

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:

ARCH COAL, INC., *et al.*,

Debtors.¹

**Chapter 11
Case No. 16-40120-705**

(Jointly Administered)

**Objection Deadline:
May 4, 2016**

**Hearing Date and Time:
May 11, 2016, 1:00 p.m.
(Prevailing Central Time)**

**Hearing Location:
Courtroom 7 South**

**NOTICE OF THE DEBTORS' MOTION FOR
AUTHORIZATION TO ASSUME CERTAIN EXECUTORY CONTRACTS**

PLEASE TAKE NOTICE that this motion is scheduled for hearing on May 11, 2016, at 1:00 p.m. (prevailing Central Time), in Bankruptcy Courtroom 7 South, in the Thomas F. Eagleton U.S. Courthouse, 111 South Tenth Street, St. Louis, Missouri 63102.

WARNING: ANY RESPONSE OR OBJECTION TO THIS MOTION MUST BE FILED WITH THIS COURT BY MAY 4, 2016. A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE.

¹ The Debtors are listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

**DEBTORS' MOTION FOR AUTHORIZATION TO
ASSUME CERTAIN EXECUTORY CONTRACTS**

NOW COME Arch Coal, Inc. and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) and move this Court for entry of an order authorizing them to assume certain executory contracts. In support of this motion (the “**Motion**”), the Debtors show the Court as follows:

Relief Requested

1. By this Motion, and pursuant to sections 105 and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors seek entry of an order (the “**Proposed Order**”) ² authorizing them to assume the executory contracts identified on Exhibit A ³ attached hereto (collectively, the “**Agreements**”), ⁴ with such assumptions to take effect as of the Assumption Effective Dates identified thereon.

Jurisdiction

2. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. Venue of this proceeding is proper pursuant to 28 U.S.C. § 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

² A copy of the Proposed Order will be provided to the Notice Parties (as defined below) and made available on the Debtors’ Case Information Website at <https://cases.primeclerk.com/archcoal>.

³ Due to the voluminous nature of and confidentiality provisions in the Agreements, the Debtors have not attached copies of the Agreements to this Motion. Upon request, the Debtors will provide copies of the Agreements to the Court and the U.S. Trustee. The descriptions of any Agreements included in Exhibit A hereto are provided for convenience only and do not modify, or represent the Debtors’ interpretation of, the terms of any Agreements.

⁴ The term “Agreement” as used in this Motion include any modifications, amendments, addenda or supplements thereto or restatements thereof. With respect to each Agreement, Exhibit A hereto sets forth, among other things, the applicable counterparty for the Agreement (each, a “**Counterparty**”), the requested effective date of assumption (the “**Assumption Effective Date**”) for the Agreements and the amount pursuant to section 365(b)(1)(a) of the Bankruptcy Code that the Debtors propose to pay to each Counterparty to each Assumed Agreements to cure any and all defaults thereunder (the “**Cure Cost**”).

Background

3. The Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on January 11, 2016 (the “**Petition Date**”).

4. The Debtors have continued in possession of their property and have continued to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner.

5. The Debtors’ cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* entered by this Court on January 13, 2016 in each of the Debtors’ cases.

6. The Court entered the *Order Establishing Certain Notice, Case Management and Administrative Procedures* on January 21, 2016 [ECF No. 155] (the “**Case Management Order**”).

7. Additional information about the Debtors’ businesses and the events leading up to the Petition Date can be found in the *Declaration of John T. Drexler, Senior Vice President and Chief Financial Officer of Arch Coal, Inc.*, filed on the Petition Date [ECF No. 3], which is incorporated herein by reference.

The Agreements

8. Following the Petition Date, the Debtors, in consultation with their financial advisor, FTI Consulting Inc., began a rigorous review of their purchasing agreements to determine whether each contract should be assumed on its existing terms, rejected or potentially renegotiated with the applicable counterparty. As the Debtors have identified purchasing agreements for potential assumption, the Debtors’ purchasing team has commenced discussions with the Counterparties regarding the terms of such assumption. These discussions have been

overseen by the Debtors' senior management, whose approval is required prior to extending any offers to the Counterparties.

9. As a result of these discussions, the Debtors have determined in their business judgment, and to the best of their ability based on the information currently available, that the assumption of the Agreements set forth on Exhibit A hereto and described below is appropriate and represents the best available alternative under the circumstances. The Agreements concern the purchase of goods and services that are essential to the Debtors' future business operations and restructuring efforts. In exchange for the assumption of the Agreements, each of the Counterparties has agreed to a reduced Cure Cost and certain improvements in the Debtors' payment terms and in the discount obtained on payment of invoices. The total Cure Cost to assume the Agreements is \$744,350.

10. Additionally, certain of the Agreements may also have realizable value for the Debtors in the market. To preserve and maximize this potential market value, the Debtors expressly reserve the right to sell and assign each Agreement at a future date pursuant to sections 363 and 365(f) of the Bankruptcy Code.

Basis for Relief

The Assumption of the Agreements Is an Appropriate Exercise of the Debtors' Business Judgment and Should Be Authorized

11. Section 365(a) of the Bankruptcy Code provides that a debtor may assume or reject an executory contract or unexpired lease, subject to the Court's approval. The Eighth Circuit has adopted the business judgment rule for determining whether a debtor is justified in assuming or rejecting an executory contract. *See Crystalin, LLC v. Selma Props. Inc. (In re Crystalin, LLC)*, 293 B.R. 455, 463 (B.A.P. 8th Cir. 2003); *In re Steaks to Go, Inc.*, 226 B.R. 35, 37 (Bankr. E.D. Mo. 1998). Under the business judgment rule, "management of a corporation's

affairs is placed in the hands of its board of directors and officers, and the Court should interfere with their decisions only if it is made clear that those decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the officers' and directors' fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code.” *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (citing *In re United Artists Theatre Co.*, 315 F.3d 217, 233 (3d Cir. 2003), *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303 (5th Cir. 1985) and *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992)). In order to satisfy the business judgment rule in this Circuit, a debtor must carry its burden to show some benefit to the estate. *Crystalin*, 293 B.R. at 464. However, courts emphasize that “this test is not an onerous one”, *id.* at 463, *see also In re AbitibiBowater, Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (the business judgment standard is “not a difficult standard to satisfy”), and courts should find this prong of the analysis met “as long as the proposed action appears to enhance the debtor’s estate.” *Crystalin*, 293 B.R. at 464 (quoting *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997) (emphasis original, internal alterations and quotations omitted)). Once a benefit to the estate has been shown, only a finding of “bad faith or gross abuse of . . . ‘business discretion’” should prevent the debtor from assuming or rejecting the contract. *Id.* (quoting *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1984)). Further, nothing prevents the parties to a contract from agreeing to postpetition modifications to the contract prior to its assumption. *See City of Covington v. Covington Landing Ltd. P’ship*, 71 F.3d 1221, 1227 (6th Cir. 1995) (“Nothing in the Code suggests that the debtor may not modify its contracts when all parties to the contract consent.”).

12. The proposed assumption by the Debtors of the Agreements is an appropriate exercise of the Debtors' business judgment based upon the information available to the Debtors at this point in their chapter 11 cases. Specifically, for each of the Agreements, the Debtors have assessed the relevant markets and their business operations in light of the current status of their reorganization efforts, recognizing that the coal industry remains in a state of uncertainty. Within these constraints, the Debtors have determined that the Agreements are necessary to their current and future business operations and that the rejection of these contracts would be disruptive and costly. The Debtors have determined in their business judgment that the potential benefits associated with assuming and servicing the Agreements are outweighed by the costs at this time.

13. For all of these reasons, the Debtors believe that the assumption of the Agreements is proper under the circumstances and should be approved. Moreover, the Debtors submit that the payment of the Cure Costs will fully satisfy the Debtors' obligations to cure outstanding defaults under the Agreements, pursuant to section 365(b) of the Bankruptcy Code, and should be approved.

Waiver of Stay Under Bankruptcy Rule 6004(h)

14. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their businesses without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day

stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

15. Consistent with the Case Management Order, the Debtors will serve notice of this Motion on (a) the Core Parties, (b) the Counterparties and (c) any Non-ECF Parties (collectively, the “**Notice Parties**”). All parties who have requested electronic notice of filings in these cases through the Court’s ECF system will automatically receive notice of this motion through the ECF system no later than the day after its filing with the Court. A copy of this Motion and any order approving it will also be made available on the Debtors’ Case Information Website (located at <https://cases.primeclerk.com/archcoal>). A copy of the Proposed Order will be made available on the Debtors’ Case Information Website. The Proposed Order may be modified or withdrawn at any time without further notice. If any significant modifications are made to the Proposed Order, an amended Proposed Order will be made available on the Debtors’ Case Information Website, and no further notice will be provided. In light of the relief requested, the Debtors submit that no further notice is necessary.

No Prior Request

16. The Debtors have not previously sought the relief requested herein from this or any other court.

WHEREFORE, the Debtors respectfully request that this Court:

- (a) authorize the Debtors to assume the Agreements identified on Exhibit A hereto, effective as of the Assumption Effective Dates identified thereon, and to pay the associated Cure Costs; and
- (b) grant the Debtors such other and further relief as is just and proper.

Dated: April 27, 2016
New York, New York

Respectfully submitted,
DAVIS POLK & WARDWELL LLP

/s/ Kevin J. Coco

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SCHEDULE 1
Debtor Entities

1.	ACI Terminal, LLC	37.	ICG Eastern, LLC
2.	Allegheny Land Company	38.	ICG Eastern Land, LLC
3.	Apogee Holdco, Inc.	39.	ICG Illinois, LLC
4.	Arch Coal, Inc.	40.	ICG Knott County, LLC
5.	Arch Coal Sales Company, Inc.	41.	ICG Natural Resources, LLC
6.	Arch Coal West, LLC	42.	ICG Tygart Valley, LLC
7.	Arch Development, LLC	43.	International Coal Group, Inc.
8.	Arch Energy Resources, LLC	44.	Jacobs Ranch Coal LLC
9.	Arch Reclamation Services, Inc.	45.	Jacobs Ranch Holdings I LLC
10.	Arch Western Acquisition Corporation	46.	Jacobs Ranch Holdings II LLC
11.	Arch Western Acquisition, LLC	47.	Juliana Mining Company, Inc.
12.	Arch Western Bituminous Group, LLC	48.	King Knob Coal Co., Inc.
13.	Arch Western Finance LLC	49.	Lone Mountain Processing, Inc.
14.	Arch Western Resources, LLC	50.	Marine Coal Sales Company
15.	Arch of Wyoming, LLC	51.	Melrose Coal Company, Inc.
16.	Ark Land Company	52.	Mingo Logan Coal Company
17.	Ark Land KH, Inc.	53.	Mountain Coal Company, L.L.C.
18.	Ark Land LT, Inc.	54.	Mountain Gem Land, Inc.
19.	Ark Land WR, Inc.	55.	Mountain Mining, Inc.
20.	Ashland Terminal, Inc.	56.	Mountaineer Land Company
21.	Bronco Mining Company, Inc.	57.	Otter Creek Coal, LLC
22.	Catenary Coal Holdings, Inc.	58.	Patriot Mining Company, Inc.
23.	Catenary HoldCo, Inc.	59.	P.C. Holding, Inc.
24.	Coal-Mac, Inc.	60.	Powell Mountain Energy, LLC
25.	CoalQuest Development LLC	61.	Prairie Coal Company, LLC
26.	Cumberland River Coal Company	62.	Prairie Holdings, Inc.
27.	Energy Development Co.	63.	Saddleback Hills Coal Company
28.	Hawthorne Coal Company, Inc.	64.	Shelby Run Mining Company, LLC
29.	Hobet Holdco, Inc.	65.	Simba Group, Inc.
30.	Hunter Ridge, Inc.	66.	Thunder Basin Coal Company, L.L.C.
31.	Hunter Ridge Coal Company	67.	Triton Coal Company, L.L.C.
32.	Hunter Ridge Holdings, Inc.	68.	Upshur Property, Inc.
33.	ICG, Inc.	69.	Vindex Energy Corporation
34.	ICG, LLC	70.	Western Energy Resources, Inc.
35.	ICG Beckley, LLC	71.	White Wolf Energy, Inc.
36.	ICG East Kentucky, LLC	72.	Wolf Run Mining Company

Exhibit A

Arch Coal, Inc.

Contract Assumption Exhibit

Counterparty	Debtor Counterparty	Agreement Date	Description	Proposed Cure Amount ^[1]
Eagle Creek Mining, LLC PO Box 1200 Robinson Creek, KY 41560	Mingo Logan Coal Company	4/1/2015	Contract Mining Agreement	\$ -
Eagle Creek Mining, LLC PO Box 1200 Robinson Creek, KY 41560	Mingo Logan Coal Company	1/1/2011	Contract Mining Agreement	\$ -
Eagle Creek Mining, LLC PO Box 1200 Robinson Creek, KY 41560	Mingo Logan Coal Company	1/1/2011	Contract Mining Agreement	\$ -
SLS West, Inc. 5950 Magnuson Blvd. Gillette, WY 82718	Thunder Basin Coal Company, L.L.C.	6/1/2009	Technical Services Agreement (Heavy Lubricants Required For Draglines And Shovels)	\$ 336,586
Sulzer EMS, Inc. 3382 Bird Drive Gillette, WY 82716	Thunder Basin Coal Company, L.L.C.	7/8/2013	Consigned Stock Agreement (Shovels & Wheel Motors Parts)	\$ 5,829
Jabo Supply Corporation 5164 Braley Street PO Box 238 Huntington, WV 25707	ICG Tygart Valley, LLC	4/18/2014	Consigned Stock Agreement (Specialized Plumbing (Galvanized Pipe And Several Types And Sizes))	\$ -
Jabo Supply Corporation P.O. Box 238 Huntington, WV 25707	Mingo Logan Coal Company	4/30/2014	Consigned Stock Agreement (Specialized Plumbing (Galvanized Pipe And Several Types And Sizes))	\$ -
Standard Hydraulics PO Box 446 Hurricane, WV 25526	ICG Tygart Valley, LLC	7/7/2014	Consigned Stock Agreement (Hydraulic Cylinders And Hydraulic Components)	\$ 42,962
Mayo Manufacturing Co., Inc 54 Owens Road Suite B Chapmanville, WV 25508	ICG Tygart Valley, LLC	7/3/2014	Consigned Stock Agreement (Shuttle Car And Continuous Miner Components)	\$ 39,634
Mayo Manufacturing Co., Inc 54 Owens Road Suite B Chapmanville, WV 25508	Mingo Logan Coal Company	7/31/2014	Consigned Stock Agreement (Shuttle Car And Continuous Miner Components)	See Footnote 1
Beavers Construction Company 35305 Hwy 133 Hotchkiss, CO 81419	Mountain Coal Company, L.L.C.	10/15/2015	Construction Agreement (Preparation Plant Refuse Handling And Construction Work)	\$ 62,753
RM Wilson Company, Inc. PO Box 6274 Wheeling, WV 26003	Mingo Logan Coal Company	4/3/2015	Consigned Stock Agreement (Shear Bits And Longwall Face Conveyor Components)	\$ 115,207
Sturm Environmental Services, Inc. Brushy Fork Road Bridgeport, WV 26330	Arch Coal, Inc.	4/1/2014	General Service/Supply Agreement (Environmental, Water Sampling, and Permit Activities)	\$ 42,798
Veyance Industrial Services, Inc. Dba National Belt Services P.O. Box 3228 Charleston, WV 25332	Wolf Run Mining Company	11/15/2008	Independent Contractor Agreement (Repair & Services related to Splicing, Vulcanized Splicing, Patch Repair, Change Out Conveyor Belts)	\$ 37,948
Veyance Technologies, Inc. 703 S. Cleveland Massillon Road Fairlawn, OH 44333	Arch Coal, Inc.	6/30/2011; as amended 9/29/2011, 6/30/2012, 10/31/2012, 1/1/2014, and 11/2/2015	General Services Agreement (Conveyor Belts)	See Footnote 1
Delta Electric, Inc. 911 Enterprise Drive Logan, WV 25601	Arch Coal, Inc.	7/1/2011	General Services Agreement (Repair & Services Agreement For Circuit Breaker Repair & Repair Electrical Components)	\$ 30,848
Delta Electric, Inc. 911 Enterprise Drive Logan, WV 25601	ICG Tygart Valley, LLC	1/9/2014	Consigned Stock Agreement (SMC Electrical Components For Longwall)	See Footnote 1
Burrell Mining Products, Inc. 2400 Leechburg Road, Suite 221 New Kensington, PA 15068	Arch Coal, Inc.	8/26/2013	Consigned Stock Agreement (Roof Support)	\$ 29,785
Kings Tire Service, Inc. PO Box 3511 Bluefield, WV 24701	Arch Coal, Inc.	8/4/2014; as amended 8/17/2015	General Service and Supply Agreement (Tire Supply and Maintenance)	\$ 16,745
Kings Tire Service, Inc. PO Box 3511 Bluefield, WV 24701	ICG Tygart Valley, LLC	11/13/2013	Consignment Agreement (Tire Supply and Maintenance)	See Footnote 1

Notes

[1]: For Counterparties who have multiple Agreements appearing on this schedule, the proposed cure amount represents the total amount for all such Agreements and is set forth opposite the first such Agreement to appear.