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)**

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE DEBTORS' JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE AND OMNIBUS REPLY TO OBJECTIONS TO CONFIRMATION

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

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PRELIMINARY STATEMENT

The plan of reorganization filed by Arch Coal, Inc. ("**Arch Coal**") and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the "**Debtors**") under chapter 11 of the Bankruptcy Code (as amended, the "**Plan**")[2] provides for a restructuring and reorganization of the Debtors that will enable the Debtors to emerge from chapter 11 as a competitive, well-capitalized company that is positioned for long-term success. The Plan's main feature is the right-sizing of the Debtors' capital structure. By eliminating the Debtors' estimated $3.2 billion of prepetition unsecured and second-lien bond debt, and by reducing the Debtors' prepetition first lien debt from approximately $1.9 billion to $326.5 million, the Plan ensures that the Debtors have the sustainable capital structure that they need to compete effectively in a challenging marketplace. In addition to this improved capital structure, the Reorganized Debtors will benefit from substantial sources of liquidity. On the Effective Date, the Debtors will amend and extend their existing $200 million Securitization Facility, which will continue to support the issuance of letters of credit and will also reinstate the Debtors' ability to request cash advances as existed prior to the Petition Date. Moreover, the Debtors will have sufficient cash upon emergence to meet all of their obligations under the Plan and project to have sufficient cash flow to service their debt obligations and fund operations.

In the only eight months since the Petition Date, the Debtors have not only transformed their balance sheet, but also continued to improve their operations, in particular through rejecting nearly 390 executory contracts that were not beneficial to the Debtors' estates. On the strength of their recapitalization and operational restructuring, the Debtors are well-positioned to emerge

[2] Capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Plan.

from the Chapter 11 Cases and continue to prosper as a leader in the U.S. coal markets for decades to come.

The Debtors have garnered overwhelming consensus for the Plan, which is the culmination of the Debtors' intensive reorganization and rehabilitation efforts and is the product of extensive good faith, arm's-length negotiations among the Debtors and a great many parties, including the Creditors' Committee, the ad hoc committee of the First Lien Lenders and certain prepetition noteholders, and has the support of all of these parties. Of the 188 Classes entitled to vote on the Plan,[3] 185 Classes have voted to accept the Plan pursuant to the Approval Order. Overall, 3,500 ballots were cast, and 96.66% of those ballots represented votes to accept the Plan, representing over $4.4 billion of voting Claims. Notably, the Debtors' largest Class of voting Creditors, holders of approximately $3.2 billion of Notes, voted to accept the Plan by an overwhelming 97.32% in number and 98.98% in amount.

The consensus surrounding the Plan and these Chapter 11 Cases has led to a virtually uncontested confirmation hearing with respect to all economic parties in interest. The Debtors received only seven limited objections to confirmation of the Plan,[4] a remarkable result considering that there are more than 40,000 parties in interest and more than 7,000 claims have

[3] Although the Plan classifies 213 Classes of Claims entitled to vote on the Plan, 25 such Classes are vacant of any Allowed Claim, Allowed Interest or temporarily Allowed Claim or Interest, and therefore deemed eliminated from the Plan for purposes of (i) voting to accept or reject the Plan and (ii) determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

[4] The Sierra Club, West Virginia Highlands Conservancy and Ohio Valley Environmental Coalition (the "**Environmental Groups**") filed the *Reservation of Rights of Sierra Club, West Virginia Highlands Conservancy and Ohio Valley Environmental Coalition to Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [ECF No. 1289]. The Environmental Groups do not object to the Plan in its current form, and the Environmental Groups' rights are preserved as set forth in Section 11.4(e) of the Plan, the terms of which were agreed among the Debtors and the Environmental Groups prior to the hearing on the Disclosure Statement. The Debtors have also received three Treatment Objections. The resolution of such Treatment Objections will not impact whether the Plan meets the requirements of section 1129 of the Bankruptcy Code, and can be resolved post-Confirmation in accordance with section 9.5 of the Plan. As of the filing of this Memorandum, two of the Treatment Objections already have been resolved and/or withdrawn, and the Debtors are in discussions with the counterparty that filed the third Treatment Objection.

been filed or scheduled in these Chapter 11 Cases. The Debtors have expended extensive efforts to resolve the issues raised in these objections and other concerns that have been raised by various parties in interest in advance of the Confirmation Hearing. As a result, five of the seven objections have been resolved and/or withdrawn, leaving one remaining objection from a creditor, who sent a letter to the Court requesting payment of its claim and does not object to any provision of the Plan or provide any basis for denying confirmation, and an objection from the United States Trustee (the "**U.S. Trustee**"). The Debtors believe both of these objections are meritless and should be overruled for the reasons set forth herein.

As demonstrated in this Memorandum, it is clear that confirmation and consummation of the Plan and the Debtors' emergence from chapter 11 will permit the Debtors to maximize creditor recoveries and is in all stakeholders' best interests, and the Plan complies with the requirements for a plan of reorganization under the Bankruptcy Code and should be confirmed.

FACTS

In addition to the facts set forth below, many of the pertinent facts related to the Debtors' reorganization are set forth in (i) the *Disclosure Statement for Debtors' Third Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* (the "**Disclosure Statement**"), approved by this Court on July 6, 2016 [ECF No. 1091]; (ii) the *Declaration of John T. Drexler in Support of Confirmation of the Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* (the "**Drexler Declaration**") and the *Declaration of Mark Buschmann in Support of Confirmation of the Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* (the "**Buschmann Declaration**"), each dated September 12, 2016 and filed contemporaneously herewith (together, the "**Confirmation Declarations**") and (iii) the *Declaration of James Daloia of Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Debtors' Third Amended Joint Plan of Reorganization Under*

Chapter 11 of the Bankruptcy Code, dated September 10, 2016 [ECF No. 1300] (the "**Vote Certification**").

Information about various notifications and publications made in connection with the Chapter 11 Cases can be found in the affidavit of mailing evidencing the timely service of the Plan, the Disclosure Statement and related solicitation materials and notices of non-voting status, which have been filed with the Bankruptcy Court (the "**Notice Affidavit**")[5] and the affidavits (collectively, the "**Publication Affidavits**")[6] evidencing the timely publication of the Confirmation Hearing Notice published in *The Wall Street Journal, National Edition*; *St. Louis Post Dispatch*, a St. Louis, Missouri newspaper; *Charleston Gazette Mail*, a Charleston, West Virginia newspaper; *Morgantown Dominion Post*, a Morgantown, West Virginia newspaper; *Huntington Herald-Dispatch*, a Huntington, West Virginia newspaper; *Coalfield Progress*, a Wise County, Virginia newspaper; *The Dickenson Star*, a Clintwood, Virginia newspaper; *The Post*, a Big Stone Gap, Virginia newspaper; *Lexington Herald-Leader*, a Lexington, Kentucky newspaper; *Owensboro Messenger-Inquire*r, an Owensboro, Kentucky newspaper; *The State Journal-Register*, a Springfield, Illinois newspaper; *Grand Junction Sentinel*, a Grand Junction, Colorado newspaper; *Salt Lake City Tribune*, a Salt Lake City, Utah newspaper; *Rawlins Daily Times*, a Rawlins, Wyoming newspaper; *Gillette News-Record*, a Gillette and Campbell County, Wyoming newspaper; *Daily Mountain Eagle*, a Walker County, Alabama newspaper; *Mount Pleasant Daily Tribune,* a Texas newspaper; *Rains County Leader*, a Texas newspaper; and *Southern Illinoisan*, an Illinois newspaper (collectively, the "**Publications**"), and electronically on the Debtors' case information website (located at *https://cases.primeclerk.com/archcoal*).

[5] *See Affidavit of Service of Solicitation Materials*, dated July 15, 2016 [ECF No. 1112].

[6] *See Affidavit of Publication*, dated September 9, 2016 [ECF No. 1299].

All of the facts contained in the Disclosure Statement, the Confirmation Declarations, the Vote Certification, the Notice Affidavit and the Publication Affidavits are incorporated herein by reference.

ARGUMENT

I. THE BURDEN OF PROOF UNDER SECTION 1129 OF THE BANKRUPTCY CODE IS A PREPONDERANCE OF THE EVIDENCE

To confirm the Plan, the Debtors must demonstrate that the Plan satisfies the provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence. As set forth by the United States Court of Appeals for the Fifth Circuit in *Heartland Federal Savings & Loan Ass'n v. Briscoe Enterprises., Ltd. II (In re Briscoe Enterprises., Ltd. II)*, 994 F.2d 1160, 1165 (5th Cir. 1993):

> The combination of legislative silence, Supreme Court holdings, and the structure of the [Bankruptcy] Code leads this Court to conclude that preponderance of the evidence is the debtor's appropriate standard of proof both under § 1129(a) and in a cramdown.

See also In re Kent Terminal Corp., 166 B.R. 555, 561 (Bankr. S.D.N.Y. 1994) ("the final burden of proof at . . . the . . . confirmation hearings remains a preponderance of the evidence"); 7 Collier on Bankruptcy ¶ 1129.05[1][d] (16th ed. 2012). Through evidence submitted by the Debtors (including, without limitation, the Confirmation Declarations, the Vote Certification, the Notice Affidavit and the Publication Affidavits), the Debtors have demonstrated, by a preponderance of the evidence, that all of the subsections of section 1129 of the Bankruptcy Code have been satisfied with respect to the Plan.

II. THE PLAN MEETS ALL REQUIREMENTS OF SECTION 1129

1. The Plan Complies With All Applicable Provisions Of The Bankruptcy Code

Pursuant to section 1129(a)(1) of the Bankruptcy Code, a plan must "compl[y] with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(1); *see also In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984) ("In order for a plan of reorganization to pass muster for confirmation purposes, it must comply with all the requirements of chapter 11 as stated in Code § 1129(a)(1)."). The legislative history of section 1129(a)(1) explains that this provision is intended to encompass the requirements of sections 1122 and 1123 governing the classification of claims and the contents of a plan, respectively. H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978); *In re Johns-Manville Corp.*, 68 B.R. 618, 629 (Bankr. S.D.N.Y. 1986), *aff'd in part*, *rev'd in part on other grounds*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd*, *Kane v. Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988). As demonstrated below, the Plan complies fully with the requirements of sections 1122 and 1123, as well as other applicable provisions of the Bankruptcy Code.

A. The Plan Complies with Section 1122 of the Bankruptcy Code

Section 1122 of the Bankruptcy Code provides as follows:

> (a) Except as provided in subsection (b) of this section, a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.
>
> (b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

11 U.S.C. § 1122. Under this section, a plan may provide for multiple classes of claims or interests so long as each claim or interest within a class is substantially similar to other claims or

interests in that class. "[C]lassification is constrained by two straight-forward rules: [d]issimilar claims may not be classified together; similar claims may be classified separately only for a legitimate reason." *In re Chateaugay Corp.*, 89 F.3d 942, 949 (2d Cir. 1996). Nevertheless, the requirement of substantial similarity does not mean that claims or interests within a particular class must be identical. *Hanson v. First Bank of South Dakota, N.A.*, 828 F.2d 1310, 1313 (8th Cir. 1987). The focus is on the nature of the claims or interests being classified as they relate to the debtor's assets. *J. P. Morgan & Co. v. Missouri Pac. R. Co.*, 85 F.2d 351 (8th Cir. 1936), *cert. denied*, 299 U.S. 604 (1936). As noted in the case law, "separate classification of substantially similar unsecured claims is permissible only when there is a reasonable basis for doing so or when the decision to separately classify does not offend one's sensibility of due process and fair play." *In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 246–47 (Bankr. S.D.N.Y. 2007).

The Plan provides for the separate classification of Claims and Interests into Classes based upon differences in the legal nature and/or priority of such Claims and Interests. The classification and treatment of Claims and Interests has been arranged in the following groups:

- Classes 1A-71A (Other Priority Claims) provide for the separate classification of Claims entitled to priority under section 507(a) of the Bankruptcy Code, other than Administrative Claims and Priority Tax Claims.
- Classes 1B-71B (Other Secured Claims) provide for the separate classification of any Secured Claim other than the DIP Facility Claims.
- Classes 1C-71C (First Lien Credit Facility Secured Claims) provides for separate classification of First Lien Credit Facility Secured Claims.
- Classes 1D-71D (Unsecured Funded Debt Claims) provides for separate classification of any Claims asserted against the Debtors by holders of Notes Claims.
- Classes 1E-71E (General Unsecured Claims) provide for separate classification of any prepetition Claim against any of the Debtors that is not a DIP Facility Claim, Administrative Expense Claim, Priority Tax Claim, Other Priority Claim, First

Lien Credit Facility Secured Claim, Other Secured Claim, Notes Claim, Intercompany Claim or Section 510(b) Claim, including any unsecured claims under section 506(a)(1) of the Bankruptcy Code.

- Classes 1F-71F (Section 510(b) Claims) provide for separate classification of Section 510(b) Claims.
- Class 1G (Interests in Arch Coal) provides for separate classification of Interests in Arch Coal.
- Classes 2G-71G (Interests in Subsidiary Debtors) provide for separate classification of Interests in Subsidiary Debtors.

Each of the Claims or Interests in each Class is substantially similar to other Claims and Interests, as the case may be, in each such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Plan, and such Classes do not unfairly discriminate between or among holders of Claims or Interests. The Debtors' classification scheme has a rational basis because it is based upon the respective legal rights of each holder of a Claim or Interest.

Accordingly, the classification of Claims and Interests in the Plan complies with section 1122 of the Bankruptcy Code.

B. The Plan Complies with Section 1123 of the Bankruptcy Code

Section 1123(a) of the Bankruptcy Code sets forth seven requirements with which every chapter 11 plan must comply. *See* 11 U.S.C. § 1123(a). The Plan fully complies with each such requirement.

- Section 1123(a)(1) of the Bankruptcy Code: Article 2 of the Plan provides for the treatment of Administrative Claims and Priority Tax Claims and Article 3 of the Plan designates Classes of Claims and Interests as required by section 1123(a)(1).
- Sections 1123(a)(2) and 1123(a)(3) of the Bankruptcy Code: Article 3 of the Plan specifies whether each Class of Claims and Interests is Impaired under the Plan and the treatment of each such Class, as required by sections 1123(a)(2) and 1123(a)(3), respectively.

- Section 1123(a)(4) of the Bankruptcy Code: As required by section 1123(a)(4), the Plan provides that each Claim in a Class receives the same treatment as all other Claims in that Class, unless the holder of a Claim or Interest has agreed to a less favorable treatment.

- Section 1123(a)(5) of the Bankruptcy Code: Section 1123(a)(5) of the Bankruptcy Code requires that the Plan provide "adequate means" for its implementation. Means for implementation of a plan may include retention by the debtor of all or part of its property; the transfer of property of the estate to one or more entities; cancellation or modification of any indenture; curing or waiving of any default; extension of a maturity date or change in an interest rate or other term of outstanding securities; amendment of the debtor's charter; or issuance of securities for cash, for property, for existing securities, in exchange for claims or interests or for any other appropriate purpose. Articles 5, 6, 7, 10, 12, 15 and various other provisions of the Plan set forth "adequate means" for implementation of the Plan as required by section 1123(a)(5). Those provisions relate to, among other things: (i) the continued corporate existence of certain Reorganized Debtors after the Effective Date; (ii) the Restructuring Transactions; (iii) the authorization of New Common Stock and New Warrants; (iv) the cancellation of existing securities and related agreements; (v) the implementation of distributions under the Plan; (vi) entry into the New First Lien Debt Facility; (vii) entry into the amended and extended Securitization Facility; (viii) exempting the Debtors and the Reorganized Debtors from certain transfer taxes and recording fees; (ix) the execution, delivery, filing or recording of all contracts, instruments, releases, indentures and other agreements or documents related to the foregoing and (x) the filing of Administrative Expense Claims.

- Sections 1123(a)(6) and 1123(a)(7) of the Bankruptcy Code: The certificate of incorporation of Reorganized Arch Coal will prohibit the issuance of nonvoting equity securities to ensure compliance with section 1123(a)(6). The organizational documents of Reorganized Arch Coal provide for the selection of officers and directors of the Reorganized Debtors in a manner consistent with the interests of creditors, equity security holders and public policy in accordance with section 1123(a)(7).

Based upon the foregoing, the Plan complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code and thus satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code.

2. The Debtors Have Complied With All Applicable Provisions of the Bankruptcy Code

Section 1129(a)(2) of the Bankruptcy Code requires that the plan proponent "compl[y] with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(2). The

legislative history of section 1129(a)(2) reflects that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code. *See In re Johns-Manville Corp.*, 68 B.R. at 630; *In re Toy & Sports Warehouse, Inc.*, 37 B.R. at 149; *In re Texaco, Inc.*, 84 B.R. 893, 907 (Bankr. S.D.N.Y. 1988), appeal dismissed, 92 B.R. 38 (S.D.N.Y. 1988) ("The principal purpose of section 1129(a)(2) is to assure that the proponents have complied with the requirements of section 1125 in the solicitation of acceptances to the plan."); H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978) ("Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."). The Debtors have complied with the applicable provisions of the Bankruptcy Code, including the provisions of sections 1125 and 1126, regarding disclosure, solicitation of votes and acceptance of a Plan.

A. The Debtors Have Complied with Section 1125 of the Bankruptcy Code

Section 1125 of the Bankruptcy Code provides in pertinent part:

> (b) An acceptance or rejection of a plan may not be solicited after the commencement of the case under [the Bankruptcy Code] from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information. . . .
>
> (c) The same disclosure statement shall be transmitted to each holder of a claim or interest of a particular class, but there may be transmitted different disclosure statements, differing in amount, detail, or kind of information, as between classes.

11 U.S.C. § 1125(b), (c).

By the *Order (i) Approving Disclosure Statement; (ii) Approving Solicitation and Notice Materials; (iii) Approving Forms of Ballots; (iv) Establishing Solicitation and Voting*

Procedures; (v) Establishing Procedures for Allowing and Estimating Certain Claims for Voting Purposes; (vi) Scheduling a Confirmation Hearing, and (vii) Establishing Notice and Objection Procedures, dated July 8, 2016 [ECF No. 1101] (the "**Approval Order**"), after notice and a hearing, the Court approved the Disclosure Statement pursuant to section 1125 of the Bankruptcy Code as containing "adequate information" of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of the Debtors' Creditors to make an informed judgment whether to accept or reject the Plan. The Approval Order also approved (a) all materials to be transmitted to those holders of Claims and Interests entitled to vote on the Plan, (b) the timing and method of delivery of the solicitation materials and (c) the rules for tabulating votes to accept or reject the Plan.

As set forth in the Notice Affidavit, the Disclosure Statement, together with the additional solicitation materials approved by the Court in the Approval Order, were transmitted in Solicitation Packages to each Creditor that was entitled to vote to accept or reject the Plan, as well as to other parties in interest in this case, in compliance with section 1125 of the Bankruptcy Code and the Approval Order. In addition, Creditors that were not entitled to vote to accept or reject the Plan and Interest holders (who are deemed to reject the Plan) were provided with certain non-voting materials approved by the Court in the Approval Order. The Debtors did not solicit the acceptance or rejection of the Plan by any Creditor prior to the transmission of the Disclosure Statement. In addition, as reflected in the Publication Affidavits and as required by the Approval Order, the Debtors caused the Confirmation Hearing Notice to be published in the Publications and electronically on the Debtors' case information website (located at *https://cases.primeclerk.com/archcoal*).

B. Compliance with Section 1126

Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a plan of reorganization. Under section 1126, only holders of allowed claims and allowed equity interests in impaired classes of claims or equity interests that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject such plan. As set forth in section 1126:

> (a) The holder of a claim or interest allowed under section 502 of [the Bankruptcy Code] . . . may accept or reject a plan.
>
> * * *
>
> (f) Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.
>
> (g) Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.

11 U.S.C. § 1126(a), (f), (g).

As set forth in the Disclosure Statement and in the Vote Certification, in accordance with section 1126 of the Bankruptcy Code, the Debtors solicited acceptances or rejections of the Plan from the holders of Claims in the Classes of Impaired Claims that are to receive a distribution under the Plan. Claims in Classes 1A-71A (Other Priority Claims), Classes 1B-71B (Other Secured Claims) and 2G-71G (Interests in Subsidiary Debtors) are designated as Unimpaired under the Plan. As a result, pursuant to section 1126(f), holders of Claims in those Classes are conclusively presumed to have accepted the Plan. Claims in Classes 1C-71C (First Lien Credit

Facility Secured Claims), Classes 1D-71D (Unsecured Funded Debt Claims) and Classes 1E-71E (General Unsecured Claims) are Impaired and holders of Allowed Claims in those Classes will receive distributions under the Plan. As a result, pursuant to section 1126(a), holders of Claims in those Classes were entitled to vote to accept or reject the Plan. Claims in Classes 1E-71E (Section 510(b) Claims) and Class 1G (Interests in Arch Coal) will not receive any distributions under the Plan. As a result, pursuant to section 1126(g), holders of Claims and Interests in those Classes are deemed to have rejected the Plan.

Sections 1126(c) and 1126(d) of the Bankruptcy Code specify the requirements for acceptance of a plan by classes of claims and interests, respectively, that are entitled to vote on a plan:

> (c) A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected the plan.
>
> (d) A class of interests has accepted the plan if such plan has been accepted by holders of such interests, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c), (d). As set forth above, Classes 1F-71F (Section 510(b) Claims) and Class 1G (Interests in Arch Coal) (the "**Deemed to Reject Classes**") will receive no distribution under, and thus are deemed to have rejected, the Plan, and the Classes listed on Schedule II hereto (the "**Voting to Reject Classes**" and, together with the Deemed to Reject Classes, the "**Rejecting Classes**") have voted to reject the Plan. Nevertheless, as set forth below, pursuant to section 1129(b) of the Bankruptcy Code, the Plan may be confirmed over the deemed rejections of the

Deemed to Reject Classes and the rejections of the Voting to Reject Classes because the Plan does not discriminate unfairly and is fair and equitable with respect to each such Class. *See* 11 U.S.C. § 1129(b).

Based upon the foregoing, the requirements of section 1129(a)(2) have been satisfied.

3. The Plan Has Been Proposed In Good Faith And Not By Any Means Forbidden By Law

A. The Plan Was Proposed in Good Faith

Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). The good faith standard has been defined as "requiring a showing that the plan was proposed with 'honesty and good intentions' and with 'a basis for expecting that a reorganization can be effected.'" *Koelbl v. Glessing (In re Koelbl)*, 751 F.2d 137, 139 (2d Cir. 1984) (quoting *Manati Sugar Co. v. Mock*, 75 F.2d 284, 285 (2d Cir. 1935)); *see also In re Johns-Manville Corp.*, 68 B.R. at 631–32. In the context of a chapter 11 plan, courts have held that "a plan is proposed in good faith if there is a likelihood that the plan will achieve a result consistent with the standards prescribed under the [Bankruptcy] Code." *Hanson v. First Bank of South Dakota, N.A.*, 828 F.2d 1310, 1315 (8th Cir. 1987) (quoting *In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984)). The determination of whether a plan will likely achieve a result consistent with the objectives and purpose of the Bankruptcy Code is made in "light of the particular facts and circumstances . . ." *In re Apex Oil Co.*, 118 B.R. 683, 703 (Bankr. E.D. Mo. 1990) (citation omitted).

The primary goal of chapter 11 is to promote the rehabilitation of the debtor. Congress has recognized that the continuation of the operation of a debtor's business as a viable entity benefits the national economy through the preservation of jobs and continued production of

goods and services. The Supreme Court similarly has recognized that "[t]he fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984); *see also In re Union Fin. Servs. Group, Inc.*, 303 B.R. 390, 423 (Bankr. E.D. Mo. 2003) (quoting *Bildisco & Bildisco*). In addition, courts have stressed the importance of payment of creditors in chapter 11 cases. *See In re McClelland*, 418 B.R. 61, 67 (Bankr. S.D.N.Y. 2009) (citing *In re Ngan Gung Restaurant*, 254 B.R. 566, 571 (Bankr. S.D.N.Y. 2000)); *In re Balco Equities Ltd.*, 323 B.R. 85, 98 (Bankr. S.D.N.Y. 2005) (same).

The Plan proposed by the Debtors accomplishes these rehabilitative goals by restructuring the Debtors' obligations and providing the means through which the Debtors may continue to operate as a viable enterprise. The Plan is also in the best interests of Creditors, allowing them to realize the highest possible recoveries under the circumstances, including an (i) estimated recovery to holders of First Lien Credit Facility Secured Claims of up to 58.2%, (ii) estimated recovery of up to 2.9% to holders of Unsecured Funded Debt Claims and (iii) estimated recoveries of approximately 1.9% for holders of General Unsecured Claims, whereas the distributable value to those claims would be up to 21%, zero and zero, respectively, if the Debtors were to be liquidated. *See* Disclosure Statement, Appendix B. The Plan is the result of extensive good faith, arm's-length negotiations among the Debtors, Creditors' Committee, the ad hoc committee of the First Lien Lenders, certain members of the Creditors' Committee and other parties in interest. The Plan has been overwhelmingly supported by holders of claims in the 185 Voting to Accept Classes, representing 96.66% of the number of ballots cast and 96.86% in amount of voting claims, while only 3 Classes voted to reject the Plan,

casting ballots that represented only 3.34% of the number of ballots cast and 3.14% in amount of voting claims.

The support of the Plan by such overwhelming margins underscores the fact that the Plan is fundamentally fair to Creditors and the Estates. Moreover, it is indisputable that the Plan promotes the rehabilitative objectives and purposes of the Bankruptcy Code by providing for the Debtors' emergence from Chapter 11 as a viable, going concern business.

B. The Plan's Exculpation, Releases and Injunction Are Well Within the Parameters of the Bankruptcy Code and Applicable Law

The exculpation provision (Section 11.6 of the Plan), the Debtor releases (Section 11.7 of the Plan), the third-party releases by the holders of certain Claims and Interests (Section 11.8 of the Plan) and the injunction related to the exculpation and release provisions (Section 11.9 of the Plan) are fair and equitable, conform to applicable law and are similar to those included in other approved plans of reorganization.

(i) The Exculpation Provision Is Reasonable and Customary, Appropriately Tailored and an Integral Part of the Plan

The exculpation provision set forth in Section 11.6 of the Plan provides that none of the Released Parties shall have or incur any liability to "any holder of a Claim, Cause of Action or Interest" for acts or omissions "in connection with, related to or arising out of, the Chapter 11 Cases, the negotiation of any settlement or agreement, contract, instrument, release or document created or entered into in connection with the Plan or in the Chapter 11 Cases . . . the pursuit of confirmation of the Plan, the consummation of the Plan, the preparation and distribution of the Disclosure Statement, the offer, issuance and distribution of any securities issued or to be issued under or in connection with the Plan . . . [or] any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors or the administration of the Plan or the property to be distributed under the Plan." Crucially, the

exculpation provision excludes from its scope "any act or omission that is determined in a Final Order to have constituted willful misconduct (including, without limitation, actual fraud) or gross negligence."

As discussed further below in connection with the Debtors' response to the UST Objection (as defined below), exculpation provisions similar to the exculpation provision in the Plan are customarily upheld by bankruptcy courts, particularly where, as is the case here, such provisions contain carve-outs for behavior amounting to gross negligence or willful misconduct. *See, e.g.*, *In re Loehmann's Holdings Inc.*, Case No. 10-16077 (REG) (Bankr. S.D.N.Y. Feb. 9, 2011) (upholding similar exculpation provision as "appropriately tailored" to protect released parties from "inappropriate litigation."). Accordingly, the exculpation provision set forth in Section 11.6 of the Plan is necessary, appropriate and should be approved.

(ii) The Debtor Releases Represent a Valid Exercise of the Debtors' Business Judgment and Are in the Best Interests of the Debtors' Estates

Section 11.7 of the Plan provides that the Released Parties, on and after the Effective Date and only to the extent permitted by applicable law, shall be "deemed released and discharged" by the Debtors from any and all "Claims, obligations, debts, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever." The Debtor releases expressly exclude claims and liabilities arising out of or relating to any act or omission that constitutes "willful misconduct, actual fraud or gross negligence." Subject to certain narrow exceptions, if a Released Party asserts a claim against a Debtor on account of an action arising before the Effective Date, the Debtor releases are automatically and retroactively null and void *ab initio* as to such Released Party.

The Debtor releases are authorized under section 1123(b)(3)(A) of the Bankruptcy Code, which states that a plan may provide for "the settlement or adjustment of any claim or interest

belonging to the debtor or to the estate." Releases granted by chapter 11 debtors are approved upon a showing that the releases are "an appropriate exercise of business judgment, and, possibly, in the best interest of the estate." *In re Motors Liquidation Co.*, 447 B.R. 198, 220 (Bankr. S.D.N.Y. 2011); *see also In re Charter Commc'ns*, 419 B.R. 221, 256 (Bankr. S.D.N.Y. 2009), *aff'd*, 691 F.3d (2d Cir. 2012) ("When reviewing releases in a debtor's plan, courts consider whether such releases are in the best interest of the estate."); *In re Best Prods. Co.*, 177 B.R. 791, 794 n.4 (S.D.N.Y. 1995), *aff'd,* 68 F.3d 26 (2d Cir. 1995) (approval of debtor releases warranted when releases are fair and equitable and in the best interests of the estate).

Moreover, the Debtor releases are in the best interests of the Debtors' estates. Each of the releases was necessary to induce the Released Parties to enter into agreements with the Debtors, including the DIP Facility, the Securitization Facility, the Restructuring Support Agreement, the New First Lien Debt Facility and the amended and extended Securitization Facility, or to ensure the support of a Released Party for the Plan. As such, the Debtor releases confer a material benefit on the Debtors, their Estates and their Creditors and are important to the overall objectives of the Plan to finally resolve all claims among or against parties-in-interest in the Chapter 11 Cases with respect to the Debtors. Additionally, pursuing claims against any of the Released Parties would be expensive, time-consuming and, the Debtors believe, ultimately, fruitless. As such, the Debtor releases contained in the Plan fall within the bounds of the Debtors' business judgment. The Debtor releases in Section 11.7 are reasonable, appropriate and should be approved.

(iii) The Third-Party Releases Are Consistent with Established Law

The releases set forth in Section 11.8 of the Plan apply only to holders of Claims and Interests who, with full and proper notice, consented to such releases by electing not to opt out of the releases (as permitted on the Ballots and the Non-Voting Notices (as defined in the Approval

Order). Holders of Claims and Interests who consented to the releases provided in Section 11.8 shall be deemed to have released the Debtors, the Reorganized Debtors and the Released Parties from all Causes of Action based on or relating to, inter alia, the Chapter 11 Cases. Like the exculpation (set forth in Section 11.6 of the Plan) and the Debtor releases (set forth in Section 11.7 of the Plan), the releases by the holders of certain Claims and Interests set forth in Section 11.8 exclude claims or liabilities based on willful misconduct (including, without limitation, actual fraud) or gross negligence.

The third-party releases in Section 11.8 are reasonable, appropriate and should be approved.

(iv) The Injunction is Necessary to Preserve and Enforce the Exculpation and Release Provisions

The injunction provided in Section 11.9 of the Plan enjoins all entities from pursuing or commencing any action against the Released Parties based on claims or causes of action that were subject to the Plan's exculpation or release provisions. The injunction serves the important purpose of effectuating the release and exculpation provisions by shielding parties from litigation based on claims that were released or discharged under the Plan and, consequently, cannot be pursued. Furthermore, the injunction deters litigants from initiating costly lawsuits that seek to unravel the terms of the Plan and the agreements that led to the Plan's consummation.

Courts have approved similar injunctions where they were found to be "an integral part of, and essential to, the Plan, are necessary to preserve and enforce the Debtor Releases, the third-party releases and the exculpation provisions . . . and are narrowly tailored to achieve that purpose." *In re Loehmann's Holdings Inc.*, Case No. 10-16077 (REG) (Bankr. S.D.N.Y. Feb. 9, 2011). *See, e.g.*, *In re Patriot Coal Corp.*, Case No. 12-51502-659 (KAS) (Bankr. E.D. Mo. Dec. 18, 2013); *In re US Fidelis, Inc.*, Case No. 10-41902 (CER) (Bankr. E.D. Mo. Aug. 28,

2012); *In re The Great Atlantic & Pacific Tea Co.*, Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 28, 2012). Likewise, the injunction set forth in Section 11.9 is an integral part of the plan, necessary to preserve the Plan's exculpation and release provisions and narrowly tailored in scope. The Plan's injunction simply insulates the Released Parties from litigation on account of Claims resolved through the Plan. The injunction is not a blanket injunction precluding all potential claimants from bringing actions against third parties. Accordingly, the injunction should be approved.

4. The Plan Provides That Payments Made By The Debtors For Services Or Costs And Expenses Are Subject To Court Approval

Section 1129(a)(4) of the Bankruptcy Code requires that certain professional fees and expenses paid by the plan proponent, by the debtor, or by a person receiving distributions of property under the plan be subject to approval by the Court as reasonable. Specifically, section 1129(a)(4) requires that:

> Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to approval of, the court as reasonable.

11 U.S.C. § 1129(a)(4).

Pursuant to the interim application procedures established under section 331 of the Bankruptcy Code, the Court authorized and approved the payment of certain fees and expenses of professionals retained in this case. All Professional Fee Claims remain subject to final review for reasonableness by the Court under section 330 of the Bankruptcy Code. 11 U.S.C. § 330. In addition, pursuant to sections 503(b)(3) and (4), the Court must review any application for substantial contribution to ensure compliance with the statutory requirements and that the fees requested are reasonable.

The foregoing procedures for the Court's review and ultimate determination of the fees and expenses to be paid by the Debtors satisfy the objectives of section 1129(a)(4). *See In re Elsinore Shore Assocs.*, 91 B.R. 238, 268 (Bankr. D. N.J. 1988) (requirements of section 1129(a)(4) satisfied where plan provided for payment of only "allowed" administrative expenses); *In re Future Energy Corp.*, 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988) ("Court approval of payments for services and expenses is governed by various Code provisions—e.g., §§ 328, 329, 330, 331, and 503(b)—and need not be explicitly provided for in a Chapter 11 plan."); 7 Collier on Bankruptcy ¶ 1129.02[4] (16th ed. 2012).

Based upon the foregoing, the Plan complies with the requirements of section 1129(a)(4).

5. The Debtors Have Disclosed Information Regarding Directors, Officers And Insiders

Section 1123(a)(7) of the Bankruptcy Code requires that a plan of reorganization "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan." 11 U.S.C. § 1123(a)(7). This provision is supplemented by section 1129(a)(5) of the Bankruptcy Code, which directs a court to examine the methods by which the management of the reorganized corporation is to be chosen to provide adequate representation of those whose investments are involved in the reorganization — *i.e.*, Creditors. *See* 7 Collier on Bankruptcy ¶ 1123.01[7] (16th ed. 2012).

Pursuant to Section 10.3(a) and (b) of the Plan, on September 6, 2016, the Debtors filed a Plan Supplement [ECF No. 1284] announcing that seven individuals had been selected to serve

as the initial members of the Board of Directors of Reorganized Arch Coal (the "**New Board Members**") beginning on the Effective Date.[7] The New Board Members will be:

- Patrick J. Bartels, Jr.
- James N. Chapman
- John W. Eaves
- Sherman K. Edmiston III
- Patrick A. Kriegshauser
- Richard A. Navarre
- Scott D. Vogel

Each officer of Reorganized Arch Coal shall serve from and after the Effective Date in accordance with applicable non-bankruptcy law and the terms of such Reorganized Arch Coal's constituent documents.

The employment of officers and directors by the Reorganized Debtors, as described above, is consistent with the interests of Creditors and is essential to the ongoing viability of the Debtors' businesses. The New Board Members were selected based upon their substantial experience, excellent reputations and distinguished credentials. *See Apex Oil*, 118 B.R. at 704-05 (if the debtors as well as the creditors' committee believe control of the business by certain individuals is beneficial, section 1129(a)(5) requirements are satisfied); *In re Toy & Sports Warehouse, Inc.*, 37 B.R. at 149-50 (the continuation of employment of the debtor's president and founder, who had many years of experience in the debtor's business, satisfied section 1129(a)(5)).

Based upon the foregoing, the Plan complies with both sections 1123(a)(7) and 1129(a)(5) by such information as is presently available with regard to the individuals proposed to serve on and after the Effective Date as officers and directors of the Reorganized Debtors.

[7] Subject to the Restructuring Transactions and the New Board, the directors of the Subsidiary Debtors immediately prior to the Effective Date will continue to serve in their current capacities after the Effective Date.

6. The Plan Does Not Provide For Any Rate Change Subject To Regulatory Approval

Section 1129(a)(6) of the Bankruptcy Code is applicable only to debtors whose rates are subject to governmental regulatory authority and requires that "[a]ny governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." 11 U.S.C. § 1129(a)(6). In these Chapter 11 Cases, section 1129(a)(6) of the Bankruptcy Code is not applicable because the Plan is not premised on any rate changes or the establishment of rates over which any regulatory commission has jurisdiction or will have jurisdiction after Confirmation.

7. The Plan Is In The Best Interests Of All Creditors Of The Debtors

Section 1129(a)(7)(A) of the Bankruptcy Code provides in relevant part that for each impaired class of claims or interests:

> (A) each holder of a claim or interest of such class —
>
> (i) has accepted the plan; or
>
> (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date ….

11 U.S.C. § 1129(a)(7)(A). This section is often referred to as the "best interests" test. *See In re Leslie Fay*, 207 B.R. 787 (Bankr. S.D.N.Y. 1997). The best interests test focuses on individual dissenting creditors rather than classes of claims. *See id.*; *see also Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 North LaSalle St. P'ship*, 526 U.S. 434, 441 n.13 (1999). Under the best interests test, the court "must find that each [nonaccepting] creditor will receive or retain value that is not less than the amount he would receive if the debtor were liquidated." *In re Leslie Fay*,

207 B.R. at 787. As section 1129(a)(7) makes clear, the liquidation analysis applies only to non-accepting impaired claims or equity interests. A court, in considering whether a plan satisfies the "best interests" test, is not required to consider any alternative to the plan other than the dividend projected in a liquidation of all of the debtor's assets under chapter 7 of the Bankruptcy Code. *See In re Crowthers McCall Pattern, Inc.*, 120 B.R. 279, 297 (Bankr. S.D.N.Y. 1990).

In this case, the best interests test is inapplicable to Classes 1A-71A, Classes 1B-71B and Classes 2G-71G (the "**Deemed to Accept Classes**") because each such class is Unimpaired and, pursuant to section 1126(f) of the Bankruptcy Code, is deemed to have accepted the Plan. The Classes listed as "Empty Voting Classes" on Schedule I hereto (the "**Empty Voting Classes**") were entitled to vote but, because no votes were received from the Empty Voting Classes, are deemed to have voted to accept the Plan per the Approval Order. The Classes listed as Voting to Accept Classes on Schedule I hereto (the "**Voting to Accept Classes**" and, together with the Deemed to Accept Classes and the Empty Voting Classes, the "**Accepting Classes**") have voted to accept the Plan.

As described in the Liquidation Analysis attached as Appendix B to the Disclosure Statement, the values that may be realized by the holders of the Rejecting Classes upon disposition of the Debtors' assets pursuant to a hypothetical chapter 7 liquidation are significantly less than the value of the recoveries to such Classes provided for under the Plan. As described in detail in the Liquidation Analysis, holders of Unsecured Funded Debt Claims and General Unsecured Claims against the Debtors would recover nothing in a chapter 7 liquidation, whereas (i) holders of First Lien Credit Facility Secured Claims will receive an estimated recovery of up to 58.2%, (ii) holders of Unsecured Funded Debt Claims will receive an estimated

recovery of up to 2.9% and (iii) holders of General Unsecured Claims will receive an estimated recovery of approximately 1.9%.

Finally, while the holders of Claims in Classes 1F-71F (Section 510(b) Claims) and Class 1G (Interests in Arch Coal) are expected to receive no recovery under the Plan, such recovery is not less than the projected recovery in a chapter 7 liquidation of the Debtors (which would also be zero).

Based upon the foregoing analysis, the Plan satisfies the requirements of section 1129(a)(7).

8. The Plan Has Been Accepted By The Accepting Classes, And The Requirements Of Section 1129(a)(8) Have Been Satisfied As To Such Classes

Section 1129(a)(8) of the Bankruptcy Code requires that each class of impaired claims or interests accepts the plan, as follows:

With respect to each class of claims or interests –

(A) such class has accepted the plan; or
(B) such class is not impaired under the plan.

11 U.S.C. § 1129(a)(8). Claims in Classes 1A-71A (Other Priority Claims) , Classes 1B-71B (Other Secured Claims) and Classes 2G-71G (Interest in Subsidiary Debtors) are Unimpaired under the Plan and are conclusively presumed, pursuant to section 1126(f), to have accepted the Plan. The Empty Voting Classes are Impaired and were entitled to vote on the plan but, because no votes were received from the Empty Voting Classes, they are deemed to have voted to accept the Plan per the Approval Order. The Voting to Accept Classes, which are Impaired, have affirmatively voted to accept the Plan. A summary of the tabulation of the voting is set forth in Schedules I and II attached hereto.

The Voting to Reject Classes have rejected the Plan and the Deemed to Reject Classes are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

Nonetheless, as set forth below, as to such Classes, the Plan may be confirmed under the "cram down" provisions of section 1129(b) of the Bankruptcy Code.

9. The Plan Provides For Payment In Full Of All Allowed Administrative Claims, Priority Tax Claims And Other Priority Claims

Section 1129(a)(9) of the Bankruptcy Code requires that persons holding claims entitled to priority under section 507(a) receive specified cash payments under the plan. Unless the holder of a particular claim agrees to a different treatment with respect to such claim, section 1129(a)(9) requires the plan to provide as follows:

> (A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of [the Bankruptcy Code], on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;
>
> (B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6) or 507(a)(7) of [the Bankruptcy Code], each holder of a claim of such class will receive—
>
> > (i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
> >
> > (ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim; and
>
> (C) with respect to a claim of a kind specified in section 507(a)(8) of [the Bankruptcy Code], the holder of such claim will receive on account of such claim deferred cash payments over a period of five years from the date of the order for relief so long as the amount so paid has a value, as of the effective date of the plan, equal to the allowed amount of such claim.

11 U.S.C. § 1129(a)(9).

An Administrative Expense Claim Bar Date has been set for all Administrative Expense Claims other than Professional Fee Claims (which will be paid pursuant to Section 7.1 of the Plan). The Plan provides that (i) other than Contingent DIP Obligations, and except to the extent

that a holder of a DIP Facility Claim agrees in its sole discretion to less favorable treatment, on or before the Effective Date, the DIP Agent, for the benefit of the applicable DIP Lenders and itself, shall be paid in Cash 100% of the then-outstanding amount of the DIP Facility Claims, (ii) all Allowed Administrative Expense Claims under section 503(b) of the Bankruptcy Code will be paid in full in Cash (a) on or as soon as reasonably practicable after the Effective Date (for Claims Allowed as of the Effective Date), (b) on or as soon as practicable after the date such Claim is Allowed (or upon such other terms as may be agreed upon by such holder and the applicable Reorganized Debtor) or (c) as otherwise ordered by the Bankruptcy Court and (iii) all Allowed Other Priority Claims under section 507(a) (excluding Priority Tax Claims under section 507(a)(8), as described below) will be paid in full in Cash in an amount equal to the Allowed amount of such Claim on or as soon as reasonably practicable after the latest of (x) the Effective Date, (y) 20 calendar days after the date such Claim becomes Allowed and (z) the date for payment provided by any applicable agreement between the Reorganized Debtors and the holder of such Claim. *See* Plan, §§ 2.1, 2.3(a) and 3.2(a). Thus, the requirements of section 1129(a)(9)(A) and (B) are satisfied.

Lastly, the Plan satisfies the requirements of section 1129(a)(9)(C) regarding the treatment of Priority Tax Claims under section 507(a)(8). Section 1129(a)(9)(C) permits deferred payments over a period of five years from the date of the order for relief so long as the amount so paid has a value, as of the effective date of the plan, equal to the allowed amount of the priority tax claim. *See* 11 U.S.C. § 1129(a)(9)(C). Pursuant to Section 2.5 of the Plan, the Reorganized Debtors will pay holders of Allowed Priority Tax Claims, unless such holder agrees to a different treatment, either (i) payment in full in Cash made on or as soon as reasonably practicable after the later of the Effective Date and the first Distribution Date occurring at least

20 calendar days after the date such Claim is Allowed, (ii) regular installment payments in accordance with section 1129(a)(9)(C) of the Bankruptcy Code or (iii) such other amounts and in such other manner as may be determined by the Bankruptcy Court to provide the holder of such Allowed Priority Tax Claim deferred Cash payments having a value, as of the Effective Date, equal to such Allowed Priority Tax Claim.

Based upon the foregoing, the Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

10. At Least One Class Of Impaired Claims Has Accepted The Plan

Section 1129(a)(10) of the Bankruptcy Code provides that:

> If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

11 U.S.C. § 1129(a)(10); *see In re Martin*, 66 B.R. 921, 924 (Bankr. D. Mont. 1986) (where three classes of impaired creditors accepted the plan, exclusive of insiders, the requirement of section 1129(a)(10) was satisfied).

The Plan satisfies this requirement with respect to each of the Debtors because there is an Impaired Class of Claims against each Debtor that has accepted the Plan.

11. The Plan Is Feasible

Section 1129(a)(11) of the Bankruptcy Code requires that, as a condition precedent to confirmation, a court determine that a plan is feasible. Specifically, a court must determine that:

> Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

11 U.S.C. § 1129(a)(11). As described below, the Plan is feasible within the meaning of this provision.

The feasibility test set forth in section 1129(a)(11) requires a court to determine whether a plan is workable and has a reasonable likelihood of success. *See In re Leslie Fay*, 207 B.R. at 788; *In re Woodmere Investors Ltd. P'ship*, 178 B.R. 346, 361 (Bankr. S.D.N.Y. 1995); *Drexel Burnham*, 138 B.R. at 762; *In re Johns-Manville Corp.*, 68 B.R. at 635.

The feasibility test does not require that success be guaranteed. *See In re Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988) ("[T]he feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed."); *see also In re U.S. Truck Co.*, 47 B.R. 952, 944 (E.D. Mich. 1985) ("'Feasibility' does not, nor can it, require the certainty that a reorganized company will succeed."), *aff'd*, 800 F.2d 581 (6th Cir. 1986); *In re One Times Square Assocs. Ltd. P'ship*, 159 B.R. 695, 709 (Bankr. S.D.N.Y. 1993), *aff'd*, 165 B.R. 773 (S.D.N.Y 1994) ("'It is not necessary that the success be guaranteed, but only that the plan present a workable scheme of reorganization and operation from which there may be a reasonable expectation of success.'") (quoting 5 Collier on Bankruptcy ¶ 1129.02[11], at 1129-54 (15th ed. 1992)); *In re Texaco, Inc.*, 84 B.R. 893, 910 (Bankr. S.D.N.Y.) ("All that is required is that there be reasonable assurance of commercial viability."), *appeal dismissed*, 92 B.R. 38 (S.D.N.Y. 1988); *In re Prudential Energy Co.*, 58 B.R. 857, 862 (Bankr. S.D.N.Y. 1986) ("Guaranteed success in the stiff winds of commerce without the protection of the Code is not the standard under § 1129(a)(11).").

The key element of feasibility is whether there exists a reasonable probability that the plan's provisions can be performed. The feasibility test exists to protect against visionary or speculative plans. As noted by the United States Court of Appeals for the Ninth Circuit:

> The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation.

Pizza of Haw., Inc. v. Shakey's, Inc. (In re Pizza of Haw., Inc.), 761 F.2d 1374, 1382 (9th Cir. 1985) (quoting 5 Collier on Bankruptcy ¶ 1129.02, at 1129-36.11 (15th ed. 1984)). However, just as speculative prospects of success cannot sustain feasibility, speculative prospects of failure cannot defeat feasibility. The mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds. *See U.S. Truck*, 47 B.R. at 944.

Applying the foregoing standards of feasibility, courts have identified the following factors as probative:

(1) the adequacy of the capital structure;

(2) the earning power of the business;

(3) economic conditions;

(4) the ability of management;

(5) the probability of the continuation of the same management; and

(6) any other related matters which will determine the prospects of a sufficiently successful operation to enable performance of the provisions of the plan.

See In re Leslie Fay, 207 B.R. 764 at 789 (citing 7 Collier on Bankruptcy ¶ 1129 LH[2], at 1129-82 (15th ed. rev. 1996)); *see also Texaco, Inc.*, 84 B.R. at 910; *Prudential Energy*, 58 B.R. at 862–63. The foregoing list is neither exhaustive nor exclusive. *Drexel Burnham*, 138 B.R. at 763; *cf. In re U.S. Truck Co.*, 800 F.2d 581, 589 (6th Cir. 1986).

For purposes of determining whether the Plan satisfies the feasibility standard, the Debtors have analyzed their ability to fulfill their obligations under the Plan. As part of this analysis, the Debtors have prepared the Financial Projections attached to the Disclosure Statement as Appendix C. The Financial Projections establish that the Debtors will have sufficient Cash to meet all of their obligations under the Plan.

As described in the Drexler Declaration, the Debtors believe the Plan satisfies the feasibility requirement of section 1129(a)(11) of the Bankruptcy Code. *See* Drexler Decl. ¶¶ 26-28. The Debtors' financial advisor agrees with Mr. Drexler's assessment. As described in the Buschmann Declaration, the Debtors' financial advisor, PJT Partners LP ("**PJT Partners**"), has reviewed the Financial Projections and believes the Plan satisfies the feasibility requirement of section 1129(a)(11) of the Bankruptcy Code. *See* Buschmann Decl. ¶¶ 12-14. PJT Partners believes that based in part on their significantly restructured balance sheet, the Debtors' businesses will be viable. Buschmann Decl. ¶ 13. Based on the Financial Projections, PJT Partners believes the Debtors can reasonably be expected to have sufficient cash flow to service their debt obligations and to fund operations. *See id.*

Based upon the foregoing, the Plan has a more than reasonable likelihood of success and satisfies the feasibility standard of section 1129(a)(11).

12. All Statutory Fees Have Been Or Will Be Paid

Section 1129(a)(12) requires the payment of "[a]ll fees payable under section 1930 of title 28 of the United States Code, as determined by the court at the hearing on confirmation of the plan." 11 U.S.C. § 1129(a)(12). Section 507 of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930 of] chapter 123 of title 28" are afforded priority as administrative expenses. 11 U.S.C. § 507(a)(2). In accordance with sections 507 and 1129(a)(12) of the Bankruptcy Code, the Plan provides that all such fees and charges, to the extent not previously paid, will be paid in cash on the Effective Date or as soon thereafter as is practicable. *See* Plan, §§ 2.2, 15.3. Thus, the Plan satisfies the requirements of section 1129(a)(12).

13. The Plan Adequately And Properly Treats Retiree Benefits

Section 1129(a)(13) of the Bankruptcy Code requires a plan to provide for "retiree benefits" (as defined in section 1114 of the Bankruptcy Code) at levels established pursuant to section 1114 of the Bankruptcy Code. On and after the Effective Date, as set forth in Section 9.3(d) of the Plan, all retiree benefits shall remain in place and will continued to be honored.

Accordingly, the requirements of section 1129(a)(13) of the Bankruptcy Code have been satisfied.

14. The Plan Satisfies The "Cram Down" Requirements for the Deemed to Reject Classes and the Voting to Reject Classes Because It Does Not Discriminate Unfairly And Is Fair And Equitable With Respect To Such Classes

Section 1129(b) of the Bankruptcy Code provides a mechanism for confirmation of a plan in circumstances where the plan is not accepted by all impaired classes of claims and equity interests. This mechanism is known colloquially as "cram down." Section 1129(b) provides in pertinent part:

> Notwithstanding section 510(a) of [the Bankruptcy Code], if all of the applicable requirements of [section 1129(a) of the Bankruptcy Code] other than [the requirement contained in section 1129(a)(8) that a plan must be accepted by all impaired classes] are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b)(1). Thus, under section 1129(b), a court may "cram down" a plan over the deemed rejection by impaired classes of claims or equity interests that receive no distributions under the plan as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such classes.

A. The Plan Does Not Discriminate Unfairly

Section 1129(b)(1) does not prohibit discrimination between classes; it prohibits only discrimination that is unfair. *See In re 11,111, Inc.*, 117 B.R. 471, 478 (Bankr. D. Minn. 1990). The weight of judicial authority holds that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if similar classes are treated differently without a reasonable basis for the disparate treatment. *See Liberty Nat'l Enters. v. Ambac La Mesa Ltd. P'ship (In re Ambac La Mesa Ltd. P'ship)*, 115 F.3d 650, 656 (9th Cir. 1997); *In re WorldCom, Inc.*, 2003 Bankr. LEXIS 1401, at *174 (Bankr. S.D.N.Y. 2003); *In re Buttonwood Partners, Ltd.*, 111 B.R. 57, 63 (Bankr. S.D.N.Y. 1990). Accordingly, as between two classes of claims or two classes of equity interests, there is no unfair discrimination if (i) the classes are comprised of dissimilar claims or interests, *see, e.g.*, *In re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986), or (ii) taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment, *see, e.g.*, *Buttonwood Partners*, 111 B.R. at 63; *In re Rivera Echevarria*, 129 B.R. 11, 13 (Bankr. D.P.R. 1991).

Under this standard, the Plan does not "discriminate unfairly" as to the Rejecting Classes. The Deemed to Reject Classes consist of Interests (or Claims subordinated to Interests pursuant to section 510(b) of the Bankruptcy Code) dissimilar in their legal nature from secured or unsecured claims. The different treatment of remaining Rejecting Classes is not "unfair" because unsecured creditors are not entitled to any recovery and there is a reasonable, legitimate basis for the discrimination in treatment among these Classes based on the different legal and factual nature of the claims. Moreover, the Unimpaired treatment of Class 2G-71G (Interests in Subsidiary Debtors), the other classes of Interests, has a reasonable basis. Section 1129(b) does not require the dismemberment of the Debtors' corporate structure. Should it be necessary, exercising the option to retain ownership over the Subsidiary Debtors inures to the benefit of all

creditors, and it is absolutely reasonable for the ownership interests in the Subsidiary Debtors to be treated differently from the interests of equity holders of Arch Coal.

B. The Plan Is Fair and Equitable

Section 1129(b)(2) of the Bankruptcy Code defines the phrase "fair and equitable" as follows:

> (A) As to "secured claims": Either (i) each impaired secured creditor retains the liens securing its secured claim and receives on account of its secured claim deferred cash payments having a present value equal to the amount of its allowed secured claim, (ii) the property is sold free and clear of liens with such liens to attach to the proceeds of the sale and the treatment of such liens on proceeds is provided in clause (i) or (iii) of this subparagraph, or (iii) each impaired secured creditor realizes the "indubitable equivalent" of its allowed secured claim.
>
> (B) As to "unsecured claims": Either (i) each impaired unsecured creditor receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive or retain any property under the plan on account of such junior interest.
>
> (C) As to holders of "interests": Either (i) each holder of an interest will receive or retain under the plan property of a value as of the effective date of the plan equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled or the value of the interest or (ii) the holder of any interest that is junior to the nonaccepting class will not receive or retain any property under the plan on account of such junior interest.

See 11 U.S.C. § 1129(b)(2). In this case, the "fair and equitable" rule is satisfied as to each holder of a Claim or Interest in the Rejecting Classes.

Even though interests in Classes 2G-71G (Interests in Subsidiary Debtors) may be reinstated in order to preserve the corporate structure of the Debtors, the Plan is still "fair and

equitable." Bankruptcy courts have held that the "technical preservation of equity is a means to preserve the corporate structure that does not have any economic substance and that does not enable any junior creditor or interest holder to retain or recover any value under the Plan." *Ion Media Networks, Inc. v. Cyrus Select Opportunities Master Fund, Ltd. (In re Ion Media Networks, Inc.)*, 419 B.R. 585, 601 (Bankr. S.D.N.Y. 2009). Here, as in *Ion Media*, the retention of intercompany interests would "constitute[] a device utilized to allow the Debtors to maintain their organizational structure and avoid the unnecessary cost of having to reconstitute that structure." *Id.* Accordingly, the requirements of section 1129(b)(2)(B) are satisfied as to Classes 2G-71G.

The Voting to Reject Classes are comprised of General Unsecured Claims against the Debtors. Other than interests in Classes 2G-71G, the reinstatement of which is "fair and equitable" for the reasons described in the previous paragraph, no holder of Claims or Interests junior in priority to holders of General Unsecured Claims will receive or retain any property on account of their Claims or Interests. Accordingly, the requirements of section 1129(b)(2)(B) are satisfied as to the Voting to Reject Classes.

Class 1G is comprised of Interests in Arch Coal. As the holders of Claims against the Debtors will not be paid in full pursuant to the Plan, holders of Interests in Arch Coal will not and appropriately should not receive or retain any property under the Plan on account of their Interests. Accordingly, the requirements of section 1129(b)(2)(C) of the Bankruptcy Code are satisfied as to Class 1G.

Finally, Classes 1F-71F are comprised of Section 510(b) Claims subordinated pursuant to section 510(b) of the Bankruptcy Code. No holder of Claims or Interests junior in priority to holders of Section 510(b) Claims (except the holders of certain intercompany Interests, as

discussed above) will receive or retain any property on account of their Claims or Interests. Accordingly, the requirements of section 1129(b)(2)(B) are satisfied as to Classes 1F-71F.

III. DEBTORS' REPLY TO OBJECTIONS TO CONFIRMATION

1. United States Trustee's Objection

The U.S. Trustee objected to the exculpation of certain parties pursuant to Section 11.6 of the Plan and to the payment of the Indenture Trustee Fees and Expenses pursuant to Section 6.1 of the Plan. *See United States Trustee's Objection to Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [ECF No. 1290] (the "**UST Objection**").

A. The U.S. Trustee's Objection to the Exculpation Provision Should Be Overruled

As set forth in section 3.B above, the exculpation provision is reasonable and customary, appropriately tailored and an integral part of the plan. Notably, of the thousands of parties that were solicited, not one creditor or other economic party in interest objected to the exculpation provision. Only the U.S. Trustee took issue, erroneously contending that the exculpation provision is unlawful because it provides exculpation for non-estate fiduciaries. The U.S. Trustee ignores the long line of cases where courts in this and other districts have recognized that there is no absolute bar on exculpation of non-estate fiduciaries where such exculpation is justified under the circumstances, and have approved exculpation provisions in favor of non-estate fiduciaries where such parties made a substantial contribution to the debtors' restructuring. *See, e.g.*, *In re Patriot Coal Corp.*, Case No. 12-51502 (KAS) (Bankr. E.D. Mo. Dec. 18, 2013) (exculpation included DIP Agent, DIP lenders, prepetition lenders and prepetition notes trustees); *In re Am. Bancorporation*, Case No. 14-31882 (Bankr. D. Minn. Feb. 29, 2016) (exculpation included debtor's shareholders); *In re Deerfield Retirement Cmty., Inc.*, Case No. 14-00052 (ALS) (Bankr.

S.D. Iowa Mar. 7, 2014) (exculpation included prepetition secured lender and prepetition bondholders); *In re Otter Tail Ag Ent., LLC*, Case No. 09-61250 (DDO) (Bankr. D. Minn. June 1, 2011) (exculpation included prepetition lenders and prepetition bondholders); *In re Sabine Oil & Gas Corp.*, Case No. 15-11835 (SCC) (Bankr. S.D.N.Y. July 27, 2016) (exculpation included prepetition lenders); *In re Venoco, Inc.*, Case No. 16-10655 (KG) (Bankr. D. Del. July 14, 2016) (exculpation included DIP agent, DIP lenders, each party to the debtors' restructuring support agreement, prepetition noteholders and prepetition notes trustees); *In re Alpha Natural Res., Inc.*, Case No. 15-33896 (KRH) (Bankr. E.D. Va. July 12, 2016) (exculpation included DIP Agent, DIP lenders, prepetition lenders and prepetition notes trustee); *In re Verso Corp.*, Case No. 16-10163 (KG) (Bankr. D. Del. June 23, 2016) (exculpation included DIP agent, DIP lenders, each party to the debtors' restructuring support agreement, agents under the debtors' prepetition credit agreements and the debtors' private equity sponsor); *In re Magnum Hunter Res. Corp.*, Case No. 15-12533 (KG) (Bankr. D. Del. Apr. 18, 2016) (exculpation included DIP agent, DIP lenders and prepetition notes trustee); *In re James River Coal Co.*, Case No. 14-318848 (KHR) (Bankr. E.D. Va. Mar. 21, 2016) (exculpation included DIP agent, DIP lenders and prepetition notes trustee); *In re Patriot Coal Corp.*, Case No. 15-32450 (KLP) (Bankr. E.D. Va. Oct. 9, 2015) (exculpation included DIP Agent, DIP lenders, prepetition lenders and postpetition asset purchaser).

As explained by one Delaware bankruptcy court in responding to a U.S. Trustee objection to an exculpation provision that provided exculpation for acts by two non-estate fiduciaries, "there may be particular circumstances which warrant permitting an exculpation clause for a nonfiduciary." *In re FAH Liquidating Corp.*, Confirmation Hr'g Tr. 24-27, Case No. 13-13087 (Bankr. D. Del. July 28, 2014). In approving the exculpation provision, Judge Kevin Gross recognized the "significant contribution" of both parties, including, among other things,

their willingness to provide debtor-in-possession financing and the waiver of certain claims against the estate and other creditors. *Id.*; Disclosure Statement 1-4, Docket No. 1152 (Bankr. D. Del. June 10, 2014).

Indeed, here, aside from the estate fiduciaries being exculpated, each of the Released Parties that benefits from the exculpation provision provided a substantial contribution to the Debtors' reorganization and was critical to the successful outcome of these Chapter 11 Cases. Each such party either participated in the negotiation and formulation of the Plan and the Restructuring Support Agreement upon which the Plan is premised and/or committed to providing the debtor-in-possession financing or securitization facility that were critical to the Debtors' successful operations in chapter 11 and ultimate reorganization. Due in large part to these parties' efforts, the Debtors were able to quickly stabilize their operations upon the commencement of the Chapter 11 Cases and are positioned to emerge with adequate liquidity and a consensual plan. The willingness of the Released Parties to provide financing, waive and release claims and causes of action pursuant to the Restructuring Support Agreement and/or otherwise provide necessary cooperation and support of the Debtors during these Chapter 11 Cases was premised on an expectation of receiving the benefits of the exculpation provision.

The exculpation provision was also essential to reaching the consensus upon which the Plan is based. It fostered open negotiations and critical compromises among key constituencies, which otherwise would have been dramatically more costly, if not wholly impossible, without assurances that parties would be protected (to a limited degree) from future liability. In approving similar exculpation provisions, courts have found that, "where a debtor's plan requires the settlement of numerous, complex issues, protection of third parties against legal exposure may be a key component of such settlement." *In re Enron Corp.*, Case No. 01-16034 (AJG)

(Bankr. S.D.N.Y. July 15, 2004) (citing *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285 (2d Cir. 1992)); *see also In re DBSD N. Am. Inc.*, 419 B.R. 179, 218 (Bankr. S.D.N.Y. 2009) (exculpation provisions are permissible "where the provisions are important to a debtor's plan"), *aff'd in part and rev'd in part*, 627 F.3d 496 (2d Cir. 2010), *aff'd in part and rev'd in part*, 634 F.3d 79 (2d Cir. 2010). Indeed, approval of the exculpation provision is required for the Plan to be confirmed and become effective. Section 12.1(a) of the Plan provides that, as a condition to confirmation of the Plan, the Confirmation Order must be in form and substance reasonably acceptable to the Majority Consenting Lenders, the Creditors' Committee, and, solely to the extent provided for in the Restructuring Support Agreement, the Initial Consenting Noteholders. Section 12.2(d) of the Plan provides that, as a condition to the effectiveness of the Plan, any amendments to the Plan must be in form and substance reasonably acceptable to the Majority Consenting Lenders, the Creditors' Committee, and, solely to the extent provided for in the Restructuring Support Agreement, the Initial Consenting Noteholders. Additionally, the effectiveness of the Plan requires the reinstatement of the Securitization Facility, which is subject to entry of a confirmation order that is reasonably satisfactory to the parties thereto. The Debtors understand that none of the foregoing parties would view a plan or confirmation order that does not provide them with the benefit of the exculpation provision as reasonably acceptable or satisfactory.

B. The U.S. Trustee's Objection to Payment of the Indenture Trustee Fees and Expenses Should Be Overruled

The objection of the U.S. Trustee to the payment of Indenture Trustee Fees and Expenses is both commercially and legally misguided. Prohibiting the Debtors' payment of the Indenture Trustee Fees and Expenses would be directly contrary to the hard-fought compromise that achieved the support of the parties to the Restructuring Support Agreement and subsequently

received the overwhelming support of Creditors. As discussed at length in the Disclosure Statement and at the hearing on the Disclosure Statement, the Plan includes a global settlement and compromise of certain disputed case issues. These issues had the potential to frustrate the Debtors' attempts to achieve consensus regarding the Plan, which would have resulted in costly litigation and delay and jeopardized the Debtors' successful reorganization. However, after extensive discovery and numerous rounds of intense negotiations, the parties to the Restructuring Support Agreement reached a compromise that culminated in the Plan.[8] Crucially, the agreed distributions to unsecured creditors—an essential element of the grand bargain—were expected to be delivered *without deducting Indenture Trustee Fees and Expenses.* The Restructuring Support Agreement and Disclosure Statement are clear that the Indenture Trustee Fees are to be paid separately under the Plan and not taken from the distributions to unsecured creditors.[9] If the U.S. Trustee's objection is sustained and the Plan is amended to omit payment of the Indenture Trustee Fees and Expenses, the agreed distributions to holders of Notes Claims will be reduced by the full amount of the Indenture Trustee Fees and Expense because each of the Indenture Trustees benefits from a charging lien under the applicable Indenture, which the Plan cannot and does not discharge. *See* Plan Section 5.4(b); s*ee also In re RNI Wind Down Corp.*, No. 06-10110 (CSS), 2007 WL 949647, at *8-*9 (Bankr. D. Del. Mar. 29, 2007) (holding that bankruptcy court

[8] As described in the Disclosure Statement, "the consideration for the settlement . . . is provided by *the distributions to unsecured creditors and holders of First Lien Credit Facility Claims pursuant to the Plan*." *See* Disclosure Statement, Article III.H (emphasis added).

[9] Although the Debtors do not believe that any further disclosure on the Indenture Trustee Fees and Expenses is required, the Debtors have obtained authority from each of the Indenture Trustees and their respective counsel to disclose estimates of the Indenture Trustee Fees and Expenses through the Effective Date, which is as follows: U.S. Bank National Association ($471,278.50); UMB Bank, National Association ($657,437.56); Wilmington Savings Fund Society ($695,000). This takes into account the $75,000 cap on fees and expenses incurred after the entry of the RSA Order for each Indenture Trustee, which cap was specifically negotiated for by the parties to the Restructuring Support Agreement.

does not have jurisdiction over a dispute between noteholders and the indenture trustee regarding the charging lien).[10]

Perplexingly, through its objection, the U.S. Trustee is advocating against the interests of the Debtors' creditors, including certain of the Debtors' least sophisticated creditors. Holders of Notes Claims include numerous retail investors, some of whom have experienced substantial investment losses and resulting hardship due to the Debtors' insolvency. The change the U.S. Trustee seeks would cause the Indenture Trustees to assert their charging liens against the distributions to holders of Notes Claims, effectively taking value from the pockets of retail investors and moving it to the pockets of the First Lien Lenders, who will own 94% of the New Common Stock of Arch Coal and will therefore be the primary beneficiaries of the Debtors' cash savings from not having to pay the Indenture Trustee Fees and Expenses. With not a single First Lien Lender voting to reject the Plan or objecting to the Plan, there is no reason the Court ought to enhance their recovery, in particular at the expense of the Debtors' general unsecured creditors.

Moreover, the U.S. Trustee is incorrect that section 503(b) of the Bankruptcy Code is the "sole possible source" of authority to pay the Indenture Trustee Fees and Expenses. In support of this assertion, the U.S. Trustee cites *Davis v. Elliot Management Corp. (In re Lehman Bros. Holdings, Inc.)*, 508 B.R. 283, 290 (S.D.N.Y. 2014). However, this decision was limited to the issue of the payment of statutory committee members' professional fees, and is not binding on this Court.

[10] Pursuant to Section 7.07 of each of the Indentures, the Indenture Trustee is permitted to withhold distributions to the holders of Notes and place a lien on such distributions until its outstanding fees and expenses are satisfied.

Courts in this and other districts have authorized the payment of indenture trustee fees and expenses pursuant to chapter 11 plans. *See, e.g., In re Patriot Coal Corp.,* Case No. 12-51502-659 (KAS) (Bankr. E.D. Mo. Dec. 18, 2013), *In re Alpha Natural Res., Inc.*, Case No. 15-33896 (KRH) (Bankr. E.D. Va. Aug. 18, 2016); *In re Verso Corp.*, Case No. 16-10163 (Bankr. D. Del. June 23, 2016). The *Lehman* bankruptcy court's rationale is compelling. As noted by Judge James M. Peck, "[s]ection 503(b) is not a straightjacket, and the provisions of that section that directly govern the allowance of administrative claims do not control the plan process and are not inconsistent with the more liberal treatment prescribed in the Plan." *In re Lehman Bros. Holdings Inc.*, 487 B.R. 181, 186 (Bankr. S.D.N.Y. 2013). Judge Peck relied on a prior Southern District of New York Bankruptcy Court opinion in which Judge Robert E. Gerber stated that, "section 503(b) does not provide that it is the only way by which individual creditors' fees may be absorbed by the estate." *In re Adelphia Commc'ns Corp.*, 441 B.R. 6, 15 (Bankr. S.D.N.Y. 2010). In *Adelphia*, Judge Gerber approved the payment of professional fees of fourteen ad hoc groups and certain individual creditors pursuant to a plan, and held, over the objection of the U.S. Trustee, that section 1123(b)(6) of the Bankruptcy Code provides the bankruptcy court with a "broad grant of authority" to permit the payments of reasonable professional fees without showing compliance with section 503(b) on the basis that "reorganization plans, after they get the requisite assent, may allocate and distribute the value of the debtors' estates by a broad array of means." *Id.* at 19. Agreeing with Judges Peck and Gerber, Southern District of New York Bankruptcy Court Judge Sean H. Lane also allowed, over the objection of the U.S. Trustee, payment of statutory committee members' professional fees contemplated by the plan "given the overwhelming support of the Plan by creditors." *In re AMR Corp.*, 497 B.R. 690, 696 (Bankr. S.D.N.Y. 2013).

Thus, despite the District Court's holding in *Lehman*, the Debtors aver that section 503(b) is not the sole means by which indenture trustee's fees and expenses may be paid pursuant to a chapter 11 plan. As recognized by the *Adelphia* court, "[s]ection 1123(b)(6), by its terms, is plainly a broad grant of authority." 441 B.R. at 19. *See also U.S. Trustee v. Bethlehem Steel Corp (In re Bethlehem Steel Corp.)*, 2003 WL 21738964, at *11 (S.D.N.Y. July 28, 2003) (holding that section 503(b)(3)(D) and (4) did not bar a debtor from reimbursing its labor union's professional fees during collective bargaining agreement negotiations provided that section 363(b) is satisfied). Judge Gerber cautioned that a court "must be wary of declaring a plan provision not 'appropriate,' and hence forbidden, in the absence of a violation of statutory or caselaw, a provision plainly contrary to public policy, or, perhaps, unusual circumstances or good reason," and went on to note that,

> reorganization plans, after they get the requisite assent, may allocate and distribute the value of debtors' estates by a broad array of means. The various interests of maintaining the necessary flexibility for plan proponents and other parties in interest, maintaining predictability in the bankruptcy courts of this district and elsewhere, and avoiding judicial legislation all suggest a construction of section 1123(b)(6) under which judges act with restraint in declaring plan provisions not to be appropriate based on anything short of bankruptcy caselaw, nonbankruptcy statutory or case law, or clear public policy concerns.

Id.

Ultimately, each of the U.S. Trustee's grounds for objecting to the Plan fails for the same reason. Each overlooks the fact that the Plan includes compromises that were initially negotiated and subsequently accepted by thousands of creditors with disparate economic interests. The terms and conditions of such compromises were crucial to achieving the overwhelming creditor support that the Plan garnered, are permitted by law and should not be subject to the line-item veto of a party that is not an economic stakeholder.

2. Joseph J. and Sharon L. Pabian

Joseph J. and Sharon L. Pabian filed an objection [ECF No. 1272] seeking a lump sum payment of $43,331.00 plus interest on account of certain retirement benefits. Mr. and Mrs. Pabian's objection attaches a letter dated December 15, 2003 indicating that Mr. Pabian was employed by Evergreen Mining through December 31, 2003, and that he was entitled to receive either a lump sum payment or an annuity from the Horizon NR, LLC Employee Pension Plan in varying amounts depending upon certain elections that he made. The letter also indicates that Mr. Pabian may have been entitled to receive an additional "protection benefit" either in the form of a $855.59 monthly payment—if he elected to receive his primary benefits in the form of an annuity—or a $43,331.25 lump sum if he elected to receive his primary benefits in the form of a lump sum. The letter does not indicate which elections Mr. Pabian made, if any.

Mr. and Mrs. Pabian's objection seeks payment of the $43,331.25 lump sum "protection benefit" in conjunction with Confirmation. Mr. Pabian has also filed Proof of Claim No. 2000 in respect of this $43,331.25 lump sum payment, seeking priority treatment pursuant to section 507(a)(5) of the Bankruptcy Code.

Neither Mr. Pabian's Proof of Claim nor Mr. and Mrs. Pabian's objection indicates why the alleged decade-old entitlement to a lump sum payment is arising in the context of the Debtors' reorganization. Although the Debtors purchased assets from an affiliate of Evergreen Mining in 2004, the Debtors do not have any responsibility for pension benefits payable by such affiliate or the Horizon NR, LLC Employee Pension Plan, and intend to object to Mr. Pabian's Claim. If Mr. Pabian's Claim is ultimately allowed, which the Debtors believe is unlikely, it will receive the treatment to which it is entitled under the Plan. Mr. and Mrs. Pabian do not question the legality of the treatment provisions of the Plan or the Debtors' satisfaction of section 1129 of

the Bankruptcy Code, and, thus, their objection is not an appropriate objection to Confirmation and should be overruled.

IV. RELIEF UNDER BANKRUPTCY RULE 3020(E) IS APPROPRIATE

According to Bankruptcy Rule 3020(e), "[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." *See also* Fed. R. Bankr. P. 6004(h), 6006(d). It is not uncommon for Bankruptcy Courts in this district and others to waive the stay imposed by Bankruptcy Rule 3020(e) or otherwise make a confirmation order effective immediately when justified by commercial circumstances. *See, e.g.*, *In re US Fidelis, Inc.*, Case No. 10-41902 (CER) (Bankr. E.D. Mo. Aug. 28, 2012); *In re ContinentalAFA Dispensing Co.*, Case No. 08-45921-659 (Bankr. E.D. Mo. Sep. 24, 2009); *In re Alpha Natural Res., Inc.*, Case No. 15-33896 (KRH) (Bankr. E.D. Va. July 12, 2016); *In re Molycorp, Inc.*, Case No. 15-11357 (CSS) (Bankr. D. Del. Apr. 8, 2016). In these cases, it is critical for the Debtors to have the ability to emerge immediately should it be required for financial or other commercial reasons, and, absent a waiver by the Majority Consenting Lenders, the Plan, Restructuring Support Agreement and DIP Facility require that the Debtors emerge within 15 days of the Confirmation Date. Accordingly, a waiver of the stay imposed by Bankruptcy Rule 3020(e) is appropriate and necessary.

CONCLUSION

The Plan complies with and satisfies all of the requirements of section 1129 of the Bankruptcy Code and should therefore be confirmed.

Dated: September 12, 2016
New York, New York

Respectfully submitted,

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Local Counsel to the Debtors and Debtors in Possession

SCHEDULE A
Debtor Entities

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

SCHEDULE I
Accepting Voting Classes

Total Number of Voting to Accept Classes 185

Class 1C	First Lien Credit Facility Secured Claims (ACI Terminal, LLC)
Class 2C	First Lien Credit Facility Secured Claims (Allegheny Land Company)
Class 3C	First Lien Credit Facility Secured Claims (Apogee Holdco, Inc.)
Class 4C	First Lien Credit Facility Secured Claims (Arch Coal, Inc.)
Class 5C	First Lien Credit Facility Secured Claims (Arch Coal Sales Company, Inc.)
Class 6C	First Lien Credit Facility Secured Claims (Arch Coal West, LLC)
Class 7C	First Lien Credit Facility Secured Claims (Arch Development, LLC)
Class 8C	First Lien Credit Facility Secured Claims (Arch Energy Resources, LLC)
Class 9C	First Lien Credit Facility Secured Claims (Arch Reclamation Services, Inc.)
Class 10C	First Lien Credit Facility Secured Claims (Arch Western Acquisition Corporation)
Class 11C	First Lien Credit Facility Secured Claims (Arch Western Acquisition, LLC)
Class 12C	First Lien Credit Facility Secured Claims (Arch Western Bituminous Group, LLC)
Class 13C	First Lien Credit Facility Secured Claims (Arch Western Finance LLC)
Class 14C	First Lien Credit Facility Secured Claims (Arch Western Resources, LLC)
Class 15C	First Lien Credit Facility Secured Claims (Arch of Wyoming, LLC)
Class 16C	First Lien Credit Facility Secured Claims (Ark Land Company)
Class 17C	First Lien Credit Facility Secured Claims (Ark Land KH, Inc.)
Class 18C	First Lien Credit Facility Secured Claims (Ark Land LT, Inc.)
Class 19C	First Lien Credit Facility Secured Claims (Ark Land WR, Inc.)
Class 20C	First Lien Credit Facility Secured Claims (Ashland Terminal, Inc.)
Class 21C	First Lien Credit Facility Secured Claims (Bronco Mining Company, Inc.)
Class 22C	First Lien Credit Facility Secured Claims (Catenary Coal Holdings, Inc.)
Class 23C	First Lien Credit Facility Secured Claims (Catenary HoldCo, Inc.)
Class 24C	First Lien Credit Facility Secured Claims (Coal-Mac, Inc.)
Class 25C	First Lien Credit Facility Secured Claims (CoalQuest Development LLC)
Class 26C	First Lien Credit Facility Secured Claims (Cumberland River Coal Company)
Class 27C	First Lien Credit Facility Secured Claims (Energy Development Co.)
Class 28C	First Lien Credit Facility Secured Claims (Hawthorne Coal Company, Inc.)
Class 29C	First Lien Credit Facility Secured Claims (Hobet Holdco, Inc.)
Class 30C	First Lien Credit Facility Secured Claims (Hunter Ridge, Inc.)
Class 31C	First Lien Credit Facility Secured Claims (Hunter Ridge Coal Company)
Class 32C	First Lien Credit Facility Secured Claims (Hunter Ridge Holdings, Inc.)
Class 33C	First Lien Credit Facility Secured Claims (ICG, Inc.)
Class 34C	First Lien Credit Facility Secured Claims (ICG, LLC)
Class 35C	First Lien Credit Facility Secured Claims (ICG Beckley, LLC)
Class 36C	First Lien Credit Facility Secured Claims (ICG East Kentucky, LLC)
Class 37C	First Lien Credit Facility Secured Claims (ICG Eastern, LLC)
Class 38C	First Lien Credit Facility Secured Claims (ICG Eastern Land, LLC)
Class 39C	First Lien Credit Facility Secured Claims (ICG Illinois, LLC)

Class 40C	First Lien Credit Facility Secured Claims (ICG Natural Resources, LLC)
Class 41C	First Lien Credit Facility Secured Claims (ICG Tygart Valley, LLC)
Class 42C	First Lien Credit Facility Secured Claims (International Coal Group, Inc.)
Class 43C	First Lien Credit Facility Secured Claims (Jacobs Ranch Coal LLC)
Class 44C	First Lien Credit Facility Secured Claims (Jacobs Ranch Holdings I LLC)
Class 45C	First Lien Credit Facility Secured Claims (Jacobs Ranch Holdings II LLC)
Class 46C	First Lien Credit Facility Secured Claims (Juliana Mining Company, Inc.)
Class 47C	First Lien Credit Facility Secured Claims (King Knob Coal Co., Inc.)
Class 48C	First Lien Credit Facility Secured Claims (Lone Mountain Processing, Inc.)
Class 49C	First Lien Credit Facility Secured Claims (Marine Coal Sales Company)
Class 50C	First Lien Credit Facility Secured Claims (Melrose Coal Company, Inc.)
Class 51C	First Lien Credit Facility Secured Claims (Mingo Logan Coal Company)
Class 52C	First Lien Credit Facility Secured Claims (Mountain Coal Company, L.L.C.)
Class 53C	First Lien Credit Facility Secured Claims (Mountain Gem Land, Inc.)
Class 54C	First Lien Credit Facility Secured Claims (Mountain Mining, Inc.)
Class 55C	First Lien Credit Facility Secured Claims (Mountaineer Land Company)
Class 56C	First Lien Credit Facility Secured Claims (Otter Creek Coal, LLC)
Class 57C	First Lien Credit Facility Secured Claims (Patriot Mining Company, Inc.)
Class 58C	First Lien Credit Facility Secured Claims (P.C. Holding, Inc.)
Class 59C	First Lien Credit Facility Secured Claims (Powell Mountain Energy, LLC)
Class 60C	First Lien Credit Facility Secured Claims (Prairie Coal Company, LLC)
Class 61C	First Lien Credit Facility Secured Claims (Prairie Holdings, Inc.)
Class 62C	First Lien Credit Facility Secured Claims (Saddleback Hills Coal Company)
Class 63C	First Lien Credit Facility Secured Claims (Shelby Run Mining Company, LLC)
Class 64C	First Lien Credit Facility Secured Claims (Simba Group, Inc.)
Class 65C	First Lien Credit Facility Secured Claims (Thunder Basin Coal Company, L.L.C.)
Class 66C	First Lien Credit Facility Secured Claims (Triton Coal Company, L.L.C.)
Class 67C	First Lien Credit Facility Secured Claims (Upshur Property, Inc.)
Class 68C	First Lien Credit Facility Secured Claims (Vindex Energy Corporation)
Class 69C	First Lien Credit Facility Secured Claims (Western Energy Resources, Inc.)
Class 70C	First Lien Credit Facility Secured Claims (White Wolf Energy, Inc.)
Class 71C	First Lien Credit Facility Secured Claims (Wolf Run Mining Company)
Class 1D	Unsecured Funded Debt Claims (ACI Terminal, LLC)
Class 2D	Unsecured Funded Debt Claims (Allegheny Land Company)
Class 3D	Unsecured Funded Debt Claims (Apogee Holdco, Inc.)
Class 4D	Unsecured Funded Debt Claims (Arch Coal, Inc.)
Class 5D	Unsecured Funded Debt Claims (Arch Coal Sales Company, Inc.)
Class 6D	Unsecured Funded Debt Claims (Arch Coal West, LLC)
Class 7D	Unsecured Funded Debt Claims (Arch Development, LLC)
Class 8D	Unsecured Funded Debt Claims (Arch Energy Resources, LLC)
Class 9D	Unsecured Funded Debt Claims (Arch Reclamation Services, Inc.)
Class 10D	Unsecured Funded Debt Claims (Arch Western Acquisition Corporation)
Class 11D	Unsecured Funded Debt Claims (Arch Western Acquisition, LLC)
Class 12D	Unsecured Funded Debt Claims (Arch Western Bituminous Group, LLC)

Class 13D	Unsecured Funded Debt Claims (Arch Western Finance LLC)
Class 14D	Unsecured Funded Debt Claims (Arch Western Resources, LLC)
Class 15D	Unsecured Funded Debt Claims (Arch of Wyoming, LLC)
Class 16D	Unsecured Funded Debt Claims (Ark Land Company)
Class 17D	Unsecured Funded Debt Claims (Ark Land KH, Inc.)
Class 18D	Unsecured Funded Debt Claims (Ark Land LT, Inc.)
Class 19D	Unsecured Funded Debt Claims (Ark Land WR, Inc.)
Class 20D	Unsecured Funded Debt Claims (Ashland Terminal, Inc.)
Class 21D	Unsecured Funded Debt Claims (Bronco Mining Company, Inc.)
Class 22D	Unsecured Funded Debt Claims (Catenary Coal Holdings, Inc.)
Class 23D	Unsecured Funded Debt Claims (Catenary HoldCo, Inc.)
Class 24D	Unsecured Funded Debt Claims (Coal-Mac, Inc.)
Class 25D	Unsecured Funded Debt Claims (CoalQuest Development LLC)
Class 26D	Unsecured Funded Debt Claims (Cumberland River Coal Company)
Class 27D	Unsecured Funded Debt Claims (Energy Development Co.)
Class 28D	Unsecured Funded Debt Claims (Hawthorne Coal Company, Inc.)
Class 29D	Unsecured Funded Debt Claims (Hobet Holdco, Inc.)
Class 30D	Unsecured Funded Debt Claims (Hunter Ridge, Inc.)
Class 31D	Unsecured Funded Debt Claims (Hunter Ridge Coal Company)
Class 32D	Unsecured Funded Debt Claims (Hunter Ridge Holdings, Inc.)
Class 33D	Unsecured Funded Debt Claims (ICG, Inc.)
Class 34D	Unsecured Funded Debt Claims (ICG, LLC)
Class 35D	Unsecured Funded Debt Claims (ICG Beckley, LLC)
Class 36D	Unsecured Funded Debt Claims (ICG East Kentucky, LLC)
Class 37D	Unsecured Funded Debt Claims (ICG Eastern, LLC)
Class 38D	Unsecured Funded Debt Claims (ICG Eastern Land, LLC)
Class 39D	Unsecured Funded Debt Claims (ICG Illinois, LLC)
Class 40D	Unsecured Funded Debt Claims (ICG Natural Resources, LLC)
Class 41D	Unsecured Funded Debt Claims (ICG Tygart Valley, LLC)
Class 42D	Unsecured Funded Debt Claims (International Coal Group, Inc.)
Class 43D	Unsecured Funded Debt Claims (Jacobs Ranch Coal LLC)
Class 44D	Unsecured Funded Debt Claims (Jacobs Ranch Holdings I LLC)
Class 45D	Unsecured Funded Debt Claims (Jacobs Ranch Holdings II LLC)
Class 46D	Unsecured Funded Debt Claims (Juliana Mining Company, Inc.)
Class 47D	Unsecured Funded Debt Claims (King Knob Coal Co., Inc.)
Class 48D	Unsecured Funded Debt Claims (Lone Mountain Processing, Inc.)
Class 49D	Unsecured Funded Debt Claims (Marine Coal Sales Company)
Class 50D	Unsecured Funded Debt Claims (Melrose Coal Company, Inc.)
Class 51D	Unsecured Funded Debt Claims (Mingo Logan Coal Company)
Class 52D	Unsecured Funded Debt Claims (Mountain Coal Company, L.L.C.)
Class 53D	Unsecured Funded Debt Claims (Mountain Gem Land, Inc.)
Class 54D	Unsecured Funded Debt Claims (Mountain Mining, Inc.)
Class 55D	Unsecured Funded Debt Claims (Mountaineer Land Company)
Class 56D	Unsecured Funded Debt Claims (Otter Creek Coal, LLC)

Class 57D	Unsecured Funded Debt Claims (Patriot Mining Company, Inc.)
Class 58D	Unsecured Funded Debt Claims (P.C. Holding, Inc.)
Class 59D	Unsecured Funded Debt Claims (Powell Mountain Energy, LLC)
Class 60D	Unsecured Funded Debt Claims (Prairie Coal Company, LLC)
Class 61D	Unsecured Funded Debt Claims (Prairie Holdings, Inc.)
Class 62D	Unsecured Funded Debt Claims (Saddleback Hills Coal Company)
Class 63D	Unsecured Funded Debt Claims (Shelby Run Mining Company, LLC)
Class 64D	Unsecured Funded Debt Claims (Simba Group, Inc.)
Class 65D	Unsecured Funded Debt Claims (Thunder Basin Coal Company, L.L.C.)
Class 66D	Unsecured Funded Debt Claims (Triton Coal Company, L.L.C.)
Class 67D	Unsecured Funded Debt Claims (Upshur Property, Inc.)
Class 68D	Unsecured Funded Debt Claims (Vindex Energy Corporation)
Class 69D	Unsecured Funded Debt Claims (Western Energy Resources, Inc.)
Class 70D	Unsecured Funded Debt Claims (White Wolf Energy, Inc.)
Class 71D	Unsecured Funded Debt Claims (Wolf Run Mining Company)
Class 1E	General Unsecured Claims (ACI Terminal, LLC)
Class 2E	General Unsecured Claims (Allegheny Land Company)
Class 3E	General Unsecured Claims (Apogee Holdco, Inc.)
Class 4E	General Unsecured Claims (Arch Coal, Inc.)
Class 5E	General Unsecured Claims (Arch Coal Sales Company, Inc.)
Class 8E	General Unsecured Claims (Arch Energy Resources, LLC)
Class 13E	General Unsecured Claims (Arch Western Finance, LLC)
Class 14E	General Unsecured Claims (Arch Western Resources, LLC)
Class 15E	General Unsecured Claims (Arch of Wyoming, LLC)
Class 17E	General Unsecured Claims (Ark Land KH, Inc.)
Class 22E	General Unsecured Claims (Catenary Coal Holdings, Inc.)
Class 23E	General Unsecured Claims (Catenary Holdco, Inc.)
Class 24E	General Unsecured Claims (Coal-Mac, Inc.)
Class 25E	General Unsecured Claims (CoalQuest Development LLC)
Class 26E	General Unsecured Claims (Cumberland River Coal Company)
Class 27E	General Unsecured Claims (Energy Development Co.)
Class 28E	General Unsecured Claims (Hawthorne Coal Company, Inc.)
Class 29E	General Unsecured Claims (Hobet Holdco, Inc.)
Class 30E	General Unsecured Claims (Hunter Ridge, Inc.)
Class 34E	General Unsecured Claims (ICG, LLC)
Class 35E	General Unsecured Claims (ICG Beckley, LLC)
Class 36E	General Unsecured Claims (ICG East Kentucky, LLC)
Class 37E	General Unsecured Claims (ICG Eastern, LLC)
Class 39E	General Unsecured Claims (ICG Illinois, LLC)
Class 40E	General Unsecured Claims (ICG Natural Resources, LLC)
Class 41E	General Unsecured Claims (ICG Tygart Valley, LLC)
Class 42E	General Unsecured Claims (International Coal Group, Inc.)
Class 43E	General Unsecured Claims (Jacobs Ranch Coal LLC)
Class 46E	General Unsecured Claims (Juliana Mining Company, Inc.)

Class 47E	General Unsecured Claims (King Knob Coal Co., Inc.)
Class 48E	General Unsecured Claims (Lone Mountain Processing, Inc.)
Class 51E	General Unsecured Claims (Mingo Logan Coal Company)
Class 52E	General Unsecured Claims (Mountain Coal Company, L.L.C.)
Class 54E	General Unsecured Claims (Mountain Mining, Inc.)
Class 56E	General Unsecured Claims (Otter Creek Coal, LLC)
Class 57E	General Unsecured Claims (Patriot Mining Company, Inc.)
Class 59E	General Unsecured Claims (Powell Mountain Energy, LLC)
Class 60E	General Unsecured Claims (Prairie Coal Company, LLC)
Class 63E	General Unsecured Claims (Shelby Run Mining Company, LLC)
Class 65E	General Unsecured Claims (Thunder Basin Coal Company, L.L.C.)
Class 67E	General Unsecured Claims (Upshur Property, Inc.)
Class 68E	General Unsecured Claims (Vindex Energy Corporation)
Class 70E	General Unsecured Claims (White Wolf Energy, Inc.)

Total Number of Empty Voting Classes 25

Class 6E	General Unsecured Claims (Arch Coal West, LLC)
Class 7E	General Unsecured Claims (Arch Development, LLC)
Class 9E	General Unsecured Claims (Arch Reclamation Services, Inc.)
Class 10E	General Unsecured Claims (Arch Western Acquisition Corporation)
Class 11E	General Unsecured Claims (Arch Western Acquisition, LLC)
Class 12E	General Unsecured Claims (Arch Western Bituminous Group, LLC)
Class 18E	General Unsecured Claims (Ark Land LT, Inc.)
Class 19E	General Unsecured Claims (Ark Land WR, Inc.)
Class 20E	General Unsecured Claims (Ashland Terminal, Inc.)
Class 21E	General Unsecured Claims (Bronco Mining Company, Inc.)
Class 31E	General Unsecured Claims (Hunter Ridge Coal Company)
Class 32E	General Unsecured Claims (Hunter Ridge Holdings, Inc.)
Class 38E	General Unsecured Claims (ICG Eastern Land, LLC)
Class 44E	General Unsecured Claims (Jacobs Ranch Holdings I LLC)
Class 45E	General Unsecured Claims (Jacobs Ranch Holdings II LLC)
Class 49E	General Unsecured Claims (Marine Coal Sales Company)
Class 50E	General Unsecured Claims (Melrose Coal Company, Inc.)
Class 53E	General Unsecured Claims (Mountain Gem Land, Inc.)
Class 55E	General Unsecured Claims (Mountaineer Land Company)
Class 58E	General Unsecured Claims (P.C. Holding, Inc.)
Class 61E	General Unsecured Claims (Prairie Holdings, Inc.)
Class 62E	General Unsecured Claims (Saddleback Hills Coal Company)
Class 64E	General Unsecured Claims (Simba Group, Inc.)
Class 66E	General Unsecured Claims (Triton Coal Company, LLC)
Class 69E	General Unsecured Claims (Western Energy Resources, Inc.)

SCHEDULE II
Rejecting Voting Classes

Total Number of Rejecting Voting Classes 3

Class 16E	General Unsecured Claims (Ark Land Company)
Class 33E	General Unsecured Claims (ICG, Inc.)
Class 71E	General Unsecured Claims (Wolf Run Mining Company)