

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)

Related to Docket No. 882

**ORDER (i) APPROVING THE SALE AND TRANSFER OF
THE MEMBERSHIP INTEREST AND RELATED LIABILITIES FREE
AND CLEAR OF ENCUMBRANCES AND (ii) GRANTING RELATED RELIEF**

On May 26, 2016, Arch Coal, Inc. and its subsidiaries that are debtors and debtors in possession in these cases (collectively, the “**Debtors**”) filed a motion (the “**Motion**”)² for an order, pursuant to sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004, seeking entry of an order approving the sale and transfer of certain assets and liabilities free and clear of encumbrances. This Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334; and it having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and it having venue pursuant to 28 U.S.C. §§ 1408 and 1409; and the Debtors having represented that they provided proper and sufficient notice; and the Court having reviewed the Motion; and the relief requested in the Motion being in the best interests of the Debtors, their estates and their creditors; and the Court having determined that there exists the required basis for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation; the Court **ORDERS** that:

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

² Each capitalized term used herein but not otherwise defined herein shall have the meaning ascribed to it in the Motion.

1. The relief requested in the Motion is hereby **GRANTED** as set forth herein.
2. The Millennium MIPA and the transactions contemplated thereby are approved, and Arch Coal West is authorized and empowered to enter into the Millennium MIPA, to perform its obligations thereunder and to take such actions as are necessary to effectuate the terms of the Millennium MIPA, without any further corporate authorization or order of this Court.
3. Arch Coal, Inc. is authorized and empowered to enter into the Option Agreement, to perform its obligations thereunder and to take such actions as are necessary to effectuate the terms of the Option Agreement, without any further corporate authorization or order of this Court.
4. Notwithstanding any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) or Local Rule of the Bankruptcy Court for the Eastern District of Missouri that might otherwise delay the effectiveness of this Order, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
5. Arch Coal West is hereby authorized, empowered and directed, pursuant to sections 363(b) and (f) of the Bankruptcy Code, to sell the Membership Interests to LHR pursuant to and in accordance with the terms and conditions of the Millennium MIPA, and, pursuant to section 363 of the Bankruptcy Code, title to the Membership Interests shall pass to LHR at closing, free and clear of any and all Encumbrances. All such Encumbrances upon the Membership Interests shall be unconditionally released, discharged and terminated, with all such Encumbrances to attach only to the proceeds of the Millennium Sale with the same priority, validity, force and effect as they existed with respect to the Membership Interests prior to the Closing Date of the Millennium Sale except as may be set forth herein.

6. Arch Coal West and LHR are directed to comply, and shall comply, with all provisions of the Millennium MIPA.

7. LHR shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Millennium MIPA or any other related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence.

8. The transfer of the Membership Interests to LHR pursuant to the Millennium MIPA constitutes a legal, valid and effective transfer and shall vest LHR with all right, title and interest of Arch Coal West in and to the Membership Interests so transferred.

9. This Order and the Millennium MIPA shall be binding upon, and shall inure to the benefit of, Arch Coal West, LHR and their respective successors and assigns, including, without limitation, any chapter 11 trustee hereinafter appointed for Arch Coal West or any trustee appointed in a chapter 7 case, and its estate and creditors, if any of these chapter 11 cases are converted from chapter 11.

10. On the date of the closing of the transactions contemplated by the Millennium MIPA (the “**Closing Date**”), each of the creditors of the Debtors is authorized and directed to execute such documents and take all other actions as may be necessary to release the Encumbrances against or in the Membership Interests, if any, as such Encumbrances may have been recorded or may otherwise exist.

11. If any person or entity that has filed financing statements, mortgages, mechanic’s liens, *lis pendens* or other documents or agreements evidencing Encumbrances against or in the Membership Interests shall not have delivered to Arch Coal West prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements,

instruments of satisfaction and releases of the Encumbrances that the person or entity has with respect to the Membership Interests or otherwise, Arch Coal West is hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Membership Interests.

12. Effective upon the Closing Date, all persons and/or entities asserting Encumbrances or contract rights against the Debtors with respect to the Membership Interests are hereby permanently enjoined and precluded from, with respect to such Encumbrances:

(i) asserting, commencing or continuing in any manner any action against LHR or any director, officer, agent, representative or employee of LHR (all such entities are collectively referred to as the “**Protected Parties**”) or against any Protected Party’s assets or properties, including, without limitation, the Membership Interests; (ii) the enforcement, attachment, collection or recovery, by any manner or means, of any judgment, award, decree or order against the Protected Parties or any properties or assets of the Protected Parties, including, without limitation, the Membership Interests; (iii) creating, perfecting or enforcing any encumbrance of any kind against the Protected Parties or any properties or assets of the Protected Parties, including, without limitation, the Membership Interests; (iv) asserting any setoff, right of subrogation or recoupment of any kind against any obligation due the Protected Parties; and (v) taking any action, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Order or the Millennium MIPA.

13. The provisions of this Order authorizing the sale of the Membership Interests free and clear of the Encumbrances (with such Encumbrances to attach to the proceeds of the Millennium Sale) shall be self-executing, and none of the Debtors, LHR nor any other party shall be required to execute or file releases, termination statements, assignments, cancellations,

consents or other instruments to effectuate, consummate and/or implement the provisions hereof with respect to such sale; *provided, however*, that this paragraph shall not excuse such parties from performing any and all of their respective obligations under the Millennium MIPA.

Without in any way limiting the foregoing, LHR is empowered to execute and file releases, termination statements, assignments, consents, cancellations or other instruments to effectuate, consummate and/or implement the provisions hereof with respect to such sale.

14. A certified copy of this Order may be filed with the appropriate clerk and/or recorded to act to cancel any Encumbrances.

15. Consummation of the Millennium Sale and the transactions contemplated by the Millennium MIPA does not effect a *de facto* merger or consolidation of Arch Coal West and LHR or result in the continuation of Arch Coal West's business under LHR's control. LHR is not, and will not become by virtue of the Millennium Sale, the alter ego of, a successor in interest to, or a continuation of Arch Coal West, nor is LHR otherwise liable for Arch Coal West's debts and obligations, unless otherwise specifically provided for in the Millennium MIPA or pursuant to this Order.

16. All entities that are presently, or on the Closing Date may be, in possession of some or all of the Membership Interests are hereby directed to surrender possession of the Membership Interests to LHR on the Closing Date.

17. Nothing contained in any plan of reorganization confirmed in these cases or the order of confirmation confirming any such plan shall conflict with or derogate from the provisions of the Millennium MIPA or the terms of this Order.

18. The Millennium MIPA is not a *sub rosa* chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford, and is not in violation of creditors' and equity security interest holders' voting rights.

19. The purchase by LHR is a purchase in good faith for fair value within the meaning of section 363(m) of the Bankruptcy Code, and LHR is entitled to the protection of section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification or appeal of the authorization provided herein to consummate the Millennium Sale shall not affect the validity of the sale to LHR, unless such authorization is duly stayed pending such appeal prior to the Closing Date.

20. The sale approved by this Order is not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code. The consideration provided by LHR for the Membership Interests shall be deemed to constitute reasonably equivalent value and fair consideration.

21. From and after entry of this Order, no person shall take or cause to be taken any action that would adversely affect or interfere with the transfer of the Membership Interests to LHR in accordance with the terms and conditions of the Millennium MIPA and this Order.

22. Any objections to the Motion or the relief requested therein that have not been adjourned, withdrawn or resolved are overruled in all respects on the merits.

23. As of the time of the closing of the Millennium Sale, all agreements of any kind whatsoever and all orders of this Court entered prior to the date hereof shall be deemed amended or otherwise modified to the extent required to permit consummation of the Millennium Sale.

24. The Millennium MIPA and any related agreements, documents or other instruments may be modified, amended or supplemented through a written document signed by the parties thereto in accordance with the terms thereof; *provided* that, (a) an order of this Court

has approved such modification, amendment or supplement; (b) such modification, amendment or supplement is not material or (c) such modification, amendment or supplement is made in the ordinary course of business.


25. In the event of any inconsistency between the provisions of the Motion, the Millennium MIPA and this Order, the provisions of this Order shall govern.

26. The Debtors are authorized to take all such actions as are necessary to implement the terms of this Order.

27. The Debtors have represented that proper, timely, adequate and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court for the Eastern District of Missouri.

28. No later than 24 hours after the date of this Order, the Debtors shall serve a copy of this Order on the Notice Parties and, no later than 24 hours after such service, the Debtors shall file a certificate of service with the Court.

DATED: June 17, 2016
St. Louis, Missouri 63102
mtc


CHARLES E. RENDLEN, III
U.S. Bankruptcy Judge

Order Prepared By:
Marshall S. Huebner
Brian M. Resnick
Michelle M. McGreal
Kevin J. Coco
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017