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

In re:	**Chapter 11**
NEW WEI, INC., *et al.*,[1]	**Case No. 15-02741-TOM7**
Debtors.	**Jointly Administered**

MOTION TO ENFORCE ORDER AUTHORIZING AND APPROVING SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Warrior Met Coal, LLC, f/k/a Coal Acquisition LLC ("Warrior Met" or "Purchaser"), hereby files this motion (the "Motion"), pursuant to sections 105 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et. seq.* (the "Bankruptcy Code"), to enforce against the Alabama Department of Labor (the "ALDOL") the *Order (I) Approving the Sale of the Acquired 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* [Dkt. No. 1584] (the "Sale Order", attached hereto as Exhibit A), which was entered by this Court on January 8, 2016 and approved the sale of substantially all of the assets of New WEI, Inc. f/k/a/ Walter Energy, Inc. (the "Debtors") to the Purchaser free and clear of all

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: New WEI, Inc. (f/k/a 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); New WEI 7, Inc. (f/k/a J.W. Walter, Inc.) (0648); Jefferson Warrior Railroad Company, Inc. (3200); New WEI 2, LLC (f/k/a Jim Walter Homes, LLC) (4589); New WEI 13, Inc. (f/k/a 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); New WEI 19, LLC (f/k/a Walter Black Warrior Basin LLC) (5973); New WEI 18, Inc. (f/k/a Walter Coke, Inc.) (9791); New WEI 22, LLC (f/k/a Walter Energy Holdings, LLC) (1596); New WEI 20, LLC (f/k/a Walter Exploration & Production LLC) (5786); New WEI 1, Inc. (f/k/a Walter Home Improvement, Inc.) (1633); New WEI 6 Company (f/k/a Walter Land Company) (7709); New WEI 16, Inc. (f/k/a Walter Minerals, Inc.) (9714); and New WEI 21, LLC (f/k/a Walter Natural Gas, LLC) (1198). The location of the Debtors' corporate headquarters is 2100 Southbridge Parkway, Suite 650, Birmingham, Alabama 35209.

claims, liens, interests and encumbrances (other than Permitted Encumbrances[2] and Assumed Liabilities).

INTRODUCTION

Although the Sale Order expressly provides that the sale to the Purchaser was to be free and clear of, among other things, any successor liability claims under state unemployment compensation laws and that Purchaser is a new employer with respect to all state unemployment laws, including any unemployment compensation laws, the ALDOL is nonetheless attempting to enforce those very laws and claims against the Purchaser. In particular, the ALDOL has, despite the Sale Order, determined that because Warrior Met had purchased assets related to the Debtors' business, it had succeeded to the Debtors' unemployment experience rating, which affected the quantum of unemployment contributions that Warrior Met was required to make. ALDOL's conduct flies in the face of this Court's specific findings that: (i) the Purchaser is not the Debtors' successor or successor employer under any and all federal or state unemployment laws; (ii) the sale was free and clear of claims grounded in successor liability theories; and (iii) the Purchaser would not be assuming the Debtors' burdens or obligations under state unemployment compensation laws. The ALDOL's belated attempt to enforce Alabama unemployment compensation laws against the Purchaser is a collateral attack on the terms of the Sale Order. These efforts must be stopped.

Several other courts have considered the effect of an order pursuant to section 363(f) on unemployment contribution rates and have held that such "free and clear" sales orders are due to be enforced against state employment agencies. *Massachusetts Dep't of Unemployment Assistance v. OPK Biotech, LLC*, 484 B.R. 860, 870-871 (1st Cir. BAP 2013); *In re Old Carco*

[2] Capitalized terms not otherwise defined shall have the meanings ascribed to them in the Sale Order.

LLC, 551 B.R. 124, 131 (Bankr. S.D.N.Y. 2016); *In re Old Carco LLC*, 538 B.R. 674, 686-687 (Bankr. S.D.N.Y. 2015); *In re USA United Fleet, Inc.*, 496 B.R. 79, 89 (Bankr. E.D.N.Y. 2013); *In re Tougher Indus.*, Nos. 06–12960 and 07–10022, 2013 WL 1276501, at *8 (Bankr. N.D.N.Y. Mar. 27, 2013); *Ouray Sportswear, LLC v. Industrial Claim Appeals Office*, 315 P.3d 1280, 1285 (Colo. App. 2013).

JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. In addition, the Court retained jurisdiction to enforce the Sale Order in the order itself. *See* Sale Order, at ¶37. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105 and 363 of the Bankruptcy Code.

BACKGROUND

Debtors' Bankruptcy Cases

2. On July 15, 2015 (the "Petition Date") the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

3. On February 21, 2017, the Court converted each of the Debtors' Chapter 11 cases to a case under Chapter 7 of the Bankruptcy Code.

4. By Order dated February 21, 2017, André M. Toffel (the "Trustee") was appointed as interim Chapter 7 Trustee of each of the converted cases of the Debtors.

Sale of Assets to Warrior Met Coal

5. On November 5, 2015, the Debtors and Warrior Met executed the Warrior Met Coal APA, pursuant to which the Debtors agreed to sell substantially all of the Debtors' Alabama coal and methane gas operations, subject to higher or better offers. The Alabama coal operations

include the historic number 4 and 7 mines, related methane gas operations, and certain additional assets incidental thereto. On January 8, 2016, the Court entered the Sale Order approving the Core Assets Sale. *See* Docket No. 1584. The Core Assets Sale closed on March 31, 2016.

6. Pursuant to the Warrior Met Coal APA, Warrior Met acquired the Acquired Assets, as defined in the Warrior Met Coal APA. Warrior Met Coal APA, section 2.1 [Docket No. 2235]. Warrior Met assumed only a very narrow and limited set of liabilities. Warrior Met Coal APA, section 2.3. The only tax liabilities assumed by Warrior Met were certain transfer taxes and secured taxes. *Id.* The definition of "Excluded Liabilities" in the Warrior Met Coal APA specifically includes "all liabilities with respect to Taxes that are not expressly assumed by Buyer pursuant to Section 2.3(k)." Warrior Met Coal APA, section 2.4.

7. Pursuant to the Warrior Met Coal APA, Warrior Met acquired the Acquired Assets free and clear of all Encumbrances, as broadly defined in the Warrior Met Coal APA. Warrior Met Coal APA, Section 2.1. The Core Asset Sale was contingent upon an order of the Court approving the sale of the assets free and clear of any liens, claims, interests, and encumbrances, "including, for the avoidance of doubt, all successor liability." APA, Sections 10.6; 1.1 (Definition of "Sale Order").

8. On November 5, 2015, the Debtors filed the Sale Motion, seeking, among other things, approval of the sale of the Acquired Assets to Warrior Met Coal on the terms set forth in the Warrior Met Coal APA, free and clear of all liens, claims, interests and encumbrances. [Dkt No. 993].

9. Notice of the Sale Motion was given to all parties in interest, including the ALDOL. *See* Affidavit of Service [Dkt. No. 1173] (attached hereto as Exhibit B)[3].

10. The hearing on the Sale Motion took place on January 6, 2016. The Court entered the Sale Order January 8, 2016. The Sale Order approved the Warrior Met Coal APA in its entirety.

11. The Sale Order provides in pertinent part as follows:

- The Stalking Horse Purchaser would not have entered into the Stalking Horse Agreement and would not consummate the Sale Transaction if the sale of the Acquired Assets to the Stalking Horse 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 Stalking Horse 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 Stalking Horse Purchaser shall not be responsible for any claims, liens, interests and encumbrances, including in respect of the following . . . (j) state unemployment compensation laws or any other similar state laws . . Sale Order, ¶ Q.

- 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 or the Motion are deemed to have consented to the Motion and the Sale pursuant to Bankruptcy Code section 363(f)(2). Sale Order, ¶ R.

- Upon the Closing, except as included in the Assumed Liabilities, the Stalking Horse 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, except for Buyer 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

[3] The Affidavit of Service [Dkt. No. 1173] and attached exhibits are 813 pages. For convenience, the Affidavit of Service, the exhibit cover page, and the section showing that ALDOL received notice are the only portions included in Exhibit B.

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 Stalking Horse Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in the Stalking Horse Agreement, the parties intend that the Stalking Horse 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 Stalking Horse 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 Stalking Horse Purchaser would not have acquired the Acquired Assets but for the foregoing protections against potential claims based upon "successor liability" theories. Sale Order, ¶ U.

- An injunction against creditors and third parties pursuing claims against, and liens, interests and encumbrances on, the Acquired Assets is necessary to induce the Stalking Horse Purchaser to close the 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. Sale Order, ¶ CC.

- 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 Stalking Horse 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 Stalking Horse Agreement, all Encumbrances and Liabilities (other than the Assumed Liabilities and the Permitted Encumbrances) shall not be enforceable as against the Stalking Horse Purchaser or the Acquired Assets. Unless otherwise expressly included in the Assumed Liabilities and Permitted Encumbrances or as otherwise expressly provided by this Order, the Stalking Horse Purchaser shall not be responsible for any claims, liens, interests and encumbrances, including in respect of the following: . . .(j) state unemployment compensation laws or any other similar state laws. Sale Order, ¶ 6.

- The transfer to the Stalking Horse Purchaser of the Debtors' rights, title and interest in the Acquired Assets pursuant to the Stalking Horse 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 Stalking Horse 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 Stalking Horse Agreement, and any rights, claims and defenses of the Debtors and other parties in interest. Sale Order, ¶ 7.

- Except as expressly provided in the Stalking Horse Agreement or by this Order, all persons and entities, including, but not limited to . . . governmental, tax and regulatory authorities. . . 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 Stalking Horse 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 Stalking Horse Purchaser or its affiliates, successors, assigns, equity holders, employees or professionals the Acquired Assets, or the interests of the Debtors in such Acquired Assets. Sale Order, ¶ 9.

- 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 Stalking Horse Purchaser on the Closing Date pursuant to the terms of the Stalking Horse Agreement, free and clear of all claims, liens, interests and encumbrances (other than Assumed Liabilities and Permitted Encumbrances). Sale Order, ¶ 16.

- Upon the Closing, except as specifically included in Assumed Liabilities, **the Stalking Horse 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, except for Buyer 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 Stalking Horse Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in the Stalking Horse Agreement, the parties intend and the Court hereby orders that the Stalking Horse 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 Stalking Horse 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. Sale Order, ¶ 17.

12. Pursuant to Paragraph 37 of the Sale Order, the Court expressly retained jurisdiction and authority to interpret, implement and enforce the terms and provisions of the Sale Order and the Warrior Met Coal APA, and to "protect the Stalking Horse Purchaser, or the Acquired Assets, from and against any of the claims, liens, interest or encumbrances."

13. Closing on the sale took place on March 31, 2016. On April 1, 2016, the Debtors filed a Notice of Amended Stalking Horse Agreement and Closing of "Core" Asset Sale Transaction. [Dkt No. 2235].

ALDOL's Transfer of the Debtors' Unemployment Experience to Warrior Met

14. Warrior Met has received statements from ALDOL showing that ALDOL has determined that Warrior Met's contribution rate is based on the Debtors' experience. As a result, ALDOL has incorrectly charged Warrior Met in excess of $175,000 per quarter. Warrior Met advised ALDOL that the Sale Order prohibited ALDOL from assigning the Debtors'

contribution rate to or charging the Debtors' liabilities against Warrior Met, because under the Sale Order (1) the sale of the Debtors' assets to Warrior Met was made free and clear of all liens, claims, interests, and encumbrances, including those relating to unemployment compensation, and (2) Warrior Met is not a successor to the Debtors for any purposes and shall be a "new employer with respect to any and all federal or state unemployment laws, including any unemployment compensation or tax laws." *See* Sale Order, at ¶U.

15. The ALDOL responded by letter dated February 22, 2017, in which it stated as follows:

> According to information provided to our local field agent by the Payroll Manager, Laura Crawford and Senior Counsel, Mitchell Mataya, Warrior Met Coal LLC acquired Walter Energy, Inc and Jim Walter Resources, Inc on April 2, 2016. Your account succeeds to the unemployment experience (benefit charges and taxable payrolls) of this entities for tax rate calculation purposes. Accordingly, any benefit charges and taxable payrolls credited to the predecessors' accounts are transferred to the successor's experience rating account in accordance with Section 25-4-54(i) of the Alabama Unemployment Compensation Law.

The ALDOL's response[4] ignored completely the bankruptcy law overlay to Warrior Met's position and failed to address, or even acknowledge, this Court's Sale Order.[5]

BASIS FOR RELIEF

16. By its plain terms, the Sale Order provided that the assets that Warrior Met purchased from the Debtors were transferred to Warrior Met free and clear of any interests in that property. Under well-established applicable precedent, the right held by the ALDOL to determine an employer's contribution rate against a purchaser of the Debtors' assets based on the

[4] Warrior Met's employees stated that it purchased the assets of Walter Energy, rather than Walter Energy itself.

[5] Ordinarily, the most common procedural approach in a situation such as this is to seek a Show Cause order directing the offending party to show why it should not be held in contempt. Because ALDOL is a government agency, Warrior Met has not filed a Motion to Seek a Show Cause Order against ALDOL. Although ALDOL has stated that its "final ruling" is to charge the assessment at the higher incorrect rate, Warrior Met anticipates that when the Court reiterates its ruling at a hearing where ALDOL is present, ALDOL will comply with the Court's existing order. Warrior Met reserves its right to file a Motion to Seek a Show Cause Order should that become necessary.

pre-sale unemployment experience of the Debtors was such an interest. Thus, the ALDOL's efforts to impute the Debtors' unemployment experience rating to Warrior Met and use that experience rating to collect additional unemployment contributions from Warrior Met are barred by the Sale Order.

17. In addition, the Purchaser has been paying the ALDOL based on the higher contribution rate attributable to the Debtors. Accordingly, in addition to seeking enforcement of the Sale Order, the Purchaser hereby seeks an order directing the ALDOL to return all amounts paid in excess of the lower, correct contribution rate applicable to the Purchaser. The Amount of the Purchaser's overpayment will continue to increase with each subsequent payroll until this matter is resolved.

I. The ALDOL Irrevocably Waived its Rights and is now Estopped from Taking a Position Contrary to the Sale Order.

18. The ALDOL was served with a notice of the Sale Motion, *see* Affidavit of Service [Dkt. No. 1173], but never filed an objection or any response thereto. The Court confirmed in the Sale Order that notice of the Sale Motion, including service upon the ALDOL, was sufficient and that no other or further notice was required, specifically stating that —

> As evidenced by the affidavits of service [Docket Nos. 1028, 1150, 1151,1152, 1172, 1173, 1174, 1230, 1340, 1441, 1442, 1495, 1519] 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 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(*l*), 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 Sale Transaction, the assumption and assignment of the Assumed Contracts or the Cure Amounts is or shall be required.

Sale Order, at ¶*G*. Accordingly, the ALDOL's failure to timely respond to the Sale Motion means that the ALDOL is now estopped from collaterally attacking or taking any position contrary to the Sale Order. *See Matter of Jones*, 545 B.R. 778, 784 (Bankr. N.D. Ga. 2016) ("[h]aving failed to object before the order was entered, the Debtor cannot now, dissatisfied with the outcome of the sale, engage in a collateral attack on the price obtained."); *In re Morgan*, No. DT 13-05825, 2015 WL 7252206, at *3 (Bankr. W.D. Mich. Nov. 16, 2015) (noting that the debtor should have challenged the trustee's authority to enter into the compromise that reduced the value of her asset).

19. For a party to be estopped from asserting rights that are contrary to an order, it must be shown that there was:

> (1) a representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made;
> (2) an act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation is made;
> (3) and detriment to such person as a consequence of the act or omission.

In re Colarusso, 280 B.R. 548, 559 (Bankr. D. Mass. 2002) (citing, *inter alia*, *In re Newport Offshore, Ltd.*, 86 B.R. 325 (Bankr. D.R.I. 1998) and *In re Calore Express Co., Inc.*, 288 F.3d 22 (1st Cir. 2002)) , *aff'd*, 295 B.R. 166 (B.A.P. 1st Cir. 2003), *aff'd*, 382 F.3d 51 (1st Cir. 2004).

20. This issue of estoppel based on failure to object has been addressed in both *In re Newport Offshore, Ltd.*, 86 B.R. 325 (Bankr. D.R.I. 1998) and *In re Calore Express Co., Inc.*, 288 F.3d 22 (1st Cir. 2002).

21. In *Newport Offshore*, the Court held that the Army was estopped from objecting to the debtor's confirmation order given the failure of the Army to assert a setoff in or object to confirmation of the debtor's plan of reorganization despite ample notice. 86 B.R. at 326. The Court found that consummation of the plan would be jeopardized and several parties would be

prejudiced were the modification of the confirmation order to be heard. *Id.* Estoppel was particularly appropriate as the Court found that parties to the transaction reasonably relied on the finality of the confirmation order that did not itself preserve the setoff rights of the Army. *Id.*

22. In *Calore Express*, the debtor argued that where the creditor failed to object to numerous orders or motions that impacted the creditor's rights to set off, the creditor had waived its set off rights by conduct. 288 F.3d at 27-28. The First Circuit recognized that a court may imply waiver through conduct provided the conduct fairly demonstrates intent. *Id.* at 37-39. In addition, the Court found that although waivers are not typically irrevocable, when "another party to the proceedings has relied on the waiver to its detriment, the court may invoke estoppel and rule that the waiver has become irrevocable." *Id.* at 39. This being the case, the Court held that "silence at a specific time may be unequivocally inconsistent with the assertion of the setoff right." *Id.* at 40.

23. In the present case, the failure of the ALDOL to object to the Sale Motion induced Warrior Met to rely on the Sale Order, close the transaction and pay the purchase price. Indeed this Court recognized the extent of the Purchaser's reliance when, in the Sale Order, this Court found that:

> The Stalking Horse Purchaser would not have entered into the Stalking Horse Agreement and would not consummate the Sale Transaction if the sale of the Acquired Assets to the Stalking Horse 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 Stalking Horse 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 Stalking Horse Purchaser shall not be responsible for any claims, liens, interests and encumbrances, including in respect of the following . . . (j) ***state unemployment compensation laws or any other similar state laws***[.]

Sale Order, at ¶Q (emphasis added). This Court then ordered that the Purchaser shall not be deemed to be a successor of the Debtor, *see* Sale Order, ¶U, and that, except as otherwise agreed, the Purchaser would "have no successor or vicarious liability of any kind or character whatsoever[.]" *Id.*

24. Relying on these terms of the Sale Order, the Purchaser went forward with the Closing, at which time the Purchaser remitted the Cash Consideration, in addition to other consideration, to the Debtor in exchange for its assets. Accordingly, the first two of the three elements necessary for estoppel exist.

25. As to the third element required to establish estoppel, the Purchaser would be detrimentally impacted should the sale, now, nearly a year after the Closing, be subject to obligations and interests that would not otherwise have transferred to the Purchaser under the free and clear sale authorized by the Sale Order. The Purchaser paid for the Debtors' assets with, in part, Cash Consideration based on the terms of the Sale Order, including its provision that the sale would be free and clear of successor liability claims and obligations.

26. It would be manifestly unfair to now burden the Purchaser with successor liability under Ala. C. § 25-4-54(i) (the "AL Unemployment Compensation Statute"). Such a result would effectively punish the Purchaser for the ALDOL's failure to object to the Sale Motion. Accordingly, this Court should enforce the Sale order and rule that the ALDOL has irrevocably waived its right to challenge the Sale order or the fact that the sale was free and clear of the Debtor's experience rating.

II. Section 363(m) of the Bankruptcy Code Protects the Purchaser's Rights Under and the Validity of the Sale Order.

27. For reasons similar to the policies underlying estoppel, section 363(m) of the Bankruptcy Code (the "Code") also bars the ALDOL from challenging the Sale Order. Section 363(m) provides:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

28. The purpose behind section 363(m) is to protect the public's interest in finalizing bankruptcy sales to encourage buyers to purchase the debtor's property, to prevent injury to creditors, and to insure that adequate sources of financing remain available. *In re C.W. Mining Co.*, 641 F.3d 1235, 1238-39 (10th Cir. 2011). Section 363(m) serves to allow a good faith purchaser the comfort of relying upon the finality of the sale order by ensuring the finality of the bankruptcy sale. *See In re Trism, Inc.*, 328 F.3d 1003, 1006 (8th Cir. 2003). The principles of finality and the protection of good faith purchasers under section 363(m) of the Code apply to collateral attacks on sale orders to the same extent that they apply to appeals. *See In re Sax*, 796 F.2d 994, 998 (7th Cir.1986) (“[Section] 363(m) and the cases interpreting it have clearly held that a stay is necessary to challenge a bankruptcy sale authorized under § 363(b) [unless the challenger asserts lack of good faith]”); *In re Hagood Reserve, LLC*, No. 10-30725, 2010 WL 5067444, at *15, (Bankr. W.D.N.C. Dec. 7, 2010) (noting that § “363(m) makes any effort to unwind [a] sale untenable” in the absence of a stay before considering and denying adverse party's Rule 60 motion). *But see In re Alan Gable Oil Dev. Co.*, No. 91-1526, 1992 WL 329419, at *4 (4th Cir.1992) (“where an order authorizing a sale is challenged collaterally by motion

under Fed. R. Civ. P. 60(b), section 363(m) on its face does not divest the bankruptcy court of the power to upset the sale under proper circumstances."); *see also In re Edwards*, 962 F.2d 641, 645 (7th Cir.1992) (speculating that § 363(m) "does not of its own force preclude collateral attack on such sales").

29. The sole proper method for a third-party to challenge a sale order is to file an appeal *and* obtain a stay of the sale order. *In re The Charter Co.*, 829 F.2d 1054, 1056 (11th Cir. 1987) ("[i]n order to protect those who purchase property from a bankrupt estate, the Bankruptcy Code provides that once a sale is approved by the bankruptcy court and consummated by the parties, the bankruptcy court's authorization of the sale cannot be effectively altered on appeal . . . . . if a sale is not stayed[.]").

30. This Court explicitly found and ordered that "[t]he Stalking horse Agreement has been entered into by the Stalking Horse Purchaser in good faith and the Stalking Horse Purchaser of the Acquired Assets as that term is used in Bankruptcy Code section 363(m). The Stalking Horse Purchaser is entitled to all of the protections afforded by Bankruptcy Code section 363(m)." Sale Order, at ¶13. In fact, the Court expressly found that the Purchaser would not have entered into the Stalking Horse Agreement and would not have consummated the Core Assets Sale if not for the fact that the sale was free and clear of claims, liens, interests and encumbrances arising out of, in part, state unemployment compensation laws or any other similar state laws. *Id.*, at ¶Q. These specific terms of the Sale Order were integral to the same from the time that they first appeared in similar fashion in the Sale Motion. *Sale Motion*, ¶45 ("[t]he Debtors also submit that the Sale(s) of the Subject Assets should be free and clear of any and all claims, liens and encumbrances under Bankruptcy Code section 363(f) (other than Assumed

Liabilities and Permitted Encumbrances as provided in the Stalking Horse Agreement, the Short Form APA or the Modified Asset Purchase Agreement, as applicable)").

31. It would be prejudicial to the Purchaser, and in violation of the principles and policies of reliance and finality underlying section 363(m) of the Code, to allow the ALDOL to belatedly challenge the protections provided under the Sale Order. The ALDOL failed to oppose the successor liability protections requested by the Debtor and the Purchaser. It is simply too late for the ALDOL to take any position contrary to the terms of the Sale Order. The Purchaser relied in good faith upon the finality of the terms of the Sale Order. The Purchaser would be unjustly denied the benefit of its bargain if the ALDOL were now permitted -- nearly a year after the entry of the Sale order -- to challenge the validity of the sale free and clear of the AL Unemployment Compensation Statute and of the ALDOL's interest in the Debtors. Accordingly, section 363(m) bars the ALDOL from collaterally challenging, or now seeking to modify, reverse or obtain any other relief from the terms of the Sale Order.

III. Alternatively, ALDOL's Attempt to Base the Purchaser's Contribution Rate on the Debtor's Prepetition Experience Rating is Preempted by Section 363(f) and by the Fundamental Policies Underlying the Bankruptcy Code.

32. Even if the ALDOL had timely objected to the Sale Motion, which it did not, its objection would have been overruled under principles of preemption. Article VI of the United States Constitution provides that the laws of the United States "shall be the supreme Law of the Land." U.S. Const., art. VI, § 2. When the Bankruptcy Code and state law conflict, the Code "takes precedence over state laws under the Supremacy Clause[.]" *In re Spa at Sunset Isles Condo. Ass'n, Inc.*, 454 B.R. 898, 907 (Bankr. S.D. Fla. 2011) (*quoting Stanley ex rel. Estate of Hale v. Trinchard*, 579 F.3d 515, 519 (5th Cir.2009)); *see also In re Osejo*, 447 B.R. 352 (Bankr. S.D. Fla. 2011) (Bankruptcy Code preempted Florida's constitutional homestead exemption); *In*

re Old Carco LLC, 442 B.R. 196 (S.D.N.Y. 2010) (Bankruptcy Code preempted state franchise law that interfered with debtor's power to reject contracts); *E. Equip. & Servs. Corp. v. Factory Point Nat'l Bank, Bennington*, 236 F.3d 117, 120 (2d Cir. 2001) (Bankruptcy Code preempted state law tort claims for violation of the automatic stay). Accordingly, any attempt by the ALDOL to base the Purchaser's Unemployment Experience Rating on the Debtors' experience rating is preempted by: (i) section 363(f) of the Code; and (ii) the fundamental policies underlying the Code.

a. The Assignment of the Debtor's Experience Rating to the Purchaser is Preempted by Section 363(f).

33. The Sale Order was entered pursuant to, *inter alia*, sections 363(f) of the Code. Section 363(f) provides that "the trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate," if certain conditions are satisfied.[6] The language of Section 363(f) does not limit the term "interest" to an *in rem* interest in property. *See UMWA 1992 Benefit Plan v. Leckie Smokeless Coal*, 99 F.3d 573, 582 (4th Cir. 1996); *see also In re Old Carco*, 538 B.R. 674, 682-687 (Bankr. S.D.N.Y. 2015) (approving *Leckie* court's broad interpretation of "interest in property"); *In re Ormet* No. 13-10334, 2014 WL 3542133 at *2-3 (Bankr. D. Del. July 17, 2014); *In re PBBPC, Inc.*, 484 B.R. 860, 869 (1st Cir. 2013) (concluding that the "more expansive" reading of the terms "any

[6] Having not timely objected to the Sale Motion, ALDOL may not now challenge whether the Sale Order was properly issued. But even if the correctness of the "free and clear sale" order were open to being relitigated, the Sale Order clearly satisfied at least one of the conditions of Section 363(f). Clause (5), permitting a sale free and clear if "such entity could be compelled, in a legal or equitable proceeding" is clearly satisfied. Given that a right to assess unemployment contributions is by nature the right to collect payment of money, ALDOL could be compelled in a legal or equitable proceeding to accept a money satisfaction of the interest it held in the property at the time of the sale. *In re PBBPC, Inc.*, 467 B.R. 1, 8 (Bankr. D. Mass. 2012), *aff'd*, 484 B.R. 860 (B.A.P. 1st Cir. 2013) (finding that interest in assessing unemployment contributions based on transferred unemployment experience "is a right of taxation, a right that is usually, ordinarily, preferredly [sic], and probably exclusively satisfied precisely by the payment of money" and therefore satisfied Section 363(f)(5)). In addition, Clause (2) was satisfied because the ALDOL did not object to the Sale Motion. Pursuant to the Sale Order, any holders of claims, liens, interests and encumbrances against the Debtors who had not objected to the Sale Motion are deemed to have consented. Sale Order, at ¶R.

interest" advanced by numerous circuit courts is "more consistent with the Bankruptcy Code and the policy expressed in § 363" and affirming sale free and clear of debtor's experience ratings for state unemployment liabilities); *In re Chrysler LLC,* 576 F.3d 108, 126 (2d Cir. 2009), *judgment vacated sub nom. Ind. State Police Pension Trust v. Chrysler LLC,* 558 U.S. 1087 (2009), *vacated sub nom. In re Chrysler, LLC,* 592 F.3d 370 (2d Cir. 2010) (affirming sale free and clear of product liability claims and agreeing with *Leckie* that "the term 'any interest in property' encompasses those claims that 'arise from the property being sold'"); *In re Trans World Airlines, Inc.,* 322 F.3d 283, 289-90 (3d Cir. 2003) (adopting *Leckie* analysis and affirming sale free and clear of successor liability for civil rights claims and travel voucher program).

34. Federal courts in Alabama have approved this expansive interpretation of "interest in property" advanced by the First, Second, Third, Fourth, and Seventh Circuits, recently affirming that the term "interest in property" as set forth in section 363(f) should be given a broad reading to effectuate the purposes of the Bankruptcy Code. *See United Mine Workers of America Combined Benefit Fund v. Walter Energy,* 551 B.R. 631, 641 (N.D. Ala. 2016) ("[w]hile a minority of courts have narrowly interpreted the term 'interests in property' in this narrow way, Section 363(f) has more often (and more correctly) been given a broad reading to effectuate the purposes of the Bankruptcy Code.") As noted by Judge Proctor in *Walter Energy*, an expansive reading of "interests in property" is consistent with the Bankruptcy Code's policy of maximizing the value of the bankruptcy estate. *Id.*

35. Numerous courts to have considered the precise issue have held that a Debtors' unemployment experience rating is an "interest in property" within the meaning of section 363(f) that can be extinguished by a free and clear sale order.[7] *Massachusetts Dep't of Unemployment*

[7] Purchaser is informed and believes ALDOL may argue that *In re Wolverine Radio,* 930 F.2d 1132 (6th Cir. 1991) suggests that the Debtors' experience rating is not an "interest" of the ALDOL in the Debtors' property, as that

Assistance v. OPK Biotech, LLC, 484 B.R. 860, 870-871 (1st Cir. BAP 2013); *In re USA United Fleet, Inc.*, 496 B.R. 79, 89 (Bankr. E.D.N.Y. 2013); *In re Tougher Indus.*, Nos. 06–12960 and 07–10022, 2013 WL 1276501, at *8 (Bankr. N.D.N.Y. Mar. 27, 2013); *Ouray Sportswear, LLC v. Industrial Claim Appeals Office*, 315 P.3d 1280, 1285 (Colo. App. 2013). In one factually identical case, the purchaser of a chapter 11 debtors' assets in a bankruptcy court-authorized free and clear sale under section 363 of the Bankruptcy Code sought enforcement of the sale order against the Massachusetts Department of Workplace Development, Division of Unemployment Assistance (the "DUA"), to prevent the DUA from imputing the debtor's experience rating to the purchaser as a "successor employer." *PBBPC*, 484 B.R. 860.

36. The First Circuit held that the term "any interest" should not be narrowly construed to mean only *in rem* interests in property, but should be read expansively to include any obligations that might flow from ownership of the property. *Id.* at 869. The Court concluded that "any interest" as used in section 363(f) is broad enough to encompass the Debtor's experience rating. *Id.* The court credited the bankruptcy court's view that "[t]here is

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decision held that "while 11 U.S.C. § 363(f) provides that property may be sold 'free and clear of any interest in such property,' we do not perceive the experience history of Wolverine as an 'interest' that attaches to property ownership so as to cloud its title." *Id.* at 1147. The *Wolverine Radio* Court's narrow definition of the term "interest" is clearly at odds with the better reasoned and more expansive interpretation of that term favored by courts in this District, *United Mine Workers of Am. Combined Benefit Fund v. Walter Energy, Inc.*, 551 B.R. 631, 642 n.10 (N.D. Ala. 2016), *appeal dismissed* (May 4, 2016) ("The Bankruptcy Code's definition of 'claim' supports the broader reading of "interest" in Section 363(f)."), as well as the First, Second, Third, Fourth, and Seventh Circuits. *In re PBBPC, Inc.*, 484 B.R. 860, 869 (B.A.P. 1st Cir. 2013) ("We conclude that the more expansive reading of the term 'any interest' advanced by the Seventh, Fourth, Third, and Second Circuits . . . is more consistent with the language of the Bankruptcy Code and the policy expressed in § 363."); *In re Chrysler LLC*, 576 F.3d 108, 126 (2d Cir. 2009), *cert. granted and judgment vacated on other grounds*, 558 U.S. 1087 (2009) (holding that the bankruptcy court was permitted to authorize the sale of substantially all of the debtor's auto manufacturing assets free and clear of product liability claims); *UMWA 1992 Benefit Plan v. Leckie Smokeless Coal*, 99 F.3d 573, 582 (4th Cir. 1996) ("while the plain meaning of the phrase 'interest in such property' suggests that not all general rights to payment are encompassed by the statute, Congress did not expressly indicate that, by employing such language, it intended to limit the scope of 363(f) to *in rem* interests, strictly defined, and we decline to adopt such a restricted reading of the statute here."); *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288 (3d Cir. 2003) (holding that the rights of flight attendants under a travel voucher program that the debtor-airline had established in settlement of a sex discrimination action qualified as an "interest in property"); *Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 545 (7th Cir. 2003) (noting that an inclusive interpretation of the phrase "any interest" is "consistent with the expansive use of that same phrase in other provisions of the Code.").

good reason to view this right as an interest in estate assets: it imposes a debtor's experience rating on the buyer precisely because, and only because, the buyer purchased assets of the bankruptcy estate. By operation of state statute, the debtor's experience rating travels with the assets and encumbers their purchaser." *Id.* at 870. As noted by the court, "the transfer of an employer's contribution rate to a successor asset purchaser is really an attempt to recover the money that the predecessor employer would have paid had it continued in business." *Id.* at 869. Section 363(f) authorized the bankruptcy court to authorize the sale free and clear of that interest. *Id.* at 870; *see In re Old Carco LLC*, 551 B.R. 124, 131 (Bankr. S.D.N.Y. 2016) ("the Court concludes that paragraph 23 is not an exception to the *Sale Order* that permits Indiana to transfer Old Chrysler's Experience Rating to New Chrysler, and for the reasons explained in *Chrysler II,* the use of Old Chrysler's Experience Rating therefore violated the successor liability/free and clear provisions of the *Sale Order*") (emphasis in original); *In re Old Carco LLC*, 538 B.R. 674, 687 (Bankr. S.D.N.Y. 2015) (holding that under 11 U.S.C. § 363(f) "the *Sale Order* unambiguously extinguishes the States' right to apply Old Chrysler's Experience Rating to New Chrysler or collect increased taxes from New Chrysler as a result of Old Chrysler's discharge of its employees.") (emphasis in original); *see also In re Tougher Indus., Inc.*, No. 06-12960, 2013 WL 1276501, at *8 (Bankr. N.D.N.Y. Mar. 27, 2013) ("the right of the DoL to tax TIE and TME, as successor to the Debtors, at the Debtors' experience rating, is an "interest" in property of the bankruptcy estate, of which Debtors' assets could be sold free and clear of").

37. Similarly, the Bankruptcy Court in *In re USA United Fleet, Inc.*, 496 B.R. 79 (Bankr. E.D.N.Y 2013) held that the right to transfer the experience rating of a debtor to the purchaser of the debtor's assets constitutes an "interest in property" within the meaning of Section 363(f) that can be extinguished by a free and clear sale order. In so holding, the *United*

Fleet court rejected the DOL's argument that the experience rating was merely a computational device used to determine prospective tax rates, and noted that the obvious reason that the DOL assigned the Debtors' experience rating to the purchaser was because the purchaser acquired the Debtors' assets. *Id.* at 88. Having concluded that the DOL had an interest in property within the meaning of section 363(f), the Court had no trouble concluding that the interest was extinguished by the sale order, which defined "interests" broadly, and clearly stated that the purchaser was purchasing the assets free and clear of such interests, as well as any successor, transferee, or similar liability. *Id.* at 89. The Court further noted that the DOL, as a party with notice of the sale hearing, "should have had no trouble anticipating that its right to apply the Debtors' experience rating to the purchaser was implicated by the sale." *Id.*

38. The AL Unemployment Compensation Statute provides that

> For the purpose of this section, an employer's benefit charges and that part of his or her taxable payroll with respect to which contributions have been paid, shall be deemed benefit charges and taxable payrolls of a successor employer and shall be taken into account in determining the contribution rate of such successor employer as provided in subsection (f), if such successor succeeds the employer in any of the manners set out in paragraph (a)(4)a of Section 25-4-8 . . . .

Ala. C. § 25-4-54. A successor employer is defined in Ala Code § 25-4-8 as an entity which:

> a. Acquired at least 65 percent of the organization, trade, employees, or business located in the State of Alabama, or substantially all the assets thereof, of another employing unit which at the time of such acquisition was an employer subject to this chapter; or
>
> b. Acquired a segregable part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to this chapter; provided, that such segregable part would have been an employer subject to this chapter if such part had constituted its entire organization, trade, or business.

Ala. C. § 25-4-8.

39. Were it not for operation of the Code, the ALDOL could find that an entity that purchased a debtors' assets as a going concern would first qualify as a successor under Ala. C. §

25-4-8, and thus succeed to that debtors' contribution rate under Ala. C. § 25-4-54. However, as provided above, in a sale such as this, where the sale was made free and clear under section 363(f) of those liabilities and encumbrances not otherwise agreed to, and which specifically excluded liabilities related to "state unemployment compensation laws or any other similar state laws," Sale Order, ¶Q, the AL Unemployment Compensation Statute is preempted.

b. The Assignment of the Debtor's Experience Rating to the Purchaser is Preempted by Fundamental Bankruptcy Law Principles and Policies.

40. The AL Unemployment Compensation Statute as enforced in this instance by the ALDOL frustrate at least two fundamental bankruptcy policies. First the purpose behind allowing sales free and clear under section 363(f) is to:

> maximize the value of the asset, and thus enhance the payout made to creditors. Without the “free-and-clear” language, prospective buyers would be unwilling to pay a fair price for the property subject to sale; instead, the price would have to be discounted, perhaps quite substantially, to account for the liabilities that the buyer would face simply as a result of acquiring the asset.

In re WBQ P'ship, 189 B.R. 97, 108 (Bankr. E.D. Va. 1995).

41. While the assignment of an employer's experience rating to its "successor" has a place *outside* of bankruptcy, in bankruptcy, the competing interests of the debtor's creditors are of paramount importance to the interests of the ALDOL as far as operation of the AL Unemployment Compensation Statute is concerned. *See id.* (finding that creditors would be prejudiced were a Virginia statue observed which would have allowed the Department of Medical Assistance Services to exercise their right of recapture against the Debtor). Thus, the imposition of successor liabilities under the AL Unemployment Compensation Statute would harm not only the purchasers of a debtor's assets in bankruptcy, but also unsecured creditors of the debtor.

42. Second, "Congress' main purpose in enacting the Bankruptcy Code was to ensure the insolvent debtor a fresh start by discharging his prepetition debts." *In re Murphy*, 257 B.R. 72, 76 (Bankr. N.D. Ala. 2000). Allowing the Debtors' unemployment experience rating, which are high as a result of the effects of the Debtors' insolvency, to be assigned to the Purchaser would only perpetuate the stigma associated with the Debtors' prepetition financial woes in violation of the "fresh start" policy. Indeed, this concept was addressed in *United Mine Workers of America Combined Benefit Fund v. Walter Energy*, when Judge Proctor rejected the Coal Act Funds' argument that the Bankruptcy Court lacked authority to order that the purchaser does not constitute the Debtors' "successor" for Coal Act purposes. 551 B.R. 631, 641 (N.D. Ala. 2016). In that case, the court noted that such a conclusion would undermine the policy behind Chapter 11, and holding that "the Bankruptcy Court had legal authority to determine in advance that Coal Acquisition is a new entity and not Debtors' 'successor in interest' under the Coal Act." *Id*. at 643.

43. Given the apparent relationship between an insolvent entity that pursues Chapter 11 to obtain a fresh start, allowing the Debtors' experience rating to survive the bankruptcy as against the Purchaser would undermine the Code's fresh start policy, and is plainly unsupported by relevant case law. Warrior Met acquired the Debtors' assets free and clear of claims and interests, and in reliance on this Court's findings that Purchaser was not a successor of the Debtor, Sale Order, ¶17, would not assume obligations under state unemployment compensation laws, *id.*, at ¶Q, and would not be burdened by the Debtors' financial difficulties and the consequences of its insolvency. *See, e.g.*, Sale Order.

CONCLUSION

44. Warrior Met, the only purchaser that came forward to buy the Debtors' core Alabama coal mining operations, would not have purchased the assets without a free and clear sale order. Free and clear sales under section 363 sales encourage buyers to purchase the assets of bankrupt companies, thereby maximizing the value of those assets. As the United States Court of Appeals for the Fourth Circuit recognized in a similar context, it may very well be that application of the statute in a way that recognizes the free and clear nature of a bankruptcy sale "protects the [ALDOL's] interests more effectively than a contrary rule." *Leckie Smokeless*, 99 F.3d at 586-87. If sales free and clear of debtors' experience ratings are not effective, fewer assets will be purchased out of bankruptcy, more businesses will simply be closed, and there may well be fewer jobs and more unemployment claims.

45. Under the principles set forth herein, the Debtors' experience rating used to calculate the appropriate contribution rate is an "interest in property" that was extinguished by the Sale Order. Regardless of whether Warrior Met may be a "successor in interest" to the Debtors under Alabama law, it is not a successor in interest to the Debtors under the Sale Order and federal bankruptcy law. For all the reasons stated herein, the Court should grant the Motion and enter an order declaring that ALDOL's assignment of the Debtors' contribution rate to Warrior Met based on the Debtors' experience, was a violation of the Sale Order.

WHEREFORE, Warrior Met moves the Court to enter an Order that provides as follows: (i) enforcement of the Sale Order and directing ALDOL not to use the Debtors' experience in calculating the obligations of Warrior Met; (ii) that ALDOL shall return to Purchaser overpayments based on the correct contribution rate; and (iii) sanctions should they become necessary.

Dated: March 23, 2017

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that this motion was served by electronic service on those parties registered with the Court's electronic noticing system on March 23, 2017, and that I have served a copy of the foregoing with all exhibits properly addressed, postage prepaid to:

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EXHIBIT A

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

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

ORDER (I) APPROVING THE SALE OF THE ACQUIRED 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) approving the sale of the Acquired Assets pursuant to the Stalking Horse Agreement, as amended, and which for purposes of this Order shall include all exhibits, schedules and ancillary documents related thereto, including all Transaction Documents (as defined therein) and the Escrow and Trust Agreements referred to herein (the "**Sale Transaction**") free and clear of all claims, liens, interests and encumbrances; (II) authorizing the assumption and assignment of certain executory contracts and unexpired leases (the "**Assumed Contracts**") and the assumption of the Assumed Liabilities, each as more fully described in the Stalking Horse Agreement; and (III) granting

[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 Motion or the Bidding Procedures Order (as defined below), as applicable.

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Case 15-02741-TOM7 Doc 2942-1 Filed 03/23/17 Entered 03/23/17 16:43:34 Desc Exhibit A Page 2 of 32

related relief; and the Court having held a hearing on January 6, 2016 (the "**Sale Hearing**") to approve the Sale Transaction; and the Court having reviewed and considered the relief sought in the Motion, declarations submitted in support of the Motion, all objections to the Motion and the Debtors' reply thereto, and the arguments of counsel made, and the testimony and 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 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 is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and upon the record of the Sale Hearing and these Chapter 11 Cases, and after due deliberation thereon, and good cause appearing therefor, it is hereby

FOUND, CONCLUDED AND DETERMINED THAT:[3]

A. This Court has jurisdiction to consider this 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 this 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. 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]. The hearing on certain

[3] 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 based solely on 11 U.S.C. § 365 (the "**Cure Objections**") has been continued to February 3, 2016, as more particularly described in the *Notice of Continued Hearing on Certain Cure Objections* [Docket No. 1515].

C. 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 and Bid Protections, (ii) authorized the Assumption and Assignment Procedures, (iii) approved the form and manner of notice of the Sale Transaction and the other procedures, protections, schedules and agreements related thereto, and (iv) scheduled the Auction and the Sale Hearing.

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

E. The Debtors have articulated good and sufficient business reasons for the Court to authorize (i) the Debtors' entry into the Stalking Horse Agreement and consummation of the Sale of the Acquired Assets to the Stalking Horse Purchaser or any Buyer Designee and (ii) the assumption and assignment of the Assumed Contracts and Assumed Liabilities as set forth herein and in the Stalking Horse Agreement.

F. Sound business justifications also exist for the establishment of the various escrow and trust accounts (the "**Escrow and Trust Arrangements**") pursuant to the escrow and trust agreements (the "**Escrow and Trust Agreements**") as provided in Section 4.2 of the Stalking Horse Agreement. The Escrow and Trust Arrangements will avoid a freefall shutdown of the Debtors' remaining estates, provide for, among other things, the payment of accrued and unpaid (i) professional fees and expenses and (ii) payroll and other related expenses, each in

accordance with the Stalking Horse Agreement, and provide a mechanism to assist in the orderly and responsible winddown of any Excluded Assets not otherwise sold at the Auction.

G. As evidenced by the affidavits of service [Docket Nos. 1028, 1150, 1151, 1152, 1172, 1173, 1174, 1230, 1340, 1441, 1442, 1495, 1519] 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 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 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 Debtors to the Stalking Horse Purchaser pursuant to the Stalking Horse Agreement are property of the Debtors' estates and title thereto is vested in the Debtors' 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 Acquired 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 Acquired Assets.

J. On November 5, 2015, the Debtors entered into the Stalking Horse Agreement subject to higher and better offers. In accordance with the Bidding Procedures Order, the Stalking Horse Agreement was deemed a Qualified Bid and the Stalking Horse Purchaser was eligible to participate in the Auction as a Qualified Bidder.

K. 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 Acquired Assets. The Debtors conducted the sale process without collusion and in accordance with the Bidding Procedures.

L. 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 Acquired Assets than that reflected in the Stalking Horse Agreement.

M. As no other Qualified Bid for the Acquired Assets was received prior to the bid deadline, no Auction was conducted.[4] Consequently, the Debtors have determined in a

[4] While indications of interest were received, in consultation with the Consultation Parties, the Debtors determined that no Qualified Bid was received for the Acquired Assets requiring an auction.

valid and sound exercise of their business judgment that the highest or otherwise best Qualified Bid for the Acquired Assets is that of the Stalking Horse Purchaser. The First Lien Creditors hold allowed secured claims, as of the Petition Date, approximately as follows: term loans in the aggregate principal amount of $978,178,601.35, outstanding letters of credit under the Credit Agreement in the aggregate face amount of US$50,688,432.80 and C$22,570,494.00 and first lien notes in the aggregate outstanding principal amount of $970,000,000, in each case, plus interest, fees, costs and expenses (collectively, the "**First Lien Obligations**"). Pursuant to the Bidding Procedures, applicable law, including Bankruptcy Code section 363(k), and in accordance with the Cash Collateral Orders, the Stalking Horse Purchaser (on behalf of the First Lien Creditors) was authorized to credit bid any or all of such First Lien Obligations as well as the First Lien Adequate Protection Obligations. Pursuant to the Stalking Horse Agreement, the Stalking Horse Purchaser credit bid (the "**Credit Bid and Release**") an amount of First Lien Obligations and First Lien Adequate Protection Obligations in the initial amount of $1,250,000,000 in the aggregate, subject to adjustment pursuant to Section 7.8 of the Stalking Horse Agreement, including the reduction thereof by $100,000,000 as a result of the Walter Coke Election being made and to being increased if certain Non-Core Assets are not sold to third parties, and cash (the "**Cash Consideration**") in an amount equal to $5,400,000. The Credit Bid and Release was a valid and proper offer pursuant to the Bidding Procedures Order and Bankruptcy Code sections 363(b) and 363(k).

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

necessary to authorize and approve the Stalking Horse Agreement and the Sale of the Acquired Assets, and all other actions required to be performed by the Debtors in order to consummate the transactions contemplated in the Stalking Horse Agreement. No consents or approvals, other than those expressly provided for in the Stalking Horse Agreement or this Order, are required for the Debtors to consummate the Sale of the Acquired Assets.

O. The Stalking Horse Agreement was negotiated and is undertaken by the Debtors and the Stalking Horse Purchaser at arm's length without collusion or fraud, and in good faith within the meaning of Bankruptcy Code section 363(m). The Stalking Horse Purchaser is not an "insider" of any of the Debtors as that term is defined by Bankruptcy Code section 101(31). The Stalking Horse 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 Stalking Horse Purchaser and other agreements or arrangements entered into by the Stalking Horse Purchaser in connection with the Sale have been disclosed. The Stalking Horse 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 Stalking Horse Purchaser and the Debtors. As a result of the foregoing, the Stalking Horse 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 Stalking Horse Purchaser for the Acquired Assets is the highest or otherwise best offer received by the Debtors, and the Purchase

Price constitutes reasonably equivalent value and fair consideration 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 Stalking Horse Purchaser. The Debtors' determination that the Stalking Horse 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, the Sale of the Acquired Assets, the Sale Transaction and the Stalking Horse Agreement is in the best interests of the Debtors, their estates and creditors and all other parties in interest.

Q. The Stalking Horse Purchaser would not have entered into the Stalking Horse Agreement and would not consummate the Sale Transaction if the sale of the Acquired Assets to the Stalking Horse 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 Stalking Horse 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 Stalking Horse 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 Stalking Horse Purchaser. The Sale of the Acquired Assets

contemplated by the Stalking Horse 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 or the Motion are deemed to have consented to the Motion and the Sale 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 Stalking Horse Purchaser engaged in any conduct that would cause or permit the Stalking Horse 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 Stalking Horse 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 Stalking Horse Purchaser has entered into the Stalking Horse Agreement or is

consummating the Sale of the Acquired Assets with any fraudulent or otherwise improper purpose.

U. Upon the Closing, except as included in the Assumed Liabilities, the Stalking Horse 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, except for Buyer 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 Stalking Horse Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in the Stalking Horse Agreement, the parties intend that the Stalking Horse 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 Stalking Horse 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 Stalking

Horse 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 Stalking Horse Agreement and the 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 Stalking Horse Purchaser. Additionally: (i) the Stalking Horse Agreement constitutes the highest or otherwise best offer for the Acquired Assets; (ii) the Stalking Horse Agreement and the closing of the Sale Transaction will present the best opportunity to realize the highest 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 Sale Transaction is not consummated promptly; and (iv) the Stalking Horse Agreement and the Sale of the Acquired Assets to the Stalking Horse Purchaser 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 Stalking Horse Agreement and the Sale Transaction have been articulated by the Debtors. The Debtors have demonstrated compelling circumstances and a good, sufficient and sound business purpose for the 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 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 Stalking Horse Agreement. Time is of the essence in consummating the 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 Stalking Horse Purchaser in connection with the consummation of the Sale Transaction, and the assumption and assignment of the Assumed Contracts to the Stalking Horse 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 Stalking Horse Purchaser are an integral part of the Acquired Assets being purchased by the Stalking Horse 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 Stalking Horse 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 Stalking Horse 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 the Stalking Horse Purchaser to close the 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. With respect to any agreements entered into between the Stalking Horse Purchaser and the Debtors' management or key employees regarding compensation or future employment, if any exist, the Stalking Horse Purchaser has disclosed the material terms of such agreements.

EE. The Sale Transaction does not constitute a *sub rosa* chapter 11 plan. The 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, 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 Stalking Horse Agreement, the Credit Bid and Release and the Sale Transaction are hereby approved and the Debtors are authorized to enter into and perform under the Stalking Horse Agreement. Pursuant to Bankruptcy Code sections 105, 363, 364, 365 and 503, each of the Debtors and the Stalking Horse Purchaser are hereby authorized and directed to take any and all actions necessary or appropriate to: (i) consummate the Sale Transaction and the closing of the sale in accordance with the Motion, the Stalking Horse Agreement and this Order; (ii) assume and assign the Assumed Contracts; (iii) perform, consummate, implement and close fully the Stalking Horse Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Stalking Horse Agreement; and (iv) establish and fund the Escrow and Trust Arrangements. The Debtors and each other party to the Transaction Documents, including the Escrow and Trust Agreements, are hereby authorized and directed to perform each of their covenants and undertakings as provided in the Stalking Horse Agreement and the Transaction Documents, including the Escrow and Trust Agreements, prior to or after the Closing Date without further order of the Court. The Stalking Horse Purchaser and the Debtors shall have no obligation to close the Sale Transaction except as is contemplated and provided for in the Stalking Horse 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 Stalking Horse Purchaser or to any Buyer Designee, which assignment shall take place on and be effective as of the Closing or as otherwise provided by order of this Court. There shall be no accelerations, assignment fees, increases or any other fees charged to the Stalking Horse Purchaser or the Debtors as a result of the assumption and assignment of the Assumed Contracts.

5. The Debtors' assumption of the Assumed Contracts is subject to the consummation of the 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, the Debtors, in consultation with the Stalking Horse Purchaser or any Buyer Designee, 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 Date. 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 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 Stalking Horse 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 Stalking Horse Agreement, all Encumbrances and Liabilities (other than the Assumed Liabilities and the Permitted Encumbrances) shall not be enforceable as against the Stalking Horse Purchaser or the Acquired Assets. Unless otherwise expressly included in the Assumed Liabilities and Permitted Encumbrances or as otherwise expressly provided by this Order, the Stalking Horse 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 Stalking Horse Purchaser of the Debtors' rights, title and interest in the Acquired Assets pursuant to the Stalking Horse 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 Stalking Horse 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 Stalking Horse Agreement, and any rights, claims and defenses of the Debtors and other parties in interest.

8. None of the Stalking Horse 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 Stalking Horse Agreement and the entry into and consummation of the Sale of the Acquired Assets, except as expressly provided in the Stalking Horse Agreement and this Order.

9. Except as expressly provided in the Stalking Horse 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 Stalking Horse 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 Stalking Horse 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 Stalking Horse 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 Stalking Horse Agreement, the Escrow and Trust Agreements, 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 Stalking Horse Agreement, the Escrow and Trust Agreements, and this Order.

10. Upon assumption of the Assumed Contracts by the Debtors and assignment of same to the Stalking Horse 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. As of the Closing, subject to the provisions of this Order, the Stalking Horse Purchaser shall succeed to the entirety of Debtors' rights and obligations in the Assumed Contracts first arising and attributable to the time period occurring on or after the date the assignment of the Assumed Contracts becomes effective 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 Stalking Horse 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 Stalking Horse 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 creation and funding of the Escrow and Trust Arrangements are approved pursuant to Bankruptcy Code sections 105(a) and 363(b). The Debtors and the other parties thereto are authorized, pursuant to Bankruptcy Code sections 105(a) and 363(b) and without further notice or relief from this Court, to enter into the Escrow and Trust Agreements, to take any and all actions that are necessary or appropriate in the exercise of their business judgment to implement the Escrow and Trust Arrangements, including employing third party contractors in accordance therewith, and to make or authorize the payments contemplated thereunder. Funds deposited in accordance with the Trust and Escrow Arrangements shall not constitute property of any Debtor's estate or be subject to claw back or disgorgement, and such funds (including any residual funds) may be released and applied in accordance with the terms thereof, without further order of this Court.

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

14. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale Transaction. Except as otherwise provided in the Stalking Horse Agreement, the Estate Retained Professional Fee Escrow Agreement, and the Committee Member and Indenture Trustees Fee Escrow 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 Stalking Horse Agreement, the other transaction documents or the transactions contemplated hereby or thereby for which the Stalking Horse Purchaser is or will become liable.

15. The consideration provided by the Stalking Horse Purchaser for the Acquired Assets under the Stalking Horse Agreement, including the portion of the consideration that consisted of the Credit Bid and Release, 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.

16. 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 Stalking Horse Purchaser on the Closing Date pursuant to the terms of the Stalking Horse Agreement, free and clear of all claims, liens, interests and encumbrances (other than Assumed Liabilities and Permitted Encumbrances).

17. Upon the Closing, except as specifically included in Assumed Liabilities, the Stalking Horse 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, except for Buyer 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 Stalking Horse

Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in the Stalking Horse Agreement, the parties intend and the Court hereby orders that the Stalking Horse 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 Stalking Horse 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.

18. 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; (b) shall be effective as a determination that, on the Closing Date, all of the First Lien Creditors, unsecured creditors and any other party receiving interests in Coal Acquisition LLC shall be deemed to be bound by the Limited Liability Company Agreement of Coal Acquisition LLC (as amended or restated from time to time) without any further court order or further action, approval or consent by the Credit Agreement Agent, Indenture Trustee, any First Lien Creditor, unsecured creditor or any other party receiving interests in Coal Acquisition LLC; and (c) 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 Stalking Horse 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.

19. 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 Stalking Horse 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.

20. All counterparties to the Assumed Contracts shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the Stalking Horse Purchaser, and shall not charge the Debtors or the Stalking Horse 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.

21. 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 Stalking Horse Agreement.

22. Nothing in this Order or the Stalking Horse 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 Stalking Horse 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.

23. Without limiting the provisions of paragraph 22 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 Stalking Horse Purchaser on account of the filing or pendency of these Chapter 11 Cases or the consummation of the Sale of the Acquired Assets.

24. No provision of the Bidding Procedures Order, this Order, the Stalking Horse Agreement (or any other purchase/sale agreement) shall be a ruling or is intended to be construed as a ruling on whether the Stalking Horse 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 Stalking Horse 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 Stalking Horse Agreement, or any other purchase/sale agreement with any other party shall relieve or excuse the Debtor, the Stalking Horse Purchaser, or any other party from complying with any and all applicable Federal Securities Laws. Further, the Stalking Horse 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. Nothing in this Order, the Stalking Horse Agreement, the Transaction Documents or the Sale Transaction shall be deemed to express, imply or otherwise provide either: (a) that any surety has consented to the substitution of any principal on any outstanding surety bond; or (b) that any surety has consented to its bonds assuring any payment or performance obligation of any party other than the principal or principals named in such surety bond. Further, nothing in this Order, the Stalking Horse Agreement, the Transaction Documents

or the Sale Transaction 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. Notwithstanding any provision of this Order to the contrary, any surety objections to any other sale or transaction under the Bidding Procedures Order are fully reserved and may be raised again or otherwise supplemented by such surety with respect to any such other sale or transaction.

26. Notwithstanding anything to the contrary in the Motion, the Stalking Horse 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, the "**ACE Companies**") to (or providing coverage to) any Seller (collectively, the "**ACE Contracts**"), and/or any rights, benefits, claims, rights to payments and/or recoveries under such ACE Contracts, other than as provided in section 2.1(o) of the Stalking Horse Agreement; (ii) the ACE Contracts, and/or any rights, benefits, claims, rights to payments and/or recoveries under such ACE Contracts, shall, except as provided in section 2.1(o) of the Stalking Horse Agreement, be Excluded Assets; (iii) nothing (including section 2.1(o) of the Stalking Horse Agreement) shall alter, modify or otherwise amend the terms or conditions of the ACE Contracts; and (iv) the ACE Companies may continue to pay any proceeds due under the ACE Contracts to the Sellers (as opposed to the Buyer) or other claimant thereunder as required under the relevant ACE Contracts, unless and until otherwise ordered by this Court.

27. On December 9, 2015 the Walter Coke Election was made, and the Walter Coke Facility is no longer part of the Sale. The United States and the Debtors and Sellers are engaged in good faith settlement negotiations in an effort to resolve the United States' concerns with respect to the Walter Coke Facility [Docket No. 1446]. In the event that there is

no Successful Bidder for the Walter Coke Assets as determined in accordance with the Bidding Procedures or the sale of the Walter Coke Assets to a Successful Bidder or Backup Bidder (if any) does not close and the relevant sale agreement is terminated, an Environmental Response Trust will be established pursuant to the execution of agreement(s) in form and substance reasonably satisfactory to the Debtors and the United States on behalf of the EPA, and approved by the Bankruptcy Court, including a trust agreement (the "**Environmental Response Trust Agreement**"). The net proceeds from the liquidation of all assets of the Walter Coke Trust (including but not limited to the Walter Coke Working Capital Assets, $1.4 million in cash, and any mobile equipment) shall be transferred to the Environmental Response Trust by the trustee of the Walter Coke Trust (the "**Walter Coke Trustee**"), after payment of all administrative costs of the Walter Coke Trust, including the Walter Coke Trustee fees, in liquidating the assets of the Walter Coke Trust, and after establishing an appropriate and reasonable reserve in the Walter Coke Trust for the payment of the fees and administrative costs of any chapter 7 trustee for Debtor Walter Coke's estate. Any loans made by Coal Acquisition LLC to the Walter Coke Trust must be repaid before the transfer of the net proceeds to the Environmental Response Trust. The Environmental Response Trust Agreement shall also contain appropriate provisions for funding of the start-up and administrative costs of the Environmental Response Trust. The trustee of the Environmental Response Trust shall be a trustee recommended by the United States on behalf of EPA and the Debtors, and appointed by the Court. Walter Coke will transfer any non-mobile equipment, remaining personal property and real property to the Environmental Response Trust. All transfers to the Environmental Response Trust shall be free and clear of all liens, claims, and interests against the estate other than any liability to governmental units as provided in the Environmental Response Trust Agreement. All funding and assets of the Environmental Response Trust shall be used solely for environmental action with respect to the Walter Coke facility and administration of the Environmental Response Trust Agreement.

28. 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 Stalking Horse 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 Stalking Horse 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.

29. Caterpillar Financial Services Corporation ("**Caterpillar**") has filed a limited objection to the Motion (the "**Caterpillar Objection**") [Docket No. 1374] in which it objects to the sale of the Acquired Assets free and clear of Caterpillar's first priority lien in certain collateral more particularly described in the Caterpillar Objection (the "**Caterpillar Collateral**"). The parties continue to negotiate a resolution to the Caterpillar Objection. Notwithstanding anything to the contrary contained herein, the Sale authorized by this Order shall not be free and clear of Caterpillar's first priority liens in the Caterpillar Collateral, and all such liens shall be unaffected by this Order pending entry of a further order by this Court.

30. Notwithstanding anything else contained herein, ARP Production Company, LLC reserves any and all rights it may have under the Formation Agreement dated August 2, 1983 regarding any Debtor's transfer of its shares in Black Warrior Methane Corp., provided, that the foregoing reservation of rights shall be subject in all respects to applicable limitations set forth in the Bankruptcy Code.

31. 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 Stalking Horse Agreement, the terms of this Order shall govern.

32. Except as expressly provided in the Stalking Horse 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.

33. 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 Stalking Horse Purchaser on the Closing Date.

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

35. This Order and the Stalking Horse 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, 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 Stalking Horse Agreement, including, for the avoidance of doubt, the Escrow and Trust Agreements, 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 Stalking Horse Purchaser hereunder and the rights and obligations of any trustee or escrow agent appointed under the Escrow and Trust Agreements shall remain effective and, notwithstanding such dismissal, shall remain binding on parties in interest.

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

37. 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 Stalking Horse Agreement, all amendments thereto and any waivers and consents thereunder; (ii) protect the Stalking Horse 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 Stalking Horse Purchaser; (iv) compel the Stalking Horse Purchaser to perform all of its obligations under the Stalking Horse Agreement; and (v) resolve any disputes arising under or related to the Stalking Horse Agreement or the Sale of the Acquired Assets.

38. The Stalking Horse 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.

39. 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.

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

Dated: January 8, 2016

/s/ Tamara O. Mitchell
TAMARA O. MITCHELL
United States Bankruptcy Judge

Schedule 1

PERMITTED ENCUMBRANCES

1. The lien for ad valorem property taxes and any assessments for any tax year beginning in 2015, 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 Stalking Horse 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 ACE Companies

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

EXHIBIT B

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

In re:	Chapter 11
WALTER ENERGY, INC., *et al.*,[1]	Case No. 15-02741 (TOM)
Debtors.	Jointly Administered

CERTIFICATE OF SERVICE

I, Clarissa D. Cu, depose and say that I am employed by Kurtzman Carson Consultants LLC ("KCC"), the claims and noticing agent for the Debtors in the above-captioned cases.

On December 1, 2015, at my direction and under my supervision, employees of KCC caused the following documents to be served via Overnight mail to the parties on the service list attached hereto as **Exhibit A** for subsequent distribution to beneficial holders of the securities listed on the attached **Exhibit B**; via First Class mail to the parties on the service list attached hereto as **Exhibit C**, and via Email to the parties attached hereto as **Exhibit D**:

- **Notice of Bidding Procedures, Auction Date, and Sale Hearing**, attached hereto as **Exhibit E**

- **Notice Regarding Order (I) Establishing Bidding Procedures for the Sale(s) of All, or Substantially All, of the Debtors' Assets; (II) Approving Bid Protections; (III) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Approving Form and Manner of the Sale, Cure and Other Notices; (V) Scheduling an Auction and a Hearing to Consider the Approval of the Sale(s); and (VI) Granting Certain Related Relief** [Docket. No. 1121]

[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.

Additionally, on December 1, 2015, at my direction and under my supervision, employees of KCC caused the following documents to be served via First Class mail to the parties on the service lists attached hereto as **Exhibit F** and **Exhibit G**:

- **Notice of Bidding Procedures, Auction Date, and Sale Hearing**, attached hereto as **Exhibit E**

- **Notice Regarding Order (I) Establishing Bidding Procedures for the Sale(s) of All, or Substantially All, of the Debtors' Assets; (II) Approving Bid Protections; (III) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Approving Form and Manner of the Sale, Cure and Other Notices; (V) Scheduling an Auction and a Hearing to Consider the Approval of the Sale(s); and (VI) Granting Certain Related Relief** [Docket. No. 1121]

Dated: December 2, 2015

/s/ Clarissa D. Cu
Clarissa D. Cu
KCC
2335 Alaska Ave
El Segundo, CA 90245
Tel 310.776.7378

EXHIBIT G

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CREDITORNAME	NOTICENAME	ADDRESS1	ADDRESS2	ADDRESS3	CITY	STATE	ZIP	COUNTRY
ALABAMA ELECTRIC MOTOR SERVICE		7416 PARKWAY DRIVE			LEEDS	AL	35094	
ALABAMA EYE & CATERACT CENTER		1201 11TH AVENUE SOUTH			BIRMINGHAM	AL	35205	
ALABAMA FAMILY HEALTH CARE INC		307-C SOUTH 5TH STREET			GADSDEN	AL	35901	
ALABAMA FAMILY RIGHTS ASSOC.		P.O. BOX 6028			HUNTSVILLE	AL	35813-0028	
ALABAMA FILTER SPECIALISTS INC		320 MONTCLAIR DRIVE			GADSEN	AL	35901	
ALABAMA FIRE COLLEGE		2501 PHOENIX DRIVE			TUSCALOOSA	AL	35405	
ALABAMA FIREFIGHTER MEMORIAL FUND		2501 PHOENIX DRIVE			TUSCALOOSA	AL	35405	
ALABAMA FLAG & BANNER CO INC		2315 BOB WALLACE AVENUE			HUNTSVILLE	AL	35805	
ALABAMA FLUID SYSTEM TECH. INC		BOX 245			PELHAM	AL	35124	
ALABAMA FORESTRY ASSOCIATION		555 ALABAMA STREET			MONTGOMERY	AL	36104	
ALABAMA FREIGHT		P. O. BOX 10032			BIRMINGHAM	AL	35202-0032	
ALABAMA FREIGHT, INC		P.O. BOX 10032			BIRMINGHAM	AL	35202	
ALABAMA FUEL PRODUCTS, LLC		1329 FORESTDALE BLVD., STE 303			BIRMINGHAM	AL	35214	
ALABAMA FUEL PRODUCTS, LLC.	ATTN MR. GENE PAUL - CONTROLLER	1329 FORESTDALE BLVD. SUITE 303			BIRMINGHAM	AL	35214	
Alabama Gas Corp		2333 Fl Shuttlesworth Dr			Birmingham	AL	35234	
ALABAMA GAS CORPORATION		2101 6th AVE. N			BIRMINGHAM	AL	35203	
Alabama Gas Corporation		605 Richard Arrington, Jr. Blvd N			Birmingham	AL	35203	
ALABAMA GAS CORPORATION		P. O. BOX 2224			BIRMINGHAM	AL	35246	
ALABAMA GAS CORPORATION		1918 FIRST AVENUE NORTH			BIRMINGHAM	AL	35203-4006	
Alabama Gas Corporation	Alabama Gas Corporation, Attn Eddie Coston	605 Richard Arrington, Jr. Blvd N			Birmingham	AL	35203	
Alabama Gas Corporation	Attn Eddie Coston	605 Richard Arrington, Jr. Blvd N			Birmingham	AL	35203	
ALABAMA GAS CORPORATION	Attn Officer or Director	1918 FIRST AVENUE NORTH			BIRMINGHAM	AL	35203-4006	
ALABAMA GAS CORPORATION	Attn Officer or Director	2101 6th AVE. N			BIRMINGHAM	AL	35203	
ALABAMA GAS CORPORATION	Attn Officer or Director	P. O. BOX 2224			BIRMINGHAM	AL	35246	
Alabama Gas Corporation	Karen Winkler	2101 Sixth Avenue North			Birmingham	AL	35203	
ALABAMA GASTROENTEROLGY ASSOC.		2022 BROOKWOOD MED. CTR. DR.	SUITE 626		BIRMINGHAM	AL	35209	
ALABAMA GRAPHICS		2801 5TH AVENUE SOUTH			BIRMINGHAM	AL	35233	
ALABAMA GRAPHICS & ENGINEERING SUPPLY		2801-5TH AVENUE SOUTH			BIRMINGHAM	AL	35233	
ALABAMA GRINDING AND MACHINE		116 GRAYMONT AVE N			BIRMINGHAM	AL	35204	
ALABAMA GUARDRAIL, INC.		PO BOX 126			CLEVELAND	AL	35049-0126	
ALABAMA HARD-SURFACING INC.		P. O. BOX 608			FAIRFIELD	AL	35064	
ALABAMA HEAD INJURY FOUNDATION	INVERNESS RACQUET CLUB	P. O. BOX 43248			BIRMINGHAM	AL	35243	
ALABAMA HEALTH CENTER		1233 2ND AVENUE SOUTH			BIRMINGHAM	AL	35233	
ALABAMA HOME THERAPEUTICS		435 RIVERHILLS BUSINESS PARK			BIRMINGHAM	AL	35242	
ALABAMA INDUSTRIAL FABRICATORS		P O BOX 247			PELHAM	AL	35124	
ALABAMA INDUSTRIAL LLC		P.O. BOX 1788			TUPELO	MS	38802	
ALABAMA INDUSTRIAL LLC.		P. O. BOX 610246			BIRMINGHAM	AL	35261	
ALABAMA INDUSTRIAL WEED CONTROL		1101 MEADOW LANE WEST			BIRMINGHAM	AL	35228	
ALABAMA INDUSTRIAL WEED CONTROL		7585 HWY 55			WILSONVILLE	AL	35186	
ALABAMA INDUSTRIAL WEED CONTROL	ROBERT L BEARD, SR	1101 MEADOW LANE WEST			BIRMINGHAM	AL	35228	
ALABAMA INDUSTRIAL WEED CONTROL	ROBERT L BEARD, SR	7585 HWY 55			WILSONVILLE	AL	35186	
ALABAMA INSTRUMENT & MEASUREMENT, INC.		P O BOX 70430			TUSCALOOSA	AL	35407	
ALABAMA INVESTIGATIVE SERVICES		P. O. BOX 3243			TUSCALOOSA	AL	35403	
ALABAMA INVESTIGATIVE SERVICES	DAVID E. HILL	P. O. BOX 3243			TUSCALOOSA	AL	35403	
ALABAMA JACK CO		1140 5TH AVENUE NORTH			BIRMINGHAM	AL	35203	
ALABAMA JACK CO	CORPORATE BILLING, INC.	P. O. BOX 2257			DECATUR	AL	35609-2257	
ALABAMA JACK COMPANY		1140 5TH AVE NORTH			BIRMINGHAM	AL	35203	
ALABAMA LABELS & GRAPHICS CORP		P.O. BOX 2025			BIRMINGHAM	AL	35201	
ALABAMA LABELS & GRAPHICS CORPORATION		DEPT. 933	P.O. BOX 1070		CHARLOTTE	NC	28201-1070	
ALABAMA LABELS & GRAPHICS CORPORATION		3005 4TH AVE. SO.			BIRMINGHAM	AL	35233	
ALABAMA LABOR DEPARTMENT		P.O. BOX 613			SATSUMA	AL	36572	
ALABAMA LABOR LAW POSTER SERVICE		5859 W. SAGINAW HWY	#343 (CORP. OFFICE)		LANSING	MI	48917-2460	
ALABAMA LADDER COMPANY, INC.		280 SNOW DIRVE	SUITE 2		BIRMINGHAM	AL	35209	
ALABAMA LADDER INC.		280 SNOW DRIVE			BIRMINGHAM	AL	35209	
ALABAMA LAND SURVEYORS	EDUCATION FOUNDATION	P.O. BOX 241254			MONTGOMERY	AL	36124	
ALABAMA LINE SERVICES		P. O. BOX 9308			MOBILE	AL	36691	
ALABAMA LIVE LLC		P.O. BOX 416211			BOSTON	MA	02241-6211	
ALABAMA LOCK & KEY		P O BOX 1056			BIRMINGHAM	AL	35201	
ALABAMA LOCK AND KEY INC		P.O. BOX 1056			BIRMINGHAM	AL	35201	
ALABAMA LOCK AND KEY INC		P.O. BOX 11247			BIRMINGHAM	AL	35202	
ALABAMA LUMBER AND SUPPLY CO.		P.O. BOX 320737			BIRMINGHAM	AL	35232	
ALABAMA MACHINE & WELDING, INC.		1900 HOLT ROAD			TUSCALOOSA	AL	35404	
ALABAMA MACHINE & WELDING, INC.		P. O. BOX 801			FAIRFIELD	AL	35064	
ALABAMA MACHINE COMPANY, INC.		3512 INDUSTRIAL PARKWAY			JASPER	AL	35501	
ALABAMA MACHINE COMPANY, INC.		RT. 12 BOX 281			JASPER	AL	35501	
ALABAMA MANUFACTURERS REGISTER		1633 CENTRAL STREET			EVANSTON	IL	60201	
ALABAMA MATH, SCIENCE &	TECHNOLOGY INITIATIVE	13414 HWY 69 SO.			TUSCALOOSA	AL	35405	
ALABAMA MEDICAL SERVICE INC.		4300 NARROW LANE ROAD			MONTGOMERY	AL	36334	
ALABAMA MESSENGER		205 NORTH 20TH STREET	SUITE 706		BIRMINGHAM	AL	35203	
ALABAMA MFG HOUSING INSTITUTE		4274 LOMAC STREET			MONTGOMERY	AL	36106	
ALABAMA MINERS MEMORIAL FOUNDATION, INC.		P.O. BOX 496			MOBILE	AL	36616	
ALABAMA MOBILE HOME & CAMPER SERVICE		5640 SKYLAND BLVD. EAST			COTTONDALE	AL	35453	
ALABAMA MOBILE STORAGE		PO. BOX 1179			PELHAM	AL	35124	
ALABAMA MOTORISTS ASSOCIATION		2305 5TH AVE NO			BIRMINGHAM	AL	35203	
ALABAMA MOTORISTS ASSOCIATION		2400 ACTION ROAD			BIRMINGHAM	AL	35243	
ALABAMA MUSIC HALL OF FAME		P. O. BOX 740405			TUSCUMBIA	AL	35674	
ALABAMA NEGRO LEAGUE ASSOC.,		P.O BOX 39435			BIRMINGHAM	AL	35208	

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EXHIBIT C

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

In re:	**Chapter 11**
NEW WEI, INC., *et al.*,[1]	**Case No. 15-02741-TOM7**
Debtors.	**Jointly Administered**

ORDER GRANTING MOTION TO ENFORCE ORDER AUTHORIZING AND APPROVING SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES

This matter having come before the Court upon the *Motion to Enforce Order Authorizing and Approving Sale of Substantially all of the Debtors' Assets and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [Dkt. No. ____] (the "Motion") of Warrior Met Coal, LLC, f/k/a Coal Acquisition LLC ("Warrior Met" or "Purchaser"); this Court having reviewed and considered the Motion and any objections or other responses thereto (collectively, the "Objections"); due and timely notice of the Motion having been given pursuant to the Federal Rules of Bankruptcy Procedures and the Local Bankruptcy Rules, which notice is deemed adequate and for all purposes so that no other or further notice need be given; all interested parties, including without limitation the Alabama Department of

[1]The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: New WEI, Inc. (f/k/a 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); New WEI 7, Inc. (f/k/a J.W. Walter, Inc.) (0648); Jefferson Warrior Railroad Company, Inc. (3200); New WEI 2, LLC (f/k/a Jim Walter Homes, LLC) (4589); New WEI 13, Inc. (f/k/a 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); New WEI 19, LLC (f/k/a Walter Black Warrior Basin LLC) (5973); New WEI 18, Inc. (f/k/a Walter Coke, Inc.) (9791); New WEI 22, LLC (f/k/a Walter Energy Holdings, LLC) (1596); New WEI 20, LLC (f/k/a Walter Exploration & Production LLC) (5786); New WEI 1, Inc. (f/k/a Walter Home Improvement, Inc.) (1633); New WEI 6 Company (f/k/a Walter Land Company) (7709); New WEI 16, Inc. (f/k/a Walter Minerals, Inc.) (9714); and New WEI 21, LLC (f/k/a Walter Natural Gas, LLC) (1198). The location of the Debtors' corporate headquarters is 2100 Southbridge Parkway, Suite 650, Birmingham, Alabama 35209.

Labor (the "ALDOL"), having had due and proper notice and an opportunity to be heard; all Objections having been overruled or withdrawn; and after due consideration and good cause appearing therefor, the Court hereby FINDS AND CONCLUDES THAT:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 and 1334.

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

C. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The sale to the Purchaser pursuant to the *Order (I) Approving the Sale of the Acquired 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* [Dkt. No. 1584] was free and clear of the Debtors' Experience Rate and Contribution Rate as those terms are used in Ala. C. § 25-4-54.

For all of the foregoing reasons, and after due consideration and good cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The Motion is granted.

2. ALDOL shall assess Warrior Met as a new employer with respect to any and all federal or state unemployment laws, including unemployment compensation laws, or similar federal or state laws.

3. Within 30 days after the entry of this Order, the ALDOL shall return to the Purchaser all overpayments attributable to the improper Contribution Rate ALDOL has charged the Purchaser.

4. The terms of this Order shall be immediately effective and enforceable upon its entry. The Court reserves jurisdiction over this matter to enforce this Order.

Dated: _____, 2017

_____
Honorable Tamara O. Mitchell
United States Bankruptcy Judge