

Hearing Date: October 16, 2012 at 10:30 a.m.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	:	Chapter 11
	:	
WP STEEL VENTURE LLC, <i>et al.</i> ,	:	Case No. 12-11661 (KJC)
	:	
Debtors.	:	Jointly Administered
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**MOTION OF STATE OF WEST VIRGINIA OFFICES OF THE  
INSURANCE COMMISSIONER TO TAKE JUDICIAL NOTICE**

The State of West Virginia Offices of the Insurance Commissioner (the “OIC”) moves this Court pursuant to Federal Rule of Bankruptcy Procedure 9017 and Federal Rule of Evidence 201 to take judicial notice of the Order entered on September 26, 2012 by Michael D. Riley, the Insurance Commissioner of the State of West Virginia (the “Commissioner”) in *In re RG Steel Wheeling, LLC*, 12-AP-WCCSI-02001 (the “Order”) in connection with the OIC’s motion dated August 31, 2012 for relief from the automatic stay (the “Stay Relief Motion”), and respectfully states:

1. Pursuant to the Stay Relief Motion, the OIC moved for entry of an order granting it relief from the automatic stay to allow it to enforce its liens against certain collateral and set off the proceeds of the collateral against the liabilities and obligations of RG Steel Wheeling, LLC under the West Virginia Workers’ Compensation Act and the rules and regulations thereunder (“RG Steel Wheeling Workers’ Compensation Liabilities”).

2. The Debtors filed a limited objection to the Stay Relief Motion on September 11, 2012 (the “Limited Objection”). The Debtors’ Limited Objection raises only one question—whether the RG Steel Wheeling Workers’ Compensation Liabilities exceed the value of



collateral—and “request[ed] that the Court require the Commissioner to substantiate its claims that the Debtors lack any equity in the Collateral with appropriate documentation.” Limited Objection at ¶18. Given that there is no dispute as to the value of the collateral, the sole issue before the Court on the Stay Relief Motion is the amount of the OIC’s claim relating to the RG Steel Wheeling Workers’ Compensation Liabilities.

3. Since the filing of the Limited Objection, the OIC has provided documentation to RG Steel Wheeling substantiating conclusively the amount and extent of its claims against RG Steel Wheeling. Such documentation consisted of (a) the Order and (b) a spreadsheet embodying the OIC’s calculation of the RG Steel Wheeling Workers’ Compensation Liabilities.

4. By this Motion, the OIC respectfully requests that this Court take judicial notice of the Order, a copy of which is annexed hereto as Exhibit A.

The Bankruptcy Rules Authorize the Court  
to Take Judicial Notice of the Order

5. Federal Rule of Evidence 201, made applicable to cases under the Bankruptcy Code by Federal Rule of Bankruptcy Procedure 9017, provides:

(a) **Scope.** This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) **Kinds of Facts That May be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court’s territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) **Taking Notice.** The court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) **Timing.** The court may take judicial notice at any stage of the proceeding.

The Order satisfies all of the requirements of Rule 201 and the Court therefore should take judicial notice of it.

The Order Disposes of the Sole Open Issue  
in Connection with the OIC's Motion

6. The OIC requests that the Court take judicial notice of the Order with respect to the only remaining issue to be determined in connection with the OIC's motion—the amount of the OIC's claim against RG Steel Wheeling relating to the RG Steel Wheeling Workers' Compensation Liabilities. The Debtors do not dispute the validity or perfection of the OIC's lien in the collateral or the value of the collateral. The only issue the Debtors raised in their Limited Objection is the scope and amount of the RG Steel Wheeling Workers' Compensation Liabilities.

7. As established in the Order, the Commissioner has set out and calculated the RG Steel Wheeling Workers' Compensation Liabilities and the OIC's claim with respect thereto.

8. Immediately upon RG Steel Wheeling's default in the performance of its workers' compensation obligations at the end of August, the Commissioner commenced administrative proceedings pursuant to the West Virginia Workers' Compensation Act (W. Va. Code §§ 23-1-1, *et seq.*) to revoke RG Steel Wheeling's self-insured status and enforce its police and regulatory powers under the Act. Pursuant to a notice dated August 29, 2012, a copy of which is annexed as Exhibit E to the Declaration of Angela H. Shepherd dated August 31, 2012 filed together with the Stay Relief Motion, the OIC gave notice of the administrative proceedings to RG Steel Wheeling and provided it with an opportunity to appear and be heard. At the conclusion of those

administrative proceedings, the Commissioner entered the Order revoking RG Steel Wheeling's self-insured status. In accordance with Article 2, Section 9(d)(1) of the Act (W. Va. Code § 23-9(d)(1)), the provision of the act specifically dealing with a self-insured employer's defaults in the payment of benefits required under the Act, the Order also estimated, fixed and determined the amount of the RG Steel Wheeling Workers' Compensation Liabilities and assessed that amount against RG Steel Wheeling. In addition, the Order provided for the accrual of interest at a certain rate in accordance with Article 2, Sections 9(d)(1) and 13 of the Act (W. Va. Code §§ 23-2-9(d)(1) and 23-2-13).

9. As the Insurance Commissioner determined and assessed the RG Steel Wheeling Workers' Compensation Liabilities in the Order, as specifically contemplated and authorized in the Workers' Compensation Act, the Order is fully determinative of the amount and extent of the RG Steel Wheeling Workers' Compensation Liabilities upon which the OIC's claim is based, the sole issue remaining in connection with the Motion. *See, e.g., In re UTEX Communications Corp.*, 457 B.R. 549 (Bankr. W.D. Tex. 2011) (giving *res judicata* effect to administrative determination of claims in connection with the allowance of claims in bankruptcy); *see generally United States v. Utah Construction & Mining Co.*, 384 U.S. 394, 422, 86 S. Ct. 1545, 1560 (1966) ("When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata* to enforce repose.").

The Entry of the Order and the Insurance Commissioner's  
Determinations Therein Are Not Subject to Reasonable Dispute

10. The fact that the Commissioner entered the Order and the content thereof are not subject to reasonable dispute. Indeed, the Insurance Commissioner entered the Order at the conclusion of administrative proceedings of which RG Steel Wheeling was fully aware and in

which RG Steel Wheeling was given an opportunity to participate. The Order also makes clear that the Commissioner estimated, fixed, determined, and assessed the RG Steel Wheeling Workers' Compensation Liability at the amount set forth therein.

11. The facts and circumstances relating to the entry of the Order put both the fact of its entry and the contents thereof beyond any reasonable dispute. Upon entry of the order, the OIC served a copy of the order upon RG Steel Wheeling and transmitted the Order to the Office of the Secretary of State for inclusion in the West Virginia Register. The entry of the Order is, in fact, reflected in the current issue of the West Virginia Register, dated October 12, 2012, and published by the Office of the Secretary of State, Volume XXIX, Issue 41, at page 1709 (available online at <http://apps.sos.wv.gov/adlaw/register/readpdf.aspx?did=1523>, as accessed on October 14, 2012). Plainly, the fact of the entry of the order and the content thereof "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

12. Moreover, other courts have recognized that administrative orders are the proper subjects of judicial notice. *See A.E. Staley Mfg. Co. v. Federal Trade Commission*, 144 F.2d 221 (7<sup>th</sup> Cir. 1944) (court may take judicial notice of administrative orders of federal government); *Clark v. Donahoe*, Slip Op. 2012 WL 3224097 (S.D. Ohio 2012) (identifying administrative decisions as items a court may take judicial notice of); *Schonfeld v. City of Carlsbad*, 978 F. Supp. 1329 (S.D. Cal. 1997) (taking judicial notice of, among other things, a city manager's administrative order).

13. As the entry of the Order and the existence of the Insurance Commissioner's determinations therein are determinative of the only issue before the court and are not subject to

reasonable dispute, this Court must take judicial notice of the Order pursuant to Federal Rule of Evidence 201.

14. Notice of this Motion was provided by email to the Debtors' counsel on the morning of October 15, 2012 and immediately upon the filing of this Motion with the Court later the same day. The Debtors have known of the entry and provisions of the Order for more than two weeks. The OIC, moreover, provided the Debtors with an additional copy of the Order together with the other documentation substantiating its claim on September 28, 2012. Since that time, the OIC and the Debtors have been engaged in discussions and negotiations concerning the Stay Relief Motion, and it only became apparent that a hearing may be required on Friday after the first exchange of written documents concerning a resolution of the Stay Relief Motion. Under the circumstances, the OIC submits that the notice provided to the Debtors of this Motion is adequate. Indeed, it is notable that Rule 201(d) provides that the Court may take judicial notice at any time during a proceeding.

WHEREFORE, the OIC respectfully requests that the Court take judicial notice of the Order, and grant it such other and further relief as is just.

Dated: October 15, 2012

BAILEY & GLASSER, LLP

By: /s/ Kevin W. Barrett

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General for the State of West Virginia  
Offices of the Insurance Commissioner*  
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Offices of the Insurance Commissioner*  
209 Capitol Street  
Charleston, West Virginia 25301  
Telephone: (304) 345-6555  
Facsimile: (304) 342-1110

# Exhibit A

Order entered on September 26, 2012 by Michael D. Riley,  
the Insurance Commissioner of the State of West Virginia  
in *In re RG Steel Wheeling, LLC*, 12-AP-WCCSI-02001

PROCEEDINGS BEFORE THE HONORABLE MICHAEL D. RILEY  
INSURANCE COMMISSIONER  
STATE OF WEST VIRGINIA

IN RE: RG STEEL WHEELING, LLC

12-AP-WCCSI-02001

ORDER

**Michael D. Riley**, the Insurance Commissioner of the State of West Virginia (hereinafter "Insurance Commissioner") has determined that a review of RG STEEL WHEELING LLC's self-insured status should occur based upon certain instances of conduct occurring within the last several months. As a result of such review, the Insurance Commissioner hereby finds and orders the following.

FINDINGS OF FACT

1. **WHEREAS** Michael D. Riley is the duly appointed Insurance Commissioner of the State of West Virginia;

2. On September 13<sup>th</sup>, 2012, the West Virginia Offices of the Insurance Commissioner appeared before the West Virginia Workers' Compensation Industrial Council and made a recommendation that the self-insured status of RG Steel Wheeling, LLC be revoked. The Industrial Council thereafter found the following<sup>1</sup>:

A. **WHEREAS**, RG Steel Wheeling, LLC has filed for Chapter 11 relief under the United States Bankruptcy Code in Delaware, is a company

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<sup>1</sup> The Resolution of the West Virginia Workers' Compensation Industrial Council adopted September 13, 2012 is appended to this Order as Exhibit 1.



doing business in the State of West Virginia and is self-insured under the auspices of W.Va. Code §23-2-9; and

B. **WHEREAS**, RG Steel Wheeling, LLC has provided to the West Virginia Offices of the Insurance Commissioner notice that they will no longer honor their statutory obligation to pay and furnish workers' compensation benefits to its injured employees and dependents of its fatally injured employees effective August 24, 2012; and

C. **WHEREAS**, pursuant to W. Va. Code § 23-2-9 and W. Va. Code of State Rules §85-18-15, the West Virginia Workers' Compensation Industrial Council has the authority to approve the recommendation of the Insurance Commissioner to revoke or terminate the self-insured status of any employer who fails to comply with the provisions of Chapter 23 of the W. Va. Code or Title 85 of the West Virginia Code of State Rules; and

D. **WHEREAS**, it has been determined that based upon RG Steel Wheeling LLC's own admissions, pleadings filed with the United States Bankruptcy Court and with filings or correspondence with the West Virginia Offices of the Insurance Commissioner, RG STEEL WHEELING LLC is in deteriorating financial condition, "delinquent" and in "default" of its workers' compensation obligations under state law and does not intend to rectify or correct the situation as an obligation of its continuing affairs; and

E. **THEREFORE, BE IT RESOLVED** that the West Virginia Workers' Compensation Industrial Council hereby approves the recommendation

of the West Virginia Offices of the Insurance Commissioner to revoke the self-insured status of RG Steel Wheeling, LLC effective September 13, 2012.

3. Consequently, the Insurance Commissioner is thereby empowered by action of the West Virginia Workers' Compensation Industrial Council to order the revocation of the self-insured status of RG STEEL WHEELING LLC based upon the aforementioned criteria found by the Industrial Council.

4. It is further found that RG STEEL WHEELING LLC waived its right to appear before the Industrial Council and contest the same despite having been given notice of the same via electronic transmission and United States Mail. RG STEEL WHEELING LLC acknowledged receipt of said notice to the Insurance Commissioner and in bankruptcy proceedings.

### **CONCLUSIONS OF LAW**

1. The Insurance Commissioner has proper jurisdiction and venue of this matter under the provisions of Chapters 23 and 33 of the West Virginia Code, as well as the West Virginia Code of State Rules, Series 85.

2. Due to a rapidly deteriorating financial condition and its admitted and intentional default and delinquency, continued allowance of RG STEEL WHEELING LLC's self-insured status would be harmful to employees of the company, other West Virginia employers, the public and the State of West Virginia.

3. Pursuant to the West Virginia Code of State Rules §§ 85-18-1 *et. seq.* and 85-19-1 *et. seq.*, RG STEEL WHEELING LLC is in default and

delinquent of its obligations and is in fact in deteriorating financial condition and is therefore in violation of the West Virginia Code and is no longer viable to self-insure under West Virginia Code §23-2-9.

4. Pursuant to the West Virginia Code of State Rules §85-18-15.4( c) RG STEEL WHEELING LLC is liable to pay into the Self-Insured Employer Guaranty Risk Pool and Self-Insured Employer Security Risk Pool an amount to sufficiently cover the estimated cost of all of the self-insured employer's accrued and contingent liabilities resulting from the period of self-insured status.

### **ORDER**

WHEREAS, the INSURANCE COMMISSIONER herein **ORDERS** the following:

1. RG STEEL WHEELING LLC's self-insured status or the ability to self-insure its workers' compensation obligations under the West Virginia Code and/or West Virginia Code of State Rules is hereby **REVOKED** effective the date of this Order.

2. RG STEEL WHEELING LLC shall immediately become insured for its workers' compensation obligations under the West Virginia Code and/or West Virginia Code of State Rules for any continuing operations within the State of West Virginia where employees are retained. RG STEEL WHEELING LLC shall immediately demonstrate via a certificate of coverage and other documentation sufficient to assure the Insurance Commissioner that RG STEEL WHEELING LLC is in compliance on a going forward basis in covering its employees for workers' compensation obligations.

3. That RG STEEL WHEELING LLC's failure to immediately demonstrate its insured status to the West Virginia Offices of the Insurance Commissioner may result in the entity being determined to be operating as an uninsured entity and by further ORDER of the Insurance Commissioner subject to a **CEASE** and **DESIST** of operations in the State of West Virginia and may be enjoined from business operations on a permanent basis for failure to maintain worker's compensation coverage under West Virginia Code §33-2-22.<sup>2</sup>

4. All obligations and/or liabilities (accrued or contingent) incurred by RG STEEL WHEELING LLC pursuant to Chapter 23 or 33 or Series 85 of the West Virginia Code shall remain due and owing obligations of RG STEEL WHEELING LLC.

5. That, pursuant to W. Va. Code §23-2-9, the liability of RG STEEL WHEELING LLC is estimated, fixed, and determined to be Thirteen Million, Five Hundred Forty-Nine Thousand and Seventy-Eight Dollars (\$13,549,078.00), which amount has been actuarially justified to cover anticipated claims and administrative costs for obligations (accrued or contingent) from RG STEEL WHEELING LLC's self-insured status, and (b) such amount is assessed against RG STEEL WHEELING LLC. However, it is noted that this is an estimate and that RG STEEL WHEELING LLC is liable for any amount in excess of the stated obligations. Additionally, interest is ORDERED at Seven Percent per Annum (7%) pursuant to W.Va. Code §23-2-13.

6. That, pursuant to W.Va. Code § 23-2-5a, any payment, interest and penalty due and unpaid under this Order and the Workers' Compensation Act

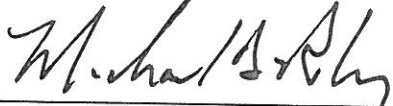
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<sup>2</sup> See also: W.Va. Code §23-2C-15 & W.Va. Code St. R. §85-8-4

shall be a lien enforceable against all property of RG STEEL WHEELING LLC, and the Commissioner reserves the option to create and perfect such lien against all property and proceeds of RG STEEL WHEELING LLC .

7. All regulatory authority concerning the Insurance Commissioner's duties, authority and responsibilities as enumerated to him under the West Virginia Code are herein reserved and preserved in their entirety.

**ENTERED** this 26th day of September, 2012.

  
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**MICHAEL D. RILEY**  
**INSURANCE COMMISSIONER**  
**STATE OF WEST VIRGINIA**

**BEFORE THE WEST VIRGINIA WORKERS' COMPENSATION  
INDUSTRIAL COUNCIL**

**IN RE:**

**RG STEEL WHEELING, LLC,  
a W.Va. Self-Insured Employer**

**RESOLUTION**

On this day, the West Virginia Offices of the Insurance Commissioner appeared before the Industrial Council and made a recommendation that the self-insured status of RG Steel Wheeling, LLC be revoked. Therefore, the Industrial Council finds the following:

**WHEREAS**, RG Steel Wheeling, LLC has filed for Chapter 11 relief under the United States Bankruptcy Code in Delaware, is a company doing business in the State of West Virginia and is self-insured under the auspices of W.Va. Code §23-2-9; and

**WHEREAS**, RG Steel Wheeling, LLC has provided to the West Virginia Offices of the Insurance Commissioner notice that they will no longer honor their statutory obligation to pay and furnish workers' compensation benefits to its injured employees and dependents of its fatally injured employees effective August 24, 2012; and

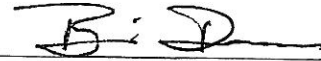
**WHEREAS**, pursuant to W. Va. Code § 23-2-9 and W. Va. Code of State Rules §85-18-15, the West Virginia Workers' Compensation Industrial Council has the authority to approve the recommendation of the Insurance Commissioner to revoke or terminate the self-insured status of any employer who fails to comply with the provisions of Chapter 23 of the W. Va. Code or Title 85 of the West Virginia Code of State Rules; and

**WHEREAS**, it has been determined that based upon RG Steel Wheeling LLC's own admissions, pleadings filed with the United States Bankruptcy Court and with filings or correspondence with the West Virginia Offices of the Insurance Commissioner, RG STEEL WHEELING LLC is in deteriorating financial condition, "delinquent" and in "default" of its workers' compensation obligations under state law and does not intend to rectify or correct the situation as an obligation of its continuing affairs; and

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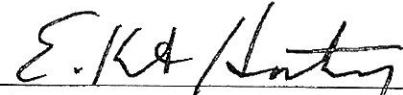
**THEREFORE, BE IT RESOLVED** that the West Virginia Workers' Compensation Industrial Council hereby approves the recommendation of the West Virginia Offices of the Insurance Commissioner to revoke the self-insured status of RG Steel Wheeling, LLC effective September 13, 2012.

Adopted this 13<sup>th</sup> day of September, Two Thousand and Twelve.



Chairperson

ATTEST:



Vice-Chairperson or Designee