

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

In re:

STOLLINGS TRUCKING COMPANY, INC.

Case No. 15-20624

Chapter 11

Debtor.

**COMBINED DISCLOSURE STATEMENT OF
STOLLINGS TRUCKING COMPANY, INC.**

ARTICLE I

INTRODUCTION

This is the Debtor's Combined Disclosure Statement and Plan of Reorganization which supercedes the previously filed Disclosure Statement and Plan of Reorganization submitted to the Court on July 20, 2017. Your rights may be affected. You should read this document carefully and discuss it with your attorney. If you do not have an attorney, you may wish to consult one.

This document describes the Debtor and significant events during the bankruptcy case; how the Plan proposes to treat claims; who can vote or object to the Plan; the effect of confirmation of the Plan; and future Court proceedings which will determine whether unsecured creditors will receive a dividend.

The Court has not yet confirmed the Plan and the Court will schedule a hearing to determine whether this Disclosure Statement is adequate. The Court will also separately select a date for the deadline for voting to accept or reject the Plan.

ARTICLE II

DEFINITIONS

For the purpose of this Plan of Reorganization, the following definitions shall apply unless the context otherwise requires:

1. “Allowed Claim” shall mean a claim, proof of which has been filed with the Court on or before the claims bar date or scheduled in the list of creditors prepared and filed with the Court and not listed as disputed, contingent or unliquidated as to amount, or as to an administrative claim arising in the ordinary course of business of the debtor-in-possession, to which no objection has been filed.

2. “Allowed Secured Claim” shall mean an allowed claim secured by a valid lien on property in which the debtor has an interest, and which is not void or voidable under any state or federal law, including any provision of the Code, to the extent of the value of such creditors’ interest in debtor’s interest in such property.

3. “Chapter 11 Case” shall mean the Chapter 11 case filed by the debtor-in-possession and pending in this Court under the Case Number 15-20624.

4. “Claim” shall mean any claim, as defined in 11 U.S.C. § 101(4).

5. “Code” shall mean the Bankruptcy Code of 1978, effective October 1, 1979, as amended, as set forth in Title 11 of the United States Code.

6. “Confirmation” shall mean the entry by the Court of an Order confirming this Plan of Reorganization under Chapter 11.

7. “Court” shall mean the United States Bankruptcy Court for the Southern District of West Virginia, or such other Court as may have jurisdiction over the debtor-in-possession with respect to this Chapter 11 case.

8. “Debtor-in-Possession” shall mean Power Plant Service, Inc., the debtor in this Chapter 11 case.

9. “Effective Date” shall mean the date on which the Order confirming the Plan becomes final and non-appealable, and on which no appeal is pending. In the event such an appeal is pending, the debtor may elect an effective date notwithstanding that appeal. The beginning of payments is not identical to the effective date. Payments under this Plan will begin 45 days after confirmation.

10. “Estate” shall mean the estate created by § 541 of the Code, 11 U.S.C. § 541, upon the filing of the Chapter 11 case.

11. “Plan of Liquidation” and/or “Plan” shall mean this Chapter 11 Plan, as amended, in accordance with the terms hereof or modified in accordance with the Code.

12. “Filed” means filed with the Bankruptcy Court or in the case of a proof of claim or interest, deemed filed pursuant to §1111(a) of the Code.

13. “Final Order” means the Order of the Bankruptcy Court as to which any appeal that has been or may be taken has been resolved or as to which the time for appeal has expired.

14. “Liquidation Trustee” shall be the person approved by the U.S. Bankruptcy Court for the Southern District of West Virginia to implement the terms of the Liquidation Trust and this Plan.

15. “Petition Date” means December 7, 2015, the date upon which the Debtor filed its Chapter 11 Petition with the Bankruptcy Court.

16. “Pro Rata” means that proportion of a Claim in a particular Class as that proportion bears to the aggregate amount of all finally Allowed Claims in that particular Class, and the total amount of all claims which are either contingent or disputed as of the date of any distribution under the Plan.

17. “Secured Claim” means any Claim secured by liens on property of the Debtors, which liens are valid, properly perfected and enforceable under applicable law, are not subject to avoidance under the Bankruptcy Code or other applicable non-bankruptcy law, and are duly established in this case, to the extent that such Claims are not greater than the value of the Debtor’s interest in the

assets which are security for such Claim.

18. “Tax Claim” means any Claim entitled to priority treatment pursuant to Bankruptcy Code §507(a)(8).

19. “Unsecured Claim” means only those claims listed as unsecured claims in the Plan.

ARTICLE III

SUMMARY OF THE PLAN OF REORGANIZATION

The Plan places claims in various classes and describes the treatment of each class. Certain types of claims are entitled to specific treatment under the Bankruptcy Code. These claims are not considered impaired, and holders of such claims do not vote on the Plan but they may object to their treatment under the Plan if it does not comply with the requirements of the Code.

Administrative expenses are costs of administering the Debtor’s Chapter 11 case which are allowed under Section 507 (a)(2) of the Code. Administrative expenses include professional fees as approved by the Court and any unpaid expenses post-petition, such as utilities or expenses for post-petition environmental compliance such as water testing.

The following chart lists the Debtor’s estimated administrative expenses and their proposed treatment under the Plan.

<u>Type</u>	<u>Estimated Amount Owed</u>	<u>Proposed Treatment</u>
Expenses Arising in the Ordinary Course of Business After the Petition Date	\$4,000	Paid in full within 30 days after the effective date of the Plan, or according to terms of obligation if later
Professional Fees, as approved by the Court	\$20,000	To be paid in installments over six months after Court approval.
Office of the U.S. Trustee Fees	\$	Paid in full on the effective date of the Plan
TOTAL		

Through the pendency of this Chapter 11 case, Stollings Trucking Company, Inc. has been involved in litigation. The litigation has realized proceeds which have been placed in escrow, as more detailed discussion about the litigation is set forth in Article _____.

Additionally, Stollings Trucking Company, Inc. will file a separate adversary proceeding in the U.S. Bankruptcy Court for the Southern District of West Virginia asking the Court to impose a surcharge

under 11 U.S.C. § 506(c) on the Internal Revenue Service and the West Virginia State Tax Department. The Debtor will also request the Court to elevate the position of unsecured creditors pursuant to 11 U.S.C. § 552(b). Recognition of a 506(c) surcharge and recognition of 11 U.S.C. § 552(b) must occur in order for the unsecured creditors to receive any dividend.

The Plan provides for five classes of priority claims; five classes of secured claims; and one class of unsecured claims. The equity claim of the Debtor will be extinguished. The Plan will also provide for payment of administrative expenses after first being approved by the U.S. Bankruptcy Court.

Priority claims in the case consist of claims of the Internal Revenue Service; the West Virginia State Tax Department; Work Force West Virginia; West Virginia Department of Environmental Protection; and the Office of Surface Mining. In the aggregate, these claims exceed the sum of \$124,055. Secured claims consist of the Federal tax lien of the Internal Revenue Service based upon liens filed in the Office of the Clerk of the County Commission of Logan County, West Virginia, totaling the sum of \$690,081. These claims also consist of State tax liens filed Office of the Clerk of the County Commission of Logan County, West Virginia, in the sum of \$1,255,826. The secured claims are entitled to be paid before priority claims.

Unsecured claims total in excess of \$3,869,427. These claims can only be paid if the U.S. Bankruptcy Court for the Southern District of West Virginia allows a 506(c) surcharge on the secured claims and if the Court recognizes the application of the doctrine of “equities of the case” under 552(b).

This Plan is a “waterfall” distribution scheme which specifically provides that each class will be paid in full before the class immediately inferior will get paid. The Plan provides for all assets to be liquidated and final distribution will be through the counsel for the Debtor and counsel for the Unsecured Creditors Committee subject to approval by the U.S. Bankruptcy Court.

ARTICLE IV

BACKGROUND

This Chapter 11 bankruptcy case was filed on December 7, 2015. At the time of the filing of the case, Stollings Trucking Company, Inc. which had previously engaged in the mining of coal in Logan County, West Virginia, was not actually operating a coal mine. Stollings Trucking Company, Inc. had assets as identified on the schedules and all of the machinery and equipment has been sold pursuant to prior Court Orders. A summary of the net sale proceeds is attached as Exhibit _____.

Stollings Trucking Company, Inc. began work in 1990. Throughout the years, the company both hauled coal and mined coal for its own profit. As the business grew, it acquired more pieces of equipment and rolling stock. It also obtained mining permits on property in Logan County, West Virginia, and was a party to coal leases.

Stollings Trucking Company, Inc. had posted cash bonds for environmental reclamation and was also a party to a contract with Cumberland Surety for certain surety reclamation bonds. The reclamation bonds pledged to the West Virginia Department of Environmental Protection cover six separate mining permits. A portion of the area subject to the bonds was later “over bonded” by Guyandotte Mining which under applicable regulations is required to post a separate bond for its haul road permit. Areas not affected by the haul road are subject to continued reclamation.

During the pendency of this case, Stollings Trucking Company, Inc. filed an Application with the U.S. Bankruptcy Court for the Southern District of West Virginia for permission to transfer its reclamation permits to Condor Mining. Condor Mining agreed to become fully responsible for all reclamation responsibilities and further agreed to allow the Debtor to retain \$225,000 of cash bonds previously posted. Because the future liability for reclamation is uncertain and to some degree open ended, the Debtor concluded that the transfer of the reclamation permits was in the best interest of the bankruptcy estate.

Through the pendency of this Chapter 11 case, Stollings Trucking Company, Inc. has been involved in litigation. The litigation has realized proceeds which have been placed in escrow. A more detailed discussion about the litigation is set forth in Articles V and VI.

Additionally, Stollings Trucking Company, Inc. will file a separate adversary proceeding in the U.S. Bankruptcy Court for the Southern District of West Virginia asking the Court to impose a surcharge under 11 U.S.C. § 506(c) on the Internal Revenue Service and the West Virginia State Tax Department. The Debtor will also request the Court to elevate the position of unsecured creditors pursuant to 11 U.S.C. § 552(b). Recognition of a 506(c) surcharge and recognition of 11 U.S.C. § 552(b) must occur in order for the unsecured creditors to receive any dividend.

This Plan provides for five classes of priority claims; five classes of secured claims; and one class of unsecured claims. The equity claim of the Debtor will be extinguished. The Plan will also provide for payment of administrative expenses after first being approved by the U.S. Bankruptcy Court.

ARTICLE V

LITIGATION

The Debtor has been a party to litigation in State Court in the Circuit Court of Logan County, West Virginia, and in McDowell County, West Virginia. The Debtor has also been a party to litigation in the U.S. Bankruptcy Court for the Southern District of West Virginia. Additionally, the Debtor anticipates the filing of an adversary proceeding in the U.S. Bankruptcy Court to determine the rights, status and interest of the taxing authorities in liquid assets of the Debtor.

Willis Marcum filed a Proof of Claim in this case asserting a first lien on a 2005 Caterpillar D-11 Dozer and a 2004 Caterpillar D-11R Dozer. The total amount of the claim was \$448,000. Willis Marcum had previously filed a UCC-1 Financing Statement on October 25, 2011, with the West Virginia Secretary of State's Office to perfect a lien on the machinery. Willis Marcum was a party to a Settlement Agreement in 2011 with Stollings Trucking Company, Inc. on a matter heard in the Circuit Court of Logan County, West Virginia.

Subsequent to the filing of the UCC-1, the Internal Revenue Service filed several Federal tax liens in the Office of the Clerk of the County Commission of Logan County, West Virginia. The Debtor asserted that at the time of execution of the Settlement Agreement with Willis Marcum, that Stollings Trucking was insolvent and that the execution of the Settlement Agreement constituted a fraudulent transfer. The Debtor further asserted that the Internal Revenue Service, pursuant to applicable tax laws, can reach back over a period of 10 years to challenge transfers.

The equipment in question was sold for the sum of \$110,000. The parties have now entered into an agreement under which Willis Marcum is to receive 85 percent of the proceeds from the sale of the equipment, and the Internal Revenue Service of the United States of America is to receive the remaining

15 percent. The settlement will reduce the secured and priority tax claim of the Internal Revenue Service.

There is pending in the Circuit Court of McDowell County, West Virginia, a civil action instituted by the Debtor against GS Energy and Continuum Coal to recover monies advanced by Stollings Debtor in connection with a Contract Mining Agreement. In addition, the Debtor forwarded \$136,000 to GS Energy to obtain a mining permit. Not long after the execution of the Agreement, the market for metallurgical coal plummeted and the parties mutually agreed that mining was not financially feasible. Later, the parties were unable to negotiate a settlement and GS Energy and Continuum have asserted that Stollings Trucking materially breached the contract and that as a result, it is entitled to the transfer of mining equipment and that it has no responsibility to repay Stollings for the bond. This case has now been referred to the West Virginia Business Court. Further, mediation is set for June 13, 2018. Any settlement funds received from this case will be subject to the determination of the U.S. Bankruptcy Court for the Southern District of West Virginia on distribution.

The Debtor was also a party to litigation in the Circuit Court of Logan County, West Virginia, involving XL Insurance Company. That litigation has been described in a separate section of this document.

ARTICLE VI

INSURANCE CLAIM AGAINST XL

Post petition, the Debtor filed a civil action in the Circuit Court of Logan County, West Virginia, against XL Insurance. The basis of the claim was the failure of XL Insurance to recognize the Debtor's claim for damage to a Highwall Miner. At the time of the commencement of this case, the Debtor owned a Highwall Miner valued at \$1 Million subject to a lien in favor of Branch Banking & Trust. The equipment was subject to a purchase option in favor of Bonnie B Land Company which had agreed to pay \$1,500,000 for the equipment. At the time of the commencement of the bankruptcy case, Bonnie B Land Company owed approximately \$571,000 to the Debtor. The Debtor owed approximately \$101,000 to Branch Banking & Trust on the Miner. The claim of Branch Banking & Trust was also cross collateralized with other equipment and the total indebtedness to Branch Banking & Trust was the approximate sum of \$288,666.

XL Insurance Company only offered \$25,000 asserting that full coverage was not applicable because the equipment had been "leased". After extensive discovery, summary judgment was granted in favor of the Debtor by the Circuit Court of Logan County, West Virginia, and the net proceeds paid over to the Debtor was the sum of \$1,039,000, which was placed in escrow. The Debtor's attorney fees were paid separate from that award by the insurance company under what is know as the Hayseeds Doctrine.

The Debtor states that the entire insurance proceeds should not be made fully available to the West Virginia State Tax Department and the Internal Revenue Service. The Debtor asserts that the insurance proceeds represent after-acquired property or in the alternative, under the

provisions of 11 U.S.C. § 552(b) the “equities of the case” should be applied to prevent the secured creditors from receiving a windfall. The maximum claim of the secured taxing creditors should be the equity in the collateral at the time of the commencement of the case. The Debtor also believes that the secured claims of the taxing authorities can be surcharged under 11 U.S.C. § 506(c). The value of the claims of the secured taxing authorities should be determined at the time of the Chapter 11 commencement. The maximum amount to which the taxing authorities would have been entitled, pre-petition, would have been the “real equity” in the collateral which would have been not greater than \$470,000. Post-petition assets generated by the Debtor’s efforts should be an enhancement available for the entire bankruptcy estate, including unsecured creditors.

The Debtor will request the U.S. Bankruptcy Court for the Southern District of West Virginia to determine an appropriate balance between the rights of the statutory secured creditors and the equity claims of unsecured creditors.

ARTICLE VII

TRANSFER OF RECLAMATION PERMITS

On May 3, 2018, the Debtor filed a Motion for entry of an Order to authorize and approve assignment of reclamation permits obtained from the West Virginia Department of Environmental Protection. The permits are collateralized by reclamation obligations totaling \$3,067,464. A part of the total collateral consists of surety bonds in the amount of \$1,301,404 through Cumberland Surety as agent for Lyndon Property Insurance Co. The permits are identified on an exhibit attached to the Motion to transfer.

Condor Holdings, LLC assumed the reclamation obligations under the permits and upon release of the bonds, the Debtor will liquidate the Certificates of Deposit and will receive \$225,000 for the benefit of the bankruptcy estate. The disposition of the \$225,000 will be subject to approval of the U.S. Bankruptcy Court for the Southern District of West Virginia, but the Debtor will seek to have these monies declared unencumbered by any pre-petition liens. There will be an \$85,000 distribution to Cumberland Surety on account of post-petition bond premiums and inspection fees and expenses. The balance of the Certificates of Deposit will be distributed to Condor to partially finance reclamation. The Debtor and the surety will exchange mutual releases of liability and the surety will withdraw its Proof of Claim in the amount of \$791,000.

The Debtor is no longer operating its business and does not have the means to perform the necessary reclamation. Reclamation could take five years or longer and the expense is uncertain. The surety is providing additional bonding to Condor to assume the permits without which Condor would be unable to enter into the proposed transaction.

The benefit of the agreement is that it totally eliminates real and contingent environmental liabilities for the bankruptcy estate and allows an orderly liquidation. A hearing on the proposal took place on May 30, 2018, in the U.S. Bankruptcy Court for the Southern District of West Virginia.

Representatives of the land owners; the taxing authorities; counsel for the Unsecured Creditors Committee; bonding company counsel; Special Environmental Counsel; and attorneys for the taxing authorities were present. After hearing the representations of counsel and review of the proposed Agreement, the Court determined to approve the transfer.

Prior to entering into the Permit Transfer Agreement, the Debtor had undertaken fish studies to determine the length of time for water treatment. That work, and additional reclamation estimates were performed by Doss Engineering. The Debtor concluded that the uncertainties of future reclamation expenses posed a significant risk and could capture all assets of the bankruptcy estate.

The Debtor exercised its sound business judgment in entering into the Agreement with Condor Mining. The West Virginia Department of Environmental Protection has issued numerous post-petition Notices of Violations and Cessation Orders to the Debtor. The Transfer Agreement is also in the best interest of the Debtor because it can be implemented immediately.

ARTICLE VIII

DEBTOR'S REQUEST TO SURCHARGE SECURED CREDITORS PURSUANT TO 11 U.S.C. § 506(c)

11 U.S.C. § 506(c) permits recovery of administrative expenses from a secured creditor's collateral when the expenses are "necessary" to preserve or dispose of the collateral; the expenses are "reasonable"; and the incurrence of expenses provides a "benefit" to the secured creditor. In this case, both the West Virginia State Tax Department and the Internal Revenue Service of the United States pre-petition files tax liens in the Office of the Clerk of the County Commission of Logan County, West Virginia.

The taxing authorities have received a significant benefit from funds realized by litigation. Further, work by the Special Environmental Counsel and the Environmental Consultant has led to a transfer of reclamation permits which has avoided a significant potential environmental cost that would have been an administrative expense that could have greatly eroded the secured creditors' ability to collect upon their secured claims. Each of the prongs under 11 U.S.C. § 506(c) have been met. To the extent that a portion of the taxing authorities' secured claims are disallowed, then the disallowed liens can be preserved under Section 506(d) for the benefit of the bankruptcy estate.

Significant effort was put into the insurance litigation with XL. At the time of the filing of the bankruptcy case, the maximum equity in the Highwall Miner would not have exceeded \$470,000. To allow the taxing authorities to receive the proceeds above that sum would generate a windfall. As to be discussed in this Disclosure Statement, under the "equities of the case" pursuant to 11 U.S.C. § 552(b), a portion of the insurance proceeds should be earmarked for unsecured creditors.

The Debtor has filed an adversary proceeding asking the U.S. Bankruptcy Court for the Southern District of West Virginia to determine the rights, status and interest of the parties.

Debtor's counsel has also negotiated a \$225,000 payment to be released from reclamation bonds and turned over to the bankruptcy estate. The scope and extent of reclamation was open ended. The

Debtor did not have the necessary funds or equipment to itself undertake the required reclamation. The Debtor believes that at least the sum of \$225,000 should be surcharged on efforts to resolve the reclamation issues. Legal expenses for Babst Calland, Environmental Special Counsel, and the professional consulting expenses of Doss Engineering total greater than \$_____.

Although administrative costs and expenses are generally paid from unencumbered assets of a bankruptcy estate, in cases where there are insufficient unencumbered assets Section 506(c) may be used by the Debtor to recoup costs. The effect of Section 506(c) is to allow the Debtor in Possession to surcharge a secured creditor's collateral with certain costs and expenses that typically would constitute administrative claims, and to receive payment for such claims from the proceeds of the secured creditor's collateral

Surcharge under Section 506(c) is recovered for the benefit of the bankruptcy estate. In re: *Resource Technology Corp.*, 356 B.R. 435 (Bankr ND Ill. 2006). Because compensation has already been paid to the professionals, the 506(c) surcharge will be available to the bankruptcy estate. The Debtor has preserved the going concern value of secured assets and because the Debtor will not stay in business in the future, a surcharge is warranted.

ARTICLE IX

SECTION 552(b) - EQUITIES OF THE CASE

Section 552(b) of the Bankruptcy Code provides that the Bankruptcy Court has the power to eliminate a lien on post-petition proceeds from pre-petition collateral “based on the equities of the case”. Although the term “equities of the case” is not defined in the Bankruptcy Code, Courts have applied the exception to compensate a Debtor’s estate for expenditures that have enhanced the value of the secured creditor’s collateral. See *United Virginia v. Slab Fork*, 784 F.2d 1188 (4th Cir. 1986). In this case, the Debtor suffered a loss post-petition and was initially offered only \$25,000 to cover damage to an expensive piece of equipment valued at \$1 Million. The equipment was subject to a Lease Purchase Agreement with Bonnie B Land Company. The equipment was also subject to a lien in favor of BB&T. Litigation with XL Insurance reaped a result of more than \$1,039,000 for the benefit of the bankruptcy estate. That litigation significantly enhanced the value of the asset to the estate. The Debtor has asserted that the secured taxing authorities should be limited to the amount of their combined pre-petition secured claims at the time of the filing of the case.

A secured party bears the burden to prove its pre-petition lien and that it retains validity as a post-petition lien on after-acquired property. See *In re: Commercial Millwright Services Corp.*, 245 B.R. 585 (Bankr ND Ia. 1998). The claims of the secured taxing authorities were not diminished post-petition and the real equity in the collateral has now been captured. Any funds over and above the pre-petition liens of the taxing authorities should be limited. Although the cause of action against the insurance company was property of the estate, the proceeds from that cause of action should not be subject to the pre-petition statutory tax liens. Yet under the facts of this case, if the amount of the secured claim of each taxing authority is reduced, that claim may still be classified as a priority claim. Although a debtor does not have the ability to propose a Chapter 11 Plan which violates the Chapter 11 priority system, this Court has the ability to surcharge the taxing authorities and to apply the equities of the case. See

Czyzewski v. Jevic Holding Corp., 2017 WL 1066259 (2017). The Debtor states that all creditors should benefit from the Debtor's litigation efforts and that in addition to allocating a portion of the insurance proceeds to unsecured creditors, the Court should also allocate \$225,000 of the Certificates of Deposit to the estate. But for the Debtor's efforts in negotiating a fair transfer of the mining permits to Condor, it was probable that future environmental expenses, if classified as administrative expenses, would have swept up all of the Debtor's assets. Again, the "equities of the case" and a 506(c) surcharge are appropriate.

Professional fees incurred by the Debtor in connection with negotiations for the transfer of the reclamation permits, including Special Counsel and Barry Doss, Environmental Consultant, total at least the sum of \$33,000.

There was no "equity" in the reclamation bonds at the time of the commencement of the case. Those bonds were pledged for reclamation to the WVDEP. Consulting expenses incurred by Barry Doss and professional fees of Robert Stonestreet, Special Counsel for environmental matters, should be considered by the Court as expenses which benefitted the secured creditors.

The Debtor will file an adversary proceeding under the applicable Bankruptcy Rules of Procedure and request that the Court carefully examine these principles. The secured creditors should not receive a windfall based solely upon the efforts of the Debtor. And whether the assets are designated as after-acquired property not subject to a lien, or collateral proceeds subject to a pre-petition lien, where the estate creates value through any means during the Chapter 11 case and that value enhances the secured creditors' position, the estate should receive the benefit of such value.

ARTICLE X

CLASSIFICATION OF CLAIMS AND INTERESTS

- Class A Class A consists of administrative expenses required to be paid under the provisions of Section 507 of the Bankruptcy Code.
- Class P-1 Class P-1 is the priority claim of the Internal Revenue Service..
- Class P-2 Class P-2 is the priority claim of the West Virginia State Tax Department.
- Class P-3 Class P-3 is the claim of Work Force West Virginia.
- Class P-4 Class P-4 is the priority claim of the West Virginia Department of Environmental Protection.
- Class P-5 Class P-5 is the priority claim of the Office of Surface Mining.
- Class S-1 Class S-1 is the secured claim of the Internal Revenue Service.
- Class S-2 Class S-2 is the secured claim of the West Virginia State Tax Department.
- Class S-3 Class S-3 is the secured claim of Bonnie B Land Company.
- Class S-4 Class S-4 is the secured claim Willis Marcum.
- Class S-5 Class S-5 is the secured claim of Lyndon Surety.
- Class U Class U consists of all allowed general unsecured claims.
- Class O Class O consists of the ownership interest of Rhonda Marcum, the sole shareholder of the Debtor.

ARTICLE XI

TREATMENT OF CLAIMS

Class A All administrative expenses shall be paid within 45 days after confirmation unless the holder of administrative expense claim agrees otherwise. All professional fees shall be paid only after approval by the U.S. Bankruptcy Court for the Southern District of West Virginia.

In the event that it is finally determined that the secured claims of the West Virginia State Tax Department and the Internal Revenue Service are greater than monies held in escrow, then those monies will be paid according to the hierarchy of liens of record in the Office of the Clerk of the County Commission of Logan County, West Virginia.

Class P-1 The priority claim of the Internal Revenue Service may not be paid in full. This claim will only be paid after payment of the secured component of the IRS claim. The degree to which the priority component of the Service's claim may be paid is dependent upon the outcome of an adversary proceeding to be filed by the Debtor asking the U.S. Bankruptcy Court for the Southern District of West Virginia to surcharge the secured claim of the Internal Revenue Service pursuant to 11 U.S.C. § 506(c) and to also recognize the doctrine of the "equities of the case" under 11 U.S.C. § 552(b).

Class P-2 Class P-2 is the priority claim of the West Virginia State Tax Department. This claim may increase if the Court imposes a surcharge and/or recognizes the equities of the case under 11 U.S.C. § 552. The State Tax Department filed a priority claim in the amount of \$72,610. During the time frame between the filing of the Disclosure Statement and a hearing on the Disclosure Statement and/or confirmation, Debtor's counsel will attempt to reach a compromise with both the Internal Revenue Service and the State Tax Department.

Class P-3 Class P-3 is the claim of Work Force West Virginia in the sum of \$28,162 and will be paid from available funds after payment of the secured claim of the taxing authorities.

Class P-4 Class P-4 is the priority claim of the West Virginia Department of Environmental Protection in the amount of \$10,156 and will be paid from available funds after payment of the secured claim of the taxing authorities.

Class P-5 Class P-5 is the priority claim of the Office of Surface Mining in the amount of \$4,724 which will be paid from available funds after determination of the secured claims.

Class S-1 Class S-1 is the secured claim of the Internal Revenue Service listed in the sum of \$ _____. The Internal Revenue Service has filed numerous liens in the Office of the Clerk of the County Commission of Logan County, West Virginia. The West Virginia State Tax Department has also filed numerous liens in the Office of the Clerk of the County Commission of Logan County, West Virginia. All liens may exceed the liquid assets of the Debtor. Debtor's counsel is attempting to negotiate a compromise lump sum payment with each taxing authority which would allow those claims to be paid

and avoid installment payments over time and free up monies to the unsecured creditors. Additionally, the Debtor will seek a surcharge on the secured claim of each taxing authority and will ask the Court to utilize 11 U.S.C. § 552(b) to make available monies to unsecured creditors. If either a Section 506(c) surcharge or a 552(b) remedy is allowed, then the secured claims will be impaired.

- Class S-2 Class S-2 is the secured claim of the West Virginia State Tax Department. This claim has been filed in the amount of \$1,255,826. As noted above, this claim will also be subject to a possible Section 506(c) surcharge and the equities of the case under Section 552(b).
- Class S-3 Class S-3 is the secured claim of Bonnie B Land Company. Bonnie B Land Company purchased the claim of BB&T which held a first lien on a Highwall Miner and other equipment owned by the Debtor. During the pendency of the case, the secured claim of Bonnie B Land Company was paid in full by adequate protection payments and the sale of equipment.
- Class S-4 Class S-4 is the secured claim of Willis Marcum and Marcum & Associates. This claim was secured by two separate bulldozers subject to a UCC-1 Financing Statement executed in October, 2011. The secured component of the Marcum claim was also the subject matter of an adversary proceeding filed in the U.S. Bankruptcy Court. That claim has been compromised as more fully identified in the litigation section of this document. That portion of the compromise which was allocated to the Debtor will be paid over to the Internal Revenue Service.
- Class S-5 Class S-5 is the secured claim of Lyndon Surety. This claim was secured by Certificates of Deposit and surety bonds. This claim has been released as a result of the arrangement on the transfer of reclamation permits to Condor Mining.
- Class U Class U consists of all general unsecured claims as identified on Exhibit _____. The amount of the dividend, if any, to be received by unsecured creditors will be dependent upon the outcome of an adversary proceeding to be filed in the U.S. Bankruptcy Court for the Southern District of West Virginia. That case will seek that certain monies be set aside for the unsecured creditor class. The Debtor has asserted that professionals in this case realized the recovery of monies which enhance the value of secured claims and also preserved that value because of contingent environmental liability expenses. The Debtor's goal is to segregate at least \$500,000 for the benefit of the unsecured creditor class.
- Class O Class O is the ownership interest of Rhonda Marcum which will be extinguished.

ARTICLE XII

LIQUIDATION ANALYSIS

The only alternative to a Chapter 11 liquidation is a Chapter 7 liquidation. The Debtor believes that a Chapter 7 liquidation would be more costly because it would generate additional administrative expenses. All assets, which will be reduced to cash, in this Chapter 11 case will be paid over to creditors. A list of monies on hand and anticipated future administrative expenses is attached as Exhibit _____. The Debtor believes that it will receive monies up to \$136,000 from the Continuum Coal litigation. The Debtor cannot predict with any degree of certainty whether the U.S. Bankruptcy Court for the Southern District of West Virginia will grant the Debtor's request to surcharge the secured taxing authorities under 11 U.S.C. § 506(c) and also to recognize the "equities of the case" under 11 U.S.C. § 552(b). Those two remedies are the source of payment to unsecured creditors.

ARTICLE XIII

MANAGEMENT AND MEANS OF IMPLEMENTATION OF THE PLAN

Because there will be no business going forward, there will not be the necessity for any active management. Distribution of assets will be coordinated through Debtor's counsel and Douglas Kilmer, counsel for the Unsecured Creditors Committee. All disbursements will also be reviewed by the Office of the U.S. Trustee.

ARTICLE XIV

ACCEPTANCE OR CRAMDOWN

Under the Bankruptcy Code, a Plan of Reorganization if accepted by an impaired class of claims of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number can be approved if the Court finds the Plan otherwise feasible.

The Bankruptcy Code also contains provisions authorizing the confirmation of a Plan of Reorganization even if it is not accepted by all impaired classes, as long as at least one impaired class of claims has accepted the Plan. This is the so called “cram down” provision as set forth in 1129(b) of the Bankruptcy Code.

Because the Debtor has sold all equipment and hard assets during the pendency of this case, and because the remaining assets will consist of potential litigation proceeds subject to distribution approval by the Unsecured Creditors Committee, in the event that the Debtor does not gain the required acceptance of votes, then this case will be converted to a Chapter 7 case. The Debtor does not believe that the Liquidation Plan as proposed unfairly discriminates against any class that may not accept or otherwise consent to the Plan. The distribution scheme is governed by the Bankruptcy Code.

ARTICLE XV

CONFIRMATION

To confirm a Plan, it must meet the requirements listed in Section 1129(a) or (b) of the Bankruptcy Code. These include the requirements that the Plan must be proposed in good faith; at least one impaired class of claims must accept the Plan; the Plan must distribute to each creditor an equity interest holder at least as much as the creditor would receive in a Chapter 7 Liquidation and the Plan must be feasible

To confirm the Plan, the Court must find that all creditors who did not accept the Plan will receive as much under the Plan as each would receive in a Chapter 7 Liquidation. Under the terms of this Plan, the amount to be received by creditors is the same which would be received in a Chapter 7 Liquidation, although it is anticipated that the administrative expenses should be less.

All unsecured creditors are impaired by the Plan. There simply will not be enough assets to pay unsecured creditors in full.

As noted previously, this is a Liquidation Plan. In the event that the creditors do not vote in favor of the Plan, then the case will be converted to a Chapter 7 Liquidation.

ARTICLE XVI

EFFECT OF CONFIRMATION OF PLAN

A. Discharge of Debtor

On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in §114(d)(1)(A) of the code, except that the Debtor shall not be discharged of any debt imposed by Plan, of a kind specified in §114(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, or (iii) of a kind specified in §114(d)(6)(B). After the effective date of the Plan, claims against the Debtor will be limited to the debts described above.

B. Modification of Plan

The Plan Proponent may modify the Plan at any time before confirmation but the Court may require a new Disclosure Statement if the modifications are significant.

ARTICLE XVI

OTHER PLAN PROVISIONS

Miscellaneous

1. Governing Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under the Plan shall be governed by and construed and enforced in accordance with the laws of the State of West Virginia.

2. Severability. Should any provision in the Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Plan.

3. Effective Date of Plan. The effective date of this Plan is the 11th business day following the date of the entry of the order of confirmation. But if a stay of the confirmation order is in effect on that date, the effective date will be the first business day after that date on which no stay of the confirmation order is in effect, provided that the confirmation order has not been vacated.

4. Definitions and Rules of Construction. The definitions and rules of construction set forth in §101 and 102 of the Code shall apply when terms defined or constructed in the Code are used in this Plan, and they are supplemented by the following definitions: {insert additional definitions if necessary}.

5. Binding Effect. The rights and obligations of any entity named or referred to in this Plan will be binding upon , and will insured to the benefit of the successors or assigns of each entity.

STOLLINGS TRUCKING COMPANY, INC.

By Counsel

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