

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

WALTER ENERGY, INC., et al.,)
)
Debtors,)
)
)
)
) **CASE NO: 15-02741-TOM**
) **CHAPTER 11**
) **Jointly Administered**

**OBJECTION TO BIDDING PROCESS, REQUEST TO BID AND OBJECTION
TO MOTION AND/OR ORDER APPROVING SALE**

Comes now Marco Resources, LLC, potential purchaser of the Lot Number 3 assets described as the West Virginia assets in the Exhibit A to Bidding Procedures attached to Exhibit A to the Bidding Procedures Order (Document 1119) as Exhibit A and objects to the bidding process and requests access to adequate information and an opportunity to bid or participate in bidding process and also objects to any order approving the sale occurring at the auction and as grounds therefor, submits the following:

1. Marco Resources, LLC, is an established coal mining company with its headquarters in Beckley, West Virginia. Marco Resources, LLC (hereinafter "Marco") has, in good faith, made a bid for the purchase of the Lot 3 assets. Marco believes it has established that it is and it is a qualified bidder to make a bid and to purchase assets to be sold at the auction.
2. However, Marco was denied the opportunity to engage in and exercise sufficient due diligence in order to assess the value of the Lot 3 assets.



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3. Nonetheless, Marco tendered a bid for the purchase of the assets in the amount of \$10,000.00 plus the assumption of environmental liabilities and executory contract liabilities. This bid was 10,000 times the accepted bid of \$1.00.
4. On December 14, 2015, representatives of Marco contacted Kerry Greer of PJT Partners to acquire information concerning the Asset Purchase Agreement, the status of the case and access to the dataroom created to provide information to potential bidders for the sale of the assets. Access to the dataroom was not provided until December 31, 2015. Marco requested the opportunity to conduct proper due diligence in order to make a bid on Walter Energy's Lot No. 3 assets. Marco also asked to also do an onsite due diligence study on the Lot 3 Mines.
5. On December 14, 2015, John Mattus with PJT Partners asked James Ferguson, President of Marco Resources, LLC (hereinafter "Ferguson") whether there was someone at Marco that a Walter Energy executive "may have had a problem with." Ferguson acknowledged that a Walter executive may previously have had a disagreement with Everett Cook, CEO of Marco. However, this disagreement was unrelated to and irrelevant and immaterial to the sale of the Walter Energy assets and the bidding process. Mr. Mattus informed Mr. Ferguson that Everett Cook would not be allowed on either property. This was apparently one of the reasons for Walter denying Marco's representatives full access to the property and information and the ability to conduct adequate due diligence.
6. On December 30, 2015, Marco supplied Walter's representatives with proof of its financial ability and a letter from First Instance Limited dated December

30, 2015, showing the basic terms of a sales agreement with that company. A true and correct copy of that letter is attached hereto as Exhibit A.

7. On December 31, 2015, Marco was given access to the dataroom. On January 5, 2016, Marco was allowed to conduct what can best be described as a “drive by” inspection or “windshield tour.” During the windshield tour, Marco representatives were denied access to a full inspection of the preparation plants located on the properties. Marco was denied access to the deep mines located on the properties and Marco was denied access to the refuse areas located on the properties.
8. When questioned about certain information during and after the inspection, the selling parties representatives told Marco the information could be located on the dataroom site. However, Marco was not able to locate much of the needed information in the dataroom and the Debtors’ representatives were not able to locate or point to the information on the dataroom for Marco’s representatives. In addition, Marco was denied the following information:
 - a. Access to daily production reports;
 - b. Violations and reports on any violations of regulatory laws;
 - c. Projected future capital expenditures;
 - d. The equipment rebuild schedules;
 - e. Availability reports on belts and equipment;
 - f. Refuse area data;
 - g. Loadout reports and ratings;
 - h. Safety reports (accidents);

- i. Copies of MSHA and State Plans concerning roof control, ventilation, etc.;
 - j. Bonus/incentive plans for employees;
 - k. Projection maps (copies of all of these were seen in the mine office and Marco's representatives were told they could locate a hard copy on the dataroom site and although Marco representatives looked several times and were not able to locate it, the Seller's representatives could not and would not tell Marco's representatives where to locate the information in the dataroom);
 - l. Fire boss books;
 - m. Roof Fall maps;
 - n. Marco was not given the opportunity to inspect the belt lines;
 - o. Marco was denied the ventilation readings, including the efficiency of the underground fan;
 - p. A detailed list of equipment located on the Lot 3 properties.
9. After the windshield tour, Marco sent requests for due diligence information on January 12, 13, 15, 19, 21, 23 and 26, 2016. Marco received no response to these requests and was not given any information that was requested.
10. On January 11, 2016, Marco presented its offer of \$10,000.00 and also tendered a check to the Debtor for that amount. On January 12, 2016, PJT Partners notified Marco that its bid was nonconforming but that it was "willing to work with" Marco. On January 14, 2016, Ferguson wrote Walter Energy and once again requested access to the Lot 3 properties and enclosed a supplemental due diligence list which was attached to the letter as Exhibits A

and B. A true and correct copy of this email letter is attached hereto as Exhibit B. Despite repeated requests to be allowed to conduct its due diligence, Marco continued to be denied access to important portions of the property and information that was not contained in or accessible through the dataroom.

11. Marco appeared at the properties with four individuals on January 5, 2016, who were ready to inspect the facilities and who were authorized and certified to make an inspection of the properties and the information that would have provided Marco with adequate information to make a bid, perhaps higher than the bid previously made by Marco. Everett Cook was not among these representatives from Marco.
12. Attached hereto as Exhibit C is a letter from Ferguson to Jeff Allen pointing out the problems with the treatment given Marco's representatives in attempting to inspect the properties. As noted in this letter, despite the fact that Marco requested information on December 14, 2015, to gain access to the dataroom and to do the onsite due diligence study on the Lot 3 properties, the information concerning the dataroom was not provided until December 31, 2015, and the inspection of the properties, which was nothing more than a drive by inspection, in effect, was not allowed until January 5, 2016.
13. Marco's representatives informed Walter that it did not feel it was being treated fairly.
14. Marco was not treated fairly in the bidding process and was denied the ability to make a true assessment of the value of the assets. Denial of Marco's access could not have been in the best interest of the creditors and other parties in

interest in this case. Therefore, Marco objects to the bidding process and to the approval of the auction and the sale that occurred at the auction.

Submitted this the 3rd day of February, 2016.

/s/ Walter F. McArdle
Walter F. McArdle

/s/ Frederick M. Garfield
Frederick M. Garfield

OF COUNSEL:
Spain & Gillon, LLC
The Zinszer Building
2117 Second Avenue North
Birmingham, Alabama 35203
Phone: (205) 328-4100
Facsimile: (205) 324-8866
Email: wfm@spain-gillon.com
fmg@spain-gillon.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing pleading to the following, by electronic service and by email on this the 3rd day of February, 2016.

James Bailey, Esq.
Bradley Arant Boult Cummings, LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203

J. Thomas Corbett
Chief Bankruptcy Administrator
United States Bankruptcy Court
112 Robert S. Vance Federal Building
1800 5th Avenue N.
Birmingham, AL 35203

/s/ Walter F. McArdle
OF COUNSEL



First Instance Limited

Head Office:

Unit 903 Seaview Commercial Building, 21-24
Connaught Road West, Sheung Wan, Hong Kong
Office Phone: +852 2545 1518

December 30, 2015

The Directors
Marco Resources, LLC
801 Ragland Road
Beckley, West Virginia

To Whom It May Concern

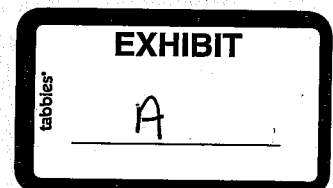
We are in the process of establishing Expansion Funding & Off-take arrangements for up to \$22 million for 9 million tonnes of Metallurgical Coal for Marco Resources LLC. In order to finalise these arrangements we need Marco Resources, LLC to complete an immediate site visit and obtain all necessary due diligence material for our review during January, 2016.

We have the financial capacity to make an offer for the Maple coal assets of Walter Energy as part of the Off-take arrangements as the funds will be made available by our trading company which currently trades around 1.5 million tonnes of ore per annum for a value of \$75 million.

We trust this meets your requirements

Yours truly,

Malcolm L Stevens
Chairman and Managing Director
First Instance Limited
Email: mls@canaustra.com.au
Cell:
USA: +16232077784
Spain: +34604212665



Walter F. McArdle

From: Jamie Ferguson [ferguson.marcoresources@gmail.com]
Sent: Tuesday, February 02, 2016 6:04 PM
To: Walter F. McArdle
Subject: Fwd: Marco request for Due Diligence re the WV Properties of Walter

----- Forwarded message -----

From: John Wooton <john.wooton@wwdhe.com>
Date: Fri, Jan 15, 2016 at 5:41 PM
Subject: Marco request for Due Diligence re the WV Properties of Walter
To: "Greer@pjtpartners.com" <Greer@pjtpartners.com>, "Mattus, John" <Mattus@pjtpartners.com>
Cc: Jamie Ferguson <ferguson.marcoresources@gmail.com>, Everett <Marcoresources@gmail.com>, Dave Wallen <davewallen@frontier.com>

Please find enclosed a letter from Jamie Ferguson re the due diligence on the WV Properties.

Please respond to either my or Jamie Ferguson

Thank you,

John D. Wooton

January 14, 2016

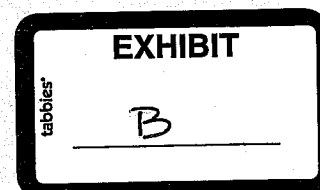
Walter Energy, Inc.

3000 Riverchase Galleria – Suite 1700

Birmingham, AL 35244-2359

ATTN: Earl Doppel

Re: Bid for Lot # 3 - The West Virginia Properties



Ladies & Gentlemen,

In accordance with the Bidding Procedures, as defined the Order entered by the United States Bankruptcy Court for the Northern District of Alabama on November 25, 2015, Marco Resources, LLC (“Marco Resources”) hereby requests additional due diligence material, as well as a second inspection of the property described as Lot #3 (the “West Virginia Properties”).

Attached as Exhibit A is a list of supplemental (over and above those items requested in previous correspondence) due diligence required to complete its Bid for the West Virginia Properties.

In addition to the requests found in Exhibit A, Marco Resources requests that it be allow to have a second, non-limited, inspection of the West Virginia Properties. Previously, Marco Resources was permitted only an extremely limited inspection, which did not include access to the preparation plants, underground facilities or access to the refuse areas. Marco Resources proposes that a second inspection take place as early as January 17, 2016. The additional inspection requirements are attached to this letter as Exhibit B.

Because of the time sensitive nature of these requests, as the Bid Deadline is set to close on January 19, 2016, a response to this letter is required no later than Friday, January 15, 2016. If you have any questions regarding this letter, or the attached Exhibits, please do not hesitate to contact us.

Sincerely,

Benjamin James Ferguson

President, Marco Resources, LLC

Exhibit A

Supplemental Due Diligence

As previously requested in December 2015, the following supplemental due diligence is required regarding the “Reporting” of Lot #3, as it was either not provided on the data site or made available during the first inspection:

1. Isopac maps of geological data (seam height, coal height, coal specs);
2. Daily production reports (underground, surface, plant);
3. Violations and Reports relating to any Violations;
4. Projected future capital expenditures;
5. Equipment rebuild schedules;
6. Availability reports on belts and equipment;
7. Refuse area data (type, life, federal and state approvals);
8. Loadout reports and rating;
9. Safety reports (including, but not limited to Accident Reports, OSHA violations, etc.);
10. Copy of MSHA and State plans (roof control, ventilation, etc);
11. Bonus/incentive plans;
12. Projection maps (Located on the wall of the mine office, but was not provided a copy, or directed to its location on the data site when requested);
13. Fire boss books;
14. Roof Fall maps;
15. Ventilation readings including what the present underground fan is producing;
16. Detailed list of equipment both at Maple and Gauley Eagle.

Marco Resources
Tel 304-255-3700 Fax 304-255-3705
801 Ragland Road
Beckley WV 25801



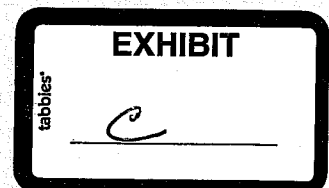
Jeff Allen,

Marco Resources feels that they have not been treated fairly for not being allowed to conduct proper due diligence in order to make a bid on Walter Energy's lot #3 (the West Virginia properties). We had asked for and provided requested information on Dec 14, 2015 to gain access to the data room and at this time requested to do an on-site due diligence study on both the Gauley Eagle and the Maple properties. On this same date I was requested by John Mattus, from PJT Partners, to call his office to discuss my request. During this call he asked me if there was someone in our organization that a Walter Energy executive may have a problem with. I responded I was not sure one of the Walter executives may have had a disagreement with Everett Cook, CEO of Marco Resources. Mr. Mattus stated yes that is true and that Everett Cook would not be allowed on either property.

After we received access to the data room we repeatedly asked to be allowed on the property to conduct our due diligence. When this was finally approved we were given a "windshield tour" of the property. We were not allowed access into either preparation plant or access to the underground mine (even though the fan was running and we were told by Dan Stickle that they were in fact still firebossing the mine). General questions that were asked on this tour was not answered such as cost per ton or near term capital expenses.

On January 11 John Wooten, from Wooten, Wooten, and Davis, sent a letter to John Mattus in regards to our limited access as well as our displeasure of our due diligence study. He also noted that we were prepared to make a bid, but that it would be much lower than what we had anticipated due to the lack of professionalism, the lack of access given on the properties, and the lack to provide us with the needed information in order to make an educated bid on the properties.

I have received an email from Kerry Greer on January 12, 2016 after I made a bid for Marco Resources that stated ***"While we note that we did not receive any written request for diligence from you since data room access was provided to you on December 31, we are prepared to work with you, up until the auction date, to provide you with the information you need to submit a qualifying bid. If you remain interested in the property, please provide us with a list of that information as soon as possible."***



I immediately sent him the original letter from December 14, 2015 that stated what Marco Resources requested to perform a due diligence study. I continued to send the same request approximately every 48 hours and I have not received a response from Walter Energy or PJT partners since the previous email from January 12, 2016.

We believe Marco Resources has been wrongfully interfered with as well as not given the opportunity to properly conduct our due diligence in light of all these instances.

Sincerely,

Benjamin James Ferguson
President, Marco Resources LLC