquiring and assume material environmental obligations as part of that same chapter 11 plan.

Many parties took risks and made sacrifices to get to this result. The Prepetition ABL Lenders and DIP Lenders have agreed to "roll" their debt into the Blackhawk transaction instead of requiring payment in full in cash on the effective date. The Debtors' employees and management worked heroically under incredibly difficult conditions and in the face of great uncertainty to preserve the Debtors' operations as a going concern, to satisfy staggering diligence and discovery requests from creditors, and to negotiate the vast number of agreements and transactions that have gotten the Debtors to this point. The DIP Lenders have committed more than $120 million in new money to facilitate the transaction. The UMWA made wage and

benefit concessions during the 1113/1114 process. The Retiree Committee also agreed to benefit concessions. Environmental creditors, most notably including the West Virginia Department of Environmental Protection, have worked cooperatively with the Debtors to find ways to resolve their environmental objections and address the most pressing of their environmental obligations first. Many trade creditors extended credit to the Debtors on a postpetition basis. In short, the Plan proposed by the Debtors would not have been possible without the shared sacrifice from their key stakeholders the Bankruptcy Code seeks to encourage.

Not every party made sacrifices, however. In particular, the Prepetition LC Lenders have declined to lift a financial finger to assist the Debtors. They refused to offer DIP financing. They declined to credit bid for the Blackhawk Purchased Assets because this would require the Prepetition LC Lenders to fund significant administrative claims and cure costs. They declined to credit bid for the VCLF Purchased Assets for similar reasons. And they declined to invest new money to assist the Debtors in confirming the Plan necessary to consummate the Blackhawk APA and VCLF APA.

Instead, at the eleventh hour, after a great many parties worked together to generate a great deal of significant value, the Prepetition LC Lenders, who stood on the precipice of no recovery whatsoever on the Petition Date, have surveyed the landscape, taken note of the substantial value that has been generated, and are asking the court to convert these cases to chapter 7 and give all the value that has been created in these Chapter 11 Cases to the Prepetition LC Lenders.[2] As the evidence and arguments at trial will show, the Prepetition LC Lenders are flatly incorrect. The Debtors will demonstrate that the Plan provides fair consideration on

[2] The Debtors are currently engaging with the Prepetition LC Lenders regarding the terms of a settlement to resolve their objections to confirmation of the Plan. However, to the extent the parties cannot reach agreement, the Debtors reserve all of their rights with respect to the Prepetition LC Lenders' objections.

account of the Prepetition LC Lender's putative secured claim, and that the Plan can be confirmed over their objection.

Additionally, the evidence at the confirmation hearing will demonstrate that the Plan provides the Prepetition Term Lenders with the recovery to which they are legally entitled. It is well established that a sale and marketing process is the best indicator of value, and the Debtors, with the assistance of their investment banker, conducted an extensive sale and marketing process here. The evidence to be presented at confirmation will demonstrate that no buyer was willing to pay an amount sufficient to satisfy the Prepetition LC Lenders' claims in full. Thus, the sale process establishes that the Prepetition Term Lenders' claims are wholly unsecured. No theoretical valuation exercise or "observation" can change this result. The Plan treats the Prepetition Term Lenders' claims accordingly.

Nearly two dozen counterparties to the Debtors' Assumed Executory Leases and Unassigned Contracts filed objections to confirmation of the Plan (collectively, the "Contract and Lease Objections"). The Debtors have been working around the clock to resolve as many of the Contract and Lease Objections as possible, and will continue these efforts following Confirmation of the Plan. To the extent that the Debtors and Blackhawk or VCLF, as applicable, are unable to reach resolution of the respective Contract and Lease Objection, the Debtors request that such Contract and Lease Objection be fully preserved and reserved for consideration at the Omnibus Hearing scheduled for October 22, 2015 at 10:00 a.m. prevailing Eastern Time.

The Debtors submit that the balance of the responses to the remaining objections to confirmation of the Plan are addressed in the chart attached hereto as **Exhibit A**. The Debtors will supplement this chart in advance of the Confirmation Hearing to reflect additional resolutions achieved.

The uncontroverted record of these chapter 11 cases reflects the Debtors' herculean efforts to maximize value for the benefit of all of their stakeholders. The Debtors, like many of their competitors, have been pushed to the brink while trying to navigate a maximizing alternative on the one hand with the threat of a catastrophic shut down on the other. In the face of these challenges, the resolution the Debtors present to the Court is extraordinary -- and unparalleled. The Debtors wish there was more value to provide to all of their stakeholders. But the Debtors cannot change the challenges facing the coal industry, and this reality is buttressed by certain financial stakeholders' tactical decision to challenge the transactions the Debtors propose as opposed to funding a solution. The Plan treats all parties fairly, is consistent with applicable law, and should be confirmed.

BACKGROUND

I. DEVELOPMENT OF THE PLAN.

1. On the first day of these Chapter 11 Cases, the Debtors openly and directly addressed the dire cash flow limitations and the operational challenges that necessitated their second bankruptcy filing in just two years.[3] In sum, the Debtors' feasibility upon emergence from their 2012-2013 Restructuring was predicated on assumptions about coal prices that ultimately did not materialize, and the Debtors were unable to support their capital structure as a result of the continued decline in domestic and foreign demand for coal, burdensome environmental obligations, and unsustainable legacy and other non-operating liabilities left. Together, these challenges left the Debtors with rapidly decreasing liquidity. The Debtors actively pursued myriad out-of-court restructuring options, all as outlined in the First Day Declaration, but with dwindling liquidity and a limited runway, they were forced to decide how

[3] *See* DIP Motion, ¶1 ("The Debtors filed these chapter 11 cases because they have run out of cash.").

to maximize value for all of their stakeholders before they ran out of cash. The Debtors determined they faced two options: a hard shutdown of their mines and operations or an expedited sale of their assets as a going-concern.

2. To conduct a fulsome marketing process for the sale of substantially all of their assets, the Debtors needed financing. The Debtors' investment banker, Centerview Partners, LLC ("Centerview"), canvassed the market for all available financing sources, including from third-party lenders and the Debtors' existing secured lenders and noteholders.[4] None of the Prepetition Secured Parties — including the most outspoken opponents of the Debtors' Plan: the Prepetition LC Lenders — indicated willingness to provide any financing outside of chapter 11, eliminating the possibility the Debtors could avoid a bankruptcy filing.[5] Ultimately, the Debtors succeeded in securing a $100 million DIP Facility from the DIP Lenders, who conditioned the terms of the financing on various milestones, including conducting accelerated sales processes. None of the Debtors' other existing lenders provided a feasible financing proposal. While the DIP Facility provided the Debtors with the essential liquidity to fund operations during their marketing process and facilitated their ability to pursue going-concern sale transactions, the size of the DIP Facility was approximately $30 million less than the Debtors requested. After commencing these Chapter 11 Cases and obtaining approval of the DIP Facility, the Debtors, with the assistance of Centerview, conducted a robust but accelerated marketing process for their assets, which, as described in more detail below and in the Disclosure Statement, involved

---

[4] *See* DIP Motion, Exhibit D, *Declaration of Marc Puntus in Support of the Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Use of Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Claims, (D) Granting Adequate Protection, (E) Modifying the Automatic Stay, (F) Scheduling a Final Hearing, and (G) Granting Related Relief* ¶¶ 9, 10.

[5] *See id.*

contacting 75 potential buyers, of whom 21 executed non-disclosure agreements and 19 requested and were granted access to diligence materials through a virtual data room.

3. As described at length in the Disclosure Statement and in Section I below, the Debtors' marketing process proved fruitful.[6] The Debtors ultimately generated two competing bids for the Blackhawk Purchased Assets (a bid from Blackhawk and a bid from Coronado) as well as a bid from VCLF for the Blackhawk Excluded Assets. The going-concern sale of the Debtors' assets through a plan contemplated by these bids provided significantly greater economic recoveries than if the Debtors had shut down their operations in a cold idle and liquidated, while also providing a mechanism for the Debtors to preserve jobs, continue ongoing relationships with customers and trade vendors, and address all of their current and future environmental obligations. The magnitude of this achievement cannot be understated in light of the unprecedented headwinds facing the coal industry.

4. While the Debtors made clear in their Court-approved Bidding Procedures that bids could be submitted in any form, both the Blackhawk Transaction and the VCLF Transaction proposed to be implemented pursuant to a chapter 11 plan. On August 25, 2015, following approval of the Disclosure Statement by the Court, the Debtors filed solicitation versions of the *Debtors' Third Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 942] (the "Initial Plan") and the *Third Amended Disclosure Statement for Debtors] Third Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* (the "Initial Disclosure Statement") which implemented the proposed sales to Blackhawk and VCLF, all subject to the receipt of any higher or better bids in connection with an auction.

[6] *See id.*

5. Recognizing that confirmation of a chapter 11 plan requires all administrative and priority claims as well as cure costs to be paid in full in cash on the effective date, the Debtors, with the assistance of Centerview, continued to solicit further financing that would facilitate an exit from these Chapter 11 Cases. The evidence presented at confirmation will demonstrate that the Debtors solicited new money financing from all of their major economic stakeholders to fund the Debtors' emergence. Only the DIP Lenders, however, proved willing to engage and provide the Debtors with the new money commitments requested. The evidence at the confirmation hearing will also show that in light of the decline in coal prices and equity valuations facing the coal industry, however, the DIP Lenders would not agree to provide any additional new money in the form of an upsized DIP Facility within the structure of the Initial Plan. Instead, the DIP Lenders insisted that their investment would require material changes to the Initial Plan resulting in, among other things, material modifications to the treatment of certain stakeholders. Importantly, no other stakeholder was willing to provide the Debtors with the financing necessary to exit chapter 11.

6. In light of these material modifications to the Initial Plan, the Debtors adjourned the confirmation hearing scheduled for September 16, 2015 to allow them to amend the Initial Plan and the Initial Disclosure Statement and seek to re-solicit votes. On September 16, 2015, the Bankruptcy Court entered a scheduling order that set October 5, 2015 as a combined hearing to consider confirmation of the Plan and approval of the Disclosure Statement, so long as the Debtors filed the Plan and Disclosure Statement on or before September 18, 2015.[7] On

---

[7] *See Order Approving Debtors' Motion for Entry of an Order (I) Scheduling Combined Hearing on Approval of a Revised Disclosure Statement and Confirmation of a Revised Plan, (II) Approving the Form and Manner of Notice of the Combined Hearing, (III) Shortening the Notice of the Combined Hearing and the Deadline for Filing Objections; (IV) Maintaining the Voting Record Date; (V) Approving the Submission of Votes to Accept or Reject the Plan Through an "E-Ballot" Platform; (VI) Establishing the Voting Deadline; (VII) Establishing the Objection Deadline; and (VIII) Granting Related Relief* [Docket No. 1320].

September 18, 2015, the Debtors filed the Plan and Disclosure Statement reflecting the modifications required by the DIP Lenders in connection with the new money commitments that will be funded through the Combined Company 1.5 Lien Term Loan on the Effective Date.[8]

II. NEGOTIATIONS AND ACHIEVED SETTLEMENTS REGARDING EMPLOYEE-RELATED LIABILITIES.

7. The Debtors have actively worked with numerous important employee-related constituencies throughout these Chapter 11 Cases in an effort to consensually resolve critical gating issues with respect to future employee-related liabilities. These settlements are integrated into the Blackhawk Transaction and the VCLF Transaction, as applicable. These achievements are an integral component of the transactions embodied in the Plan. Importantly, as of the date hereof, the Debtors are continuing to engage in proactive discussions with the Retiree Committee regarding modifications to the Debtors' retiree benefit obligations.

8. As described in the Disclosure Statement, on July 16, 2015, the Debtors filed a motion seeking to, among other things, authorize, but not direct, the Debtors to reject the CBAs under section 1113 of the Bankruptcy Code and modify certain union-related retiree healthcare benefits under section 1114 of the Bankruptcy Code [Docket No. 524] (the "<u>1113/1114 Motion</u>"). Prior to the hearing to consider the 1113/1114 Motion, the Debtors reached an understanding regarding the 1113/1114 Motion with the United Mine Workers of American 1992 Benefit Plan and the United Mine Workers of America Combined Benefit Fund (together, the "<u>Coal Act Funds</u>") pursuant to which, among other the things, the Debtors agreed to adjourn the 1113/1114 Motion with respect to the Debtors' obligations under the Coal Act. The Court entered the stipulation and agreed order memorializing this understanding on September 1, 2015

---

[8] *See Notice of Filing of Debtors' Fourth Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1332]; *Notice of Filing of Fourth Amended Disclosure Statement for Debtors' Fourth Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1333].

[Docket No. 1018]. The Debtors further agreed with the UMWA to adjourn relief with respect to retiree healthcare benefits to a later date.

9. The hearing to consider the balance of the 1113/1114 motion began on September 1, 2015. Following a day-long adjournment to permit further negotiations, the 1113/1114 Hearing resumed on September 3, 2015. At that time, the Debtors announced on the record that a settlement agreement had been reached between the UMWA, on one hand, and Blackhawk and VCLF, on the other hand (the "1113/1114 Settlement"). Pursuant to the 1113/1114 Settlement, the UMWA consented to the Debtors' rejection of the CBAs in exchange for each of Blackhawk and VCLF, respectively, agreeing to enter into new collective bargaining agreements with the UMWA on mutually agreed terms. Additionally, the Debtors reached agreement with the the Coal Act Funds adjourning the 1113/1114 Motion with respect to the Debtors' obligations under the Coal Act.[9]

10. As set forth in the Disclosure Statement, the Debtors are in discussions continued with the Retiree Committee regarding modifications to certain of the Debtors' retiree benefit obligations.[10] On September 21, 2015, the Debtors filed a motion requesting authority to modify certain of the Debtors' retiree healthcare benefits pursuant to section 1114 of the Bankruptcy Code [Docket No. 1352] (the "1114 Motion").[11] On October 1, 2015, the Debtors filed a supplement to the 1114 Motion seeking to confirm Peabody's obligations to fund the UMWA VEBA. A hearing on the 1114 Motion is scheduled to commence on October 6, 2015.

---

[9] *See Stipulation And Agreed Order Between The Debtors And The United Mine Workers Of America 1992 Benefit Plan And The United Mine Workers Of America Combined Benefit Fund Regarding Liabilities Under The Coal Act* [Docket No. 1018] (the "Coal Act Stipulation").

[10] *See* Disclosure Statement Art. IV.B.10(c).

[11] *See Motion to Authorize Debtors' Motion for Entry of an Order (I) Authorizing, But Not Directing, the Debtors to (A) Modify Certain Retiree Benefits, and (B) Implement Terms of Their Section 1114 Proposal, and (II) Granting Related Relief* [Docket No. 1352] (the "1114 Motion").

III. THE MARKETING PROCESS, THE AUCTION, AND THE SELECTION OF THE WINNING BIDDER AND THE BACK UP BIDDER.

11. As outlined in greater detail in the Disclosure Statement and at the Bidding Procedures Hearing, the Debtors, with the assistance of Centerview, ran a competitive marketing process resulting in an agreement with Blackhawk regarding an acquisition of the Blackhawk Purchased Assets and with VCLF regarding the Blackhawk Excluded Assets. As described in the Disclosure Statement,[12] the Debtors and Centerview identified and contacted 75 potential buyers, ranging from strategic purchasers to potential private equity partners. This group included 37 potential strategic purchasers and 38 potential financial buyers. Of these 75 parties, 21 executed non-disclosure agreements and 19 requested and were granted access to diligence materials through a virtual data room, which provided extensive information regarding the Debtors' business and financial condition. Accordingly, the Debtors entered into the Blackhawk APA and the VCLF APA, which served as the Stalking Horse Bids for the Blackhawk Purchased Assets and the Blackhawk Excluded Assets, respectively. As required under the Bidding Procedures Order, concurrent with the path to confirmation, the Debtors continued their marketing process with the goal of soliciting a higher or better bid to top the transactions set forth in the Blackhawk APA and/or the VCLF APA. In addition, the Bidding Procedures expressly authorized each of the Debtors' secured creditor groups to credit bid pursuant to section 363(k) for some or all of the Debtors' assets.

12. On September 4, 2015, the Court approved Bid Deadline, the Debtors received a competing bid for the Blackhawk Purchased Assets from Coronado. The Debtors did not receive any additional Bids for any of the Blackhawk Excluded Assets. None of the Debtors' secured lenders or noteholders submitted a credit bid. Following the Bid Deadline, and in accordance

[12] *See* Disclosure Statement (A)(6)(d).

with the Bidding Procedures, the Debtors and their advisors engaged with the Bidders and the Consultation Parties regarding the terms of the Bids. On September 7, 2015, the Debtors, in an exercise of their reasonable business judgment and in accordance with the Bidding Procedures, extended the deadline for the Debtors to notify each Bidder whether its Bid was a Qualified Bid to September 10, 2015, at 11:59 p.m. prevailing Eastern Time and adjourned the Auction.[13] During this period, the Debtors continued to engage with the Bidders to negotiate the terms of both Bids for the Blackhawk Purchased Assets, as well as certain issues pertaining to the VCLF Transaction. In accordance with the Bidding Procedures Order, the Debtors provided continuous updates to and engaged with the Consultation Parties throughout.

13. The Debtors, in consultation with the Consultation Parties and in accordance with the Scheduling Order, further extended the deadline for the Debtors to notify each Bidder whether its Bid was a qualified Bid to September 18, 2015. On that date, both Blackhawk and Coronado submitted new Bids.[14] No entity submitted a Bid for the Blackhawk Excluded Assets other than VCLF. No secured creditor group submitted a credit bid for any of the Debtors' assets.

14. Pursuant to the Bidding Procedures, the Debtors commenced the Auction on September 21, 2015, whereby Blackhawk was identified as the "Winning Bidder" and Coronado Mining, LLC ("Coronado") was identified as the "Backup Bidder" with respect to such assets.

[13] *See Notice of Adjournment of Auction* [Docket No. 1084] and the *Notice of Adjournment of Auction* [Docket No. 1243] further adjourning the Auction to September 21, 2015.

[14] Blackhawk materially altered and substantially changed its Bid in response to the terms associated with the additional $30 million in new money commitments to be provided by the New Money Lenders in the form of the Combined Company 1.5 Lien Term Loan. Among other things, Blackhawk's Bid submitted on September 18, 2015, altered potential recoveries to certain stakeholders. Blackhawk submits that the bid it submitted on September 18, 2015 is an amendment to its prior Bid and should not be characterized as a new Bid.

The Debtors concluded the Auction on September 22, 2015. On that same day, the Debtors filed a notice announcing the Auction results. [15]

IV. PLAN CONFIRMATION PROCESS AND SOLICITATION.

15. On September 15, 2015, the Debtors filed a motion for entry of an order to, among other things, establish October 2, 2015, as the deadline for voting on an amended plan and schedule a combined hearing to consider the approval of a revised plan and disclosure statement (the "Scheduling Motion").[16] On September 16, 2015, the Bankruptcy Court approved the Debtors' proposed timeline, contingent on the Debtors filing the Plan and the Disclosure Statement by September 18, 2015.[17] The Debtors filed the Plan and the Disclosure Statement on September 18, 2015, as required under the Scheduling Order.

16. Also on September 18, 2015, the Debtors filed the Amended Plan Supplement, which included the the Blackhawk List of Officers and Directors, the Financial Projections for the Liquidating Trust, the VCLF Financial Projections, the VCLF List of Officers and Directors, the VCLF Operating Agreement, the VCLF Financing Commitment Letter, the Schedule of Assumed Executory Contracts and Unexpired Leases, the Amended Liquidation Analysis, and the Liquidating Trust Agreement.[18]

---

[15] *See Notice of Designation of Winning and Backup Bidders* [Docket No. 1368].

[16] *See Motion to Approve Debtors' Motion for Entry of an Order (I) Scheduling Combined Hearing on Approval of a Revised Disclosure Statement and Confirmation of a Revised Plan, (II) Approving the Form and Manner of Notice of the Combined Hearing, (III) Shortening the Notice of the Combined Hearing and the Deadline for Filing Objections; (IV) Maintaining the Voting Record Date; (V) Approving the Submission of Votes to Accept or Reject the Plan Through an "E-Ballot" Platform; (VI) Establishing the Voting Deadline; (VII) Establishing the Objection Deadline; and (VIII) Granting Related Relief* [Docket No. 1275].

[17] *See Order (I) Scheduling Combined Hearing on Approval of a Revised Disclosure Statement and Confirmation of a Revised Plan, (II) Approving the Form and Manner of Notice of the Combined Hearing, (III) Shortening the Notice of the Combined Hearing and the Deadline for Filing Objections; (IV) Maintaining the Voting Record Date; (V) Approving the Submission of Votes to Accept or Reject the Plan Through an "E-Ballot" Platform; (VI) Establishing the Voting Deadline; (VII) Establishing the Objection Deadline; and (VIII) Granting Related Relief* [Docket No. 1309].

[18] *See Notice of Filing of Amended Plan Supplement* [Docket No. 1405].

17. Contemporaneously herewith, the Debtors will file the Second Amended Plan Supplement, which includes the Blackhawk LLC Agreement, the Amended Combined Company New ABL Term Sheet, the Combined Company First Lien Term Loan Term Sheet, the Combined Company 1.5 Lien Term Loan Term Sheet, the Combined Company Second Lien Loan Term Sheet, the Combined Company Financial Projections, the Blackhawk APA, and the Coronado APA.

18. The Scheduling Order established the October 2, 2015 as the deadline to object to confirmation of the Plan. 48 parties filed formal objections (collectively, the "Objections"). **Exhibit A** hereto is a summary of the status of the Objections, including the resolution of certain Objections and the Debtors' responses to the other Objections not resolved as of the date hereof. The Debtors will continue to negotiate with the parties that filed the remaining Objections to attempt to reach resolution in advance of the Confirmation Hearing.

V. RIGHTS OFFERING SUBSCRIPTION RESULTS.

19. The Plan incorporates a Rights Offering that affords the Prepetition LC Lenders and the Prepetition Term Lenders the opportunity to purchase Combined Company First Lien Term Loans and Combined Company Second Lien Term Loans.[19] The Rights Offerings Procedures were filed with the Disclosure Statement.[20] Proceeds from the Rights Offerings shall be utilized to refinance a portion of Blackhawk's capital structure.

20. Pursuant to the amended Rights Offerings Procedures, the deadline for Holders of Claims eligible to participate in the Rights Offerings was October 2, 2015 at 4:00 P.M. Eastern

[19] The Initial Plan incorporated a two rights offering in which certain Holders of Prepetition Term Loan Facility Claims and certain Holders of Prepetition Notes Claims were eligible to participate. In connection with the rights offerings incorporated in the Initial Plan, on August 20, 2015, the Court entered an order approving certain Rights Offerings Procedures [Docket No. 902]. The rights offerings in the Initial Plan were abandoned and the Subscription Agent refunded all amounts received.

[20] *See* Disclosure Statement Exhibit D.

Time. None of the Prepetition LC Facility Lenders elected to participate in the Rights Offering. Pursuant to the Rights Offering Procedures, the Holders of Allowed Prepetition Term Loan were notified of their right to participate in the full amount of the Rights Offering on October 5, 2015. The deadline for Holders of Prepetition Term Loan Facility Claims to elect to participate in and submit payment for the Rights Offering is October 6, 2015 at 5:00 p.m. prevailing Eastern Time.

VI. VOTING RESULTS.

21. The deadline for all Holders of Claims entitled to vote on the Plan to submit their ballots was October 2, 2015, at 4:00 P.M. Eastern Time (the "Voting Deadline").

22. The following table summarizes the voting rights of each Class under the Plan:

Class	Claim	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Deemed to Accept
2	Secured Tax Claims	Unimpaired	Deemed to Accept
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Prepetition ABL Facility Claims	Impaired	Entitled to Vote
5	Prepetition LC Facility Claims	Impaired	Entitled to Vote
6	Prepetition Term Loan Facility Claims	Impaired	Entitled to Vote
7	Prepetition Notes Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Intercompany Claims	Impaired	Deemed to Reject
10	Intercompany Interests	Impaired	Deemed to Reject
11	Equity Interests	Impaired	Deemed to Reject

23. The Debtors have filed a voting certification (the "Voting Certification") contemporaneously herewith reflecting the voting results in accordance with Local Bankruptcy Rule 3016-1(D).

24. As set forth in the Voting Certification, at least one impaired Class of Claims voted to accept the Plan. Specifically, Holders of Claims in Class 4—Prepetition ABL Facility Claims and Holders of Claims in Class 7—Prepetition Notes Claims have voted to accept the Plan.

25. Holders of Class 5—Prepetition LC Facility Claims, Class 6—Prepetition Term Loan Facility Claims, and Class 8—General Unsecured Claims voted to reject the Plan. However, because the Plan meets the requirements of section 1129(b) of the Bankruptcy Code as described below, the Court may still confirm the Plan over the rejection by the Rejecting Classes.

ARGUMENT

26. This brief is divided into two parts. First, the Debtors counter certain headline objections raised by Objecting Parties and present their "case in chief" that the Plan satisfies the requirements of section 1129 of the Bankruptcy Code and should be confirmed. A chart identifying each Objection and the Debtors' response is attached as **Exhibit A**. Second, the Debtors request approval of the Disclosure Statement and a finding that the Debtors complied with the Scheduling Order. The Debtors shall present all evidence in support of confirmation of the Plan through the designation of deposition transcripts, written declarations, or live testimony to be adduced at the Confirmation Hearing. To confirm the Plan, the Court must find that the Debtors have satisfied the provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence.[21]

[21] *See Heartland Fed. Savs. & Loan Ass'n v. Briscoe Enters., Ltd. II (In re Briscoe Enters Ltd., II)*, 994 F.2d 1160, 1165 (5th Cir. 1993) ("The combination of legislative silence, Supreme Court holdings, and the structure of the Code leads this Court to conclude that preponderance of the evidence is the debtor's appropriate standard of proof both under § 1129(a) and in a cramdown."); *In re Bate Land & Timber, LLC*, 523 B.R. 483, 491 (Bankr. E.D.N.C. 2015) *leave to appeal granted sub nom. Bate Land Co., LP v. Bate Land & Timber, LLC*, 2015 WL 3409208 (E.D.N.C. May 27, 2015) ("This court is persuaded that the *Briscoe* court's rationale in determining that the preponderance of the evidence standard applies to all aspects of a bankruptcy court's consideration of whether to confirm a debtor's plan under § 1129 is both accurate and consistent with controlling Fourth Circuit and Supreme Court precedent.").

I. THE PLAN SHOULD BE CONFIRMED OVER THE PREPETITION LC LENDERS' OBJECTION.

27. Over the past four months, the Debtors have worked tirelessly to bring value-maximizing sale transactions to the table for the benefit their stakeholders. The Prepetition LC Lenders, on the other hand, have remained consistently obstinate throughout these Chapter 11 Cases. Although the Prepetition LC Lenders had ample opportunities to participate in the DIP financing, they ultimately declined to do so. The DIP Lenders alone stepped up to provide the financing necessary to facilitate the Debtors' value-maximizing marketing process. Despite the evident necessity of these funds to avoid liquidation, the Prepetition LC Lenders objected.[22] With the Court-approved DIP Facility secured, the Debtors continued to implement their strategy of pursuing sales of their assets by seeking approval of their Bidding Procedures. Again, the Prepetition LC Lenders objected.[23] Nonetheless, the Debtors succeeded in obtaining Court approval and moved on to tackling the enormous challenge of marketing a coal company in 2015. Despite strong headwinds, the Debtors arrive at the penultimate point in these Chapter 11 Cases with not one but **four** avenues for providing value to their stakeholders: a Blackhawk-VCLF transaction, a Blackhawk-Liquidating Trust transaction, a Coronado-VCLF transaction, or a Coronado-Liquidating Trust transaction. Of these, the Debtors believe that the Blackhawk-VCLF transaction maximizes value for their stakeholders and thus seek confirmation of the Plan, which is underpinned by such transactions. Importantly, pursuant to the Blackhawk

---

[22] *See Limited Objection of Barclays Bank Plc with Respect to the Debtors' Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing Debtors and Debtors in Possession to Obtain Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Super-Priority Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Scheduling A Final Hearing, and (VI) Granting Related Relief)* [Docket No. 180].

[23] *See Objection of Barclays Bank PLC with Respect to the Debtors' Motion for Entry of an Order (A) Approving Bidding Procedures and Bid Protections in Connection with the Sales of Certain of the Debtors' Assets, (B) Approving the Form and Manner of Notice, (C) Scheduling Auctions and a Sale Hearing, (D) Approving Procedures for the Assumption and Assignment of Contracts, and (E) Granting Related Relief)* [Docket No. 332].

Transaction, the Prepetition LC Lenders stand to receive $155 million in face amount of the Combined Company Second Lien Term Loans on account of their Prepetition LC Facility Claims.

28. But, the Prepetition LC Lenders are not satisfied. They seek to grab all of the value the Debtors have unlocked, destroy the Debtors' considerable other achievements during these Chapter 11 Cases, and force the Debtors to consummate a sale outside of a chapter 11 plan solely for their benefit. The Prepetition LC Lenders' arguments fail for at least four reasons.

1. The Coronado Bid Would Not Be Available in a Liquidation.

29. The Prepetition LC Lenders argue that the Plan does not satisfy section 1129(a)(7) of the Bankruptcy Code because the Liquidation Analysis does not account for the Prepetition LC Lenders' recovery under the Coronado APA.[24] This is not only not the standard under section 1129(a)(7) of the Bankruptcy Code; it is a blatant mischaracterization of the deal and belies the Prepetition LC Lenders' fundamental failure to comprehend the realities of these Chapter 11 Cases. The Debtors are not denying the value of the Coronado Bid. To the contrary, the Coronado Bid resulted from the Debtors' DIP Facility-funded marketing efforts, was selected by the Debtors as their Backup Bid, and is reflected in the Plan in that capacity. But the Coronado APA is not available in a liquidation. The liquidation scenario the Debtors face—the scenario outlined in their Liquidation Analysis and which they filed these Chapter 11 Cases to avoid—is a value-destructive, forced shutdown of the Debtors' operations under conditions in which Santa Claus would not buy coal. Under its express terms, the Coronado APA is terminable by Coronado in the event these Chapter 11 Cases convert to ones under chapter 7 of

[24] *See* Prepetition LC Lenders Obj. ¶ 39 ("In particular, the Debtors ignore reality: Coronado is sitting on the sidelines, ready, willing, and able to buy the Blackhawk Purchased Assets for cash.")

the Bankruptcy Code.[25] And there is no evidence Coronado would submit a bid for a shuttered coal company, let alone a bid approaching the purchase price included in the Coronado APA.

30. Notwithstanding the Prepetition LC Lenders' self-defeating efforts, the Debtors are endeavoring to consummate the value-maximizing sale transactions obtained in these Chapter 11 Cases through the Plan. The Liquidation Analysis shows, and the evidence at trial will demonstrate, that the Prepetition LC Facility Lenders' recovery under the Plan is materially greater than their recovery in a hypothetical liquidation. Accordingly, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code.

2. The Plan Was Proposed in Good Faith and Treats the Prepetition LC Lenders Equitably.

31. The Prepetition LC Lenders argue that the Plan improperly strips value from them and that the Debtors have breached their fiduciary duties by failing to explore the Coronado APA. This objection misses the mark. First, the Debtors have actively explored a Coronado transaction and have Coronado bound as the Backup Bidder. Second, the evidence will show the Blackhawk Transaction provides a better economic recovery than the Coronado transaction. Third, while the Prepetition LC Lenders argue the Debtors should abandon their pursuit of confirmation and instead consummate a cash sale to Coronado outside a chapter 11 plan, such a transaction will not work here for myriad reasons, including:

- The Debtors must confirm a chapter 11 plan to reach a settlement with the West Virginia Department of Environmental Protection, a gating issue to obtaining all required regulatory approvals;
- The Debtors must confirm a chapter 11 plan to resolve certain confirmation issues with various NGOs and other environmental agencies;

[25] *See* Coronado APA, Section 11.01(j).

- The Debtors must confirm a chapter 11 plan to implement their extensively negotiated settlements with the UMWA, including through the 1113/1114 Settlement; and

- The Debtors must confirm a chapter 11 plan to avoid triggering sizable administrative claims that would impact potential recoveries to creditors.

32. The Prepetition LC Lenders may have their desired path for where these Chapter 11 Cases should go, but the Debtors have consistently acted in good faith in seeking to consummate a transaction that is in the best interests of all creditors. Moreover, the determination as to whether one bid is higher and better than another bid is squarely within the Debtors' business judgment.[26] And the Prepetition LC Lenders cannot demonstrate (and would be unable to demonstrate) that the Debtors should be deprived of the deference due to their decision.

3. There Are No LC Adequate Protection Obligations Because the Prepetition LC Lenders' Collateral Was Valueless as of the Petition Date.

33. The Prepetition LC Lenders assert that the Plan does not provide for the satisfaction of the LC Adequate Protection Obligations as provided under the DIP Order. In fact, no such Claims exist because on the Petition Date—the proper date for measuring value in these Chapter 11 Cases—the Prepetition LC Lenders was of no or minimal value. Bankruptcy courts have recognized that the petition date is the correct date for valuing a secured lender's collateral for cramdown purposes where the collateral appreciated during the case due to the efforts of

[26] *See e.g.*, *In re Castre, Inc.*, 312 B.R. 426, 430-31 (Bankr. D. Colo. 2004) ("the trustee or DIP is entitled to great judicial deference in deciding which bid to accept as the best and highest bid on the sale of the Debtor's assets; and, although the trustee's or DIP's discretion is not without limit, the Court should not step in and assume a role and responsibility properly placed by the Code in another's hands..."); *In re Family Christian, LLC*, 533 B.R. 600, 621-22 (Bankr. W.D. Mich. 2015) ("The Debtors, in conducting the sale process, have a fiduciary duty to maximize the value of their estates. However, as this court has previously noted, that fiduciary duty does not require the Debtors to mechanically accept a bid with the highest dollar amount. The Debtors are permitted, and in fact are encouraged, to evaluate other factors such as contingencies, conditions, timing, or other uncertainties in an offer that may render it less appealing.") (internal citations omitted).

parties other than the secured lenders.[27] Relying upon the express language of section 506(a) and its legislative history as well as the lack of guidance elsewhere in the Bankruptcy Code, bankruptcy courts have concluded that they are endowed with great discretion in determining valuation matters, guided only by the Bankruptcy Code's mandate under section 506(a) that value must be determined in light of the purpose of the valuation and proposed disposition of the property.[28] Due to the Bankruptcy Code's silence, it is generally recognized that a bankruptcy court's discretion typically extends to appropriate valuation techniques and methodologies, the proper temporal point of valuing property of the estate, the admissibility of expert testimony on the subject of valuation, and a myriad of other matters relating to valuation. The wide latitude permitted to the courts coupled with the sparse guidance provided by the Bankruptcy Code has resulted in courts applying different valuation methodologies and principles depending upon the circumstances of each case.[29] Further, the court in *In re Wood* has indicated that valuing collateral as of the petition date is particularly appropriate where there has been a post-petition

---

[27] *See e.g.*, *In re Houston Regional Sports Network L.P.*, No. 13-35998 (Bankr. S.D.Tex. Oct. 8, 2014) (finding that secured claim should be valued as of the petition date where collateral appreciated solely due to efforts of the debtors and third parties)*; Chase Manhattan Bank USA NA v. Stembridge (In re Stembridge)*, 394 F.3d 383, 386 (5th Cir. 2004) (holding that a secured claim should be valued as of the petition date for purposes of cramdown); *Wood v. in LA Bank (In re Wood)*, 190 B.R. 788, 790-91 (Bankr. M.D. Pa. 1996)(holding that the petition date is the correct date for valuing a secured lender's collateral in circumstances where the collateral appreciated during the case due to the efforts of parties other than the secured lender).

[28] *See Rash*, 520 U.S. at 962 (noting that the "proposed use or disposition" was of "paramount importance to the valuation question."); *Official Comm. of Unsecured Creditors v. UMB Bank, N.A. (In re Residential Capital, LLC)*, 501 B.R. 549, 594 (Bankr. S.D.N.Y. 2013) (finding that "the proper valuation methodology must account for the proposed disposition of the collateral."); *First Am. Bank of Va. v. Monica Rd. Assocs. (In re Monica Rd. Assocs.)*, 147 B.R. 385, 390 (Bankr. E.D. Va. 1992).

[29] *See La Jolla Mortg. Fund v. Rancho El Cajon Assocs.*, 18 B.R. 283, 288 (Bankr. S.D. Cal. 1982) ("Since the term 'value' is an elusive and illusory concept, this Court can only endeavor to make a reasonable determination based upon the evidence, including the opinions of the two expert witnesses, presented during this trial. This valuation process is not an exact science and the Court must consider estimates and approximations founded upon opinions.") (internal citations omitted).

increase in the value of such collateral due entirely to the efforts of parties other than the lender.[30]

34. On the Petition Date, the Debtors were not viable. The Debtors faced a cold idle of their mines and a potential fire-sale liquidation of their assets. By contrast, the Debtors have now secured three going-concern Bids that will provide meaningful recoveries to the Prepetition LC Lenders, without any assistance from such lenders. The Debtors submit that the Bankruptcy Court should follow the court's ruling in *In re Wood*, valuing the Prepetition LC Lenders' collateral as of the Petition Date.

4. The Plan is Fair and Equitable with Respect to Class 5 within the meaning of section 1129(b) of the Bankruptcy Code.

35. Notwithstanding the rejection of the Plan by Class 5—Prepetition LC Facility Claims, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code and should be confirmed. Pursuant to section 1129(b)(2)(A)(ii) of the Bankruptcy Code, a Plan is fair and equitable with respect to a class of secured claims if the plan provides "… for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph."[31] Section 1129(b)(2)(A)(iii) provides that a plan is fair and equity if it provides "for the realization by such

[30] 190 B.R. at 790-91, 795 ("In summary, this property has increased in value during the bankruptcy solely because of the Debtor's efforts and not due to any general appreciation of the property. Allowing the Debtor to benefit from this increase certainly encourages the Debtor in her fresh start. The Bank can expect to receive the present value of their allowed secured claim as determined on the date of the filing over the life of the plan. There is no unfairness to this result."); *cf. In re Heritage Highgate, Inc.*, 679 F.3d 132, 143 (3d Cir. 2012) ("More fundamentally, the projections regarding monies to be realized from the sale of [collateral] over time do not equate to 'value' as of confirmation because they anticipate Debtors spending time and money to realize value at a later date. That future value should not be credited to the secured creditor at confirmation.").

[31] 11 U.S.C. § 1129(b)(2)(A)(ii).

holders of the indubitable equivalent of such claims."[32] It is axiomatic that the return of a secured creditors' collateral is the indubitable equivalent of its claims.[33]

36. The Plan plainly meets these requirements. Pursuant to the Bidding Procedures Order, the Debtors pursued a sale of substantially all of the Debtors' assets, including the Prepetition LC Lenders' collateral, free and clear of the Prepetition LC Lenders' liens. The Bidding Procedures Order expressly preserved all secured creditors' rights to credit bid for all or a portion of the Debtors' assets pursuant to section 363(k) of the Bankruptcy Code.[34] As a Consultation Party, the Prepetition LC Lenders were also fully apprised of the results of the Debtors' marketing process and attended the Auction for the Blackhawk Purchased Assets. Moreover, upon information and belief, the Debtors understand that both Blackhawk and Coronado engaged in negotiations with the Prepetition LC Agent regarding the terms of their respective Bids prior to and during the Auction. The Debtors further understand that the Prepetition LC Agent did not enter into any agreement with either Bidder at the Auction. However, despite full knowledge of these events and of the proposed terms of each Qualified Bid, the Prepetition LC Lenders never exercised their right to credit bid, a secured lender's statutory protection in the event it believes its collateral is undervalued.

37. Consistent with the outcome of the Auction and the Debtors' marketing process, the Plan effectuates a sale of substantially all of the Debtors' assets through the Blackhawk APA and the VCLF APA. The sale will generate proceeds in the form of a $114.8 million Combined Company First Lien Term Loan, the Combined Company New ABL (if the Payout Event does

---

[32] *Id.*

[33] *In re SUD Properties, Inc.*, No. 11-03833-8-RDD, 2011 WL 5909648, at *5 (Bankr. E.D.N.C. Aug. 23, 2011) ("plans proposing to surrender all of the property to which its lien attaches are "fair and equitable" and the creditor receives the indubitable equivalent of its secured claim").

[34] *See* Bidding Procedures Order ¶ 10.

not occur), and the $155 million Combined Company Second Lien Term Loan.[35] The Plan provides for the distribution of such proceeds in accordance with the priority scheme established by the Bankruptcy Code. In lieu of payment in full in cash upon emergence as required by the Bankruptcy Code, the DIP Lenders agreed to receive the $114.8 million Combined Company First Lien Term Loan in full satisfaction of their Allowed DIP Facility Claims. Similarly, the Prepetition ABL Parties, whose liens are senior to the Prepetition LC Lenders' liens, consented to receive the Combined Company New ABL (if the Payout Event does not occur) in full satisfaction of their claims. Accordingly, as next in priority, the Prepetition LC Lenders' liens attach to the $155 million Combined Company Second Lien Term Loan, the remaining undistributed sale proceeds, pursuant to section 1129(b)(2)(A)(ii) of the Bankruptcy Code.[36] These treatment of these liens under the Plan complies with section 1129(b)(2)(A)(iii) of the Bankruptcy Code, as incorporated into section 1129(b)(2)(A)(ii) of the Bankruptcy Code, by providing the Prepetition LC Lenders with the "indubitable equivalent" of their claims.[37] The Plan provides for the return of this collateral after the sale to the Prepetition LC Lenders, to be distributed on a Pro Rata basis. As such, the Plan provides the Prepetition LC Lenders with the indubitable equivalent of their Allowed Claims, as the return of collateral is recognized to be the indubitable equivalent of a secured creditor's secured claim, and the new Combined Company Second Lien Term Loan constitutes the sale proceeds generated and, consequently, the Prepetition LC Lenders' collateral.[38]

---

[35] *See* Blackhawk APA Section 2.06.

[36] *See* 7-1129 Collier on Bankruptcy P 1129.04 (The lien of the secured creditor will attach to the proceeds, be they cash, notes or other property received in exchange.)

[37] 11 U.S.C. § 1129(b)(2)(A)(ii), (iii).

[38] *In re Bate Land & Timber, LLC*, 523 B.R. 483, 497-98 (Bankr. E.D.N.C. 2015) *leave to appeal granted sub nom. Bate Land Co., LP v. Bate Land & Timber, LLC*, No. 7:15-CV-22-BO, 2015 WL 3409208 (E.D.N.C. May

38. The Prepetition LC Lenders will also argue that the Plan inappropriately utilizes cash, accounts receivable and proceeds from the Alcoa Settlement to pay junior creditors and that any cram down plan should instead turnover such collateral as the indubitable equivalent of their claims. The evidence at trial will show such a path is inappropriate under the circumstances.

39. The Prepetition LC Lenders also attempt to argue that the assumption by VCLF of the VCLF Assumed Liabilities constitutes "proceeds" within the meaning of Uniform Commercial Code.[39] However, the Prepetition LC Lenders do not cite, and the Debtors have not found, a single case to support this assertion. Nor does a plain reading of the statute support this argument. The Debtors are not acquiring or collecting on anything under the VCLF APA; they are not receiving any "rights arising out of collateral" or claims arising from the loss thereof; no insurance will be payable to the Debtors on account of the collateral under the VCLF APA or otherwise.[40] This is not a "fiction devised for cram down purposes"—it is the stark reality of these Chapter 11 Cases. The Debtors conducted an exhaustive marketing process for all of their assets. Only one party, VCLF, bid on the Blackhawk Excluded Assets (or any combination thereof). That sale will not generate any sale proceeds. As set forth above and as the evidence at

27, 2015) ("It generally is understood that when a secured creditor receives *all* of the property to which its lien attaches, the creditor has received the full value—the "indubitable equivalent"—of its monetary claim, because "common sense tells us that property is the indubitable equivalent of itself.") (internal citations omitted).

[39] *See* Prepetition LC Lenders' Objection ¶ 46 ("The Debtors may try to claim that no proceeds will be realized in this sale and thus no consideration to the LC Parties is required, but that is a fiction devised for cram down purposes.").

[40] *See* Va. Code Ann. § 8.9A-102 (defining "Proceeds" as "(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral; (B) whatever is collected on, or distributed on account of, collateral; (C) rights arising out of collateral; (D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or (E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.").

trial will demonstrate, VCLF's motivation for assuming the VCLF Assumed Liabilities is not to "unlock" some hidden value. Rather, VCLF is a uniquely situated buyer whose mission is to conserve natural resources for the betterment of the environment. If the Prepetition LC Lenders truly believed that the disposition of the Blackhawk Excluded Assets could generate value, they would have exercised their right to credit bid. They did not.

40. The Prepetition LC Lenders' argument that the VCLF Equity Grant constitutes proceeds of the VCLF Transaction is similarly misguided. Under the terms of the VCLF APA, the VCLF Equity Grant does not flow into the Debtors' estates. Rather, the VCLF APA provides for the potential distribution by VCLF of VCLF's equity securities directly to certain stakeholders with whom VCLF will have an ongoing working relationship post-closing.[41] The recent Third Circuit decision in *ICL Holding Company, Inc.,* et al. is instructive here.[42] In that case, the bankruptcy court approved a settlement agreement whereby the purchaser of substantially all of the debtors' assets proposed to pay $3.5 million to unsecured creditors, notwithstanding the fact that the debtors' secured creditors would not be paid in full from the sale proceeds. On appeal, the Third Circuit affirmed the bankruptcy court's ruling that the settlement payment was not estate property, and therefore not subject to the Bankruptcy Code's priority scheme.[43] Specifically, the Third Circuit stated that the settlement funds were not property of the estate because "sums paid by the purchaser were not proceeds from its liens, did not at any time belong to [the debtors'] estate, and will not become part of its estate even as a pass-through." That is exactly the case here. First, the VCLF Equity Grant is not "proceeds" of

---

[41] *See* VCLF APA Section 7.12.

[42] *ICL Holding Company, Inc.,* No. 14-2709, 2015 WL 5315604 (3d Cir. Sept. 14, 2015). Notably, counsel to the debtor in *ICL Holding* is counsel to the Prepetition LC Agent, Barclays Bank PLC, in these Chapter 11 Cases.

[43] *Id*. at 7.

the VCLF Transaction, as the language of the VCLF APA makes clear. The VCLF Equity Grant is not included in Article 2 of the VCLF APA, which details the assets to be purchased thereunder and VCLF's corresponding obligations at closing.[44] Rather, the VCLF Equity Grant appears separately, in Article 7 of the VCLF APA, as a covenant of VCLF.[45] Second, the VCLF Equity Grant relates solely to equity securities of VCLF which never have been and never will become property of the Debtors' estates. Finally, the VCLF Equity Grant does not contemplate a pass-through of the VCLF equity securities to the Debtors prior to distribution. Indeed, the Debtors are not mentioned in the provision, which expressly dictates the goal of direct distribution of VCLF equity securities in the six months after closing.[46] Therefore, the VCLF Equity Grant is not property of the Debtors' estates and, consequently, not subject to the Bankruptcy Code.

41. Accordingly, the Plan satisfies section 1129(b)(2)(A)(ii) of the Bankruptcy Code and should be confirmed notwithstanding rejection by Class 5.

II. THE PLAN SATISFIES THE REQUIREMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE.

42. Section 1129(a)(1) of the Bankruptcy Code requires that a plan comply with the "applicable provisions" of the Bankruptcy Code.[47] The legislative history relating to this provision explains that section 1129(a)(1) of the Bankruptcy Code encompasses and incorporates

---

[44] *See generally* VCLF APA Article 2.

[45] *See* VCLF APA Section 7.12

[46] *Id.*

[47] 11 U.S.C. § 1129(a)(1); *see e.g.*, *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.")*; In re Hawkins*, 2013 WL 663608, at *2 (Bankr. D.S.C. Feb. 21, 2013) ("Because section 1129 indicates that a court "shall" confirm a plan that complies with all of its requirements, if all of those requirements are met, "a court has no discretion with regard to chapter 11 plan confirmation.").

the requirements of sections 1122 and 1123 of the Bankruptcy Code, which govern classification of claims and interests and the contents of the plan, respectively.[48]

A. The Plan Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code.

43. The Plan satisfies section 1122 of the Bankruptcy Code, which provides that "a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."[49] For a classification structure to satisfy section 1122 of the Bankruptcy Code, not all substantially similar claims or interests need to be grouped in the same class.[50] Instead, claims or interests designated to a particular class must be substantially similar to each other.[51] 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.[52]

---

[48] *See* S. Rep. No. 95-989, at 126 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5912; H.R. Rep. No. 95-595, at 412 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6368; *see also 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 omitted, emphasis in original).

[49] 11 U.S.C. § 1122(a).

[50] *Armstrong World Indus., Inc.*, 348 B.R. at 159.

[51] *Id.*

[52] Courts have identified grounds justifying separate classification, including: (a) where members of a class possess different legal rights and (b) where there are good business reasons for separate classification. *See John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.*, 987 F.2d 154, 158–59 (3d Cir. 1993) (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," the classification is proper); *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); *see also Frito-Lay, Inc. v. LTV Steel Co. (In re Chateaugay Corp.)*, 10 F.3d 944, 956–57 (2d Cir. 1993) (finding separate classification appropriate because classification scheme had a rational basis on account of the bankruptcy court-approved settlement); *In re Heritage Org., L.L.C.*, 375 B.R. 230, 303 (Bankr. N.D. Tex. 2007) ("the only express prohibition on separate classification is that it may not be done to gerrymander an affirmative vote on a reorganization plan"); *In re 500 Fifth Ave. Assocs.*, 148 B.R. 1010, 1018 (Bankr. S.D.N.Y. 1993) (although discretion is not unlimited, "the proponent of a plan of reorganization has considerable discretion to classify claims and interests according to the facts and circumstances of the case") (internal quotations omitted); *In re Drexel Burnham Lambert Grp.*

44. The Plan's classification of Claims and Interests satisfies the requirements of section 1122 of the Bankruptcy Code because the Plan places Claims and Interests into eleven separate Classes, with each Class differing from the Claims and Interests in each other Class in a legal or factual nature or based on other relevant criteria.[53] Specifically, the Plan provides for the separate classification of Claims and Interests into the following Classes:

a. Class 1: Other Priority Claims;

b. Class 2: Secured Tax Claims;

c. Class 3: Other Secured Claims;

d. Class 4: Prepetition ABL Facility Claims;

e. Class 5: Prepetition LC Facility Claims;

f. Class 6: Prepetition Term Loan Facility Claims;

g. Class 7: Prepetition Notes Claims;

h. Class 8: General Unsecured Claims;

i. Class 9: Intercompany Claims;

j. Class 10: Intercompany Interests; and

k. Class 11: Equity Interests.

45. Claims and Interests assigned to each particular Class described above are substantially similar to the other Claims and Interests in such Class. In addition, valid business, legal, and factual reasons justify the separate classification of the particular Claims or Interests into 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

Inc., 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992) ("Courts have found that the Bankruptcy Code only prohibits the identical classification of dissimilar claims. It does not require that similar classes be grouped together….").

[53] *See* Plan Art. III.

Holder of such Claims or Interests may hold (or may have held) rights in the Estates legally dissimilar to the Claims or Interests in other Classes or because substantial administrative convenience resulted from such classification. For example, Claims (rights to payment) are classified separately from Interests (representing ownership in the business). Secured Claims are classified separately from unsecured Claims because the Debtors' obligations with respect to the former are secured by collateral. Secured Claims are further grouped into Classes based on, for instance, the collateral securing the Claim (against which the secured claimant has recourse subject to the provisions of the Bankruptcy Code) and the governing credit documents under which the Claim arises. While certain Objecting Parties challenge the purported classification of their Claims, none of the Objecting Parties have objected to the Debtors' classification structure. Accordingly, the Plan satisfies section 1122(a) of the Bankruptcy Code.

1. The Plan Satisfies the Seven Mandatory Plan Requirements of Section 1123(a)(1)–(7) of the Bankruptcy Code.

46. The Plan meets the seven mandatory requirements of section 1123(a) of the Bankruptcy Code. Specifically:[54]

- as required by section 1123(a)(1) of the Bankruptcy Code, Article II of the Plan designates Classes of Claims and Interests;
- as required by section 1123(a)(2) of the Bankruptcy Code, Article III of the Plan specifies which Classes of Claims and Interests are not impaired under the Plan;
- as required by section 1123(a)(3) of the Bankruptcy Code, Article IV of the Plan specifies the treatment of each Class of Claims or Interests that is impaired under the Plan;
- as required by section 1123(a)(4) of the Bankruptcy Code, Article IV of the Plan provides the same treatment for each Claim or Interest within a particular Class (unless the Holder of a particular Claim or Interest agrees to less favorable treatment on account of its Claim or Interest);

[54] *See* 11 U.S.C. § 1123(a)(1)(7).

- as required by section 1123(a)(5) of the Bankruptcy Code, the provisions of Article VII of the Plan provide adequate means for the Plan's implementation;

- as required by section 1123(a)(6) of the Bankruptcy Code, the organizational documents of the Combined Company and VCLF, as applicable, will be amended, as necessary, to prohibit the issuance of non-voting equity securities to the extent required by section 1123(a)(6) of the Bankruptcy Code; and

- as required by section 1123(a)(7) of the Bankruptcy Code, prior to the Confirmation Hearing, to the extent not already disclosed in the Plan Supplement, the Debtors will properly and adequately disclose the identities of officers or directors to the extent known or otherwise identify the manner by which the individuals proposed to serve as the officers and directors of the Combined Company and VCLF will be selected, consistent with the interests of creditors and equity security holders and with public policy.

47. Accordingly, the Debtors submit that the Plan fully complies with and satisfies all of the requirements of section 1123(a) of the Bankruptcy Code.

2. The Discretionary Contents of the Plan, Including the Plan's Discharge, Release, Injunction, and Exculpation Provisions, Are Appropriate and Should Be Approved.

48. Section 1123(b) of the Bankruptcy Code identifies the discretionary provisions that may be included in a plan of reorganization. For example, a plan may, among other things: (a) impair or leave unimpaired any class of claims or interests; (b) modify or leave unaffected the rights of holders of secured or unsecured claims; (c) provide for the settlement or adjustment of claims against or interests in a debtor or its estate or the retention and enforcement by a debtor, trustee or other representative of claims or interests; and/or (d) provide for the assumption or rejection of executory contracts and unexpired leases. In addition to the enumerated provisions, section 1123(b) of the Bankruptcy Code also provides that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]."[55]

---

[55] *See* 11 U.S.C. § 1123(b)(6).

49. Here, the Plan includes various provisions that are consistent with the discretionary authority vested under section 1123(b) of the Bankruptcy Code. For example, the Plan impairs certain Classes of Claims and Interests and leaves others unimpaired, proposes treatment for Executory Contracts and Unexpired Leases, provides a structure for Claim allowance and disallowance and establishes a distribution process for the satisfaction of Allowed Claims entitled to distributions under the Plan. In addition, the Plan contains provisions implementing certain releases and exculpations, discharging Claims and Interests and permanently enjoining certain causes of action. The Plan's discharge, release, exculpation, and injunction provisions are proper because, among other things, they: (a) are the product of arm's-length, good-faith negotiations among the Debtors, on the one hand, and certain of the Released Parties on the other hand; (b) have been critical to obtaining the necessary support from certain constituencies for the Plan; (c) are given for valuable consideration; (d) are fair and equitable and in the best interests of the Debtors and their estates; and (e) are consistent with the relevant provisions of the Bankruptcy Code and Fourth Circuit law. Moreover, the Debtors' board of directors reviewed the proposed release, exculpation, and injunction provisions and determined they were appropriate and important in connection with their approval of the Plan. Such provisions are discussed in turn below, but, in summary, satisfy the requirements of section 1123(b).

a. The Discharge Is Appropriate.

50. The Plan's discharge provision is permissible and should be approved. Under section 1141(d)(3) of the Bankruptcy Code, a debtor is entitled to receive a discharge under a chapter 11 plan unless all three of the following factors are met: (a) the plan provides for the liquidation of all or substantially all of the property of the estate; (b) the debtor does not engage in business after consummation of the plan; ***and*** (c) the debtor would be denied a discharge

under section727(a) of this title if the case were a case under chapter 7 of this title.[56] Here, the Plan does not provide for the liquidation of all or substantially all of the property of the Debtors' chapter 11 estates. Rather, the Plan contemplates the value-maximizing, going-concern sales of substantially all of the Debtors' assets and operations to Blackhawk and to VCLF.[57] Moreover, even if the VCLF Transaction cannot be consummated, the Blackhawk Excluded Assets will vest in the Liquidating Trust for a period of years, which will continue to operate the Debtors' remaining assets through the Wind Down.[58] The Bankruptcy Code expressly provides that a chapter 11 plan may provide for the "sale of all or substantially all of the property of the estate"[59], and bankruptcy courts have regularly approved discharges as part of chapter 11 plans of reorganization that implement a sale of substantially all of a debtor's assets.[60] So too here. Accordingly, the Debtors submit a discharge is warranted and the U.S. Trustee's objection should be overruled.

b. The Debtor Release Is Appropriate.

51. The Plan provides for release by the Debtors (the "Debtor Release") of claims, including direct, indirect, or derivative claims, against the Debtors Releasees and the Third Party Releasees, which parties include: (a) each Debtor and the Debtors' current and former Affiliates, partners, members, subsidiaries, officers, directors, principals, employees, agents, advisors,

---

[56] *See* 11 U.S.C. § 1141(d)(3); *In re River Capital Corp.,* 155 B.R. 382, 387 (Bankr. E.D. Va. 1991) ("[I]f any one provision does not apply, confirmation of a plan results in the discharge of debt.").

[57] *See* Plan Art. IV.O; Disclosure Statement VI.I.

[58] *See id.*

[59] *See* 11 U.S.C. § 1129(b)(4).

[60] *See, e.g, In re OnCure Holdings Inc.*, No. 13-11540 (KG) (Bankr. D. Del. 2013) [Docket No. 376] (confirming a Chapter 11 plan that included the sale of the reorganized debtor); *In re Penson Worldwide, Inc.*, No. 13-10061 (PJW) (Bankr. D. Del. 2013) [Docket No. 781] (confirming a Chapter 11 liquidating plan and granting a discharge).

attorneys, accountants, investment bankers, consultants, representatives, and other Professionals, and their respective successors and assigns, each in their capacity as such, and only if serving in such capacity; (b) the Liquidating Trust;[61] (c) the Liquidating Trustee; (d) Blackhawk; (e) VCLF; (f) the Combined Company; (g) the Prepetition Agents and Barclays Bank PLC, as predecessor Term Administrative Agent (under and as defined in the Prepetition LC/Term Loan Agreement) and any of their respective sub-agents; (h) the Prepetition Term Lenders; (i) the Prepetition ABL Secured Parties; (j) the Prepetition Noteholders; (k) the DIP Agent; (l) the DIP Lenders; (m) the Combined Company 1.5 Lien Term Loan Agent; (n) the Combined Company 1.5 Lien Term Loan Lenders; (o) the Committee; and (p) with respect to each of the foregoing Entities in clauses (a) through (o) (other than with respect to a final fee application of a Professional), all such Entities' respective current and former Affiliates and all such Entities' and such Affiliates' respective current and former attorneys, financial advisors, consultants, representatives, advisors, accountants, investment bankers, investment advisors, actuaries, professionals, members (including ex officio members), officers, directors, employees, partners, subsidiaries, principals, agents, managers, administrators, trustees, managed funds, fund managers and representatives, and successors and assigns of each of the foregoing in their respective capacities as such; provided that in no circumstance shall Peabody or Arch be Third Party Releasees (collectively, the "Released Parties").[62] Notably, in response to certain comments received by parties in interest, the Plan makes clear that in no circumstance shall Peabody or Arch be Released Parties.

---

[61] The Debtors will file a notice with the Bankruptcy Court in accordance with Art. IV.S of the Plan indicating whether the Plan shall implement the VCLF Transaction of the Liquidating Trust. To the extent the Plan implements the Liquidating Trust, the Debtors will file the Liquidating Trust Agreement concurrently with the filing of the notice.

[62] *See* Plan Art VIII.C.

52. A plan that proposes to release a claim or cause of action that belongs to a debtor is considered a "settlement" for purposes of satisfying section 1123(b)(3)(A) of the Bankruptcy Code.[63] Section 1123(b)(3)(A) of the Bankruptcy Code specifically provides that a plan of reorganization may provide for the settlement or adjustment of any claim or interest belonging to the debtor or the estate.[64] Further, a debtor may release claims under section 1123(b)(3)(A) of the Bankruptcy Code "if the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate."[65] The Debtor Release is in the best interest of the Debtors' estates and well within their business judgment because the recipients of the Debtor Release are all parties who either have an identity of interest with the Debtors or who were critically important to the negotiation and formulation of the Plan.[66]

53. Certain of the Released Parties have been active and important participants in the development of the Blackhawk APA, the VCLF APA, the Plan, and the chapter 11 process. Indeed, the cooperation and support of these Released Parties has enabled the Debtors to formulate two going-concern sale transactions that maximize value for the Debtors' stakeholders despite unprecedented industry challenges and in an environment where coal financings and sale transactions are non-existent.

---

[63] *See, e.g.*, *In re WCI Cable, Inc.*, 282 B.R. 457, 469 (Bankr. D. Or. 2002). To the extent Bankruptcy Rule 9019 is applicable in reviewing this type of settlement, the appropriate standard is the reasonable "business judgment" standard. *Id.*

[64] 11 U.S.C. § 1123(b)(3)(A).

[65] *In re Spansion, Inc.*, 426 B.R. 114, 143 (Bankr. D. Del. 2010); *see also In re Wash. Mut., Inc.*, 442 B.R. 314, 327 (Bankr. D. Del. 2011) ("In making its evaluation [whether to approve a settlement], the court must determine whether `the compromise is fair, reasonable, and in the best interest of the estate.") (internal citations omitted); *In re Bond,* No. 93-1410, 1994 WL 20107, at *4 (4th Cir. 1994) (when determining whether a settlement is fair and equitable, the court may give deference to the debtor's business judgment at the time of execution of the settlement).

[66] *Feld v. Zale Corp*. (*In re Zale Corp*.), 62 F.3d 746, 761 (5th Cir. 1995) (noting that release of claims is appropriate "when the non-debtor and the debtor enjoy such an identity of interests that the suit against the non-debtor is essentially a suit against the debtor…" and "when the third-party action will have an adverse impact on the debtor's ability to accomplish reorganization…").

54. Needless to say, the transactions contemplated by the Plan would not be possible without the contributions that Blackhawk and VCLF have made in formulating the transactions that provide the bedrock for both the Plan and the Debtors' go-forward business structure, as well as providing consideration and assuming the liabilities necessary to effectuate the Plan transactions.

55. The DIP Lenders and the DIP Agent provided the Debtors with the only available debtor-in-possession financing on terms that were reasonable and competitive, which allowed the Debtors to conduct an accelerated sale process that has led to the Plan. Without the DIP Facility, the Debtors would have been forced to file cases under chapter 7 and put their operations into a cold idle, resulting in a devastating impact to their employees, customers, stakeholders, and environmental authorities. The DIP Facility has enabled the Debtors to pursue multiple going-concern sale transactions, which unquestionably provide for a higher and better recovery to their stakeholders and is a better result for the Debtors' employees, trade vendors, and environmental authorities. The Combined Company 1.5 Lien Term Loan Lenders have similarly provided significant financial commitments to fund emergence in an economic environment where third-party financing for coal companies is nearly impossible, thereby allowing the transactions contemplated under the Plan to be consummated.

56. The Debtors' directors, officers, and related parties also played a crucial role both before and during the chapter 11 cases. When it became apparent that a chapter 11 filing would be necessary, the Debtors' board took all appropriate steps to ensure—to the maximum extent possible—that the asset sales would be accomplished swiftly and successfully, all while causing minimal disruption to the Debtors' operations. The board also took an extremely active role in all restructuring-related activities, including overseeing Centerview's marketing process and the

development of the Plan and the transactions contemplated therein. Indeed, since the Petition Date, the Debtors' directors and officers have actively participated in these cases and continue to support the management team with various operating issues. In the fact of a rapidly diminishing cash position and with no further financing available—and in the face of significant litigation threats—the Board and management team could have elected to take an alternative route, which could have caused a devastating impact on the Debtors' ability to seek to obtain confirmation of the Plan and eliminated the possibility of any going-concern transaction. Furthermore, the Debtors' directors, officers, related parties, and the Released Parties that are funded debt holders in the Debtors' capital structure share an identity of interest with the Debtors, such that any litigation against such entities requires the Debtors to indemnify those parties, triggering potential administrative claims that to the extent allowed, must be paid in full in cash nothwithstanding the Debtors' significant liquidity shortfall.

57. Furthermore, after a reasonable and appropriate inquiry, the Debtors do not believe that the Debtors have material causes of action against the other Released Parties. Pursuing causes of action against the Released Parties would not be in the best interests of the Debtors' various constituencies as the costs involved would likely outweigh any potential benefit from pursuing such claims. Furthermore, the Debtors believe pursuing causes of action against the Released Parties could result in material harm to the Debtors' ability to consummate the Blackhawk Transaction and the VCLF Transaction, and, therefore, the Plan, as these transactions are predicated on the Debtor Release. In fact, the Debtors submit that if the Debtors had tried to preserve claims and causes of action against the Released Parties, the transactions contemplated by the Plan would not have been possible and the Debtors would have been forced to liquidate. Indeed, the Combined Company 1.5 Lien Term Loan Lenders only would agree to provide the

new money financing that will facilitate consummation of the Plan if the Debtors agreed to, among other things, release the Released Parties. Accordingly, the Debtors submit that the Debtor Release reflects a reasonable balance of the risk and expense of litigation, on the one hand, against the benefits of resolution of disputes and issues, on the other hand, removing what could otherwise be potentially substantial impediments to emergence from chapter 11.[67]

58. Accordingly, as set forth above, the Debtors Release is well considered, represents a valid exercise of the Debtors' business judgment, and should be approved.

c. The Third Party Release Provisions Are Appropriate.

59. The Plan also includes a number of third-party releases. First, the Plan includes a consensual third-party release from Holders of Claims and Interests (the "Consensual Release"). For the reasons described below, this release is a consensual release and is consistent with similar third-party release provisions approved in the Fourth Circuit and in other circuits. Second, the Plan incorporates non-consensual releases from all Holders of Claims and Interests as well as the Government Environmental Entities of the New Money Lender Entities (the "Release of New Money Lender Entities") and the Current Director and Officers (the "Release of Current Directors and Officers").

i. The Consensual Release Should Be Approved.

60. The Consensual Release provides that, as of the Effective Date, except as otherwise provided in the Plan, each Releasing Party will release all claims, including direct, indirect, and derivative claims, against the Debtors, their Estates, and the Released Parties.[68]

---

[67] *See In re Teltronics Servs., Inc.*, 762 F.2d 185, 188-89 (2d Cir. 1985); *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983)); June 10, 2004 Confirmation Order [Docket No. 1481] ¶¶ 60-61, *In re Allegiance Telecom, Inc.*, No. 03-13057 (Bankr. S.D.N.Y.) ("avoidance of long and complicated litigation is one of the principal rationales for debtors entering into settlements with creditors") (citing *In re Baldwin United Corp.*, 43 B.R. 888 (Bankr. S.D. Ohio 1984).

[68] *See* Plan, Art. VIII.D.

61. Importantly, the Plan provides that "…any Holder of a Claim (other than a Committee Member) who votes to reject the Plan or who does not vote to accept or reject the Plan but who submits a Ballot opting out of the Third Party Release shall not be a Third Party Releasee."[69] The consensual aspect of the Consensual Release was conspicuously noticed in the Disclosure Statement, the Plan, and in each of the Ballots sent to voting creditors, and such materials provided clear and detailed instruction on how to opt out of the Third Party Releases.[70]

62. Bankruptcy courts in the Fourth Circuit have acknowledged the propriety of non-debtor releases and injunctions in situations where the releases and injunctions are an integral part of the plan and where such releases are consensual under the circumstances.[71] Notably, nondebtor third-party releases may be permissible where the requisite consent is given, including where the eligible voting creditors fail to opt-out of the release so long as they receive adequate notice of the release on the ballot.[72] Such releases are warranted where "[t]he failure to effect the release, indemnification, and exculpation provisions of the Plan would impair the Debtors' ability to confirm the Plan."[73]

---

[69] Plan, Art. I.A.232.

[70] *See* Disclosure Statement, Art.V.G.4;Ballots, Item 3.

[71] *See, e.g.*, *In re Neogenix Oncology, Inc.*, 508 B.R. 345, 361 (Bankr. D. Md. 2014) (denying confirmation of plan because requisite consent not given, but acknowledging that consensual releases are permissible in the Fourth Circuit) (citing *Food Lion, Inc. v. S.L. Nusbaum Ins. Agency, Inc.*, 202 F.3d 233 (4th Cir. 2000)); *compare with Behrman v. National Heritage Foundation*, 663 F.3d 704 (analyzing nonconsensual releases under factors set forth in *Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow Corning Corp.)*, 280 F.3d 649 (6th Cir. 2002)).

[72] *See, e.g.*, *In re Movie Gallery, Inc.*, No. 07-33849 (DOT) (Bankr. E.D. Va. Apr. 10, 2008) [Docket No. 2191] (approving third party release as consensual where applied to accepting parties or parties that abstained and did not opt-out of the third party release); *see also In re Indianapolis Downs, LLC.*, 486 B.R. 286, 305-06 (Bankr. D. Del. 2013) (approving third party releases under a plan where the "impaired creditors who abstained from voting on the Plan, or who voted to reject the Plan and did not otherwise opt out of the releases, [and] the record reflects these parties were provided detailed instructions on how to opt out, and had the opportunity to do so by marking their ballots.").

[73] *Id.*; *In re Harborwalk, LP*, 2010 WL 5116620, at *7 (Bankr. S.D. Tex. Oct. 25, 2010).

63. The Debtors respectfully submit that the Consensual Release is appropriate under the circumstances of these Chapter 11 Cases. Each of the Released Parties also provided substantial contributions to the Chapter 11 Cases and the Debtors' restructuring—including in connection with the Blackhawk Transaction and the VCLF Transaction. As with the Debtor Release, the Consensual Release was a key negotiating point for the Debtors and the Third Party Releasees.

64. Accordingly, the Debtors submit that the Consensual Release should be approved.

d. The Exculpation Provision Is Appropriate.

65. The Plan provides that (a) the Debtors; (b) Blackhawk; (c) VCLF; (d) the Debtor Releasees; (e) the Third Party Releasees; (f) the DIP Agent; (g) DIP Lenders; (h) the Committee and the Committee Members, each in their capacity as such; and (i) all of the current and former Affiliates, attorneys, financial advisors, consultants, representatives, advisors, accountants, investment bankers, investment advisors, actuaries, professionals, members (including ex officio members), officers, directors, employees, partners, subsidiaries, principals, agents, managed funds and representatives and successors and assigns of each of the foregoing Entities (whether current or former, in each case in his, her or its capacity as such) (collectively, the "Exculpated Parties")[74] will be exculpated for certain claims arising out of their actions during the chapter 11 case (the "Exculpation").[75] Exculpation provisions such as the ones contemplated under the Plan "generally are permissible, so long as they are properly limited and not overly broad."[76]

[74] *See* Plan, Art. I.A.84.

[75] *See* Plan, Art. VIII.E.

[76] *In re Nat'l Heritage Found., Inc.*, 478 B.R. 216, 233 (Bankr. E.D. Va. 2012) *aff'd sub nom. Nat'l Heritage Found. Inc. v. Behrmann*, No. 1:12-CV-1329 AJT/JFA, 2013 WL 1390822 (E.D. Va. Apr. 3, 2013) *aff'd sub nom. Nat'l Heritage Found., Inc. v. Highbourne Found.*, No. 13-1608, 2014 WL 2900933 (4th Cir. June 27, 2014) on reh'g, 760 F.3d 344 (4th Cir. 2014) and *aff'd sub nom. Nat'l Heritage Found., Inc. v. Highbourne Found.*, 760 F.3d 344 (4th Cir. 2014).

Importantly, the Fourth Circuit has not held that exculpation is limited to estate fiduciaries. Courts have held that exculpation is warranted when a third party has granted substantial consideration to the debtor or where such exculpations are critical to the reorganization.[77]

66. Such circumstances are present here. The contributions and concessions by each of the Exculpated Parties were fundamental to the Debtors' ability to propose a confirmable chapter 11 plan of reorganization. Blackhawk has made significant contributions to these Chapter 11 Cases, including by directly participating in negotiations, serving as the buyer for the Blackhawk Purchased Assets, and facilitating distributions to the Debtors stakeholders. Indeed, Blackhawk is providing the primary source of recovery for the Debtors' stakeholders under the Plan and the Blackhawk APA. Similarly, VCLF has made the extraordinary contribution of assuming the Debtors' environmental obligations that are not Blackhawk Purchased Assets, in addition to serving as the Stalking Horse Bidder for the Blackhawk Excluded Assets. VCLF, with the assistance of the Debtors, has also made significant progress reaching settlements with certain environmental authorities that will facilitate the feasibility of the newly created enterprise and best position it for long-term success. Moreover, VCLF has provided a potential payment to holders of General Unsecured Claims through the VCLF Equity Grant, which holders would otherwise not be entitled to any recovery under the Plan.

67. Additionally, as described above, the DIP Agent and DIP Lenders provided the essential financing necessary—and the only financing available—for the Debtors to maintain operations during the chapter 11 process and conduct any sale process. Moreover, the Combined Company 1.5 Lien Term Loan Lenders have further enabled the Debtors to seek confirmation

[77] *See e.g.*, *In re Houston Regional Sports Network L.P.*, No. 13-35998 (Bankr. S.D.Tex. Oct. 30, 2014); *In re Hingham Campus, LLC*, 2011 WL 3679057, at *9 (Bankr. N.D. Tex. Aug. 23, 2011) (confirming a plan which included provisions exculpating third parties); *In re Tex. Rangers Baseball Partners,* 2010 WL 4106713, at *11 (Bankr. N.D. Tex. Oct. 12, 2010) (same).

and consummation of the Plan through their new $80 million investment to fund the Debtors' emergence costs.

68. Each of these contributions is critical to the Debtors' ability to achieve a confirmable Plan and successful going-concern transactions. As a result of these contributions, the Plan provides the Debtors the means to consummate the Blackhawk Transaction and the VCLF Transaction, to the benefit of all stakeholders. Without these contributions, the Plan would fail, to the detriment of its estate and all of its stakeholders, including employees and environmental and governmental authorities. As the Debtors' board of directors recognized in approving the Plan, the Plan represents the only available alternative to liquidation. Therefore, for these reasons and as the evidence to be adduced at trial will show, the Exculpation in favor of these parties is appropriate and lawful.

e. The Injunction Provision Is Appropriate.

69. Pursuant to its terms, the Plan permanently enjoins certain Holders of Claims from bringing any action against the Released Parties (the "Injunction").[78] The Injunction provision is necessary to preserve and enforce the Debtor Release, the Third Party Release, and the Exculpation and is narrowly tailored to achieve that purpose. The Injunction is a key provision of the Plan because it enforces the Debtor Release, Third Party Release, and Exculpation that are centrally important to the Plan.[79] As such, the Injunction was also necessary to secure the participation of Blackhawk, VCLF, and the Debtors' prepetition creditors in the formulation of the Plan. Without the Injunction, the Plan's other release provisions would lose their impact and the Plan would fail, leaving the Debtors with no alternative but to liquidate.

---

[78] *See* Plan, Art. 14.8.

[79] *See SEC v. Drexel Burnham Grp., Inc. (In re Drexel Burnham Lambert Grp., Inc.*), 960 F.2d 285, 293 (2d Cir. 1992) (court may approve injunction provision in settlement contained in plan of reorganization where such provision "plays an important part in the debtor's reorganization plan").

Thus, the Court should approve the Injunction provision to the same extent it approves the Debtor Release and Exculpation provisions.

70. Accordingly, the Debtors submit that the discretionary provisions of the Plan are consistent with and permissible under section 1123(b) of the Bankruptcy Code. In light of the foregoing, because the Plan fully complies with section 1122 and 1123 of the Bankruptcy Code, the Debtors submit that the Plan fully complies with and satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code.

B. The Debtors Have Complied with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(2)).

71. The Debtors have satisfied section 1129(a)(2) of the Bankruptcy Code, which requires that the proponent of a plan of reorganization comply with the applicable provisions of the Bankruptcy Code. 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 set forth in sections 1125 and 1126 of the Bankruptcy Code.[80] As discussed below, the Debtors have complied with sections 1125 and 1126 of the Bankruptcy Code regarding disclosure and solicitation of the Plan.

1. The Debtors Complied with Section 1125 of the Bankruptcy Code.

72. As discussed in Part II of this memorandum, the Debtors complied with the notice and solicitation requirements of section 1125 of the Bankruptcy Code.

[80] *In re Lapworth*, No. 97-34529 (DWS), 1998 WL 767456, at *3 (Bankr. E.D. Pa. Nov. 2, 1998) ("The legislative history of § 1129(a)(2) specifically identifies compliance with the disclosure requirements of § 1125 as a requirement of § 1129(a)(2)."); *In re Worldcom, Inc.*, No. 02-13533 (AJG), 2003 WL 23861928, at *49 (Bankr. S.D.N.Y. Oct. 31, 2003) (stating that section 1129(a)(2) requires plan proponents to comply with applicable provisions of the Bankruptcy Code, including "disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code").

2. The Debtors Complied with Section 1126 of the Bankruptcy Code.

73. Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a plan of reorganization. Specifically, under section 1126 of the Bankruptcy Code, only holders of allowed claims and allowed interests in impaired classes of claims or interests that will receive or retain property under a plan on account of such claims or interests may vote to accept or reject such plan. Section 1126 of the Bankruptcy Code provides, in pertinent part, that:

> (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.[81]

74. As set forth in Part I of this memorandum, in accordance with section 1125 of the Bankruptcy Code, the Debtors solicited acceptances or rejections of the Plan from the Holders of Allowed Claims in the Voting Classes. The Debtors did not solicit votes from holders of Claims and Interests in Classes 1, 2, and 3 because Holders of Claims and Interests in these Classes are Unimpaired and, pursuant to section 1126(f) of the Bankruptcy Code, are conclusively presumed to have accepted the Plan. Additionally, holders of Claims and Interests in Classes 9, 10, and 11 are deemed to reject the Plan because they will receive no distribution on account of their Claims or Interests. Accordingly, such Holders were not entitled to vote to accept or reject the Plan. Thus, pursuant to section 1126(a) of the Bankruptcy Code, only holders of Claims in the Voting Classes were entitled to vote to accept or reject the Plan.

75. Sections 1126(c) and 1126(d) of the Bankruptcy Code specify the requirements for acceptance of a plan by classes of claims and interests:

---

[81] 11 U.S.C. § 1126(a), (f).

(a) 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.

(b) A class of interests has accepted a plan if such plan has been accepted by holders of such interests, other than any entity designated under subsection (e) or this section, that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

76. As described above, Holders of Claims in Classes 4 and 7 voted to accept the Plan.[82] Based upon the foregoing, the Debtors submit that they satisfy the requirements of section 1129(a)(2) of the Bankruptcy Code.

C. The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law (Section 1129(a)(3)).

77. 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.[83] 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.'"[84] 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

---

[82] As set forth above, the Debtors will file the Voting Certification prior to the commencement of the Confirmation Hearing.

[83] *See* 11 U.S.C. § 1129(a)(3).

[84] *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); *see also In re Osborne*, No. 12-00230-8-SWH, 2013 WL 2385136, at *4 (Bankr. E.D.N.C. May 30, 2013)

that the plan must provide for fundamental fairness in dealing with creditors."[85] 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.[86] 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.[87] Bankruptcy courts evaluate the fairness of a plan's proposed treatment of creditors in light of the debtor's ability to pay.[88]

78. The evidence adduced at trial will show the Debtors commenced these Chapter 11 Cases for the sole purpose of maximizing value for all of their stakeholders and they have fervently acted in a manner consistent with their fiduciary duties both prior to and throughout the chapter 11 process. Unprecedented challenges in the domestic coal industry precipitated the Debtors' severe liquidity shortfall and forced the Debtors to commence these chapter 11 cases to obtain the DIP financing necessary to fund the marketing and sale process. Any alternative would have resulted in a cold idle of the Debtors' operations and destroyed value. To fend off the

---

[85] *In re Eagan*, No. 12-30525, 2013 WL 237812, at *4 (Bankr. W.D.N.C. Jan. 22, 2013).

[86] *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) ("whether 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"); *In re Osborne,* 2013 WL 2385136 (Bankr. E.D.N.C. 2013) (viewing debtor's ability to pay as a part of the good faith inquiry); *In re Harenberg,* 491 B.R. 706, fn. 27 (Bankr. D. Md. 2013) ("An inquiry into good faith is a factual one geared to a consideration of the totality of the circumstances"); *In re Gyro–Trac (USA), Inc.,* 441 B.R. 470, 479 (Bankr. D.S.C. 2010) (same).

[87] *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.").

[88] *In re Osborne*, No. 12-00230-8-SWH, 2013 WL 2385136, at *5 (Bankr. E.D.N.C. May 30, 2013) ("…in considering the adequacy of the proposed distribution to unsecured creditors under the debtors' plan, the court notes that one of the circumstances courts have consistently considered when conducting a good faith inquiry is a debtor's ability to repay creditors."); *In re Trimm, Inc.*, No. B-97-16637-C-11D, 2000 WL 33673795, at *8 (Bankr. M.D.N.C. Feb. 17, 2000)("Good faith is determined by examining the totality of the circumstances and considering many factors, including the debtor's ability to pay."); *see also 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).

very real and value-destructive threat of liquidation and comply with the milestones set forth in the DIP Order, the Debtors, in consultation with their advisors, decided to pursue a sale of substantially all of their assets to maximize potential recoveries for all stakeholders. However, in light of the turbulent market conditions facing coal marketers and distributors and the substantial complexities of their businesses, the Debtors' ability to attract an acceptable buyer or buyers for their assets was far from a foregone conclusion. To achieve this feat, the Debtors engaged in tireless pre- and post-petition efforts to market their assets to strategic and financial buyers and maximize value to the fullest extent possible for their creditors.[89]

79. These efforts ultimately culminated in the Debtors' successful entry into the Blackhawk APA and the VCLF APA, complimentary transactions engineered to unlock synergies, resolve liabilities, and result in distributions to creditors well above those available in a forced liquidation. Moreover, both Blackhawk and VCLF agreed that their respective APAs would act as Stalking Horse Bids, subject to overbids and a marketing process in accordance with the Bidding Procedures Order. Accordingly, the Debtors continued to engage with alternate parties to evaluate whether a potentially higher or better transaction was available for the benefit of their stakeholders. These efforts ultimately resulted in the submission of a Bid from Coronado in the form of $255 million in Cash. Following extensive negotiations with Coronado, during which process the Debtors continued to consult with all of their major stakeholders, the Debtors determined that the Coronado Bid constituted a Qualified Bid. To further drive value for creditors, the Debtors conducted the Auction with respect to the Blackhawk Assets. Although Coronado did not top the Blackhawk Bid, at the conclusion of the Auction, the Debtors

---

[89] *See B.D. Int'l Disc. Corp. v. Chase Manhattan Bank (In re B.D. Int'l Disc. Corp.)*, 701 F.2d 1071, 1075 n.8 (2d Cir. 1983) ("Finally, it is necessary to keep in mind that reorganization under Chapter 11 was intended to afford the earnest debtor an opportunity to restructure its finances in such a fashion as to permit continued operation of business ventures so as to enable payment of creditors, rather than face immediate liquidation.").

determined that Coronado was the Backup Bidder. Through this process, the Debtors obtained an additional source of recovery for creditors in the event that the Debtors do not consummate the Blackhawk Transaction.

80. Concurrently with the sale process, the Debtors devoted substantial resources to successfully negotiating a workable framework for the go-forward treatment of certain employee-related obligations, as set forth in the 1113/1114 Settlement and the Coal Act Stipulation. In addition, the Debtors have engaged and will continue to engage with environmental authorities and surety providers regarding their environmental obligations under permits assumed pursuant to the Blackhawk APA and the VCLF APA, as applicable. This record evidences the Debtors' unflinching dedication to maximizing value for all stakeholders during the short life of these Chapter 11 Cases.

81. Notwithstanding the ample evidence to the contrary, many of the Objecting Parties object to confirmation of the Plan on the grounds that the Debtors have not satisfied section 1129(a)(3) of the Bankruptcy Code. These objections generally fall into three categories. First, the objectors assert that the Plan does not comply with applicable law because the Debtors have not demonstrated that Blackhawk and VCLF will be able to satisfy the Debtors' environmental obligations under applicable law. To the contrary, the Blackhawk APA, the VCLF APA, and the Plan expressly contemplate that Blackhawk and VCLF, as applicable, will comply with all obligations under applicable law and their financial projections show their ability to do the same. The evidence presented at trial will show that these objections, to the extent not resolved prior to the Confirmation Hearing, are without merit.

82. Second, and relatedly, the objectors assert that the Plan was not proposed in good faith because the Plan is not feasible and fails to satisfy certain regulatory requirements. The

Debtors address this objection in Section II.K herein. The evidence presented at trial will similarly show these objections lack merit. In particular, the evidence presented at trial will show that Blackhawk and VCLF have the wherewithal to satisfy their go-forward obligations and that all permits will be transferred in a manner consistent with applicable laws and regulations.

83. Third, certain of the Objecting Parties argue that the Plan is unfair to creditors because the proposed treatment of certain Classes was significantly modified in connection with the new money commitments from certain DIP Lenders (and, for the avoidance of doubt, certain lenders who are also Prepetition Term Lenders and Prepetition Noteholders). These objections rely on rhetoric to cast aspersions, alleging that the Debtors surreptitiously altered the Plan as part of a nefarious scheme to benefit the DIP Lenders and/or the Holders of Prepetition Notes. And these objections ignore the fact that although the DIP Lenders made clear that any other entity was welcome to provide the new money financing, no other lenders proved willing to do so. The evidence is uncontroverted.

84. In fact, and as the evidence presented at confirmation will demonstrate, the Debtors recognized prior to commencing these Chapter 11 Cases that additional financing would be necessary to fund the Chapter 11 Cases and emergence costs. Prior to the Petition Date, the Debtors, with Centerview's assistance, solicited all of their secured debt holders, in addition to other third-party lenders, regarding potential debtor-in-possession financing. Only the DIP Lenders proved willing to provide the much-needed cash necessary to administer the marketing and sale process—a process which, in turn, successfully resulted in the Blackhawk APA, the Coronado APA, and the VCLF APA. This going-concern sale process significantly improved the available recoveries for the Debtors' stakeholders from those available on the Petition Date.

85. The evidence at trial will also show that as a result of the economic realities of these Chapter 11 Cases and the coal industry generally, the DIP Lenders were unwilling to upsize the DIP Facility to provide the new money necessary to fund the Debtors' exit within the structure of the Initial Plan and they required material changes to the Plan in exchange for providing any new capital. Specifically, the DIP Lenders required any new money investment to take the form of an exit facility available only on the Effective Date, i.e. the Combined Company 1.5 Lien Term Loan. While these terms unfortunately resulted in a material reduction in recoveries to certain funded debt holders, the resultant Plan modifications were necessary to obtain the only financing available to facilitate an expeditious exit from chapter 11 and to consummate the Blackhawk and the VCLF Transactions. Any alternative would be worse for the Debtors' stakeholders.

86. Furthermore, as the evidence at confirmation will show, the Blackhawk Transaction is a higher and better transaction than the transaction reflected in the Coronado APA, and the Debtors, in consultation with their advisors, appropriately exercised their business judgment in selecting it as the highest and best Bid.

87. The Prepetition Term Lenders argue that the Plan was not proposed in good faith because the Plan does not accurately reflect the value of their Claims, which they allege to be substantial. To the contrary, the law is clear that an open marketing and sale process provides conclusive evidence of value.[90] Here, as described herein, the Debtors worked determinedly to market and sell their assets. This comprehensive effort successfully resulted in two Bids for the

[90] *See e.g.*, *In re Chrysler LLC*, 405 B.R. 84, 98 (Bankr. S.D.N.Y. 2009) ("…the true test of value is the sale process itself.); *In re Iridium Operating LLC*, 373 B.R. 283, 347 (Bankr. S.D.N.Y. 2007) ("Absent some reason to distrust it, the market price is a more reliable measure of the stock's value than the subjective estimates of one or two expert witnesses.); *Peltz v. Hatten*, 279 B.R. 710, 737-38 (D. Del. 2002) *aff'd sub nom. In re USN Commc'ns, Inc.*, 60 F. App'x 401 (3d Cir. 2003) ("I]n determining whether a value is objectively "reasonable" the court gives significant deference to marketplace values.").

Blackhawk Purchased Assets and one bid for the Blackhawk Excluded Assets. Following the Auction, the Debtors incorporated the highest and best offers received for their assets into the Plan and provided for the distribution of the proceeds to their stakeholders. As such, the Plan accurately reflects the highest possible recoveries available to creditors on account of their Claims.[91] There is simply no credible evidence to support a higher valuation. If the Prepetition Term Lenders truly believed more value was recoverable, they would have exercised their right to credit bid under section 363(k) of the Bankruptcy Code and in accordance with the Bidding Procedures. Their failure to credit bid reinforces the Debtors' assertion that the Plan's proposed treatment of creditors, including the Prepetition Term Lenders, is fair and equitable.

88. In sum, consummating a chapter 11 plan is necessary to bring these cases to conclusion, and the Plan affords the Debtors the best opportunity to do so. It is in the best interests of all of the Debtors' stakeholders, and the Debtors should be commended for achieving a comprehensive transaction that not only maximizes value for all stakeholders, but provides a path to exit and closing of their estates.

89. Accordingly, the Debtors submit that the Plan fully complies with and satisfies all of the requirements of section 1129(a)(3) of the Bankruptcy Code.

D. Payments Under the Plan Are Subject to Court Approval (Section 1129(a)(4)).

90. As required by section 1129(a)(4) of the Bankruptcy Code, all payments promised or received, made or to be made, by the Debtors in connection with services provided or for costs or expenses incurred in connection with the chapter 11 case, including for professionals, are

[91] *See United States v. Buchman*, 646 F.3d 409, 410-11 (7th Cir. 2011) (affirming lower court's ruling that "the outcome of a competitive auction is the best indicator of value").

subject to the review by and approval of the Court.[92] Among other things, the Plan provides that all requests for professional compensation and claims for reimbursement will be allowed, after notice and a hearing, in accordance with and subject to the requirements of the Bankruptcy Code and prior orders of the Court, as applicable. Moreover, the Plan provides that the Court will retain jurisdiction to decide and resolve all matters relating to applications for the allowance of compensation or reimbursement of expenses to professionals authorized pursuant to the Bankruptcy Code or the Plan.[93]

91. Accordingly, the Debtors submit that the Plan fully complies with and satisfies all of the requirements of section 1129(a)(4) of the Bankruptcy Code.

E. The Plan Properly Discloses Post-Confirmation Management (Section 1129(a)(5)).

92. Section 1129(a)(5) of the Bankruptcy Code requires certain disclosures regarding (a) the identities of post-confirmation officers and directors, (b) that the appointment or continuance of such officers and directors is consistent with the interests of creditors and equity security holders and with public policy and (c) any insiders to be employed or retained and the compensation proposed to be paid to such insiders. Section 1129(a)(5) of the Bankruptcy Code requires such disclosures to be made to the extent known.[94]

93. As previously disclosed in Exhibit B to the Plan Supplement, the officers and directors for the Combined Company will be: John M. Potter, Chief Executive Officer ; Nicholas

---

[92] *See* 11 U.S.C. § 1129(a)(4); *see also In re Johns-Manville Corp.*, 68 B.R. 618, 632 (Bankr. S.D.N.Y. 1986), *aff'd*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd sub nom. Kane v. Johns-Manville Corp.*, 843 F.2d 636, 648-49 (2d Cir. 1988) (concluding that court must be permitted to review and approve reasonableness of professional fees made from estate assets).

[93] *See* Plan, Art. II.B.

[94] *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).").

Glancy, President and Chairman of Board; Michael K. Staton, Chief Financial Officer; Daniel Moon, Senior Vice President of Sales and Marketing; Elbert Foley, Senior Vice President of Administration; Jeff Sands, Senior Vice President of Operations; Elizabeth Nicholas, General Counsel and Secretary; D. Edward Brown- Vice President of Technical Service; Norman Page, Vice President of Health and Safety; Chad Salyer, Vice President of Land and Acquisitions; Rusty Rowe, Vice President; Tom Potter, Vice President; Jesse Parrish, Vice President; Steve Blevins, Director of Mine Process Analysis; Ryan Schwartz, Associate General Counsel and Assistant Secretary; and Daniel Zaluski, Assistant General Counsel.

94. As previously disclosed in Exhibit J to the Plan Supplement, the officers and directors for VCLF will be: Ken McCoy, Director and Chief Executive Officer; Jason McCoy, Director and Vice President; and Tom Clarke, Managing Director.

95. As of the date hereof, the identity of the Liquidating Trustee is unknown. The Debtors will disclose the Liquidating Trustee's identity when and if it becomes known.[95]

96. Accordingly, the Debtors submit that the Plan fully complies with and satisfies all of the requirements of section 1129(a)(5) of the Bankruptcy Code.

F. The Plan Does Not Require Regulatory Approval of Rate Changes (Section 1129(a)(6)).

97. Section 1129(a)(6) of the Bankruptcy Code requires, with respect to a debtor whose rates are subject to governmental regulation following confirmation, that appropriate governmental approval has been obtained for any rate change provided for in the plan, or that such rate change be expressly conditioned on such approval. Here, there is no governmental regulatory commission that has jurisdiction over the rates of the Debtors, the Combined Company, or VCLF. Accordingly, section 1129(a)(6) of the Bankruptcy Code does not apply.

---

[95] *See id.*

G. The Plan Satisfies the "Best Interests of Creditors" Test (Section 1129(a)(7)).

98. The "best interests of creditors" test of section 1129(a)(7) of the Bankruptcy Code requires that, with respect to each impaired class of claims or interests, each individual holder of a claim or interest has either accepted the plan or will receive or retain property having a present value, as of the effective date of the plan, of not less than what such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code at that time.[96] The "best interests of creditors" test is satisfied where the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7 liquidation are less than or equal to the estimated recoveries for a holder of an impaired claim or interest under the debtor's plan of reorganization that rejects the plan.[97] As section 1129(a)(7) of the Bankruptcy Code makes clear, the liquidation analysis applies only to non-accepting impaired claims or equity interests.[98]

99. To determine the value that a rejecting creditor would receive in a hypothetical liquidation of the Debtors' estates under chapter 7 of the Bankruptcy Code, first, the aggregate dollar amount estimated to be generated from a liquidation of the Debtors' assets by a chapter 7 trustee must be determined. This "liquidation value" would consist of the net proceeds from the disposition of the Debtors' assets, plus Cash on hand, reduced by the costs and expenses relating to, and claims arising in connection with, among other things, (a) the compensation paid to the

---

96 *See In re Walker*, 165 B.R. 994, 1005 (E.D. Va. 1994) (citing 11 U.S.C. § 1129(a)(7)(A)(ii)); *In re Affiliated Foods, Inc.*, 249 B.R. 770, 787 (Bankr. W.D. Mo. 2000) ("Under the best interests of creditors test, a Chapter 11 plan can be confirmed over the objection of a holder of a claim or interest that is impaired by the plan only if the holder of the impaired claim or interest '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.'").

97 *See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 441 n.13 (1999) ("The 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan."); *see e.g. In re Cypresswood Land Partners, I*, 409 B.R. 396, 428 (Bankr. S.D. Tex. 2009) ("This provision is known as the 'best-interest-of-creditors-test' because it ensures that reorganization is in the best interest of individual claimholders who have not voted in favor of the plan.").

98 11 U.S.C. § 1129(a)(7)

chapter 7 trustee, (b) the asset disposition, (c) taxes, (d) litigation, (e) chapter 7 operations, and (f) any unpaid administrative expense claims. The Debtor filed their updated Liquidation Analysis with the Plan Supplement on September 25, 2015.[99]

100. Importantly, as set forth in the Liquidation Analysis, a chapter 7 liquidation could also trigger certain additional priority claims (*e.g.*, claims for severance pay) or accelerate the payment of certain priority claims (*e.g.*, tax claims), that would otherwise be payable in the ordinary course of business, but which, in a liquidation scenario, would instead be paid from net proceeds (after paying secured claims to the extent of the value of the underlying collateral but before paying unsecured creditors or equity holders).[100] Additionally, liquidation would likely increase, perhaps significantly, the aggregate amount of unsecured claims arising from additional lease and contract rejections or litigation, among other things.[101] The Liquidation Analysis provides extensive details surrounding the assumptions associated with a hypothetical liquidation of the Debtors' assets in a forced and orderly manner.

101. Here, the Plan provides that all rejecting Holders of impaired Claims will receive property valued at an amount that is in no case less than the value of what they would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.[102] The chart below provides a comparison of the recoveries to holders of Claims under the Plan versus under a hypothetical liquidation using the assumptions set forth in the Liquidation Analysis.

Class	**Claim**	**Plan Recovery**	**Liquidation Recovery**

[99] *See generally* Liquidation Analysis, Plan Supplement, Exhibit O.

[100] *See id.*

[101] *See id.*

[102] *See id.*

Class	Claim	Plan Recovery	Liquidation Recovery
4	Prepetition ABL Facility Claims	100%	100%
5	Prepetition LC Facility Claims	80%	5% to 50%
6	Prepetition Term Loan Facility Claims	Greater than 0%	No Recovery.
7	Prepetition Notes Claims	Greater than 0%	No Recovery.
8	General Unsecured Claims	Greater than 0%	No Recovery.
9	Intercompany Claims	No Recovery.	No Recovery.
10	Intercompany Interests	No Recovery.	No Recovery.
11	Equity Interests	No Recovery.	No Recovery.

102. The Plan provides all Holders of Claims with more than they would receive in a hypothetical liquidation. Accordingly, the Proponents submit that the Plan fully complies with and satisfies all of the requirements of section 1129(a)(7) of the Bankruptcy Code.

H. The Plan Does Not Satisfy the Requirements of Section 1129(a)(8), But Satisfies the Alternative Requirements Under Section 1129(a)(10) (Section 1129(a)(8)).

103. The Plan does not meet the requirements of section 1129(a)(8) of the Bankruptcy Code because Holders of Class 5—Prepetition LC Facility Claims, Class 6—Prepetition Term Loan Facility Claims, and Class 8—General Unsecured Secured Claims voted to reject the Plan. Nonetheless, as set forth below, the Plan may be confirmed under the "cram down" provisions of section 1129(b) of the Bankruptcy Code.

I. The Plan Provides for the Payment of Priority Claims (Section 1129(a)(9)).

104. Section 1129(a)(9) of the Bankruptcy Code requires that claims entitled to priority under section 507(a) must be paid in full in cash, unless the holder thereof agrees to less

favorable treatment with respect to such claim.[103] In accordance therewith, the Plan generally provides that:

- Allowed Administrative Claims will be paid in full in cash on the Effective Date or, if not then due or Allowed, on the date on which an order of the Bankruptcy Court Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter, consistent with section 1129(a)(9)(A) of the Bankruptcy Code;

- Allowed Other Priority Claims will be paid in full in cash on or as soon as reasonably practicable after the Effective Date or, if not then due or Allowed, otherwise be treated in any other manner such that the Allowed Other Priority Claim shall be rendered Unimpaired on the later of the Effective Date and the date on which such Other Priority Claim becomes an Allowed Other Priority Claim or as soon as reasonably practicable thereafter, consistent with section 1129(a)(9)(B); and

- Allowed Priority Tax Claims will be treated in accordance with sections 511 and 1129(a)(9)(C) of the Bankruptcy Code.

105. Accordingly, the Debtors submit that the Plan fully complies with and satisfies all of the requirements of section 1129(a)(9) of the Bankruptcy Code.

J. The Plan Has Been Accepted by at Least One Impaired Class (Section 1129(a)(10)).

106. Section 1129(a)(10) of the Bankruptcy Code is an alternative to the requirement that each class of claims or interests must either accept a plan or be unimpaired under the plan as set forth in section 1129(a)(8) of the Bankruptcy Code. Section 1129(a)(10) of the Bankruptcy Code provides that if a class of claims is impaired under a plan, at least one impaired class of claims must accept the plan, excluding acceptance by any insider.[104] As set forth in the Voting Certification, Class 4—Prepetition ABL Facility Claims and Class 7—Prepetition Notes Claims have voted to accept the Plan.

[103] 11 U.S.C. § 1129(a)(9); *see also In re Cheatham*, 78 B.R. 104, 107 (Bankr. E.D.N.C. 1987) *aff'd*, 91 B.R. 377 (E.D.N.C. 1988) (stating that section 1129(a)(9) provides that "paid in full *in cash* on the effective date of the plan, unless the claimant agrees to a different treatment.").

[104] 11 U.S.C. § 1129(a)(10).

107. The Prepetition Term Lenders assert (a) that the votes of Holders of Claims in Class 7 should be designated and not counted towards acceptances of the Plan and (b) that the Holders of Claims in Class 7 cannot be an impaired accepting Class of Claims within the definition of section 1129(a)(10) of the Bankruptcy Code. The Prepetition Term Lenders make these allegations with no evidentiary support, and the evidence at trial will show these allegations have no merit. Moreover, the evidence at trial will show that Holders of Prepetition Notes Claims are not insiders of the Debtors under section 101(31) of the Bankruptcy Code. Lastly, the Prepetition Term Loan Lenders accusations are a mere distraction as Holders of Class 4 Claims, the Prepetition ABL Lenders, have voted to accept the Plan. Therefore, the Debtors submit that the Plan fully complies with and satisfies all of the requirements of section 1129(a)(10) of the Bankruptcy Code.

K. The Plan Is Feasible (Section 1129(a)(11)).

108. Section 1129(a)(11) of the Bankruptcy Code requires that the Court determine, in relevant part, that confirmation is not likely to be followed by the liquidation or further financial reorganization of the Debtors (or any successor thereto).[105] In the Fourth Circuit, "the standard for feasibility is whether there is a 'reasonable assurance of success. Success need not be guaranteed.'"[106] 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."[107] Indeed, "a court is never presented with a plan that is guaranteed to succeed.

[105] *See* 11 U.S.C. § 1129(a)(11)

[106] *Quality Inns Int'l, Inc. v. L.B.H. Associates Ltd. P'ship*, 911 F.2d 724 (4th Cir. 1990) (citing *Kane v. Johns-Manville Corp.,* 843 F.2d 636, 649 (2d Cir.), *cert. denied,* 488 U.S. 868, 109 S.Ct. 176 (1988).

[107] *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

Nevertheless, the plan proponent—here the debtor—must demonstrate 'a reasonable prospect that the plan of reorganization will succeed.'"[108]

109. In evaluating the post-effective date business operations, immediate profitability is not required.[109] Rather, "[w]here the projections are credible, based upon the balancing of all testimony, evidence, and documentation, even if the projections are aggressive, the court may find the plan feasible …. Debtors are not required to view business and economic prospects in the worst possible light."[110] As long as the commercial viability of the reorganized entity is "reasonably assured," the court will hold that the plan is feasible.[111]

110. Here, the Combined Company Financial Projections demonstrate that the Combined Company will generate sufficient Cash to fund operations and meet its obligations with respect to liabilities assumed pursuant to the Blackhawk APA.[112] Further, the Combined Company Financial Projections demonstrate the sustainability of the Combined Company's post-

---

(B.A.P. 9th Cir. 2003)), *remanded*, 2008 WL 687266 (Bankr. D. Conn. March 10, 2008); *Berkeley Fed. Bank & Trust v. Sea Garden Motel & Apartments (In re Sea Garden Motel & Apartments)*, 195 B.R. 294, 304–05 (D.N.J. 1996); *In re Eddington Thread Mfg. Co.*, 181 B.R. 826, 833 (Bankr. E.D. Pa. 1995) ("[T]he feasibility inquiry is peculiarly fact intensive and requires a case by case analysis, using as a backdrop the relatively broad parameters articulated in the statute.").

[108] *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)).

[109] *See Dish Network Corp. v. DBSD N. Am.,, Inc. (In re DBSD N. Am., Inc.)*, 634 F.3d 79 (2d Cir. 2011) (affirming district and bankruptcy court decisions approving plan of reorganization despite the fact that, at confirmation, the debtors were not yet operational, did not generate any revenue, and the debtors' financial projections were subject to certain risks).

[110] *T-H New Orleans*, 116 F.3d at 802 (citing *In re Lakeside Global II, Ltd.*, 116 B.R. 499, 508 n.20 (Bankr. S.D. Tex. 1989) and *In re Western Real Estate Fund, Inc.*, 75 B.R. 580, 585 (Bankr. E.D. Okla. 1987)).

[111] *Briscoe*, 994 F.2d at 1165-66; *see also In re Bastankhah*, 2012 WL 170901, at *2 (Bankr. S.D. Tex. Jan. 18, 2012) (holding that payment does not need to be "certain" and citing and interpreting *In re Am. Trailer & Storage, Inc.*, 419 B.R. 412, 422–23 (Bankr. W.D. Mo. 2009) (the debtor only needs to provide "some proof that funds will be available at the time the balloon payment is due")).

[112] *See generally* Combined Company Financial Projections, Plan Supplement Exhibit R.

closing capital structure.[113] Finally, the Combined Company's proposed management team consists of established coal industry professionals with the depth of experience to navigate current market challenges. Accordingly, the Debtors submit that the Blackhawk Transaction is feasible within the meaning of section 1129(a)(11) of the Bankruptcy Code.

111. Likewise, the evidence at trial will show the VCLF Transaction is feasible. Pursuant to the VCLF Transaction, VCLF will assume certain liabilities in relation to the VCLF Purchased Assets, including all liabilities with respect to assumed permits, certain post-closing regulatory violations and obligations, mine operating or safety compliance matters related to the condition of the VCLF Purchased Assets or the mining areas of the Purchased Business, compliance with Environmental Laws, environmental, safety or health conditions present at, under or migrating from the VCLF Purchased assets, Black Lung Liabilities for any transferred employee for whom VCLF is statutorily responsible for, certain environmental liabilities under consent decrees affecting the VCLF Purchased Assets, and certain other obligations, all as set forth in the VCLF APA, (collectively, the "VCLF Assumed Liabilities"). The VCLF Financial Projections demonstrate that VCLF will be able to satisfy their obligations with respect to the VCLF Assumed Liabilities for the five-year projections period.[114] As the evidence presented at confirmation will show, VCLF's directors and officers have the skill and experience necessary to negotiate and implement the settlements that are integral to consummating the VCLF Transaction. VCLF and its affiliated entities have funded or obtained commitments to fund over 40 capital transactions valued in excess of $150,000,000. With an average of over 40 years of mining experience each, the members of VCLF's management team are coal industry veterans

[113] *See id.*

[114] *See generally* VCLF Financial Projections, Plan Supp. Exhibit I.

who have operated some of the safest and most successful mines in the world. Consequently, VCLF's management team has active relationships with regulatory authorities that have and will continue to facilitate negotiations to settle certain of the liabilities assumed by VCLF pursuant to the VCLF APA. Indeed, VCLF and the Debtors have engaged and will continue to engage with governmental authorities, non-governmental organizations, and other stakeholders to negotiate settlements and seek to modify certain modified consent decrees.[115]

112. Accordingly, the Debtors submit that the Plan complies with the requirements of section 1129(a)(11) of the Bankruptcy Code.

L. The Plan Provides for the Payment of Certain Statutory Fees (Section 1129(a)(12)).

113. Section 1129(a)(12) of the Bankruptcy Code requires that certain fees listed in 28 U.S.C. § 1930 must be paid or that provision be made for their payment under a chapter 11 plan. Here, Article XII.C of the Plan provides that the Debtors shall pay all fees under section 1930(a) of the Judicial Code. Accordingly, the Debtors submit that the Plan fully complies with and satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code.

M. The Requirements of Section 1129(a)(13) of the Bankruptcy Code Do Not Apply to the Plan.

114. Section 1129(a)(13) of the Bankruptcy Code requires that a plan provide for the continuation, after the plan's effective date, of all retiree benefits at the level established by agreement or by court order pursuant to section 1114 of the Bankruptcy Code at any time prior to confirmation of the plan, for the duration of the period to which the debtor has obligated itself. As required by Section 1129(a)(13) of the Bankruptcy Code, following the Effective Date of the Plan, the payment of all retiree benefits (as defined in Section 1114 of the Bankruptcy Code) will

[115] As set forth above, to the extent the Plan implements the Liquidating Trust, the Debtors will file the Liquidating Trust Agreement concurrently with the filing of the notice.

continue at the levels established pursuant to the 1113/1114 Settlement as incorporated into the Plan, for the duration of the periods the Debtors, the Combined Company, and VCLF have obligated themselves to provide such benefits, as well as the obligations that may be otherwise agreed to or determined by the Court in connection with the 1114 Motion.[116]

III. THE PLAN SATISFIES THE APPLICABLE "CRAM DOWN" REQUIREMENTS OF SECTION 1129(B) OF THE BANKRUPTCY CODE WITH RESPECT TO THE REMAINING REJECTING CLASSES.

115. Section 1129(b) of the Bankruptcy Code allows for confirmation of a plan in cases where all of the requirements of section 1129(a) are met other than section 1129(a)(8) (*i.e.*, the plan has not been accepted by all impaired classes of claims or interests), by allowing a court to "cram down" the plan notwithstanding objections as long as the court determines that the plan is "fair and equitable" and does not "discriminate unfairly" with respect to the rejecting classes.[117]

116. As set forth above, the Plan meets the "cram down" requirements in section 1129(b) to confirm the Plan over the rejection by Class 5—Prepetition LC Lenders.

117. In addition, the Plan meets the "cram down" requirements in section 1129(b) of the Bankruptcy Code to confirm the Plan over the rejection of the Plan by Classes 6 and 8 and

---

[116] The final requirements of section 1129 are inapplicable to the chapter 11 case and confirmation of the Plan. The Debtor is not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. Accordingly, section 1129(a)(14) of the Bankruptcy Code is inapplicable in this chapter 11 case. The Debtor is not an individual, and, accordingly, section 1129(a)(15) of the Bankruptcy Code is inapplicable in this chapter 11 case. The Debtor is a moneyed, business, or commercial corporation, and, accordingly, section 1129(a)(16) of the Bankruptcy Code is inapplicable in this chapter 11 case.

[117] 11 U.S.C. § 1129(b)(1); *see also WorldCom*, 2003 WL 23861928, at *59-60 ("Section 1129 of the Bankruptcy Code provides, in relevant part: Notwithstanding section 510(a) of [the Bankruptcy Code], if all of the applicable requirements of subsection (a) of this section other than paragraph (8) 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."); *see also Travelers Ins. Co. v. Bryson Porps., XVIII* (*In re Bryson Props., XVIII*), 961 F.2d 496, 503 (4th Cir. 1992)., 961 F.2d at 500; *In re Catron*, 186 B.R. 194, 197 (Bankr. E.D. Va. 1995).

the deemed rejection by Classes 9, 10, and 11 (collectively with Class 5, the "Rejecting Classes"). Notwithstanding the fact that the Rejecting Classes have rejected the Plan, the Plan is confirmable.

A. The Plan is Fair and Equitable with Respect to the Remaining Rejecting Classes.[118]

1. The Plan is Fair and Equitable with Respect to Classes 6, 8 and 9.

118. Section 1129(b)(2)(B)(ii) of the Bankruptcy Code provides that a chapter 11 plan is "fair and equitable" with respect to a class of impaired unsecured claims if "the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property[_]."[119]

119. Here, there is no Class of equal priority receiving more favorable treatment than Classes 6, 8 and 9, and no Class that is junior to Class 6, 8 or 9 will receive or retain any property on account of the Claims or Interests in such Class. The Debtors, with the assistance of Centerview, ran a fulsome marketing process that reflects the value of the Debtors' assets. The results of this marketing process reveal that the Prepetition LC Facility Claims cannot be paid in full and all junior creditors are unsecured as a matter of law. The evidence to be presented at confirmation will demonstrate that the value of the proceeds of the Blackhawk APA and the VCLF APA did not generate recoveries for the Holders of Allowed Prepetition Term Loan Facility Claims. Accordingly, the Debtors submit that these Holders are fully unsecured.

---

[118] The Debtors assert that the Class 6—Prepetition Term Loan Facility Claims are wholly unsecured, as Debtors' marketing process conclusively establishes that the value of the Prepetition Term Lenders' collateral is less than the value of their Claims. *See Bank of America Nat. Trust and Sav. Ass'n v. 203 North La Salle Partnership,* 526 U.S. 434, 457, 119 S.Ct. 1411, 143 L.Ed.2d 607 (1999) (acknowledging "the best way to determine value is exposure to a market" rather than a determination by a bankruptcy judge); *VFB LLC v. Campbell Soup Co.,* 482 F.3d 624, 633 (3d Cir.2007) ("Absent some reason to distrust it, the market price is 'a more reliable measure of the stock's value than the subjective estimates of one or two expert witnesses.").

[119] 11 U.S.C. § 1129(b)(2)(A).

120. The Prepetition Term Lenders will submit expert testimony in an effort to allege that the Debtors have undervalued their assets and allege that the Holders of Prepetition Notes Claims are seeking to steal value from senior stakeholders. However, the evidence will show these assertions have no basis in reality and, tellingly, the Prepetition Term Lenders have failed to provide any financing during the Chapter 11 Cases to facilitate the Debtors' sale process. Nor did the Prepetition Term Lenders submit a credit bid pursuant to section 363(k) of the Bankruptcy Code to purchase the purportedly undervalued collateral. Accordingly, the Plan satisfies section 1129(b)(2)(B)(ii) of the Bankruptcy Code and should be confirmed notwithstanding rejection by Classes 6, 8, and 9.

B. The Plan Does Not Unfairly Discriminate with Respect to the Rejecting Classes.

121. Section 1129(b) of the Bankruptcy Code does not prohibit discrimination in treatment between classes, but rather it prohibits only discrimination that is "unfair."[120] Notably, the Bankruptcy Code does not set forth a standard for determining when "unfair discrimination" exists.[121] Rather, courts typically examine the facts and circumstances of the particular case to determine whether "unfair discrimination" exists.[122] Generally, courts have found that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if similarly

[120] *See Cypresswood Land Partners*, 409 B.R. at 434 ("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).").

[121] *See In re Cooper*, 08-20473-RLJ-13, 2009 WL 1110648 (Bankr. N.D. Tex. Apr. 24, 2009) (noting that "the Bankruptcy Code does not define unfair discrimination"); *see also Johns-Manville*, 68 B.R. at 636 ("The language and legislative history of the statute provides little guidance in applying the 'unfair discrimination' standard.").

[122] *See In re Sea Trail Corp.,* No. 11-07370-8-SWH, 2012 WL 5247175, at *8 (Bankr. E.D.N.C. Oct. 23, 2012) (whether a plan is unfairly discriminatory requires a "totality of circumstances" type of analysis); *see also In re Freymiller Trucking, Inc.*, 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996) (holding that a determination of unfair discrimination requires a court to "consider all aspects of the case and the totality of all the circumstances"); *In re Aztec Co.*, 107 B.R. 585, 589 (Bankr. M.D. Tenn. 1989) (noting that courts "have recognized the need to consider the facts and circumstances of each case to give meaning to the proscription against unfair discrimination").

situated claims are treated differently *without a reasonable basis for the disparate treatment.*[123] Minor differences in creditor treatment do not constitute unfair discrimination.[124]

122. Here, the Plan's treatment of the non-accepting Impaired Classes (i.e., the Rejecting Classes) is proper because all similarly situated holders of Claims and Interests will receive substantially similar treatment and the Plan's classification scheme rests on a legally acceptable rationale. Claims in the Rejecting Classes are not similarly situated to any other Classes, given their distinctly different legal character from all other Claims and Interests. The Plan's treatment of the Deemed Rejecting Classes is proper because no similarly situated class will receive more favorable treatment. Furthermore, where the Plan provides differing treatment for certain Classes of Claims or Interests, the Debtors have a rational basis for doing so. For example, Holders of Class 5—Prepetition LC Facility Claims are receiving a materially higher recovery than Holders of Class 6—Term Loan Facility Claims due to their senior priority under the Debtors' prepetition debt documents, the Intercreditor Agreements, and the Bankruptcy Code. Likewise, if the Payout Event occurs, Holders of Class 6—Term Loan Facility Claims will receive their Pro Rata of share of the Payout Event Cash Pool prior to distribution to Holders of Class 8—General Unsecured Claims due to their prepetition secured status. No Objecting Party has asserted the Plan unfairly discriminates against a class that has voted to reject the Plan or is deemed to reject the Plan.

---

[123] *See e.g. In re Eagle Bus Mfg., Inc.*, 134 B.R. 584, 601 (Bankr. S.D. Tex. 1991) (confirming chapter 11 plan in relevant part because the "Plan does not provide disparate treatment for any similar Claims. Unsecured Claims against each estate are treated similarly unless a reasonable basis exists for different treatment"), *aff'd*, 158 B.R. 421 (S.D. Tex. 1993).

[124] *See In re Sea Trail Corp.*, No. 11-07370-8-SWH, 2012 WL 5247175, at *8 (Bankr. E.D.N.C. Oct. 23, 2012) ("A crucial distinction, therefore, between cases in which plans have been determined to be unfairly discriminatory and those that have not is the magnitude of the difference in the amount of recovery between similarly-situated classes."); *see also In re Aztec Co.,* 107 B.R. 585, 589 (Bankr. M.D. Tenn. 1989) (stating that to hold that any degree of disparate treatment among similarly situated classes violates section 1129(b)(1) would "threaten [ ] the vitality of the word 'unfairly' in [section] 1129(b)(1).").

123. Accordingly, for the reasons discussed above, the Plan does not discriminate unfairly in contravention of section 1129(b)(1) of the Bankruptcy Code and the Plan may be confirmed.

IV. THE PRINCIPAL PURPOSE OF THE PLAN IS NOT AVOIDANCE OF TAXES OR SECTION 5 OF THE SECURITIES ACT (SECTION 1129(D)).

124. Section 1129(d) of the Bankruptcy Code states that "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."[125] The purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933. Moreover, no party that is a governmental unit, or any other entity, has requested that the Court decline to confirm the Plan on the grounds that 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. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

V. APPROVAL OF THE DISCLOSURE STATEMENT IS WARRANTED AND THE DEBTORS COMPLIED WITH THE SCHEDULING ORDER.

A. The Disclosure Statement Satisfies the Requirements of the Bankruptcy Code.

1. The Disclosure Statement Contains Adequate Information.

125. The primary purpose of a disclosure statement is to provide material information, or "adequate information," that allows parties entitled to vote on a proposed plan to make an informed decision about whether to vote to accept or reject the plan.[126] "Adequate information"

---

[125] 11 U.S.C. § 1129(d).

[126] *See, e.g.*, *Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp.*, 337 F.3d 314, 321–22 (3d Cir. 2003) ("Under 11 U.S.C. § 1125(b), a party seeking chapter 11 bankruptcy protection has an affirmative duty to provide creditors with a disclosure statement containing adequate information to enable a creditor to make an informed judgment about the Plan.") (internal quotations omitted); *Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) ("[S]ection 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.").

is a flexible standard, based on the facts and circumstances of each case.[127] Courts within the Fourth Circuit and elsewhere acknowledge that determining what constitutes "adequate information" for the purpose of satisfying section 1125 of the Bankruptcy Code resides within the broad discretion of the court.[128]

126. Courts look for certain information when evaluating the adequacy of the disclosures in a proposed disclosure statement, including:

(i) the events which led to the filing of a bankruptcy petition;

(ii) the relationship of a debtor with the affiliates;

(iii) a description of the available assets and their value;

(iv) the anticipated future of the company;

(v) the source of information stated in the disclosure statement;

(vi) the present condition of a debtor while in chapter 11;

(vii) the claims asserted against a debtor;

(viii) the estimated return to creditors under a chapter 7 liquidation;

(ix) the future management of a debtor;

(x) the chapter 11 plan or a summary thereof;

---

[127] 11 U.S.C. § 1125(a)(1) ("'[A]dequate information' means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records."); *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) ("From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case."); *First Am. Bank of N.Y. v. Century Glove, Inc.*, 81 B.R. 274, 279 (D. Del. 1988) (noting that adequacy of disclosure for a particular debtor will be determined based on how much information is available from outside sources).

[128] *See, e.g.*, *Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988) ("The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court."); *In re River Village Assocs.*, 181 B.R. 795, 804 (E.D. Pa. 1995) (same); *In re Phx. Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (same); *In re PC Liquidation Corp.*, 383 B.R. 856, 865 (E.D.N.Y. 2008) ("The standard for disclosure is, thus, flexible and what constitutes adequate information in any particular situation is determined on a case-by-case basis, with the determination being largely within the discretion of the bankruptcy court.") (internal citations omitted); *In re Lisanti Foods, Inc.*, 329 B.R. 491, 507 (D.N.J. 2005) (same).

(xi) the financial information, valuations, and projections relevant to the claimants' decision to accept or reject the chapter 11 claim;

(xii) the information relevant to the risks posed to claimants under the plan;

(xiii) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers;

(xiv) the litigation likely to arise in a non-bankruptcy context; and

(xv) the tax attributes of a debtor.[129]

127. The Disclosure Statement contains adequate information. The Debtors respectfully submit that the Disclosure Statement (including any updates, supplements, amendments and/or other modifications contemplated thereby or by the Plan) addresses each of the salient types of information identified above and will provide Holders of Impaired Claims entitled to vote to accept or reject the Plan with adequate information to allow each such Holder to make an informed judgment about the Plan. Specifically, the Disclosure Statement contains a number of categories of information that courts consider "adequate information," including:

(i) an overview of the Plan, the Blackhawk Transaction, and the VCLF Transaction, *see* Disclosure Statement, Executive Summary;

(ii) a summary of the classifications and treatment of all classes of Claims and Interests, *see* Disclosure Statement, Executive Summary, Art. V;

(iii) provisions governing distributions under the Plan, *see* Disclosure Statement, Art. V;

(iv) a summary of the Plan, *see* Disclosure Statement, Art. II;

(v) a description of the Debtors' prepetition indebtedness, *see* Disclosure Statement, Art. IV;

[129] *In re U.S. Brass Corp.*, 194 B.R. 420, 424–25 (Bankr. E.D. Tex. 1996); *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988) (listing the factors courts have considered in determining the adequacy of information provided in a disclosure statement); *In re Metrocraft Publ'g. Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (same). Disclosure regarding all topics is not necessary in every case. *U.S. Brass*, 194 B.R. at 425; *Phx. Petroleum*, 278 B.R. at 393.

(vi) the history of the Debtors' businesses, including the events leading to the commencement of these chapter 11 cases, *see* Disclosure Statement, Arts. IV;

(vii) a description of the Debtors' and the Combined Company's respective projected financial information, *see* Disclosure Statement, Art. VII and Exhibit E;

(viii) a description of the solicitation and voting procedures, *see* Disclosure Statement, Art. VIII;

(ix) a description of the Rights Offering procedures, *see* Disclosure Statement, Art. IX;

(x) certain risk factors to consider that may affect the Plan, *see* Disclosure Statement, Art. X;

(xi) the means for implementation of the Plan, *see* Disclosure Statement, Art. IV; and

(xii) certain securities law and federal income tax law consequences of the Plan, *see* Disclosure Statement, Arts. XI–XII.

128. Accordingly, the Debtors submit that the Disclosure Statement contains adequate information within the meaning of section 1125(a) of the Bankruptcy Code in satisfaction of section 1126(b)(2) and should be approved.

B. The Debtors Complied with the Scheduling Order.

129. On September 17, 2015, the Court granted the relief requested in the Scheduling Motion[130] and approved the form and manner of the Combined Hearing Notice, Voting Record Date, Voting Deadline, Solicitation Packages, form of ballots, and voting tabulation procedures.[131]

[130] For the avoidance of doubt, the factual and legal arguments set forth in the Scheduling Motion are incorporated herein by reference in their entirety.

[131] Scheduling Order ¶¶ 7–12.

1. The Debtors Complied with the Notice Requirements Set Forth in the Scheduling Order.

130. The Debtors satisfied the notice requirements set forth in the Scheduling Order and Bankruptcy Rule 3017. First, on September 21, 2015, the Debtors caused their claims and noticing agent, Prime Clerk, to commence distributing materials required by the Scheduling Order to holders of Claims as of the Voting Record Date entitled to vote to accept or reject the Plan. Second, commencing on September 21, 2015, the Debtors mailed the Combined Hearing Notice to all parties on the Debtors' creditor matrix and all Interest holders of record informing the recipients of, among other things: (a) the date and time set for the hearing to consider approval of the Disclosure Statement and confirmation of the Plan; (b) the Voting Deadline and the Voting Record Date; and (c) the deadline for filing objections to the Plan and the Disclosure Statement. Third, the Debtors caused the Combined Hearing Notice to be published in the *Wall Street Journal* (*National Edition*), the *Charlotte Gazette*, and the *Times-Dispatch* on September 24, 2015. Fourth, the Combined Hearing Notice included instructions on how to obtain the Plan and the Disclosure Statement through the Debtors' restructuring website, http://cases.primeclerk.com/PatriotCoal, at the Court's PACER website, http://www.vaeb.uscourts.gov, or by calling the Debtors' restructuring hotline at (844) 864-0639 or, for international callers, (929) 342-0754, or by email at patriotballots@primeclerk.com.

2. The Ballots Used to Solicit Holders of Claims Entitled to Vote on the Plan Complied with the Scheduling Order.

131. The form of Ballots used here comply with the Bankruptcy Rules and were approved by the Court pursuant to the Scheduling Order.[132] No party has objected to the

[132] Scheduling Order ¶ 11.

sufficiency of the Ballots. Based on the foregoing, the Debtors submit that they complied with the Scheduling Order and satisfied the requirements of Bankruptcy Rule 3018(c).

3. The Debtors' Solicitation Period Complied with the Scheduling Order and Bankruptcy Rule 3018(b).

132. The Debtors' solicitation period complied with the Scheduling Order and Bankruptcy Rule 3018(b). First, as demonstrated above and in the Scheduling Motion, the Plan and Disclosure Statement were transmitted to all holders of Claims entitled to vote on the Plan. Second, the solicitation period, which lasted from September 18, 2015, through October 2, 2015, complied with the Scheduling Order[133] and was adequate under the particular facts and circumstances of these cases and was not "unreasonably short." This conclusion is most strongly supported by the fact that none of the holders of Claims entitled to vote on the Plan objected to the length of the solicitation period. Accordingly, the Debtors submit that they complied with the Scheduling Order and satisfied the requirements of Bankruptcy Rule 3018(b).

4. The Debtors' Vote Tabulation Procedures Complied with the Scheduling Order.

133. The Debtors request that the Court find that the Debtors' tabulation of votes complied with the Scheduling Order. Prime Clerk reviewed all ballots received through October 2, 2015, in accordance with the procedures described in the Scheduling Motion and the Disclosure Statement[134] and subsequently approved in the Scheduling Order.[135] Because Prime Clerk complied with all of the Solicitation Procedures, the Debtors respectfully submit that the Court should approve the Debtors' tabulation of votes confirming that, with respect to the Voting

---

[133] *Id.* at ¶ 9.

[134] *See generally* Voting Certification.

[135] Scheduling Order ¶ 5-10.

Classes, the requisite majorities in amount and number of Claims voted to accept the Plan pursuant to section 1126(c) of the Bankruptcy Code.

5. Solicitation of the Plan Complied with the Bankruptcy Code and Was in Good Faith.

134. Section 1125(e) of the Bankruptcy Code provides that "a person that solicits acceptance or rejection of a plan, in good faith and in compliance with the applicable provisions of this title . . . is not liable" on account of such solicitation for violation of any applicable law, rule, or regulation governing solicitation of acceptance or rejection of a plan.

135. As demonstrated by the Debtors' compliance with the Scheduling Order, the Debtors at all times engaged in arm's-length, good-faith negotiations and took appropriate actions in connection with the solicitation of the Plan in compliance with section 1125 of the Bankruptcy Code. Therefore, the Debtors respectfully request that the Court grant the parties the protections provided under section 1125(e) of the Bankruptcy Code.

CONCLUSION

For all of the reasons set forth herein, and as will be further shown at the Confirmation Hearing, the Debtors submit that the Plan fully satisfies all of the applicable requirements of the Bankruptcy Code. Accordingly, the Debtors respectfully request that the Court enter an order confirming the Plan, overrule the Objections thereto, adjourn the Contract and Lease Objections, and grant such other and further relief as is just and proper.

Dated: October 5, 2015

/s/ Michael A. Condyles

Michael A. Condyles (VA 27807)
Peter J. Barrett (VA 46179)
Jeremy S. Williams (VA 77469)
KUTAK ROCK LLP
Bank of America Center
1111 East Main Street, Suite 800
Richmond, Virginia 23219-3500
Telephone: (804) 644-1700
Facsimile: (804) 783-6192

- and -

Stephen E. Hessler (admitted *pro hac vice*)
Patrick Evans (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

- and -

James H.M. Sprayregen, P.C.
Ross M. Kwasteniet (admitted *pro hac vice*)
Justin R. Bernbrock (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Counsel for the Debtors and Debtors in Possession

EXHIBIT A

Summary of Confirmation Objections

In re Patriot Coal Corporation, *et. al.*, Case No. 15-32450 (KLP)
Summary of Confirmation Objections[1]

#	Objector and Docket No.	Objections to Plan[2]	Proposed Response
1	**The United States Trustee for Region 4 ("UST")**, [Docket Nos. 1106 and 1388]	• The Plan's release and exculpation provisions are overly broad in violation of applicable Fourth Circuit law. • The Debtors are not entitled to a discharge under section 1141(d)(3) of the Bankruptcy Code. • The Plan **violates section 1129(a)(5)** of the Bankruptcy Code because it does not disclose the identity of the debtors' successors. • The Plan and Disclosure Statement do not provide adequate information regarding the proposed treatment of creditors. • There is no evidence that the Plan meets the "best interests" test pursuant to section 1129(a)(7) of the Bankruptcy Code. • The modifications reflected in the Plan should not take effect until notice and a hearing Rule 3019.	• *See, Confirmation Brief*, II.B.6.b-d. • *See, Confirmation Brief*, II.B.6.a. • *See, Confirmation Brief*, II.F. • *See, Confirmation Brief*, VI.A.1; See also, Plan Supplement, VI.A.1. • *See, Confirmation Brief*, II.H. • The Scheduling Order [Docket No. 1320] ensures that this objection has been addressed.
2	**Barclays Bank PLC ("Barclays"), in its capacity as Prepetition LC Agent for the Prepetition LC Facility Issuers and the Prepetition LC Lenders (together with Barclays in such capacity, the "LC Parties")** [Docket Nos. 1172 and 1466]	• The Plan cannot satisfy the cram down requirements of section 1129(b) if Class 5 votes to reject the Plan. • The Plan **violates section 1129(a)(3)** of the Bankruptcy Code because it does not treat the LC Parties equitably. • The Plan **violates section 1129(a)(7)**. In circumstances where a cash bidder is available, the liquidation analysis should reflect the terms of the cash bid. • Confirmation of the Plan would violate due process.	• *See, Confirmation Brief*, III. • *See, Confirmation Brief*, II.D. • *See, Confirmation Brief*, II.H. • The Debtors have complied with the Scheduling Order [Docket No. 1320] and provided notice and a hearing.
3	**Fifth Third Bank ("Fifth Third")**, [Docket Nos. 1141 and 1425]	• The Plan was not proposed in good faith in **violation of section 1129(a)(3)** of the Bankruptcy Code because the Plan violates the Intercreditor Agreement and because the proposed VCLF Equity Grant **violates section 1129(b)** of the Bankruptcy Code. • The Blackhawk and VCLF Transactions **violate section 363** of the Bankruptcy Code. • The Plan **violates section 1129(a)(7)** of the Bankruptcy Code because it does not generate a distribution of over 50% of the value of the Prepetition LC Facility Claims and therefore does not satisfy the best interests of creditors test. • The Plan **violates section 1129(b)(2)(A)** of the Bankruptcy Code because the Plan violates the absolute priority rule. • The Disclosure Statement does not contain adequate information because it fails to show the valuation of the Combined Company's assets and the terms of the Combined Company Debt Facilities. • The Plan was not proposed in good faith because it does not disclose the terms of the Payout Event. • The Liquidation Analysis does not provide sufficient analysis to determine whether the best interests test is satisfied.	• *See, Confirmation Brief*, II.D and III. • The Plan satisfies the applicable standard under section 1129 of the Bankruptcy Code. • *See, Confirmation Brief*, II.H. • *See, Confirmation Brief*, III. • The Debtors have disclosed the terms in the Plan, the Term Sheet filed in connection with the Scheduling Motion [Docket No. 1275], and the Plan Supplement, Exhibits C-G. • *See, Confirmation Brief*, II.D • *See, Confirmation Brief*, II.D; See also, Plan Supplement¸ Exhibit O.

[1] Capitalized terms used herein but not defined have the meanings given to such terms in the Disclosure Statement, the Plan, or the applicable Objection.
[2] To the extent that a party filed an Objection to the Initial Plan, that Objection, and the Debtors' response thereto, is incorporated here

#	Objector and Docket No.	Objections to Plan[2]	Proposed Response
4	**Cortland Capital Market Services LLC ("Cortland")**, [Docket Nos. 1145 and 1451]	• The Plan **violates section 1129(a)(2)** because the Plan fails to make sufficient disclosures pursuant to section 1125 of the Bankruptcy Code. The Plan does not identify material terms of the Combined Company Debt Documents and does not include the Backstop Commitment Agreements.	• The Plan, as revised from the Initial Plan, does not complete Backstop Agreements. *See, Confirmation Brief,* II, C; *See also,* the Terms of the Combined Company Debt Documents in the Plan and filed on September 15, 2015 and the Plan Supplement, Exhibits C-G.
		• The Plan **violates section 1129(a)(3)** because the Plan was not negotiated in good faith, and is an attempt by the Subordinated PIK Noteholders to capitalize on the Debtors' tightened liquidity for their own benefit; the Plan is not reasonably likely to succeed; and the Plan violates the intercreditor agreement.	• *See, Confirmation Brief*, II, C.
		• The Plan **violates section 1129(a)(10)** to the extent the Debtors intend to rely upon the acceptance of Class 7 because the Prepetition Noteholders' votes should be designated.	• This Objection is meritless and moot because the Class 4 Prepetition ABL Facility Claims voted to accept the plan.
		• The Plan does not provide for the satisfaction of the Term Loan Lenders' adequate protection claim.	• *See, Confirmation Brief*, I, 3
		• The Plan improperly eliminates the Term Loan Lenders' state law causes of action against the Prepetition Noteholders arising from their breach of the TSA.	• *See, Confirmation Brief*, [ ]
		• The Plan cannot be confirmed over the Term Loan Lenders' objection because it is not fair and equitable pursuant to section 1129(b).	• *See, Confirmation Brief*, III.
		• The Prepetition Noteholders are actually receiving $35 million on account of their Claims in violation of the absolute priority rule.	• *See, Confirmation Brief*, III.
		• The Plan is not feasible. The Debtors have not filed a complete Blackhawk APA or the Combined Company Debt Documents, which are needed to demonstrate feasibility.	• The Debtors have disclosed the terms in the Plan, the Term Sheet filed in connection with the Scheduling Motion [Docket No. 1275], and the Plan Supplement, Exhibits C-G.
		• The third party releases are impermissible.	• *See, Confirmation Brief*, II, B, 6, c.
5	**U.S. Bank N.A., as Trustee ("Trustee")** [Docket No. 1439]	• The Trustee filed a limited objection seeking specific clarifications to the Plan.	• The Debtors are in discussions with this Objecting Party. The Debtors will address this Objection at the Confirmation Hearing.
6	**The Official Committee of Unsecured Creditors (the "Committee")** [Docket Nos. 1174 and 1458]	• The Plan **violates section 506(a)** because secured creditors are recovering on account of unencumbered property (i.e. Avoidance Actions and Unencumbered Real Property). • The Plan **violates section 1129(a)(11)** because the Debtors have not introduced any evidence that Blackhawk and VCLF will obtain necessary third-party financing. • The third party releases are impermissible. • The Plan **violates section 1129(a)(3)** because the Plan was not negotiated in good faith.	• The Debtors are in discussions with this Objecting Party. The Debtors will address this Objection at the Confirmation Hearing.
7	**The United Mine Workers of America ("UMWA")**, [Docket Nos. 1129 and 1455]	• The Plan **violates section 1129(a)(11)** because it is not feasible due to the contingencies with respect to the sales of the Debtors' assets and because the ultimate treatment of the Debtors' collective bargaining agreements and other retiree benefit obligations has not yet been determined. • The Plan **violates section 1129(a)(7)** and does not satisfy the best interests test because the Plan does not clearly provide stakeholders, including the UMWA, with a better recovery than those received under a chapter 7 liquidation. • The Plan **violates section 1129(a)(1)** because it effectively reduces retiree health benefits in violation of section 1114.	• The Debtors are in discussions with this Objecting Party. The Debtors will address this Objection at the Confirmation Hearing.

#	Objector and Docket No.	Objections to Plan[2]	Proposed Response
		• The Plan **violates section 1129(a)(2)** because it enjoins retirees from asserting direct claims against various parties, which effectively takes away retiree medical benefits in violation of section 1114. • The Plan **violates section 1129(a)(3)** because it has not been proposed in good faith since the Debtors failed to include affected retirees or the UMWA in their negotiations with Alcoa. • The Plan and any confirmation order must make clear that no claims and issues arising from the Settlement Agreement are released by the Plan.	
8	**The United Mine Workers of America 1974 Pension Plan and Trust (the "1974 Pension Plan"), the United Mine Workers of America Combined Benefit Fund (the "Combined Fund"), and the United Mine Workers of America 1992 Benefit Plan (the "1992 Plan," and together with the CBF, the "Coal Act Funds" and the Coal Act Funds, together with the 1974 Pension Plan, the "UMWA Funds"),** [Docket Nos. 1151 and 1455]	• The Plan **violates section 1129(a)(9)** because it fails to provide a mechanism to ensure payment in full of administrative claims, including the portion of the 1974 Pension Plan's withdrawal liability claim that the 1974 Pension Plan asserts is entitled to administrative priority. • For the same reason, the Plan **violates section 1129(a)(11)** because it leaves the Debtors without a realistic and workable framework for exiting chapter 11 and, thus, is infeasible. • The third party releases are impermissible. • The 1974 Pension Plan joins the arguments made by the Committee.	• The Debtors are in discussions with this Objecting Party. The Debtors will address this Objection at the Confirmation Hearing.
9	**UMR, Inc. ("UMR")**, [Docket Nos. 1134 and 1403]	• UMR seeks clarification whether its contract with the Debtors will be assumed because it is not listed as a purchased asset under either APA. • The Plan **may violate section 1129(a)(1) and the Coal Act stipulation** because it fails to provide how the Debtors will ensure a "smooth transition of health benefits for affected beneficiaries" because: if the contract is assumed, the Plan fails to provide adequate assurance of future performance as required by section 365(b); and if the contract is rejected, treatment is unclear.	• The Debtors are in discussions with this Objecting Party. The Debtors will address this Objection at the Confirmation Hearing.
10	**Patriot Coal Retiree Committee Retiree Committee (the "Retiree Committee"),** [Docket No. 1154]	• The Plan **violates section 1129(a)(11)** because it is not feasible due to the contingencies with respect to the sales of the Debtors' assets and because the ultimate treatment of the Debtors' retiree benefit obligations has not yet been determined. • The Retiree Committee joins the UMWA's objection with respect to the Plan's release provisions.	• The Debtors are in discussions with this Objecting Party. The Debtors will address this Objection at the Confirmation Hearing.

11	**Federal Insurance Company ("Federal")**, [Docket Nos. 1103 and 1408]. **Joined by Argonaut Insurance Company ("Argonaut"),** [Docket Nos. 1155 and 1420].	• The Plan **violates section 1129(a)(11)** because Federal has not consented to the assumption and assignment of its permits, without which the Buyers cannot continue mining operations post-closing.
		  ◦ The Liquidating Trust does not have sufficient funding to operate, complete the wind down, and comply with applicable regulatory requirements.
		• The Plan **violates section 1129(a)(3)** of the Bankruptcy Code because the Plan's third-party release is overly broad and not consensual and the Plan improperly enjoins creditors from pursuing claims against third parties with no apparent ability for creditors to opt out of the injunction provisions.
		• The Plan provisions relating to classification and treatment of Prepetition ABL Facility Claims and Prepetition LC Facility Claims are unclear.
		  ◦ The Plan appears to impermissibly modify the rights of holders of letters of credit issued by non-debtor banks by providing that letters of credit will be substituted or deemed issued
			• The Debtors are in discussions with this Objecting Party. The Debtors will address this Objection at the Confirmation Hearing.

#	Objector and Docket No.	Objections to Plan[2]	Proposed Response
		under the Combined Company New ABL Facility or the Combined Company First Lien L/C Facility. Letters of credit are irrevocable contracts between issuing banks and holders of letters of credit, and are not property of the estate. • If the VCLF Transaction does not close, it is also likely that the concessions needed to fund the Liquidating Trust will not be forthcoming. If the Liquidating Trust cannot fund its proposed liquidation strategy, the Plan is not feasible. • The Plan purports to improperly modify the rights of holders of letters of credit despite the fact that the letters of credit are not property of the debtors or of the estates.	
12	**Lexon Insurance Co. and Bond Safeguard Insurance Company ("Lexon"),** [Docket Nos. 1156 and 1423	• The Plan **violates Section 1129(a)(3)**. The Debtors anticipate transferring all of their remaining assets to the Liquidating Trust. The applicable regulatory statutes do not allow abandonment or transfer of the Debtors' environmental liability and therefore the Plan is not confirmable. • The Plan enjoins actions against third-parties that creditors may not opt out of or challenge. • The Plan **violates Section 1129(a)(7)** because the liquidation analysis and financial feasibility outline are misleading and inadequate. • The Plan is not feasible because it does not address environmental liabilities and the Liquidating Trust Financial Projection are inadequate.	• The Debtors are in discussions with this Objecting Party. The Debtors will address this Objection at the Confirmation Hearing.

13	**Fidelity & Deposit Company of Maryland, Indemnity National Insurance Company, Travelers Casualty and Surety Company of America, US Specialty Insurance and Westchester Fire Insurance Company (together, "Sureties"),** [Docket Nos. 1171 and 1447]	• The Plan is unconfirmable because:
		  • The Plan will effectively result in the Debtors abandoning environmental liabilities and does not provide for conditions that will adequately protect the public's health and safety from imminent harm;
		  • The Plan contains no evidence demonstrating that VCLF has the resources available to reclaim the properties affected by the Debtors' environmental obligations or that VCLF can comply with those obligations.
		  • The Plan and VCLF APA violate non-bankruptcy law regarding permits and surety bonds by improperly providing for the assumption and assignment of the Debtors' surety bonds and by failing to provide for the regulatory approval of the transfer of mining permits;
		  • The Plan's provision in Art. IV, Section G, providing for the release of liens impermissibly purports to cancel the Sureties' indemnity agreements;
		  • The Plan provides for an injunction that could be interpreted as negating the Sureties right of subrogation, contrary to law; and
		  • The Plan provides for broad third-party releases contrary to the Sureties' rights to subrogation under non-bankruptcy law and the Debtors have not identified the facts and circumstances warranting broad releases;
		  • The Plan provides for third-party injunctions contrary to surety and environmental laws and the Debtors have not identified the facts and circumstances warranting injunctive relief.
		• The Plan does not provide a reasonable estimate of the amount of administrative expenses to be paid under the Plan.
			• The Debtors are in discussions with this Objecting Party. The Debtors will address this Objection at the Confirmation Hearing.

14	**The United States of America (United States), on behalf of the U.S. Environmental Protection Agency (EPA), the U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSMRE), the**	• Neither Blackhawk, VCLF, or the Liquidating Trust may own or operate the transferred coal mining assets without obtaining the required permits from the proper state and federal authorities. • The Plan **violates section 1123(a)(5)** because it fails to provide adequate means for its implementation because the Debtors acknowledge the Liquidating Trust may have insufficient resources to satisfy its obligations.	• The Debtors are in discussions with these Objecting Parties. The Debtors will address this Objection at the Confirmation Hearing.

#	Objector and Docket No.	Objections to Plan[2]	Proposed Response

	U.S. Army Corps of Engineers (USACE), and the U.S. Nuclear Regulatory Commission (NRC) [Docket Nos. 1168 and 1428]; ***Joinder by*** **Commonwealth of Kentucky, Energy and Environment Cabinet, (“Kentucky”)** [Docket Nos. 1173 and 1435]	• The Plan **violates section 1129(a)(3)** because it transfers assets subject to mandatory regulatory obligations under SMCRA and the CWA into a Liquidating Trust without providing for satisfaction of those obligations, including selenium water treatment obligations; thus, the Plan is not proposed in good faith and is forbidden by law.
		• The Plan **violates section 1129(a)(11)** because it fails to identify how the Debtors will complete the steps necessary to make the Liquidating Trust feasible, such as by specifying treatment of the Debtors’ SMCRA and CWA obligations as well as other regulatory requirements.
		• The Plan **violates section 1129(a)(1)** because it suggests that CWA and SMCRA obligations, or any other liabilities that do not fall within the Code’s definition of claim are dischargeable claims.
		  ◦ Article VIII.A (Discharge of Claims) **violates section 1141(d)(1)** because it purports to discharge environmental obligations that are not “claims.”
		  ◦ Article VIII.A (Discharge of Claims) **violates section 1141(d)(3)** because the Debtors are liquidating, so a discharge is unavailable.
		  ◦ Article VIII.B (Release of Liens) **violates section 1129(a)(1)** because it does not specify what liens it purports to release
		  ◦ Article VIII.E (Exculpation) **violates section 1129(a)(1)** because it is overbroad and contrary to law and could be construed as immunizing Blackhawk, VCLF, and the Liquidating Trust from compliance with non-bankruptcy law postpetition.
		  ◦ Article VIII.F (Injunction) **violates section 1129(a)(1)** because it is overbroad and contrary
		  ◦ Article 11.9 (Retention of Jurisdiction) of the Liquidating Trust Agreement **violates section 1129(a)(1)** because it vests exclusive jurisdiction in the Court for controversies regarding the Plan.
		• The Plan **violates the Code and 28 U.S.C. 959(b)** because it provides overly broad releases of future owners or operators for their responsibility to protect public health and safety.
		• The Plan **violates Section 363(f)**, which does not allow purchasers to acquire property free and clear of the obligation to comply with environmental law, including obtaining the required permits.	

15	**The West Virginia Department of Environmental Protection (“WVDEP”)** [Docket Nos. 1161 and 1422]
	**Requests specific carve-out language
		• The Plan **violates section 1123(a)(5)** because it fails to provide adequate means for its implementation.
		• The Plan’s discharge, release, injunction, exculpation, etc. provisions are impermissible because the Plan may not enjoin or otherwise exempt any party from compliance with applicable state law.
		• The Plan **violates section 1129(a)(3)** because it has not been proposed in good faith because the Plan:
		  ◦ Was proposed in bad faith by the hedge funds, including their proposal to backstop the Plan.
		• The Plan **violates section 1129(a)(11)** because it fails to provide any assurance that the VCLF or Liquidating Trust (as applicable) will have the resources to satisfy its ongoing legal obligations and, thus, is not feasible.
		• The Plan **violates section 1129(a)(1)** because:
		  ◦ The Plan’s discharges, releases, injunctions, exculpations, reservations, and other general provisions are contrary to law;
		  ◦ The Debtors are not entitled to a discharge under section 1141(d)(3);
			• The Debtors are in discussions with this Objecting Party. The Debtors will address this Objection at the Confirmation Hearing.

#	Objector and Docket No.	Objections to Plan[2]	Proposed Response
		• To the extent the Plan seeks to limit liability of a transferee of property with respect to state or federal law, the Plan is contrary to law; • The application of the releases, exculpatory, and other provisions to any claims WVDEP and other agencies of the State of West Virginia may have against third parties is contrary to law; • The Plan **violates section 553** due to an impermissible injunction, which bars governmental units from asserting rights of setoff, • The Plan exempts the Debtors and the transferees from complying with applicable state and federal law governing the transfer or assignment of governmental licenses, permits or other registrations; and • The Plan's retention of jurisdiction and various injunctive provisions are contrary to law.	
16	**State of Ohio, Ohio Department of Natural Resources** ("**ODNR**"), [Docket Nos. 1120 and 1471	• The Plan **violates section 1129(a)(3)** because it leaves the Debtors unable to perform nondischargeable responsibilities under federal and state environmental laws to reclaim land and treat environmental problems, including their obligations to the State of Ohio. • The Plan impermissibly seeks to release, discharge, preclude, exculpate, or enjoin the enforcement by ODNR of obligations owed by the Reorganized Debtors under Ohio law. • The Plan **violates section 1129(a)(1)** because it discharges and releases persons connected with, or representing, the Debtors that may have individual liability for environmental violations, but only the Debtors will be discharged and released under sections 524(e) and 1141 (d)(l)(A). • The ODNR asserts it may obtain and enforce injunctive relief against the Debtors related to the nondischargeable environmental obligations discussed in ODNR's objection pursuant to 28 U.S.C. § 959(b).	• The Debtors are in discussions with this Objecting Party. The Debtors will address this Objection at the Confirmation Hearing.
17	**Illinois Department of Natural Resources and the Illinois Environmental Protection Agency ("the Departments")** [Docket No. 1431]	• The Plan **violates section 1123(a)(5)** because it fails to specify how either VCLF or the Liquidating Trust will obtain the permits and replace the surety bonds necessary to carry out the Debtors' reclamation obligations; and the Liquidating Trust will not have the resources necessary to satisfy the legal obligations that run with the assets it will receive; and the Financial Projections for the Liquidating Trust rely on unsupported assumptions. • The Plan **violates section 1129(a)(3)** and was not filed in good faith and proposes to take actions forbidden by law because the Debtors seek to spin-off their valuable assets while leaving the holder of the remaining assets with extensive liabilities and no prospect of remedying such liabilities. • The Plan **violates section 1129(a)(1)** because: (i) the plan seeks to discharge the Debtors' environmental compliance obligations, which are not "claims;" (ii) the Plan may be interpreted to release and exculpate non-debtors from environmental compliance obligations; and (iii) the Plan may not transfer property free and clear of environmental obligations.	• The Debtors are in discussions with this Objecting Party. The Debtors will address this Objection at the Confirmation Hearing.
18	**Sierra Club, Ohio Valley Environmental Coalition, and West Virginia Highlands Conservancy (collectively, the "Environmental Protection Groups")** [Docket Nos. 1167 and 1440]	• The Plan **violates sections 1129(a)(1) and (3)** because it fails to require compliance with court-ordered measures to control water pollution in accordance with federal law. • Neither the Plan nor the Liquidating Trust Agreement provide for the Liquidating Trust to comply with the Modified Consent Decree or establish a segregated fund to cover compliance expenses. • Equitable remedies under environmental law, including the pollution control required by the Modified Consent Decree and the Hobet compliance order, are not "claims" under the Bankruptcy Code. • The Plan **violates section 1129(a)(11)** because it is not feasible because: (i) it fails to provide	• The Debtors are in discussions with these Objecting Parties. The Debtors will address this Objection at the Confirmation Hearing.

#	Objector and Docket No.	Objections to Plan[2]	Proposed Response
		adequate funding, including for compliance with court-ordered pollution controls; (ii) the Debtors have not reached agreement on modification of their consent decrees, (iii) the viability of the Liquidating Trust relies on unobtained outside funding; and (iv) the Debtors grossly underestimate the costs of their selenium control obligations. • The Plan **violates section 1129(a)(1) and (3)** because it contains overly broad discharge, exculpation, and injunctive provisions that could impermissibly frustrate court-mandated pollution control, may be read to exculpate Blackhawk, VCLF and the Liquidating Trust from their obligation to comply with environmental law, and suggest the actions to enforce environmental laws may be enjoined. • The Environmental Protection Groups argue that the new projections do not establish feasibility because they depend on unreasonable compliance cost assumptions, abandonment of certain properties before the Effective Date, and surety collateral transfer and third-party funding. The Debtors do not explain the basis for, or offer any evidence in support of these assumptions and expectations.	
19	**Commonwealth of Pennsylvania, Department of Environmental Protection ("Pennsylvania DEP")** [Docket Nos. 1177 and 1453]	• The Plan **violates sections 1129(a)(1) and (3)** because it fails to establish how the VCLF or the Liquidating Trust will comply with PA environmental law as required by 28 U.S.C. § 959(b) and fails to demonstrate how the Debtors' will continue to honor their obligations under their permits and consent order. • The Plan suggests the Debtors may abandon their PA property, but they cannot abandon property without adequately protecting the public. • The Plan's release provisions **violate sections 524(e) and 1141(d)(1)(A)** by providing for release of parties other than the Debtor and its affiliates. • The Debtors have stated their intention to abandon properties if compliance with environmental obligations is not feasible.	• The Debtors are in discussions with this Objecting Party. The Debtors will address this Objection at the Confirmation Hearing.
20	**Virginia Electric and Power Company dba Dominion Virginia Power ("Dominion")**, [Docket Nos. 1017 1040]	• The Debtors did not properly serve contract notices on Dominion, and the contract notices are substantially deficient. • The Plan **violates section 365** because the Debtors cannot assume and assign only part of an agreement; it must be assumed and assigned in full and because it fails to provide adequate assurance of future performance under the agreements.	• The Debtors propose reserving rights of the parties for hearing on Oct. 22.

21	**AIG Assurance Company, AIG Specialty Insurance Company, American Home Assurance Company, Commerce and Industry Insurance Company, Granite State Insurance Company, Lexington Insurance Company, National Union Fire Insurance Company of Pittsburgh, PA, New Hampshire Insurance Company, and certain other affiliates of AIG Property Casualty, Inc. (collectively, "AIG")**, [Docket No. 1143]	• The Plan, Blackhawk APA, and VCLF APA are ambiguous with respect to the proposed treatment of the Debtors' agreements with AIG. AIG includes proposed language to resolve this objection.
		• To the extent the Plan seeks to modify the rights of holders of letters of credit, the Plan is not consistent with applicable law and cannot be confirmed.
		• The Plan's injunction, setoff, recoupment, and retention of jurisdiction provisions could be construed to impermissibly limit, among other things, AIG's rights to setoff, recoupment, reimbursement, subrogation, and arbitration under the Program Agreements.
		• The Plan's claims resolution provisions are improper because they effectively permit the Debtors to use the claims estimation procedure as a final adjudication of claims without a hearing.
		  • The Program Agreements provide for arbitration to resolve disputes regarding, among other things, the amount of AIG's claims against the Debtors.
		  • The Plan provisions regarding reimbursement or contribution effectively prevent a claimant from reconsideration of an adjudication of a claim objection under section 502(e)(1)B) of the Bankruptcy Code.
			• The Debtors propose reserving rights of the parties for hearing on Oct. 22.

#	Objector and Docket No.	Objections to Plan[2]	Proposed Response
		• The Plan improperly restricts a claimant's ability to amend or modify its claim by requiring Court approval or authorization from the Liquidating Trustee.	
22	**Arch Coal Inc., ("Arch")** [Docket Nos. 1163 and 1438]	• The Plan **violates section 1129(a)(11)** because it transfers mining permits without assurances that government agencies will authorize transfers or that buyers will replace all required surety bonds; therefore, absent binding, non-waivable commitments from sureties to replace bonds securing the transferred permits, the Plan is not feasible. • Allowing the Debtors to unilaterally waive the surety bond replacement provisions threatens the Plan's feasibility. • Allowing the Debtors to transfer the bonds securing the Arch-Magnum permits to VCLF or simply maintain them for VCLF's benefit threatens the Plan's feasibility. • To the extent Blackhawk or VCLF intends to use the Plan to avoid complying with applicable law, the Plan is not feasible. • The Plan **violates section 1129(a)(3)** because, to the extent that the Plan proposes a sale that does not comport with applicable law and require replacement of surety bonds upon transfer of associated permits, the Plan is not proposed in good faith and in accordance with applicable law. • The Plan is impermissible because the terms of the surety agreement require the Debtors replace the bonds securing the Arch-Magnum permits.	• The Debtors propose reserving rights of the parties for hearing on Oct. 22.
23	**Black King Mine Development Company ("Black King")**, [Docket No. 1147 and 1449]	• The Plan **violates section 365**.	• By agreement, rights of parties reserved for hearing on Oct. 22.
24	**Blue Eagle Land Company ("Blue Eagle"),** [Docket Nos. 1125 and 1434]	• The Plan **violates section 365**. • The Plan **violates Section 1129(a)(9)** because it fails to contain a mechanism for satisfying Blue Eagle's alleged administrative expense claim. • The third party releases are impermissible.	• The Debtors propose reserving rights of the parties for hearing on Oct. 22. • *See, Confirmation Brief*, II, B, 6.
25	**Boone East Development Company ("Boone East") and Eagle Energy, Inc., Bandy Town Coal Company, Pioneer Fuel Corporation (together known as "the Alpha Entities")**, [Docket Nos. 1131, 1150, 1443 and 1452]	• The Plan **violates section 365**. • The third party releases are impermissible.	• By agreement, rights of parties reserved for hearing on Oct. 22. • *See, Confirmation Brief*, II, B, 6.
26	**Cassingham, LLC ("Cassingham")** [Docket Nos. 1152 and 1416]	• The Plan **violates section 1129(a)(11)** because the Debtors may remain obligated on certain lease and/or reclamation obligations but will have no means to complete those obligations. • The Plan may inappropriately eliminate the Debtors' environmental obligations because the Debtors make no representation that all of their permits shall be transferred. • The Plan **violates section 1129(a)(11)** because the Debtors cannot demonstrate that VCLF is eligible to apply for the permits. • The Plan **violates section 365**.	• By agreement, rights of parties reserved for hearing on Oct. 22.

#	Objector and Docket No.	Objections to Plan[2]	Proposed Response
27	**Caterpillar Financial Service Corporation ("CFSC"),**[Docket No. 1148 and 1414]	• The Plan **violates section 1129** because it is impossible to determine what treatment CFSC will receive because the Plan fails to identify with specificity which executory contracts and/or unexpired leases will be assumed and assigned under the APAs and which will be rejected. • Stated cure amounts are incorrect. • The Plan **violates section 365**.	• By agreement, rights of parties reserved for hearing on Oct. 22.
28	**Courtney Company ("Courtney")**, [Docket No. 1140 and 1412]	• The Plan **violates section 365**.	• By agreement, rights of parties reserved for hearing on Oct. 22.
29	**Daniels Electric, Inc. ("Daniels")**, [Docket No. 1138 and 1413]	• The Initial Plan should be modified to expressly classify all holders of allowed mechanic's lien claims under Class 3 (Other Secured Claims). • Stated cure amounts are incorrect.	• The Plan now resolves this objection. *See* Plan, Art. I.A.128 ("For the avoidance of doubt, a properly perfected mechanic's lien constitutes an Other Secured Claim under this definition."). • By agreement, rights of parties reserved for hearing on Oct. 22.
30	**Gelco Corporation *d/b/a* GE Fleet Services ("GEFS")**, [Docket No. 1059 and 1393]	• The Plan **violates section 1129(a)(1)** because it improperly re-classifies GEFS's property that the Debtors lease as fixed assets of the Debtor. • Assuming *arguendo* that the Debtors could reclassify the GEFS' lease as a secured financing, the Plan **would violate sections 1122 and 1123** because the Plan does not classify GEFS secured claims. • The Plan **violates section 365**.	• By agreement, rights of parties reserved for hearing on Oct. 22.
31	**General Electric Capital Corporation ("GECC")**, [Docket Nos. 1144 and 1411]	• The Plan **violates section 365**.	• By agreement, rights of parties reserved for hearing on Oct. 22.

32	**H Robson Trust; PRC Holdings, LLC; Prichard School, LLC; City National Bank of West Virginia as Trustee under a Trust Agreement with A.M. Prichard, III; Sarah Ann Prichard and Lewis Prichard and their respective spouses; Robert B. LaFollette Holdings, LLC; Wright Holdings, LLC; Kanawha Boone Holdings LLC; James A. LaFollette Holdings, LLC; LML Properties, LLC; and Riverside Park, Inc. ("LRPB")** [Docket No. 1419]	• The proposed treatment of the LRPB Lease under the Plan is unclear. Neither the Assumption Schedule nor the Contract Notices expressly identify the LRPB Lease
		• The Plan **violates Section 1129(a)(1)** because it does not purport to assume the LRPB Lease in its entirety including all permits associated therewith to Blackhawk.
		  • It appears that the Debtors are proposing to divide the permits associated with the lease among multiple parties, which is expressly prohibited by the lease
		  • Assuming *arguendo* that the Debtors are successful in dividing the permits, Debtors have failed to demonstrate adequate assurance of VCLF's future performance under certain permits associated with the lease.
		• The Plan permits the debtors to assume or reject executory contracts and leases post-confirmation.
		• The Plan does not provide that debtors or Blackhawk will cure, or provide adequate assurance of their ability to cure, the existing defaults under the LRPB Lease at the time of assumption
		• The third party releases are impermissible.
			• The Debtors propose reserving rights of parties for hearing on Oct. 22.
			• *See, Confirmation Brief*, II, B, 6.

33	**Honey Island Coal Co., LLC ("Honey Island")**, [Docket Nos. 1146 and 1415]	• Honey Island's lease prohibits removal or transfer of any equipment used in the coal processing facility located on the property subject to its lease. • The VCLF APA does not assume and assign Honey Island's lease, but proposes to sell equipment included in the facility free and clear. • Honey Island objects to the sale of the equipment and to the sale or transfer of any other equipment or property subject to the lease.	• By agreement, rights of parties reserved for hearing on Oct. 22.

#	Objector and Docket No.	Objections to Plan[2]	Proposed Response
34	**Kentucky Utilities Company (“KU”)**, [Docket Nos. 1097 and 1392]	• KU provides electricity to the Debtors, including Highland and Heritage, but pursuant to the Prairie APAs, Prairie did not acquire rights to any utility deposits given by Highland or Heritage. • Neither the Blackhawk APA or the VCLF APA purport to acquire the utility deposits related to Highland or Heritage, so any such deposit is not accounted for under the Plan. • The Confirmation Order should clarify that (a) KU is permitted to continue holding its deposit until account reconciliations are completed; (b) KU has authority to apply the deposit to the final invoice amounts without leave from the Court and to remit the remainder, if any, to the Debtors; and (c) if the deposit is insufficient, KU shall hold an Allowed Administrative Claim for the remaining amount owed.	• The Debtors are in discussions with this Objecting Party. The Debtors will address this Objection at the Confirmation Hearing.
35	**Kinder Morgan Resources, LLC (“Kinder”)**, [Docket No. 1133 and 1450]	• The Plan **violates section 365**.	• By agreement, rights of parties reserved for hearing on Oct. 22.
36	**Natural Resource Partners L.P., WPP LLC, and ACIN LLP (“Lessors”)** [Docket Nos. 1178 and 1385]	• The Plan **violates section 1129(a)(1) and section 365** because the Debtors cannot assume and assign a lease without curing all defaults and because it fails to provide adequate assurance of future performance of the lease to be assumed. • The Plan **violates section 1129(a)(3)** because the Debtors attempt to sever the lease from its permits, but the Debtors cannot assume and assign only part of a lease; the lease must be assumed and assigned in full. • The Plan seeks to terminate environmental and indemnification obligations due to the Lessors, contrary to law. • The Plan **violates section 1129(a)(11)** because confirmation is likely to be followed by liquidation or further reorganization. • The Plan does not include adequate supporting documentation in the form of updated Asset Purchase Agreements and schedules that would allow Lessors to determine the impact of the Plan on their interests. • The third party releases are impermissible.	• The Debtors propose reserving rights of parties for hearing on Oct. 22. • • • • • *See, Confirmation Brief*, II, B, 6.
37	**Oracle America, Inc.** (“**Oracle**”), [Docket Nos. 1112 and 1444]	• The Plan **violates section 365** because it assumes and assigns the Oracle agreement (intellectual property licenses) without Oracle’s consent and because it requests a blanket determination that any anti-assignment or change in control provision in contracts to be assumed and assigned is unenforceable and void and any required consent shall be deemed granted upon confirmation of the Plan. • The Plan fails to adequately identify the Oracle agreement to be assumed and assigned and it is impermissible to attempt to segregate the underlying Oracle license agreement from the corresponding support and any payment agreements for purposes of assumption and assignment. • The Plan fails to provide sufficient information to determine the correct cure cost. • If the Oracle agreement will not be assumed and assigned, Oracle requests that its software be “scrubbed” and the “scrubbing” confirmed in writing. • The Plan fails to provide adequate assurance of future performance by the assignee because the ultimate assignee’s identity is unknown. • The Plan is impermissible to the extent it provides for simultaneous use of the Oracle agreement by the Debtors and any assignee. • Oracle has not had sufficient time or information to examine the documents accompanying the Plan.	• The Debtors propose reserving rights of parties for hearing on Oct. 22

#	Objector and Docket No.	Objections to Plan[2]	Proposed Response
38	**Peabody Energy Corporation ("PEC"), on behalf of itself and its corporate affiliates (collectively, "Peabody")** [Docket Nos. 1158 and 1436]	• The Plan **violates section 1123(b)(6) section 365 and applicable state law** because Section V.D impermissibly requires performance by contract counterparties post-rejection. • Accordingly, the Court should: (a) deny confirmation; (b) strike Section V.D from the Plan; or, at a minimum, (c) revise Section V.D to clarify that Peabody is not required to perform any "preexisting obligations owed to the Debtors" under the Peabody Contracts.	• The Debtors will address this Objection at the Confirmation Hearing.
39	**Penn Virginia Operating Co., LLC ("Penn Virginia")**, [Docket Nos. 1142 and 1442]	• The Plan fails to address Penn Virginia's interests (including its security interest) in the escrow account and escrow account proceeds related to its lease; Penn Virginia's interests must be preserved and not subject to the release and injunction provisions of the Plan. • The Plan **violates section 365**. • Stated cure amounts are incorrect.	• By agreement, rights of parties reserved for hearing on Oct. 22.
40	**Powell Construction Co., Inc. ("Powell")**, [Docket No. 1139]	• The Plan should be modified to expressly classify all holders of allowed mechanic's lien claims under Class 3 (Other Secured Claims).	• The Plan now resolves this objection. *See* Plan, Art. I.A.128 ("For the avoidance of doubt, a properly perfected mechanic's lien constitutes an Other Secured Claim under this definition.").
41	**Rhino Eastern LLC ("Rhino Eastern") AND Rhino Energy WV, LLC ("Rhino,")** [Docket No. 1165] **Rhino adopts and joins the objections filed by all other coal lessors.	• The Plan **violates section 365** to the extent it proposes to assume only the sublease agreement, which was a part of an integrated transaction, so the Debtors cannot one agreement without assuming the other agreements, and because it proposes to assume only select portions of the sublease, but the Debtors cannot assume favorable provisions of a lease or contract and reject its unfavorable provisions. • The Plan **violates section 1129(a)(9)** because the Debtors do not have sufficient funds to pay administrative expense claims, including cure claims, on the Effective Date.	• The Debtors propose reserving rights of parties for hearing on Oct. 22.

42	**Shonk Land Company, LLC ("Shonk") and REALCO Limited Liability Company ("REALCO")**, [Docket Nos. 1157 and 1400]	• The Plan **violates sections 1129(a)(1) and (2)** because it does not comply with the Bankruptcy Code, including section 365.
		  ◦ The Plan proposes to assume coal leases without curing defaults, satisfying mechanic's liens, and assuming all provisions of the leases regarding surface mining and environmental permits and licenses.
		  ◦ The Debtors have not provided adequate assurances of future performance under the leases by the proposed assignees.
		• The Plan **violates section 1129(a)(3)** because it is not proposed in good faith and the proposed carbon tax credit scheme is forbidden by law
		• The Plan **violates section 1129(a)(7)** because it does not show that a non-accepting class will receive more under the Plan than in liquidation
		• The Plan **violates section 1129(a)(11)** because confirmation is likely to be followed by liquidation or further reorganization. The Plan fails to adequately disclose the education and experience of Blackhawk's or VCLF's management to gauge whether they have sufficient expertise in the coal mining industry.
		• The Plan **violates section 1129(a)(5)** because it fails to adequately disclose the directors, officers, or members of Blackhawk or VCLF.
		• The third party releases are impermissible
			• The Debtors propose reserving rights of parties for hearing on Oct. 22.
			• *See, Confirmation Brief*, II, B, 6.

#	Objector and Docket No.	Objections to Plan[2]	Proposed Response
43	**Siemens Financial Services, Inc. ("SFS")**, [Docket Nos. 1176 and 1418]	• The Plan **violates section 365**. • It is **unclear if the Plan satisfies Section 1129(a)(7)** with respect to the Class 4—Prepetition ABL Facility Claims. • **In order to satisfy Section 1129(a)(7)** Siemens submits that the proposed terms of the Combined Company New ABL must be satisfactory to *each* Prepetition ABL Lender whose claim could potentially be converted into the Combined Company New ABL.	• By agreement, rights of parties reserved for hearing on Oct. 22.
44	**Stollings Trucking Company, Inc. ("Stollings")**, [Docket No. 1049]	• The Plan should provide that the permit is transferred to Blackhawk subject to Stollings pending permit appeal.	• By agreement, rights of parties reserved for hearing on Oct. 22.
45	**The United States of America, Internal Revenue Service ("IRS")**, [Docket Nos. 1126 and 1433]	• The Exculpation is overly broad. • Article II.A violates section 503(b)(1)(D) because it sets an administrative claims bar date for taxes described in sections 503(b)(1)(B) and (C). • Article VII.C impermissibly bars creditors from amending timely filed proofs of claim for any reason in accordance with bankruptcy law.	• This objection has been resolved.
46	**United Leasing, Inc. ("United Leasing")**, [Docket Nos. 1128 and 1441]	• The Plan **violates section 365**.	• By agreement, rights of parties reserved for hearing on Oct. 22.