

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

In re:) Chapter 11
)
Blackjewel, L.L.C., *et al.*,) Case No. 19-30289
)
Debtors.¹) (Jointly Administered)

**DECLARATION OF DAVID J. BECKMAN
IN SUPPORT OF ADDITIONAL FIRST DAY PLEADINGS**

1. I am a Senior Managing Director of FTI Consulting, Inc. (“FTI”), an internationally recognized consulting firm that has a wealth of experience in providing financial advisory services both in and out-of-court, and enjoys an excellent reputation for services it has rendered in large and complex chapter 11 cases on behalf of debtors and creditors throughout the United States. FTI was engaged by the above-captioned debtors and debtors in possession (collectively, the “Debtors”) and I was appointed Chief Restructuring Officer on June 27, 2019. I was appointed the Debtors’ Interim Chief Executive Officer on July 3, 2019.

2. As Chief Restructuring Officer and Interim Chief Executive Officer, I have become familiar with the Debtors’ day-to-day operations, business affairs and books and records. I am familiar with the Debtors’ relationships with the lenders, lessors, trade vendors, and other parties necessary to the Debtors’ ability to conduct business. I have been intimately involved in the preparation and filing of these chapter 11 cases.

3. I submit this declaration (the “Declaration”) pursuant to 28 U.S.C. § 1746 in support of certain supplemental “first day” motions and other applications filed

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: Blackjewel, L.L.C. (0823); Blackjewel Holdings L.L.C. (4745); Revelation Energy Holdings, LLC (8795); Revelation Management Corporation (8908) and Revelation Energy, LLC (4605). The headquarters for each of the Debtors is located at 1051 Main Street, Milton, West Virginia 25541-1215.

contemporaneously herewith. Except as otherwise indicated, the facts set forth in this Declaration are based upon my personal knowledge, my review of the relevant documents, and/or my opinion based upon personal knowledge and experience of the Debtors' business and financial condition. If called upon to testify, I could and would testify competently to the facts set forth in this Declaration.

COMMENCEMENT OF CHAPTER 11 PROCEEDINGS

4. On July 1, 2019 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief with the Court under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are operating and maintaining their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. This declaration provides information and facts in support of certain additional "first day" motions and other applications filed by the Debtors concurrently with, or shortly after, the filing of this Declaration (the "Additional Motions"). I have reviewed and am familiar with the Debtors' Additional Motions.²

ADDITIONAL MOTIONS³

6. Concurrently with the filing of this Declaration, the Debtors filed the Additional Motions requesting various forms of relief. Generally, the Additional Motions supplement the relief requested on the first day of these cases and have been designated to meet the goals of: (a) preserving and protecting the Debtors' chapter 11 estates, including by paying certain claims,

² Descriptions of the Debtors' and their operations, the relevant facts giving rise to these chapter 11 cases, and the Debtors' capital structure were previously set forth in the *Declaration of Jeff A. Hoops, Sr. in Support of Chapter 11 Filings and First Day Motions* [Dkt. No. 14], which was filed on the Petition Date. Mr. Hoops resigned his positions as officer and director of each of the Debtors on July 3, 2019 and is no longer involved with the management of the Debtors or their business.

³ Capitalized terms used but not otherwise defined in the Declaration shall have the meaning ascribed in the applicable Additional Motion.

establishing adequate assurance procedures for utilities, maintaining appropriate insurance coverage, retaining necessary professionals, and establishing procedures for the smooth and efficient functioning of the Debtors' estates. I believe that the relief sought in each of the Additional Motions is tailored to meet the goals described above and, ultimately, will be critical to the Debtors' ability to attain a value-maximizing outcome in these cases.

I. Debtors' Motion to Change Divisional Venue to Charleston, West Virginia (the "Venue Motion")

7. By the Venue Motion, the Debtors are requesting that the divisional venue of these chapter 11 cases be transferred from Huntington, West Virginia to Charleston, West Virginia. Because the Debtors' headquarters are located at 1051 Main Street, Milton, West Virginia 25541-1215, the Debtors' chapter 11 cases were automatically assigned to the Huntington, West Virginia division of this Court.

8. Notwithstanding that assignment, taking all parties' interests into consideration, the most efficient and convenient forum for this case is the Charleston Division. For example, this Court convenes more frequently in Charleston and the Debtors anticipate that numerous hearings, at times on an expedited basis, will be required throughout the duration of the cases. Moreover, the proximity of Charleston Yeager Airport will allow for more efficient and cost-effective participation by parties making in-person appearances before the Court.

9. Accordingly, I believe that the request to transfer the divisional venue of these cases be to Charleston, West Virginia is reasonable and appropriate under the circumstances.

II. DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE INSURANCE COVERAGE ENTERED INTO PREPETITION AND SATISFY OBLIGATIONS RELATED THERETO, INCLUDING PREMIUM FINANCING, AND (B) RENEW, SUPPLEMENT, OR PURCHASE INSURANCE POLICIES; (II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECK AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO; AND (III) GRANTING RELATED RELIEF (THE "INSURANCE MOTION")

10. By the Insurance Motion, the Debtors request entry of interim and final orders (a) authorizing, but not directing, the Debtors to (i) continue insurance coverage entered into prepetition and satisfy prepetition obligations related thereto in the ordinary course of business, including Premium Financing Agreements, and (ii) renew, supplement, or purchase insurance policies in the ordinary course of business, and (b) authorizing the Banks to honor and process checks and electronic transfer requests related to the foregoing.

A. The Debtors' Insurance Programs

11. In the ordinary course of business, the Debtors maintain approximately nine insurance policies (collectively, the "Insurance Policies") that are provided and/or administered by multiple third-party insurance carriers (collectively, the "Insurance Carriers"). A schedule of the current Insurance Policies, policy terms, and annual premium amounts is attached to the Insurance Motion as Exhibit C.⁴

12. The Insurance Policies include coverage for, among other things, commercial general liability insurance, commercial automobile liability insurance, umbrella policy insurance, property insurance, inland marine insurance, crime liability insurance, directors' and officers'

⁴ Although Exhibit C to the Insurance Motion is intended to be comprehensive, the Debtors may have inadvertently omitted Insurance Policies from Exhibit C. By the Insurance Motion, the Debtors also request relief with respect to all Insurance Policies, regardless of whether such Insurance Policy is specifically identified on Exhibit C thereto.

insurance, and workers' compensation insurance.⁵ All the Insurance Policies are essential to the ongoing operation of the Debtors' business.

13. The Debtors employ Black Rock Diamond Insurance Group, LLC (the "Broker"), as insurance broker to assist them with the procurement and management of the Insurance Policies. The Broker collects commissions when the Debtors purchase coverage or when they remit premiums. The Broker's commission is paid directly by the Insurance Carriers and made a part of the annual premiums due for the Insurance Policies.

B. Insurance Premiums and Related Finance Payments

14. The Debtors finance premiums (the "Insurance Premiums") under all of their Insurance Policies, except the workers' compensation insurance (collectively, the "Financed Policies"), because it is not economically advantageous for the Debtors to pay the premium on the Financed Policies, in full, on a lump-sum, quarterly, or monthly basis. The Insurance Premiums are determined annually and paid by the Debtors directly or through First Insurance Funding ("First Funding") on behalf of the Debtors at policy inception pursuant to premium financing agreements ("Premium Financing Agreements"), which the Debtors repay via installments through the policy term directly to First Funding. In 2018, the Insurance Premiums under the Financed Policies aggregated \$5,137,202.38.⁶

⁵ The Debtors do not seek authority to maintain workers' compensation coverage and to pay prepetition amounts related thereto pursuant to the Insurance Motion. Such authority was previously granted on an interim basis by this Court pursuant to its *Interim Order (A) Authorizing (I) Payment of Prepetition Employee Wages, Salaries, and Other Compensation; (II) Reimbursement Of Prepetition Employee Business Expenses; (III) Payment of Prepetition Tax and Other Withholdings to Third Parties; (IV) Contributions to Prepetition Employee Health and Other Benefit Programs And Continuation of Such Programs; (V) Payment of Workers' Compensation Obligations and Other Insurance Premiums; (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests* [Doc. No. 59].

⁶ This amount includes a \$72,979.50 balance carried over from the 2017 Premium Financing Agreement.

15. The Premium Financing Agreement between the Debtors and First Funding requires the Debtors to pay First Funding an initial down payment of approximately \$2,200,000.00, followed by nine monthly payments of approximately \$337,330.72 (due on the 5th of each month, beginning on November 5, 2018), in exchange for First Funding's obligation to pay the Debtors' insurance premiums on account of the Financed Policies. As of the Petition Date, the Debtors have made seven out of nine payments on account of their Premium Financing Agreement with First Insurance. One prepetition installment of \$337,330.72 was due on June 5, 2019 and remained outstanding as of the Petition Date.⁷ The second remaining installment of \$337,330.72 became due and owing on July 5, 2019 (after the Petition Date) and was paid in the ordinary course of business by the Debtors on July 8, 2019.

16. For all the reasons set forth in the Insurance Motion, I believe that the relief requested is in the best interests of the Debtors' estates, their creditors and all other stakeholders in these chapter 11 cases.

III. DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS AUTHORIZING PAYMENT OF CERTAIN PREPETITION TAXES AND DIRECTING ALL BANKS TO HONOR CHECKS FOR PAYMENT OF TAXES (THE "TAX MOTION")

17. By the Tax Motion, the Debtors seek entry of interim and final orders (a) authorizing, but not requiring, the Debtors, in their sole discretion, to pay the Taxes (as defined

⁷ On July 5, 2019, the Debtors received notice from First Funding that it purported to cancel the Debtors' insurance policies as of June 28, 2019. The Debtors immediately addressed and resolved the purported cancellation. The Debtors and First Funding agreed to the following terms to resolve any and all issues relating to the Debtors' insurance coverage: (i) the Debtors agreed to pay and did pay First Funding's post-petition July invoice in the ordinary course in the total amount of \$337,330.72 on Monday July 8, 2019, (ii) the Debtors have included the request for payment of First Funding's pre-petition June invoice in the total amount of \$337,330.72 in the Insurance Motion and such payment will be included in the budget that the Debtors anticipate will support additional debtor-in-possession financing it is working to arrange, and (iii) any notice purporting to cancel the Insurance Policies due to the timing of the filing of the Insurance Motion or for any other reasons will be immediately reversed and deemed null, such that the Debtors will not suffer any interruption in coverage.

below) owed as of the Petition Date and (b) authorizing the Banks to receive, process, honor and pay checks or wire transfers used by the Debtors to pay such prepetition Taxes.

A. The Debtors' Taxes

18. In the ordinary course of business, the Debtors collect, withhold and incur severance, excise, use, franchise, property, environmental and safety taxes, as well as other taxes and fees described in the Tax Motion (the "Taxes").⁸ The Debtors remit Taxes to various federal, state and local government entities, including taxing and licensing authorities (collectively, the "Governmental Authorities"). A schedule identifying the Governmental Authorities is attached to the Tax Motion as Exhibit C.⁹ The Debtors remit the Taxes through checks and electronic transfers that their banks and other financial institutions process. As of the Petition Date, the Debtors estimate that they owe approximately \$146 million of prepetition Taxes that have accrued and not been paid.

B. Severance Taxes

19. In the ordinary course of business, the Debtors must pay severance or production taxes and fees (collectively, the "Severance Taxes") to continue producing coal. Generally, severance taxes are a tax on "severing" natural resources, such as coal, from the land or waters within a state or jurisdiction. Severance tax methodology varies by jurisdiction. For example, in

⁸ Pursuant to the Tax Motion, the Debtors do not seek authority to collect and remit state and federal employee-related withholding taxes. The Court previously granted such authority in its *Interim Order (A) Authorizing (I) Payment of Prepetition Employee Wages, Salaries, and Other Compensation; (II) Reimbursement of Prepetition Employee Business Expenses; (III) Payment of Prepetition Tax and Other Withholdings to Third Parties; (IV) Contributions to Prepetition Employee Health and Other Benefit Programs and Continuation of Such Programs; (V) Payment of Workers' Compensation Obligations and Other Insurance Premiums; (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto; and (C) Granting Related Relief* [Dkt. No. 59].

⁹ For the avoidance of doubt, the inclusion of any entity on, or the omission of any entity from, Exhibit C to the Tax Motion is not an admission by the Debtors that such entity is, or is not, a Governmental Authority, and the Debtors reserve all rights with respect to any such determination.

West Virginia, taxing authorities calculate severance tax liability as a percentage of the value of coal produced, while federal taxing authorities generally calculate severance tax liability as a percentage of either the value or volume of coal produced, whichever is less.¹⁰ The Debtors pay the Severance Taxes on a monthly basis and in 2018 paid approximately \$23.5 million in such taxes to the applicable Governmental Authorities. As of the Petition Date, the Debtors estimate approximately \$120 million is due and owing to the relevant Governmental Authorities on account of prepetition Severance Taxes.

C. Excise Taxes

20. The Debtors incur excise taxes pursuant to section 4121 of the Internal Revenue Code (“Coal Excise Taxes”). *See* 26 U.S.C. § 4121. Generally, Coal Excise Taxes are calculated as either a percentage of value or volume of coal produced and deposit such collected taxes into a statutorily mandated Black Lung Disability Trust Fund. *See* 26 U.S.C. § 9501. The Debtors pay Coal Excise Taxes on a semi-monthly basis and in 2018 paid approximately \$12.5 million in such taxes to the applicable Governmental Authorities. As of the Petition Date, the Debtors estimate approximately \$9,700,000 is due and owing to the relevant Governmental Authorities on account of prepetition Coal Excise Taxes.

D. Environmental and Safety Fees

21. In the ordinary course of business, the Debtors incur various licensing and permitting fees and assessments to comply with environmental, health, and safety laws and regulations (collectively, the “Licensing and Permitting Fees”). The Debtors are required to remit the Licensing and Permitting Fees to the relevant Governmental Authorities on various dates

¹⁰ Severance Taxes due to the federal government comprise reclamation fees payable in accordance with the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq.

throughout the year. In addition, the Debtors have incurred assessments for alleged prepetition violations of environmental, health, and safety laws, which the Debtors have not yet remitted to the relevant Governmental Authorities (collectively, the “Assessments,” and together with the Licensing and Permitting Fees, the “Environmental and Safety Fees”). As of the Petition Date, the Debtors estimate approximately \$500,000 is due and owing to the relevant Governmental Authorities on account of prepetition Environmental and Safety Fees .

E. Use Taxes

22. The Debtors purchase a variety of equipment, materials and supplies necessary for the operation of their business on a day-to-day basis from out of state vendors. Included in the purchase price that the Debtors pay out of state vendors is the anticipated sales tax in connection with such purchases (the “Use Taxes”). Historically, the out of state vendors withhold and remit the Use Taxes to the relevant Governmental Authorities at various times throughout the year on account of the Debtors’ purchases. On an annual or biannual basis, the Debtors subsequently hire auditors to evaluate the out of state vendors’ remittances to determine if the Debtors were charged in excess of the amount of Use Taxes due and owing to the relevant Governmental Authorities. Upon information and belief, the Debtors are owed a Use Tax refund from at least one out of state vendor that exceeds \$1 million. As of the Petition Date, the Debtors estimate that approximately \$100,000 is due and owing to the relevant Governmental Authorities on account of prepetition Use Taxes.

F. Property Taxes

23. State and local laws in the jurisdictions where the Debtors operate generally grant Governmental Authorities the power to levy property taxes against the Debtors’ real and personal property, including taxes with regard to unmined minerals (collectively, the “Property Taxes”).

The Debtors' Property Taxes also include payments the Debtors make to vendors on property the Debtors lease, which payments are then passed through to the landlord on the property. The Debtors are also a party to a prepetition payment plan agreement with Campbell County, Wyoming, dated on or around April 2, 2019, whereby the Debtors agreed to pay certain outstanding prepetition real and personal property taxes in accordance with a payment schedule. In 2018, the Debtors paid approximately \$3.6 million in Property Taxes to the applicable Governmental Authorities. As of the Petition Date, the Debtors estimate approximately \$7 million is due and owing to the relevant Governmental Authorities on account of prepetition Property Taxes.¹¹

G. Franchise Taxes

24. The Debtors are required to pay various state franchise taxes and annual report and privilege fees (collectively, the "Franchise Taxes") in order to continue conducting their businesses in accordance with state laws. In 2019, the Debtors are required to pay the Franchise Taxes for business conducted in 2018. The Debtors generally remit Franchise Taxes as required by the applicable jurisdiction. Failure to pay the Franchise Taxes would likely cause the Debtors to lose their ability to conduct business in the jurisdictions requiring payment. In 2018, the Debtors remitted approximately \$150,000 in Franchise Taxes. As of the Petition Date, the Debtors estimate approximately \$125,000 is due and owing to the relevant Governmental Authorities on account of prepetition Franchise Taxes.

¹¹ The Debtors may have certain obligations assessed against third parties who are counterparties to certain leases with the Debtors. As a result, there are additional Governmental Authorities that are owed Property Taxes by the Debtors that are not included in Exhibit C to the Tax Motion.

H. Other Taxes and Fees

25. Federal, state, and local Governmental Authorities impose various other Taxes and Fees against the Debtors' operations (collectively, the "Other Taxes and Fees"). Such taxes and fees include taxes imposed on gross receipts, explosive taxes, business license fees, and other miscellaneous Taxes. As of the Petition Date, the Debtors estimate approximately \$10.1 million is due and owing to the relevant Governmental Authorities on account of prepetition Other Taxes and Fees.

26. For all the reasons set forth in the Tax Motion, I believe that the requested relief is reasonable and appropriate under the circumstances and in the best interest of the Debtors, their estates and creditors.

IV. DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (A) FINDING UTILITIES ADEQUATELY PROTECTED, (B) ENJOINING UTILITIES FROM ALTERING, REFUSING, DISCONTINUING OR INTERFERING WITH UTILITY SERVICE AND (C) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE (THE "UTILITIES MOTION")

27. By the Utilities Motion, the Debtors request entry of interim and final orders (a) finding that the Utilities identified on Exhibit C to the Utilities Motion¹² have adequate assurance of future payment within the meaning of section 366 of the Bankruptcy Code based on, among other things, the Debtors' establishment of a security deposit in a segregated account equal to 50% of the average monthly bill for each Utility, which amount may be adjusted by the Debtors for reasons specified in the Utilities Motion following the final hearing on the Utilities Motion and

¹² While the Debtors have exercised their best efforts to list all of their Utilities and account numbers on Exhibit C, it is likely that certain Utilities and/or account numbers may have been omitted. The Debtors reserve the right to amend Exhibit C to add any Utilities and/or account numbers that were omitted therefrom and to request that the relief requested in the Utilities Motion apply equally to all such entities and accounts. Furthermore, the relief requested therein shall apply to all of the Debtors' accounts with every Utility listed on Exhibit C regardless of whether such accounts are contained therein or not. In addition, the Debtors reserve the right to argue that any of the entities now or hereafter listed in Exhibit C are not "utilities" within the meaning of section 366(a) of the Bankruptcy Code.

which is without prejudice to the Utilities' right to request additional adequate assurance according to the procedures set forth below, (b) enjoining the Utilities from altering, refusing, discontinuing or interfering with services to the Debtors on account of any unpaid invoice for prepetition services, including the making of demands for security deposits or accelerated payment terms, or while a request for adequate assurance of payment in accordance with the procedures set forth in the Utilities Motion and below is pending, and (c) establishing procedures for determining requests for additional adequate assurance and authorizing the Debtors to provide such adequate assurance to the Utilities.

A. Utilities

28. In connection with the operation of their businesses and management of their property, the Debtors incur utility expenses in the ordinary course of business for, among other things, electricity, gas, sewer, trash, local and long-distance telecom services, data services and television service and other similar services (collectively, the "Utility Services"). On a monthly basis, the Debtors spend approximately \$1.5 million for the various Utility Services. These Utility Services are provided by approximately 44 Utilities. A non-exhaustive list of the Utilities is attached to the Utilities Motion as Exhibit C.

B. Proposed Adequate Assurance

29. Section 366 of the Bankruptcy Code prohibits utilities from altering, refusing, discontinuing or interfering with services to a debtor for the first twenty (20) days of a bankruptcy case. However, in a chapter 11 case, pursuant to section 366(c)(2), a utility may refuse or discontinue service to a debtor after the first thirty (30) days if the debtor has not furnished the utility with adequate assurance of future payment.

30. The Debtors intend to pay all postpetition obligations owed to the Utilities in a timely manner, consistent with the ordinary course of their businesses. However, to provide adequate assurance of payment for future services as required by section 366(c) of the Bankruptcy Code, the Debtors propose to deposit (within twenty (20) days of the Petition Date) an amount into an interest-bearing, newly-created, segregated account (the “Adequate Assurance Account”) equal in the aggregate to 50% of the average monthly bill for each Utility and excluding those four Utilities that hold a prepetition deposit from the Debtors (the “Adequate Assurance Deposit”) pending further order of the Court. After reviewing four Utilities’ prepetition deposits and the Debtors’ two week average cost for the Utility Services, the initial Adequate Assurance Deposit will be approximately one half of the monthly Utility Services costs for those Utilities that do not yet have a deposit from the Debtors, or \$245,964.

31. The Debtors further propose to maintain the Adequate Assurance Account with a minimum balance in the aggregate equal to 50% of the Debtors’ average monthly cost of Utility Services through the final hearing on the motion. Thereafter, the Debtors propose to adjust the amount in the Adequate Assurance Account to reflect several factors such as: (a) the termination of Utility Services by the Debtors regardless of any Utility’s Request (as defined below); (b) an agreement with any Utility pursuant to the procedures below; and (c) the amount spent on Utility Services with a Utility that already holds a deposit or other security from the Debtors. These adjustments will permit the Debtors to maintain the Adequate Assurance Account in an amount that consistently provides the Utilities that do not otherwise hold deposits or other security with a half-month’s deposit on account of such services.

32. The Debtors submit that the Adequate Assurance Deposit taken together with the facts and circumstances of the Debtors’ chapter 11 cases, (together, the “Proposed Adequate

Assurance”) constitutes sufficient adequate assurance to the Utilities. These protections ensure that all Utilities will have adequate assurance of payment throughout these cases, and the Debtors believe that no other or further assurance is necessary. However, if any Utility believes additional adequate assurance beyond that described herein is required, it must request such assurance pursuant to the procedures set forth below.

C. The Proposed Procedures

33. The Debtors request entry of an order approving and adopting the following procedures for resolving requests by any Utility seeking additional adequate assurance from the Debtors:

- (a) The Debtors will serve a copy of Utilities Motion, together with the proposed Interim Order and Final Order, which includes these proposed procedures, on each Utility within three (3) business days after entry of the Interim Order by the Court.¹³
- (b) If a Utility is not satisfied with the Adequate Assurance Deposit provided by the Debtors and seeks additional adequate assurance in the form of an additional deposit or other security, the Utility shall serve such a request in writing (the “Request”) so that it is received by the Debtors and other parties of interest at the following addresses: (i) Blackjewel, L.L.C., 1051 Main Street, Milton, West Virginia 25541, Attn: David J. Beckman; (ii) proposed counsel to the Debtors, Squire Patton Boggs (US) LLP, 201 E. Fourth Street, Suite 1900, Cincinnati, Ohio 45202, Attn: Stephen D. Lerner (stephen.lerner@squirepb.com); (iii) proposed co-counsel to the Debtors, Supple Law Office PLLC, 801 Viand Street, Point Pleasant, West Virginia 25550, Attn: Joe Supple (supplelawoffice@yahoo.com); (iv) counsel to Riverstone Credit Partners – Direct, L.P., Bailey & Glasser LLP, 209 Capitol Street, Charleston, West Virginia 25301, Attn: Kevin W. Barrett (kbarrett@baileyglasser.com); (v) counsel to United Bank, Inc., Steptoe & Johnson PLLC, P.O. Box 1588, Charleston, West Virginia 25326-1588, Attn: Joseph G. Bunn (joseph.bunn@steptoe-johnson.com); (vi) proposed counsel to the Creditors’ Committee, Whiteford Taylor & Preston, LLP, 10 S. Jefferson Street, Suite 1110, Roanoke, Virginia 24011, Attn: Brandy M.

¹³ In addition, the Debtors seek authority, without further order of the Court, to supplement the list of Utilities on Exhibit C to the Utilities Motion if any Utility has been omitted or subsequently removed. If the Debtors supplement the list subsequent to the filing of the Utilities Motion, the Debtors will serve a copy of the Utilities Motion and the proposed Final Order on any Utility that is added to the list by such supplement.

Rapp (brapp@wtplaw.com); and (vii) the Office of the U.S. Trustee for the Southern District of West Virginia, 2025 United States Courthouse, 300 Virginia Street, East, Charleston, West Virginia 25301, Attn: David L. Bissett (David.L.Bissett@usdoj.gov), within thirty (30) days of the date of service of the Interim Order upon such Utility.

- (c) The Request shall: (i) be in writing; (ii) set forth the location(s) for which Utility Services are provided; (iii) provide the associated account number(s); (iv) include a summary of the Debtors' payment history relevant to the affected account, including any security deposits; (v) explain the reasons why the Utility believes that the Proposed Adequate Assurance is not sufficient to assure future payment; and (vi) the amount and nature of any assurance of future payment that would be satisfactory to the Utility.
- (d) Without further order of the Court, the Debtors may enter into an agreement granting additional adequate assurance to any Utility who served a Request upon the Debtors, if the Debtors, in their sole discretion, determine that the Request is reasonable.
- (e) If a consensual resolution of the Request is not reached within thirty (30) days after service of the Request upon the Debtors and their counsel, the Debtors shall request a hearing before this Court for determination of adequate assurance of payment pursuant to section 366(c)(3) of the Bankruptcy Code (the "Determination Hearing") with respect to such Utility and the Determination Hearing shall be scheduled for a hearing date established by the Court. Such hearing will be without prejudice to the right of any Utility to seek relief separately under section 366(c)(3) of the Bankruptcy Code.
- (f) Pending resolution of such dispute at the Determination Hearing or any time after a Request is submitted, the relevant Utility (i) shall be restrained from altering, refusing, discontinuing or interfering with service to the Debtors on account of any unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance, and (ii) shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code in the form of the Adequate Assurance Deposit furnished by the Debtors until and unless the Court enters a final order finding otherwise.

34. Any Utility that does not timely file and serve a Request shall be deemed to have received adequate assurance under section 366 of the Bankruptcy Code in the form of the portion of the Adequate Assurance Deposit equal to the applicable percentage of the average monthly bill for such Utility prior to the Petition Date.

D. Modifications to the Utility List

35. To the extent the Debtors identify new Utilities or discontinue services from existing Utilities, the Debtors seek authority to add or remove parties from the list of Utilities in Exhibit C to the Utility Motion without further order from the Court. For any Utility that is subsequently added to the list, the Debtors will serve such Utility a copy of the Court's order regarding Utility Services, including the adequate assurance procedures. The Debtors request that the terms of that order and the adequate assurance procedures apply to any subsequently identified Utility.

36. As set forth in detail in the Utilities Motion, I believe that the relief requested by the Debtors is reasonable and appropriate under the circumstances and in the best interests of their estates, creditors and other stakeholders.

V. DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO EMPLOY AND RETAIN SQUIRE PATTON BOGGS (US) LLP AS THEIR BANKRUPTCY COUNSEL EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE (THE "SQUIRE RETENTION APPLICATION")

37. By the Squire Retention Application, the Debtors seek entry an order (a) authorizing the Debtors to retain and employ Squire Patton Boggs (US) LLP ("Squire") as their counsel in these cases in accordance with the Engagement Letter, and (b) granting related relief. The Squire Retention Application is also supported by the *Declaration of Stephen D. Lerner in Support of Debtors' Application for Entry of an Order Authorizing the Debtors to Employ and Retain Squire Patton Boggs (US) LLP as Their Bankruptcy Counsel Effective Nunc Pro Tunc to the Petition Date* (the "Lerner Declaration").

A. Squire's Qualifications

38. Squire is well-qualified to serve as the Debtors' primary legal counsel in these cases. With 47 offices in 20 countries, Squire has broad-based practice groups with expertise in

virtually all areas of law that may be significant in these cases, including, bankruptcy and restructuring, transactional, regulatory, environmental, securities, tax, and mergers and acquisitions. Squire and, in particular, its expertise in bankruptcy, restructuring and insolvency matters, has consistently been recognized and ranked as being among the best nationally and internationally by a number of organizations within the legal and restructuring industries, and the partner leading this engagement for Squire, Stephen Lerner, is a Fellow in the American College of Bankruptcy. *Lerner Declaration* at ¶ 10.

39. Indeed, Squire has represented debtors, committees and other significant parties in numerous major chapter 9, 11, and 15 cases, including, but not limited to: *In re Midway Gold US Inc.* (representing the debtors); *In re Atna Resources Inc.* (representing the debtors); *In re LBI Media, Inc.* (representing the committee); *In re Santa Fe Gold Corporation* (representing the committee); *In re Veris Gold Corp.* (U.S. counsel for chapter 15 debtors); *In re the City of Detroit* (representing a Court-appointed expert on feasibility); *In re Flat Out Crazy, LLC* (representing the debtors); *In re AmFin Financial Corp.* (representing the debtors); *In re EnviroSolutions of New York, LLC* (representing the committee); *In re The Austin Company* (representing the debtor), *In re EaglePicher Holdings, Inc.* (representing the debtors); *In re Enron Corp.* (representing the committee); *In re WorldCom Inc.* (representing the debtors); *In re Mercedes Homes* (representing the debtors); *In re Eurofresh* (representing the debtors); *In re TECO-PANDA Generating Company, L.P.* (representing the debtor); *In re AMERCO* (representing the debtor); *In re WCI Steel, Inc.* (representing the debtor); *In re Drug Emporium, Inc.* (representing the debtor); *In re American Architectural Products Corp.* (representing the debtor). *Lerner Declaration* at ¶ 11.

40. Squire has also gained familiarity with the Debtors' businesses, capital structure, and financial affairs. The Debtors engaged Squire to help plan and implement their restructuring

and to serve as general restructuring counsel in connection with these cases. As such, Squire has the necessary background to deal effectively with the full range of potential legal issues and problems that may arise in the context of these cases. *Lerner Declaration* at ¶ 12.

B. Services to be Provided

41. Employment of Squire as the Debtors' restructuring counsel is appropriate and necessary to enable the Debtors to execute faithfully their duties as debtors and debtors in possession and to implement a successful restructuring of their business operations and financial affairs. In general, the Debtors anticipate that Squire will provide the following services:

- (a) advise the Debtors with respect to their powers and duties as debtors in possession in the continued management and operation of their businesses and property;
- (b) attend meetings and negotiate with representatives of creditors and other parties in interest and advise and consult on the conduct of the cases, including all of the legal and administrative requirements of operating in chapter 11;
- (c) assist the Debtors with the preparation of their Schedules of Assets and Liabilities and Statements of Financial Affairs;
- (d) advise the Debtors in connection with any contemplated sales of assets or business combinations, including negotiating agreements, formulating and implementing appropriate bidding, auction and other procedures with respect to the closing of any such transactions, conducting an auction and obtaining necessary court approvals in connection with such transactions, and otherwise counseling the Debtors in connection with such transactions;
- (e) advise the Debtors in connection with any necessary cash collateral and post-petition financing arrangements and negotiate and draft documents relating thereto;
- (f) advise the Debtors on matters relating to the evaluation of the assumption, rejection or assignment of unexpired leases and executory contracts;
- (g) advise the Debtors with respect to legal issues arising in or relating to the Debtors' ordinary course of business, including attending senior management meetings, and meetings of the board of directors;
- (h) take all necessary action to protect and preserve the Debtors' estates, including the prosecution of actions on their behalf, the defense of actions commenced against them, negotiations concerning all litigation in which the Debtors are

involved and evaluating and objecting (when appropriate) to claims filed against the Debtors' estates;

- (i) prepare, on the Debtors' behalf, all motions, applications, answers, orders, reports and papers necessary to the administration of the estates;
- (j) negotiate and prepare, on the Debtors' behalf, a plan or plans of reorganization, disclosure statement and all related agreements and/or documents and taking any necessary action on behalf of the Debtors to obtain confirmation of such plan or plans;
- (k) attend meetings with third parties and participating in negotiations with respect to the above matters;
- (l) appear before this Court, any appellate courts and protect the interests of the Debtors' estates before such courts;
- (m) assist and represent the interests of the Debtors with respect to all matters involving the Office of the United States Trustee; and
- (n) perform all other necessary legal services and provide all other necessary legal advice to the Debtors in connection with the cases and/or performing their duties as debtors and debtors in possession, including but not limited to real estate, financial services, regulatory, environmental, labor, pension/employee benefits, tax, corporate and intellectual property matters.

Lerner Declaration at ¶ 13.

42. It is necessary and essential that the Debtors employ Squire as their counsel to render the foregoing professional services. Squire has indicated a willingness to act on behalf of, and render such services to, the Debtors. *Lerner Declaration* at ¶ 14.

C. Professional Compensation

43. The proposed terms for Squire's compensation are set forth in the Engagement Letter. A summary of those terms follows. To the extent there is any inconsistency between the summary below and the actual terms set forth in the Engagement Letter, the Engagement Letter shall govern.

44. Pursuant to the Engagement Letter, the Debtors were required to provide an advance payment retainer (the "Retainer") to Squire to secure the payment and/or reimbursement

of Squire's fees and expenses and any disbursements made on behalf of the Debtors. In total, Squire received \$250,000 on June 28, 2019 (prior to the Petition Date) to be held as its Retainer.¹⁴ Squire intends to apply \$239,258.50 of the Retainer to its invoice for fees incurred prior to the petition date and will hold the remaining balance as a retainer, to be applied by Squire going forward as provided for below and subject to any orders of the Court.¹⁵ *Lerner Declaration* at ¶ 16.

45. Squire reserves the right to apply the Retainer to any other prepetition fees, expenses, or disbursements that may have accrued prior to the Petition Date but were not discovered or otherwise accounted for until after the Petition Date. Squire will retain all remaining amounts of the Retainer in trust during the pendency of these cases to be applied to any professional fees, expenses, and disbursements that remain unpaid during these cases. *Lerner Declaration* at ¶ 17.

46. For professional services, Squire's fees are based primarily on its customary hourly rates, which are periodically adjusted in accordance with Squire's policy, as determined by the billing rate for each person devoting time to this matter. Inside the United States, Squire's hourly rates for associates, partners and non-attorney personnel currently range from \$210 for new associates to \$1,360 or higher for its most senior partners and from \$80 for new legal assistants to \$465 for experienced senior paralegals, with most non-attorney billing rates falling within the range of \$80 to \$310 per hour. Specific rates for the Squire attorneys expected to advise the Debtors is set forth in the Squire Retention Application.

¹⁴ An advance payment retainer is paid in exchange for the commitment to provide legal services in the future. Ownership passes to the lawyer immediately upon payment and is deposited in the lawyer's trust account.

¹⁵ Squire has incurred certain expenses prior to the Petition Date which, under the circumstances, were not able to be included in the amounts to which the Retainer was applied. These expenses will be included in Squire's first monthly invoice postpetition.

47. The Debtors respectfully submit that their fee arrangements with Squire, as set forth above, are similar to fee arrangements that have been authorized in other chapter 11 cases in which Squire has rendered services and are reasonable in light of industry practice, market rates both in and out of chapter 11 proceedings, Squire's experience in reorganizations, and the scope of the work to be performed pursuant to its retention. The Debtors believe that, given the nature of the services to be provided, the fee structure is both fair and reasonable.

D. Squire's Disinterestedness

48. To the best of the Debtors' knowledge, Squire does not hold or represent any interests adverse to the estate and qualifies as a disinterested person. The Lerner Declaration discloses Squire's connections to the Debtors and parties in interest in these cases and is incorporated herein by reference. In reliance on the Lerner Declaration, and except as set forth therein, the Debtors believe that Squire does not hold or represent an interest adverse to the Debtors' estates and is a "disinterested person," as that term is defined in Bankruptcy Code § 101(14) as modified by Bankruptcy Code § 1107(b), with respect to the matters for which it is to be retained. To the best of the Debtors' knowledge, information, and belief, based on the Lerner Declaration, the partners, counsel, and associates of Squire do not have any connection, other than as set forth in the Lerner Declaration, with the Debtors or their affiliates, creditors or estates, or with any United States District Judge or United States Bankruptcy Judge for the Southern District of West Virginia, the United States Trustee or any person employed in the office of the United States Trustee for Region 4 in West Virginia, or any other party in interest, or their respective attorneys and accountants. *Lerner Declaration* at ¶¶ 23-24.

49. The Debtors have been advised that the disclosures made by Squire in the Lerner Declaration satisfy the requirements of Bankruptcy Rule 2014 and that, in the event any direct

adversity arises between the Debtors and a current client of Squire, the Debtors' co-counsel will represent the Debtors solely in that matter. By separate application, the Debtors seek to retain Joe M. Supple of Supple Law Office, PLLC as their bankruptcy co-counsel. *Lerner Declaration* at ¶ 32.

50. As set forth in the Squire Retention Application, I believe that Squire is both well-qualified and uniquely able to represent the Debtors effectively and efficiently in these cases. The resources, capabilities, and experience of Squire in advising the Debtors are crucial to the Debtors' successful restructuring. As such, I believe that the retention of Squire is in the best interest of the Debtors and their estates, creditors, and stakeholders.

VI. DEBTORS' APPLICATION FOR ORDER AUTHORIZING DEBTORS TO RETAIN AND EMPLOY SUPPLE LAW OFFICE PLLC AS CO-COUNSEL ("SUPPLE RETENTION APPLICATION")

51. By the Supple Retention Application, the Debtors request entry of an order authorizing the employment and retention of Supple Law Office PLLC ("Supple") as co-counsel to the Debtors.

52. Supple has over 16 years of experience in representing Chapter 11 debtors, is licensed to practice law in the State of West Virginia and is admitted to practice before this Court.

53. The Debtors have selected Supple due to his experience in matters of this kind and believe that he is well-qualified to represent the Debtors in this Court.

54. The professional services to be rendered include:

- a. To provide legal advice to the Debtors in the matters arising in the administration of the Chapter 11 proceedings.
- b. To appear before the Court in all matters arising in the bankruptcy case to present and protect the interests of the Debtors; and advancing or responding to motions, applications, claims, objections or the like as required to advance the asset sale and administration of the bankruptcy estate.

- c. Such other matters as properly require the services of counsel in connection with this case and in the best interest of the noted parties-in-interest.

55. The Debtors have also applied for authority to employ Stephen D. Lerner and the law firm Squire Patton Boggs (US) LLP as co-counsel in these cases.

56. Stephen D. Lerner and the attorneys of Squire Patton Boggs will serve as lead counsel. Both co-counsel will coordinate to avoid unnecessary duplication of legal services. As set forth in the Affidavit of Supple, attached to the Supple Retention Application and to the best of the Debtors' knowledge, Supple does not represent or hold any interest adverse to the Debtors or the Debtors' estates. Supple is a "disinterested person" within the meaning of § 101(14) of the United States Bankruptcy Code.

57. The terms of employment of Supple are that Joe M. Supple shall be compensated for his services at a rate of \$300.00 per hour, paralegals at \$100.00 per hour, plus expenses incurred. Supple will make applications for interim and final compensation in accordance with local rules and any administrative orders entered by the Court in these cases.

58. On June 28, 2019, Supple received a retainer of \$25,000.00 paid by the Debtors that was deposited in trust and which is to be applied against services and expenses as approved by the Court.

59. I believe that an order approving the employment of Supple as co-counsel in the consolidated cases is reasonable and appropriate under the circumstances because of Supple's considerable experience in bankruptcy and strong qualifications to perform the work required to represent the Debtors.

VII. DEBTORS' APPLICATION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO (A) RETAIN FTI CONSULTING, INC. TO PROVIDE THE DEBTORS (1) A CHIEF RESTRUCTURING OFFICER AND INTERIM CHIEF EXECUTIVE OFFICER AND (2) CERTAIN ADDITIONAL PERSONNEL AND (B) DESIGNATE DAVID BECKMAN AS CHIEF RESTRUCTURING OFFICERS

AND INTERIM CHIEF EXECUTIVE OFFICER FOR THE DEBTORS, NUNC PRO TUNC TO THE PETITION DATE, AND (II) GRANTING RELATED RELIEF (THE “FTI RETENTION APPLICATION”)

60. By the FTI Retention Application, the Debtors request entry of an order (a) authorizing the Debtors to (i) retain FTI to provide the Debtors with the Engagement Personnel, including a CRO and CEO and (ii) designate David Beckman as the Debtors’ CRO, effective *nunc pro tunc* to the Petition Date and CEO *nunc pro tunc* to July 3, 2019, on the terms set forth in the Engagement Letter and in the FTI Retention Application, and (b) granting related relief.

A. Retention of FTI

61. In consideration of the size and complexity of their businesses, as well as the exigencies of the current circumstances facing their business, the Debtors have determined that the services of experienced restructuring managers will substantially enhance their attempts to maximize the value of their estates. The Engagement Personnel and the CRO/CEO are well qualified to act on the Debtors’ behalf given their extensive knowledge and expertise with the Debtors’ industry and business.

62. The Engagement Personnel specialize in interim management, turnaround consulting, operational due diligence, creditor advisory services, and financial and operational restructuring. FTI’s debtor advisory services have included a wide range of activities targeted at stabilizing and improving a company’s financial position, including: (a) developing or validating forecasts and business plans and related assessments of a business’s strategic position; (b) monitoring and managing cash, cash flow, and vendor relationships; (c) assessing and recommending cost reduction strategies; and (d) designing and negotiating financial restructuring plans.

63. FTI's professionals have assisted, advised and provided strategic advice to, debtors, creditors, bondholders, investors and other entities in numerous chapter 11 cases similar in size and complexity to the Debtors' chapter 11 cases. FTI has provided restructuring or crisis management services in numerous large cases, including most recently, *In re Goodman Networks Inc.*, No. 17-31575 (MI) (Bankr. S.D. Tex. Apr. 20, 2017); *In re CS Mining LLC*, No. 16-24818 (WTT) (Bankr. D. Utah Aug. 24, 2016); *In re Ryckman Creek Resources, LLC*, No. 16-10292 (KJC) (Bankr. D. Del. Feb. 9, 2016); *In re Molycorp Inc.*, No. 15-11362 (CJS) (Bankr. D. Del. July 17, 2015); *In re Magnetation LLC*, No. 15-50307 (GFK) (Bankr. D. Minn. June 10, 2015); *In re Altegrity, Inc.*, No. 15-10226 (LSS) (Bankr. D. Del. March 16, 2015); *In re Energy Future Holdings Corp.*, No. 14-10979 (CJS) (Bankr. D. Del. Jan. 12, 2015). The Debtors propose to designate David Beckman as their CRO, *nunc pro tunc* to the Petition Date and CEO *nunc pro tunc* to July 3, 2019.

64. Mr. Beckman is a Senior Managing Director with FTI based in Denver, Colorado. He has worked as a turnaround consultant and financial advisor for over thirty (30) years, and has extensive experience in the mining industry, specifically with coal companies. Mr. Beckman has substantial knowledge and experience in senior management positions with, or as restructuring advisor to, distressed companies and in assisting distressed companies with stabilizing their financial condition, analyzing their operations, and developing an appropriate business plan to accomplish the necessary restructuring of their operations and finances. FTI has provided financial or restructuring advice to a number of companies or their creditors in the energy and mining sectors, including Peabody Energy Corporation and Arch Coal, Inc.—two of the largest U.S. coal companies— Cloud Peak Energy, American Gilsonite Company, CS Mining, LLC (where FTI provided the CRO), Patriot Coal Corporation, Midway Gold Corporation (where FTI provided the

CRO), Magnetation, Inc. (where FTI provided the CRO), Mineral Park, Inc. (where FTI provided the CRO), and Thompson Creek Metals Company, Inc. In addition, Mr. Beckman has served as chief financial officer of 21st Century Oncology, chief restructuring officer of CS Mining, and Mineral Park, and lead financial advisor or financial advisor to, among others, Peabody Energy Corporation, and Patriot Coal Corporation.

65. On June 27, 2019, FTI and Blackjewel L.L.C. entered into the Engagement Letter attached to the FTI Retention Application as Exhibit B. The Engagement Letter sets forth the services that the CRO and the Engagement Personnel will provide to the Debtors. In addition, the Engagement Letter provides for the compensation of FTI (i) on a monthly fixed fee basis for the CRO and (ii) on an hourly basis for the Engagement Personnel, all as more fully set forth in the Engagement Letter. In addition to serving as CRO, Mr. Beckman will serve as CEO to replace Mr. Jeffrey Hoops, the former chief executive officer who resigned all his positions as officer and director of the Debtors on July 3, 2019. FTI is not seeking, and will not receive, any additional compensation by virtue of Mr. Beckman serving as both CRO and CEO.

66. FTI is intimately familiar with the Debtors' businesses, financial affairs, and capital structure. Since FTI's engagement, Mr. Beckman and the Engagement Personnel have devoted substantial amounts of time and effort working with members of the Debtors' senior management and legal advisors to, among other things, assist in the development of near-term projections and short-term cash management activities, review strategic alternatives, and coordinate the Debtors' efforts to prepare for and operate in their chapter 11 cases. For these reasons, FTI is both well qualified and uniquely suited to deal effectively and efficiently with matters that may arise in the context of these chapter 11 cases. Accordingly, the Debtors submit that the retention of FTI and the designation of Mr. Beckman as CRO and CEO on the terms and conditions set forth in the

Engagement Letter and in the FTI Retention Application are necessary and appropriate, are in the best interest of the Debtors' estates, creditors, and all other parties in interest, and should be granted in all respects.

B. Services to be Provided

67. Subject to approval by the Court, the Debtors propose to retain FTI to provide the Debtors with a CRO and CEO and the additional Engagement Personnel as necessary on the terms and conditions set forth in the Engagement Letter and the FTI Retention Application, except as otherwise explicitly set forth herein or in any order granting the relief requested in the FTI Retention Application. The Engagement Personnel will provide assistance to the Debtors in completing their restructuring through these chapter 11 cases, including cash forecasting, liquidity management, assistance in addressing business issues that arise during the pendency of these chapter 11 cases, the development of information for the Debtors and parties in interest, bankruptcy administration, preparation of monthly operating reports and motions, and testimony, as may be required, and other assistance intended to support the Debtors and their other retained professionals. The Debtors will monitor the work of the Engagement Personnel and ensure that they do not provide duplicating services relative to other retained professionals. In addition, as CEO, Mr. Beckman will serve as the Debtor's interim chief executive officer with full authority and responsibility to manage the business and affairs of the Debtors during the chapter 11 cases. Mr. Beckman will report to the Board of Directors (the "Board") of Blackjewel, L.L.C., a Debtor in these cases.

68. Subject to further order of the Court, the Engagement Personnel may provide the services described in the Engagement Letter as FTI and the Debtors shall deem appropriate and

feasible in order to manage and advise the Debtors during these chapter 11 cases (collectively the “Restructuring Advisory Services”), including but not limited to:

- (a) assisting with the preparation of the statement of affairs, schedules and other regular reports required by the Court;
- (b) assisting with Monthly Operating Reports and other court and U.S. Trustee requested or required information;
- (c) assisting with the additional cataloging of executory contracts and unexpired leases and advising the Debtors regarding decisions on assumptions and rejections and cure amounts;
- (d) advising senior management in the negotiation and implementation of restructuring initiatives and evaluation of strategic alternatives;
- (e) assisting in communication and/or negotiation with outside constituents including stakeholders, vendors and suppliers and other lenders and their advisors;
- (f) managing the claims and claims reconciliation processes;
- (g) providing required cash budgeting and reporting under the agreements and the terms of the cash collateral motion;
- (h) providing assistance to management in connection with the Debtors’ development of its rolling 13-week cash receipts and disbursements forecasting tool designed to provide on-time information related to the Debtors’ liquidity;
- (i) assisting in obtaining and presenting information required by parties-in-interest in the Debtors’ bankruptcy process including to the official committees appointed by the Court and the Court itself;
- (j) assisting the Debtors and outside counsel on the development of an approach to meet the requirements of Bankruptcy Rule 2015.3 for reporting on the value, operations and profitability of those entities in which the Debtors’ estate holds a substantial or controlling interest;
- (k) assisting the Debtors in other business and financial aspects of a Chapter 11 proceeding, including, but not limited to, development of a disclosure statement and chapter 11 plan;
- (l) assisting as requested in managing any litigation that may be brought against the Debtors in the Court;

- (m) providing assistance in such areas as testimony before the Court on matters that are within the scope of this engagement and within FTI's area of testimonial competencies; and
- (n) assisting with such other matters as may be requested that fall within FTI's expertise and that are mutually agreeable.

69. Such Restructuring Advisory Services are necessary to the Debtors' restructuring efforts and in the ongoing operation and management of the Debtors' businesses while subject to chapter 11 of the Bankruptcy Code. The Restructuring Advisory Services provided by FTI will complement, and not duplicate, the services to be rendered by other professional retained in these chapter 11 cases. The Engagement Personnel has and will continue to work closely with the other professionals retained by the Debtors to minimize and avoid duplication of services. In addition, on July 1, 2019, the Board approved the retention of Mr. Beckman as CRO and on July 3, 2019, the Board approved the appointment and retention of Mr. Beckman as the CEO. As CRO and CEO, Mr. Beckman will act under the direction, control, and supervision of the Board. Moreover, to the extent any additional FTI personnel other than those provided in the Engagement Letter are to assist the Debtors, such appointments, if any, will occur only if reasonably satisfactory to the Board after the Debtors are consulted about any modifications to the staffing plan.

C. FTI's Disinterestedness

16. To the best of the Debtors' knowledge, information and belief, and except to the extent disclosed herein and in the Beckman Declaration, attached to the FTI Retention Application as Exhibit C, FTI (a) is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, (b) has no connection with the Debtors, their creditors, or other parties in interest, or the attorneys or accountants of the foregoing, or the Office of the U.S. Trustee or any person employed in the Office of the U.S. Trustee, and (c) does not hold any interest adverse to the Debtors' estates.

17. Although the Debtors respectfully submit that the retention of FTI is not governed by section 327 of the Bankruptcy Code, the Beckman Declaration discloses, among other things, any relationship that FTI or Mr. Beckman have with the Debtors, their significant creditors, or other significant parties in interest known to FTI. Based upon the disclosures set forth in the Beckman Declaration, the Debtors submit that FTI is a “disinterested person” as that term is defined by section 101(14) of the Bankruptcy Code.

70. As set forth in the Beckman Declaration, to the extent that any new relevant facts or relationships bearing on the matters described herein during the period of FTI’s retention are discovered or arise, FTI will provide the Court with a supplemental declaration disclosing, among other things, new material facts and relationships between the Debtors, the Engagement Personnel, or other significant parties in interest.

D. Terms of Retention

71. As set forth in the Engagement Letter and the FTI Retention Application, the Debtors have agreed to, among other things: (a) compensate and reimburse FTI for expenses incurred and services provided by the Engagement Personnel; and (b) indemnify those persons serving as executive officers on the same terms as provided to the Debtors’ other officers and directors under the Debtors’ corporate bylaws and provide such persons insurance coverage under the Debtors’ director and officer liability insurance policy as further described below.

Professional Compensation and Expense Reimbursement

72. In summary, the Engagement Letter provides for the following compensation:

- **Monthly Fee:** For services rendered in connection with this assignment, the Debtors agree to pay FTI a monthly, non-refundable advisory fee of \$150,000 for the services of David Beckman. The monthly fee provided for David Beckman is a discounted fee that is less than the fees that the Debtors would incur if FTI were to bill for Mr. Beckman’s work on an hourly basis. All such payments are considered to be earned upon payment.

- **Standard Hourly Rates:** For services rendered by the Engagement Personnel, fees will be billed at their current hourly rate. Fees may be billed as frequently as weekly and will be billed not less frequently than monthly. The normal hourly billing rates for the professionals with the skills and expertise needed for engagements of this kind, which are subject to periodic revision, are as follows:

Senior Managing Directors	\$895 - \$1195
Directors/Senior Directors/Managing Directors	\$670 - \$880
Consultants/Senior Consultants	\$335 - \$640
Administrative/Paraprofessionals	\$145 - \$275
- **Completion Fee:** If the Debtors succeed in obtaining: (a) a consensual restructuring, compromise and/or extinguishment of a substantial amount of their existing indebtedness or (b) a final judicial order approving a plan of reorganization under Chapter 11 or (c) a sale of substantially all of the Debtors' assets under Section 363 of the Bankruptcy Code, then, upon the consummation of such restructuring or sale, the Debtors will pay FTI a Completion Fee in the amount of \$500,000.
- **Reimbursement of Expenses:** In addition to compensation for professional services rendered by the Engagement Personnel, FTI will seek reimbursement for reasonable and customary expenses incurred in connection with these chapter 11 cases, including, but not limited to, travel, lodging, computer research, and messenger and telephone charges. In addition, FTI shall be reimbursed for the reasonable fees and expenses incurred in connection with the preparation and approval of the FTI Retention Application. All fees and expenses due to FTI will be billed on a monthly basis, or more frequently as agreed to between FTI and the Debtors, as further set forth in the Engagement Letter, but in all events subject to the order approving the FTI Retention Application.

Indemnification Provisions

73. As a material part of the consideration for which FTI has agreed to provide the services described herein, and pursuant to the Engagement Letter, including the indemnification provisions attached thereto and incorporated by reference herein (the "Indemnification Provisions"), the Debtors have agreed to: (a) indemnify the Engagement Personnel serving as directors or officers of the Debtors to the same extent as the most favorable indemnification and advancement provisions provided by the Debtors to their directors, officers and any equivalently placed employees, whether under the Debtors' by-laws, by contract or otherwise; and

(b) indemnify and hold harmless FTI and any of its subsidiaries and affiliates, officers, directors, principals, shareholders, agents, independent contractors and employees (collectively, the “Indemnified Persons”) under certain circumstances.¹⁶ The rights to indemnification shall survive the termination of these chapter 11 cases or any cases into which they may be converted.

74. Accepting the Indemnification Provisions was a condition to FTI’s engagement, the terms and provisions of which were, along with all other terms of the Engagement Letter, negotiated by the Debtors and FTI at arm’s-length and in good faith. FTI and the Debtors believe that the Indemnification Provisions are comparable to those indemnification provisions generally obtained by crisis management firms of similar stature to FTI and for comparable engagements, both in- and out-of-court. The Debtors respectfully submit that the Indemnification Provisions, viewed in conjunction with the other terms of FTI’s proposed retention, are reasonable and in the best interests of the Debtors’ estates and creditors, in light of the fact that the Debtors require FTI’s services to successfully manage the Debtors’ businesses during the pendency of the chapter 11 cases.

E. Fees and Reporting

75. If the Court approves the relief requested herein, FTI will be retained to provide the Debtors with the Engagement Personnel and Mr. Beckman will be designated as the CRO and CEO pursuant to section 363 of the Bankruptcy Code. Because FTI is not being employed as a

¹⁶ The Indemnification Provisions generally provide that the Debtors will indemnify and hold harmless the Indemnified Parties from and against any claims, liabilities, damages, obligations, costs and expenses (including reasonable attorneys’ fees and expenses and costs of investigation), arising out of or relating to the Debtors’ retention of FTI, the execution and delivery of the Engagement Letter, and the provision of services or other matters relating to or arising from the Engagement Letter. Notwithstanding the terms of the Indemnification Provisions, the Debtors and FTI have agreed, subject to the Court’s approval of the FTI Retention Application, that in no event shall an Indemnified Party be indemnified or receive contribution or other payment under the Indemnification Provisions if the Debtors, their estates, or the statutory committee of unsecured creditors appointed in these chapter 11 cases assert a claim against an Indemnified Party and the Court determines by final order that such claim arose out of the gross negligence or willful misconduct on the part of that or any other Indemnified Persons.

professional under section 327 of the Bankruptcy Code, FTI will not be required to submit fee applications pursuant to sections 330 and 331 of the Bankruptcy Code. Instead, FTI will file with the Court, and provide notice to the U.S. Trustee, the Creditors' Committee, counsel to Riverstone Credit Partners – Direct, L.P., Bailey & Glasser LLP, and counsel to United Bank, Inc., Steptoe & Johnson PLLC (collectively, the “Notice Parties”), reports of compensation earned and expenses incurred on at least a quarterly basis. Such compensation and expenses shall be subject to Court review in the event that an objection is filed. In addition, FTI will file with the Court and provide the Notice Parties a report on staffing (the “Staffing Report”) by the 20th of each month for the previous month, and the report will include the names and tasks filled by all Engagement Personnel involved in this matter. The Staffing Report (and FTI’s staffing for this matter) will be subject to review by the Court in the event so requested by any of the Notice Parties.

76. As set forth in the Engagement Letter, FTI received \$200,000 as a retainer from the Debtors (the “Retainer”). The Retainer is to be replenished on a monthly basis going forward and the Debtors agreed to increase or supplement the Retainer from time to time during the course of the chapter 11 cases in such amounts as the Debtors and FTI mutually agree are reasonably necessary to increase the Retainer to a level that will be sufficient to fund FTI’s fees, charges, and disbursements to be incurred. FTI has applied the Retainer to amounts due for services rendered and expenses incurred prior to the Petition Date, which exhausted the Retainer. To the extent that FTI was owed any outstanding fees and expenses in excess of the balance of the Retainer as of the Petition Date, FTI will write-off such amounts. Certain expenses and fees may have been incurred by FTI prior to the Petition Date, but not yet applied to the Retainers. Moreover, the Debtors are not aware of any asserted or threatened disputes against FTI or the Engagement Personnel on account of their services provided before the Petition Date. To the extent the Retainer exceeds

FTI's fees, charges and disbursements upon the completion of the chapter 11 cases, FTI will refund any unused portion to the Debtors.

77. Given the numerous issues which the Engagement Personnel may be required to address in the performance of their services, FTI's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for such services in an in-court and out-of-court context, the Debtors submit that the fee arrangements set forth in the FTI Retention Application and in the Engagement Letter are reasonable.

78. Given the numerous issues which the Engagement Personnel may be required to address in the performance of their services, FTI's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for such services in an in-court and out-of-court context, the fee arrangements set forth in the Application and in the Engagement Letter are reasonable.

VIII. DEBTORS' APPLICATION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE RETENTION AND EMPLOYMENT OF JEFFERIES LLC AS INVESTMENT BANKER FOR THE DEBTORS AND DEBTORS IN POSSESSION PURSUANT TO 11 U.S.C. §§ 327(A) AND 328(A), *NUNC PRO TUNC* TO THE PETITION DATE, (II) WAIVING CERTAIN TIME-KEEPING REQUIREMENTS, AND (III) GRANTING RELATED RELIEF (THE "JEFFERIES RETENTION APPLICATION")

79. By the Jefferies Retention Application, the Debtors request entry of an order (a) authorizing the retention and employment of Jefferies LLC as investment banker for the Debtors *nunc pro tunc* to the Petition Date, (b) waiving certain time-keeping requirements, and (c) granting related relief.

A. Jefferies' Qualifications and the Need for Jefferies' Services

80. The Debtors submit the Jefferies Retention Application because of their need to retain a qualified investment banker to assist them in the critical tasks associated with guiding the

Debtors through these chapter 11 cases. The Debtors believe that their retention of an investment banker is necessary and appropriate to enable them to evaluate the financial and economic issues raised by the Debtors' chapter 11 proceedings, obtain debtor in possession financing, successfully consummate a restructuring and to fulfill their statutory duties.

81. The Debtors selected Jefferies as their investment banker in these cases based upon Jefferies' extensive experience in matters involving complex financial restructurings and Jefferies' excellent reputation for the services that it has rendered in chapter 11 cases on behalf of debtors and creditor constituencies throughout the United States.

82. As set forth in the White Declaration, Jefferies is a full-service investment banking firm, with approximately 3,900 employees in more than 30 offices around the world. Jefferies and its senior professionals have extensive expertise providing investment banking services to financially distressed companies, creditors, committees, equity holders, asset purchasers and other constituencies in reorganization proceedings and complex financial restructurings, both in and out of court. Jefferies and its professionals are providing or have provided investment banking, financial advisory, and other services in connection with the following recent cases, including seven recently-filed chapter 11 bankruptcies by coal companies: *In re Cloud Peak Energy Inc.*, No. 19-11047 (KG) (Bankr. D. Del. July 9, 2019); *In re Westmoreland Coal Company*, No. 18-3562 (DRJ) (Bankr. S.D. Tex. Dec. 16, 2018); *In re Mission Coal Company, LLC*, No. 18-04177 (TOM) (Bankr. N.D. Ala. Oct. 14, 2018); *In re Peabody Energy Corp.*, No. 16-42529 (Bankr. E.D. Mo. June 17, 2016); *In re Arch Coal, Inc.*, No. 16-40120, (Bankr. E.D. Mo. Mar. 21, 2016); *In re Alpha Natural Resources, Inc.*, No. 15-33896 (KPH) (Bankr. E.D. Va. Oct. 16, 2015); *In re Patriot Coal Corporation*, No. 15-32450 (KLP) (Bankr. E.D. Va. July 9, 2015); *In re MPM Silicones, LLC*, No. 14-22503 (RDD) (Bankr. S.D.N.Y. June 10, 2014); *In re Brookstone Holdings Corp.*,

No. 14-10752 (BLS) (Bankr. D. Del. Apr. 23, 2014); *In re Event Rentals, Inc.*, No. 14-10282 (PJW) (Bankr. D. Del. Mar. 14, 2014); *In re Velti Inc.*, No. 13-12878 (PJW) (Bankr. D. Del. Dec. 2, 2013); *In re Excel Maritime Carriers Ltd.*, Case No. 13-23030 (Bankr. S.D.N.Y. July 1, 2013) (RDD); *In re OnCure Holdings, Inc.*, No. 13-11540 (KG) (Bankr. D. Del. June 14, 2013); *In re GMX Res. Inc.*, No. 13-11456 (SAH) (Bankr. W.D. Okla. May 17, 2013); *In re K-V Discovery Solutions, Inc.*, No. 12-13346 (ALG) (Bankr. S.D.N.Y. Oct. 10, 2012); *In re ATP Oil & Gas Corp.*, No. 12-36187 (MI) (Bankr. S.D. Tex. Oct. 4, 2012); *In re Eastman Kodak Co.*, No. 12-10202 (ALG) (Bankr. S.D.N.Y. Apr. 19, 2012); *In re Borders Grp., Inc.*, No. 11-10614 (MG) (Bankr. S.D.N.Y. Feb. 16, 2011); and *In re MSR Golf Resort LLC*, No. 11-10372 (SHL) (Bankr. S.D.N.Y. Feb. 1, 2011). The Debtors thus believe that Jefferies is both well-qualified and uniquely able to advise the Debtors in these chapter 11 cases in an efficient and timely manner.

B. Scope of Services

83. Subject to the Court's approval, the Debtors anticipate that Jefferies will perform the following investment banking services, among others, pursuant to the Engagement Letter, as mutually agreed upon by Jefferies and the Debtors and as appropriate:¹⁷

- (a) becoming familiar with, to the extent Jefferies deems appropriate, and analyzing the business, operations, assets, financial condition, and prospects of the Debtors;
- (b) advising the Debtors on the current state of the "restructuring market";
- (c) assisting and advising the Debtors in developing, examining, analyzing, and where appropriate implementing, any potential or proposed strategy for restructuring or adjusting the Debtors' outstanding indebtedness or overall capital structure, whether pursuant to a plan of reorganization under chapter 11 of the Bankruptcy Code, a liquidation, or otherwise, including the valuation of any securities that may be issued in connection therewith;

¹⁷ To the extent there is any inconsistency between this summary of the services set forth in the Engagement Letter and the terms of the Engagement Letter, the terms of the Engagement Letter shall control.

- (d) providing advice and assistance to the Debtors in connection with analyzing, structuring, negotiating and effecting (including providing valuation analyses and testimony in connection with any DIP financing, sale or plan, as appropriate), and acting as exclusive investment banker to the Debtors in connection with, any restructuring of the Debtors' outstanding indebtedness, however achieved, including, without limitation, through any offer by the Debtors with respect to outstanding Debtors indebtedness, a solicitation of votes, approvals, or consents giving effect thereto, the execution of any agreement giving effect thereto, an offer by any party to convert, exchange, or acquire any such indebtedness, and/or any similar balance sheet restructuring involving the Debtors (any of the foregoing, a "Restructuring");
- (e) advising and assisting in connection with a possible sale or other business transaction or series of transactions (including a sale of assets or equity under section 363 of the Bankruptcy Code and including any credit bid made pursuant to section 363(k) of the Bankruptcy Code) involving all or a material portion of the Debtors' or any affiliate's equity or assets, through any form of transaction, including, without limitation, merger, reverse merger, liquidation, stock purchase, asset purchase, recapitalization, reorganization, consolidation, amalgamation or other transaction (any of the foregoing, an "M&A Transaction"); and
- (f) advising and assisting in connection with the structuring, issuance, sale or placement (any or all of the foregoing, including a debtor-in possession financing an exit financing, the "Financing", and each of a Financing, a Restructuring and an M&A Transaction, individually and collectively, a "Transaction"), whether in one or more public or private transactions, of (i) debt securities of the Debtors ("Debt Securities"), (ii) preferred or common equity or equity-linked securities of the Debtors (collectively, "Equity Securities") and/or (iii) bank debt or a similar credit facility of the Debtors ("Bank Debt", and any or a combination of Bank Debt, Equity Securities and/or Debt Securities, "Instruments") during the term of the Engagement Letter.

84. The Debtors do not believe that the services to be rendered by Jefferies will be duplicative of the services performed by any other professional, and Jefferies will work together with the other professionals retained by the Debtors to minimize and avoid duplication of services.

C. Professional Compensation

85. As set forth more fully in the Engagement Letter, Jefferies and the Debtors have agreed on the following terms of compensation and expense reimbursement (the “Fee and Expense Structure”):¹⁸

- (a) **Monthly Fee.** A monthly fee (the “Monthly Fee”) equal to \$150,000.00 payable in advance on the 1st day of each month. Fifty percent (50%) of any Monthly Fees actually paid to and retained by Jefferies in excess of \$600,000.00 in the aggregate will be credited once against the payment of any Transaction Fee (as defined in the Engagement Letter) payable to Jefferies.
- (b) **Transaction Fee.** Upon the consummation of a Restructuring or M&A Transaction (as defined in the Engagement Letter), a fee (the “Transaction Fee”) equal to \$4,500,000.00. For the avoidance of doubt, the Transaction Fee shall only be paid once regardless of whether a Restructuring or M&A Transaction is consummated and a chapter 11 plan is later confirmed and becomes effective.¹⁹
- (c) **Minority Sale Transaction Fee.** If at any time during the Fee Period, whether in connection with the consummation of a Restructuring or otherwise, (1) the Debtors consummate any sale transaction not covered by the definition of M&A Transaction (a “Minority Sale”), or (2) the Debtors enter into an agreement in principle or definitive agreement to effect a Minority Sale, and at any time (including following the expiration of the Fee Period) such Minority Sale is consummated, the Debtors shall pay Jefferies a fee (a “Minority Sale Transaction Fee”) equal to 2.25% of the Aggregate Sale Consideration (as defined below). Such Minority Sale Transaction Fee shall be contingent upon the consummation of a Minority Sale and payable at the closing thereof.
- (d) **DIP Fee.** Upon the placement or purchase of any DIP financing, 1.0% of the aggregate principal amount of any additional borrowing availability provided by any DIP financing (specifically excluding any portion of any DIP financing provided by Jeffrey A. Hoops, Sr. (or his designee) or that represents a rollover of indebtedness existing at the time of filing a chapter 11 case under the Bankruptcy Code) (the “DIP Fee”).

¹⁸ To the extent there is any inconsistency between the summary of the Fee and Expense Structure set forth in the Jefferies Retention Application and the Fee and Expense Structure as set forth in the Engagement Letter, the terms of the Engagement Letter shall control.

¹⁹ The Engagement Letter also provides for a certain Break-up Fee that Jefferies does not expect to earn during the course of these chapter 11 cases.

- (e) **Debt Placement Fee.** Upon the placement or purchase of any Debt Securities, a fee (the “Debt Placement Fee”) in an amount equal to 2.0% of the aggregate principal amount of Debt Securities placed.
- (f) **Equity Securities Fee.** Upon the placement or purchase of any Equity Securities, a cash fee (the “Equity Fee”) in an amount equal to 5.0% of the aggregate gross proceeds from the issuance of the Equity Securities.
- (g) **Bank Debt Arrangement Fee and Bank Debt Placement Fee.** With respect to the placement or arrangement of Bank Debt, if any: upon the execution of a definitive credit agreement by the Debtors and the lenders thereunder, (i) if Jefferies or its affiliate is the arranger of the Bank Debt, an arrangement fee (the “Bank Debt Arrangement Fee”) equal to 2.0% of the maximum principal amount available under the Bank Debt or (ii) if Jefferies or its affiliate is not the arranger of the Bank Debt, a placement fee (the “Bank Debt Placement Fee”) equal to 2.0% of the maximum principal amount available under the Bank Debt (it being understood that the Bank Debt Placement Fee does not include fees and expenses paid to lenders or purchasers of the Bank Debt).

In addition to any fees that may be paid to Jefferies under the Engagement Letter, the Debtors shall reimburse Jefferies for out-of-pocket expenses incurred in connection with its engagement by the Debtors.

86. During the pendency of these chapter 11 cases, Jefferies shall apply to the Court for the allowance of compensation for professional services rendered and reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and any other applicable procedures and orders of the Court and consistent with the proposed compensation arrangement set forth in the Engagement Letter.

87. The Debtors believe that the Fee and Expense Structure set forth in the Engagement Letter is reasonable. The Fee and Expense Structure appropriately reflects the nature of the services to be provided by Jefferies and the fee structures typically utilized by leading investment banking firms of similar stature to Jefferies for comparable engagements, both in and out of court. The Fee and Expense structure is consistent with Jefferies’ normal and customary billing practices for cases of this size and complexity that require the level of scope and services outlined herein.

Moreover, the Fee and Expense Structure is reasonable in light of: (a) industry practice; (b) market rates charged for comparable services both in and out of the chapter 11 context; (c) Jefferies' substantial experience with respect to investment banking services; and (d) the nature and scope of work to be performed by Jefferies in these cases. In particular, the Debtors believe that the Fee and Expense Structure creates a proper balance between fixed monthly fees and contingency fees. Similar fixed and contingency fee arrangements have been approved and implemented in other recent large chapter 11 cases. *See, e.g., In re Westmoreland Coal Company*, No. 18-3562 (DRJ) (Bankr. S.D. Tex. Dec. 16, 2018) (authorizing retention of Jefferies under a fixed and contingent fee arrangement); *In re Mission Coal Company, LLC*, No. 18-04177 (TOM) (Bankr. N.D. Ala. Oct. 14, 2018) (same); *In re Peabody Energy Corp.*, No. 16-42529 (Bankr. E.D. Mo. June 17, 2016) (same); *In re Arch Coal, Inc.*, No. 16-40120, (Bankr. E.D. Mo. Mar. 21, 2016) (same).

88. Consistent with its ordinary practice and the practice of investment bankers in other chapter 11 cases whose fee arrangements are not hours-based, Jefferies does not maintain contemporaneous time records or provide or conform to a schedule of hourly rates for its professionals. Given the foregoing and that Jefferies' compensation is based on fixed fees, the Debtors request that, notwithstanding anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, any order of this Court, or any other guidelines regarding the submission and approval of fee applications, Jefferies' professionals be excused from maintaining time records as set forth in Bankruptcy Rule 2016(a) and the Trustee Guidelines in connection with the services to be rendered pursuant to the Engagement Letter. Jefferies will nonetheless maintain reasonably detailed summary time records in one-half hour increments, which records shall indicate the total hours incurred by each professional for each day and provide a brief description of the nature of the work performed. Courts in other large chapter 11 cases

have excused flat-fee professionals from time-keeping requirements under similar circumstances. *See, e.g., In re Westmoreland Coal Company*, No. 18-3562 (DRJ) (Bankr. S.D. Tex. Dec. 16, 2018) (requiring Jefferies only to keep reasonably detailed summary time records in one-half hour increments while indicating the total hours incurred by each professional for each day and briefly describing the nature of the work performed); *In re Mission Coal Company, LLC*, No. 18-04177 (TOM) (Bankr. N.D. Ala. Oct. 14, 2018) (same); *In re Peabody Energy Corp.*, No. 16-42529 (Bankr. E.D. Mo. June 17, 2016) (same); *In re Arch Coal, Inc.*, No. 16-40120, (Bankr. E.D. Mo. Mar. 21, 2016) (same).

D. Indemnification of Jefferies

89. As part of the overall compensation payable to Jefferies under the terms of the Engagement Letter, the Engagement Letter provides for certain indemnification obligations to Jefferies and its affiliates, and each of their respective officers, directors, managers, members, partners, employees and agents, and any other controlling persons, to the fullest extent lawful, from and against any claims, liabilities, losses, damages, costs and expenses, as incurred, related to or arising out of or in connection with Jefferies' services under the Engagement Letter.²⁰ Such terms of indemnification, as modified by the Order, reflect the qualifications and limits on such terms that are customary for investment bankers such as Jefferies in chapter 11 cases. *See, e.g., In re Westmoreland Coal Company*, No. 18-3562 (DRJ) (Bankr. S.D. Tex. Dec. 16, 2018) (approving identical indemnification provisions); *In re Mission Coal Company, LLC*, No. 18-04177 (TOM) (Bankr. N.D. Ala. Oct. 14, 2018) (same); *In re Peabody Energy Corp.*, No. 16-42529 (Bankr. E.D.

²⁰ To the extent there is any inconsistency between the summary of the indemnification provisions set forth in the Jefferies Retention Application and the indemnifications set forth in Schedule A to the Engagement Letter, the terms of the Engagement Letter shall control.

Mo. June 17, 2016) (same); *In re Arch Coal, Inc.*, No. 16-40120, (Bankr. E.D. Mo. Mar. 21, 2016) (same).

E. Jefferies' Disinterestedness

90. Jefferies has informed the Debtors that as of the date hereof, except as set forth in the White Declaration: (a) Jefferies has no connection with the Debtors, their creditors, equity security holders or other parties in interest in these chapter 11 cases; (b) Jefferies does not have or represent any entity having an interest adverse to the interests of the Debtors' estates or of any class of creditors or equity security holders; and (c) Jefferies (i) is not a creditor, equity security holder or an insider of the Debtors and (ii) is not or was not, within two years before the Petition Date, a director, officer, or employee of any of the Debtors. In addition, none of the Jefferies professionals expected to assist the Debtors in these chapter 11 cases are related or connected to any United States Bankruptcy Judge for the Southern District of West Virginia, the U.S. Trustee, or any person employed in the office of the U.S. Trustee.

91. During the 90-day period prior to the commencement of these cases, Jefferies did not receive any payments from the Debtors.

92. The Debtors have been advised that Jefferies has agreed not to share with any other person or firm the compensation to be paid for professional services rendered in connection with these chapter 11 cases in accordance with section 504(a) of the Bankruptcy Code.

93. Based on the foregoing, the Debtors believe that Jefferies is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code and utilized in section 328(c) of the Bankruptcy Code.

94. As set forth in the Jefferies Retention Application, I believe that the relief requested therein is reasonable and appropriate under the circumstances and in the best interests of the Debtors' estates, creditors and other stakeholders.

IX. DEBTORS' APPLICATION FOR APPOINTMENT OF PRIME CLERK LLC AS CLAIMS AND NOTICING AGENT (THE "PRIME 156(C) APPLICATION")

95. The Debtors request entry of an order appointing Prime Clerk as the Claims and Noticing Agent for the Debtors in their chapter 11 cases, including assuming full responsibility for the distribution of notices and the maintenance, processing and docketing of proofs of claim filed in the Debtors' chapter 11 cases. The Debtors submit, based on all engagement proposals obtained and reviewed, that Prime Clerk's rates are competitive and reasonable given Prime Clerk's quality of services and expertise. The terms of Prime Clerk's retention are set forth in the Engagement Agreement attached to the Prime 156(c) Application as Exhibit C (the "Engagement Agreement"); provided, however, that the Debtors are seeking approval solely of the terms and provisions as set forth in the Prime 156(c) Application and the proposed Retention Order attached to the Prime 156(c) Application.

96. Although the Debtors have not yet filed their schedules of assets and liabilities, they anticipate that there will be hundreds of entities to be noticed. In view of the number of anticipated claimants and the complexity of the Debtors' businesses, the Debtors submit that the appointment of a claims and noticing agent is required and is in the best interests of both the Debtors' estates and their creditors.

A. Prime Clerk's Qualifications

97. Prime Clerk is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. Prime Clerk's professionals have experience in noticing, claims administration, solicitation, balloting and

facilitating other administrative aspects of chapter 11 cases and experience in matters of this size and complexity. Prime Clerk's professionals have acted as debtor's counsel or official claims and noticing agent in many large bankruptcy cases in this circuit and in other districts nationwide. Prime Clerk's active and former cases include: *Gymboree Group, Inc.*, No. 19-30258 (KLP) (Bankr. E.D. Va.); *Toys "R" Us, Inc.*, No. 17-34665 (KLP) (Bankr. E.D. Va.); *The Gymboree Corp.*, No. 17-32986 (KLP) (Bankr. E.D. Va.); *Patriot Coal Corp.*, No. 15-32450 (KLP) (Bankr. E.D. Va.); *Weatherford International plc*, No. 19-33694 (DRJ) (Bankr. D. Del.); *Checkout Holding Corp.*, No. 18-12794 (KG) (Bankr. D. Del.); *Fairway Energy, LP*, No. 18-12684 (LSS) (Bankr. D. Del.); *Dixie Electric, LLC*, No. 18-12477 (KG) (Bankr. D. Del.); *New MACH Gen GP, LLC*, No. 18-11369 (MFW) (Bankr. D. Del.); *Gibson Brands, Inc.*, No. 18-11028 (CSS) (Bankr. D. Del.); *Bertucci's Holdings, Inc.*, No. 18-10894 (MFW) (Bankr. D. Del.); *EV Energy Partners, L.P.*, No. 18-10814 (CSS) (Bankr. D. Del.); *Claire's Stores, Inc.*, No. 18-10584 (MFW) (Bankr. D. Del.); *The Bon-Ton Stores, Inc.*, No. 18-10248 (MFW) (Bankr. D. Del.); *Orchard Acquisition Company, LLC*, No. 17-12914 (KG) (Bankr. D. Del.); *Rentech WP U.S., Inc.*, No. 17-12958 (CSS) (Bankr. D. Del.); *Appvion, Inc.*, No. 17-12082 (KJC) (Bankr. D. Del.); *TK Holdings Inc.*, No. 17-11375 (BLS) (Bankr. D. Del.); *General Wireless Operations Inc. dba RadioShack*, No. 17-10506 (BLS) (Bankr. D. Del.); *Lily Robotics, Inc.*, No. 17-10426 (KJC) (Bankr. D. Del.); *Bonanza Creek Energy, Inc.*, No. 17-10015 (KJC) (Bankr. D. Del.); *Aegerion Pharmaceuticals, Inc.*, No. 19-11632 (MG) (Bankr. S.D.N.Y.); *Sungard Availability Services Capital, Inc.*, No. 19-22915 (RDD) (Bankr. S.D.N.Y.); *Sears Holdings Corporation*, No. 18-23538 (RDD) (Bankr. S.D.N.Y.); *Global Brokerage, Inc.*, No. 17-13532 (MEW) (Bankr. S.D.N.Y.); *Global A&T Electronics Ltd.*, No. 17-23931 (RDD) (Bankr. S.D.N.Y.); *Pacific Drilling S.A.*, No. 17-13193 (MEW) (Bankr. S.D.N.Y.);

Walter Investment Management Corporation, No. 17-13446 (JLG) (Bankr. S.D.N.Y.); *Castex Energy Partners, L.P.*, No. 17-35835 (MI) (Bankr. S.D. Tex.).

98. By appointing Prime Clerk as the Claims and Noticing Agent in these chapter 11 cases, the distribution of notices and the processing of claims will be expedited, and the Office of the Clerk of the Bankruptcy Court (the “Clerk”) will be relieved of the administrative burden of processing what may be an overwhelming number of claims.

B. Services to be Provided

99. The Prime 156(c) Application pertains only to the work to be performed by Prime Clerk under the Clerk’s delegation of duties permitted by 28 U.S.C. § 156(c). Any work to be performed by Prime Clerk outside of this scope is not covered by the Prime 156(c) Application or by any order granting approval hereof. Specifically, Prime Clerk will perform the following tasks in its role as Claims and Noticing Agent, as well as all quality control relating thereto:

- (a) Prepare and serve required notices and documents in these chapter 11 cases in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) in the form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of these chapter 11 cases and the initial meeting of creditors under Bankruptcy Code § 341(a), (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the Debtors’ plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan and (vii) all other notices, orders, pleadings, publications and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of these chapter 11 cases;
- (b) Maintain an official copy of the Debtors’ schedules of assets and liabilities and statements of financial affairs (collectively, the “Schedules”), listing the Debtors’ known creditors and the amounts owed thereto;
- (c) Maintain (i) a list of all potential creditors, equity holders and other parties-in-interest and (ii) a “core” mailing list consisting of all parties described in Bankruptcy Rule 2002(i), (j) and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update and make said lists available upon request by a party-in-interest or the Clerk;

- (d) Furnish a notice to all potential creditors of the last date for filing proofs of claim and a form for filing a proof of claim, after such notice and form are approved by the Court, and notify said potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- (e) Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- (f) For *all* notices, motions, orders or other pleadings or documents served, prepare and file or cause to be filed with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service and (iv) the date served;
- (g) Process all proofs of claim received, including those received by the Clerk, check said processing for accuracy and maintain the original proofs of claim in a secure area;
- (h) Maintain the official claims register for each Debtor (collectively, the “Claims Registers”) on behalf of the Clerk; upon the Clerk’s request, provide the Clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*), (vi) the applicable Debtor and (vii) any disposition of the claim;
- (i) Provide public access to the Claims Registers, including complete proofs of claim with attachments, if any, without charge;
- (j) Implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;
- (k) Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- (l) Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of Prime Clerk, not less than weekly;
- (m) Upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the Claims Registers for the Clerk’s review (upon the Clerk’s request);

- (n) Monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;
- (o) Identify and correct any incomplete or incorrect addresses in any mailing or service lists;
- (p) Assist in the dissemination of information to the public and respond to requests for administrative information regarding these chapter 11 cases as directed by the Debtors or the Court, including through the use of a case website and/or call center;
- (q) Monitor the Court's docket in these chapter 11 cases and, when filings are made in error or containing errors, alert the filing party of such error and work with them to correct any such error;
- (r) If these chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code, contact the Clerk's office within three (3) days of notice to Prime Clerk of entry of the order converting the cases;
- (s) Thirty (30) days prior to the close of these chapter 11 cases, to the extent practicable, request that the Debtors submit to the Court a proposed order dismissing Prime Clerk as Claims and Noticing Agent and terminating its services in such capacity upon completion of its duties and responsibilities and upon the closing of these chapter 11 cases;
- (t) Within seven (7) days of notice to Prime Clerk of entry of an order closing these chapter 11 cases, provide to the Court the final version of the Claims Registers as of the date immediately before the close of the chapter 11 cases; and
- (u) At the close of these chapter 11 cases, (i) box and transport all original documents, in proper format, as provided by the Clerk's office, to (A) the applicable Federal Records Center or (B) any other location requested by the Clerk's office; and (ii) docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

100. The Claims Registers shall be open to the public for examination without charge during regular business hours and on a case-specific website maintained by Prime Clerk.

C. Professional Compensation

101. The Debtors respectfully request that the undisputed fees and expenses incurred by Prime Clerk in the performance of the above services be treated as administrative expenses of the Debtors' chapter 11 estates pursuant to 28 U.S.C. § 156(c) and section 503(b)(1)(A) of the Bankruptcy Code and be paid in the ordinary course of business without further application to or order of the Court. Prime Clerk agrees to maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and to serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors and any party-in-interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Engagement Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if resolution is not achieved, the parties may seek resolution of the matter from the Court.

102. Prior to the Petition Date, the Debtors provided Prime Clerk an advance in the amount of \$37,000. Prime Clerk seeks to first apply the advance to all prepetition invoices, and thereafter, to have the advance replenished to the original advance amount, and thereafter, to hold the advance under the Engagement Agreement during these chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

103. Additionally, under the terms of the Engagement Agreement, the Debtors have agreed to indemnify, defend and hold harmless Prime Clerk and its members, officers, employees, representatives and agents under certain circumstances specified in the Engagement Agreement, except in circumstances resulting solely from Prime Clerk's gross negligence or willful misconduct or as otherwise provided in the Engagement Agreement or Retention Order. The Debtors believe that such an indemnification obligation is customary, reasonable and necessary to retain the services of a Claims and Noticing Agent in these chapter 11 cases.

D. Disinterestedness

104. Although the Debtors do not propose to employ Prime Clerk under section 327 of the Bankruptcy Code pursuant to the Prime 156(c) Application (such retention will be sought by separate application), Prime Clerk has nonetheless reviewed its electronic database to determine whether it has any relationships with the creditors and parties in interest provided by the Debtors, and, to the best of the Debtors' knowledge, information, and belief, and except as disclosed in the Steele Declaration, Prime Clerk has represented that it neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed.

105. Moreover, in connection with its retention as Claims and Noticing Agent, Prime Clerk represents in the Steele Declaration, among other things, that:

- (a) Prime Clerk is not a creditor of the Debtors;
- (b) Prime Clerk will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these chapter 11 cases;
- (c) By accepting employment in these chapter 11 cases, Prime Clerk waives any rights to receive compensation from the United States government in connection with these chapter 11 cases;
- (d) In its capacity as the Claims and Noticing Agent in these chapter 11 cases, Prime Clerk will not be an agent of the United States and will not act on behalf of the United States;
- (e) Prime Clerk will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these chapter 11 cases;
- (f) Prime Clerk is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged;
- (g) In its capacity as Claims and Noticing Agent in these chapter 11 cases, Prime Clerk will not intentionally misrepresent any fact to any person;

- (h) Prime Clerk shall be under the supervision and control of the Clerk's office with respect to the receipt and recordation of claims and claim transfers;
- (i) Prime Clerk will comply with all requests of the Clerk's office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- (j) None of the services provided by Prime Clerk as Claims and Noticing Agent in these chapter 11 cases shall be at the expense of the Clerk's office.

Prime Clerk will supplement its disclosure to the Court if any facts or circumstances are discovered that would require such additional disclosure.

106. To the extent that there is any inconsistency between the Prime 156(c) Application, the Retention Order and the Engagement Agreement, the Retention Order shall govern.

107. Accordingly, for all the reasons set forth in the Prime 156(c) Application, I believe that retention of Prime Clerk as claims and noticing agent is in the best interests of the Debtors and their estates, creditors and stakeholders.

X. DEBTORS' APPLICATION FOR AN ORDER AUTHORIZING EMPLOYMENT AND RETENTION OF PRIME CLERK LLC AS ADMINISTRATIVE ADVISOR NUNC PRO TUNC TO THE PETITION DATE (THE "PRIME ADMINISTRATIVE APPLICATION")

108. The Debtors have contemporaneously filed an application (the "Section 156(c) Application") for an order appointing Prime Clerk as claims and noticing agent pursuant to 28 U.S.C. § 156(c) and section 105(a) of the Bankruptcy Code. The Debtors believe that administration of these chapter 11 cases may require Prime Clerk to perform duties outside the scope requested in the Prime 156(c) Application. Therefore, to enable Prime Clerk to provide services outside the scope of the order approving the Prime 156(c) Application, the Debtors submit the Prime Administrative Application, pursuant to section 327 of the Bankruptcy Code, Bankruptcy Rule 2014 and Local Rule 2014-1, for an order authorizing the Debtors to employ and retain Prime Clerk as Administrative Advisor for the Debtors in accordance with the Engagement

Agreement attached to the Prime Administrative Application as Exhibit C (the “Engagement Agreement”).

A. Prime Clerk’s Qualifications

109. Prime Clerk is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. Prime Clerk’s professionals have experience in noticing, claims administration, solicitation, balloting and facilitating other administrative aspects of chapter 11 cases and experience in matters of this size and complexity. Prime Clerk’s professionals have acted as debtor’s counsel, official claims and noticing agent and/or administrative advisor in many large bankruptcy cases in this circuit and in other districts nationwide. Prime Clerk’s active and former cases include: *Gymboree Group, Inc.*, No. 19-30258 (KLP) (Bankr. E.D. Va.); *Toys “R” Us, Inc.*, No. 17-34665 (KLP) (Bankr. E.D. Va.); *The Gymboree Corp.*, No. 17-32986 (KLP) (Bankr. E.D. Va.); *Patriot Coal Corp.*, No. 15-32450 (KLP) (Bankr. E.D. Va.); *Weatherford International plc*, No. 19-33694 (DRJ) (Bankr. D. Del.); *Checkout Holding Corp.*, No. 18-12794 (KG) (Bankr. D. Del.); *Fairway Energy, LP*, No. 18-12684 (LSS) (Bankr. D. Del.); *Dixie Electric, LLC*, No. 18-12477 (KG) (Bankr. D. Del.); *New MACH Gen GP, LLC*, No. 18-11369 (MFW) (Bankr. D. Del.); *Gibson Brands, Inc.*, No. 18-11028 (CSS) (Bankr. D. Del.); *Bertucci’s Holdings, Inc.*, No. 18-10894 (MFW) (Bankr. D. Del.); *EV Energy Partners, L.P.*, No. 18-10814 (CSS) (Bankr. D. Del.); *Claire’s Stores, Inc.*, No. 18-10584 (MFW) (Bankr. D. Del.); *The Bon-Ton Stores, Inc.*, No. 18-10248 (MFW) (Bankr. D. Del.); *Orchard Acquisition Company, LLC*, No. 17-12914 (KG) (Bankr. D. Del.); *Rentech WP U.S., Inc.*, No. 17-12958 (CSS) (Bankr. D. Del.); *Appvion, Inc.*, No. 17-12082 (KJC) (Bankr. D. Del.); *TK Holdings Inc.*, No. 17-11375 (BLS) (Bankr. D. Del.); *General Wireless Operations Inc. dba RadioShack*, No. 17-10506 (BLS) (Bankr. D. Del.); *Lily Robotics, Inc.*, No. 17-10426 (KJC)

(Bankr. D. Del.); *Bonanza Creek Energy, Inc.*, No. 17-10015 (KJC) (Bankr. D. Del.); *Aegerion Pharmaceuticals, Inc.*, No. 19-11632 (MG) (Bankr. S.D.N.Y.); *Sungard Availability Services Capital, Inc.*, No. 19-22915 (RDD) (Bankr. S.D.N.Y.); *Sears Holdings Corporation*, No. 18-23538 (RDD) (Bankr. S.D.N.Y.); *Global Brokerage, Inc.*, No. 17-13532 (MEW) (Bankr. S.D.N.Y.); *Global A&T Electronics Ltd.*, No. 17-23931 (RDD) (Bankr. S.D.N.Y.); *Pacific Drilling S.A.*, No. 17-13193 (MEW) (Bankr. S.D.N.Y.); *Walter Investment Management Corporation*, No. 17-13446 (JLG) (Bankr. S.D.N.Y.); *Castex Energy Partners, L.P.*, No. 17-35835 (MI) (Bankr. S.D. Tex.).

B. Services to be Provided

110. Pursuant to the Engagement Agreement, the Debtors seek to retain Prime Clerk to provide, among other things, the following bankruptcy administration services, if and to the extent requested:

- (a) Assist with, among other things, solicitation, balloting and tabulation of votes, and prepare any related reports, as required in support of confirmation of a chapter 11 plan, and in connection with such services, process requests for documents from parties in interest, including, if applicable, brokerage firms, bank back-offices and institutional holders;
- (b) Prepare an official ballot certification and, if necessary, testify in support of the ballot tabulation results;
- (c) Assist with the preparation of the Debtors' schedules of assets and liabilities and statements of financial affairs and gather data in conjunction therewith;
- (d) Provide a confidential data room, if requested;
- (e) Manage and coordinate any distributions pursuant to a chapter 11 plan; and
- (f) Provide such other processing, solicitation, balloting and other administrative services described in the Engagement Agreement, but not included in the Section 156(c) Application, as may be requested from time to time by the Debtors, the Court or Clerk.

C. Professional Compensation

111. The fees Prime Clerk will charge in connection with providing services to the Debtors are set forth in the Engagement Agreement. The Debtors respectfully submit that Prime Clerk's rates are competitive and comparable to the rates its competitors charge for similar services. Indeed, the Debtors conducted a review and competitive comparison of other firms before selecting Prime Clerk as Administrative Advisor. The Debtors believe Prime Clerk's rates are reasonable given the quality of Prime Clerk's services and its professionals' bankruptcy expertise. Additionally, Prime Clerk will seek reimbursement from the Debtors for reasonable expenses in accordance with the terms of the Engagement Agreement.

112. Prime Clerk intends to apply to the Court for allowance of compensation and reimbursement of expenses incurred after the Petition Date in connection with the services it provides as Administrative Advisor pursuant to the Engagement Agreement. Prime Clerk will comply with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any orders entered in these chapter 11 cases regarding professional compensation and reimbursement of expenses.

113. Additionally, under the terms of the Engagement Agreement, the Debtors have agreed to indemnify, defend and hold harmless Prime Clerk and its members, officers, employees, representatives and agents under certain circumstances specified in the Engagement Agreement, except in circumstances resulting solely from Prime Clerk's gross negligence or willful misconduct or as otherwise provided in the Engagement Agreement. The Debtors believe that such an indemnification obligation is customary, reasonable and necessary to retain the services of an Administrative Advisor in these chapter 11 cases.

D. Disinterestedness

114. Prime Clerk has reviewed its electronic database to determine whether it has any relationships with the creditors and parties in interest provided by the Debtors, and, to the best of the Debtors' knowledge, information, and belief, and except as disclosed in the Steele Declaration, Prime Clerk is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed.

115. Prime Clerk believes that it does not have any relationships with creditors or parties in interest that would present a disqualifying conflict of interest. Prime Clerk will supplement its disclosure to the Court if any facts or circumstances are discovered that would require such additional disclosure.

116. For all the reasons set forth in the Prime Administrative Application, I believe that retention of Prime Clerk as claims and noticing agent is in the best interests of the Debtors and their estates, creditors and stakeholders.

XI. DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO EMPLOY AND PAY PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (THE "OCP MOTION")

117. By the OCP Motion, the Debtors request entry of an order authorizing the Debtors to employ and compensate the Ordinary Course Professionals listed on **Exhibit B** to the OCP Motion postpetition in accordance with the procedures set forth therein, without the need for each Ordinary Course Professional to file formal applications for retention and compensation.

A. The Ordinary Course Professionals

118. Prior to the filing of these chapter 11 cases, the Debtors customarily retained the services of various attorneys and other professionals to assist and/or advise them in matters arising in the ordinary course of business including, but not limited to, legal services, specialized engineering services, accounting services, auditing and tax services, etc. (collectively, the “Ordinary Course Professionals”). A list of Ordinary Course Professionals as of the Petition Date is attached to the OCP Motion Exhibit B. The Debtors wish to continue to employ and retain Ordinary Course Professionals to render services that are similar to those that were rendered prior to the commencement of these chapter 11 case. The Debtors request that they be permitted to employ and retain Ordinary Course Professionals on terms substantially similar to those in effect prior to the Petition Date, subject to the limits and conditions described below.

B. Payment of Fees and Expenses

119. The Debtors propose that they be permitted to pay, without formal application to this Court by any Ordinary Course Professional, 100% of the postpetition fees and expenses to each Ordinary Course Professional upon the submission to the Debtors of any appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date. Except as provided below, the fees and disbursements paid to each professional will not exceed the monthly average fee and expense cap for that professional set forth on Exhibit B (the “Fee Cap”). The Fee Cap was calculated by reviewing the monthly average fees and expenses for each Ordinary Course Professional over certain three month periods.

120. The Debtors propose that to the extent fees and expenses payable to any Ordinary Course Professional exceed the monthly Fee Cap, then such Ordinary Course Professional shall, on or before the 30th day of the month following the month for which compensation is sought (the

“Monthly Statement Date”), submit a monthly statement for the additional compensation sought to: (a) Blackjewel, L.L.C., 1051 Main Street, Milton, West Virginia 25541, Attn: David J. Beckman, (b) proposed counsel to the Debtors, Squire Patton Boggs (US) LLP, 201 E. Fourth Street, Suite 1900, Cincinnati, Ohio 45202, Attn: Stephen D. Lerner (stephen.lerner@squirepb.com); (c) proposed co-counsel to the Debtors, Supple Law Office PLLC, 801 Viand Street, Point Pleasant, West Virginia 25550, Attn: Joe Supple (supplelawoffice@yahoo.com); (d) counsel to Riverstone Credit Partners – Direct, L.P., Bailey & Glasser LLP, 209 Capitol Street, Charleston, West Virginia 25301, Attn: Kevin W. Barrett (kbarrett@baileyglasser.com); (e) counsel to United Bank, Inc., Steptoe & Johnson PLLC, P.O. Box 1588, Charleston, West Virginia 25326-1588, Attn: Joseph G. Bunn (joseph.bunn@steptoe-johnson.com); (f) proposed counsel to the Creditors’ Committee, Whiteford Taylor & Preston, LLP, 10 S. Jefferson Street, Suite 1110, Roanoke, Virginia 24011, Attn: Brandy M. Rapp (brapp@wtplaw.com); and (g) the Office of the U.S. Trustee for the Southern District of West Virginia, 2025 United States Courthouse, 300 Virginia Street, East, Charleston, West Virginia 25301, Attn: David L. Bissett (David.L.Bissett@usdoj.gov) (collectively, the “Interested Parties”).

121. The Interested Parties will have twenty days after the Monthly Statement Date to review the statement for additional compensation and object to the additional fees requested by such Ordinary Course Professional. If any of the Interested Parties object to the payment of the additional fees and such objection cannot be consensually resolved, then the Ordinary Course Professional will be required to submit a formal application to this Court for the additional compensation. If no Interested Party timely objects to the payment of fees, then the Debtors shall be deemed authorized, but not required, to pay the additional compensation sought.

C. The Submission of Affidavits

122. The Debtors request that the Ordinary Course Professionals be excused from filing an affidavit of disinterestedness pursuant to Bankruptcy Rule 2014. The Debtors recognize, however, the importance of providing to this Court and the U.S. Trustee information regarding each Ordinary Course Professional that is an attorney. Accordingly, the Debtors propose that each Ordinary Course Professional that is an attorney be required to file with this Court and to serve upon the Interested Parties an affidavit, as limited by section 327(e) of the Bankruptcy Code, stating that the Ordinary Course Professional does not represent or hold any interests adverse to the Debtors or their estates with respect to the matter(s) on which such Ordinary Course Professional is to be employed (the “Affidavit”) within 60 days of the date of an order granting the OCP Motion.

D. Additional Ordinary Course Professionals

123. The Debtors further request that they be authorized, but not directed, to employ and pay additional Ordinary Course Professionals in their sole discretion without the need to file individual retention applications for each by filing with this Court a supplement to **Exhibit B** of this motion (the “Supplement”). The Supplement will set forth: (a) the name of the additional Ordinary Course Professional, (b) a brief description of the services to be rendered, and (c) the Fee Cap with respect to the additional Ordinary Course Professional. The Supplement will be served upon the Interested Parties. If no objections are filed to such Supplement within 14 days after service thereof, such Supplement shall be deemed approved by this Court without the necessity of a hearing.

124. For the purposes of complying with the procedures set forth above, the Debtors request that the 60-day time period for additional Ordinary Course Professionals that are attorneys

to file and serve an Affidavit with this Court run from the filing of the Supplement, but that all other requirements remain the same.

E. Objections to an Affidavit

125. The Debtors propose that the Interested Parties shall have 20 days after the receipt of each Affidavit (the “Affidavit Objection Deadline”) to object to the retention of such Ordinary Course Professional. Such objecting party shall serve any such objections upon the Interested Parties and the Ordinary Course Professional on or before the Affidavit Objection Deadline.

126. If any such objection cannot be resolved within 20 days after the Affidavit Objection Deadline, the matter shall be scheduled for hearing before this Court at the next regularly scheduled hearing date or a date otherwise agreeable to the Ordinary Course Professional, the Debtor, the U.S. Trustee and the Creditors’ Committee. If no objection is received prior to the Affidavit Objection Deadline, the Debtors shall be deemed authorized to retain such Ordinary Course Professional.

127. For all the reasons set forth in the OCP Motion, I believe that the relief requested is appropriate under the circumstances and in the best interest of the Debtors and their estates, creditors and other stakeholders.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: July 9, 2019

/s/ David J. Beckman
David J. Beckman
Senior Managing Director, FTI Consulting, Inc.