

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7973
Marshall S. Huebner (admitted *pro hac vice*)
Brian M. Resnick (admitted *pro hac vice*)
Michelle M. McGreal (admitted *pro hac vice*)

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Counsel to the Debtors
and Debtors in Possession*

*Local Counsel to the Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

JAMES RIVER COAL COMPANY, *et al.*,

Debtors.¹

Chapter 11

Case No. 14-31848 (KRH)

(Jointly Administered)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING
THE DEBTORS TO (I) RETAIN MOTLEYS ASSET DISPOSITION GROUP,
(II) SELL CERTAIN MISCELLANEOUS PROPERTY FREE AND CLEAR
OF LIENS, CLAIMS AND ENCUMBRANCES AND (III) ABANDON
CERTAIN MISCELLANEOUS PROPERTY**

James River Coal Company ("JRCC") and its subsidiaries, as debtors and debtors in possession in these proceedings (collectively, the "**Debtors**"), respectfully represent:

Jurisdiction and Venue

1. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b) and

¹ The Debtors, along with the last four digits of each Debtor's federal tax identification number, are listed on Schedule I attached hereto.

may be determined by this Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On April 7, 2014 (the “**Petition Date**”), each Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ cases are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

3. This Court has entered several Orders approving the sales of substantially all of the Debtors’ assets, including (1) the *Order (i) Approving the Sale of a Substantial Portion of the Debtors’ Assets Free and Clear of All Non-Assumed Liens, Claims, Encumbrances and Interests, (ii) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (iii) Granting Related Relief*, entered on August 28, 2014 (the “**Blackhawk Sale Order**”) [ECF No. 599], pursuant to which the Court approved the sale of a substantial portion of the Debtors’ assets to JR Acquisition, LLC, a wholly-owned subsidiary of Blackhawk Mining LLC; and (2) the *Order (i) Approving the Sales and Transfers of Certain Assets and Liabilities Free and Clear of Liabilities and Encumbrances, (ii) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith, and (iii) Granting Related Relief*, entered on December 29, 2014 (the “**Revelation Sale Order**”) [ECF No. 819], pursuant to which the Court approved the sale of all of the Debtors’ remaining operational assets to Revelation Energy, LLC.

4. Since the closing of the aforementioned sales, the Debtors have worked to wind down their businesses. In connection with such efforts, the Debtors intend to vacate the lease at their office located at 901 East Byrd Street, Suite 1600, Richmond, VA 23219 (the “**Richmond Office**”) at the end of April 2015. The Debtors intend to enter into a new lease for smaller office space so that that Debtors may continue to resolve the remaining issues regarding their estates.

5. Nevertheless, the Debtors currently are in possession of artwork, equipment and furniture (the “**Miscellaneous Property**”) at the Richmond Office. In light of the upcoming move into new office space, the Debtors believe that it is appropriate and in the best interests of their estates to sell the Miscellaneous Property at this time rather than incur the expenses associated with moving and storing such property. The Debtors do not believe that the Miscellaneous Property has significant value, but believe it can be sold profitably for the benefit of their estates and creditors.

6. To that end, in an effort to maximize the value for the Miscellaneous Property and to sell such property in an efficient and expeditious manner, the Debtors seek to retain Motleys Asset Disposition Group (“**Motleys**”), pursuant to the Consignment Contract attached hereto as Exhibit B, to market the Miscellaneous Property and to conduct an Internet auction for the Miscellaneous Property.²

7. Under the terms of the Consignment Contract, Motleys has agreed to advertise and market the Miscellaneous Property and to conduct the auction in exchange for a commission of 35% of the sale price of each item sold, plus the buyers’ premium

² The Debtors and Motleys are in the process of finalizing “Attachment A” to the Consignment Contract identifying the Miscellaneous Property. Due to inclement weather, the list could not be finalized as of the date hereof. The Debtors anticipate filing and serving a copy of the Consignment Contract that includes Attachment A by no later than three (3) days prior to the objection deadline to the Motion.

and reasonable sale expenses, payable at the time of the closing of the sale of the particular Miscellaneous Property.³

8. Motleys is one of the leading artwork and antique disposition firms in Virginia. Motleys has extensive experience in and an excellent reputation for providing high quality auctioneer services. Because of this background, the Debtors believe that the retention of Motleys pursuant to the terms of the Consignment Contract is in the best interests of the Debtors' estate.

9. If the Court approves the relief requested herein, Motleys will be retained as the Debtors' auctioneer pursuant to section 363 of the Bankruptcy Code, rather than as a professional under section 327 of the Bankruptcy Code. Accordingly, Motleys will not be required to submit fee applications pursuant to sections 330 and 331 of the Bankruptcy Code.

10. Although the Debtors seek to retain Motleys pursuant to section 363, out of an abundance of caution, attached hereto as Exhibit C is the *Declaration of William D. Irvin in Support of the Debtors' Motion for Entry of an Order Authorizing the Debtor to (i) Retain Motleys Asset Disposition Group, (ii) Sell Certain Miscellaneous Property Free and Clear of Liens, Claims and Encumbrances and (iii) Abandon Certain Miscellaneous Property* (the "**Irvin Declaration**"). As set forth in the Irvin Declaration, Motleys does not have any connection with the Debtors or their estates with respect to the matters on which Motleys is to be employed. The Irvin Declaration also confirms that Motleys does not hold any prepetition claim against the Debtors.

³ The summary of the Consignment Contract described herein is provided for convenience only and is qualified in its entirety by the actual terms of the Consignment Contract.

Relief Requested

11. By this motion (the “**Motion**”), the Debtors seek entry of an order, substantially in the form attached hereto as Exhibit A (the “**Proposed Order**”), pursuant to sections 105(a), 363 and 554(a) of the Bankruptcy Code, authorizing the Debtors to (i) retain Motleys pursuant to the terms of the Consignment Contract, (ii) sell the Miscellaneous Property free and clear of liens, claims and encumbrances and (iii) abandon certain Miscellaneous Property.

Basis for Relief

I. The Debtors have exercised their sound business judgment.

12. The Debtors seek to employ and retain Motleys pursuant to section 363 of the Bankruptcy Code to sell the Miscellaneous Property. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor in possession “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363. In reviewing a debtor’s decision to use estate property pursuant to section 363 of the Bankruptcy Code, courts have routinely held that if such use represents the reasonable business judgment of the part of the debtors, such use should be approved. *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070–71 (2d Cir. 1983) (requiring a “good business reason” to approve a sale pursuant to section 363(b)); *In re W.A. Mallory Co.*, 214 B.R. 834, 836 (Bankr. E.D. Va. 1997) (“This Court follows the ‘sound business purpose’ test when examining § 363(b) sales.”) (citing *In re WBQ P’ship*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995)); *see also In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must find from the evidence presented before him or her a good business reason to grant such application); *In re Ionosphere*

Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a section 363(b) motion is “a good business reason”).

13. Bankruptcy courts, including this Court in the present case, have analyzed the propriety of a debtor-in-possession’s retention of third parties to conduct asset sales under section 363 of the Bankruptcy Code and have determined that it is an appropriate exercise of business judgment to retain such parties. *See, e.g., In re James River Coal Company*, Case No. 14-31848 (Bankr. E.D. Va. Dec. 29, 2014) [ECF No. 821]; *In re Movie Gallery*, Case No. 10-30696 (Bankr. E.D. Va. May 20, 2010) [ECF No. 1155]; *In re Love Culture, Inc.*, Case No. 14-24508 (Bankr. D. N.J. July 31, 2014) [ECF No. 124]; *In re Saint Vincents Catholic Med. Ctrs. of N.Y.*, Case No. 10-11963 (CGM) (Bankr. S.D.N.Y. Oct. 12, 2010) [ECF No. 999].

14. Here, the decision to retain Motleys as an auctioneer for the purpose of marketing the Miscellaneous Property and conducting an Internet auction for the Miscellaneous Property should be authorized because it is based on the sound exercise of the Debtors’ business judgment. The Debtors seek to retain Motleys because it has extensive experience as an auctioneer. Indeed, the Bankruptcy Court for the Eastern District of Virginia has approved the retention of Motleys to perform similar services in other chapter 11 cases. *See In re Roomstore, Inc.*, Case No. 11-37790 (Bankr. E.D. Va. Jan. 28, 2013) [ECF No. 1415]; *In re S&K Famous Brands, Inc.*, Case No. 09-30805 (Bankr. E.D. Va. Dec. 14, 2009) [ECF No. 576].

15. Furthermore, the Debtors do not have experience in marketing and selling the Miscellaneous Property, and any attempts to sell such property without the assistance of a third-party would likely result in the Debtors’ obtaining a sub-optimal price for the

Miscellaneous Property. Likewise, the marketing and selling of the Miscellaneous Property without assistance would require the dedication of time, efforts and resources of the Debtors' remaining employees, which would delay or otherwise impede the orderly winding down of the Debtors' businesses. Absent entry into the Consignment Contract, the Debtors could fail to maximize the value of the assets in their estates and would, instead, expend significant resources to market and sell the Miscellaneous Property, to the detriment of the Debtors' wind down efforts.

16. In view of the foregoing, the Debtors believe that the retention of Motleys is a sound exercise of the Debtors' business judgment and is in the best interests of all parties in interest in these chapter 11 cases, and respectfully request that the Court authorize the relief requested herein.

17. Even though the Debtors are not seeking to retain Motleys pursuant to section 327 of the Bankruptcy Code, to the best of the Debtors' knowledge, information and belief and as set forth in the Irvin Declaration, Motleys does not have any connection with the Debtors or their estates with respect to the matters on which Motleys is to be employed and also does not hold any prepetition claim against the Debtors.

18. Additionally, the Debtors believe that the Internet auction for the Miscellaneous Property represents the most expeditious and efficient manner to sell such property and avoid costs to the Debtors' estates associated with storage of the Miscellaneous Property. The Miscellaneous Property has little, if any, utility to the Debtors' estates, but its sale, to the extent possible, will generate additional value for the benefit of the Debtors' estates and all parties in interest.

19. Accordingly, the Debtors propose that they, through Motleys, will sell the Miscellaneous Property to the purchaser offering the highest and best bid for such item and submit that an Internet auction is both fair and reasonable and will result in the highest and/or best price for the Miscellaneous Property. The proposed sale of the Miscellaneous Property, therefore, is an exercise of the Debtors' sound business judgment and is in the best interests of the Debtors' estates and creditors.

II. The Sales of the Miscellaneous Property Satisfy the Requirements of Section 363(f) of the Bankruptcy Code for a Sale Free and Clear of Encumbrances

20. The Debtors request that the Court authorize the sale of the Miscellaneous Property free and clear of any and all liens, claims, interests and encumbrances (collectively, "**Encumbrances**").

21. Under section 363(f) of the Bankruptcy Code, a debtor in possession may sell property free and clear of any lien, claim or interest in such property of an entity other than the estate if, among other things:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

22. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Miscellaneous Property "free and clear" of such Encumbrances. *See, e.g., In re*

Collins, 180 B.R. 447, 450 (Bankr. E.D. Va. 1995) (“Section 363(f) is phrased in the disjunctive, such that only *one* of the enumerated conditions must be met in order for the Court to approve the proposed sale.”) (emphasis in original).

23. Although section 363(f) of the Bankruptcy Code provides for the sale of assets “free and clear of any interests,” the term “any interest” is not defined anywhere in the Bankruptcy Code. While some courts have “narrowly interpreted that phrase to mean only in rem interests in property,” *see, e.g., In re White Motor Credit Corp.*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987), the Fourth Circuit has held that the scope of section 363(f) is not limited to in rem interests, and can extend to liabilities that arise under federal statute and for which a succeeding purchaser would otherwise be liable. *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 581-85 (4th Cir. 1996). Accordingly, courts in this District have given “any interest” a broad interpretation. *See In re P.K.R. Convalescent Ctrs., Inc.*, 189 B.R. 90, 94 (Bankr. E.D. Va. 1995) (“[Section] 363 covers more situations than just sales involving liens... [it] addresses sales free and clear of *any interest*.” (emphasis in original)).

24. In taking this view, courts in this District are in keeping with the trend toward “a more expansive reading of ‘interests in property’ which ‘encompasses other obligations that may flow from ownership of the property.’” *In re Trans World Airlines, Inc.*, 322 F.3d 283, 289 (3d Cir. 2003) (citing 3 COLLIER ON BANKRUPTCY ¶ 363.06[1]); *see also MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93-94 (2d Cir. 1988) (channeling of claims to sale proceeds consistent with intent of sale free and clear under section 363(f) of the Bankruptcy Code); *Ninth Avenue Remedial Group v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating that a

bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); *In re New England Fish Co.*, 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (transfer of property in free and clear sale included free and clear of Title VII employment discrimination and civil rights claims of debtors' employees); *American Living Systems v. Bonapfel (In re All Am. of Ashburn, Inc.)*, 56 B.R. 186, 190 (Bankr. N.D. Ga. 1986) (product liability claims precluded in a sale of assets free and clear); *In re Hoffman*, 53 B.R. 874, 876 (Bankr. D. R.I. 1985) (transfer of liquor license free and clear of any interest permissible even though the estate had unpaid taxes).

25. Indeed, this Court has previously approved sales by the Debtors free and clear of Encumbrances. *See, e.g., In re James River Coal Company*, Case No. 14-31848 (Bankr. E.D. Va. Dec. 29, 2014) [ECF No. 821]; Revelation Sale Order; Blackhawk Sale Order;.

26. The Debtors submit that section 363(f) permits the sales of the Miscellaneous Property free and clear of all Encumbrances, except Encumbrances specifically assumed by the applicable purchaser of any such Miscellaneous Property. Each Encumbrance that is not the result of an assumed liability satisfies at least one, if not more, of the tests of section 363(f) of the Bankruptcy Code.

27. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate, and in the best interest of the Debtors' estates and creditors, and therefore should be granted.

III. Any Potential Abandonment of Miscellaneous Property Satisfies the Standard Set Forth in Section 554(a) of the Bankruptcy Code

28. Pursuant to the Consignment Contract, Motleys reserves the right to reject any Miscellaneous Property that is not suitable for sale. In such circumstances, the Debtors may conclude in their sound business judgment that any such Miscellaneous Property is no longer of any value to the Debtors' estates and, thus, such property would be abandoned by the Debtors.

29. The Debtors submit that any potential abandonment of the Miscellaneous Property satisfies the standard set forth in section 554(a) of the Bankruptcy Code. Section 554(a) provides that a debtor in possession may abandon, subject to Court approval, "property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." The abandonment of property pursuant to section 554(a) is governed by the sound business judgment standard. *See, e.g., In re US Airways Grp., Inc.*, 287 B.R. 643, 645-46 (Bankr. E.D. Va. 2002).

30. If Motleys determines that any of the Miscellaneous Property is not suitable for sale, such Miscellaneous Property likely would be of no value or benefit to the Debtors' estates or burdensome because the costs of removal and storage of the property is likely to exceed the net proceeds realizable from their sale, and therefore the Debtors should be authorized to abandon such Miscellaneous Property.

31. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate, and in the best interests of the Debtors' estates and creditors, and therefore should be granted.

Request for Waiver of Stay

32. In addition, by this Motion, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion pursuant to any applicable Bankruptcy Rule or Local Bankruptcy Rule pursuant to any applicable Bankruptcy Rule or Local Bankruptcy Rule. Specifically, pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” The Debtors require immediate relief in order to move forward expeditiously with respect to the sale of the Miscellaneous Property. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rules 6004(h) and any other applicable Bankruptcy Rule or Local Bankruptcy Rule or otherwise applicable law, to the extent that it applies.

Notice

33. Notice of this Motion has been provided in accordance with the *Notice, Case Management and Administrative Procedures* [ECF No. 77] approved by this Court on April 10, 2014 (the “**Case Management Procedures**”). The Debtors submit that no other or further notice need be provided.

No Previous Request

34. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

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

Dated: March 5, 2015
Richmond, Virginia

Respectfully submitted,

/s/ Henry P. (Toby) Long, III

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218

*Local Counsel to the Debtors
and Debtors in Possession*

-and-

Marshall S. Huebner (admitted *pro hac vice*)
Brian M. Resnick (admitted *pro hac vice*)
Michelle M. McGreal (admitted *pro hac vice*)
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7973

*Counsel to the Debtors
and Debtors in Possession*

SCHEDULE 1

Debtor Entities

1. James River Coal Company (2012)
2. BDCC Holding Company, Inc. (3200)
3. Bell County Coal Corporation (0806)
4. Bledsoe Coal Corporation (4821)
5. Bledsoe Coal Leasing Company (6654)
6. Blue Diamond Coal Company (3812)
7. Buck Branch Resources LLC (1459)
8. Chafin Branch Coal Company, LLC (7873)
9. Eolia Resources, Inc. (0587)
10. Hampden Coal Company, LLC (4334)
11. International Resource Partners LP (8669)
12. International Resources Holdings I LLC (9838)
13. International Resources Holdings II LLC (1567)
14. International Resources, LLC (2522)
15. IRP GP Holdco LLC (5380)
16. IRP Kentucky LLC (1454)
17. IRP LP Holdco Inc. (4447)
18. IRP WV Corp. (6050)
19. James River Coal Sales, Inc. (3417)
20. James River Coal Service Company (2577)
21. James River Escrow Inc. (0314)
22. Jellico Mining, LLC (4545)
23. Johns Creek Coal Company (9412)
24. Johns Creek Elkhorn Coal Corporation (9199)
25. Johns Creek Processing Company (4021)
26. Laurel Mountain Resources LLC (1458)
27. Leeco, Inc. (4176)
28. Logan & Kanawha Coal Co., LLC (5716)
29. McCoy Elkhorn Coal Corporation (8373)
30. Rockhouse Creek Development, LLC (9583)
31. Shamrock Coal Company, Incorporated (1843)
32. Snap Creek Mining, LLC (6858)
33. Triad Mining Inc. (9005)
34. Triad Underground Mining, LLC (9041)

Exhibit A
The Proposed Order

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7973
Marshall S. Huebner (admitted *pro hac vice*)
Brian M. Resnick (admitted *pro hac vice*)
Michelle M. McGreal (admitted *pro hac vice*)

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Counsel to the Debtors
and Debtors in Possession*

*Local Counsel to the Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

JAMES RIVER COAL COMPANY, *et al.*,

Debtors.¹

Chapter 11

Case No. 14-31848 (KRH)

(Jointly Administered)

**ORDER AUTHORIZING THE DEBTORS TO (I) RETAIN MOTLEYS ASSET
DISPOSITION GROUP, (II) SELL CERTAIN MISCELLANEOUS PROPERTY
FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND
(III) ABANDON CERTAIN MISCELLANEOUS PROPERTY**

Upon the motion (the “**Motion**”)² of James River Coal Company and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) for an order to authorizing the Debtors to (i) retain Motleys pursuant to the terms of the Consignment Contract, (ii) sell the Miscellaneous Property free and clear

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached to the Motion.

² Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Motion.

of liens, claims and encumbrances and (iii) abandon certain Miscellaneous Property; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding under 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with the Case Management Procedures; and no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors, their estates, their creditors and other parties in interest; and the Court having reviewed the Motion, the Irvin Declaration [and having held a hearing with appearances of parties in interest noted in the transcript thereof (the “**Hearing**”)]; and the Court having determined that the legal and factual bases set forth in the Motion [and at the Hearing] establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby GRANTED.
2. The Consignment Contract is hereby approved, and, pursuant to sections 105(a) and 363 of the Bankruptcy Code, the Debtors are authorized to retain Motleys to market and sell the Miscellaneous Property pursuant to the terms of the Consignment Contract.
3. All amounts payable to Motleys pursuant to the Consignment Contract shall be payable to Motleys without further Court approval.

4. Notwithstanding anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, or any Order entered by this Court in these chapter 11 cases, Motleys shall not be required to file formal applications for approval of its compensation and reimbursement of expenses.

5. The Debtors may sell the Miscellaneous Property free and clear of any Encumbrances because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those non-Debtor parties with Encumbrances with respect to the Miscellaneous Property who received notice of the Motion and did not object, or who withdrew their objections to the Motion, are deemed to have consented to the sale of the applicable Miscellaneous Property free and clear of such Encumbrances pursuant to section 363(f)(2) of the Bankruptcy Code.

6. Pursuant to section 554(a) of the Bankruptcy Code, the Debtors are authorized to abandon the Miscellaneous Property in connection with any rejection of such property pursuant to the terms of the Consignment Agreement without any further notice or order of the Court.

7. The Debtors and Motleys are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

8. The relief granted herein shall be binding upon any chapter 11 trustee appointed in these chapter 11 cases, or upon any chapter 11 trustee appointed or serving in the event of a subsequent conversion of these chapter 11 cases to cases under chapter 7 of the Bankruptcy Code.

9. This Court retains exclusive jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.

10. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is hereby waived.

11. Notwithstanding any Bankruptcy Rule or Local Bankruptcy Rule 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.

Dated: Richmond, Virginia

_____, 2015

KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ Henry P. (Toby) Long, III
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218

Local Counsel to the Debtors and Debtors in Possession

-and-

Marshall S. Huebner (admitted *pro hac vice*)
Brian M. Resnick (admitted *pro hac vice*)
Michelle M. McGreal (admitted *pro hac vice*)
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7973

Counsel to the Debtors and Debtors in Possession

CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)

I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Henry P. (Toby) Long, III

Exhibit B
The Consignment Contract



CONSIGNMENT CONTRACT

Consignor/Seller: James River Coal Company
Address: 901 East Byrd Street, Suite 1600, Richmond, VA 23219
Phone: 804-780-3000, 804-783-6292
Email Address: william.murphy@jamesrivercoal.com
Authorized Agent/Contact: William B. Murphy, Chief Restructuring Officer

Location of Consigned Items listed in Attachment "A": James River Coal Company, Suite 1600, 901 East Byrd Street, Richmond, VA 23219

Date, Time and Location of Auction Preview Venue: TBD.

Date & Time of Auction: TBD.

Internet Auction Venue: Proxibid (www.proxibid.com)

Subject to approval by the United States Bankruptcy Court for the Eastern District of Virginia, James River Coal Company, the undersigned Consignor/Seller, and Motleys Asset Disposition Group (Motleys) hereby agree to the following:

James River Coal Company hereby commissions Motleys to sell the items listed in Attachment "A" to the highest bidder by Public Internet Auction.

Consignor/Seller is consigning the items listed in Attachment "A" to be offered and sold **WITHOUT** (With or Without) **Reserve** prices.

Consignor/Seller agrees to pay Motleys a commission of **35%** of the sale price of each item sold. Motleys will remit to Consignor/Seller the collected proceeds of the sale less its commission and any other fees payable by Consignor/Seller that are described herein.

Consignor/Seller understands that Motleys will collect from the purchaser of each item sold a buyer's premium and other possible fees which are not due or payable, in whole or in part, to Consignor/Seller and are not part of or included in sale proceeds.

Motleys will remit net collected sale proceeds to Consignor/Seller within thirty (30) days of auction. At such time, Consignor/Seller also shall receive a comprehensive summary report of the auction, including the total amount paid, along with Motley's commission, for each item sold, and any other fees or expenses payable by Consignor/Seller to Motleys.

The undersigned Consignor/Seller certifies that it is the owner or legal representative of the owner of the Consigned Items listed in Attachment "A"; that it has good title and right to sell the items; and that the listed items are free from all liens and/or encumbrances. The undersigned Consignor/Seller agrees to indemnify and hold Motleys, its agents and employees harmless against any and all claims, including payment of reasonable attorney fees, from any claim brought against Motleys regarding any ownership, control or right to sell the listed items described in Attachment "A." Consignor/Seller agrees: to accept all responsibility for providing merchantable title or proof of ownership to the purchaser if required; that none of the items listed herein will be withheld or withdrawn from the sale and if they should be withheld or withdrawn will pay to Motleys a fee of **\$100.00** per item withheld or withdrawn; to provide full insurance for all items listed until



sold and will in no way hold liable Motleys Asset Disposition Group or its employees in the event of fire, theft or damage. Consignor/Seller agrees: that Motleys will have the undisputed right to grade objects as to marketability and to reject any items considered unsuitable for sale; to group objects as needed to create saleable lots; to use whatever type promotion and advertising Motleys deems appropriate; that nothing will be bid on or bought back by the seller or seller's agents; and to hold harmless and indemnify Motleys and its agents against any claims of any nature regarding or arising from this agreement.

Consignor/Seller authorizes and accepts the following service charges in addition to the commission noted above to be deducted from the aggregate collected sale proceeds:

- Wrapping/Removal of Consigned Items from James River Coal Company offices to auction preview venue and then to Motleys for delivery to buyers - **\$750.00**.

In the event Consignor/Seller cancels or indefinitely suspends the auction sale of the items listed in Attachment "A", Consignor/Seller agrees to reimburse Motleys within 30 days of such decision or upon presentation of Motleys' invoice for same for any and all expenses advanced and incurred by Motleys on behalf of Consignor/Seller in preparation of the intended auction sale. In addition to any reimbursement of actual third party expenses Consignor/Seller will pay to Motleys 50% of the amount to be reimbursed or \$1,500.00, whichever is greater, for labor and other non-quantifiable opportunity costs.

The undersigned Consignor/Seller has read and understands this Consignment Contract for the items listed in Attachment "A" which are being consigned to Motleys Asset Disposition Group. This contract replaces and supersedes any and all other proposals, understandings and agreements made by Motleys, whether written or oral.

For James River Coal Company:

Signature of Consignor/Seller: _____

Name & Title of Authorized Signer: William B. Murphy, Chief Restructuring Officer

Date: March ____, 2015

For Motleys Asset Disposition Group:

William D. Irvin, Ed. D., ISA
Lead Appraiser

Exhibit C

The Irvin Declaration

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7973
Marshall S. Huebner (admitted *pro hac vice*)
Brian M. Resnick (admitted *pro hac vice*)
Michelle M. McGreal (admitted *pro hac vice*)

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Counsel to the Debtors
and Debtors in Possession*

*Local Counsel to the Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

JAMES RIVER COAL COMPANY, et al.,

Debtors.¹

Chapter 11

Case No. 14-31848 (KRH)

(Jointly Administered)

**DECLARATION OF WILLIAM D. IRVIN IN SUPPORT OF THE DEBTORS' MOTION
FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO (I) RETAIN
MOTLEYS ASSET DISPOSITION GROUP, (II) SELL CERTAIN MISCELLANEOUS
PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND
(III) ABANDON CERTAIN MISCELLANEOUS PROPERTY**

I, William D. Irvin, hereby declare, pursuant to 28 U.S.C. § 1746, that the following statements are true and correct, to the best of my knowledge and belief after due inquiry as described herein:

1. I am the Lead Appraiser of Motleys Asset Disposition Group (“**Motleys**”), a sale and auctioneer firm based in Richmond, Virginia.

¹ The Debtors, along with the last four digits of each Debtor’s federal tax identification number, are listed on Schedule 1 attached to the Motion.

2. I submit this declaration in support of the *Debtors' Motion for Entry of an Order Authorizing the Debtors to (i) Retain Motleys Asset Disposition Group, (ii) Sell Certain Miscellaneous Property Free and Clear of Liens, Claims and Encumbrances and (iii) Abandon Certain Miscellaneous Property* (the "**Motion**"). Unless otherwise stated in this Declaration, I have personal knowledge of the facts hereinafter set forth. To the extent any information disclosed herein requires amendment or modification upon completion of further analysis or as additional information becomes available, a supplemental declaration will be submitted to the Court.

3. The Debtors seek to retain Motleys, pursuant to the Consignment Contract attached to the Motion as Exhibit B, to market and to conduct an Internet auction for artwork, equipment and furniture (the "**Miscellaneous Property**") located at the Debtors' Richmond office. Under the terms of the Consignment Contract, Motleys has agreed to market and conduct the auction for the Miscellaneous Property in exchange for a commission of 35% of the sale price of each item sold, plus the buyers' premium and reasonable sale expenses, payable at the time of the closing of the sale of the particular Miscellaneous Property.

4. Motleys is one of the leading artwork and antique disposition firms in Virginia. Motleys' has extensive experience in and an excellent reputation for providing high quality auctioneer services. Because of this background, Motleys has the necessary background to effectively market and conduct an auction for the Miscellaneous Property.

5. Motleys may have performed services in the past and may perform services in the future, in matters unrelated to these chapter 11 cases, for persons that are claimants or other parties in interest in the Debtors' chapter 11 cases. Motleys does not perform services for any such person in connection with these chapter 11 cases.

6. Neither I nor Motleys, in so far as I have been able to ascertain, has any connection with the Debtors or their estates with respect to the matters on which Motleys is to be employed.

7. Motleys does not hold any prepetition claim against the Debtors.

8. Motleys has no agreement with any entity to share any compensation received by Motleys from the Debtors other than members and associates of Motleys.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: March 5, 2015

/s/ William D. Irvin
William D. Irvin