UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re: ARCH COAL, INC., *et al.*, Debtors.	Chapter 11 Case No. 16-40120

JOINDER OF ADVERSARY PLAINTIFFS TO MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AN ORDER PURSUANT TO SECTIONS 105(A) AND 105(d) OF THE BANKRUPTCY CODE AND LOCAL RULE 9019(A) DIRECTING THE APPOINTMENT OF A MEDIATOR

Bucks Funding LLC, GSO Aiguille Des Grands Montets Fund I LP, GSO Aiguille Des Grands Montets Fund II LP, GSO Aiguille Des Grands Montets Fund III LP, GSO Cactus Credit Opportunities LP, GSO Churchill Partners LP, GSO Coastline Credit Partners LP, GSO Credit-A Partners LP, GSO Palmetto Opportunistic Investment Partners LP, GSO Special Situations Master Fund LP, and Steamboat Credit Opportunities Master Fund LP (the "**Adversary Plaintiffs**"), unsecured creditors of the Debtors and parties in interest in the Debtors' Chapter 11 Cases pursuant to section 1109 of title 11 of the United States Code (the "**Bankruptcy Code**"), through their undersigned attorneys, hereby file this joinder (the "**Joinder**") to the *Motion of the Official Committee of Unsecured Creditors for an Order Pursuant to Sections 105(A) and 105(D) of the Bankruptcy Code and Local Rule 9019(A) Directing the Appointment of a*

Mediator, dated June 23, 2016 [Docket No. 1029][1] (the "**Mediation Motion**"). In support of this Joinder, the Adversary Plaintiffs respectfully state as follows:[2]

OVERVIEW

1. The Adversary Plaintiffs respectfully submit that the Mediation Motion should be granted in order to provide the estate with a means of avoiding an otherwise protracted and costly series of litigations.

A. The Debtors' Initial Plan

2. On May 5, 2016, the Debtors filed an initial plan of reorganization [Docket No. 760] (the "**Initial Plan**") and related disclosure statement [Docket No. 761] (the "**Initial Disclosure Statement**"), which embodied "the terms set forth in the Restructuring Support Agreement, dated as of January 10, 2016, between the Debtors and holders of more than 50% of their First Lien Credit Facility debt." (Initial Disclosure Statement at 2.)

B. The Exchange Transactions and the Adversary Proceeding

3. On May 27, 2016, the Adversary Plaintiffs commenced an adversary proceeding against the certain holders of First Lien Credit Facility Debt (the "**Directing Lenders**") styled, *Bucks Funding LLC, et al. v. Aberdeen Loan Funding LTD, et al.*, [Adv. Pro. No. 16-04072] (the "**Adversary Proceeding**"). As detailed in the Adversary Complaint, in July 2015, the Company sought to de-lever its balance sheet and materially improve liquidity through an out-of-court restructuring that would have reduced the Debtors' total indebtedness by nearly $1 billion, and lowered their interest expense by approximately $74 million per annum (the "**Exchange**

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[1] All references to "Docket No. __" refer to the docket of the Debtors' jointly administered chapter 11 proceedings, Case No. 16-40120, unless otherwise specified.

[2] Any capitalized terms herein that are not otherwise defined shall have the meaning ascribed to them in the Meditation Motion or the Adversary Proceeding Complaint [Adv. Pro. No. 16-04072; Docket No. 3].

Transactions"). Specifically, the Exchange Transactions involved a series of exchanges whereby certain of the Debtors' unsecured creditors, including GSO, would have exchanged up to $1.6 billion of unsecured debt for up to $400 million of secured debt and certain other consideration. Although the Exchange Transactions were in strict accord with the Credit Agreement governing the Company's First Lien Loans, the Directing Lenders, as majority owners of the Company's secured debt, fought the restructuring tooth and nail, and managed to block the Exchange Transactions by, among other things, improperly directing the Term Loan Agent under the Credit Agreement to refrain from executing the necessary administrative documents to consummate the exchanges under the guise of manufactured and meritless claims.

4. In short, the Directing Lenders refused to live up to the express terms of the bargain they entered into when they acquired the Debtors' secured debt. The Credit Agreement explicitly permitted the Debtors to issue an additional $400 million of secured debt. Accordingly, the Directing Lenders and the Debtors' other secured lenders knowingly assumed the risk of dilution when they purchased their debt. But once the Debtors announced the Exchange Transactions, which turned that risk into a reality, the Directing Lenders sought to unilaterally rewrite the terms of their bargain by improperly and in bad faith blocking the Exchange Transactions from being consummated.

C. The Committee's Standing Motion

5. On June 14, 2016, the Committee filed: (a) two Motions to Obtain Leave, Standing and Authority to Prosecute Claims on Behalf of the Debtors' Estates and for Related Relief [Docket Nos. 963, 964] (together, the "**Standing Motions**"), which seek, among other things, to pursue claims on behalf of the estate (a) against the Directing Lenders concerning their egregious interference with the Debtor's efforts to consummate the Exchange Transactions; and

(b) certain claims against the Debtors directors and officers concerning the suspicious payment of approximately $9 million of "bonuses" to the Debtors' senior officers and directors on the eve of the Debtors' bankruptcy filing, which were approved on the very same day as the RSA and with the knowledge and support of the Directing Lenders.

6. In connection with the Committee's Standing Motions, the Committee filed a related Motion for Leave to Present Motions on Expedited Basis [Docket No. 966] (the "**Motion to Expedite**").

D. The Debtors' New Plan and Their Opposition to the Various Litigations

7. Also on June 14, 2016, and on the heels of the Committee's Standing Motions, the Debtors filed an amended plan of reorganization [Docket No. 968] (the "**Amended Plan**") and related amended disclosure statement [Docket No. 969] (the "**Amended Disclosure Statement**"). The Amended Plan, among other things, purports to settle, pursuant to Bankruptcy Rule 9019, all claims against certain Released Parties (as defined in the First Amended Plan), including claims against the Directing Lenders related to their interference with the Exchange Transactions—the very claims that the Committee seeks to pursue via the Standing Motions and the very claims that the Adversary Plaintiffs are pursuing already against the Directing Lenders in the Adversary Proceeding.

8. On June 15, 2016, the Debtors filed an opposition to the Motion to Expedite [Docket No. 973].

9. And the Debtors have informed the Adversary Plaintiffs of the Debtors' intention to intervene in the Adversary Proceeding.

E. Opposition to the Amended Plan

10. Like the Committee, the Adversary Plaintiffs also intend to object to the Amended Disclosure Statement and the Amended Plan. The Amended Disclosure Statement, among other things, fails to provide adequate information concerning the Adversary Proceeding—even though the Debtors intend on intervening in this litigation. And the Amended Plan itself is patently unconfirmable. It seeks, for example, to settle virtually all of the estate claims for inadequate or no consideration. And it fails to account for potential recoveries owing to the Adversary Plaintiffs based on the outcome of the Adversary Proceeding.

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11. In short, the parties are heading toward a long and costly litigation, involving a host of complex issues, and it is for this reason that the Adversary Plaintiffs respectfully join in the Committee's Mediation Motion, so that the parties can make a final good faith attempt to resolve their disputes amicably and in an expedited fashion.

JOINDER TO MEDIATION MOTION

12. Pursuant to Local Rule 9019(A) and section 105 of the Bankruptcy Code, the Adversary Plaintiffs respectfully join the Committee's request for the appointment of a mediator to mediate issues surrounding the Amended Plan, the Amended Disclosure Statement, the Standing Motions and the Adversary Proceeding relating to the failed Exchange Offering.

13. As detailed in the Committee's Mediation Motion, both the Bankruptcy Rules and the Local Rules explicitly contemplate court-ordered mediation under these circumstances. *See* Local Rule 9019(A) (referencing court-ordered mediation); Bankruptcy Rule 7016 (providing that court "may consider . . . settling the case and using special procedures to assist in resolving the dispute when authorized by statute or local rule"); *see also In re Atlantic Pipe Corp.*, 304

F.3d 135, 140 (1st Cir. 2002) ("There are four potential sources of judicial authority for ordering mandatory non-binding mediation of pending cases, namely, (a) the court's local rules, (b) an applicable statute, (c) the Federal Rules of Civil Procedure, and (d) the court's inherent powers."). Moreover, section 105(a) of the Bankruptcy Code provides that the court may "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Section 105(d) of the Bankruptcy Code further provides that "[t]he court, on its own motion or on the request of a party in interest (1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and (2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically . . . ." 11 U.S.C. § 105(d).

14. Here, the appointment of a sitting bankruptcy judge to mediate these issues in the Chapter 11 Cases will significantly enhance the possibility of a consensual reorganization, thereby saving the estates considerable time and expense.

WHEREFORE, for the foregoing reasons, the Adversary Plaintiffs respectfully request that this Court (i) grant the relief requested in the Mediation Motion; and (ii) grant such other and further relief as it deems just and proper.

Dated: June 24, 2016
St. Louis, Missouri

Respectfully submitted,

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LLC; Marathon Asset Management LP; Mariner LDC; Met Investors Series Trust Met/Eaton Vance Floating Rate Portfolio; Metropolitan Series Fund WMC Balanced Portfolio; Oak Hill Advisors, L.P.; Oaktree Opportunities Fund IX Delaware, L.P.; OCP CLO 2012-2, Ltd.; OCP CLO 2013-3, Ltd.; OCP CLO 2013-4, Ltd.; OCP CLO 2014-5, Ltd.; OCP CLO 2014-6, Ltd.; OCP CLO 2014-7, Ltd.; Onex Debt Opportunity Fund, Ltd.; Onex Senior Credit Fund, L.P.; Onex Senior Credit II, LP; Pacific Select Fund Floating Rate Loan Portfolio by Eaton Vance; PF Floating Rate Loan Fund; Regatta Funding LTD; Regatta II Funding LP; Regatta III Funding LTD.; Regatta IV Funding LTD.; Senior Debt Portfolio; Rockwall CDO II Ltd; Stratford CLO Ltd; SunAmerica Senior Floating Rate Fund Inc.; Super Caspian Cayman Fund Limited; Tennenbaum Opportunities Fund VI LLC; Tennenbaum Special Situations Fund IX, LLC; Tennenbaum Special Situations Fund IX-O, L.P.; The Hartford Floating Rate Fund; The Hartford Floating Rate High Income Fund; The Hartford Stategic Income Fund; The Hartford Total Return Bond Fund; The Hartford Total Return Bond HLS Fund; The Hartford Unconstrained Bond Fund; TPF, L.P.; Trilogy Portfolio Company; Vanguard High Yield Corporate Fund; Vanguard Variable Insurance Fund – High Yield Bond Portfolio; Wellington Management Portfolios (Luxembourg) IV SICAV – FIS – Multi-Sector Credit Portfolio; Wellington Trust Company, National Association Multiple Collective Investment Funds Trust II, Core Bond Plus/High Yield Bond Portfolio; Wellington Trust Company, National Association Multiple Collective Investment Funds Trust II, Multi Sector Credit Portfolio; Wellington Trust Company, National Association Multiple Common Trust Funds Trust Opportunistic Fixed Income Allocation Portfolio; Wellington Trust Company, National Association Multiple Common Trust Funds Trust, Core Bond Plus/High Yield Bond Portfolio; Westchester CLO LTD; Whitebox Credit Partners L.P.; Whitebox Multi-Strategy Partners L.P.; Whitebox Relative Value Partners L.P.; Wilmington Trust NA; and John Does 1-50.