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*Attorney for Creditor Pension Benefit Guaranty Corporation*

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

_____ )	Chapter 11
In re: )	
JAMES RIVER COAL COMPANY, <i>et al.</i> , )	Case No. 14-31848 (KRH)
)	
Debtors. <sup>1</sup> )	(Jointly Administered)
)	
_____ )	Re: Dkt. No. 1578
)	Filed 12/31/2015

**PENSION BENEFIT GUARANTY CORPORATION'S  
RESPONSE TO THE DEBTORS' SECOND OMNIBUS OBJECTIONS TO CLAIMS**

Pension Benefit Guaranty Corporation responds to the Debtors' Second Omnibus Objections to Claims and asks the Court to overrule the objections because the Debtors have failed to provide any legal or factual basis for objecting to PBGC's statutory claims.

The Debtors specifically object to the PBGC's claims for (i) the unfunded benefit liability in the estimated amount of \$47,139,514<sup>2</sup>, pursuant to 29 U.S.C. § 1362(b), that arose upon the

<sup>1</sup> The Debtors, along with the last four digits of each Debtor's federal tax identification numbers, are listed on Schedule 1 attached hereto.

<sup>2</sup> PBGC's Pension Information Profile (the "PIP"), shows how PBGC estimated the amount of liability for the unfunded benefit liabilities of the Pension Plan, Ex. 1 hereto, at 3.

termination of the James River Coal Company Employees Pension Plan (the “Pension Plan”) Pension Plan and (ii) the unpaid flat and variable rate premiums due PBGC, pursuant to 29 U.S.C. § 1307(a), related to the Pension Plan.

The Debtors’ stated basis<sup>3</sup> for objecting to the UBL claim is that the Debtors’ books and records show that the Debtors are liable to the Pension Plan in the amount of \$16,100,000 as of the date that this bankruptcy proceeding was filed.<sup>4</sup> The Debtors’ stated basis for objecting to the premium claim is that the Debtors’ books and records indicate that they are not liable to PBGC for premiums as of the date that this bankruptcy proceeding was filed.<sup>5</sup> PBGC’s UBL and premium claims are statutory claims to be determined in accordance with the relevant non-bankruptcy substantive law under which they arise – ERISA and PBGC’s regulations – not the books and records of the Debtors.<sup>6</sup>

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<sup>3</sup> The Debtors’ Second Omnibus Objections to Claims is DOC 1578 on the Court’s electronic docket and is hereafter referred to as DOC 1578. The Debtors’ Second Omnibus Objections to Claims indicates that PBGC’s UBL claim was filed as a priority claim and that it is a general unsecured claim. DOC 1578 Ex. E, Reduced and Reclassified Claims, at 200, PBGC agrees because the Debtors did not have any collective net worth as of August 31, 2014, the date of plan termination for the Pension Plan, pursuant to 29 U.S.C. § 1348(a). PBGC informed counsel for the Debtors on November 12, 2015, that PBGC is amenable to reclassifying its UBL claim as a general unsecured claim.

<sup>4</sup> Debtors’ Second Omnibus Objections to Claims, DOC 1578 at 9 ¶¶ 33-36, Ex. E, Reduced and Reclassified Claims, at 200, Ex. I, Declaration of the Restructuring Officer in Support of the Debtors. Second Omnibus Objections to Claims, at 214 ¶ 6.

<sup>5</sup> DOC 1578 at pp. 4 ¶¶ 11-12, Ex. A, No Liability Claims, at 30, and Ex. I, Declaration of the Restructuring Officer in Support of the Debtors’ Second Omnibus Objections to Claims, at 213 ¶ 2.

<sup>6</sup> *Raleigh v. Illinois Dep’t of Revenue*, 530 U.S. 15, 20 (2000); *In re US Airways Group, Inc.*, 303 B.R. 784 (Bankr. E.D.Va. 2003) (applying *Raleigh*, the value of PBGC’s UBL claim in

## **BACKGROUND**

### **A. PBGC and the Employee Retirement Income Security Act.**

1. PBGC is the United States government agency that administers the pension insurance program established under Title IV of the Employee Retirement Income Security Act of 1974 (“ERISA” or “Title IV”), *as amended*, 29 U.S.C. §§ 1301-1461 (2012 & Supp. II 2014). The program --which covers most private defined-benefit pension plans -- guarantees a secure, predictable retirement for approximately 43 million American workers and retirees.<sup>7</sup> PBGC is self-financed.

2. When a pension plan covered by Title IV terminates without sufficient assets to pay benefits, PBGC typically becomes the statutory trustee of the plan and pays the pension benefits of plan participants and their beneficiaries up to the limits established by Title IV.<sup>8</sup> *See* 29 U.S.C. §§ 1321, 1322, 1361. The employer, however, is not relieved of its liability for the benefits it promised to its employees by termination. Instead, under ERISA, the employer and each member of its controlled group become jointly and severally liable to the PBGC for, *inter alia*: (1) the “amount of unfunded benefit liabilities” of the pension plan pursuant to 29 U.S.C. § 1362(a) and (b); and (2) any unpaid premiums owed pursuant to 29 U.S.C. §§ 1306 and 1307.

3. ERISA provides the exclusive means for pension plan termination.<sup>9</sup>

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bankruptcy must be determined based on Title IV, including the agency’s longstanding valuation regulation.)

<sup>7</sup> PBGC 2015 Annual Report at 1, <http://www.pbgc.gov/documents/2015-annual-report.pdf?fs=1>.

<sup>8</sup> *See* 29 U.S.C. §§ 1321, 1322, 1361.

<sup>9</sup> 29 U.S.C. § 1341(a)(1); *see also Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 446 (1999).

4. On September 30, 2014, PBGC determined that the statutory requirements for a PBGC-initiated termination of the Pension Plan under 29 U.S.C. § 1342(a) were satisfied.

5. On or about December 12, 2014, PBGC and James River Coal executed an agreement to terminate the Pension Plan, establish the termination date as August 31, 2014, and appoint PBGC statutory trustee of the terminated Pension Plan. By its terms, the agreement was effective on the date that it was signed by PBGC, on or about December 11, 2014.<sup>10</sup>

6. When a pension plan terminates in a PBGC-initiated termination, the plan sponsor and its controlled group members are liable to PBGC for a termination premium at the rate of \$1,250 per plan participant per year for three years.<sup>11</sup> Using the statutory formula for termination liability, PBGC estimates the amount of the Debtors' liability for termination premiums at \$7,492,500.<sup>12</sup>

**B. Debtors' Bankruptcy Proceedings and the Claims of PBGC.**

7. The Debtors filed their petitions seeking relief under Chapter 11 of the United States Bankruptcy Code on April 7, 2014 (the "Petition" and "Petition Date," respectively).<sup>13</sup>

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<sup>10</sup> Ex. 2, the termination and trusteeship agreement for the James River Coal Company Pension Plan, at 1 and 3.

<sup>11</sup> See 29 U.S.C. § 1306(a)(7), as amended by § 8101(b) the Deficit Reduction Act of 2005 (Pub. L. 109-B171) and by §§ 401(b) and 402(g)(2)(B) of the Pension Protection Act of 2006 (Pub. L. 109-B280).

<sup>12</sup> 29 U.S.C. § 1306(a)(7)(A and B). The \$7,492,500 est. termination premium = (1,998 Pension Plan participants X \$1250 annual termination premium per participant) X 3 years); see PIP, Ex. 1 hereto, at 1.

<sup>13</sup> Debtors' Second Omnibus Objection to Claims, DOC 1578 at ¶ 1.

8. The Court set a general bar date of September 22, 2014, for the filing of claims.<sup>14</sup>

9. On September 18, 2014, the Court entered an order granting PBGC leave to file consolidated claims against each of the Debtors' estates.<sup>15</sup>

10. On September 22, 2014 and November 6, 2015, PBGC filed three consolidated claims and one amended consolidated claim against each of the Debtors' bankruptcy estates for: (1) liability to PBGC for the "amount of unfunded benefit liabilities" of the pension plan pursuant to 29 U.S.C. § 1362(a), (b), in the estimated amount of \$47,139,514; (2) liability to PBGC for unpaid premiums owed pursuant to 29 U.S.C. §§ 1306 and 1307, in the estimated amount of \$143,105 for flat and variable-rate premiums and in an unliquidated amount for termination premiums;<sup>16</sup> and (3) to the Pension Plan for any unpaid minimum funding contributions due under I.R.C. §§ 412, 430 and 29 U.S.C. § 1082, 1342 and 1362(c).

## **PBGC'S RESPONSE TO THE DEBTORS' OBJECTIONS**

### **I. Unfunded Benefits Liabilities Claim**

11. The Debtors assert that their liability to the Pension Plan as of the Petition Date, is stated as \$16,100,000 on their books and records. Based on this assertion, the Debtors seek to reduce the PBGC's unfunded benefit liabilities claims from \$47,139,514 to \$16,100,000.

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<sup>14</sup> DOC 479 at 2 ¶ 2.

<sup>15</sup> Consolidated Claims Order, DOC 650 at 1-2.

<sup>16</sup> As stated above in paragraph 6, the estimated amount of PBGC's termination premium claims is \$7,492,500.

12. PBGC's UBL claims are for the liability to the agency arising from the termination of the Pension Plan. Statutory liability to PBGC is distinguishable from the liability to the ongoing Pension Plan, as of the Petition Date, that was booked by the Debtors.

13. The "amount of the PBGC's claim for the "unfunded benefit liabilities" of a terminated plan is determined by subtracting the value of the plan's assets from the value of the plan's benefit liabilities as of the date of plan termination, here August 31, 2014, more than four months after the Petition Date. Furthermore, Congress mandated that the value of benefit liabilities under ERISA be determined "on the basis of assumptions prescribed by [PBGC]." <sup>17</sup> In accordance with the Congressional mandate, PBGC promulgated a regulation for valuing a terminated plan's unfunded benefit liabilities. <sup>18</sup> PBGC applied the regulation here to calculate the estimated unfunded benefit liabilities of the Pension Plan. <sup>19</sup>

14. Applying *Raleigh*, one bankruptcy judge in this district has specifically held that the amount of the PBGC's UBL claims in bankruptcy should be determined based upon the agency's valuation regulation. In *US Airways, Inc.*, Judge Mitchell held that the substantive law applicable to value the PBGC's UBL claims in bankruptcy is Title IV of ERISA, including the assumptions in PBGC's valuation regulation. <sup>20</sup>

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<sup>17</sup> 29 U.S.C. § 1301(a)(18)(A).

<sup>18</sup> 29 C.F.R. §§ 4044.41 to 4044.75.

<sup>19</sup> See the PIP, Ex. 1 hereto, at 3.

<sup>20</sup> *In re US Airways Group, Inc.*, 303 B.R. 784, 786, 788, 791-796 and 797 (Bankr. E.D. Va. 2003).

15. In *Raleigh*, the United States Supreme Court reaffirmed the long-standing principle that a bankruptcy claim is determined in accordance with the substantive non-bankruptcy law under which it arises. Following from *Raleigh*, courts have rejected employers' attempts to depart from the ERISA assumptions in calculating the pension liability, holding instead that substantive law includes ERISA's definition of UBL and PBGC's regulatory assumptions. See, e.g., *In re Wolverine Proctor & Schwartz, LLC*, 436 B.R. 253 (D. Mass. 2010), *aff'd* No. 06-10815, 2009 WL 1271953 (Bankr. D. Mass. May 5, 2009); *affirmed* No. 10-1334 (1st Cir. Apr. 20, 2011); *In re High Voltage Eng'g Corp.*, 360 B.R. 369 (Bankr. D. Mass. 2007); *In re UAL Corp.*, 351 B.R. 916 (Bankr. N.D. Ill. 2006).

16. Accordingly, the Court should overrule the Debtors' objection to the UBL claims because the book value of the Debtor's liability to the ongoing Pension Plan as of the Petition Date – April 7, 2014 – was not calculated using the assumptions set forth in ERISA's regulations contrary to the consistent case law that the amount of the UBL claims in bankruptcy should be determined based on the substantive non-bankruptcy law under which they arise.

## **II. Premium Claim**

17. The Debtors assert that their books and records show no liability to PBGC for premiums as of the Petition Date. Debtors also state that the amount claimed in Claim Number 1275, filed September 22, 2014, is "unspecified."<sup>21</sup>

18. PBGC Claim Number 1275 is an unliquidated statutory claim for premiums owed to PBGC related to the Pension Plan. It was filed by PBGC on September 22, 2014, before the

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<sup>21</sup> Debtors' Second Omnibus Claims Objections, DOC 1578, at 4 ¶¶ 11-12, Ex. A at 30 and Ex. I at 213 ¶ 2.

Pension Plan was terminated. At that time, PBGC did not know whether or to what extent the Debtors would continue to owe or pay premiums related to the Pension Plan under Title IV. Pursuant to Title IV, 29 U.S.C. § 1307(a), premiums “shall continue to accrue until a [terminated] plan’s assets are distributed pursuant to a termination procedure or until a trustee is appointed pursuant to [29 U.S.C. § 1342], whichever is earlier.” PBGC was appointed statutory trustee of the Pension Plan on or about December 12, 2014.

19. On November 6, 2015, PBGC amended Claim Number 1275 to liquidate the claim for flat and variable-rate premiums in the estimated amount of \$143,105 for the three month period between October 1, 2014, and the date that PBGC became trustee of the terminated Pension Plan, December 12, 2014.<sup>22</sup> The amended premium claim is Claim Number 1527. Debtors also owe termination premiums to PBGC.<sup>23</sup>

20. Although the Debtors did not owe any premiums to PBGC as of the Petition Date, premiums continued to accrue under the statute until PBGC was appointed statutory trustee of the Pension Plan on or about December 12, 2014. Accordingly, the Debtors owe premiums for the three month period between the beginning of the plan year (October 1) and the date of trusteeship. PBGC asserts administrative priority, pursuant to 11 U.S.C. § 507(a)(2), for the premium claims because they are for unpaid premiums accruing post-Petition. Additionally, termination of the Pension Plan gave rise to termination premiums.

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<sup>22</sup> PBGC’s Estimated Premium Spreadsheet for the Pension Plan, Ex. 3 hereto at 1.

<sup>23</sup> See n. 17.

21. PBGC's premium claims, like the agency's UBL claims, are statutory. Applying *Raleigh*, the value of the statutory claim should be determined in bankruptcy based on the non-bankruptcy law under which the claim arose. The premium claim arose under Title IV and accrued until the PBGC was appointed statutory trustee. Accordingly, the value of the premium claim should be determined in bankruptcy under Title IV of ERISA. The fact that Debtors failed to record these claims in their accounting systems is not relevant to their validity.

22. James J. Armbruster, Acting Deputy Chief Counsel, Office of the Chief Counsel, is authorized to settle the claims of PBGC discussed herein. He may be reached at (202) 326-4020, ext. 3068 or via email at armbruster.james@pbgc.gov.

### **CONCLUSION**

For the forgoing reasons, PBGC asks the Court to overrule the Debtors' objections to PBGC's UBL and premium claims.

Dated: January 15, 2016

Respectfully submitted,

/s/ Jean Marie Breen  
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Chief Counsel  
JAMES J. ARMBRUSTER  
Acting Deputy Chief Counsel  
STEPHANIE THOMAS  
Assistant Chief Counsel  
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## SCHEDULE 1

### Debtor Entities

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

# EXHIBIT 1

# James River Coal Company

## Pension Information Profile

	James River Coal Company Employees' Pension Plan 610718373/001	Total of Underfunded Plans
EIN/PN	30-Sep-07	
Plan Frozen?	No	
Plan Terminated?	No	
Cash Balance Plan?	No	
<b>Part I -- Actuarial Information</b>		
Date of Bankruptcy Filing	07-Apr-14	07-Apr-14
PBGC Valuation Date	31-Aug-14	31-Aug-14
PBGC Interest Factors		
First Period (20 Years)	3.43%	3.43%
Thereafter	3.66%	3.66%
Date Calculation Completed by CFRD Actuaries	25-Aug-14	25-Aug-14
<b>Part II -- Underfunding Details (in dollars)</b>		
Assets as of July 31, 2014 Projected to August 31, 2014	\$74,166,079	\$74,166,079
Estimated Unfunded Guaranteed Liability - UGL		
Retired	\$48,363,079	\$48,363,079
Terminated Vested	\$29,421,290	\$29,421,290
Active	\$39,932,711	\$39,932,711
<u>Expenses</u>	<u>\$1,096,769</u>	<u>\$1,096,769</u>
Total	\$118,813,849	\$118,813,849
<b>UGL</b>	<b>\$44,647,770</b>	<b>\$44,647,770</b>
Funded GL Ratio [Assets/Guaranteed Liabilities]	62%	62%
Estimated Unfunded Benefit Liability - UBL		
Retired	\$48,363,079	\$48,363,079
Terminated Vested	\$29,421,290	\$29,421,290
Active	\$42,401,454	\$42,401,454
<u>Expenses</u>	<u>\$1,119,770</u>	<u>\$1,119,770</u>
Total	\$121,305,593	\$121,305,593
<b>UBL</b>	<b>\$47,139,514</b>	<b>\$47,139,514</b>
Funded BL Ratio [Assets/Benefit Liabilities]	61%	61%
<b>Part III -- Number of Participants at Plan Valuation Date</b>		
Retired	609	609
Terminated Vested	706	706
<u>Active</u>	<u>683</u>	<u>683</u>
Total	1,998	1,998
<b>Part IV -- Unpaid Minimum Required Contributions (in dollars)</b>		
Total Unpaid Minimum Required Contributions (DUEC)	\$1,220,965	\$1,220,965
Date of Cessation of Business	31-Aug-14	31-Aug-14
Bankruptcy Claims		
- General Unsecured Claim	\$965,530	\$965,530
- 180 Day Normal Cost Claim	\$90,418	\$90,418
- (a)(2) Administrative Normal Cost Claim	\$165,017	\$165,017

# James River Coal Company

## Pension Information Profile

James River  
Coal Company  
Employees'  
Pension Plan  
610718373/001

EIN/PN

### Part V -- Funding Information (in dollars)

Plan Year Beginning (PYB)	01-Oct-13
Plan Valuation Date (PVD)	01-Oct-13
Is the Plan At-Risk? (for PYB)	No
Monthly Annuities In Payment (on PYB)	\$270,810
Funding Target Attainment Percentage (FTAP) on PVD	90.14%
Adjusted FTAP (AFTAP) on PVD	90.14%
Carry-Over Balance (COB) as of PYB	\$0
Pre-Funding Balance (PFB) as of PYB	\$0
Minimum Required Contribution (MRC) as of PVD	\$2,498,068
Can COB and PFB be used to reduce MRC?	Yes
Maximum Deductible Contribution as of PVD	\$80,200,229
Actual 2012 PY Contribution	\$770,462

### Part VI -- Comments

Benefit accruals have ceased for the plan.

The "2+7" amortization funding relief was elected for the plan year 2011 under PRA2010.

The DUEC reflects the HTFA 2014 for plan year 2013.

Most of information reported under Part V of this PIP comes from the 2013 Actuarial Valuation Report which does not reflect the HTFA 2014.

### Part VII -- Sources & Methods

AVR/AFTAP Date	10/1/2013 AVR
5500 Year	2012
Asset Date	31-Jul-14

Assets provided by Wells Fargo as of July 31, 2014 and were assumed to earn 12.80% per year (based on an investment allocation of 73% equity and 27% bonds; and investment indices known through July 2014).

Calculations assume employer shuts down.

PBGC Expense Load is based on PBGC Reg. 29 CFR §4044 (Appx. C).

PBGC Mortality Table	GAM-94 Basic
PBGC Mortality Projection Scale	Scale AA
PBGC Projection Scale Year	2024
Assumed Percent Male	50.00%

PBGC Expected Retirement Age (XRA) - PBGC Reg. 29 CFR §4044.55, §4044.56, §4044.57	
Terminated Vested Participant Table	High
Active Participant Table	Earliest

Participant Attained Age Method	
Retired Participant	Liability-Wt. Avg.
Terminated Vested Participant	Liability-Wt. Avg.
Active Participant	Liability-Wt. Avg.

# James River Coal Company

## Pension Information Profile

PBGC Valuation Date  
Date Calculation Completed by CFRD Actuaries

31-Aug-14  
25-Aug-14

### Part VIII -- Actuarial Certification

This report has been prepared for the exclusive use of PBGC in fulfilling its statutory obligations. Use of this report for any other purpose may not be appropriate and PBGC takes no responsibility for any such other uses. This PIP has been prepared in accordance with generally accepted actuarial principles and procedures and reflects our understanding of ERISA. Certain assumptions identified in this PIP are prescribed by regulation or statute. The remaining assumptions are appropriate for the purposes of this PIP and the results are considered reasonable and represent our best estimate.

The UGL is our estimate of the liability for ERISA §4022 benefits. Estimated UGL is derived from the vested funding target and target normal cost and does not reflect all ERISA §4022 PBGC benefit limitations, if applicable. No adjustment has been made to the UGL to reflect benefits in excess of PBGC guaranteed benefits, if any, which may be funded by plan assets in accordance with ERISA §4044.

In preparing the report, we have relied upon the source information regarding plan liabilities, plan assumptions, plan provisions, plan participant demographic data, plan assets, and plan sponsor elections relative to funding standards. We have reviewed the source information for overall reasonableness and consistency, but have neither audited nor independently verified the information.

The UGL and UBL have been measured as of the PBGC Valuation Date shown in Part I. A different Valuation Date will result in a different UGL and UBL due to the passage of time as well as the difference in assumptions as prescribed by regulation. In addition, a different set of source information may result in a different UGL and UBL. For reasons discussed above, the GL could be materially different from the liability for the benefits under Title IV of ERISA.

The DUEC is our best estimate of the amount of the minimum required contributions accrued and unpaid as of the PBGC Valuation Date under IRC §412, §430, and §436 based on the plan actuary's determination of funding target and target normal cost, projected as needed to subsequent plan years using generally accepted actuarial principles and practices.

The undersigned credentialed actuaries meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained in this Valuation. We are not aware of any direct or material indirect financial interest or relationship with the plan sponsor, including investments, that could create a conflict of interest that would impair the objectivity of our work.



Completed by Li Sun, ASA, EA



Date



Reviewed by Armando Saavedra, ASA, EA



Date

# EXHIBIT 2

**AGREEMENT FOR APPOINTMENT OF  
TRUSTEE AND TERMINATION OF PLAN**

This is an AGREEMENT between the Pension Benefit Guaranty Corporation (“PBGC”) and James River Coal Company.

**RECITALS:**

- A. PBGC is a United States government agency established by Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§1301-1461 (“ERISA”).
- B. James River Coal Company (“Company”) is a corporation organized under the laws of Virginia with its principal place of business located in Richmond, Virginia.
- C. The Company maintains the James River Coal Company Employees’ *Pension Plan* (“Plan”) to provide retirement benefits for certain of its employees. The Plan was established effective January 1, 1978.
- D. The Plan is an employee pension benefit plan to which 29 U.S.C. § 1321(a) applies and is not exempt under 29 U.S.C. § 1321(b). The Plan is therefore covered by Title IV of ERISA.
- E. James River Coal Company is the administrator of the Plan within the meaning of 29 U.S.C. §§ 1002(16) and 1301(a)(1).
- F. On August 29, 2014, James River Coal Company sold substantially all of its assets to a buyer who did not assume the pension plan. The remaining assets of the

Company will be liquidated in bankruptcy. Consequently, no ongoing controlled group member will exist to assume sponsorship of the Plan upon conclusion of the bankruptcy proceeding.

G. On August 31, 2014, the Company was a contributing sponsor of the Plan within the meaning of 29 U.S.C. § 1301(a)(13).

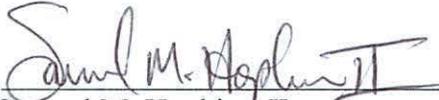
H. PBGC has issued to James River Coal Company a Notice of Determination under 29 U.S.C. § 1342(a) that the Plan will be unable to pay benefits when due and that the Plan should be terminated under 29 U.S.C. § 1342(c).

**NOW THEREFORE, the parties agree:**

1. The Plan is terminated under 29 U.S.C. § 1342(c).
2. The Plan termination date is August 31, 2014, under 29 U.S.C. § 1348.
3. PBGC is appointed trustee of the Plan under 29 U.S.C. § 1342 (c).
4. James River Coal Company and any other person having possession or control of any records, assets or other property of the Plan shall convey and deliver to PBGC any such records, assets or property in a timely manner. PBGC reserves all its rights to pursue such records, assets, and other property by additional means, including but not limited to issuance of administrative subpoenas under 29 U.S.C. § 1303.
5. PBGC will have, with respect to the Plan, all of the rights and powers of a trustee specified in ERISA or otherwise granted by law

The persons signing this Agreement are authorized to do so. The Agreement will take effect on the date the last person signs below.

JAMES RIVER COAL COMPANY, Plan Administrator

Dated: 11/25/2014 By:   
Samuel M. Hopkins, II

PENSION BENEFIT GUARANTY CORPORATION

Dated: 12/11/2014 By: 

# EXHIBIT 3

EIN/PN: 610718373/001  
 PLAN OR SPONSOR NAME: James River Coal Company Employees' Pension Plan  
 REQUESTED BY: Breen, Jean  
 DATE REQUESTED: 26-Oct-15  
 CALCULATED THROUGH: 10/31/2015

ANALYST: Pypier Harvey  
 ANALYST EXTENSION: 5665  
 PROCESSING DATE: 02-Nov-15  
 CCD TRACKING: 23220C

PTC	10/01/2008	10/01/2009	10/01/2010	10/01/2011	10/01/2012	10/01/2013	10/01/2014	TOTAL
Final Participant Count	1891	2014	1999	2003	2000	1993	2006	
Flat Premium Rate	33.00	34.00	35.00	35.00	35.00	42.00	49.00	
Flat Premium Due	62,403.00	68,476.00	69,965.00	70,105.00	70,000.00	83,706.00	24,573.50	3/12 months proration
SAFE HARBOR COMPLIANCE	Yes	Yes	Yes	Yes	Yes	Yes	No Filing	
# Of Months Late	0	0	0	0	0	0	0	
Flat Premium \$ Paid Late	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
% Penalty	0%	0%	0%	0%	0%	0%	0%	
Flat Rate Penalty	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00 Flat Rate Penalty
Flat Rate Interest	0.00	107.86	0.00	2.61	0.00	0.00	0.00	110.47 Flat Rate Interest
Unpaid Flat Premium	0.00	0.00	0.00	0.00	0.00	0.00	24,573.50	24,573.50 Unpaid Flat Premium
# Of Months Unpaid	0	0	0	0	0	0	4	
% Penalty on Unpaid Premium	0%	0%	0%	0%	0%	0%	20%	
Penalty On Unpaid Premium	0.00	0.00	0.00	0.00	0.00	0.00	4,914.70	4,914.70 Penalty On Unpaid Premium
Interest On Unpaid Premium	0.00	0.00	0.00	0.00	0.00	0.00	219.09	219.09 Interest On Unpaid Premium
Total Flat Rate Charges Due	0.00	107.86	0.00	2.61	0.00	0.00	28,707.29	29,817.76 Total Flat Rate Charges Due
Variable Rate (V/R)	28.40	77.12	85.69	120.78	159.33	93.45	236.35	
V/R Due	53,703.00	155,313.00	171,297.00	241,929.00	318,663.00	186,237.00	118,531.00	3/12 months proration
V/R Paid By Form 1 Due Date?	No	Yes	Yes	Yes	Yes	Yes	No Filing	
# Of Months Late	1	0	0	0	0	0	0	
V/R \$ Paid Late	52,152.00	0.00	0.00	0.00	0.00	0.00	0.00	
% Penalty	1%	0%	0%	0%	0%	0%	0%	
V/R Penalty	521.52	0.00	0.00	0.00	0.00	0.00	0.00	521.52 V/R Penalty
V/R Interest	28.61	0.00	0.00	0.00	0.00	0.00	0.00	28.61 V/R Interest
Unpaid V/R	0.00	0.00	0.00	0.00	0.00	0.00	118,531.00	118,531.00 Unpaid V/R
# Of Months Unpaid	0	0	0	0	0	0	4	
% Penalty On Unpaid V/R	0%	0%	0%	0%	0%	0%	20%	
Penalty On Unpaid V/R	0.00	0.00	0.00	0.00	0.00	0.00	23,706.20	23,706.20 Penalty On Unpaid V/R
Interest On Unpaid V/R	0.00	0.00	0.00	0.00	0.00	0.00	1,056.88	1,056.88 Interest On Unpaid V/R
Total V/R Charges Due	550.13	0.00	0.00	0.00	0.00	0.00	143,294.08	143,844.21 Total V/R Charges Due
Auto Write Offs	0.00	(0.01)	0.00	(2.61)	0.00	0.00	0.00	-2.62 Auto Write Offs
Payments/(Overpayments)	(550.13)	(107.85)	0.00	0.00	0.00	0.00	0.00	-657.98 Payments/(Overpayments)
Refunds	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00 Refunds
Penalty waiver	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00 Penalty waiver
<b>ANNUAL AMOUNT DUE</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>173,001.37</b>	<b>173,001.37</b>

COMMENTS  
 1. Prior year p count in non-filing year(s): Participant count used for plan year 2015 obtained from EFAST.  
 2. Cap Rate charge in non-filing year(s): Variable rate used for plan year 2015 obtained from EFAST.  
 3. Plan year 2015 calculated through 10/31/2015 per requester, amount is past due.

Premium	143,104.50
Interests	1,415.05
Penalties	29,142.42
Auto Write Offs	-2.62
Payments/(Overpayments)	-657.98
Refunds	0.00
Penalty waiver	0.00
<b>Total Amount Due (Overpaid)</b>	<b>173,001.37</b>

Note: Unpaid premium, penalty, and interest were calculated through 10/31/2015 per requester.

**CERTIFICATE OF SERVICE**

I hereby certify that on January 15, 2016, a true and correct copy of the foregoing was (a) served electronically through the U.S. Bankruptcy Court’s ECF system at the electronic addresses as set forth in the ECF system and served on the following:

<p><b>Brian M. Resnick</b> Davis Polk &amp; Wardwell, LLP 450 Lexington Avenue New York, NY 10017 JRCCservice@davispolk.com</p> <p><i>Counsel for Debtors via Email</i></p>	<p><b>Sidney J. Garabato</b> Epiq Bankruptcy Solutions, LLC 757 Third Avenue, 3<sup>rd</sup> Floor New York, NY 10017</p> <p><i>Debtors’ Authorized Claims , Noticing and Balloting Agent via FedEx</i></p>
<p><b>Tyler P. Brown</b> Hunton &amp; Williams, LLP 951 East Byrd Street Richmond, VA 23219</p> <p><i>Local Counsel to Debtors via CM/ECF</i></p>	<p><b>Judy A. Robbins</b> Office of the United States Trustee 701 East Broad Street, Suite 4304 Richmond, VA 23219</p> <p><i>United States Trustee via CM/ECF</i></p>
<p><b>Michael S. Stamer</b> <b>Alexis Freeman</b> Akin Gump Strauss Hauer &amp; Feld, LLP One Bryant Park New York, NY 10036 mstamer@akingump.com afreeman@akingump.com</p> <p><i>Counsel for the Creditors’ Committee via Email</i></p>	<p><b>Alice Belisle Eaton</b> Paul, Weiss, Rifkind, Wharton &amp; Garrison, LLP 1285 Avenue of the Americas New York, NY 10019</p> <p><i>Counsel for the Administrative Agent for the Debtors’ Post-petition Lenders via CM/ECF</i></p>
<p><b>Peter J. Barrett</b> Kutak Rock, LLP Bank of America Center 1111 East Main Street, Suite 800 Richmond, VA 23219</p> <p><i>Local Counsel for the Administrative Agent for the Debtors’ Post-petition Lenders via CM/ECF</i></p>	

/s/Jean Marie Breen \_\_\_\_\_  
Jean Marie Breen