



This is the 2<sup>nd</sup> affidavit of  
Miriam Domínguez in this case  
and was made on 29/March /2016

NO. S-1510120  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
WALTER ENERGY CANADA HOLDINGS, INC. AND THE OTHER  
PETITIONERS LISTED ON SCHEDULE "A"

PETITIONERS

**AFFIDAVIT**

I, MIRIAM DOMINGUEZ, legal assistant, of 20th Floor – 250 Howe Street, in the City of Vancouver, in the Province of British Columbia, AFFIRM THAT:

1. I am a legal assistant at Dentons Canada LLP, Canadian solicitors for the United Mine Workers of America 1974 Pension Plan and Trust (the "**1974 Pension Plan**"), a claimant in this proceeding, and as such I have personal knowledge of the facts and matters deposed to in this Affidavit except where I depose to a matter based on the information from an informant I identify, in which case, I believe that both the information from the informant and the resulting statement are true.

2. Attached hereto and marked as **Exhibit "A"** is a copy of the order entered in the United States Bankruptcy Court for the Northern District of Alabama (the "**US Court**") on December 22, 2015, approving a global settlement among the US debtors, the committee of unsecured creditors, and Coal Acquisition, LLC, the purchaser of the US debtors' core mining assets.

3. Attached hereto and marked as **Exhibit "B"** is a copy of the minor amendment to the Order of the US Court dated December 28, 2015 (the "**1113/1114 Order**"), which Order was attached to my affidavit dated January 4, 2016.

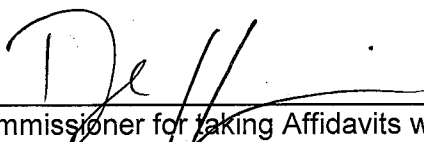
4. Attached hereto and marked as **Exhibit "C"** is a copy of the reply brief filed by the appellants, including the 1974 Pension Plan, in the District Court for the Northern District of Alabama, Southern Division, filed February 15, 2016, in the appeal of the 1113/1114 Order (the "**Reply Brief**").

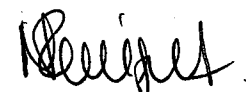
5. The Reply Brief sets out at footnote 1 on page 1 that the United Mine Workers of America settled with the purchaser, and as a result, the elements of the 1113/1114 Order relating to section 1113 of the Bankruptcy Code are no longer at issue in the appeal.

6. Attached hereto and marked as **Exhibit "D"** is a copy of the joint motion filed in the US Court on March 17, 2016, for an order authorizing procedures to implement the global settlement in the US bankruptcy cases.

7. Attached hereto and marked as **Exhibit "E"** is a copy of the order entered in the US Court on March 24, 2016, authorizing procedures to implement the global settlement in the US bankruptcy cases.

AFFIRMED BEFORE ME at Vancouver, BC,  
on 29 / Mar / 2016.

  
A Commissioner for taking Affidavits within  
British Columbia

  
MIRIAM DOMINGUEZ

TEVIA JEFFRIES  
*Barrister & Solicitor*  
DENTONS CANADA LLP  
20th Floor, 250 Howe Street  
Vancouver, B.C. V6C 3R8  
Telephone (604) 687-4460

## SCHEDULE "A"

### Petitioners

1. Walter Canadian Coal
2. Wolverine Coal
3. Brule Coal ULC
4. Cambrian Energybuild Holdings ULC
5. Willow Creek Coal ULC
6. Pine Valley Coal Ltd.
7. 0541237 B.C. Ltd.

### Partnerships

8. Walter Canadian Coal Partnership
9. Brule Coal Partnership
10. Willow Creek Coal Partnership
11. Wolverine Coal Partnership

This is Exhibit " A " referred to in the affidavit of Miriam Dominguez sworn before me at Vancouver this 29<sup>th</sup> day of March, 2016

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION  
Commissioner for taking Affidavits  
for British Columbia

----- X  
In re: : Chapter 11  
: :  
WALTER ENERGY, INC., et al., : Case No. 15-02741-TOM11  
: :  
Debtors.<sup>1</sup> : Jointly Administered  
: :  
----- X

**ORDER APPROVING GLOBAL SETTLEMENT AMONG THE DEBTORS,  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS,  
STEERING COMMITTEE AND STALKING HORSE  
PURCHASER PURSUANT TO FED. R. BANKR. P. 9019**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for entry of an order (this "Order") pursuant to Bankruptcy Code section 105(a) and Bankruptcy Rule 9019 (A) authorizing and approving the Debtors' entry into a global settlement among the Debtors, the UCC, the Steering Committee and the Stalking Horse Purchaser on the terms and conditions set forth in the Settlement Term Sheet attached to the Order as Exhibit 1; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b) and a related proceeding pursuant to 28 U.S.C. § 157(a); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409;

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors' corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and it appearing that the Global Settlement has been negotiated, proposed and has been or will be entered into by the Parties without collusion, in good faith and at arm's length; and the relief requested being a reasonable exercise of the Debtors' sound business judgment consistent with its fiduciary duties and in the best interests of the Debtors and its estate and creditors; and after due deliberation and sufficient cause appearing therefor; it is hereby

**ORDERED, ADJUDGED, AND DECREED that:**

1. The Motion is GRANTED.
2. The terms of the Global Settlement set forth in the Settlement Term Sheet, a copy of which is attached hereto as Exhibit 1, are approved and are binding on the Parties to the extent provided therein.
3. The Amended Final CCO is hereby modified to the extent necessary for the Parties to implement and effectuate the terms of the Global Settlement.
4. The Global Settlement and the effectiveness of the transactions and agreements contemplated under the Settlement Term Sheet are expressly conditioned upon the Closing of the transactions contemplated under the Stalking Horse Agreement. In the event that the Closing does not occur, the UCC (and solely the UCC) shall have the right to commence a Challenge (as defined in the Amended Final CCO) within fourteen (14) days from the date the UCC receives written notice of termination of the Stalking Horse Agreement.

5. The Debtors are hereby authorized to enter into the Global Settlement and to take any and all actions necessary to implement the terms of the Global Settlement and this Order without further order of the Court.

6. The informal objections to the Global Settlement and Sale Motion raised by BOKF, N.A. ("BOKF"), in its capacity as Trustee, and Collateral Agent for the 11.0%/12.0% Senior Secured Second Lien PIK Toggle Notes due 2020 (the "PIK Notes") issued pursuant to the Indenture dated as of March 27, 2014 (the "Second Lien Indenture") are hereby deemed withdrawn and resolved in consideration for the following: (a) the Stalking Horse Purchaser shall fund and pay to BOKF, at Closing, reasonable indenture trustee fees, expenses and costs (including, but not limited to, attorneys' fees and costs of its professionals) through and including the date of the Closing, arising under or related to the Second Lien Indenture in an amount not to exceed \$275,000; and (b) all distributions on account of or to the PIK Notes, including, but not limited to, the equity in the Stalking Horse Purchaser pursuant to the Global Settlement, shall be distributed to BOKF in accordance with the Second Lien Indenture, except as otherwise agreed to by BOKF and the Debtors, and otherwise distributed as provided in the Second Lien Indenture. Nothing herein shall be deemed to impair, waive, discharge or negatively impact the charging lien pursuant to the Second Lien Indenture.

7. No provision of this Order shall be a ruling or is intended to be construed as a ruling on whether the Stalking Horse Purchaser (or any other purchaser) is a successor to the debtors for purposes of registration and reporting under the federal securities laws (including relevant rules and regulations promulgated thereunder) (the "Federal Securities Laws"); and the Stalking Horse Purchaser's (or any other purchaser's) obligation, if any, to file periodic

public reports with the United States Securities and Exchange Commission shall be governed by applicable provisions of the Federal Securities Laws. Nothing in this Order, the Settlement Term Sheet, or Global Settlement shall relieve or excuse the Debtor, the Stalking Horse Purchaser, or any other party from complying with any and all applicable Federal Securities Laws. Further, the Global Settlement and this Order are not binding upon the SEC with respect to enforcement of its police or regulatory powers and shall not limit the SEC from pursuing any police or regulatory enforcement action.

8. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of this Order.

Dated: December 22, 2015

/s/ Tamara O. Mitchell  
TAMARA O. MITCHELL  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**(Settlement Term Sheet)**



**AMENDED TERM SHEET FOR SETTLEMENT AMONG THE DEBTORS, STEERING COMMITTEE, STALKING HORSE PURCHASER AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF WALTER ENERGY, INC., ET AL**

In consideration for the treatment of unsecured creditors outlined in this term sheet (the “Term Sheet”), the Official Committee of Unsecured Creditors (the “UCC”) appointed in the chapter 11 cases of Walter Energy, Inc. and certain of its direct and indirect subsidiaries (collectively, the “Debtors”) filed in the United States Bankruptcy Court for the Northern District of Alabama (the “Bankruptcy Court”) agrees that it will (i) consent to the *Debtors’ Motion for (A) an Order (I) Establishing Bidding Procedures for the Sale(s) of All, or Substantially All, of the Debtors’ Assets; (II) Approving Bid Protections; (III) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Approving Form and Manner of the Sale, Cure and Other Notices; and (V) Scheduling an Auction and a Hearing to Consider the Approval of the Sale(s); (B) Order(s) (I) Approving the Sale(s) of the Debtors’ Assets Free and Clear of Claims, Liens and Encumbrances; and (II) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Certain Related Relief* [Docket No. 993] (the “Sale Motion”), including the Debtors’ entry into, and consummation of, that certain stalking horse asset purchase agreement (the “Stalking Horse Agreement”) with Coal Acquisition LLC (“Stalking Horse Purchaser”), (ii) waive its right, and agree it shall not, bring any potential Claims and Defenses, Challenges or any other claims that could be asserted by the UCC pursuant to the *Amended Final Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to Prepetition Secured Parties and (C) Granting Related Relief* [Docket No. 797] (the “Amended Final CCO”)<sup>1</sup> and (iii) not challenge or object to the amount, extent, validity or priority of the First Lien Secured Parties’ adequate protection claims and liens, including the relief sought in the *Steering Committee’s Motion to Determine the Value of the First Lien Secured Parties’ Adequate Protection Claims as a Result of the Diminution in Value of the First Lien Secured Parties’ Collateral* [Docket No. 1161].

The terms and conditions described herein are part of a comprehensive proposal, each element of which is consideration for the other elements and is an integral aspect of such proposal. This Term Sheet constitutes a legally binding obligation of the Debtors, Steering Committee, Stalking Horse Purchaser and UCC. The transactions and agreements contemplated by this Term Sheet are subject to, and conditioned upon, (i) approval by the Bankruptcy Court of this settlement and (ii) the Closing of the transactions contemplated under the Stalking Horse Agreement.

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Amended Final CCO or the Sale Motion, as applicable.

## 1. Waiver of Claims, Assumption of Liabilities and Payment of Contractual Cure Obligations

- a. The Debtors and the Stalking Horse Purchaser agree to amend the Stalking Horse Agreement, consistent with Exhibit A hereto, to provide that the Stalking Horse Purchaser will acquire all causes of action of the Debtors under chapter 5 of the Bankruptcy Code as Acquired Assets without increasing the Purchase Price set forth in section 3.1 of the Stalking Horse APA.
- b. The Debtors and the Stalking Horse Purchaser agree to amend the Stalking Horse Agreement, consistent with Exhibit A hereto, to provide that the Stalking Horse Purchaser will waive at Closing all causes of action under chapter 5 of the Bankruptcy Code included as Acquired Assets.
- c. The Stalking Horse Purchaser will assume and agree to discharge and perform, when due, the Assumed Liabilities, including payment of the Cure Costs associated with the Assumed Contracts, in each case pursuant to the Stalking Horse Agreement. For the avoidance of doubt, other than as expressly set forth in the Stalking Horse Agreement, the Stalking Horse Purchaser will not assume, pay, discharge or be responsible for in any way any obligation, liability, executory contract or unexpired lease.

## 2. Stalking Horse Purchaser Equity

- a. The Stalking Horse Purchaser shall issue 1% of common equity in the Stalking Horse Purchaser to the unsecured creditors at Closing, which equity shall be subject to dilution resulting from any equity, warrants or other equity securities issued (i) pursuant to a management incentive plan and (ii) in connection with any exit or post-exit financing. The equity distributed to the Equity Trust (as defined below) will be of the same kind, with the same rights and terms, as the equity distributed to the First Lien Creditors on account of their First Lien Claims and shall be deposited into a newly formed trust (the "Equity Trust") for the benefit of the unsecured creditors. The Stalking Horse Purchaser will, consistent with Exhibit A hereto, contribute \$200,000 at Closing to the Equity Trust to allow the Equity Trust to fulfill its purpose and obligations pending the disposition of the equity interests issued to the Equity Trust pursuant to this Term Sheet.
- b. The equity will be unregistered and, unless otherwise determined by the board of the Stalking Horse Purchaser, not subject to any registration rights. The equity will further be subject to restrictions on transfer and other provisions contained in the operating agreement of the Stalking Horse Purchaser.
- c. Under no circumstances shall the Stalking Horse Purchaser be required to become a public reporting company under the Exchange Act, and the operating agreement of the Stalking Horse Purchaser shall include provisions enforcing the same.
- d. The Stalking Horse Purchaser shall provide to the Equity Trust the right to

participate in any exit financing (including any rights offering) on the same terms as the First Lien Creditors, which participation rights shall be consistent with the Equity Trust's pro forma closing ownership interest in the Stalking Horse Purchaser (i.e. 1% subject to reduction as described above). For the avoidance of doubt, the Equity Trust shall not have any right to (and shall not) participate in any back-stop of any financing or have the ability to purchase any unsubscribed amounts in excess of such 1% subject to reduction referenced above.

- e. The First Lien Secured Parties shall waive any right to receive any portion of the consideration described in this section 2 on account of a deficiency claim relating to their First Lien claims.

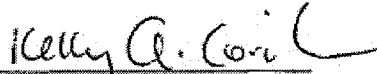
### 3. Fees

- a. The Debtors and the Stalking Horse Purchaser agree to amend the Stalking Horse Agreement, consistent with Exhibit A hereto, to provide that the amount in the Estate Retained Professional Fees Trust shall be increased to provide for the payment of all reasonable, documented, accrued and unpaid fees and expenses incurred by the UCC's retained professionals through the Closing Date in an amount not to exceed \$5.2 million in the aggregate.
- b. The Debtors and the Stalking Horse Purchaser agree to amend the Stalking Horse Agreement, consistent with Exhibit A hereto, to provide for a "Committee Member and Indenture Trustee Fees Trust" to be funded by the Stalking Horse Purchaser at Closing that will be used to pay all reasonable, documented, accrued and unpaid fees and expenses incurred by each of the members of the UCC, the indenture trustees for the unsecured notes, and their retained professionals in connection with their membership on the UCC through the Closing Date in an amount not to exceed \$1.2 million in the aggregate.

*Nothing contained in this Term Sheet shall affect, and each member of the UCC reserves its respective individual rights, with respect to any and all matters relating to these chapter 11 cases, including the right to object to any sale motion that seeks to transfer assets separately from the Debtors' obligations to its employees and/or retirees, whether arising under any pension plan, the Coal Act, or otherwise arising under law.*

**IN WITNESS WHEREOF**, the parties hereto have caused this Term Sheet to be executed and delivered by their duly authorized representatives, as of December 22, 2015.

**PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP,**  
on behalf of Walter Energy, Inc. and its Debtor subsidiaries

By:   
Name: Kelley A. Cornish  
Title: Partner

Signature Page to Term Sheet

MORRISON & FOERSTER LLP, on behalf of the  
Official Committee of Unsecured Creditors of  
Walter Energy, Inc. *et al.*

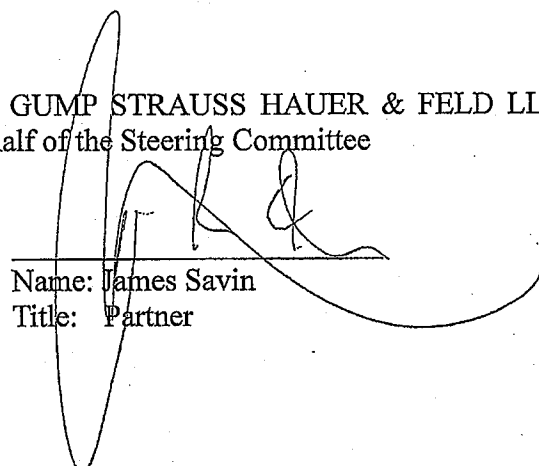
By: 

Name: Lorenzo Marinuzzi  
Title: Partner

Signature Page to Term Sheet

AKIN GUMP STRAUSS HAUER & FELD LLP,  
on behalf of the Steering Committee

By:

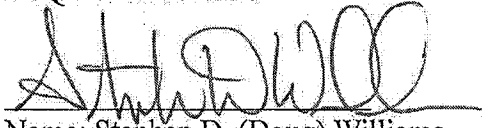


Name: James Savin

Title: Partner

Signature Page to Term Sheet

COAL ACQUISITION LLC

By:   
Name: Stephen D. (Doug) Williams  
Title: Chief Executive Officer

Signature Page to Term Sheet

Exhibit A

**Stalking Horse Agreement Amendment**



## FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

This FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT (this "Amendment"), dated as of December [●], 2015, is entered into by and among Coal Acquisition LLC, a Delaware limited liability company ("Buyer"), Walter Energy, Inc., a Delaware corporation (the "Company"), and the Additional Sellers (together with the Company, "Sellers" and each entity individually a "Seller"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Asset Purchase Agreement (as defined below).

### RECITALS

WHEREAS, the Buyer, the Company and the Additional Sellers have previously entered into that certain Asset Purchase Agreement, dated as of November 5, 2015 (as amended, restated, supplemented or otherwise modified from time to time, the "Asset Purchase Agreement");

WHEREAS, pursuant to Section 12.6 of the Asset Purchase Agreement, the Asset Purchase Agreement may be amended by a written agreement executed by each of the Parties thereto; and

WHEREAS, the parties hereto wish to enter into this Amendment to modify and amend certain provisions of the Asset Purchase Agreement as provided herein.

NOW THEREFORE, in consideration of the foregoing, the terms, conditions and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Amendments to Section 1.1 of the Asset Purchase Agreement.

(a) The following definitions are hereby added to Section 1.1 where alphabetically appropriate:

"Canadian Borrowers" has the meaning set forth in the definition of "Credit Agreement".

"Committee Member and Indenture Trustees Fees" has the meaning set forth in the definition of "Committee Member and Indenture Trustees Fees Escrow Amount".

"Committee Member and Indenture Trustees Fees Escrow" means an escrow established pursuant to an escrow agreement in form and substance satisfactory to Buyer and Sellers which shall be funded by Buyer at Closing in an aggregate amount equal to the Committee Member and Indenture Trustees Fees Escrow Amount; provided, that such escrow agreement shall expressly provide that any funds not actually used for the Committee Member and Indenture Trustees Fees shall be remitted to Buyer on the day that is ninety (90) days after the Closing Date.

"Committee Member and Indenture Trustees Fees Escrow Amount" means the aggregate amount of reasonable, documented, accrued and unpaid fees and out-of-pocket

expenses incurred by each of the members of the UCC, the indenture trustees for the Unsecured Notes, and their retained professionals in connection with their membership on the UCC through the Closing Date (the actual amount of such fees and out-of-pocket expenses being the "Committee Member and Indenture Trustees Fees") in an amount not to exceed \$1,200,000 in the aggregate.

"Equity Trust" means a trust established pursuant to a trust agreement, in form and substance satisfactory to Buyer and Sellers, which shall be funded by Buyer with the Equity Trust Amount to hold common equity of Buyer or its ultimate parent for the benefit of the equity holders of the Equity Trust; provided that such trust agreement shall provide that any funds in the Equity Trust remaining from the Equity Trust Amount shall be remitted to Buyer on the date on which the Equity Trust no longer holds any such common equity.

"Equity Trust Amount" means \$200,000.

"Escrow Agent" means one or more escrow agents acceptable to Buyer and Sellers.

"Estate Retained Professional Fees" has the meaning set forth in the definition of "Estate Retained Professional Fees Escrow Amount".

"Global Settlement" has the meaning set forth in Section 10.8.

"UCC" means the Official Committee of Unsecured Creditors appointed in the Bankruptcy Case.

"Unsecured Notes" means the Company's 9.875% Senior Notes due 2020 and 8.5% Senior Notes due 2021.

(b) The following definitions are hereby amended and restated in their entirety to read as follows:

"Avoidance Action" means any claim, right or cause of action of any Seller arising under chapter 5 of the Bankruptcy Code and any analogous state law claims.

"Credit Agreement" means that certain Credit Agreement dated as of April 1, 2011, by and among the Company, as the U.S. borrower, Western Coal Corp.<sup>1</sup> and Walter Energy Canada Holdings, Inc., as the Canadian borrowers (the "Canadian Borrowers"), the lenders from time to time party thereto, and Morgan Stanley Senior Funding, Inc., as administrative agent, as amended, restated, amended and restated, waived, supplemented or otherwise modified from time to time prior to the date hereof.

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<sup>1</sup> Western Coal Corp. was a Canadian Borrower at the time of entry into the Credit Agreement and related documents. In connection with a 2012 restructuring, substantially all of Western Coal Corp.'s assets were transferred to Walter Canadian Coal Partnership, and Western Coal Corp. was dissolved, with its remaining assets (including its partnership interest in Walter Canadian Coal Partnership) distributed to Walter Energy Canada Holdings, Inc.

“Estate Retained Professional Fees Escrow” means an escrow established pursuant to the Estate Retained Professional Fees Escrow Agreement.

“Estate Retained Professional Fees Escrow Agreement” means an escrow agreement reasonably acceptable to the Parties for the disbursement of the Estate Retained Professional Fees Escrow Amount; provided, that such escrow agreement shall expressly provide that any funds not actually used for the Estate Retained Professional Fees shall be remitted to Buyer on the day that is ninety (90) days after the Closing Date.

“Estate Retained Professional Fees Escrow Amount” means (x) a reasonable estimate of the aggregate amount of reasonable and documented fees and out-of-pocket expenses of, or incurred by, Professionals retained by Sellers pursuant to Section 327 of the Bankruptcy Code or retained by a statutory committee (other than the UCC, the fees of which are covered by clause (y) below) appointed in the Bankruptcy Case (subject to and limited by the Committee Monthly Cap (as defined in the Cash Collateral Orders, as modified to implement and effectuate the terms of the Global Settlement)) and the fees and expenses of the Bankruptcy Administrator (as defined in the Cash Collateral Orders), in each case, that are (i) are accrued and unpaid as of the Closing Date, or (ii) are transaction-based fees owed to PJT Partners LP provided for in an engagement letter in effect as of the Execution Date, which engagement letter has been disclosed to the Buyer prior to the Execution Date, so long as the payment of such transaction-based fees are authorized to be paid by the Bankruptcy Court either before or after the Closing; and (y) a reasonable estimate of the aggregate amount of all reasonable and documented fees and out-of-pocket expenses of, or incurred by, the UCC’s retained Professionals through the Closing Date that are accrued and unpaid as of the Closing Date in an amount not to exceed \$5,200,000 in the aggregate (the actual amount of the fees and out-of-pocket expenses in (x) and (y) being the “Estate Retained Professional Fees”).

“Payroll Amount” means a reasonable estimate of the amount necessary to fund Accrued Payroll, Approved Retention Payments to the extent not assumed by Buyer or paid at Closing and payroll taxes related thereto, which estimate shall be provided by Sellers to Buyer no later than two (2) weeks prior to the Closing Date, which amount shall be deposited on the Closing Date in one or more escrows established pursuant to escrow agreements, dated as of the Closing Date, that are in form and substance satisfactory to Buyer and Sellers and expressly provide for any unused funds to be remitted to Buyer within ninety (90) days of the Closing Date.

“Transaction Documents” means this Agreement, the Assumption Agreement, the Bill of Sale, the Estate Retained Professional Fees Escrow Agreement, the Transition Services Agreement, the other agreements contemplated by Section 4.2 and any other agreements, instruments or documents entered into at the Closing pursuant to this Agreement.

- (c) The definition of “Deferred Matters” is hereby deleted in its entirety.

2. Amendment to Section 2.1(m) of the Asset Purchase Agreement. Section 2.1(m) of the Asset Purchase Agreement is hereby amended by replacing it in its entirety with the following:

“(m) (1) all Avoidance Actions and (2) any other causes of action belonging or available to any of the Sellers or their estates relating to the Business or the Acquired Assets (including the Actions set forth on Schedule 2.1(m)) ((1) and (2) collectively, the “Acquired Actions”); provided, that (x) all Avoidance Actions and (y) any Acquired Actions set forth in clause (2) above against the Sellers, the First Lien Lenders, the First Lien Noteholders, the Second Lien Noteholders, the Credit Agreement Agent, the Indenture Trustee, the Second Lien Trustee, and the directors, officers, managers, employees, shareholders, members and advisors of the First Lien Lenders, the First Lien Noteholders, the Second Lien Noteholders, the Credit Agreement Agent, the Indenture Trustee, the Second Lien Trustee, any of the Sellers and other Persons set forth in the Waiver will be waived effective as of the Closing Date by execution of the Waiver;”

3. Amendment to Section 2.1 of the Asset Purchase Agreement. Sections 2.1 of the Asset Purchase Agreement is hereby amended by deleting the “and” at the end of clause 2.1(y) and replacing clause 2.1(z) in its entirety with the following:

“(z) all of the Sellers’ right and interest in and right to manage the 501(c)(21) Black Lung Benefit Trust funded by the Sellers in respect of Black Lung Liability of the Sellers; and

(aa) two tractors and one wheel dozer to the extent purchased by a Seller from Willow Creek Coal Partnership and Brule Coal Partnership, subsidiaries of a Canadian Borrower, (collectively the “Canadian Partnership Vendors”) pursuant to a bill of sale dated December 2015 (the “Canadian Sale Agreement”) on credit for approximately \$1.2 million (or such other higher amount as may be agreed by the Canadian Partnership Vendors and such Seller and the Buyer), subject to the charges and security interests granted to the Canadian Partnership Vendors or one or more of their affiliates to secure payment of the purchase price, and all of the Seller’s rights and obligations in respect of the Canadian Sale Agreement, including the obligation to pay the purchase price in connection therewith.”

4. Amendment to Section 2.2(q) of the Asset Purchase Agreement. Section 2.2(q) of the Asset Purchase Agreement is hereby amended by replacing it in its entirety with the following:

“(q) any intercompany receivables between one or more of the Sellers and any Debtor (as defined in the Cash Collateral Orders) (for the avoidance of doubt, any intercompany receivables owed to any Seller by the Canadian Borrowers or any of their Subsidiaries are not covered by this Section 2.2(q)); and”

5. Amendment to Section 2.3 of the Asset Purchase Agreement. Section 2.3 of the Asset Purchase Agreement is hereby amended by deleting the “and” at the end of clause 2.3(n), replacing the “.” at the end of clause 2.3(m) with “; and” and adding the following clause:

“(o) all Liabilities under the Canadian Sale Agreement as provided in Section 2.1(aa).”

6. Amendment to Section 2.4(f) of the Asset Purchase Agreement. Section 2.4(f) of the Asset Purchase Agreement is hereby amended by replacing it in its entirety with the following:

“(f) other than Trade Payables and the Estate Retained Professional Fees Escrow Amount, all Liabilities for: (i) costs and expenses incurred or owed in connection with the administration of the Bankruptcy Case (including all Estate Retained Professional Fees); and (ii) all costs and expenses incurred by Sellers in connection with the negotiation, execution and consummation of the transactions contemplated under this Agreement;”

7. Amendment to Section 2.5(a)(i) of the Asset Purchase Agreement. Section 2.5(a)(i) of the Asset Purchase Agreement is hereby amended by adding the following sentence at the end of such section:

“Notwithstanding the foregoing, from and after the Determination Date until February 15, 2016, Buyer shall be permitted to designate in writing any Contracts previously designated as Assumed Contracts to be Excluded Contracts, and upon any such designation such Contracts shall be automatically deemed to be Excluded Contracts.”

8. Amendment to Section 3.3 of the Asset Purchase Agreement. Section 3.3 of the Asset Purchase Agreement is hereby amended by replacing it in its entirety with the following:

3.3 Limitation on Buyer Liability.

“For the avoidance of doubt, except for amounts deposited at Closing pursuant to Section 4.2 (to the extent such amounts are required to be deposited pursuant to this Agreement) or as otherwise expressly provided in this Agreement, Buyer shall have no liability with respect to the Estate Retained Professional Fees Escrow, Estate Retained Professional Fees Escrow Amount (and any other estate professional fees), the Payroll Amount (and any trust established pursuant thereto), the Wind Down Trust, the Wind Down Trust Amount, the Walter Coke Trust, the Walter Coke Trust Amount, the Committee Member and Indenture Trustees Fees Escrow, the Committee Member and Indenture Trustees Fees Escrow Amount, the Equity Trust or the Equity Trust Amount.”

9. Amendment to Section 4.2 of the Asset Purchase Agreement. Section 4.2 of the Asset Purchase Agreement is hereby amended by replacing clauses 4.2(n)-(s) in their entirety with the following:

“(n) to the applicable Escrow Agent, a cash amount equal to the Estate Retained Professional Fees Escrow Amount;

(o) to the applicable Escrow Agent, a cash amount equal to the Payroll Amount;

(p) to the applicable Trustee, a cash amount equal to the Wind Down Trust Amount;

(q) to the applicable Escrow Agent, a cash amount equal to the Committee Member and Indenture Trustees Fees Escrow Amount;

(r) to the applicable Trustee, a cash amount equal to the Equity Trust Amount; and

(s) to the applicable Trustee, a cash amount equal to the Walter Coke Trust Amount, if the Walter Coke Election or the Pre-Closing Walter Coke Election is made and, in any event, the sale of the Walter Coke Assets to a Successful Bidder or Backup Bidder for the Walter Coke Assets does not close.”

10. Amendment to Section 7.8(a) of the Asset Purchase Agreement. Section 7.8(a) of the Asset Purchase Agreement is hereby amended by replacing the first sentence in its entirety with the following:

“From and after the date hereof until one (1) Business Day prior to the Bid Deadline, upon prior written notice to Sellers, Buyer shall have the right to amend Schedule 2.2(a) to designate the Walter Coke Assets to be an Excluded Asset (the “Walter Coke Election”).”

11. Amendment to Article 10 of the Asset Purchase Agreement. Article 10 of the Asset Purchase Agreement is hereby amended by adding the following Section 10.8:

“10.8 Global Settlement. The Buyer shall have complied in all material respects with all obligations required to be performed by the Buyer on or prior to the Closing Date pursuant to the Global Settlement (as defined in the *Debtors’ Motion for an Order Approving Global Settlement Among the Debtors, Official Committee of Unsecured Creditors, Steering Committee and Stalking Horse Purchaser Pursuant to Fed. R. Bankr. P. 9019*).”

12. Amendment to Section 11.1(b) of the Asset Purchase Agreement. Section 11.1(b) of the Asset Purchase Agreement is hereby amended by replacing clauses 11.1(b)(vi)-(viii) in their entirety with the following:

(vi) upon the date that is fourteen (14) days prior to the Bid Deadline, unless Buyer and Sellers shall have reached agreement in their sole discretion on the Sale Order;

(vii) January 31, 2016, unless Buyer and Sellers shall have reached agreement in their sole discretion on the Transition Services Agreement; or

(viii) upon the final, non-appealable ruling or denial of the Governmental Authorizations described in Sections 9.4 and 10.4 and required to be obtained by Closing.”

13. Miscellaneous.

(a) Full Force and Effect. Except as expressly modified or waived by this Amendment, all of the terms, covenants, agreements, conditions and other provisions of the Asset Purchase Agreement shall remain in full force and effect in accordance with their respective terms. As used in the Asset Purchase Agreement, the terms “this Agreement,” “herein,” “hereinafter,” “hereto,” and words of similar import shall mean and refer to, from and after the date of this Amendment, unless the context requires otherwise, the Asset Purchase Agreement as amended by this Amendment.

(b) No Waiver of Rights. Except as expressly provided herein, for the avoidance of doubt, nothing herein shall limit or otherwise modify any: (i) rights of the Buyer under the Asset Purchase Agreement, as amended hereby, or (ii) any obligations of the Sellers to the Buyer under the Asset Purchase Agreement, as amended hereby.

(c) Counterparts; Electronic Signatures. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart to this Amendment by telecopy, e-mail or other electronic means (e.g., “pdf” or “rtf”) shall be effective as an original and shall constitute a representation that an original will be delivered.

(d) GOVERNING LAW. Section 12.10 of the Agreement is incorporated by reference herein, *mutatis mutandis*.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered by their duly authorized representatives as of the date first above written.

COAL ACQUISITION LLC

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page to First Amendment to Asset Purchase Agreement]



WALTER ENERGY INC.

By: \_\_\_\_\_  
Name:  
Title:

ATLANTIC DEVELOPMENT AND CAPITAL, LLC

By: \_\_\_\_\_  
Name:  
Title:

ATLANTIC LEASECO, LLC

By: \_\_\_\_\_  
Name:  
Title:

BLUE CREEK COAL SALES, INC.

By: \_\_\_\_\_  
Name:  
Title:

BLUE CREEK ENERGY, INC.

By: \_\_\_\_\_  
Name:  
Title:

JEFFERSON WARRIOR RAILROAD COMPANY, INC.

By: \_\_\_\_\_  
Name:  
Title:

JIM WALTER HOMES, LLC

By: \_\_\_\_\_  
Name:  
Title:

JIM WALTER RESOURCES, INC.

By: \_\_\_\_\_  
Name:  
Title:

J.W. WALTER, INC.

By: \_\_\_\_\_  
Name:  
Title:

MAPLE COAL CO., LLC

By: \_\_\_\_\_  
Name:  
Title:

SLOSS-SHEFFIELD STEEL & IRON COMPANY

By: \_\_\_\_\_  
Name:  
Title:

SP MACHINE, INC.

By: \_\_\_\_\_  
Name:  
Title:

TAFT COAL SALES & ASSOCIATES, INC.

By: \_\_\_\_\_  
Name:  
Title:

TUSCALOOSA RESOURCES, INC.

By: \_\_\_\_\_  
Name:  
Title:

V Manufacturing Company

By: \_\_\_\_\_  
Name:  
Title:

WALTER BLACK WARRIOR BASIN LLC

By: \_\_\_\_\_  
Name:  
Title:

WALTER COKE, INC.

By: \_\_\_\_\_  
Name:  
Title:

WALTER ENERGY HOLDINGS, LLC

By: \_\_\_\_\_  
Name:  
Title:

WALTER EXPLORATION & PRODUCTION LLC

By: \_\_\_\_\_  
Name:  
Title:

WALTER HOME IMPROVEMENT, INC.

By: \_\_\_\_\_  
Name:  
Title:

WALTER LAND COMPANY

By: \_\_\_\_\_  
Name:  
Title:

WALTER MINERALS, INC.

By: \_\_\_\_\_  
Name:  
Title:

WALTER NATURAL GAS, LLC

By: \_\_\_\_\_  
Name:  
Title:

# Notice Recipients

District/Off: 1126-2  
Case: 15-02741-TOM11

User: ltumlin  
Form ID: pdf000

Date Created: 12/22/2015  
Total: 235

### Recipients submitted to the BNC (Bankruptcy Noticing Center) without an address:

cr Delaware Trust Company, as Indenture Trustee  
aty Lisa Beckerman

TOTAL: 2

### Recipients of Notice of Electronic Filing:

aty	Patrick Darby	pdarby@babac.com
aty	Adrian Zareba	zareba.adrian@pbgc.gov
aty	Adrienne K Walker	awalker@mintz.com
aty	Albert Kass	ecfpleadings@kccllc.com
aty	Amber M. Whillock	awhillock@starneslaw.com
aty	Arthur Lee Tucker	leetucker@leetucker-law.com
aty	Benjamin Shaw Goldman	bgoldman@handarendall.com
aty	Bill D Bensinger	bdbensinger@csattorneys.com
aty	Brian R Walding	bwalding@waldinglaw.com
aty	C Taylor Crockett	taylor@taylorcrockett.com
aty	Catherine L. Steege	csteege@jenner.com
aty	Cathleen C Moore	ccmoore@babac.com
aty	Charles Howard Moses, III	melissa@mosespc.com
aty	Clark R Hammond	chammond@wallacejordan.com
aty	Clyde Ellis Brazeal, III	ebrazeal@joneswalker.com
aty	D Christopher Carson	ccarson@burr.com
aty	Daniel Pasky	dpasky@mcglinchey.com
aty	Daniel D Sparks	ddsparks@csattorneys.com
aty	Daniel D Sparks	ddsparks@csattorneys.com
aty	David B. Anderson	dbanderson@andersonweidner.com
aty	David Lewis Selby, II	dselby@baileyglasser.com
aty	David S. Maxey	dsm@spain-gillon.com
aty	Edward E. May	bankruptcy@maylegalgroup.com
aty	Edward Q Ragland	ed.ragland@usdoj.gov
aty	Edwin Bryan Nichols	bnichols@waldinglaw.com
aty	Eric L. Pruitt	epruitt@bakerdonelson.com
aty	Eric T Ray	eray@balch.com
aty	Frank A. Anderson	anderson.frank@pbgc.gov
aty	Frederick Mott Garfield	fmg@spain-gillon.com
aty	George N. Davies	gdavies@qcwdr.com
aty	Ginger D Cockrell	GINGERCOCKRELL@COMCAST.NET
aty	Glen Marshall Connor	gconnor@qcwdr.com
aty	Grady Milton McCarthy	milton.mccarthy@asmc.alabama.gov
aty	Gregory Michael Taube	greg.taube@nelsonmullins.com
aty	Ira Dizengoff	idizengoff@akingump.com
aty	James Savin	jsavin@akingump.com
aty	James Blake Bailey	jbailey@babac.com
aty	James G Henderson	JamesH@pm-j.com
aty	James H White	jwhite@bakerdonelson.com
aty	Jamie Alisa Wilson	jwilson@bcattys.com
aty	Jason Wayne Bobo	jwb@cabaniss.com
aty	Jay R. Bender	jbender@babac.com
aty	Jayna Partain Lamar	jlamar@maynardcooper.com
aty	Jennifer Brooke Kimble	jkimble@rumberger.com
aty	Jesse S Vogtle, Jr	javogtle@balch.com
aty	Joy Beth Smith	joybeth@maxpopejr.com
aty	Karl John Fingerhood	karl.fingerhood@usdoj.gov
aty	Kenneth Joe Wilson, Jr	kjwilson@wardwilsonlaw.com
aty	Kristine Manoukian	kmanoukian@akingump.com
aty	Kristofor D Sodergren	bknotice@rcslaw.com
aty	Lars A. Peterson	lapeterson@foley.com
aty	Leah M. Eisenberg	eisenberg.leah@arentfox.com
aty	Lee R. Benton	lbenton@bcattys.com
aty	Lindan J. Hill	lhill@gattorney.com
aty	Mark F. Hebbeln	mhebbeln@foley.com
aty	Mark P. Williams	mpwilliams@nwkt.com
aty	Marty L. Brimmage, Jr.	mbrimmage@akingump.com
aty	Marvin E. Franklin	mfranklin@najjar.com
aty	Matthew M Cahill	mcahill@bakerdonelson.com
aty	Max C. Pope, Jr	max@maxpopejr.com
aty	Melissa M. Root	mroot@jenner.com
aty	Michael A Fritz, Sr	bankruptcy@fritzlawalabama.com
aty	Michael B Odom	modom@rumberger.com

aty	Michael E Bybee	mbybee1@bellsouth.net
aty	Michael Leo Hall	mhall@burr.com
aty	Norman Matt Stockman	nstockman@handarendall.com
aty	Patricia Chen	patricia.chen@ropesgray.com
aty	Patrick O'Neal Gray	pgray@sullivangraylaw.com
aty	R. Scott Williams	rswilliams@rumberger.com
aty	Randolph M Fowler	rfowler@pjgf.com
aty	Richard Patrick Carmody	richard.carmody@arlaw.com
aty	Robert A Morgan	rmorgan@rosenharwood.com
aty	Robert A Morgan	rmorgan@rosenharwood.com
aty	Robert Moore Weaver	weaver@qcwdr.com
aty	S Scott Hickman	scotthickmanlaw@gmail.com
aty	Samuel Maples	sam@mtandj.com
aty	Samuel Stephens	sstephens@bcattys.com
aty	Shelley Bush Marmon	samarmon@cjmlaw.com
aty	Stephen B Porterfield	sporterfield@sirote.com
aty	Steven J. Shaw	sshaw@sjslawfirm.com
aty	Susan Reid Sherrill-Beard	sherrill-beards@sec.gov
aty	Thomas Benjamin Humphries	thumphries@sirote.com
aty	Walter F McArdle	wfm@spain-gillon.com
aty	William W Kannel	wkannel@mintz.com
aty	William (Will) Lee Thuston, Jr.	wlt@csattorneys.com

TOTAL: 85

**Recipients submitted to the BNC (Bankruptcy Noticing Center):**

db	Walter Energy, Inc., et al.	3000 Riverchase Galleria	Suite 1700	Birmingham, AL 35244-2359
cr	WHH Real Estate, LLC	c/o Daniel D. Sparks	505 20th Street North	Suite 1800 Birmingham, AL 35203
cr	Cowin & Company, Inc.	c/o Daniel D. Sparks	505 20th Street North	Suite 1800 Birmingham, AL 35203
cr	Nelson Brothers, LLC	c/o Daniel D. Sparks	505 20th Street North	Suite 1800 Birmingham, AL 35203
ba	J. Thomas Corbett	Bankruptcy Administrator	1800 5th Avenue North	Birmingham, AL 35203
cr	United Mine Workers of America	c/o Sharon L. Levine	Lowenstein Sandler, LLP	65 Livingston Avenue & 6 Becker Farm Rd Roseland, NJ 07068
intp	Steering Committee	c/o Akin Gump Strauss Hauer & Feld LLP	One Bryant Park	Bank of America Tower New York, NY 10036-6745
intp	Wilmington Trust, National Association	Corporate Capital Markets	50 South Sixth Street Ste	1290 Minneapolis, MN 55402
intp	Scott Greissman	White & Case LLP	1155 Avenue of the Americas	New York, NY 10036
cr	Alabama State Port Authority	c/o Benjamin S. Goldman, Esquire	2001 Park Place North	Suite 1200 Birmingham, AL 35203
cr	Thompson Tractor Co., Inc.	c/o Benjamin S. Goldman, Esquire	2001 Park Place North	Suite 1200 Birmingham, AL 35203 UNITED STATES
cr	Parker Towing Company, Inc.	c/o Benjamin S. Goldman, Esquire	2001 Park Place North	Suite 1200 Birmingham, AL 35203 UNITED STATES
cr	RGGS Land & Minerals, LTD., L.P.	c/o Robert A. morgan	ROSN HARWOOD, kPA	2200 Jack Warner Parkway, Suite 200 P. O. Box 2727 Tuscaloosa, AL 35403-2727
cr	Birmingham Rail & Locomotive, Co., Inc.	Lindan J. Hill	600 University Park Place	Suite 100 Birmingham, AL 35209
cr	Arch Insurance Company	c/o C. Ellis Brazeal III	Jones Walker LLP	1819 5th Avenue North Suite 1100 Birmingham, AL 35203
cr	Aspen American Insurance Company	c/o C. Ellis Brazeal III	Jones Walker LLP	1819 5th Avenue North Suite 1100 Birmingham, AL 35203
op	Kurtzman Carson Consultants LLC	Attn: James Le	2335 Alaska Ave.	El Segundo, CA 90245
cr	Shook and Fletcher Supply Company, Inc.	c/o Stephen B. Porterfield	Sirote & Permutt, P.C.	2311 Highland Avenue S. Birmingham, AL 35205
cr	G. R. Harsh Sr., Real Estate Holdings, LLC	c/o Milton Harsh	110 Malaga Avenue	Homewood, AL 35209
intp	Janine LaDouceur	264 Commerce Street	Hawthorne, NY 10532	
cr	Hager Oil Company, Inc.	c/o Marvin E. Franklin	Najjar Denaburg, P.C.	2125 Morris Avenue Birmingham, AL 35116
cr	S.E. Belcher, Jr. Private Foundation No. 3	c/o Jesse S. Vogtle, Jr.	PO Box 306	Birmingham, AL 35201
cr	CONSOLIDATED PIPE & SUPPLY CO., INC.	c/o Marvin E. Franklin	Najjar Denaburg, P.C.	2125 Morris Avenue Birmingham, AL 35203
cr	Pension Benefit Guaranty Corporation	1200 K St., NW	Washington, DC 20005	
cr	Automotive Rentals, Inc.	c/o McGlinchey Stafford	10407 Centurion Pkwy. N.	Suite 200 Jacksonville, FL 32256
cr	Jefferson County Department of Health	and/or Mark E. Wilson, MD	1400 Sixth Avenue	South Birmingham, AL 35233
cr	Wesley West Minerals, Ltd.	c/o Robert A. Morgan	ROSEN HARWOOD, PA	2200 Jack Warner Parkway, Suite 200 PO Box 2727 Tusclaoosa, AL 35403-2727
intp	U.S. Securities and Exchange Commission	Atlanta Regional Office	950 East Paces Ferry Road,	N.E. Suite 900 Atlanta, GA 30326-1382
cr	George M. Phillippi	4 Office Park Circle, Suite 313	Birmingham,, AL 35223	

cr Appalachian Power Company d/b/a American Electric Power c/o Eric T. Ray, Esq. Post Office Box  
306 Birmingham, AL 35201

intp Ramsay McCormack Land Co. Inc. c/o Lee R. Benton Benton & Centeno, LLP 2019 3rd Avenue  
North Birmingham, AL 35203

intp Dominion Resources Black Warrior Trust by and through its Trustee, Southwest Bank c/o Lee R.  
Benton Benton & Centeno, LLP 2019 3rd Avenue North Birmingham, AL 35203

cr Comerica Bank Balch & Bingham LLP PO Box 306 Birmingham, AL 35201

cr NATIONAL LABOR RELATIONS BOARD Region 10 Birmingham Resident Office 1130 22nd St S,  
Suite 3400 BIRMINGHAM, AL 35205 JEFFERSON

cr Frontier Enterprises Balch & Bingham LLP PO Box 306 Birmingham, AL 35201

crmc Mayer Electric Supply Co., Inc. Attn: Mark J. Horn 3405 4th Avenue S Birmingham, AL 35222

crmc Delaware Trust Company, as Indenture Trustee Attn: Sandra E. Horwitz 2711 Centerville  
Road Wilmington, DE 19808

crmc UMW 1974 Pension Plan and Trust Attn: David W. Allen 2121 K Street, N.W. Washington, DC  
20037

crmc UMB Bank National Association Attn: Mark Flannagan 1010 Grand Blvd. Kansas City, MO 64106

crmc United Steelworkers Attn: David R. Jury 60 Boulevard of the Allies, Room 807 Pittsburgh, PA  
15222

crmc Hager Oil Company, Inc. Attn: Philip C. Grace P O Box 1429 Jasper, AL 35502-1429

crmc United Mine Workers of America Attn: Grant Crandall 18354 Quantico Gateway Drive, Suite  
200 Triangle, VA 22172

crmc Carroll Engineering Co. Attn: Greg Wolfe 227 Industrial Park Dr Harlan, KY 40831

crmc Consolidated Pipe & Supply Co., Inc. Attn: Chris Harper 1205 Hilltop Parkway Birmingham, AL  
35124

cr Michael Earl Carney 51140 Highway 13 Eldridge, AL 35554

cr Caterpillar Financial Services Corporation Baker, Donelson, Bearman, Caldwell & Berkowitz,  
PC 420 20th Street North Suite 1400 Birmingham, AL 35203

cr Sandvik Mining and Construction USA, LLC 201 17th Street NW Suite 1700 Atlanta, GA 30363

aty Rachel L Webber ROSEN HARWOOD, PA 2200 Jack Warner Parkway, Suite 200 Post Office Box  
2727 Tuscaloosa, AL 35403-2727

crmc Pension Benefit Guaranty Corporation Attn: Michael Strollo 1200 K St. NW Washington, DC 20005

crmc Nelson Brothers LLC Attn: Jason K. Baker 820 Shades Creek Pkwy Ste 2000 Birmingham, AL  
35209

intp Michael Bazley PO Box 20 Tracy, CA 95378

intp GE Capital Information Technology Solutions, Inc f/d/b/a IKON Financial Services Bankruptcy  
Administration 1738 Bass Road P O Box 13708 Macon, GA 31208-3708

intp WHH Real Estate, LLC c/o Lee R. Benton Benton & Centeno, LLP 2019 3rd Avenue  
North Birmingham, AL 35203

cr Alabama Gas Corporation c/o Brian R. Walding Walding LLC 2227 First Avenue South, Suite  
100 Birmingham, AL 35233

cr Jewel D Chaney 2759 County Road 63 South Berry, AL 35546

intp Robert Makohin 73280 Shadow Mountain Dr Unit D Palm Desert, CA 92260

intp Albert Plus, LLC 407 Vantage Point Tuscaloosa, AL 35406

cr EXLP Operating, LLC Stephen B. Porterfield Sirote & Permutt, P.C. 2311 Highland Avenue  
S. Birmingham, AL 35205

intp University of Notre Dame c/o Lee R. Benton Benton & Centeno, LLP 2019 3rd Avenue  
North Birmingham, AL 35203

cr KyKennKee, Inc P.O. Box 290 Vance, AL 35490

crmc Official Committee of Retired Employees of Walter Energy, Inc. Adams and Reese LLP 1901 6th Avenue  
North, Suite 3000 Birmingham, AL 35203 UNITED STATES OF AMERICA

cr Alabama Surface Mining Commission P. O. Box 2390 Jasper, AL 35402-2390

cr Charles M. Cassidy Group, LLC c/o Kristofor D. Sodergren Rosen Harwood, P.A. 2200 Jack  
Warner Parkway, Suite 200 P.O. Box 2727 Tuscaloosa, AL 35403-2727

cr Alabama Department of Conservation and Natural Resources c/o Kristofor D. Sodergren Rosen Harwood,  
P.A. P.O. Box 2727 Tuscaloosa, AL 35403-2727

ex Direct Fee Review LLC W. Joseph Dryer 1000 N West Street Suite 1200 Wilmington, DE 19801

ba Birmingham Water Works 3600 1st Avenue N Birmingham, AL 35222

aty Maynard, Cooper and Gale Maynard, Cooper, & Gale, P.C. 1901 Sixth Avenue North 2400  
AmSouth Harbert Plaza Birmingham, AL 35203-2618

cr Southeast Fabricators, Inc. c/o Kristofor D. Sodergren Rosen Harwood, P.A. P.O. Box  
2727 Tuscaloosa, AL 35403

cr Citizens' Water Service, Inc. PO Box 670 Vance, AL 35490

intp Frankie R. Cicero PO Box 126 Sumiton, AL 35148

cr Preston B. Burnett S. Scott Hickman, Atty at Law, LLC c/o S. Scott  
Hickman 2600 Tuscaloosa, AL 35401

cr Oracle America, Inc. c/o Shawn M. Christianson Buchalter Nemer 55 Second Street, 17th  
Floor San Francisco Ca, 94105 SAN FRANCISCO

intp Barbara Ann Chism 14123 Freeman Rd Tuscaloosa, AL 35405-9579

cr TN Dept of Revenue c/o TN Atty General, Bankruptcy Div PO Box 20207 Nashville, TN  
37202-0207

op AixPartners LLP James A. Mesterharm, Managing Director 2000 Town Center Ste 2400 Southfield,  
MI 48075

op The Segal Company (Eastern States), Inc. 1920 N Street NW Suite 400 Washington, DC

cr ACE American Insurance Company (Creditor) c/o David B. Anderson 505 N. 20th Street, Suite  
1450 Birmingham

cr United States of America Joyce White Vance United States Attorney 1801 Fourth Avenue  
North Birmingham, AL 35203

fa Keightley & Ashner LLP 700 12th Street NW Washington, DC 20005



aud	Ernst & Young LLP	Jeffrey Blankenship	1901 6th Ave N Ste 1200	Birmingham, AL 35203
intp	Ronnie Hodges	5023 Jjim Gogganus Rd.	Dora, AL 35062	
intp	Terry Eulenstein	12116 Narrow Lane	Brookwood, AL 35444	
intp	Vicki R. Craig	1801 Green Street	Selma, AL 36703	
intp	Barbara Warren	116 Daventry Dr	Calera, AL 35040	
intp	Jeffrey Brian Watts	P O Box 505	Resaca, GA 30735	
intp	Franklin Perdue	3105 29th Ave N	Birmingham, AL 35207	
intp	Regions/FNBT	c/o Robert A. Morgan	ROSEN HARWOOD, PA	PO Box 2727 Tuscaloosa,
	AL 35403-2727			
intp	University of Notre Dame du Lac	c/o Robert A. Morgan	ROSEN HARWOOD, PA	PO Box
	2727 Tuscaloosa, AL 35403-2727			
intp	Regions Bank	c/o Robert A. Morgan	ROSEN HARWOOD, PA	PO Box 2727 Tuscaloosa, AL
	35403-2727			
fa	Berkeley Research Group LLC	1800 M St NW Ste 200	Washington, DC 20036	
cr	De-Gas	c/o Jesse S. Vogtle, Jr.	Balch & Bingham LLP	PO Box 306 Birmingham, AL 35201
cr	Pardee Minerals LLC	Baker, Donelson, Bearman	Caldwell & Berkowitz, PC	420 North 20th
	Street Suite 1400	Birmingham, AL 35203		
cr	Airgas USA, LLC	c/o Kathleen M. Miller	Smith, Katzenstein & Jenkins, LLP	PO Box
	410 Wilmington, DE 19801			
cr	Alabama Power Company	c/o Eric T. Ray, Esq.	Balch & Bingham	P. O. Box
	306 Birmingham, AL 35201-0306			
cr	George Hunter Enis	c/o Kyle B. Fonville	Burnett Plaza, Suite 2000	801 Cherry Street, Unit
	46 Fort Worth, TX 76102			
cr	Kforce, Inc.	Cabaniss Johnston	2001 Park Place North	Suite 700 Birmingham, AL 35203
intp	John Jenkins	1229-15th Place SW	Birmingham, AL 35211	
cr	CSX Transportation, Inc.	c/o James H. White, IV	420 20th Street North	Suite
	1400 Birmingham, AL 35203			
cr	Strata Mine Services, LLC	c/o James H. White, IV	Baker Donelson	420 20th Street
	North Suite 1400	Birmingham, AL 35203		
aty	Morrison & Foerster LLP	250 West 55th Street	New York, NY 10019-9601	
aty	Allan J. Arffa	Paul, Weiss, Rifkind, Wharton & Garrison	1285 Avenue of the Americas	New York,
	NY 10019-6064			
aty	Amelia C. Joiner	Morgan, Lewis & Bockius LLP	One Federal St	Boston, MA 02110-1726
aty	Andrew I. Silfen	Arent Fox PLLC	1675 Broadway	New York, NY 10019
aty	Beth Brownstein	Arent Fox PLLC	1675 Broadway	New York, NY 10019
aty	Bobby H Cockrell, Jr	Cockrell & Cockrell	1409 University Blvd	Tuscaloosa, AL 35401-1633
aty	Brett Miller	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY 10019-9601
aty	Bruce D. Buechler	Lowenstein Sandler LLP	65 Livingston Avenue	Roseland, NJ 07068
aty	Charles B. Sklarsky	Jenner & Block LLP	353 North Clark Street	Chicago, IL 60654-3456
aty	Charles L. Kerr	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY 10019-9601
aty	Chris D. Lindstrom	Cooper & Scully, P.C.	815 Walker St. #1040	Houston, TX 77002
aty	Crystal R. Axelrod	Morgan, Lewis & Bockius LLP	1000 Louisiana Street, Suite 4000	Houston, TX
	77002-5005			
aty	Dan Youngblut	Paul, Weiss, Rifkind, Wharton & Garrison	1285 Avenue of the Americas	New
	York, NY 10019-6064			
aty	Daniel J. Leffell	Paul, Weiss, Rifkind, Wharton & Garrison	1285 Avenue of the Americas	New
	York, NY 10019-6064			
aty	David R. Jury	United Steelworkers	Five Gateway Center Room 807	Pittsburgh, PA 15222
aty	Eric J. Taube	Taube Summers Harrison Taylor Meinzer Br	100 Congress Avenue Suite 1800	Austin,
	TX 78701			
aty	Erica J. Richards	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY
	10019-9601			
aty	Harold L. Kaplan	321 North Clark St Ste 2800	Chicago, IL 60654-5313	
aty	J. Alexander Lawrence	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY
	10019-9601			
aty	James A. Newton	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY
	10019-9601			
aty	Jennifer L. Marines	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY
	10019-9601			
aty	John C. Goodchild, III	Morgan, Lewis & Bockius LLP	1701 Market Street	Philadelphia, PA
	19103-2921			
aty	John H. Maddock, III	McGuireWoods LLP	Gateway Plaza	800 East Canal Street Richmond,
	VA 23219			
aty	John R. Mooney	Mooney, Green, Saindon, Murphy & Welch,	1920 L Street NW Suite	
	400 Washington, DC 20036			
aty	Julie M. Koenig	Cooper & Scully, P.C.	815 Walker St. #1040	Houston, TX 77002
aty	Kyle B. Fonville	DECKER JONES, P.C.	Burnett Plaza, Suite 2000	801 Cherry Street, Unit
	46 Fort Worth, TX 76102			
aty	Landon S. Raiford	Jenner & Block LLP	353 North Clark Street	Chicago, IL 60654-3456
aty	Lorenzo Marinuzzi	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY
	10019-9601			
aty	Mark R. Sommerstein	Ropes & Gray LLP	1211 Avenue of the Americas	New York, NY
	10035-8704			
aty	Melissa Y. Boey	Spain & Gillon LLC	101 Park Avenue	New York, NY 10178-0060
aty	Michael E. Collins	Manier & Hood	One Nashville Place	1500 Fourth Ave N Ste
	2200 Nashville, TN 37219			
aty	Nicole M. Brown	Lowenstein Sandler LLP	65 Livingston Avenue	Roseland, NJ 07068
aty	Paul Kizel	Lowenstein Sandler LLP	65 Livingston Avenue	Roseland, NJ 07068

aty	Paul A. Green	Mooney, Green, Saindon, Murphy & Welch,	1920 L Street NW Suite
	400	Washington, DC 20036	
aty	Peter E. Ferraro	1011 W 10th St	Austin, TX 78703
aty	Phillip J. Gross	Lowenstein Sandler LLP	65 Livingston Avenue Roseland, NJ 07068
aty	Rachel Jaffe Mauceri	Morgan, Lewis & Bockius LLP	1701 Market Street Philadelphia, PA
	19103-2921		
aty	Richard M Seltzer	Cohen, Weiss & Simon LLP	330 West 42nd Street New York, NY 10036
aty	Robert N. Kravitz	Paul, Weiss, Rifkind, Wharton & Garrison	1285 Avenue of the Americas New
	York, NY 10019-6064		
aty	Ruth McFarland	Winter McFarland LLC	205 McFarland Circle North Tuscaloosa, AL 35406
aty	S. Jason Teele	Lowenstein Sandler LLP	65 Livingston Avenue Roseland, NJ 07068
aty	Sam H. Poteet, Jr.	Manier & Hood	One Nashville Place 1500 Fourth Ave N Ste
	2200	Nashville, TN 37219	
aty	Samantha Martin	MORRISON & FOERSTER LLP	250 West 55th Street New York, NY
	10019-9601		
aty	Scott C. Williams	Manier & Hood	One Nashville Place 1500 Fourth Ave N Ste
	2200	Nashville, TN 37219	
aty	Sharon L. Levine	Lowenstein Sandler LLP	65 Livingston Avenue Roseland, NJ 07068
aty	T. Michah Dortch	Cooper & Scully, P.C.	900 Jackson, Suite 100 Dallas, TX 75202
aty	Thomas N Ciantra	Cohen, Weiss & Simon LLP	330 West 42nd Street New York, NY 10036
smg	Thomas Corbett	BA Birmingham	1800 5th Avenue North Birmingham, AL 35203
smg	Steering Committee	c/o Akin Gump Strauss Hauer & Feld LLP	One Bryant Park Bank of America
	Tower	New York, NY 10036-6745	

TOTAL: 148

This is Exhibit "B" referred to in the 32  
affidavit of Ninam Dominguez  
sworn before me at Vancouver

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION  
this 29<sup>th</sup> day of March, 2016  
[Signature]  
A Commissioner for taking Affidavits  
for British Columbia

In re: ) Chapter 11  
 )  
WALTER ENERGY, INC., et al.,<sup>1</sup> ) Case No. 15-02741-TOM11  
 )  
Debtors. ) Jointly Administered

**ORDER**

Having considered the December 29, 2015 Motion to Alter or Amend (Doc. 1502) (the "Motion") wherein the Committee of Retired Employees (the "Committee") requested that the Court alter or amend its December 28, 2015 Memorandum Opinion and Order Granting Debtors' Motion for an Order (I) Authorizing the Debtors to (A) Reject Collective Bargaining Agreements, (B) Implement Final Labor Proposals, and (C) Terminate Retiree Benefits; and (II) Granting Related Relief (Doc. 1489) (the "Order"), this Court has determined that the Motion should be granted. Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. The Motion is GRANTED as set forth herein; and
2. The Order is hereby amended so that Paragraph 93 reads as follows:

Here, the UMWA lacks good cause for rejecting the Debtors' Final Proposal. The Debtors' dire circumstances require them to undertake the 363 Sale, or else they will cease operations and all employees' jobs will be lost. And, under the terms of the Stalking Horse APA, the 363 Sale cannot be consummated unless the Successorship Provisions of the UMWA CBA are eliminated. Similarly, the other obligations remaining under the UMWA CBA and Retiree

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors' corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.

Benefits must be terminated upon closing the 363 Sale because the Debtors will not have the money to pay them.

Done and ordered on this 30th day of December 2015.

/s/ Tamara O. Mitchell  
HON. TAMARA O. MITCHELL  
UNITED STATES BANKRUPTCY JUDGE

### Notice Recipients

District/Off: 1126-2  
Case: 15-02741-TOM11

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cr Delaware Trust Company, as Indenture Trustee  
aty Lisa Beckerman

TOTAL: 2

**Recipients of Notice of Electronic Filing:**

aty	Patrick Darby	pdarby@bab.com
aty	Adrian Zareba	zareba.adrian@pbgc.gov
aty	Adrienne K Walker	awalker@mintz.com
aty	Albert Kass	ecfpleadings@kccllc.com
aty	Amber M. Whillock	awhillock@starneslaw.com
aty	Arthur Lee Tucker	leetucker@leetucker-law.com
aty	Benjamin Shaw Goldman	bgoldman@handarendall.com
aty	Bill D Bensinger	bdbensinger@csattorneys.com
aty	Brian R Walding	bwalding@waldinglaw.com
aty	C Taylor Crockett	taylor@taylorcrockett.com
aty	Catherine L. Steege	csteege@jenner.com
aty	Cathleen C Moore	ccmoore@bab.com
aty	Charles Howard Moses, III	melissa@mosespc.com
aty	Clark R Hammond	chammond@wallacejordan.com
aty	Clyde Ellis Brazeal, III	ebrazeal@joneswalker.com
aty	D Christopher Carson	ccarson@burr.com
aty	Daniel Pasky	dpasky@mcglinchey.com
aty	Daniel D Sparks	ddsparks@csattorneys.com
aty	Daniel D Sparks	ddsparks@csattorneys.com
aty	David B. Anderson	dbanderson@andersonweidner.com
aty	David Lewis Selby, II	dselby@baileyglasser.com
aty	David S. Maxey	dsm@spain-gillon.com
aty	Edward E. May	bankruptcy@maylegalgroup.com
aty	Edward Q Ragland	ed.ragland@usdoj.gov
aty	Edwin Bryan Nichols	bnichols@waldinglaw.com
aty	Eric L. Pruitt	epruitt@bakerdonelson.com
aty	Eric T Ray	eray@balch.com
aty	Frank A. Anderson	anderson.frank@pbgc.gov
aty	Frederick Mott Garfield	fmg@spain-gillon.com
aty	George N. Davies	gdavies@qcwdr.com
aty	Ginger D Cockrell	GINGERCOCKRELL@COMCAST.NET
aty	Glen Marshall Connor	gconnor@qcwdr.com
aty	Grady Milton McCarthy	milton.mccarthy@asmc.alabama.gov
aty	Gregory Michael Taube	greg.taube@nelsonmullins.com
aty	Ira Dizengoff	idizengoff@akingump.com
aty	James Savin	jsavin@akingump.com
aty	James Blake Bailey	jbailey@bab.com
aty	James G Henderson	JamesH@pm-j.com
aty	James H White	jwhite@bakerdonelson.com
aty	Jamie Alisa Wilson	jwilson@bcattys.com
aty	Jason Wayne Bobo	jwb@cabaniss.com
aty	Jay R. Bender	jbender@bab.com
aty	Jayna Partain Lamar	jlamar@maynardcooper.com
aty	Jennifer Brooke Kimble	jkimble@rumberger.com
aty	Jesse S Vogtle, Jr	javogtle@balch.com
aty	John W. Mills	john.mills@btlaw.com
aty	Joy Beth Smith	joybeth@maxpopejr.com
aty	Karl John Fingerhood	karl.fingerhood@usdoj.gov
aty	Kelley Askew Gillikin	kelley.gillikin@revenue.alabama.gov
aty	Kenneth Joe Wilson, Jr	kjwilson@wardwilsonlaw.com
aty	Kristine Manoukian	kmanoukian@akingump.com
aty	Kristofor D Sodergren	bknotice@rcslaw.com
aty	Lars A. Peterson	lapeterson@foley.com
aty	Leah M. Eisenberg	eisenberg.leah@arentfox.com
aty	Lee R. Benton	lbenton@bcattys.com
aty	Lindan J. Hill	lhill@gattorney.com
aty	Mark F. Hebbeln	mhebbeln@foley.com
aty	Mark P. Williams	mpwilliams@nwkt.com
aty	Marty L. Brimmage, Jr.	mbrimmage@akingump.com
aty	Marvin E. Franklin	mfranklin@najjar.com
aty	Matthew M Cahill	mcahill@bakerdonelson.com
aty	Max C. Pope, Jr	max@maxpopejr.com
aty	Melissa M. Root	mroot@jenner.com

aty	Michael A Fritz, Sr	bankruptcy@fritzlwalabama.com
aty	Michael B Odom	modom@rumberger.com
aty	Michael E Bybee	mbybee1@bellsouth.net
aty	Michael Leo Hall	mhall@burr.com
aty	Norman Matt Stockman	nstockman@handarendall.com
aty	Patricia Chen	patricia.chen@ropesgray.com
aty	Patrick O'Neal Gray	pgray@sullivangraylaw.com
aty	R. Scott Williams	swilliams@rumberger.com
aty	Randolph M Fowler	rfowler@pjgf.com
aty	Richard Patrick Carmody	richard.carmody@arlaw.com
aty	Robert A Morgan	rmorgan@rosenharwood.com
aty	Robert A Morgan	rmorgan@rosenharwood.com
aty	Robert Moore Weaver	weaver@qcwdr.com
aty	S Scott Hickman	scotthickmanlaw@gmail.com
aty	Samuel Maples	sam@mtandj.com
aty	Samuel Stephens	sstephens@bcattys.com
aty	Shelley Bush Marmon	samarmon@cjmlaw.com
aty	Stephen B Porterfield	sporterfield@sirote.com
aty	Steven J. Shaw	sshaw@sjslawfirm.com
aty	Susan Reid Sherrill-Beard	sherrill-beards@sec.gov
aty	Thomas Benjamin Humphries	thumphries@sirote.com
aty	Walter F McArdle	wfm@spain-gillon.com
aty	William W Kannel	wkannel@mintz.com
aty	William (Will) Lee Thuston, Jr.	wlt@csattorneys.com

TOTAL: 87

**Recipients submitted to the BNC (Bankruptcy Noticing Center):**

db	Walter Energy, Inc., et al.	3000 Riverchase Galleria	Suite 1700	Birmingham, AL 35244-2359
cr	WHH Real Estate, LLC	c/o Daniel D. Sparks	505 20th Street North	Suite 1800 Birmingham, AL 35203
cr	Cowin & Company, Inc.	c/o Daniel D. Sparks	505 20th Street North	Suite 1800 Birmingham, AL 35203
cr	Nelson Brothers, LLC	c/o Daniel D. Sparks	505 20th Street North	Suite 1800 Birmingham, AL 35203
ba	J. Thomas Corbett	Bankruptcy Administrator	1800 5th Avenue North	Birmingham, AL 35203
cr	United Mine Workers of America	c/o Sharon L. Levine	Lowenstein Sandler, LLP	65 Livingston Avenue & 6 Becker Farm Rd Roseland, NJ 07068
intp	Steering Committee	c/o Akin Gump Strauss Hauer & Feld LLP	One Bryant Park	Bank of America Tower New York, NY 10036-6745
intp	Wilmington Trust, National Association	Corporate Capital Markets	50 South Sixth Street Ste 1290	Minneapolis, MN 55402
intp	Scott Greissman	White & Case LLP	1155 Avenue of the Americas	New York, NY 10036
cr	Alabama State Port Authority	c/o Benjamin S. Goldman, Esquire	2001 Park Place North	Suite 1200 Birmingham, AL 35203
cr	Thompson Tractor Co., Inc.	c/o Benjamin S. Goldman, Esquire	2001 Park Place North	Suite 1200 Birmingham, AL 35203 UNITED STATES
cr	Parker Towing Company, Inc.	c/o Benjamin S. Goldman, Esquire	2001 Park Place North	Suite 1200 Birmingham, AL 35203 UNITED STATES
cr	RGGS Land & Minerals, LTD., L.P.	c/o Robert A. morgan	ROSN HARWOOD, kPA	2200 Jack Warner Parkway, Suite 200 P. O. Box 2727 Tuscaloosa, AL 35403-2727
cr	Birmingham Rail & Locomotive, Co., Inc.	Lindan J. Hill	600 University Park Place	Suite 100 Birmingham, AL 35209
cr	Arch Insurance Company	c/o C. Ellis Brazeal III	Jones Walker LLP	1819 5th Avenue North Suite 1100 Birmingham, AL 35203
cr	Aspen American Insurance Company	c/o C. Ellis Brazeal III	Jones Walker LLP	1819 5th Avenue North Suite 1100 Birmingham, AL 35203
op	Kurtzman Carson Consultants LLC	Attn: James Le	2335 Alaska Ave.	El Segundo, CA 90245
cr	Shook and Fletcher Supply Company, Inc.	c/o Stephen B. Porterfield	Sirote & Permutt, P.C.	2311 Highland Avenue S. Birmingham, AL 35205
cr	G. R. Harsh Sr., Real Estate Holdings, LLC	c/o Milton Harsh	110 Malaga Avenue	Homewood, AL 35209
intp	Janine LaDouceur	264 Commerce Street	Hawthorne, NY 10532	
cr	Hager Oil Company, Inc.	c/o Marvin E. Franklin	Najjar Denaburg, P.C.	2125 Morris Avenue Birmingham, AL 35116
cr	S.E. Belcher, Jr. Private Foundation No. 3	c/o Jesse S. Vogtle, Jr.	PO Box 306	Birmingham, AL 35201
cr	CONSOLIDATED PIPE & SUPPLY CO., INC.	c/o Marvin E. Franklin	Najjar Denaburg, P.C.	2125 Morris Avenue Birmingham, AL 35203
cr	Pension Benefit Guaranty Corporation	1200 K St., NW	Washington, DC 20005	
cr	Automotive Rentals, Inc.	c/o McGlinchey Stafford	10407 Centurion Pkwy. N.	Suite 200 Jacksonville, FL 32256
cr	Jefferson County Department of Health	and/or Mark E. Wilson, MD	1400 Sixth Avenue South	Birmingham, AL 35233
cr	Wesley West Minerals, Ltd.	c/o Robert A. Morgan	ROSEN HARWOOD, PA	2200 Jack Warner Parkway, Suite 200 PO Box 2727 Tusclaosa, AL 35403-2727

intp U.S. Securities and Exchange Commission Atlanta Regional Office 950 East Paces Ferry Road,  
N.E. Suite 900 Atlanta, GA 30326-1382

cr George M. Phillippi 4 Office Park Circle, Suite 313 Birmingham,, AL 35223

cr Appalachian Power Company d/b/a American Electric Power c/o Eric T. Ray, Esq. Post Office Box  
306 Birmingham, AL 35201

intp Ramsay McCormack Land Co. Inc. c/o Lee R. Benton Benton & Centeno, LLP 2019 3rd Avenue  
North Birmingham, AL 35203

intp Dominion Resources Black Warrior Trust by and through its Trustee, Southwest Bank c/o Lee R.  
Benton Benton & Centeno, LLP 2019 3rd Avenue North Birmingham, AL 35203

cr Comerica Bank Balch & Bingham LLP PO Box 306 Birmingham, AL 35201

cr NATIONAL LABOR RELATIONS BOARD Region 10 Birmingham Resident Office 1130 22nd St S,  
Suite 3400 BIRMINGHAM, AL 35205 JEFFERSON

cr Frontier Enterprises Balch & Bingham LLP PO Box 306 Birmingham,, AL 35201

cr Mayer Electric Supply Co., Inc. Attn: Mark J. Horn 3405 4th Avenue S Birmingham, AL 35222

cr Delaware Trust Company, as Indenture Trustee Attn: Sandra E. Horwitz 2711 Centerville  
Road Wilmington, DE 19808

cr UMW 1974 Pension Plan and Trust Attn: David W. Allen 2121 K Street, N.W. Washington, DC  
20037

cr UMB Bank National Association Attn: Mark Flannagan 1010 Grand Blvd. Kansas City, MO 64106

cr United Steelworkers Attn: David R. Jury 60 Boulevard of the Allies, Room 807 Pittsburgh, PA  
15222

cr Hager Oil Company, Inc. Attn: Philip C. Grace P O Box 1429 Jasper, AL 35502-1429

cr United Mine Workers of America Attn: Grant Crandall 18354 Quantico Gateway Drive, Suite  
200 Triangle, VA 22172

cr Carroll Engineering Co. Attn: Greg Wolfe 227 Industrial Park Dr Harlan, KY 40831

cr Consolidated Pipe & Supply Co., Inc. Attn: Chris Harper 1205 Hilltop Parkway Birmingham, AL  
35124

cr Michael Earl Carney 51140 Highway 13 Eldridge, AL 35554

cr Caterpillar Financial Services Corporation Baker, Donelson, Bearman, Caldwell & Berkowitz,  
PC 420 20th Street North Suite 1400 Birmingham, AL 35203

cr Sandvik Mining and Construction USA, LLC 201 17th Street NW Suite 1700 Atlanta, GA 30363

aty Rachel L Webber ROSEN HARWOOD, PA 2200 Jack Warner Parkway, Suite 200 Post Office Box  
2727 Tuscaloosa, AL 35403-2727

cr Pension Benefit Guaranty Corporation Attn: Michael Strollo 1200 K St. NW Washington, DC 20005

cr Nelson Brothers LLC Attn: Jason K. Baker 820 Shades Creek Pkwy Ste 2000 Birmingham, AL  
35209

intp Michael Bazley PO Box 20 Tracy, CA 95378

intp GE Capital Information Technology Solutions, Inc f/d/b/a IKON Financial Services Bankruptcy  
Administration 1738 Bass Road P O Box 13708 Macon, GA 31208-3708

intp WHH Real Estate, LLC c/o Lee R. Benton Benton & Centeno, LLP 2019 3rd Avenue  
North Birmingham, AL 35203

cr Alabama Gas Corporation c/o Brian R. Walding Walding LLC 2227 First Avenue South, Suite  
100 Birmingham, AL 35233

cr Jewel D Chaney 2759 County Road 63 South Berry, AL 35546

intp Robert Makohin 73280 Shadow Mountain Dr Unit D Palm Desert, CA 92260

intp Albert Plus, LLC 407 Vantage Point Tuscaloosa, AL 35406

cr EXLP Operating, LLC Stephen B. Porterfield Sirote & Permutt, P.C. 2311 Highland Avenue  
S. Birmingham, AL 35205

intp University of Notre Dame c/o Lee R. Benton Benton & Centeno, LLP 2019 3rd Avenue  
North Birmingham, AL 35203

cr KyKennKee, Inc P.O. Box 290 Vance, AL 35490

cr Official Committee of Retired Employees of Walter Energy, Inc. Adams and Reese LLP 1901 6th Avenue  
North, Suite 3000 Birmingham, AL 35203 UNITED STATES OF AMERICA

cr Alabama Surface Mining Commission P. O. Box 2390 Jasper, AL 35402-2390

cr Charles M. Cassidy Group, LLC c/o Kristofor D. Sodergren Rosen Harwood, P.A. 2200 Jack  
Warner Parkway, Suite 200 P.O. Box 2727 Tuscaloosa, AL 35403-2727

cr Alabama Department of Conservation and Natural Resources c/o Kristofor D. Sodergren Rosen Harwood,  
P.A. P.O. Box 2727 Tuscaloosa, AL 35403-2727

ex Direct Fee Review LLC W. Joseph Dryer 1000 N West Street Suite 1200 Wilmington, DE 19801

ba Birmingham Water Works 3600 1st Avenue N Birmingham, AL 35222

aty Maynard, Cooper and Gale Maynard, Cooper, & Gale, P.C. 1901 Sixth Avenue North 2400

cr AmSouth Harbert Plaza Birmingham, AL 35203-2618

cr Southeast Fabricators, Inc. c/o Kristofor D. Sodergren Rosen Harwood, P.A. P.O. Box  
2727 Tuscaloosa, AL 35403

cr Citizens' Water Service, Inc. PO Box 670 Vance, AL 35490

intp Frankie R. Cicero PO Box 126 Sumiton, AL 35148

cr Preston B. Burnett S. Scott Hickman, Atty at Law, LLC c/o S. Scott  
Hickman 2600 Tuscaloosa, AL 35401

cr Oracle America, Inc. c/o Shawn M. Christianson Buchalter Nemer 55 Second Street, 17th  
Floor San Francisco Ca, 94105 SAN FRANCISCO

intp Barbara Ann Chism 14123 Freeman Rd Tuscaloosa, AL 35405-9579

cr TN Dept of Revenue c/o TN Atty General, Bankruptcy Div PO Box 20207 Nashville, TN  
37202-0207

op AixPartners LLP James A. Mesterharm, Managing Director 2000 Town Center Ste 2400 Southfield,  
MI 48075

op The Segal Company (Eastern States), Inc. 1920 N Street NW Suite 400 Washington, DC

cr ACE American Insurance Company (Creditor) c/o David B. Anderson 505 N. 20th Street, Suite  
1450 Birmingham

cr	United States of America	Joyce White Vance	United States Attorney	1801 Fourth Avenue	
	North Birmingham, AL 35203				
fa	Keightley & Ashner LLP	700 12th Street NW	Washington, DC 20005		
aud	Ernst & Young LLP	Jeffrey Blankenship	1901 6th Ave N Ste 1200	Birmingham, AL 35203	
intp	Ronnie Hodges	5023 Jjim Gogganus Rd	Dora, AL 35062		
intp	Terry Eulenstein	12116 Narrow Lane	Brookwood, AL 35444		
intp	Vicki R. Craig	1801 Green Street	Selma, AL 36703		
intp	Barbara Warren	116 Daventry Dr	Calera, AL 35040		
intp	Jeffrey Brian Watts	P O Box 505	Resaca, GA 30735		
intp	Franklin Perdue	3105 29th Ave N	Birmingham, AL 35207		
intp	Regions/FNBT	c/o Robert A. Morgan	ROSEN HARWOOD, PA	PO Box 2727	Tuscaloosa,
	AL 35403-2727				
intp	University of Notre Dame du Lac	c/o Robert A. Morgan	ROSEN HARWOOD, PA	PO Box	
	2727	Tuscaloosa, AL 35403-2727			
intp	Regions Bank	c/o Robert A. Morgan	ROSEN HARWOOD, PA	PO Box 2727	Tuscaloosa, AL
	35403-2727				
fa	Berkeley Research Group LLC	1800 M St NW Ste 200	Washington, DC 20036		
cr	De-Gas	c/o Jesse S. Vogtle, Jr.	Balch & Bingham LLP	PO Box 306	Birmingham, AL 35201
cr	Pardee Minerals LLC	Baker, Donelson, Bearman	Caldwell & Berkowitz, PC	420 North 20th	
	Street Suite 1400	Birmingham, AL 35203			
cr	Airgas USA, LLC	c/o Kathleen M. Miller	Smith, Katzenstein & Jenkins, LLP	PO Box	
	410	Wilmington, DE 19801			
cr	Alabama Power Company	c/o Eric T. Ray, Esq.	Balch & Bingham	P. O. Box	
	306	Birmingham, AL 35201-0306			
cr	George Hunter Enis	c/o Kyle B. Fonville	Burnett Plaza, Suite 2000	801 Cherry Street, Unit	
	46	Fort Worth, TX 76102			
cr	Kforce, Inc.	Cabaniss Johnston	2001 Park Place North	Suite 700	Birmingham, AL 35203
intp	John Jenkins	1229-15th Place SW	Birmingham, AL 35211		
cr	CSX Transportation, Inc.	c/o James H. White, IV	420 20th Street North	Suite	
	1400	Birmingham, AL 35203			
cr	Strata Mine Services, LLC	c/o James H. White, IV	Baker Donelson	420 20th Street	
	North Suite 1400	Birmingham, AL 35203			
aty	Morrison & Foerster LLP	250 West 55th Street	New York, NY 10019-9601		
aty	Allan J. Arffa	Paul, Weiss, Rifkind, Wharton & Garrison	1285 Avenue of the Americas	New York,	
	NY 10019-6064				
aty	Amelia C. Joiner	Morgan, Lewis & Bockius LLP	One Federal St	Boston, MA 02110-1726	
aty	Andrew I. Silfen	Arent Fox PLLC	1675 Broadway	New York, NY 10019	
aty	Beth Brownstein	Arent Fox PLLC	1675 Broadway	New York, NY 10019	
aty	Bobby H Cockrell, Jr	Cockrell & Cockrell	1409 University Blvd	Tuscaloosa, AL 35401-1633	
aty	Brett Miller	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY 10019-9601	
aty	Bruce D. Buechler	Lowenstein Sandler LLP	65 Livingston Avenue	Roseland, NJ 07068	
aty	Charles B. Sklarsky	Jenner & Block LLP	353 North Clark Street	Chicago, IL 60654-3456	
aty	Charles L. Kerr	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY 10019-9601	
aty	Chris D. Lindstrom	Cooper & Scully, P.C.	815 Walker St. #1040	Houston, TX 77002	
aty	Crystal R. Axelrod	Morgan, Lewis & Bockius LLP	1000 Louisiana Street, Suite 4000	Houston, TX	
	77002-5005				
aty	Dan Youngblut	Paul, Weiss, Rifkind, Wharton & Garrison	1285 Avenue of the Americas	New	
	York, NY 10019-6064				
aty	Daniel J. Leffell	Paul, Weiss, Rifkind, Wharton & Garrison	1285 Avenue of the Americas	New	
	York, NY 10019-6064				
aty	David R. Jury	United Steelworkers	Five Gateway Center Room 807	Pittsburgh, PA 15222	
aty	Eric J. Taube	Taube Summers Harrison Taylor Meinzer Br	100 Congress Avenue Suite 1800	Austin,	
	TX 78701				
aty	Erica J. Richards	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY	
	10019-9601				
aty	Harold L. Kaplan	321 North Clark St Ste 2800	Chicago, IL 60654-5313		
aty	J. Alexander Lawrence	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY	
	10019-9601				
aty	James A. Newton	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY	
	10019-9601				
aty	Jennifer L. Marines	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY	
	10019-9601				
aty	John C. Goodchild, III	Morgan, Lewis & Bockius LLP	1701 Market Street	Philadelphia, PA	
	19103-2921				
aty	John H. Maddock, III	McGuireWoods LLP	Gateway Plaza	800 East Canal Street	Richmond,
	VA 23219				
aty	John R. Mooney	Mooney, Green, Saindon, Murphy & Welch,	1920 L Street NW Suite		
	400	Washington, DC 20036			
aty	Julie M. Koenig	Cooper & Scully, P.C.	815 Walker St. #1040	Houston, TX 77002	
aty	Kyle B. Fonville	DECKER JONES, P.C.	Burnett Plaza, Suite 2000	801 Cherry Street, Unit	
	46	Fort Worth, TX 76102			
aty	Landon S. Raiford	Jenner & Block LLP	353 North Clark Street	Chicago, IL 60654-3456	
aty	Lorenzo Marinuzzi	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY	
	10019-9601				
aty	Mark R. Sommerstein	Ropes & Gray LLP	1211 Avenue of the Americas	New York, NY	
	10035-8704				
aty	Melissa Y. Boey	Spain & Gillon LLC	101 Park Avenue	New York, NY 10178-0060	



aty	Michael E. Collins	Manier & Hood	One Nashville Place	1500 Fourth Ave N Ste
	2200	Nashville, TN 37219		
aty	Nicole M. Brown	Lowenstein Sandler LLP	65 Livingston Avenue	Roseland, NJ 07068
aty	Paul Kizel	Lowenstein Sandler LLP	65 Livingston Avenue	Roseland, NJ 07068
aty	Paul A. Green	Mooney, Green, Saindon, Murphy & Welch,	1920 L Street NW Suite	
	400	Washington, DC 20036		
aty	Peter E. Ferraro	1011 W 10th St	Austin, TX 78703	
aty	Phillip J. Gross	Lowenstein Sandler LLP	65 Livingston Avenue	Roseland, NJ 07068
aty	Rachel Jaffe Mauceri	Morgan, Lewis & Bockius LLP	1701 Market Street	Philadelphia, PA
	19103-2921			
aty	Richard M Seltzer	Cohen, Weiss & Simon LLP	330 West 42nd Street	New York, NY 10036
aty	Robert N. Kravitz	Paul, Weiss, Rifkind, Wharton & Garrison	1285 Avenue of the Americas	New
	York, NY 10019-6064			
aty	Ruth McFarland	Winter McFarland LLC	205 McFarland Circle North	Tuscaloosa, AL 35406
aty	S. Jason Teele	Lowenstein Sandler LLP	65 Livingston Avenue	Roseland, NJ 07068
aty	Sam H. Poteet, Jr.	Manier & Hood	One Nashville Place	1500 Fourth Ave N Ste
	2200	Nashville, TN 37219		
aty	Samantha Martin	MORRISON & FOERSTER LLP	250 West 55th Street	New York, NY
	10019-9601			
aty	Scott C. Williams	Manier & Hood	One Nashville Place	1500 Fourth Ave N Ste
	2200	Nashville, TN 37219		
aty	Sharon L. Levine	Lowenstein Sandler LLP	65 Livingston Avenue	Roseland, NJ 07068
aty	T. Michah Dortch	Cooper & Scully, P.C.	900 Jackson, Suite 100	Dallas, TX 75202
aty	Thomas N Ciantra	Cohen, Weiss & Simon LLP	330 West 42nd Street	New York, NY 10036
sng	Thomas Corbett	BA Birmingham	1800 5th Avenue North	Birmingham, AL 35203
sng	Steering Committee	c/o Akin Gump Strauss Hauer & Feld LLP	One Bryant Park	Bank of America
	Tower	New York, NY 10036-6745		

TOTAL: 148

**No. 2:16-cv-00057-RDP**

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ALABAMA – SOUTHERN DIVISION**

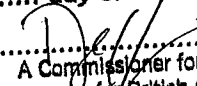
**United Mine Workers of America 1974 Pension Plan and Trust, et al.**

*Appellants,*

v.

**Walter Energy, Inc., et al.,**

*Appellees.*

This is Exhibit "C" referred to in the  
affidavit of Minam Dominguez  
sworn before me at Vancouver  
this 29<sup>th</sup> day of March, 2016  
  
A Commissioner for taking Affidavits  
for British Columbia

On Appeal from the United States Bankruptcy Court  
for the Northern District of Alabama, No. 15-02741-11

**APPELLANTS' REPLY BRIEF**

**QUINN, CONNOR, WEAVER, DAVIES  
& ROUCO LLP**

Glen M. Connor  
George N. Davies  
Two North Twentieth Building  
2-20th Street North, Suite 930  
Birmingham, AL 35203  
(205) 870-9989

**MOONEY, GREEN, SAINDON, MURPHY  
& WELCH, PC**

Paul A. Green  
John R. Mooney  
1920 L Street, NW, Suite 400  
Washington, DC 20036  
(202) 783-0010

**MORGAN, LEWIS & BOCKIUS LLP**

John C. Goodchild, III  
Rachel Jaffe Mauceri  
1701 Market Street  
Philadelphia, PA 19103  
(215) 963-5000

Sabin Willett  
Julia Frost-Davies  
Amelia C. Joiner  
One Federal Street  
Boston, MA 02110  
(617) 341-7700

Bryan M. Killian  
Raechel K. Anglin  
Stephanie Schuster  
2020 K Street, NW  
Washington, DC 20006  
(202) 373-6000

*Counsel for Appellants*

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## INTRODUCTION

Multiple legal errors require reversal of the bankruptcy court's Order under Section 1114 (the "1114 Order").<sup>1</sup> The Appellee-Debtors' argument in opposition is fundamentally flawed in the following key respects:

- *First*—the Coal Act Funds are distinct entities that are neither subsumed within nor represented by the United Mine Workers of America ("UMWA"). The UMWA can neither speak on the Coal Act Funds' behalf nor moot the Coal Act Funds' separate concerns on appeal.
- *Second*—the Coal Act Funds' appeal of the 1114 Order has nothing to do with the pending sale. This appeal addresses the *Debtors'* obligations, not the purchaser's. The record establishes conclusively that an order of the bankruptcy court granting the Debtors an exemption from the Coal Act is not a condition of the sale; an order of this Court reversing the 1114 Order will not derail the sale.
- *Third*—the Debtors misunderstand standing. The 1114 Order impermissibly terminates the Debtors' statutory obligations that finance the Coal Act Funds. It is axiomatic that the Coal Act Funds are directly affected by that order and have standing to challenge it.

Section 1114 of the Bankruptcy Code does not permit the Debtors to terminate their obligations to comply with the Coal Act, and even if it did, the bankruptcy court lacked jurisdiction under the Anti-Injunction Act to terminate

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<sup>1</sup> Now that the UMWA has settled with the purchaser, the bankruptcy court's order under Section 1113 is no longer in issue. What remains is only the 1114 Order, and only as it relates to the Appellee-Debtors' obligations under the Coal Act to Appellants United Mine Workers of America Combined Benefit Fund and United Mine Workers of America 1992 Benefit Plan (the "Coal Act Funds").

Coal Act tax assessments. Furthermore, Section 1114 does not apply in this liquidation proceeding. This Court should reverse.

### **ARGUMENT**

The Debtors devote significant effort to arguing that the 1114 Order directly affects the UMWA and not the Coal Act Funds. Doc. No. 28 (“Debtors’ Br.”) at 6–7, 16–17, 20–21. Coal Act obligations are non-negotiable statutory obligations that cannot be terminated under Section 1114. But the bankruptcy court terminated them anyway, directly affecting the Coal Act Funds. This Court should reverse.

#### **I. THE COAL ACT FUNDS HAVE STANDING TO APPEAL.**

The Debtors incorrectly assert that, because the Funds “are not the authorized representatives and have no role under Sections 1113 and 1114,” the Funds lack standing to challenge the 1114 Order. Debtors’ Br. 1. That begs the question and proves the Coal Act Funds’ point. The Coal Act Funds cannot be “authorized representatives” capable of negotiating changes to benefits under Section 1114 precisely because Coal Act obligations cannot be negotiated. If the Debtors’ logic were sound, the Coal Act Funds could be barred from appealing a bankruptcy court’s order that affects them for the very same reason that the order is reversible: the bankruptcy court had no authority to issue that order. That is not how standing works.

The Coal Act Funds satisfy the “person aggrieved” standard for bankruptcy standing because they have a “direct and substantial interest in the question being appealed.” *In re Ernie Haire Ford, Inc.*, 764 F.3d 1321, 1325 (11th Cir. 2014) (citation omitted). The Coal Act Funds rely on Coal Act premiums for stable operations—and they look to a limited pool of contributors; the Funds have both a *direct and substantial interest* in the bankruptcy court’s 1114 Order. That “financial stake” is enough to meet the “person aggrieved” standard. *In re Westwood Cmty. Two Ass’n*, 293 F.3d 1332, 1335 (11th Cir. 2002).

The Debtors’ assertion that “the 1113/1114 Order does not affect the CA Plans because these plans are backstopped by federal funds, and the Coal Act retirees will continue to receive benefits,” Debtors’ Br. 21, is both mistaken and beside the point for purposes of standing. The Coal Act Funds are surely affected by the loss of a contributing employer and the corresponding increase in the use of limited federal funding to make up the difference; standing to appeal is not limited to those left destitute with no other alternative funding source. Standing extends to those persons for whom a bankruptcy court order “diminishes their property, increases their burdens *or* impairs their rights.” *In re Westwood*, 293 F.3d at 1335 (emphasis added) (citation omitted). The Funds check all those boxes. The 1113/1114 Order impairs the Funds’ rights to tax assessments and, in so doing, diminishes their property. The Funds have standing to appeal.



Finally, the UMWA does not speak for the Funds. It is irrelevant to the Coal Act Funds' standing whether "there is a pending settlement resolving the UMWA's issues under the 1113/1114 Order." Debtors' Br. 22. There is no pending settlement resolving the Coal Act Funds' concerns with the 1114 Order. The termination of the Debtors' Coal Act obligations is a distinct concern that this Court can practically and equitably resolve.

## **II. COAL ACT OBLIGATIONS CANNOT BE MODIFIED OR TERMINATED UNDER SECTION 1114.**

Section 1114 applies only to negotiable retiree benefits: a debtor must *negotiate* proposed modifications with someone who is authorized to agree to those modifications. Statutory obligations, like Coal Act obligations, are non-negotiable, and no one is authorized to modify them. *See In re Sunnyside Coal Co.*, 146 F.3d 1273, 1278 (10th Cir. 1998) (referring to the "undeniably involuntary nature of these assessments as crafted by the Coal Act").

The Debtors offer no sound response. *First*, the Debtors contend that Section 1114 "contains no . . . restrictions" requiring negotiation and that retiree benefits may be modified either through agreement or by court order. Debtors' Br. 33. That is false. Modification cannot happen without negotiation—whether the modification is by mutual agreement or unilaterally imposed by court order. Plainly, the statute anticipates negotiation where the "trustee and the authorized representative . . . agree to modification." 11 U.S.C. § 1114(e)(1)(B). Likewise,

the statute requires negotiation prior to modification by court order. 11 U.S.C. § 1114(e)(1)(A) (modification by court order occurs “pursuant to the provisions of subsections (g) and (h),” which require prior negotiation).

*Second*, the Debtors contend that they complied with the obligation to negotiate with a representative of the Coal Act by negotiating “with the UMWA, the USW and the 1114 Committee.” Debtors’ Br. 33 n.8. None of those entities is a representative of the Coal Act Funds; nor can any of those entities negotiate with respect to non-negotiable Coal Act obligations.

Furthermore, the Debtors incorrectly assert that Coal Act obligations constitute retiree benefits subject to modification under Section 11114 because the “CA Plans were ‘*maintained* or established *in whole or in part* by the debtor’ prepetition through the Debtors’ premium payments and statutory financing requirements.” *Id.* at 32 (emphases in original) (quoting 11 U.S.C. § 1114(a)). The Debtors do not maintain the Coal Act plans.<sup>2</sup> Only Congress can maintain and establish statutory obligations.<sup>3</sup>

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<sup>2</sup> In contrast, the Debtors do maintain “an individual employer plan . . . pursuant to a 1978 or subsequent coal wage agreement.” 26 U.S.C. § 9711.

<sup>3</sup> *In re Horizon Nat. Res. Co.*, 316 B.R. 268, 276 (Bankr. E.D. Ky. 2004) was wrongly decided, and the Debtors’ other citations are distinguishable. *Rose v. Long Island R.R. Pension Plan*, 828 F.2d 910, 914–15 (2d Cir. 1987), *Feinstein v. Lewis*, 477 F. Supp. 1256, 1259–60 (S.D.N.Y. 1979), and *Stalp v. Excellus Health Plan, Inc.*, No. 8:11CV226, 2012 WL 3637257, at \*2 (D. Neb. Aug. 22, 2012) each addressed the terms “established and maintained” under ERISA. To the extent that these cases rely on whether an entity provided financing to determine if that entity maintained the ERISA plan, these cases are wrongly decided. ERISA distinguishes

**III. NO MODIFICATION OF COAL ACT OBLIGATIONS COULD POSSIBLY HAVE BEEN NECESSARY TO PERMIT THE REORGANIZATION OF THE DEBTORS.**

All parties agree that whether the Debtors will continue to have obligations under the Coal Act after the closing of the sales of their remaining operating assets (and planned conversion to Chapter 7) has nothing to do with the sale transactions themselves. Doc. No. 17-10 at 202–04 (Dec. 15, 2015 Hr’g Tr. at 199:25–201:2); *see also* Doc. No. 28-2 at 405 (Dec. 16, 2015 Hr’g Tr. at 161:5–16). The 1114 Order concerns whether the Debtors get an exemption from the Coal Act once the sale transactions have closed—effectively, the importance of the 1114 Order is whether the Chapter 7 estates of the Debtors will have the administrative expense of Coal Act compliance while they finish the liquidation of what remains after the sale of the Alabama mining assets is done. *See In re Chateaugay Corp.*, 53 F.3d 478, 498 (2d Cir. 1995) (accordng administrative priority treatment to Coal Act tax assessments); *In re Sunnyside Coal Co.*, 146 F.3d 1273, 1274 (10th Cir. 1998) (Coal Act premiums are “entitled to administrative priority”). Exempting the Debtors from the Coal Act simply could not be necessary to permit the “reorganization” of the Debtors. To argue otherwise is to make “liquidation” and

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between maintenance and financing. *See* 29 U.S.C. § 1231(a) (referring to plans “established and maintained *or* financed (directly or indirectly)” (emphasis added)).

“reorganization” synonymous, which defies the English language and Eleventh Circuit precedent.

The Debtors concede that, under the plain language, Sections 1113 and 1114 apply as “necessary to permit the *reorganization* of the debtor.” Debtors’ Br. 25 (emphasis in original); *accord* 11 U.S.C. §§ 1113(b)(1)(A) & (c)(1); 11 U.S.C. §§ 1114(f)(1)(A), (g)(1), & (g)(3). The Debtors then contend that, “[i]n the absence of a legislative definition of the term, the Bankruptcy Court correctly ascribed to the term its common meaning.” Debtors’ Br. 25. In the Debtors’ view, the “common meaning” of reorganization is “all types of debt adjustment” including “liquidating.” *Id.* at 26. Not so in the Eleventh Circuit.

The Eleventh Circuit consistently requires courts “to apply the plain meaning canon of statutory construction in interpretation of the Bankruptcy Code.” *In re Am. Steel Prod. Inc.*, 197 F.3d 1354, 1356 (11th Cir. 1999). The plain meaning of “reorganization” is the opposite of full “liquidation”—the former rehabilitates the company; the latter spells its end. *See* Doc. No. 17 (“Coal Act Funds’ Br.”) at 5–6. Full liquidation thus can never be integral to successful reorganization. *See In re Kare Kemical, Inc.*, 935 F.2d 243, 244 (11th Cir. 1991).

The Debtors contend, in response, that the bankruptcy court “did not rely on a ‘contextual’ reading of ‘reorganization,’” but rather interpreted Sections 1113 and 1114 “in a manner consistent with the goal of facilitating a going-concern sale

in the *context* of a reorganization”—*i.e.*, the bankruptcy court read the Sections “contextually” to shoehorn this liquidating proceeding into the term “reorganization.” Debtors’ Br. 28 (emphasis in original). That contention suffers from two fatal flaws as it relates to the 1114 Order.

First, a going-concern sale of separate parts of a debtor’s assets—as in this bankruptcy—is a form of liquidation, not reorganization. *See In re Haw. Telecom Commc'ns, Inc.*, 430 B.R. 564, 597 (Bankr. D. Haw. 2009) (discussing “chapter 7 liquidation . . . pursuant to a forced going-concern sale”). The characterization of this sale as a liquidation has consequences. For example, because Debtors are liquidating their assets, they are not entitled to a discharge under Section 1141. *See* 11 U.S.C. § 1141(d)(3)(A) (“The confirmation of a plan does not discharge a debtor if . . . the plan provides for the liquidation of all or substantially all of the property of the estate.”). Likewise, because the Debtors are liquidating, they are not entitled to terminate their Coal Act obligations under Section 1114. This sale is just one of the many ways in which the Debtors have disposed of assets: some were shut down, sold or idled, Doc. No. 4-5 at 54, 88 (Jan. 6, 2016 Hr’g Tr. at 53:22–25, 87:22–25); and others were grouped into the sale with which the bankruptcy court expressed concern. Bankr. Doc. Nos. 1784, 1863; *see also* Bankr. Doc. No. 1877-3 at 122–29 (Feb. 4, 2016 Hr’g Tr. at 121:25–128:16). It is

improper under well-established Eleventh Circuit precedent to expand the term “reorganization” to include a case like this one.

Second, and more importantly, even if “going-concern sale” always meant “reorganization” no matter the circumstances, the elimination of the Debtors’ Coal Act obligations after the sale closes simply cannot be necessary to the sale closing in the first place. There is no evidence, and it is not even contended by either the Debtors or the Steering Committee, that altering the Debtors’ obligations under the Coal Act—as opposed to the purchaser’s potential obligations, which are at issue in a different appeal of a different order—is in any way necessary to permit the closing of any sale of any of the Debtors’ assets. Therefore, even if the Court is not inclined to reverse on the basis of the legal error of equating this liquidation case with a “reorganization,” it still must reverse because exempting the Debtors from the Coal Act after they sell their assets is not necessary to permit the asset sales.

#### **IV. SUBJECT-MATTER JURISDICTION CANNOT BE WAIVED.**

“Because a party may not waive the defense of subject matter jurisdiction, it is clear that the issue may be raised for the first time on appeal.” Wright & Miller, 13 FED. PRAC. & PROC. JURIS. § 3522 (3d ed.) (citations omitted); *see also Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (“subject-matter jurisdiction, because it involves a court’s power to hear a case, can never be forfeited or waived”) (citation

omitted). The Anti-Injunction Act is a jurisdiction stripping statute. *See Bob Jones Univ. v. Simon*, 416 U.S. 725, 749 (1974) (holding 26 U.S.C. § 7421(a) “deprived the District Court of jurisdiction”). The Debtors’ contention that the Funds’ Anti-Injunction Act argument “is waived,” Debtors’ Br. 35, is meritless.

**V. THE ANTI-INJUNCTION ACT BARS ANY SUIT RESTRAINING THE ASSESSMENT OF TAXES; SUITS UNDER SECTION 1114 ARE NO EXCEPTION.**

The Debtors contend that the “Anti-Injunction Act does not apply to Section 1114 of the Bankruptcy Code.” Debtors’ Br. 35. The Anti-Injunction Act bars “suits,” not statutes. 26 U.S.C. § 7421. To the extent that the Debtors intended to argue that the Anti-Injunction Act does not apply to actions *pursuant to* Section 1114, they are incorrect. The Anti-Injunction Act bars suits under Section 1114. Suits under Section 1114 are not an enumerated exception to the Anti-Injunction Act, and—but for the enumerated exceptions—“no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person . . . .” 26 U.S.C. § 7421(a).

As detailed in Section I.A of the Funds’ Sale Order Reply, incorporated herein, Coal Act premiums are taxes. Every Court of Appeals to consider the question has agreed that Coal Act payments are taxes. *See, e.g., In re Chateaugay Corp.*, 53 F.3d at 496; *In re Sunnyside Coal Co.*, 146 F.3d at 1277–80; *Pittston Co. v. United States*, 199 F.3d 694, 704 (4th Cir. 1999); *Unity Real Estate Co. v.*

*Hudson*, 178 F.3d 649, 675 (3d Cir. 1999). Accordingly, the bankruptcy court lacked jurisdiction to terminate their future assessment.<sup>4</sup>

**CONCLUSION**

For the foregoing reasons, this Court should reverse the bankruptcy court's order under Section 1114 of the Bankruptcy Code authorizing the termination of the obligations imposed on the Debtors under the Coal Act.

Dated: February 15, 2016

Respectfully submitted,

/s/ George N. Davies

Glen M. Connor (Ala. Bar No. 0562-R64G)  
George N. Davies (Ala. Bar No. 3923-A63G)

**QUINN, CONNOR, WEAVER, DAVIES &  
ROUCO LLP**

Two North Twentieth Building  
2 – 20th Street North, Suite 930

Birmingham, AL 35203

Telephone: (205) 870-9989

Facsimile: (205) 803-4143

gconnor@qcwdr.com

gdavies@qcwdr.com

**MOONEY, GREEN, SAINDON, MURPHY &  
WELCH, P.C.**

Paul A. Green (*pro hac vice*)

John R. Mooney (*pro hac vice*)

1920 L Street NW, Suite 400

Washington, DC 20036

Telephone: (202) 783-0010

Facsimile: (202) 783-608

---

<sup>4</sup> Although the Funds maintain their argument that significant procedural defects preclude the Debtors from rejecting their collective bargaining agreement, in light of the pending settlement between the UMWA and the Debtors, the Funds provide no further argument in that regard.



**MORGAN, LEWIS & BOCKIUS LLP**  
John C. Goodchild, III (*pro hac vice*)  
Rachel Jaffe Mauceri (*pro hac vice*)  
1701 Market Street  
Philadelphia, PA 19103  
Telephone: (215) 963-5000  
Facsimile: (215) 963-5001  
jgoodchild@morganlewis.com  
rmauceri@morganlewis.com

Sabin Willett (*pro hac vice*)  
Julia Frost-Davies (*pro hac vice*)  
Amelia C. Joiner (*pro hac vice*)  
One Federal Street  
Boston, MA 02110  
Telephone: (617) 341-7700  
Facsimile: (617) 341-7701  
sabin.willett@morganlewis.com  
julia.frost-davies@morganlewis.com  
amelia.joiner@morganlewis.com

Bryan M. Killian (*pro hac vice*)  
Raechel K. Anglin (*pro hac vice*)  
Stephanie Schuster (*pro hac vice*)  
2020 K Street NW  
Washington, DC 20006  
Telephone: (202) 373-6000  
Facsimile: (202) 373-6001  
bryan.killian@morganlewis.com  
raechel.anglin@morganlewis.com  
stephanie.schuster@morganlewis.com

*Attorneys for Appellants*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Bankruptcy Procedure 8015(a)(7)(C), I hereby certify:

1. this brief complies with the type-volume limitation set forth in Rule 8015(a)(7)(B)(ii) of the Federal Rules of Bankruptcy Procedure because this brief contains 2,847 words, excluding the parts of the brief exempted from the type-volume calculation by Federal Rule of Bankruptcy Procedure 8015(a)(7)(B)(iii); and
2. this brief complies with the typeface and type-style requirements of Rules 8015(a)(5) and 8015(a)(6) of the Federal Rules of Bankruptcy Procedure because this brief is formatted in Microsoft Word 2010 using a proportionally spaced typeface in 14-point Times New Roman font.

Dated: February 15, 2016

/s/ George N. Davies  
George N. Davies

**CERTIFICATE OF SERVICE**

I hereby certify that on February 4, 2016, I filed a true and correct copy of the foregoing using the Court's CM/ECF system, which will notify and serve the following counsel of record:

Scott Burnett Smith  
Patrick Darby  
Jay Bender  
BRADLEY ARANT BOULT  
CUMMINGS LLP  
One Federal Place  
1819 Fifth Avenue  
Birmingham, AL 35203  
Tel: (205) 521-8000

Stephen J. Shimshak  
Kelley A. Cornish  
Claudia R. Tobler  
Robert N. Kravitz  
PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON LLP  
1285 Avenue of the Americas  
New York, NY 10019  
Tel: (212) 373-3000

*Attorneys for Appellees*

Michael L. Hall  
D. Christopher Carson  
BURR & FORMAN  
420 North 20th Street  
Birmingham, AL 35203  
Tel: (205) 458-5367

*Attorneys for Non-Parties Coal  
Acquisition LLC & The Steering  
Committee*

/s/ George N. Davies  
George N. Davies

This is Exhibit " **B** " referred to in the **57**  
affidavit of Miriam Dominguez  
sworn before me at Vancouver  
this 29<sup>th</sup> day of March, 2016

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION  
Commissioner for taking Affidavits  
for British Columbia

----- X  
In re: : Chapter 11  
: :  
WALTER ENERGY, INC., et al., : Case No. 15-02741-TOM11  
: :  
Debtors.<sup>1</sup> : Jointly Administered  
: :  
----- X

**NOTICE OF JOINT MOTION FOR AN ORDER (A) AUTHORIZING PROCEDURES  
TO IMPLEMENT THE GLOBAL SETTLEMENT AND  
(B) GRANTING RELATED RELIEF**

**PLEASE TAKE NOTICE** that on March 17, 2016, Walter Energy, Inc. and its affiliated debtors and debtors-in-possession (each a "**Debtor**" and, collectively, the "**Debtors**"), and the official committee of unsecured creditors appointed in these chapter 11 cases (the "**UCC**"), by and through their respective undersigned counsel, filed the *Joint Motion for an Order (A) Authorizing Procedures to Implement the Global Settlement and (B) Granting Related Relief* (the "**Settlement Procedures Motion**").

**PLEASE TAKE FURTHER NOTICE** that objections or responses to the Settlement Procedures Motion, if any, must be filed with the United States Bankruptcy Court for the Northern District of Alabama, Southern Division, and served so as to be received by the

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors' corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.

undersigned counsel on or before **March 23, 2016 at 4:00 pm (prevailing Central Time)** (the "**Objection Deadline**").<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that a hearing on the Settlement Procedures Motion will be held on **March 24, 2016 at 9:30 a.m. (prevailing Central Time)** before the Honorable Tamara O. Mitchell, at the United States Bankruptcy Court for the Northern District of Alabama, Southern Division, Courtroom #3, Robert S. Vance Federal Building, 1800 Fifth Avenue North, Birmingham, Alabama 35203-2111 (the "**Bankruptcy Court**").

**PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS OR RESPONSES ARE RECEIVED IN ACCORDANCE WITH THE TERMS OF THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE SETTLEMENT PROCEDURES MOTION WITHOUT FURTHER NOTICE OR HEARING.**

*[Remainder of Page Intentionally Left Blank]*

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<sup>2</sup> All deadlines and hearing dates set forth in this notice are based upon the Court's *Order Pursuant to 11 U.S.C. §§ 102 and 105(a) and Bankruptcy Rules 2002(m) and 9007 Implementing Certain Notice and Case Management Procedures* [Docket No. 56].

Dated: March 17, 2016  
 Birmingham, Alabama

BRADLEY ARANT BOULT CUMMINGS LLP

By: /s/ Cathleen C. Moore  
 Jay Bender  
 Cathleen Moore  
 James Bailey  
 One Federal Place  
 1819 Fifth Avenue North  
 Birmingham, Alabama 35203  
 Telephone: (205) 521-8000  
 Email: pdarby@babbc.com, jbender@babbc.com,  
 ccmoore@babbc.com, jbailey@babbc.com

- and -

PAUL, WEISS, RIFKIND, WHARTON &  
 GARRISON LLP  
 Stephen J. Shimshak (*pro hac vice*)  
 Kelley A. Cornish (*pro hac vice*)  
 Claudia R. Tobler (*pro hac vice*)  
 Ann K. Young (*pro hac vice*)  
 1285 Avenue of the Americas  
 New York, New York 10019  
 Telephone: (212) 373-3000  
 Email: sshimshak@paulweiss.com, kcornish@paulweiss.com,  
 ctobler@paulweiss.com, ayoung@paulweiss.com,  
 mrudnick@paulweiss.com

*Counsel to the Debtors and  
 Debtors-in-Possession*

- and -

CHRISTIAN & SMALL LLP  
 Bill D. Bensinger  
 Daniel D. Sparks  
 505 North 20th Street, Suite 1800  
 Birmingham, Alabama 35203-2696  
 Telephone: (205) 250-6626  
 Facsimile: (205) 328-7234  
 E-mail: bdbensinger@csattorneys.com,  
 ddsparks@csattorneys.com

-and-

MORRISON & FOERSTER LLP  
Lorenzo Marinuzzi  
Samantha Martin  
250 West 55th Street  
New York, NY 10019-9601  
Telephone: 212-468-8000  
Email: LMarinuzzi@mofo.com, smartin@mofo.com

*Counsel to the Unsecured Creditors' Committee*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

----- X  
 In re: : Chapter 11  
 :  
 WALTER ENERGY, INC., et al., : Case No. 15-02741-TOM11  
 :  
 Debtors.<sup>1</sup> : Jointly Administered  
 :  
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JOINT MOTION FOR AN ORDER (A) AUTHORIZING PROCEDURES TO  
IMPLEMENT THE GLOBAL SETTLEMENT AND  
(B) GRANTING RELATED RELIEF

The debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”) and the official committee of unsecured creditors appointed in these chapter 11 cases (the “UCC” and together with the Debtors, the “Parties”), by and through their respective undersigned counsel, hereby submit this joint motion (the “Motion”) pursuant to sections 105(a), 501 and 502 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the “Bankruptcy Code”), and rules 3001 through 3004 of the Federal Rules of Bankruptcy Procedure (each a “Bankruptcy Rule,” and collectively, the “Bankruptcy Rules”), for an order (the “Order”) substantially in the form attached as Exhibit A hereto (A) approving procedures to implement the global settlement (the “Global Settlement”) among the Debtors, the UCC, the informal group of certain unaffiliated first lien lenders and first lien noteholders (the “Steering

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors’ corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.



Committee") and Warrior Met Coal, LLC (f/k/a Coal Acquisition LLC) ("Met Coal"), and (B) granting related relief. In support of the Motion, the Parties respectfully represent as follows:<sup>2</sup>

### JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are in sections 105, 501 and 502 of the Bankruptcy Code and Bankruptcy Rules 3001 through 3004.

### BACKGROUND

3. On July 15, 2015 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned cases (collectively, the "Chapter 11 Cases"). The Debtors have continued in possession of their respective properties and to operate and maintain their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

4. On the Petition Date, this Court entered an order consolidating the Chapter 11 Cases for procedural purposes only.

5. The Bankruptcy Administrator for the Northern District of Alabama (the "Bankruptcy Administrator") has appointed two official committees in the Chapter 11 Cases: the UCC, and a committee of retired employees pursuant to Bankruptcy Code sections 1114(c)(2) and 1114(d) (the "Section 1114 Committee").

6. No parties have requested appointment of a trustee or examiner in these Chapter 11 Cases.

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<sup>2</sup> The Debtors will be prepared to present evidence in support of the relief sought herein to the extent this Court deems it necessary or appropriate at the hearing on this Motion.

**RELIEF REQUESTED**

7. By this Motion, the Parties request authority to implement procedures to (i) count claims for purposes of implementing the Global Settlement, (ii) establish, for sake of administrative convenience, a minimum dollar amount for claims below which no distributions on account of the Global Settlement will be made, (iii) provide notice to inform creditors of the proposed participation procedures and the treatment of their claims, (iv) limit the trading of the unsecured and second lien notes issued by the Debtors (collectively, the “**Notes**”), and (v) allow for creditor participation in exit financing on the terms described herein (collectively, the “**Participation Procedures**”). In addition, the Parties request authority to establish procedures for the implementation of the terms of the Global Settlement Order that allow for the payment of fees and expenses of UCC members and their professionals (the “**Global Settlement Implementation Procedures**”).

**A. The Global Settlement**

8. On December 22, 2015, the Court entered an order approving the Global Settlement (the “**Global Settlement Order**”).<sup>3</sup> Pursuant to the Global Settlement, Met Coal will issue 1% of its equity (subject to dilution, as provided in the Global Settlement Order) (the “**Equity**”) to a newly formed trust (the “**Equity Trust**”) for the benefit of unsecured creditors. The Equity Trust will be formed and funded at the closing of the sale of the Debtors’ core assets to Met Coal (the “**Closing**”) which is expected to occur on March 31, 2016.

9. In addition to receipt of the Equity, certain beneficiaries of the Equity Trust will also have the right to participate in any exit financing, including any rights offering, on the same terms as the First Lien Creditors (as defined in the Global Settlement), which participation rights

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<sup>3</sup> See *Order Approving Global Settlement Among the Debtors, Official Committee of Unsecured Creditors, Steering Committee and Stalking Horse Purchaser Pursuant to Fed. R. Bankr. P. 9019* [Docket No. 1456].

will be consistent with the Equity Trust's pro forma closing ownership interest in Met Coal (*i.e.*, 1% subject to dilution). By agreement of Met Coal, certain Equity Trust beneficiaries have until April 15, 2016 to participate in any exit financing.

10. The Parties hereby request authority to calculate claim amounts for purposes of implementing the Global Settlement and to determine an unsecured creditor's eligibility to participate in any exit financing. More specifically, by this Motion, the Parties request authority to (a) calculate the aggregate dollar amount of unsecured claims at \$81.6 billion (the "**Aggregate Claim Amount**") for purposes of making pro rata distributions of Equity and determining a creditor's eligibility to participate in any exit financing, based on application of the procedural rules described below to filed and scheduled claims, and (b) for sake of administrative convenience, not make any distributions from the Equity Trust to claims below \$2 million (the "**Minimum Claim Amount**").

11. By way of overview, approximately 10,700 filed and scheduled proofs of claim exist in the Chapter 11 Cases asserting claims in excess of \$82.0 billion.<sup>4</sup> The estimated distributable value per dollar of claim is expected to be minimal because the estimated recoveries for unsecured creditors will be limited to the 1% of Equity and the corresponding participation right in any exit financing (each, subject to dilution, as provided in the Global Settlement Order). Given the disparity between the amount of scheduled and filed claims and the value of the Equity, the distributable value per dollar of claim will not change absent an unforeseen and material change in the claims pool. The Parties need proposed procedures, however, to calculate the pro rata distribution from the Equity Trust in the first place, and thereby, to implement the

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<sup>4</sup> This includes the partially liquidated portion of liquidated claims, as well as claims that are filed against multiple debtor entities, including on theories of joint and several liability.

Global Settlement. Notably, the relief this Motion requests does not increase or diminish the aggregate distribution to unsecured creditors from the Chapter 11 Estates. Unsecured creditors are not entitled to any recovery from the Chapter 11 Estates beyond that established by the Global Settlement, which is fixed at the Equity and corresponding participation in any exit financing.

**B. The Proposed Procedures**

12. *Calculation of Claims.* To implement the Global Settlement, the Parties propose that the claims and noticing agent (the “**Claims Agent**”) apply the following rules to the filed and scheduled claims in these Chapter 11 Cases (the “**Claims**”) to calculate the Aggregate and Minimum Claim Amounts for purposes of making pro rata distributions of Equity and determining a creditor’s eligibility to participate in any exit financing.<sup>5</sup>

- (a) Scheduled Claims. All Claims scheduled by the Debtors as unsecured Claims, for which no superseding proof of claim was filed, will be counted at their liquidated scheduled amount, regardless of whether the Debtors indicated that any such Claim was contingent, disputed or unliquidated.
- (b) Filed Claims. All Claims for which a proof of claim was filed, and for which no scheduled Claim was matched by the Claims Agent, will be counted at their liquidated, filed amount.
- (c) Superseding Claims. All scheduled or filed Claims for which the Claims Agent determines an amending, superseding Claim was filed or scheduled shall be counted at the liquidated amount (if any) set forth in the amending, superseding Claim, and the amended, superseded Claim will not be counted.
- (d) Duplicate Claims. All filed Claims that the Claims Agent matches to the Debtors’ schedules based on determining an exact match between the name of the creditor, address of the creditor, and the debtor against which the claim is asserted, will be counted at their filed amount, regardless of whether that amount is more or less than the scheduled amount.

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<sup>5</sup> Claims that are included in the Aggregate Claim Amount in accordance with the Participation Procedures shall be referred to as the “**Qualifying Claims**.” A chart identifying the Qualifying Claims is attached hereto as **Exhibit C**.

- (e) Partially Liquidated Claims. All Claims that are counted in accordance with the Participation Procedures, but were scheduled or filed in a partially liquidated amount, will be counted at the partially liquidated amount only.
- (f) Zero Dollar Claims. All Claims that were scheduled or filed at \$0.00, as unliquidated, or where no liquidated dollar amount was indicated, will not be counted.
- (g) Multiple Debtor Claims. All Claims that are calculated in accordance with the Participation Procedures and which the Claims Agent determines based on the face of the Claim assert the same liability against multiple Debtors will be counted against each Debtor in such amount.<sup>6</sup>
- (h) Noteholder Claims. All Claims based on the Debtors' issued and outstanding debt securities will be counted in the liquidated amount of the aggregate Claim filed by the applicable Indenture Trustee for such debt security. For the avoidance of doubt, Noteholder Claims are Multiple Debtor Claims.<sup>7</sup>
- (i) Priority and Administrative Claims. All Claims scheduled or filed as entitled to priority or administrative treatment will be counted as unsecured claims.
- (j) Late Filed Claims. All Claims that the Claims Agent determines were filed after the applicable bar date will not be counted.
- (k) Intercompany Claims. Claims asserted by one Debtor against another Debtor will not be counted.

13. *Notice of Participation Procedures*. Contemporaneous with the service of this Motion, the Claims Agent will serve a copy of the notice attached as Exhibit B (the "Participation Procedures Notice") on all creditors who have a filed or scheduled Claim in these

<sup>6</sup> In calculating the value of Multiple Debtor Claims for purposes of determining whether the Minimum Claim Amount has been met, the Parties will aggregate the value of any Multiple Debtor Claims filed by a single creditor. By way of example, if a creditor filed Claims against 10 Debtors in the amount of \$200,000 each, the amount of \$200,000 would be counted 10 times for an aggregate value of \$2,000,000, thereby meeting the Minimum Claim Amount.

<sup>7</sup> For purposes of these procedures, the Claims associated with the Notes Indentures shall be the Claims set forth in the Indenture Trustees' proofs of claim. However, for distribution purposes with respect to the Equity and the ability to participate in any exit financing, the calculation mechanics described in footnote 8 that are applicable to Multiple Debtor Claims shall apply to the Claims of each beneficial noteholder. Specifically, each Indenture Trustee has filed 16 Claims against the Debtors. Accordingly, each beneficial noteholder holding a principal claim amount of \$125,000 (or more) will meet the Minimum Claim Amount because its principal amount of \$125,000 will be counted 16 times for an aggregate value of \$2,000,000.

Chapter 11 Cases. The Participation Procedures Notice notifies the creditor of the Motion and the Participation Procedures and includes contact information for creditor inquiries.

14. *Procedures to Limit the Trading of Notes.* To determine the allocation of the Equity to beneficial noteholders and to facilitate the beneficial noteholders' participation in any exit financing, the Parties propose to set a record date of April 1, 2016 (the "Record Date") for determining the owner and amount of each Note claim. Any transfer of a beneficial Note claim after the Record Date will not be recognized for purposes of the distribution of Equity and the ability to participate in any exit financing.

15. *Procedures for Participation in Any Exit Financing.* The Claims Agent will use reasonable efforts to send an eligibility notice to unsecured creditors who hold Qualifying Claims and meet the Minimum Claim Amount threshold in accordance with the Participation Procedures to determine whether each unsecured creditor is an "accredited investor" as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended, or is acting for accounts of one or more "accredited investors" as to which it exercises sole investment discretion. Any unsecured creditor (i) who holds Qualifying Claims and meets the Minimum Claim Amount threshold, and (ii) who qualifies as an accredited investor, in each case, within the prescribed time period, will receive materials from Met Coal regarding the terms of its exit financing, and, subject to customary exceptions, including with respect to limiting the maximum number of creditors that can participate in the exit financing in order to comply with applicable law,<sup>8</sup> the ability to participate in up to 1% in the aggregate (subject to dilution, as set forth in the Global Settlement) of any such exit financing. Any equity on account of a qualified unsecured

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<sup>8</sup> If Met Coal determines, in consultation with the Parties, that the exit financing is oversubscribed and the number of participating creditors needs to be limited, the Minimum Claim Amount shall be raised solely with respect to participation in the exit financing to the amount needed to satisfy the creditor limitation.

creditor's participation in any such exit financing shall be issued by Met Coal to the qualified unsecured creditor directly and not to the Equity Trust.

16. *Procedures for Payment of UCC Members' and Professionals' Fees.* In furtherance of the relief granted in the Global Settlement Order and as contemplated by paragraph 3(b) of the Settlement Term Sheet (annexed as Exhibit 1 to the Global Settlement Order), the Parties also seek to implement the Global Settlement Implementation Procedures, pursuant to which the fees and expenses of the indenture trustees for the unsecured notes and their retained professionals, as well as the fees and expenses of the members of the UCC and their retained professionals incurred in connection with their membership on the UCC, may be paid (either directly or through an escrow) through the Closing in an amount not to exceed \$1.2 million in the aggregate, as provided in the Stalking Horse Agreement, as amended, without the need for any further order of this Court or the filing of monthly or interim fee applications, and notwithstanding anything to the contrary in the *Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Docket No. 650].

#### **BASIS FOR RELIEF REQUESTED**

17. Authorizing the implementation of the Participation Procedures to calculate the Aggregate and Minimum Claim Amounts, and a creditor's ability to participate in any exit financing, constitutes a sound exercise of the Debtors' business judgment. See *In re Livore*, No. 08-32423, 2010 Bankr. LEXIS 1653, at \*12 (Bankr. D.N.J. May 6, 2010) ("a trustee is not required to pursue every asset or cause of action belonging to the estate. . . the debtor failed to show. . . that the trustee's determination not to challenge the [claim] was so unreasonable that it is not protected by the business judgment rule"); *In re Smith*, 426 B.R. 435 (Bankr. E.D.N.Y. 2010) (stating "the

trustee need only press claims that, in its business judgment, are in the estate's best interest to pursue").

18. Section 521 of the Bankruptcy Code requires a debtor to file a schedule of its assets and liabilities. 11 U.S.C. § 521. Bankruptcy Rule 3003(b)(1) provides that the schedules of liabilities constitute *prima facie* evidence of the validity and amount of a creditors' claim, and a creditor need not file a proof of claim for such amount, unless the debtor lists the claim as disputed, contingent, or unliquidated. F.R.B.P. 3003(b)(1). Similarly, Bankruptcy Rule 3001(f) provides that a proof of claim executed and filed in accordance with the Bankruptcy Rules constitute *prima facie* evidence of the validity and amount of the claim. Analogously, Section 501(c) of the Bankruptcy Code provides that "[i]f a creditor does not timely file a proof of such creditor's claim, the debtor or the trustee may file a proof of such claim." 11 U.S.C. § 501(c); see In re APCO Liquidating Trust, 370 B.R. 625, 635 (Bankr. D. Del. 2007).

19. The Bankruptcy Code recognizes that contingent and unliquidated claims "shall be estimated" to avoid "unduly delay[ing] the administration of the case." See 11 U.S.C. § 502(c)(1). "In estimating a claim, the bankruptcy court should use whatever method is best suited to the circumstances." *In re Brints Cotton Marketing, Inc.*, 737 F.2d 1338, 1341 (5th Cir. 1984). In the plan context, the Bankruptcy Code expressly contemplates the reduction and allowance of unsecured claims as reasonable and necessary for administrative convenience. See 11 U.S.C. § 1122(b). While Section 1122(b) applies in the context of formulating a chapter 11 plan, its underlying principle that general unsecured claims can be determined without the need for a formal claims process when the cost of doing so exceeds the distributable value of the claim applies here. Analogously, courts routinely confirm chapter 11 plans that do not make distributions to otherwise allowed claims if such claims are less than a dollar threshold below which the administrative cost



of making the distribution exceeds its value. Consistent with these principles, the Global Settlement Order provides that the Debtors are authorized to take all actions necessary to implement the terms of the Global Settlement. Global Settlement Order, at p.3, ¶ 5.

20. Finally, bankruptcy courts have broad authority and discretion under Section 105 of the Bankruptcy Code to enforce the provisions of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

21. Section 105(a) of the Bankruptcy Code codifies the bankruptcy court's inherent equitable powers. See In re Turner, 195 B.R. 476, 479 (Bankr. N.D. Ala. 1996) (Cohen, B.J.) (recognizing a bankruptcy court's "broad, equitable powers" under section 105(a)); Mgmt. Tech. Corp. v. Pardo (In re Mgmt. Tech. Corp.), 56 B.R. 337, 339 (Bankr. D.N.J. 1985) (relying on section 105(a) as a source of authority to resolve disputes which are not expressly addressed by other provisions of the Code). Section 105(a) "assure[s] the bankruptcy court's power to take whatever action is appropriate or necessary in aid of the exercise of [its] jurisdiction." 2 Collier on Bankruptcy, ¶ 105.01, at 105-3 (Henry J. Sommer & Alan N. Resnick eds. 16<sup>th</sup> ed. 2015).

22. Here, application of the Participation Procedures to calculate the Aggregate and Minimum Claim Amounts is appropriate. Given the magnitude of the Debtors' liabilities, and the relatively limited value of the Equity, the majority of Claims fall below the threshold where the cost of making the distribution is warranted. Notably, the distributable value of the Global Settlement per dollar amount of claim is so low that even if the Claims were reconciled and

subjected to a formal claims allowance process, only a material and unforeseen change in the filed claims pool would have any noticeable effect on the distributions that creditors will receive. As a result, the cost of running such a process is not warranted, either by the Debtors or a trustee in a chapter 7 case. Finally, and most significantly, the Debtors do not have the funds to engage in a formal and comprehensive claims allowance process. As a result, the Participation Procedures are the only available option to effectuate and implement the Global Settlement and should be approved.

#### NOTICE

23. Notice of this Motion will be provided to: (i) counsel to the agent for the Debtors' prepetition secured credit facility; (ii) counsel for the indenture trustee for each of the Debtors' outstanding bond issuances; (iii) counsel to the Steering Committee of First Lien Creditors; (iv) counsel to the UCC; (v) counsel to the Section 1114 Committee; (vi) the Bankruptcy Administrator; (vii) all persons and entities that have filed a request for service of filings in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002; (viii) counsel to the Backstop Parties (as defined in the DIP Financing Order); (ix) counsel to the DIP Agent (as defined in the DIP Financing Order); and (x) counsel to Coal Acquisition LLC (n/k/a Warrior Met Coal, LLC). In light of the nature of the relief requested herein, no other or further notice is necessary.

WHEREFORE, the Debtors and the UCC respectfully request that the Court grant the relief requested in this Motion and grant the Debtors and the UCC such other and further relief as this Court deems just and proper.

Dated: March 17, 2016  
Birmingham, Alabama

BRADLEY ARANT BOULT CUMMINGS LLP

By: \_\_\_\_\_ /s/ Cathleen C. Moore  
Jay Bender  
Cathleen Moore  
James Bailey  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Alabama 35203  
Telephone: (205) 521-8000  
Email: jbender@babc.com, ccmooore@babc.com,  
jbailey@babc.com

- and -

PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP  
Stephen J. Shimshak (*pro hac vice*)  
Kelley A. Cornish (*pro hac vice*)  
Claudia R. Tobler (*pro hac vice*)  
Ann K. Young (*pro hac vice*)  
1285 Avenue of the Americas  
New York, New York 10019  
Telephone: (212) 373-3000  
Email: sshimshak@paulweiss.com, kcornish@paulweiss.com,  
ctobler@paulweiss.com, ayoung@paulweiss.com

*Counsel to the Debtors and  
Debtors-in-Possession*

- and -

CHRISTIAN & SMALL LLP  
Bill D. Bensinger  
Daniel D. Sparks  
505 North 20th Street, Suite 1800  
Birmingham, Alabama 35203-2696  
Telephone: (205) 250-6626  
Facsimile: (205) 328-7234  
E-mail: bdbensinger@csattorneys.com,  
ddsparks@csattorneys.com

MORRISON & FOERSTER LLP  
Lorenzo Marinuzzi

Samantha Martin  
250 West 55th Street  
New York, NY 10019-9601  
Telephone: 212-468-8000  
Email: LMarinuzzi@mofocom, smartin@mofocom

*Counsel to the Unsecured Creditors' Committee*

**EXHIBIT A**  
**PROPOSED ORDER**

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

In re:

WALTER ENERGY, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 15-02741-TOM11

Jointly Administered

**ORDER (A) AUTHORIZING PROCEDURES TO IMPLEMENT THE  
GLOBAL SETTLEMENT AND (B) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of Walter Energy, Inc. and its affiliated debtors and debtors-in-possession (each a “**Debtor**” and, collectively, the “**Debtors**”), and the official committee of unsecured creditors appointed in these chapter 11 cases (the “**UCC**”), by and through their respective undersigned counsel, for an order pursuant to Sections 105(a), 501 and 502 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the “**Bankruptcy Code**”), and rules 3001 through 3004 of the Federal Rules of Bankruptcy Procedure (each a “**Bankruptcy Rule**,” and collectively, the “**Bankruptcy Rules**”): (A) authorizing procedures to implement the Global Settlement and (B) granting related relief; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors’ corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that adequate and proper notice of the Motion has been given and that no other or further notice need be given; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, their estates and all Parties in interest; and after due deliberation and sufficient cause appearing therefor; it is hereby ORDERED, ADJUDGED and DECREED that:

1. The Motion is GRANTED.
2. The Participation Procedures, the Global Settlement Implementation Procedures, and the Participation Procedures Notice are approved in their entirety and may be used to calculate the Aggregate Claim Amount and the Minimum Claim Amount.
3. The Global Settlement may be implemented and consummated in accordance with its terms and the terms hereof, including the application of the Participation Procedures, the Aggregate Claim Amount, and the Minimum Claim Amount for purposes of making of distributions on account of the Global Settlement to holders of unsecured claims and the solicitation of creditors in any exit financing.
4. The Record Date is approved for determining the owner and amount of each Note Claim. Any transfer of a beneficial Note Claim after the Record Date will not be recognized for purposes of the distribution of Equity and the ability to participate in any such exit financing.
5. The payment (either directly or through an escrow) of the fees and expenses of the indenture trustees for the unsecured notes and their retained professionals, as well as the fees and expenses of the members of the UCC and their respective retained professionals incurred in connection with such member's membership on the UCC through the Closing in an amount not to exceed \$1.2 million in the aggregate, as provided in the Stalking Horse Agreement, as amended,

is hereby approved, without the need for any further order of this Court or the filing of monthly or interim fee applications, and notwithstanding anything to the contrary in the *Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Docket No. 650].

6. The Debtors, the UCC, and Indenture Trustees under the Notes are authorized to take and direct all actions necessary to implement the Participation Procedures and the Global Settlement Implementation Procedures, including with respect to limiting the trading of Note Claims after the Record Date.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of the Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules for the Northern District of Alabama, Southern Division, are satisfied by such notice.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2016

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TAMARA O. MITCHELL  
UNITED STATES BANKRUPTCY JUDGE



**EXHIBIT B**

**Participation Procedures Notice**

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

----- X  
In re: : Chapter 11  
: :  
WALTER ENERGY, INC., et al., : Case No. 15-02741-TOM11  
: :  
Debtors.<sup>1</sup> : Jointly Administered  
: :  
----- X

**NOTICE TO CREDITORS WHO HAVE FILED OR SCHEDULED UNSECURED CLAIMS AGAINST THE ABOVE CAPTIONED DEBTORS. PARTIES RECEIVING THIS NOTICE MAY DETERMINE CALCULATION OF THEIR CLAIMS FOR PURPOSES OF THE GLOBAL SETTLEMENT.**

On March 17, 2016, Walter Energy, Inc. and its affiliated debtors and debtors-in-possession (each a “Debtor” and, collectively, the “Debtors”), and the official committee of unsecured creditors appointed in these chapter 11 cases (the “UCC”), by and through their respective undersigned counsel, filed the *Joint Motion for an Order (A) Authorizing Procedures to Implement the Global Settlement and (B) Granting Related Relief* (the “**Settlement Procedures Motion**”). A copy of the Settlement Procedures Motion is available at: <http://www.kccllc.net/walterenergy>.

The Settlement Procedures Motion, if approved, authorizes the calculation of unsecured claim amounts for purposes of implementing the court approved global settlement (“**Global Settlement**”) among the Debtors, the UCC, the informal group of certain unaffiliated first lien lenders and first lien noteholders (the “**Steering Committee**”) and Warrior Met Coal, LLC (f/k/a Coal Acquisition LLC) (“**Met Coal**”). Claims that are “Qualifying Claims” under the participation procedures are set forth on Exhibit C attached to the Settlement Procedures Motion.

If you have any questions regarding the treatment of your claim, please contact Kurtzman Carson Consultants, at [WalterEnergyInfo@kccllc.com](mailto:WalterEnergyInfo@kccllc.com), or (866) 967-0679 or, if calling from outside the United States or Canada, at (310) 751-2679.

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors’ corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.

Any objection to the Settlement Procedures Motion must be filed with the Bankruptcy Court by the objection deadline set forth in the notice of Settlement Procedures Motion, and must comply with the case management order entered in these Chapter 11 Cases.

**EXHIBIT C****Qualifying Claims**

Claim No.	Creditor Name	Amount
1844	UMWA 1974 Pension Plan and Trust	\$904,408,043.28
1854	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1857	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1867	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1866	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1848	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1861	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1851	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1853	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1856	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1845	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1863	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1864	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1862	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1858	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1846	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1860	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1847	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1859	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1849	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1850	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1852	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
1855	UMWA 1974 Pension Plan and Trust	\$904,367,132.00
2007	United Mine Workers of America	\$760,822,409.00
1998	United Mine Workers of America	\$760,822,409.00
2008	United Mine Workers of America	\$760,822,409.00
2010	United Mine Workers of America	\$760,822,409.00
2013	United Mine Workers of America	\$760,822,409.00
2023	United Mine Workers of America	\$760,822,409.00
2020	United Mine Workers of America	\$760,822,409.00
2004	United Mine Workers of America	\$760,822,409.00
2018	United Mine Workers of America	\$760,822,409.00
1997	United Mine Workers of America	\$760,822,409.00
2006	United Mine Workers of America	\$760,822,409.00
2009	United Mine Workers of America	\$760,822,409.00
2011	United Mine Workers of America	\$760,822,409.00
2012	United Mine Workers of America	\$760,822,409.00
2014	United Mine Workers of America	\$760,822,409.00
2005	United Mine Workers of America	\$760,822,409.00
2016	United Mine Workers of America	\$760,822,409.00
2003	United Mine Workers of America	\$760,822,409.00
2015	United Mine Workers of America	\$760,822,409.00
2022	United Mine Workers of America	\$760,822,409.00
2021	United Mine Workers of America	\$760,822,409.00
2019	United Mine Workers of America	\$760,822,409.00
2017	United Mine Workers of America	\$760,822,409.00

Claim No.	Creditor Name	Amount
1707	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1708	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1709	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1710	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1711	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1712	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1713	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1714	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1715	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1716	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1717	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1718	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1719	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1720	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1721	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1722	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1723	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1724	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1725	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1726	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1727	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1728	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
1729	Section 1114 Committee of Retired Employees of Walter Energy, Inc.	\$598,100,000.00
5034	Internal Revenue Service	\$554,280,642.00
5037	Internal Revenue Service	\$554,280,642.00

Claim No.	Creditor Name	Amount
1428	Delaware Trust Company, as Trustee	\$410,524,032.00
	Delaware Trust Company (As Successor Trustee to Willmington Trust, National Association)	\$410,524,031.51
	Delaware Trust Company (As Successor Trustee to Willmington Trust, National Association)	\$410,524,031.51
	Delaware Trust Company (As Successor Trustee to Willmington Trust, National Association)	\$410,524,031.51
	Delaware Trust Company (As Successor Trustee to Willmington Trust, National Association)	\$410,524,031.51
	Delaware Trust Company (As Successor Trustee to Willmington Trust, National Association)	\$410,524,031.51
	Delaware Trust Company (As Successor Trustee to Willmington Trust, National Association)	\$410,524,031.51
	Delaware Trust Company (As Successor Trustee to Willmington Trust, National Association)	\$410,524,031.51
	Delaware Trust Company (As Successor Trustee to Willmington Trust, National Association)	\$410,524,031.51
	Delaware Trust Company (As Successor Trustee to Willmington Trust, National Association)	\$410,524,031.51
	Delaware Trust Company (As Successor Trustee to Willmington Trust, National Association)	\$410,524,031.51
	Delaware Trust Company (As Successor Trustee to Willmington Trust, National Association)	\$410,524,031.51
	Delaware Trust Company (As Successor Trustee to Willmington Trust, National Association)	\$410,524,031.51
	Delaware Trust Company (As Successor Trustee to Willmington Trust, National Association)	\$410,524,031.51
	Delaware Trust Company (As Successor Trustee to Willmington Trust, National Association)	\$410,524,031.51
	Delaware Trust Company (As Successor Trustee to Willmington Trust, National Association)	\$410,524,031.51
	Delaware Trust Company (As Successor Trustee to Willmington Trust, National Association)	\$410,524,031.51
781	UMB Bank, N.A.	\$391,419,593.75
	UMB Bank, National Association (As Successor Trustee to Willmington Trust, National Association)	\$391,419,593.75
	UMB Bank, National Association (As Successor Trustee to Willmington Trust, National Association)	\$391,419,593.75
	UMB Bank, National Association (As Successor Trustee to Willmington Trust, National Association)	\$391,419,593.75
	UMB Bank, National Association (As Successor Trustee to Willmington Trust, National Association)	\$391,419,593.75
	UMB Bank, National Association (As Successor Trustee to Willmington Trust, National Association)	\$391,419,593.75
	UMB Bank, National Association (As Successor Trustee to Willmington Trust, National Association)	\$391,419,593.75
	UMB Bank, National Association (As Successor Trustee to Willmington Trust, National Association)	\$391,419,593.75
	UMB Bank, National Association (As Successor Trustee to Willmington Trust, National Association)	\$391,419,593.75
	UMB Bank, National Association (As Successor Trustee to Willmington Trust, National Association)	\$391,419,593.75

Claim No.	Creditor Name	Amount
	UMB Bank, National Association (As Successor Trustee to Willmington Trust, National Association)	\$391,419,593.75
	UMB Bank, National Association (As Successor Trustee to Willmington Trust, National Association)	\$391,419,593.75
	UMB Bank, National Association (As Successor Trustee to Willmington Trust, National Association)	\$391,419,593.75
	UMB Bank, National Association (As Successor Trustee to Willmington Trust, National Association)	\$391,419,593.75
	UMB Bank, National Association (As Successor Trustee to Willmington Trust, National Association)	\$391,419,593.75
	UMB Bank, National Association (As Successor Trustee to Willmington Trust, National Association)	\$391,419,593.75
	UMB Bank, National Association (As Successor Trustee to Willmington Trust, National Association)	\$391,419,593.75
1627	BOKF N.A., not in its individual capacity but solely capacity as Trustee, and Collateral Agent et al.	\$360,500,000.00
5096	BOKF N.A., not in its individual capacity but solely capacity as Trustee, and Collateral Agent et al.	\$360,500,000.00
5105	BOKF N.A., not in its individual capacity but solely capacity as Trustee, and Collateral Agent et al.	\$360,500,000.00
5104	BOKF N.A., not in its individual capacity but solely capacity as Trustee, and Collateral Agent et al.	\$360,500,000.00
5107	BOKF N.A., not in its individual capacity but solely capacity as Trustee, and Collateral Agent et al.	\$360,500,000.00
5106	BOKF N.A., not in its individual capacity but solely capacity as Trustee, and Collateral Agent et al.	\$360,500,000.00
5097	BOKF N.A., not in its individual capacity but solely capacity as Trustee, and Collateral Agent et al.	\$360,500,000.00
5098	BOKF N.A., not in its individual capacity but solely capacity as Trustee, and Collateral Agent et al.	\$360,500,000.00
5102	BOKF N.A., not in its individual capacity but solely capacity as Trustee, and Collateral Agent et al.	\$360,500,000.00
5100	BOKF N.A., not in its individual capacity but solely capacity as Trustee, and Collateral Agent et al.	\$360,500,000.00
5109	BOKF N.A., not in its individual capacity but solely capacity as Trustee, and Collateral Agent et al.	\$360,500,000.00
5108	BOKF N.A., not in its individual capacity but solely capacity as Trustee, and Collateral Agent et al.	\$360,500,000.00
5103	BOKF N.A., not in its individual capacity but solely capacity as Trustee, and Collateral Agent et al.	\$360,500,000.00
5110	BOKF N.A., not in its individual capacity but solely capacity as Trustee, and Collateral Agent et al.	\$360,500,000.00
5101	BOKF N.A., not in its individual capacity but solely capacity as Trustee, and Collateral Agent et al.	\$360,500,000.00
5099	BOKF N.A., not in its individual capacity but solely capacity as Trustee, and Collateral Agent et al.	\$360,500,000.00
5038	Department of the Treasury - Internal Revenue Service	\$325,218,785.00
5048	Department of the Treasury - Internal Revenue Service	\$325,218,785.00



Claim No.	Creditor Name	Amount
5042	Department of the Treasury - Internal Revenue Service	\$325,218,785.00
5039	Internal Revenue Service	\$325,218,785.00
5043	Internal Revenue Service	\$325,218,785.00
5047	Internal Revenue Service	\$325,218,785.00
5044	Internal Revenue Service	\$325,218,785.00
5045	Internal Revenue Service	\$325,218,785.00
5046	Internal Revenue Service	\$325,144,530.00
5036	Internal Revenue Service	\$293,717,032.00
5040	Internal Revenue Service	\$293,717,032.00
183	Cory Watson Attorneys on behalf of all environmental claimants listed on the attached exhibits A & B	\$241,334,574.00
5038	Department of the Treasury - Internal Revenue Service	\$229,061,857.00
5048	Department of the Treasury - Internal Revenue Service	\$229,061,857.00
5042	Department of the Treasury - Internal Revenue Service	\$229,061,857.00
5043	Internal Revenue Service	\$229,061,857.00
5036	Internal Revenue Service	\$229,061,857.00
5034	Internal Revenue Service	\$229,061,857.00
5047	Internal Revenue Service	\$229,061,857.00
5037	Internal Revenue Service	\$229,061,857.00
5035	U.S. Environmental Protection Agency	\$114,000,000.00
2223	George Brian Beason	\$100,000,000.00
1639	Pension Benefit Guaranty Corporation	\$95,700,000.00
1639	Pension Benefit Guaranty Corporation	\$95,700,000.00
1639	Pension Benefit Guaranty Corporation	\$95,700,000.00
1639	Pension Benefit Guaranty Corporation	\$95,700,000.00
1639	Pension Benefit Guaranty Corporation	\$95,700,000.00
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1639	Pension Benefit Guaranty Corporation	\$95,700,000.00
1639	Pension Benefit Guaranty Corporation	\$95,700,000.00
1639	Pension Benefit Guaranty Corporation	\$95,700,000.00
1639	Pension Benefit Guaranty Corporation	\$95,700,000.00
1639	Pension Benefit Guaranty Corporation	\$95,700,000.00
5044	Internal Revenue Service	\$66,249,619.00
5040	Internal Revenue Service	\$66,249,619.00
5046	Internal Revenue Service	\$66,249,619.00

Claim No.	Creditor Name	Amount
5045	Internal Revenue Service	\$66,249,619.00
38	State of Alabama, Department of Revenue	\$66,024,853.78
1391	Aspen American Insurance Company	\$27,945,298.86
1388	Aspen Specialty Insurance Company	\$25,313,621.86
1840	UMWA 1993 Benefit Plan	\$20,507,090.93
	Cardem Insurance Co., Ltd.	\$14,327,927.85
964	United Steel Workers	\$11,990,168.00
306	Mueller Water Products, Inc.	\$11,605,430.00
952	Arch Insurance Company	\$11,598,428.00
953	Arch Insurance Company	\$11,598,428.00
954	Arch Insurance Company	\$11,598,428.00
982	Arch Insurance Company	\$11,598,428.00
985	Arch Insurance Company	\$11,598,428.00
987	Arch Insurance Company	\$11,598,428.00
4989	State of Alabama, Department of Revenue	\$11,042,695.92
5008	State of Alabama, Department of Revenue	\$11,042,695.92
1642	Pension Benefit Guaranty Corporation	\$10,207,500.00
1642	Pension Benefit Guaranty Corporation	\$10,207,500.00
1642	Pension Benefit Guaranty Corporation	\$10,207,500.00
1642	Pension Benefit Guaranty Corporation	\$10,207,500.00
1642	Pension Benefit Guaranty Corporation	\$10,207,500.00
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1642	Pension Benefit Guaranty Corporation	\$10,207,500.00
1642	Pension Benefit Guaranty Corporation	\$10,207,500.00
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
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1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00

<b>Claim No.</b>	<b>Creditor Name</b>	<b>Amount</b>
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
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1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
1640	Pension Benefit Guaranty Corporation	\$10,200,000.00
1555	Walter Investment Management Corporation	\$9,214,476.87
1389	Caterpillar Financial Services	\$8,754,709.90
1263	Louise Moore and a Class of Property Owners as stated in Moore v. Walter Energy cv-01391-SLB N.D. Alabama	\$8,000,000.00
1405	Aspen American Insurance Company	\$7,559,650.86
726	Jones, Rose Marie	\$7,000,000.00
38	State of Alabama, Department of Revenue	\$3,859,618.70
1999	United Mine Workers of America	\$3,417,755.00
2000	United Mine Workers of America	\$3,417,755.00
2001	United Mine Workers of America	\$3,417,755.00
2002	United Mine Workers of America	\$3,417,755.00
1414	Aspen American Insurance Company	\$3,338,538.86
	Supplemental Pension Plan SERP	\$3,333,064.00
36	State of Alabama, Department of Revenue	\$2,778,529.10
1625	Pension Benefit Guaranty Corporation	\$2,369,250.00
1625	Pension Benefit Guaranty Corporation	\$2,369,250.00
1625	Pension Benefit Guaranty Corporation	\$2,369,250.00
1625	Pension Benefit Guaranty Corporation	\$2,369,250.00
1625	Pension Benefit Guaranty Corporation	\$2,369,250.00
1625	Pension Benefit Guaranty Corporation	\$2,369,250.00
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1625	Pension Benefit Guaranty Corporation	\$2,369,250.00
1625	Pension Benefit Guaranty Corporation	\$2,369,250.00
1625	Pension Benefit Guaranty Corporation	\$2,369,250.00
1625	Pension Benefit Guaranty Corporation	\$2,369,250.00
1625	Pension Benefit Guaranty Corporation	\$2,369,250.00
1625	Pension Benefit Guaranty Corporation	\$2,369,250.00

Claim No.	Creditor Name	Amount
1625	Pension Benefit Guaranty Corporation	\$2,369,250.00
1625	Pension Benefit Guaranty Corporation	\$2,369,250.00
1625	Pension Benefit Guaranty Corporation	\$2,369,250.00
1625	Pension Benefit Guaranty Corporation	\$2,369,250.00
1625	Pension Benefit Guaranty Corporation	\$2,369,250.00
1446	Alabama Power Company	\$2,337,110.74
	JOY GLOBAL UNDERGROUND MINING LLC	\$2,190,760.98
476	Gloria Jenkins	\$2,000,000.00
1154	Miller, Chris V. JWR	\$2,000,000.00

This is Exhibit " ~~E~~ " referred to in the affidavit of Miniam Dominguez 790 sworn before me at Vancouver this 29<sup>th</sup> day of March, 2016

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION  
Commissioner for taking Affidavits  
for British Columbia

In re:  
  
WALTER ENERGY, INC., *et al.*,<sup>1</sup>  
  
Debtors.

Chapter 11  
  
Case No. 15-02741-TOM11  
  
Jointly Administered

**ORDER (A) AUTHORIZING PROCEDURES TO IMPLEMENT THE GLOBAL SETTLEMENT AND (B) GRANTING RELATED RELIEF**

Upon consideration of the motion (the "Motion")<sup>2</sup> of Walter Energy, Inc. and its affiliated debtors and debtors-in-possession (each a "Debtor" and, collectively, the "Debtors"), and the official committee of unsecured creditors appointed in these chapter 11 cases (the "UCC"), by and through their respective undersigned counsel, for an order pursuant to Sections 105(a), 501 and 502 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the "Bankruptcy Code"), and rules 3001 through 3004 of the Federal Rules of Bankruptcy Procedure (each a "Bankruptcy Rule," and collectively, the "Bankruptcy Rules"): (A) authorizing procedures to implement the Global Settlement and (B) granting related relief; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these cases and the Motion in this district is

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors' corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that adequate and proper notice of the Motion has been given and that no other or further notice need be given; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, their estates and all Parties in interest; and after due deliberation and sufficient cause appearing therefor; it is hereby ORDERED, ADJUDGED and DECREED that:

1. The Motion is GRANTED.
2. The Participation Procedures, the Global Settlement Implementation Procedures, and the Participation Procedures Notice are approved in their entirety and may be used to calculate the Aggregate Claim Amount and the Minimum Claim Amount.
3. The Global Settlement may be implemented and consummated in accordance with its terms and the terms hereof, including the application of the Participation Procedures, the Aggregate Claim Amount, and the Minimum Claim Amount for purposes of making of distributions on account of the Global Settlement to holders of unsecured claims and the solicitation of creditors in any exit financing.
4. The Record Date is approved for determining the owner and amount of each Note Claim. Any transfer of a beneficial Note Claim after the Record Date will not be recognized for purposes of the distribution of Equity and the ability to participate in any such exit financing.
5. For purposes of the distribution procedures and the Participation Procedures set forth in the Motion, the parties acknowledge that the Claims related to the Notes issued pursuant to the Second Lien Indenture dated as of March 27, 2014 are being treated as unsecured claims.
6. The payment (either directly or through an escrow) of the fees and expenses of the indenture trustees for the unsecured notes and their retained professionals, as well as the fees and

expenses of the members of the UCC and their respective retained professionals incurred in connection with such member's membership on the UCC through the Closing in an amount not to exceed \$1.2 million in the aggregate, as provided in the Stalking Horse Agreement, as amended, is hereby approved, without the need for any further order of this Court or the filing of monthly or interim fee applications, and notwithstanding anything to the contrary in the *Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Docket No. 650].

7. Nothing in the Motion, this Order, the Participation Procedures, the Global Settlement Implementation Procedures or the Global Settlement shall constitute, or be deemed to be, an allowance or adjudication of any claim against the Debtors under Section 502 of the Bankruptcy Code or under any other applicable statute, rule, regulation or procedure, and all rights of the Debtor and any party in interest to object to any claim under Section 502(a) of the Bankruptcy Code are reserved in full; provided however, that a subsequent claim allowance or disallowance (if any) shall not change the Aggregate or Minimum Claim Amounts, or Qualifying Claims, for purposes of the Participation Procedures.

8. The Debtors, the UCC, and Indenture Trustees under the Notes are authorized to take and direct all actions necessary to implement the Participation Procedures and the Global Settlement Implementation Procedures, including with respect to limiting the trading of Note Claims after the Record Date.

9. Notice of the Motion as provided therein shall be deemed good and sufficient notice of the Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules for the Northern District of Alabama, Southern Division, are satisfied by such notice.

10. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

11. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: March 24, 2016

/s/ Tamara O. Mitchell  
TAMARA O. MITCHELL  
United States Bankruptcy Judge