

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
ASHLAND, LONDON AND LEXINGTON DIVISIONS

IN RE:

CHAPTER 11

LICKING RIVER MINING, LLC, *et al.*,¹

CASE NO. 14-10201

DEBTORS IN POSSESSION

JOINTLY ADMINISTERED

**STIPULATION AND ORDER FOR THE PRODUCTION AND EXCHANGE OF
CONFIDENTIAL INFORMATION**

This matter having come before the Court by stipulation of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), the Official Committee of Unsecured Creditors (the “Committee”), and parties East Coast Miner LLC, East Coast Miner II LLC, Keith Goggin, Michael Goodwin, CAMOFI Master LDC, CAMHZN Master, LDC, Centrecourt Asset Management LLC, and Pryor Cashman LLP (each, a “Party,” and collectively, the “Parties”), by and through their respective undersigned counsel, for the entry of a protective order (this “Protective Order”) governing the handling of all documents, depositions, deposition exhibits and any other written, recorded or graphic material provided by and between the Parties in connection with the above-captioned cases;

IT IS hereby ORDERED that:

1. Confidential Material. To the extent any Party (the “Producing Party”) is to provide or provides information to the other Party or its attorneys, accountants, professionals, financial advisors, representatives or experts (“Advisors”) working with or on behalf of such other Party (the “Receiving Party”), the Producing Party may (i) designate such information or

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Licking River Mining, LLC (6847), Licking River Resources, Inc. (3837), S. M. & J., Inc. (8437), Fox Knob Coal Co., Inc. (9910), J.A.D. Coal Company, Inc. (0145) and U.S. Coal Corporation (5761). The location of the debtors’ corporate headquarters is 101 Helm Street, Suite 150, Lexington, Kentucky 40505.

any portion thereof as confidential (material so designated, "Confidential Material") and (ii) deliver same to the attorneys for the Receiving Party, and such Confidential Material shall be subject to the provisions of this Protective Order. A Producing Party may designate as Confidential Material only information or documents that such Producing Party in good faith determines may qualify for confidential treatment under Fed. R. Civ. P. 26(b), 11 U.S.C. § 107(b), or other applicable law or rule of similar effect. The following shall not constitute Confidential Material for purposes of this Protective Order: (i) material that is or becomes generally available to the public from a source that was not, to the best of the Receiving Party's knowledge, subject to any prohibition against disclosing it; (ii) material that was already in the Receiving Party's possession at the time of the Producing Party's disclosure; (iii) material that is disclosed to the Receiving Party if the source was not, to the best of the Receiving Party's knowledge, prohibited from making the disclosure; (iv) material that is independently developed by any Receiving Party without the use of Confidential Material; (v) material that is approved for disclosure by the Producing Party, in writing, before disclosure; and (vi) material that has had its confidential designation withdrawn or otherwise removed.

2. Manner of Designating Material as Confidential Material. Documents or other information shall be designated as Confidential Material by placing or affixing the word "CONFIDENTIAL" thereon, by making a statement in writing or in an electronic mail message at the time of production, or, in the case of deposition testimony or deposition exhibits, either by making a statement on the record during the deposition or by written notice delivered within ten (10) business days after the transcript of such testimony is delivered to the attorneys for the Producing Party.

3. Failure to Designate Material. Failure to designate material as Confidential Material at the time of production or at the time of a deposition may be remedied by written notice to the Receiving Party. Upon the receipt by a Receiving Party of such notice, the identified materials shall thereafter be fully subject to the provisions of this Protective Order with respect to Confidential Material. In the case of Confidential Material that was inadvertently produced without the appropriate designation but that was otherwise intended to be produced, the designating Producing Party shall deliver to the Receiving Party copies of the Confidential Material containing the appropriate designation. A Producing Party that inadvertently produces material without designating the same as Confidential Material may request the return or destruction of such Confidential Material after delivering to the Receiving Party copies of the Confidential Material containing the appropriate designation and the Receiving Party shall promptly return such Confidential Material to the Producing Party or destroy such Confidential Material, as applicable.

4. Objections to Designation of Confidential Material. If at any time a Receiving Party objects to the designation of any particular material as Confidential Material under this Protective Order, the Receiving Party shall notify the Producing Party of such objection in writing. The objecting Receiving Party shall identify the particular material in question and shall specify in reasonable detail the reasons for the objection. Within five (5) business days of the receipt of such notice, or within such other time as the Parties may agree, the Producing Party and the Receiving Party shall meet and confer in an effort to resolve their differences. If the Parties cannot resolve their differences, the Producing Party may apply on or before five (5) business days thereafter, or such longer time as the Parties may agree, for *in camera* review by and a ruling from the Court on the propriety of the designation, and the material that is subject to

the application shall remain Confidential Material until and unless the Court rules against the propriety of the designation. If the Producing Party makes application to the Court, the burden shall be on such Producing Party to demonstrate that the particular material should be designated as Confidential Material. Confidential Material shall not be entitled to a confidentiality designation where the Receiving Party demonstrates that such material was in the public domain at the time of, or has become public since, its designation unless the document or information enters the public domain due to an action by the Receiving Party or by a third-party at the behest, direction, or permission of the Receiving Party. Nothing in this order precludes the Receiving Party from challenging a confidentiality designation on any other ground.

5. Confidentiality Requirement. Each Receiving Party hereby agrees that all Confidential Material, and any and all analyses, compilations, abstracts, studies, summaries or other documents, reports or records prepared by a Receiving Party or its Advisors which contain or otherwise reflect or in each case are generated, in whole or in part, from any Confidential Material (collectively with Confidential Material, "Supplementary Confidential Material"), will be used solely in connection with the Debtors' chapter 11 cases and any related adversary proceedings thereto, or appeals of orders entered in the same (collectively, the "Permitted Proceedings"), and that such information shall be kept confidential by each Receiving Party and not disclosed to any third parties; provided, however, that Supplementary Confidential Material may be disclosed to the following parties (collectively, the "Permitted Parties"): (a) a Party's Advisors in connection with the Permitted Proceedings; (b) officers and employees of a Party, subject to the provisions of paragraph 2 above; (c) any deponent and such deponent's Advisor(s) to the extent such deponent is shown Confidential Material in connection with uses permitted hereunder; (d) any court presiding over a Permitted Proceeding and its staff (collectively, a

“Presiding Court”); and (e) court reporters and videographers engaged for recording testimony in any deposition or testimony in connection with the Permitted Proceedings. Except with respect to a Presiding Court, it is understood that such Permitted Parties shall be informed by the Receiving Party of the confidential nature and limited use of such material, and such Permitted Parties shall agree to treat such material strictly in accordance with the terms of this Protective Order. A Receiving Party may not use Confidential Material in any proceeding that is not a Permitted Proceeding (“Other Proceedings”) without first giving no less than ten (10) business days’ written notice to the Producing Party of such intention. Within five days of receiving such written notice, the Producing Party may object in writing to any such use of Confidential Material by the Receiving Party. If the Parties cannot resolve their differences, the Receiving Party may seek an order on shortened or expedited notice from the Court authorizing it to use Confidential Material in Other Proceedings.

6. Non-disclosure. Each Receiving Party and all other persons or entities who may acquire access to Confidential Material pursuant to this Protective Order shall not disclose such material to any person or entity except in accordance with the terms of this Protective Order.

7. Court Filings.

(a) If a Receiving Party decides to file or otherwise submit to a Presiding Court any Confidential Material, any information derived therefrom, or any papers containing or making references to the content thereof, such Receiving Party shall inform the Producing Party of such Receiving Party’s intent to use Confidential Material not later than five (5) business days prior to the filing or submission of the same, absent exigent circumstances requiring less notice. If the Producing Party requests in writing that such Confidential Material be filed or submitted

under seal, the Receiving Party shall file such Confidential Material with the Presiding Court under seal in accordance with such Presiding Court's applicable procedures.

(b) A Receiving Party who seeks to file with the Presiding Court any deposition transcripts, exhibits, answers to interrogatories or other documents which have previously been designated by a Party as comprising or containing Confidential Information as an exhibit to any pleading shall instead file with such pleading a slip page for such exhibit indicating that the actual exhibit is filed under seal. Such exhibit shall then be filed separately under seal referencing the docket number of the pleading to which it is an exhibit. Such sealed document shall be served by email on the parties to this Protective Order.

(c) A Receiving Party who seeks to file with the Presiding Court any pleading, brief or memorandum which reproduces, paraphrases or discloses Confidential Information, shall redact all such Confidential Information contained therein. Such Receiving Party shall also file such pleading, brief or memorandum in unredacted form as a sealed document and shall link the same to the pleading, brief or memorandum filed in redacted form. Such sealed document shall be served by email on the parties to this Protective Order.

(d) All pleadings, briefs or memoranda which refer to any document(s) which have previously been designated by a Party as comprising or containing Confidential Information, shall identify such document(s) by the production number(s) ascribed to them at the time of production. Any exhibit filed under seal shall contain thereon the production number(s) ascribed to it at the time of production.

8. Response to Subpoena or Other Legal Process; Disclosure of Confidential Material. If any third party (including a governmental agency) subpoenas, requests or moves to compel disclosure by a Receiving Party of any Confidential Material, or if any Receiving Party is

otherwise requested or required in connection with a legal, governmental, or other formal proceeding (whether by oral questions, interrogatories, requests for information or documents, civil investigative demand or similar process) to disclose any Confidential Material, such Receiving Party shall provide the Producing Party with no less than five (5) business days' notice, if practicable given the deadlines in the subpoena, via electronic mail and facsimile, of receipt of such subpoena, motion or request by the Receiving Party to the extent allowed by law. The Producing Party may seek an appropriate protective order and/or waive compliance with the provisions of this Protective Order in respect thereof. The Producing Party may object to such subpoena, oppose such motion, or take such other action as it deems necessary to protect its interests, at its discretion. If, failing the entry of a protective order or the receipt of a waiver hereunder, a Receiving Party is compelled to disclose Confidential Material, that Receiving Party may, without liability hereunder, disclose such portion of the Confidential Material as it is so compelled to disclose.

9. Remedies. Each Receiving Party acknowledges that (i) remedies at law are inadequate to protect against a violation of this Protective Order, (ii) Producing Parties will suffer irreparable harm from any violation of this Protective Order, (iii) it is appropriate for any court of competent jurisdiction to grant equitable relief (including, without limitation, specific performance and injunctive and declaratory relief) in the Producing Party's favor in the event of a violation or threatened violation of this Protective Order, and (iv) this Protective Order supersedes any and all previous understandings, commitments or agreements that the Receiving Party has or had with a Producing Party pertaining to the matters set forth herein; provided, however, that each Party warrants and represents to every other Party that nothing in any such

prior arrangement shall interfere with such Party's performance according to the terms of this Protective Order.

10. Inadvertent Production of Privileged Material. The inadvertent production of any document, material, or other information subject to a claim of attorney-client privilege, attorney work product or any other privilege or discovery exemption ("Privileged Material") shall not be deemed to be a waiver of any claim of privilege with respect to that or any other document, material or information. In the event that any Privileged Material is inadvertently produced, the Receiving Party that received the inadvertently produced Privileged Material shall return such information and all copies thereof to the Producing Party within five (5) business days after it receives written notice from the Producing Party that the Privileged Material was inadvertently produced.

11. No Restrictions on Discovery Rights. Nothing in this Protective Order shall affect the ability of any Party or its Advisors to request the production or disclosure of documents or information from any other Party (nor that Party's right to oppose any such request) under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or otherwise.

12. Admissibility of Discovery Not Affected. This Protective Order shall not be construed to affect, limit or expand in any way the admissibility of any document, testimony, or other evidence at a hearing on any matter in the Permitted Proceedings.

13. Parties May Use Their Own Documents. Nothing in this Protective Order shall be construed to limit any Party's use or disclosure of its own documents, materials, or information.

14. Severability. Any provision in this Protective Order that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective to the

minimum extent of such prohibition or unenforceability, without invalidating the remaining provisions in any jurisdiction hereof or affecting the validity or enforceability of such provisions in any jurisdiction.

15. Accuracy of Confidential Material. Each Receiving Party acknowledges that no Producing Party or its agents, shareholders, members, managers, directors, officers, employees, servants, consultants, experts, investment bankers, or Advisors makes any representation or warranty as to the accuracy or completeness of any Confidential Material.

16. Treatment of Supplementary Confidential Material After Conclusion of Proceedings. Except as otherwise agreed to in writing by the Parties, in the thirty (30) days following the conclusion of the Permitted Proceedings, and all rights to appeal or seek other or further review thereof have expired or been exhausted, all Supplementary Confidential Material, all copies thereof and any document created or exchanged in connection with or used for Supplementary Confidential Material shall either be (a) returned to the Producing Party or (b) destroyed; provided, however, that no Party shall be required to return or destroy any Supplementary Confidential Material that it is required by statute, rule, regulation or other governmental mandate to retain, or that was included in any filing made in the Permitted Proceedings. Counsel for the Parties shall be entitled to retain court papers, deposition and trial transcripts and attorney work product; provided, however, that such counsel and employees of such counsel shall continue to comply with this Protective Order with respect to such material and shall not disclose such court papers or attorney work product to any person except pursuant to court order or agreement with the Party that produced the Supplementary Confidential Material. All materials returned to the Parties or their counsel by the Court likewise shall be disposed of in accordance with this paragraph.

17. Joinder of Additional Parties. Any party responding to discovery requests in any Permitted Proceeding (each, an “Electing Party”) may elect to be governed by this Protective Order by filing a notice of such election with the Court and serving such notice on all Parties hereto. Any documents produced by an Electing Party shall be entitled to the protections afforded by this Protective Order on the terms set forth herein. Notwithstanding the foregoing, an Electing Party shall not be granted access to the discovery provided by the Parties hereto simply by virtue of making the election contemplated by this paragraph 17.

18. Jurisdiction. The Bankruptcy Court for the Eastern District of Kentucky shall have exclusive jurisdiction to enforce, modify, or vacate all or any portion of this Protective Order upon appropriate motion by a party in interest.

19. Assignment. This Protective Order shall be binding on all Parties and their respective successors and assigns, including without limitation any person or entity that acquires a claim or interest of a Party.

20. Entire Agreement. This Protective Order contains the entire agreement among the Parties concerning confidentiality and non-disclosure of Confidential Material.

21. Authority of Signatory. Each Party represents and warrants to the other that the individual signing on their respective behalf has the express authority to enter into and execute this Protective Order on behalf of such Party.

22. Non-Waiver; Counterparts; Amendments. Failure by a Party to enforce any provision of this Protective Order shall not constitute a waiver of any such provision by such Party. This Protective Order may be executed in multiple counterparts (which may be delivered by facsimile or other electronic transmission), each of which shall be deemed an original and all

of which together shall constitute one instrument. This Protective Order may only be modified or waived (in whole or in part) by mutual written agreement of the Parties.

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Dated: October 8, 2014

Tendered by:

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Pursuant to KYEB LBR 9022-1(b), tendering counsel shall cause a copy of this Order to be served on all non-ECF parties entitled to notice and shall file a certificate of service stating the names, manner and date of service within 7 days of the entry hereof.

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The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.



Signed By:
Tracey N. Wise
Bankruptcy Judge
Dated: Monday, October 27, 2014
(tnw)