

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

In re:)	
)	
)	Chapter 11
WALTER ENERGY, INC. ¹)	Case No. 15-02741 (TOM11)
)	
Debtors.)	(Jointly Administered)
)	
)	

**OBJECTION OF THE UNITED MINE WORKERS OF AMERICA COMBINED
BENEFIT FUND AND THE UNITED MINE WORKERS OF AMERICA 1992 BENEFIT
PLAN TO ENTRY OF AN ORDER APPROVING THE SALE(S) OF THE DEBTORS’
“NON-CORE” ASSETS FREE AND CLEAR OF CLAIMS, LIENS
AND ENCUMBRANCES**

The United Mine Workers of America Combined Benefit Fund (the “Combined Fund”) and the United Mine Workers of America 1992 Benefit Plan (the “1992 Plan”) (together, the “Coal Act Funds”), by and through their undersigned attorneys, hereby submit this objection and reservation of rights (the “Objection”) to the entry by this Court of a proposed order (the “Proposed Non-Core Assets Sale Order”) approving, *inter alia* the sale of the Debtors’ “Non-Core Assets”², free and clear of claims, liens, and encumbrances, pursuant to the proposed asset purchase agreement for the Debtors’ non-core assets (the “Non-Core Assets APA”) filed with this Court at Docket No. 1784, on February 1, 2016, and hereby respectfully state:

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors’ corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.

² All defined terms not defined herein shall have the meanings set forth in Debtors’ Sale Motion, (Dkt. No. 993).



BACKGROUND

1. On November 5, 2015 the Debtors filed their sale motion (Dkt. No. 993), seeking authority to sell substantially all of their assets free and clear of claims, liens and encumbrances (the “Sale Motion”).

2. On November 25, 2015, the Court entered an order (Dkt. No. 1119) approving the auction and bidding procedures in connection with sales contemplated by the Sale Motion.

3. On December 17, 2015, the Coal Act Funds filed their objection to the Sale Motion (Dkt. No. 1373) (the “Funds’ Sale Objection”), objecting to a sale that contemplated a transfer of assets free and clear of obligations arising under the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§9701, et seq. (the “Coal Act”). In the Funds’ Sale Objection, the Coal Act Funds reserved their rights to amend, modify or supplement their objection based upon, among other things, “further developments in these chapter 11 cases.” *See* Dkt. No. 1373, p. 29.

4. On February 1, 2016, the Debtors filed their notice of proposed asset purchase agreement for the Debtors' Non-Core Assets, attaching the Non-Core Assets APA, stating that the Debtors, together with their professionals, have determined that the proposed purchasers under the Non-Core Assets APA (the “Buyer”) have submitted the highest and otherwise best bid for the Non-Core Assets.³ *See* Dkt. No. 1793. The Non-Core Assets include certain assets of Taft Coal Sales and Associates, Inc. (“Taft”).

³ The Debtors did not conduct an auction with respect to the Non-Core Assets. The auction for the sale of the Non-Core Assets was originally scheduled for January 14, 2016, with a sale hearing scheduled for January 20, 2016. Dkt. No. 1469. The Debtors subsequently rescheduled, continued or postponed the dates of the auction and the related sale hearing for the sale of the Non-Core Assets pursuant to notices filed with this Court on January 13, 2016 (Dkt. No. 1621), January 15, 2016 (Dkt. No. 1660), January 19, 2016 (Dkt. No. 1693) and January 22, 2016 (Dkt. No. 1729). The most recent notice of adjournment set a hearing date of February 3, 2016, and an auction date “TBD.” Dkt. No. 1729.

5. On February 1, 2016, at approximately 10:45 p.m. (EST), the Debtors circulated a proposed form of sale order (the “Proposed Non-Core Assets Sale Order”), a copy of which is attached hereto as Exhibit A.

6. Certain Debtors have Coal Act obligations to the Combined Fund with respect to approximately 32 eligible beneficiaries, with an annual premium of approximately \$147,000. One of these beneficiaries is assigned to Taft. *See* 26 U.S.C. §§ 9701(c)(2)(A), 9704(a); Dkt. No. 1198-1, ¶ 8.

7. The Debtors, including Taft, do not presently pay any 1992 Plan taxes. Taft currently provides security in an amount equal to a portion of the projected future cost to the 1992 Plan of providing health benefits for eligible and potentially eligible beneficiaries attributable to such operator. Dkt. No. 1198-1, ¶ 11. With respect to the 30 beneficiaries described above, Taft is providing security in the amount of \$238,680, which is estimated to cover the health benefits of the applicable beneficiaries for approximately one year. *Id.* In addition, the Debtors, including Taft, have historically provided retiree health benefits to approximately 572 retired coal miners and their dependents through an individual employer plan (“IEP”), 30 of which are attributable to Taft. Should those miners and their dependents become eligible to receive benefits from the 1992 Plan following termination of the IEP, the Debtors (or a successor that becomes independently liable for Coal Act premiums) might be assessed 1992 Plan taxes. *Id.*, ¶ 9. *See* 26 U.S.C. §§ 9701(c)(4), 9711(g)(1), 9712(d)(3).

8. On January 08, 2016, this Court entered an order approving the Debtors’ sale of certain of its Alabama mining assets to Coal Acquisition, LLC (the “Sale Order”) (Dkt. No. 1584).

9. The Coal Act Funds timely appealed the Sale Order to the District Court for the Northern District of Alabama (Dkt. No. 1605). The appeal, including the Coal Act Funds' emergency motion for a stay of the Sale Order pending appeal (the "Stay Motion"), is currently proceeding before the District Court under case no. 2:16-cv-00064-RDP.

THE NON-CORE ASSETS APA

10. The Non-Core Assets APA purports to exclude from the purchase any liabilities of the Debtors arising under any multiemployer benefit plan. *Non-Core Assets APA*, §§ 1.1, 2.4, 7.9. The APA also reflects the parties' intent that:

Buyer shall not be deemed to: (a) be the successor of or successor employer (as described under COBRA and applicable regulations thereunder) to Sellers, including with respect to any Collective Bargaining Agreements and any Benefit Plans, under the Coal Act, and any common law successor liability in relation to the UMWA 1974 Pension Plan, including with respect to withdrawal liability . . .

Non-Core Assets APA, § 8.8.

11. The Proposed Non-Core Assets Sale Order purports, *inter alia*, to transfer the Non-Core Assets, including assets related to Taft, free and clear of claims, liens, interests and encumbrances, including without limitation, with respect to the Coal Act, and to insulate the Buyer from any determination that it is a successor of or successor employer, including with respect to Coal Act obligations. *See, e.g., Proposed Non-Core Assets Sale Order* at ¶¶ Q, U, 6, and 16.

OBJECTION

12. For the reasons set forth in the Funds' Sale Objection, the Coal Act Funds object to the sale of the Non-Core Assets free and clear of future Coal Act obligations and to the entry of an order authorizing the sale on such terms.

RESERVATION OF RIGHTS

The Coal Act Funds reserve all rights (i) to amend, modify or supplement this Objection based upon (a) any facts or arguments that come to light prior to the hearing on the Non-Core Asset APA and the Proposed Non-Core Asset Sale Order; (b) ongoing discussions with the Debtors; or (c) further developments in these chapter 11 cases; (ii) to join any objection of the United Mine Workers of America or any other party with respect to any issue relating to the issues described herein; and (iii) to be heard before the Court with respect to the subject matter of this Objection or such joinder.

Dated: February 3, 2016

Respectfully submitted,

/s/ George N. Davies

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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2016, a true and correct copy of the foregoing was filed using the Court's CM/ECF system, which will notify and serve all persons and entities that have formally appeared and requested service in this case. Additionally, I hereby certify that a true and correct copy of the foregoing was served on the Standard Parties via electronic mail as follows:

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EXHIBIT A

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

In re:

WALTER ENERGY, INC., *et al.*

Debtors.¹

Chapter 11

Case No. 15-02741-TOM11

(Jointly Administered)

**ORDER (I) APPROVING THE SALE OF
CERTAIN NON-CORE ASSETS FREE AND CLEAR OF CLAIMS,
LIENS, INTERESTS AND ENCUMBRANCES; (II) APPROVING
THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES; AND (III) GRANTING RELATED RELIEF**

Upon the motion [Docket No. 993] (the “**Motion**”)² of the Debtors dated November 5, 2015 for, among other things, entry of an order (the “**Order**”) (I) authorizing the sale (the “**Sale**”) of the Non-Core Assets,³ to the bidder with the highest or otherwise best bid, which for purposes of this Order shall mean the sale of the Acquired Assets pursuant to the Asset

¹ The Debtors in these cases, along with the last four digits of each of the Debtors’ federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co. LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198).

² Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Seminole/ERP Agreement (as defined below) and, if not defined therein, in the Motion or the Bidding Procedures Order (as defined below), as applicable.

³ As used herein, “Non-Core Assets” shall mean the assets comprised of Lot 3 (the “**West Virginia Assets**”), Lot 4 (the “**Taft Assets**”), Lot 8 (“**Select JWR Assets**”), and Lot 9 (“**Walter Coke Assets**,” and collectively with the West Virginia Assets, the Taft Assets, and Select JWR Assets, the “**Non-Core Assets**”).

Purchase Agreement by and among certain of the Debtors,⁴ as sellers (collectively, the “**Sellers**”), and Seminole Coal Resources, LLC, ERP Compliant Coke, LLC, and ERP Environmental Fund, Inc., as purchaser (collectively, the “**Purchaser**”) substantially in the form filed with the Court on February 1, 2016 (the “**Seminole/ERP Agreement**”) [Docket No. 1784] together with all exhibits, schedules and ancillary documents related thereto, including all Transaction Documents (as defined therein) and the Surety Bond Collateral Agreement, free and clear of all liens, claims, interests, and encumbrances (collectively, the “**Non-Core Sale Transaction**”); (II) authorizing the assumption and assignment of certain executory contracts and unexpired leases (the “**Assumed Contracts**”) and the assumption of Assumed Liabilities, each as more fully described in the Seminole/ERP Agreement; and (III) granting related relief; and the Court having held a hearing on February 3, 2016 (the “**Sale Hearing**”) to approve the Non-Core Sale Transaction; and the Court having reviewed and considered the relief sought in the Motion with respect to the Non-Core Assets, declarations submitted in support of the Motion and the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and all parties in interest having been heard or having had the opportunity to be heard regarding the Non-Core Sale Transaction and the relief requested in this Order; and due and sufficient notice of the Sale Hearing and the relief sought therein having been given under the particular circumstances and in accordance with the Bidding Procedures Order; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion with respect to the Non-Core Assets is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and upon the entire record of the Sale Hearing and these

⁴ The Sellers include Atlantic Development and Capital, LLC; Atlantic Leaseco, LLC, Maple Coal Co., LLC; Walter Coke, Inc., Walter Minerals, Inc., Jefferson Warrior Railroad Company, Inc., Jim Walter Resources, Inc., Taft Coal Sales & Associates, Inc., and Tuscaloosa Resources, Inc.

Chapter 11 Cases, and after due deliberation thereon, and good cause appearing therefor, it is hereby

FOUND, CONCLUDED AND DETERMINED THAT:⁵

A. This Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409. The legal predicates for the relief requested in the Motion are Bankruptcy Code sections 105, 363, 364, 365 and 503. Such relief is also warranted pursuant to Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, and 9014.

B. The Motion requested, among other things, that the Court approve bidding procedures for the sale of both the Debtors' Core Assets (as defined below) and Non-Core Assets. On November 25, 2015, the Court entered an order [Docket No. 1119] (the "**Bidding Procedures Order**"), which, among other things, (i) approved the Bidding Procedures, (ii) authorized the Assumption and Assignment Procedures, (iii) approved the form and manner of notice of the Motion and the other procedures, protections, schedules and agreements related thereto, and (iv) scheduled the Sale Hearing with respect to the Non-Core Assets.

C. In accordance with the Bidding Procedures, the Debtors noticed several adjournments of the Bid Deadline, Auction Date, and Sale Hearing for the Non-Core Assets. [Docket Nos. 1469, 1621, 1660, 1693, and 1729].

D. Several parties filed objections to the Motion (each, an "**Objection**," and collectively, the "**Objections**") as more particularly identified and described in Exhibit A to the Debtors' Omnibus Reply to Objections to the Motion [Docket No. 1552]. Most of those

⁵ The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Objections pertained solely to the Debtors' sale of its "core" Alabama coal mining assets (the "**Core Assets**") to Coal Acquisition, LLC (the "**Core Sale Transaction**"), which was approved by order of this Court dated January 8, 2016 (the "**Core Sale Transaction Order**") [Docket No. 1584]. The hearing on certain Objections based solely on 11 U.S.C. § 365 (the "**Cure Objections**") has been continued to February 17, 2016, as more particularly described in the *Notice of Continued Hearing on Certain Cure Objections* [Docket No. 1773].

E. The relief granted herein is in the best interests of the Debtors, their estates and creditors, and other parties in interest.

F. The Debtors have articulated good and sufficient business reasons for the Court to authorize (i) the Sellers' entry into the Seminole/ERP Agreement and consummation of the Non-Core Sale Transaction and (ii) the assumption and assignment of the Assumed Contracts and Assumed Liabilities as set forth herein and in the Seminole/ERP Agreement.

G. As evidenced by the affidavits of service [Docket Nos. 1028, 1150, 1151, 1152, 1172, 1173, 1174, 1230, 1340, 1441, 1442, 1495, 1516, 1519, 1642, 1672, 1707, 1747] and publication [Docket Nos. 1387, 1543] previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing, the Non-Core Sale Transaction, the Assumption and Assignment Procedures and the assumption and assignment of the Assumed Contracts and the applicable Cure Amounts has been provided in compliance with the Bidding Procedures Order and in accordance with Bankruptcy Code sections 102(1), 363, and 365, and Bankruptcy Rules 2002, 4001, 6004, 6006, 9006, 9007 and 9014, (ii) such notice was good and sufficient, and appropriate under the particular circumstances, and (iii) no other or further notice of the Motion, the Sale Hearing, the Non-Core Sale Transaction, the assumption and assignment of the

Assumed Contracts or the Cure Amounts is or shall be required. With respect to entities whose identities were not reasonably ascertained by the Debtors, publication of the Sale Notice was made in *The Wall Street Journal*, National Edition and *The Tuscaloosa News* on December 1, 2015, *The Birmingham News* on December 2, 2015, and again in *The Wall Street Journal*, National Edition, *The Tuscaloosa News* and *The Birmingham News*, as well as the *USA Today*, National Edition and the *Charleston Gazette and Daily News*, on or about December 9, 2015. Such notice was sufficient and reasonably calculated under the circumstances to reach all known and unknown entities.

H. The Acquired Assets sought to be transferred and/or assigned, as applicable, by the Sellers to the Purchaser pursuant to the Seminole/ERP Agreement are property of the Sellers' estates and title thereto is vested in the Sellers' estates. For the avoidance of doubt, cylinders owned by Airgas USA, LLC that are currently in the Debtors' possession are not Acquired Assets.

I. The Debtors and their professionals marketed the Non-Core Assets and conducted the marketing and sale process in compliance with the Bidding Procedures and the Bidding Procedures Order. Based upon the record of these proceedings, creditors and other parties in interest and prospective purchasers were afforded a reasonable and fair opportunity to bid for the Non-Core Assets.

J. As part of its efforts to market the Non-Core Assets, the Debtors' advisors contacted 86 potential bidders. The Debtors received signed non-disclosure agreements from 26 bidders, and received six bids for some or all of the Non-Core Assets, only four of which were conforming bids under the Bidding Procedures Order, including the Purchaser's bid (the "**Seminole/ERP Bid**"). The Seminole/ERP Bid was the only bid submitted for substantially all

of the Non-Core Assets and was deemed a Qualified Bid, and the Purchaser was deemed a Qualified Bidder.

K. After reviewing all Bids, whether for some or all of the Non-Core Assets, the Debtors determined in a valid and sound exercise of their business judgment that the highest or otherwise best Qualified Bid for the Non-Core Assets was that of the Purchaser and that an auction was not required. The Seminole/ERP Agreement provides for the purchase of the Acquired Assets, including in respect of Lots 3, 4, 8, and 9.⁶ The purchase price includes only a nominal cash consideration, but also provides for the assumption of the Assumed Liabilities, as set forth in the Seminole/ERP Agreement.

L. The Bidding Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the Non-Core Assets. The Debtors conducted the sale process without collusion and in accordance with the Bidding Procedures.

M. The Debtors and their professionals conducted the sale process in compliance with the Bidding Procedures Order, and afforded potential purchasers a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer for the Non-Core Assets.

N. Subject to the entry of this Order, the Debtors: (i) have full power and authority to execute the Seminole/ERP Agreement and all other documents contemplated thereby; (ii) have all of the power and authority necessary to consummate the transactions contemplated by the Seminole/ERP Agreement; and (iii) have taken all corporate action

⁶ The Debtors received two conforming bids for Lot 3 and one conforming bid for Lot 4, but only the Seminole/ERP Bid provided for the purchase of all four lots that together comprise the Non-Core Assets.

necessary to authorize and approve the Seminole/ERP Agreement and the other Transaction Documents and the Non-Core Sale Transaction, and all other actions required to be performed by the Debtors in order to consummate the transactions contemplated in the Seminole/ERP Agreement, including the Surety Bond Collateral Agreement and the other Transaction Documents. No consents or approvals, other than those expressly provided for in the Seminole/ERP Agreement or this Order, are required for the Debtors to consummate the Sale of the Acquired Assets.

O. The Seminole/ERP Agreement was negotiated and is undertaken by the Debtors and the Purchaser at arm's length without collusion or fraud, and in good faith within the meaning of Bankruptcy Code section 363(m). The Purchaser is not an "insider" of any of the Debtors as that term is defined by Bankruptcy Code section 101(31). The Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring the Acquired Assets, complied with the Bidding Procedures Order, and agreed to subject its bid to the competitive Bidding Procedures approved in the Bidding Procedures Order. All releases and payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Sale have been disclosed. The Purchaser has not violated Bankruptcy Code section 363(n) by any action or inaction, and no common identity of directors or controlling stockholders exists between the Purchaser and the Debtors. As a result of the foregoing, the Purchaser is entitled to the protections of Bankruptcy Code section 363(m), including in the event this Order or any portion thereof is reversed or modified on appeal, and otherwise has proceeded in good faith in all respects in connection with the proceeding.

P. The total consideration provided by the Purchaser for the Acquired Assets is the highest or otherwise best offer received by the Debtors with respect to the Acquired

Assets, and the Purchase Price constitutes reasonably equivalent value and fair consideration for the Acquired Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and any other applicable laws, and may not be avoided under Bankruptcy Code section 363(n) or under any other law of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. No other person or entity or group of persons or entities has offered to purchase the Acquired Assets for an amount that would provide greater economic value to the Debtors than the Purchaser. The Debtors' determination that the Seminole/ERP Agreement constitutes the highest or otherwise best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtors' business judgment. The Court's approval of the Motion as set forth herein, the Sale of the Acquired Assets, the Non-Core Sale Transaction and the Seminole/ERP Agreement is in the best interests of the Debtors, their estates and creditors and all other parties in interest.

Q. The Purchaser would not have entered into the Seminole/ERP Agreement and would not consummate the Non-Core Sale Transaction if the sale of the Acquired Assets to the Purchaser were not free and clear of all claims, liens, interests and encumbrances (other than Permitted Encumbrances and Assumed Liabilities) pursuant to Bankruptcy Code section 363(f) or if the Purchaser would, or in the future could, be liable for any of such claims, liens, interests and encumbrances. Unless expressly included in the Assumed Liabilities and Permitted Encumbrances, the Purchaser shall not be responsible for any claims, liens, interests and encumbrances, including in respect of the following: (i) any labor or employment agreements; (ii) any mortgages, deeds of trust and security interests; (iii) any intercompany loans and receivables between one or more of the Sellers and any Debtor; (iv) any pension, multiemployer plan (as such term is defined in Section 3(37) or Section 4001(a)(3) of the Employee Retirement

Income Security Act of 1974, as amended (“**ERISA**”)), health or welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any of the Debtors or any multiemployer plan to which the Debtors have at any time contributed to or had any liability or potential liability; (v) any other employee, worker’s compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) ERISA, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including, without limitation, the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code and of any similar state law (collectively, “**COBRA**”), (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, (k) the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§9701, et seq. or (l) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors; (vi) any liabilities arising under any Environmental Laws with respect to any assets owned or operated by any of the Debtors or any corporate predecessor of any of the Debtors at any time prior to the Closing Date; (vii) any bulk sales or similar law; (viii) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (ix) the Coal Act and (x) any Excluded Liabilities. There is no better available alternative for the Acquired Assets than the Sale to the Purchaser. The Sale of the Acquired Assets contemplated by the Seminole/ERP Agreement is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

R. The Debtors may sell the Acquired Assets free and clear of all claims, liens, interests and encumbrances (other than Assumed Liabilities and Permitted Encumbrances) because, with respect to each creditor asserting a claim, lien, interest or encumbrance, one or more of the standards set forth in Bankruptcy Code section 363(f)(1)-(5) has been satisfied. Those holders of claims, liens, interests or encumbrances who did not object or who withdrew their objections to the Sale of the Acquired Assets are deemed to have consented to the Motion as it relates to the Non-Core Sale Transaction pursuant to Bankruptcy Code section 363(f)(2). Those holders of claims, liens, interests or encumbrances who did object fall within one or more of the other subsections of Bankruptcy Code section 363(f). Notwithstanding the foregoing, the Acquired Assets are being sold subject to the Permitted Encumbrances and the Assumed Liabilities.

S. Neither the Debtors nor the Purchaser engaged in any conduct that would cause or permit the Seminole/ERP Agreement or the consummation of the Sale of the Acquired Assets to be avoided, or costs or damages to be imposed, under Bankruptcy Code section 363(n) or under any other law of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law.

T. The Seminole/ERP Agreement, which constitutes reasonably equivalent value and fair consideration, was not entered into, and the Sale of the Acquired Assets is not consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtors under the Bankruptcy Code or under any other law of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtors nor the Purchaser has entered into the Seminole/ERP Agreement or is consummating the Sale of the Acquired Assets with any fraudulent or otherwise improper purpose.

U. Upon the Closing, the Purchaser shall not, and shall not be deemed to: (i) be the successor of or successor employer (as described under COBRA and applicable regulations thereunder) to the Sellers, including without limitation, with respect to any Collective Bargaining Agreements and any Benefit Plans, under the Coal Act, and any common law successorship liability in relation to the UMWA 1974 Pension Plan, including with respect to withdrawal liability, (ii) be the successor of or successor employer to the Sellers, and shall instead be, and be deemed to be, a new employer with respect to any and all federal or state unemployment laws, including any unemployment compensation or tax laws, or any other similar federal or state laws, (iii) have, *de facto*, or otherwise, merged or consolidated with or into Sellers, (iv) be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers, or (v) be liable for any acts or omissions of Sellers in the conduct of the Business or arising under or related to the Acquired Assets, other than as set forth in the Seminole/ERP Agreement, including the Assumed Liabilities. Without limiting the generality of the foregoing, and except as otherwise provided in the Seminole/ERP Agreement, the parties intend that the Purchaser shall not be liable for any Encumbrance or Liability (other than Assumed Liabilities and Permitted Encumbrances) against any Seller, or any of its predecessors or Affiliates, and the Purchaser shall have no successor or vicarious liability of any kind or character whatsoever, whether known or unknown as of the Closing Date, whether now existing or hereafter arising, whether asserted or unasserted, or whether fixed or contingent, with respect to the Business, the Acquired Assets or any Liabilities of any Seller arising prior to the Closing Date. The Purchaser would not have acquired the Acquired Assets but for the foregoing protections against potential claims based upon “successor liability” theories.

V. Entry into the Seminole/ERP Agreement and the Non-Core Sale Transaction constitutes the exercise by the Debtors of sound business judgment, and such acts are in the best interests of the Debtors, their estates and creditors, and all parties in interest. The Debtors have articulated good and sufficient business reasons justifying the Sale of the Acquired Assets to the Purchaser. Additionally: (i) the Seminole/ERP Agreement constitutes the highest or otherwise best offer for the Non-Core Assets; (ii) the Seminole/ERP Agreement and the closing of the Non-Core Sale Transaction will present the best opportunity to realize the value of the Acquired Assets and avoid further decline and devaluation of the Acquired Assets; (iii) there is risk of deterioration of the value of the Acquired Assets if the Non-Core Sale Transaction is not consummated promptly; and (iv) the Seminole/ERP Agreement and the Non-Core Transaction will provide greater value to the Debtors' estates than would be provided by any other presently available alternative.

W. Good and sufficient reasons for approval of the Seminole/ERP Agreement and the Non-Core Sale Transaction have been articulated by the Debtors. The Debtors have demonstrated compelling circumstances and a good, sufficient and sound business purpose for the Non-Core Sale Transaction outside: (a) the ordinary course of business, pursuant to Bankruptcy Code section 363(b); and (b) a plan of reorganization, in that, among other things, the immediate consummation of the Non-Core Sale Transaction is necessary and appropriate to maximize the value of the Debtors' estates. To maximize the value of the Acquired Assets and preserve the viability of the operations to which the Acquired Assets relate, it is essential that the Sale occur within the time constraints set forth in the Seminole/ERP Agreement. Time is of the essence in consummating the Non-Core Sale Transaction.

X. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Assumed Contracts to the Purchaser in connection with the consummation of the Non-Core Sale Transaction, and the assumption and assignment of the Assumed Contracts to the Purchaser is in the best interests of the Debtors, their estates and creditors and all parties in interest. The Assumed Contracts being assigned to the Purchaser are an integral part of the Acquired Assets being purchased by the Purchaser, and accordingly, such assumption and assignment of the Assumed Contracts is reasonable and enhances the value of the Debtors' estates. The cure amounts required to be paid pursuant to section Bankruptcy Code 365(b), whether agreed or judicially resolved (the "**Cure Amounts**"), are deemed to be the entire cure obligation due and owing under the Assumed Contracts under Bankruptcy Code section 365(b). To the extent that any non-Debtor counterparty to an Assumed Contract failed to timely file an objection to the proposed Cure Amount filed with the Bankruptcy Court, the Cure Amount listed in the Cure Notice shall be deemed to be the entire cure obligation due and owing under the applicable Assumed Contract.

Y. Each provision of the Assumed Contracts or applicable non-bankruptcy law that purports to prohibit, restrict or condition, or could be construed as prohibiting, restricting or conditioning, assignment of any Assumed Contracts has been satisfied or is otherwise unenforceable under Bankruptcy Code section 365.

Z. Upon the payment of the Cure Amount to the relevant counterparty to an Assumed Contract, there will be no outstanding default under each such Assumed Contract.

AA. The Purchaser has demonstrated adequate assurance of future performance of all Assumed Contracts within the meaning of Bankruptcy Code section 365.

BB. Upon the assignment to the Purchaser and the payment of the relevant Cure Amounts, each Assumed Contract shall be deemed valid and binding and in full force and effect in accordance with its terms, and all defaults thereunder, if any, shall be deemed cured, subject to the provisions of this Order.

CC. An injunction against creditors and third parties pursuing claims against, and liens, interests and encumbrances on, the Acquired Assets is necessary to induce Purchaser to close the Non-Core Sale Transaction, and the issuance of such injunctive relief is therefore necessary to avoid irreparable injury to the Debtors' estates and will benefit the Debtors' creditors.

DD. Good faith negotiations between Purchaser and the Debtors' management or key employees regarding compensation or future employment are ongoing, and Purchaser anticipates that agreements regarding employment and compensation will be reached. With respect to any agreements entered into between the Purchaser and the Debtors' management or key employees regarding compensation or future employment, if any exist, the Purchaser has disclosed the material terms of such agreements.

EE. The Non-Core Sale Transaction does not constitute a *sub rosa* chapter 11 plan. The Non-Core Sale Transaction neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates a liquidating plan of reorganization for any of the Debtors.

FF. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of judgment as set forth herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED, to the extent set forth herein.
2. Any Objection to the Motion to the extent related to the Acquired Assets, or any other relief granted in this Order, to the extent not resolved, adjourned for hearing on a later date, waived or withdrawn or previously overruled, and all reservations of rights included therein, is hereby overruled and denied on the merits.
3. Pursuant to Bankruptcy Code sections 105, 363, 364, 365 and 503 and the Seminole/ERP Agreement, the Non-Core Sale Transaction is hereby approved and the Debtors are authorized to enter into and perform under the Seminole/ERP Agreement. Pursuant to Bankruptcy Code sections 105, 363, 364, 365 and 503, each of the Debtors and the Purchaser are hereby authorized and directed to take any and all actions necessary or appropriate to: (i) consummate the Non-Core Sale Transaction in accordance with the Seminole/ERP Agreement and this Order; (ii) assume and assign the Assumed Contracts; and (iii) perform, consummate, implement and close fully the Seminole/ERP Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Seminole/ERP Agreement and the other Transaction Documents, including the Surety Bond Collateral Agreement. The Debtors and each other party to the Transaction Documents, including the Surety Bond Collateral Agreement, are hereby authorized and directed to perform each of their covenants and undertakings as provided in the Seminole/ERP Agreement, including the Surety Bond Collateral Agreement and the other Transaction Documents, prior to or after the Closing Date without further order of the Court. The Purchaser and the Debtors shall have no obligation to close the Non-Core Sale Transaction except as is contemplated and provided for in the Seminole/ERP Agreement.
4. Pursuant to Bankruptcy Code section 365(f), notwithstanding any provision of any Assumed Contract or applicable non-bankruptcy law that prohibits, restricts or conditions the assignment of the Assumed Contracts, the Debtors are authorized to assume the

Assumed Contracts and to assign the Assumed Contracts to the Purchaser, which assignment shall take place on and be effective as of the Closing or as otherwise provided herein, in the Seminole/ERP Agreement or by other order of this Court (as applicable, the “**Assumption Date**”). There shall be no accelerations, assignment fees, increases or any other fees charged to the Purchaser or the Debtors as a result of the assumption and assignment of the Assumed Contracts. Pursuant to the Seminole/ERP Agreement, the Purchaser shall be permitted until February 15, 2016 (or such later date as the Sellers and Purchaser may agree) to designate in writing any Available Contracts to be designated as Assumed Contracts or Excluded Contracts, other than the contracts listed on Schedule 2.6(b) to the Seminole/ERP Agreement which, for the avoidance of doubt, are each an Assumed Contract.

5. The Debtors’ assumption of the Assumed Contracts is subject to the consummation of the Non-Core Sale Transaction. To the extent that an objection by a counterparty to any Assumed Contract, including all objections related to Cure Amounts, is not resolved prior to the Closing Date or the Assumption Date, if later, the Debtors, in consultation with the Purchaser, may elect to: (i) not assume such Assumed Contract; (ii) postpone the assumption of such Assumed Contract until the resolution of such objection; or (iii) reserve the disputed Cure Amount and assume the Assumed Contract on the Closing or the Assumption Date, as applicable. So long as the Debtors hold the claimed Cure Amount in reserve, and there are no other unresolved objections to the assumption and assignment of the applicable Assumed Contract, the Debtors can, without further delay, assume and assign to the Purchaser the Assumed Contract that is the subject of the objection. Under such circumstances, the respective objecting counterparty’s recourse is limited to the funds held in reserve.

6. Upon the Closing: (a) the Debtors are hereby authorized and directed to consummate, and shall be deemed for all purposes to have consummated, the sale, transfer and assignment of all of the Debtors’ rights, title and interest in the Acquired Assets to the Purchaser free and clear of all Encumbrances and Liabilities, other than the Assumed Liabilities and the encumbrances identified on Schedule 1 hereto (the “**Permitted Encumbrances**”); and (b) except

as otherwise expressly provided in the Seminole/ERP Agreement, all Encumbrances and Liabilities (other than the Assumed Liabilities and the Permitted Encumbrances) shall not be enforceable as against the Purchaser or the Acquired Assets. Unless otherwise expressly included in the Assumed Liabilities and Permitted Encumbrances, the Purchaser shall not be responsible for any claims, liens, interests and encumbrances, including in respect of the following: (i) any labor or employment agreements; (ii) any mortgages, deeds of trust and security interests; (iii) any intercompany loans and receivables between one or more of the Sellers and any Debtor; (iv) any pension, multiemployer plan (as such term is defined in Section 3(37) or Section 4001(a)(3) of ERISA), health or welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any of the Debtors or any multiemployer plan to which the Debtors have at any time contributed to or had any liability or potential liability; (v) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) ERISA, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (g) the Americans with Disabilities Act of 1990, (h) COBRA, (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, (k) the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§9701, et seq. or (l) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors; (vi) liabilities arising under any Environmental Laws with respect to any assets owned or operated by any of the Debtors or any corporate predecessor of any of the Debtors at any time prior to the Closing Date; (vii) any bulk sales or similar law; (viii) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (ix) the Coal Act and (x) any Excluded Liabilities. A certified copy of this Order may be filed with the appropriate clerk and/or recorder to act to cancel any such lien, claim, interest or encumbrance of record.

7. The transfer to the Purchaser of the Debtors' rights, title and interest in the Acquired Assets pursuant to the Seminole/ERP Agreement shall be, and hereby is deemed to be, a legal, valid and effective transfer of the Debtors' rights, title and interest in the Acquired Assets, and vests with or will vest in the Purchaser all rights, title and interest of the Debtors in the Acquired Assets, free and clear of all claims, liens, interests and encumbrances of any kind or nature whatsoever (other than the Permitted Encumbrances and the Assumed Liabilities), with any such claims, liens, interests and encumbrances attaching to the sale proceeds in the same validity, extent and priority as immediately prior to the Sale of the Acquired Assets, subject to the provisions of the Seminole/ERP Agreement, and any rights, claims and defenses of the Debtors and other parties in interest.

8. None of the Purchaser or its affiliates, successors, assigns, equity holders, employees or professionals shall have or incur any liability to, or be subject to any action by any of the Debtors or any of their estates, predecessors, successors or assigns, arising out of the negotiation, investigation, preparation, execution, delivery of the Seminole/ERP Agreement and the entry into and consummation of the Sale of the Acquired Assets, except as expressly provided in the Seminole/ERP Agreement and this Order.

9. Except as expressly provided in the Seminole/ERP Agreement or by this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, vendors, suppliers, employees, trade creditors, litigation claimants and other persons, holding claims, liens, interests or encumbrances of any kind or nature whatsoever against or in the Debtors or the Debtors' interests in the Acquired Assets (whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these Chapter 11 Cases, whether imposed by agreement, understanding, law, equity or otherwise), including, without limitation, the non-debtor party or parties to each Assumed Contract, arising under or out of, in connection with, or in any way relating to, the Acquired Assets or the transfer of the Debtors' interests in the

Acquired Assets to the Purchaser, shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing claims, liens, interests and encumbrances against the Purchaser or its affiliates, successors, assigns, equity holders, employees or professionals the Acquired Assets, or the interests of the Debtors in such Acquired Assets. Following the Closing, no holder of a claim, lien, interest or encumbrance against the Debtors shall interfere with the Purchaser's title to or use and enjoyment of the Debtors' interests in the Acquired Assets based on or related to such claim, lien, interest or encumbrance, and, except as otherwise provided in the Seminole/ERP Agreement or this Order, all such claims, liens, interests or encumbrances, if any, shall be, and hereby are transferred and attached to the proceeds from the Sale of the Acquired Assets in the order of their priority, with the same validity, force and effect which they have against such Acquired Assets as of the Closing, subject to any rights, claims and defenses that the Debtors' estate and Debtors, as applicable, may possess with respect thereto. All persons are hereby enjoined from taking action that would interfere with or adversely affect the ability of the Debtors to transfer the Acquired Assets in accordance with the terms of the Seminole/ERP Agreement and this Order.

10. Upon assumption of the Assumed Contracts by the Debtors and assignment of same to the Purchaser, the Assumed Contracts shall be deemed valid and binding, in full force and effect in accordance with their terms, subject to the provisions of this Order. Subject to the provisions of this Order, the Purchaser shall succeed to the entirety of Debtors' rights and obligations in each Assumed Contract first arising and attributable to the time period occurring on or after the Closing, but subject to the assignment of said Assumed Contracts becoming effective, as provided herein and in the Seminole/ERP Agreement, and shall have all rights thereunder.

11. Subject to paragraph 5 of this Order, upon the entry of this Order, (i) all defaults (monetary and non-monetary) under the Assumed Contracts through the Closing shall be deemed cured and satisfied through the payment of the Cure Amounts, (ii) no other amounts will be owed by the Debtors, their estates or the Purchaser with respect to amounts first arising or

accruing during, or attributable or related to, the period before Closing with respect to the Assumed Contracts, and (iii) any and all persons or entities shall be forever barred and estopped from asserting a claim against the Debtors, their estates, or the Purchaser that any additional amounts are due or defaults exist under the Assumed Contracts that arose or accrued, or relate to or are attributable to the period before the Closing.

12. The Seminole/ERP Agreement has been entered into by the Purchaser in good faith and the Purchaser is a good faith purchaser of the Acquired Assets as that term is used in Bankruptcy Code section 363(m). The Purchaser is entitled to all of the protections afforded by Bankruptcy Code section 363(m).

13. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Non-Core Sale Transaction. Except as otherwise provided in the Seminole/ERP Agreement, no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment is due to any person in connection with the Seminole/ERP Agreement, the other transaction documents or the transactions contemplated hereby or thereby for which the Purchaser is or will become liable.

14. The consideration provided by the Purchaser for the Acquired Assets under the Seminole/ERP Agreement shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law, and the Sale of the Acquired Assets may not be avoided, or costs or damages imposed or awarded under Bankruptcy Code section 363(n) or any other provision of the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act or any other similar federal or state laws.

15. On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of all of the Debtors' rights, title and interest in the Acquired Assets or a bill of sale transferring good and marketable title in such Acquired Assets to the Purchaser on the Closing Date pursuant to the

terms of the Seminole/ERP Agreement, free and clear of all claims, liens, interests and encumbrances (other than Assumed Liabilities and Permitted Encumbrances).

16. Upon the Closing, except as specifically included in Assumed Liabilities, the Purchaser shall not and shall not be deemed to: (i) be the successor of or successor employer (as described under COBRA and applicable regulations thereunder) to the Sellers, including without limitation, with respect to any Collective Bargaining Agreements and any Benefit Plans, under the Coal Act, and any common law successorship liability in relation to the UMWA 1974 Pension Plan, including with respect to withdrawal liability; (ii) be the successor of or successor employer to the Sellers, and shall instead be, and be deemed to be, a new employer with respect to any and all federal or state unemployment laws, including any unemployment compensation or tax laws, or any other similar federal or state laws; (iii) have, de facto, or otherwise, merged or consolidated with or into Sellers; (iv) be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers; or (v) be liable for any acts or omissions of Sellers in the conduct of the Business or arising under or related to the Acquired Assets other than as set forth in the Seminole/ERP Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in the Seminole/ERP Agreement, the parties intend and the Court hereby orders that the Purchaser shall not be liable for any Encumbrance or Liability (other than Assumed Liabilities and Permitted Encumbrances) against any Seller, or any of its predecessors or Affiliates, and the Purchaser shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the Business, the Acquired Assets or any Liabilities of any Seller arising prior to the Closing Date.

17. This Order: (a) is and shall be effective as a determination that other than Permitted Encumbrances and Assumed Liabilities, all claims, liens, interests and encumbrances of any kind or nature whatsoever existing as to the Acquired Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected; and (b) is and shall be binding upon and shall authorize all entities,

including, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Acquired Assets conveyed to the Purchaser. Other than Permitted Encumbrances, all recorded claims, liens, interests and encumbrances against the Acquired Assets from their records, official and otherwise, shall be deemed stricken.

18. If any person or entity which has filed statements or other documents or agreements evidencing liens, interests or encumbrances on, or claims in, the Acquired Assets shall not have delivered to the Debtors before the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all claims, liens, interests or encumbrances (other than Permitted Encumbrances) which the person or entity has or may assert with respect to the Acquired Assets, the Debtors and the Purchaser are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets.

19. All counterparties to the Assumed Contracts shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the Purchaser, and shall not charge the Debtors or the Purchaser for any instruments, applications, consents or other documents which may be required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers in connection with the Sale of the Acquired Assets.

20. Each and every federal, state and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments

in connection with or necessary to consummate the Sale contemplated by the Seminole/ERP Agreement.

21. Nothing in this Order or the Seminole/ERP Agreement releases, nullifies, precludes, or enjoins the enforcement of any police or regulatory liability to a governmental unit that any entity would be subject to as the owner or operator of property after the Closing Date. Nothing in this Order or the Seminole/ERP Agreement authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization or (e) approval, or the discontinuation of any obligation thereunder, without compliance with any applicable legal requirements under police or regulatory law.

22. Without limiting the provisions of paragraph 21 above, but subject to Bankruptcy Code section 525(a), no governmental unit may revoke or suspend any right, license, trademark or other permission relating to the use of the Acquired Assets sold, transferred or conveyed to the Purchaser on account of the filing or pendency of these Chapter 11 Cases or the consummation of the Sale of the Acquired Assets.

23. Nothing in this Order or the Seminole/ERP Agreement shall be construed to limit any independent obligation of the Purchaser arising after the closing pursuant to the National Labor Relations Act, 29 U.S.C. § 145 *et seq.*, provided, for the avoidance of doubt, that the Sale is free and clear of any claims, interests, liens and encumbrances based on any theory of successor liability relating to the Sellers' business.

24. No provision of the Bidding Procedures Order, this Order, the Seminole/ERP Agreement (or any other purchase/sale agreement) shall be a ruling or is intended to be construed as a ruling on whether the Purchaser (or any other purchaser) is a successor to the debtors for purposes of registration and reporting under the federal securities laws (including relevant rules and regulations promulgated thereunder) (the "**Federal Securities Laws**"); and the Purchaser's (or any other purchaser's) obligation, if any, to file periodic public reports with the United States Securities and Exchange Commission shall be governed by applicable provisions of the Federal Securities Laws. Nothing in the Bidding Procedures Order, this Order, the

Seminole/ERP Agreement, or any other purchase/sale agreement with any other party shall relieve or excuse the Debtors, the Purchaser, or any other party from complying with any and all applicable Federal Securities Laws. Further, the Seminole/ERP Agreement, and this Order are not binding upon the SEC with respect to enforcement of its police or regulatory powers and shall not limit the SEC from pursuing any police or regulatory enforcement action.

25. As required by the Seminole/ERP Agreement, Sellers, Purchaser and the Surety Providers are authorized to enter into the Surety Bond Collateral Agreement, in substantially the form filed with the Court, which provides for, among other things, that the Surety Providers will draw on Existing Letters of Credit in an approximate amount of \$30 million, representing the notional penal amount of Existing Surety Bonds issued solely with respect to the Acquired Assets (the "LOC Proceeds"), and shall transfer such LOC Proceeds to the Purchaser's replacement surety provider(s) on the terms and conditions set forth in the Surety Bond Collateral Agreement. The Surety Providers, however, will retain all or a portion of their respective LOC Proceeds in accordance with the terms and subject to the conditions of the Surety Bond Collateral Agreement pending (A) the replacement of surety bonds issued for Mining Permits that are transferred permits under the Stalking Horse Agreement, (B) the closing of the sale to Coal Acquisition LLC pursuant to the Stalking Horse Agreement, (C) the replacement of the Seller Surety Bonds, and (D) the Closing under the Seminole/ERP Agreement, but shall transfer their respective LOC Proceeds to the Replacement Provider as soon as possible thereafter. Effective as of the Closing, the Sellers and their Affiliates and the issuers of the Existing Letters of Credit shall be deemed to have relinquished and released all right, title and interest in and to the LOC Proceeds. Except as otherwise expressly provided in this Order and the Surety Bond Collateral Agreement, nothing in the Seminole/ERP Agreement shall be deemed to alter, modify, limit, impair or prejudice any rights, remedies or defenses that: (a) any surety has or may have under any indemnity agreements, surety bonds or related agreements or documents, or under any letters of credit relating thereto; or (b) the principal(s)

has or may have under any indemnity agreements, surety bonds or related agreements or documents.

26. Notwithstanding anything to the contrary in the Motion, the Seminole/ERP Agreement, the Bidding Procedures Order, any Cure Notice, or this Order: (i) the Acquired Assets shall not include any insurance policies, surety bonds and any related agreements issued by ACE American Insurance Company or any of its affiliates listed on Schedule 2 (collectively and with each of their predecessors and successors, “**Chubb**”) to (or providing coverage to) any Seller (collectively, the “**Chubb Contracts**”), and/or any rights, benefits, claims, rights to payments and/or recoveries under such Chubb Contracts; (ii) the Chubb Contracts, and/or any rights, benefits, claims, rights to payments and/or recoveries under such Chubb Contracts, shall be Excluded Assets; (iii) nothing shall alter, modify or otherwise amend the terms or conditions of the Chubb Contracts; and (iv) Chubb may continue to pay any proceeds due under the Chubb Contracts to the Sellers (as opposed to the Purchaser) or other claimant thereunder as required under the relevant Chubb Contracts, unless and until otherwise ordered by this Court.

27. Notwithstanding anything to the contrary in this Order, without the prior written consent of Oracle America, Inc. (“**Oracle**”), the Debtors shall not assume and assign to the Purchaser or any Buyer Designee any contract between the Debtors and Oracle which includes or relates to a license of intellectual property, nor provide access to any Oracle licensed software, products, or services to the Purchaser or any Buyer Designee except as expressly permitted pursuant to the applicable contract(s). With respect to any other Sale(s) contemplated by the Sale Motion, Oracle reserves all objections to the assumption and assignment of any contracts or licenses of intellectual property between Oracle and the Debtors.

28. In the event that the Non-Core Sale Transaction does not close and the Seminole/ERP Agreement is terminated, paragraph 27 of the Core Sale Transaction Order shall remain in full force and effect, and an Environmental Response Trust will be established to fund

environmental action with respect to Walter Coke on the terms set forth in the Core Sale Transaction Order and the Stalking Horse Agreement.

29. To the extent this Order is inconsistent with any prior order or pleading filed in these Chapter 11 Cases related to the Motion, the terms of this Order shall govern. To the extent there is any inconsistency between the terms of this Order and the terms of the Seminole/ERP Agreement, the terms of this Order shall govern.

30. Except as expressly provided in the Seminole/ERP Agreement, nothing in this Order shall be deemed to waive, release, extinguish or estop the Debtors or their estates from asserting, or otherwise impair or diminish, any right (including, without limitation, any right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any asset that is not an Acquired Asset.

31. All entities that are presently, or on the Closing Date may be, in possession of some or all of the Acquired Assets are hereby directed to surrender possession of the Acquired Assets to the Purchaser on the Closing Date.

32. This Order shall not be modified by any chapter 11 plan of any of the Debtors confirmed in these Chapter 11 Cases.

33. This Order and the Seminole/ERP Agreement shall be binding in all respects upon all creditors and interest holders of the Debtors, all non-debtor parties to the Assumed Contracts, the Official Committee of Unsecured Creditors (the “UCC”), all successors and assigns of the Debtors and their affiliates and subsidiaries, and any trustees, examiners, “responsible persons” or other fiduciaries appointed in the Chapter 11 Cases or upon a conversion of the Debtors’ cases to those under chapter 7 of the Bankruptcy Code, including a chapter 7 trustee, and the Seminole/ERP Agreement shall not be subject to rejection or avoidance under any circumstances. If any order under Bankruptcy Code section 1112 is entered, such order shall provide (in accordance with Bankruptcy Code sections 105 and 349) that this Order and the rights granted to the Purchaser hereunder shall remain effective and, notwithstanding such dismissal, shall remain binding on parties in interest.

34. The failure specifically to include or make reference to any particular provisions of the Seminole/ERP Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Seminole/ERP Agreement is authorized and approved in its entirety.

35. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order, including, without limitation, the authority to: (i) interpret, implement and enforce the terms and provisions of this Order (including the injunctive relief provided in this Order) and the terms of the Seminole/ERP Agreement, all amendments thereto and any waivers and consents thereunder; (ii) protect the Purchaser, or the Acquired Assets, from and against any of the claims, liens, interests or encumbrances; (iii) compel delivery of all Acquired Assets to the Purchaser; (iv) compel the Purchaser to perform all of its obligations under the Seminole/ERP Agreement; and (v) resolve any disputes arising under or related to the Seminole/ERP Agreement or the Sale of the Acquired Assets.

36. The Seminole/ERP Agreement 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 without further order of the Court; provided, however, that any such modification, amendment or supplement is neither material nor materially changes the economic substance of the transactions contemplated hereby.

37. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, including but not limited to Bankruptcy Rule 6004(h), the Court expressly finds there is no reason for delay in the implementation of this Order and, accordingly: (i) the terms of this Order shall be immediately effective and enforceable upon its entry; (ii) the Debtors are not subject to any stay of this Order or in the implementation, enforcement or realization of the relief granted in this Order; and (iii) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

38. The provisions of this order are nonseverable and mutually dependent.

Dated: Birmingham, Alabama
February __, 2016

THE HONORABLE TAMARA O. MITCHELL
UNITED STATES BANKRUPTCY JUDGE

Schedule 1

PERMITTED ENCUMBRANCES

1. The lien for ad valorem property taxes, fire district dues, and any assessments [for any tax year beginning in 2016], and all subsequent tax years, and any current use roll-back taxes, if assessed.
2. All restrictions, reservations, easements, servitudes, rights-of-way, leases, mineral leases and encumbrances, whether or not of record, that run with the land, and riparian rights incident to the land; provided that nothing herein or in the Seminole/ERP Agreement shall be deemed to constitute the Grantee's consent to or acceptance of any unrecorded instrument of which Grantee does not have actual knowledge.
3. Any encroachment, overlap, violation, variation or adverse circumstances that would be disclosed by an accurate and complete survey and inspection of the land.
4. Any reservation or conveyance of minerals and other subsurface materials of every kind and character filed in the appropriate real property records on or before July 15, 2015, including, but not limited to, coal, oil, gas, sand, ore, kaolin, clay, stone and gravel in, on and under the land, together with mining rights and all other rights, privileges and immunities relating thereto, including any release of damages.
5. All applicable laws, rules, regulations, ordinances and orders of any government or governmental body, agency or entity, including, without limitation, zoning and other land use rules, regulations and ordinances and environmental laws, rules and regulations.

Schedule 2

List of Chubb Affiliates

1.	ACE American Insurance Company
2.	ACE Fire Underwriters Insurance Company
3.	ACE Indemnity Insurance Company
4.	ACE Insurance Company of Ohio
5.	ACE Insurance Company of Texas
6.	ACE of the Midwest Insurance Company
7.	ACE Property and Casualty Insurance Company
8.	Atlantic Employers Insurance Company
9.	Bankers Standard Fire and Marine Company
10.	Bankers Standard Insurance Company
11.	Century Indemnity Company
12.	ESIS, Inc.
13.	Illinois Union Insurance Company
14.	INA Surplus Insurance Company
15.	Indemnity Insurance Company of North America
16.	Insurance Company of North America
17.	Pacific Employers Insurance Company
18.	Westchester Fire Insurance Company
19.	Westchester Surplus Lines Insurance Company