No. 18-____

IN THE

Supreme Court of the United States

UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND AND UNITED MINE WORKERS OF AMERICA 1992 BENEFIT PLAN,

Petitioners,

v.

ANDRÉ M. TOFFEL, AS CHAPTER 7 TRUSTEE FOR NEW WEI, INC. (F/K/A WALTER ENERGY, INC.), ET AL.

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In the decision below, the Eleventh Circuit held that the tax Anti-Injunction Act (26 U.S.C. § 7421(a)) does not withdraw jurisdiction over a debtor's effort to use Section 1114(g) of the Bankruptcy Code (11 U.S.C. § 1114(g)) to restrain the assessment of "premiums" for the Combined Fund and for the 1992 Plan, two healthcare benefit plans created under the Coal Industry Retiree Health Benefit Act ("Coal Act") (26 U.S.C. ch. 99). The Eleventh Circuit's decision warrants further review. Its holding that a court may restrain the assessment of Combined Fund premiums deepens a circuit split over the scope of an exception to the Anti-Injunction Act created and applied by the Court in *South Carolina* v. *Regan*, 465 U.S. 367 (1984). And its holding that 1992 Plan premiums are not "any tax" protected by the Anti-Injunction Act opens a 3–1 split.

The questions presented are:

1. Whether the *South Carolina* v. *Regan* exception to the Anti-Injunction Act applies only in this Court and, if not, whether it applies only to litigants challenging the validity of a tax.

2. Whether 1992 Plan premiums are "any tax" for purposes of federal statutes like the Anti-Injunction Act.

PARTIES TO THE PROCEEDING

The Petitioners are the United Mine Workers of America Combined Benefit Fund and the United Mine Workers of America 1992 Benefit Plan, which are private plans established under the Coal Act and maintained by their boards of trustees.

The Respondents are the following entities who were appellees in the proceeding below:

- André M. Toffel, the Chapter 7 trustee for the following debtors:
  - New WEI, Inc. (f/k/a Walter Energy, Inc.);
  - Atlantic Development and Capital, LLC;
  - Atlantic Leaseco, LLC;
  - Blue Creek Coal Sales, Inc.;
  - Blue Creek Energy, Inc.;
  - New WEI 7, Inc. (f/k/a J.W. Walter, Inc.);
  - Jefferson Warrior Railroad Company, Inc.;
  - New WEI 2, LLC (f/k/a Jim Walter Homes, LLC);
  - New WEI 13, Inc. (f/k/a Jim Walter Resources, Inc.);
  - Maple Coal Co., LLC;
  - Sloss-Sheffield Steel & Iron Company;
  - SP Machine, Inc.;
  - Taft Coal Sales & Associates, Inc.;
  - Tuscaloosa Resources, Inc.;
  - V Manufacturing Company;
  - New WEI 19, LLC (f/k/a Walter Black Warrior Basin LLC);
  - New WEI 18, Inc. (f/k/a Walter Coke, Inc.);
  - New WEI 22, LLC (f/k/a Walter Energy Holdings, LLC);
  - New WEI 20, LLC (f/k/a Walter Exploration & Production LLC);

  - New WEI 1, Inc. (f/k/a Walter Home Improvement, Inc.);
  - New WEI 6 Company (f/k/a Walter Land Company);
  - New WEI 16, Inc. (f/k/a Walter Minerals, Inc.); and
  - New WEI 21, LLC (f/k/a Water Natural Gas, LLC).
- Warrior Met Coal, Inc., a publicly traded company that was formed by the debtors' first lien creditors and acquired the debtors' operations; and
- the Steering Committee of First Lien Holders, whose members are
  - Apollo Global Management LLC;
  - Ares Management LLC;
  - Caspian Capital LP;
  - Fidelity Investments;
  - Franklin Mutual Advisers LLC;
  - GSO Capital Partners LP; and
  - KKR Credit Advisors (US) LLC.

TABLE OF CONTENTS

Page

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED............ 1

STATEMENT... 2

I. Statutory Background.................................... 3

A. Section 1114 of the Bankruptcy Code 4

B. The Coal Act 5

II. Case Background.. 7

REASONS FOR GRANTING THE PETITION... 13

I. This Court's Review Is Necessary To Settle How Lower Courts Should Apply The *South Carolina* v. *Regan* Exception, If At All.......... 13

II. This Court's Review Is Necessary To Resolve Whether 1992 Plan Premiums Are "Any Tax" Under The AIA. 20

III. The Questions Presented In This Case Are Important, And This Case Is An Excellent Vehicle For Answering Them. 24

CONCLUSION 27

PETITION APPENDIX

Eleventh Circuit Opinion (12/27/18)...... Pet. App. 1

District Court Opinion (5/18/16) .... Pet. App. 69

Bankruptcy Court Opinion (12/30/15) .. Pet. App. 101

Statutory Addendum .... Pet. App. 176

TABLE OF AUTHORITIES

Page(s)

CASES

Adventure Res. Inc. v. *Holland*,
137 F.3d 786 (4th Cir. 1998) 21

Aloe Energy Corp. v. *Apfel*,
225 F.3d 648 (3d Cir. 2000).................................. 24

In re Am. Bicycle Ass'n,
895 F.2d 1277 (9th Cir. 1990) 16

Ambort v. *United States*,
392 F.2d 1138 (10th Cir. 2004) 16

Barnhart v. *Peabody Coal Co.*,
537 U.S. 149 (2003) 6, 24

Barnhart v. *Sigmon Coal Co.*,
534 U.S. 438 (2002) 4, 24

Bob Jones Univ. v. *Simon*,
416 U.S. 725 (1974) 13, 14, 17, 20

Bowles v. *Russell*,
551 U.S. 205 (2007) 16, 20

California v. *Arizona*,
440 U.S. 59 (1979) 15

In re Chateaugay Corp.,
53 F.3d 478 (2d Cir. 1995).................................... 21

In re Chateaugay Corp.,
64 B.R. 990 (S.D.N.Y. 1986)................................... 4

TABLE OF AUTHORITIES

Page(s)

Cohen v. *United States*,
650 F.3d 717 (D.C. Cir 2011) 19

Commissioner v. *Sunnen*,
333 U.S. 591 (1948) 24

Confederated Tribes & Bands of Yakama Indian Nation v. *ATF*,
843 F.3d 810 (9th Cir. 2016) 17

Eastern Enterprises v. *Apfel*,
524 U.S. 498 (1996) 3, 4, 23, 24

Eastern Enterprises v. *Chater*,
110 F.3d 150 (1st Cir. 1997)................................. 23

Elect. Welfare Tr. Fund v. *United States*,
907 F.3d 165 (4th Cir. 2018) 20

Fed. Energy Admin. v. *Algonquin SNG, Inc.*,
426 U.S. 548 (1976) 21

Hotze v. *Burwell*,
784 F.3d 984 (5th Cir. 2015) 22

Interfirst Bank Dallas, N.A. v. *United States*,
769 F.2d 299 (5th Cir. 1985) 16

Judicial Watch v. *Rossotti*,
317 F.3d 401 (4th Cir. 2003) 16, 18

In re LaSalle Rolling Mills, Inc.,
832 F.2d 390 (7th Cir. 1987) 17, 18

TABLE OF AUTHORITIES

Page(s)

Laughlin v. *IRS*,
912 F.2d 197 (8th Cir. 1990) 17

In re Leckie Smokeless Coal Co.,
99 F.3d 573 (4th Cir. 1996) 18, 20, 21, 23

Milner v. *Dep't of Navy*,
562 U.S. 562 (2011) 15

Nat'l Fed'n of Indep. Bus. v. *Sebelius*,
567 U.S. 519 (2012) 22

Nat'l Tr. for Historic Pres. in the U.S. v. *FDIC*,
21 F.3d 469 (D.C. Cir 1994) 16

New Neighborhoods, Inc. v. *W.V. Workers' Comp. Fund*,
886 F.2d 714 (4th Cir. 1989) 22

In re Pac. Lumber Co.,
584 F.3d 229 (5th Cir. 2009) 25

In re Pan Am. Paper Mills, Inc.,
618 F.2d 159 (1st Cir. 1980)................................. 22

Phillips v. *Commissioner*,
283 U.S. 589 (1931) 17

Pittston Co. v. *United States*,
199 F.3d 694 (4th Cir. 1999) 21, 23

RYO Mach., LLC v. *Dep't of Treasury*,
696 F.3d 467 (6th Cir. 2012) 17

TABLE OF AUTHORITIES

Page(s)

South Carolina v. *Regan*,
465 U.S. 367 (1984) ....*passim*

In re Sunnyside Coal Co.,
146 F.3d 1273 (10th Cir. 1998) 21

UMWA Combined Benefit Fund v.
Walter Energy, Inc.,
551 B.R. 631 (N.D. Ala. 2016) 9, 10

Unity Real Estate Co. v. *Hudson*,
178 F.3d 649 (3d Cir. 1999) 21

Whitfield v. *United States*,
543 U.S. 209 (2005) 15

Z Street v. *Koskinen*,
791 F.3d 24 (D.C. Cir. 2015) 19

STATUTES

11 U.S.C. § 363(f) 8

11 U.S.C. § 363(m) 26

11 U.S.C. § 503(b) 25

11 U.S.C. § 503(b)(1)(B) 21

11 U.S.C. § 1114 1

11 U.S.C. § 1114(a) 5

11 U.S.C. § 1114(e)(1) 5

TABLE OF AUTHORITIES

Page(s)

11 U.S.C. § 1114(f)(1)(A) 5

11 U.S.C. § 1114(g)(1) 5

11 U.S.C. § 1114(g)(2) 5

11 U.S.C. § 1114(g)(3) 5

26 U.S.C. § 1346(a)(1) 21

26 U.S.C. § 7421(a) 1, 2, 13

26 U.S.C. § 9701(c) 6

26 U.S.C. § 9701(c)(4) 7

26 U.S.C. § 9702(a)(1) 5

26 U.S.C. § 9702(b) 5

26 U.S.C. § 9703(b)(1) 6

26 U.S.C. § 9703(f) 6

26 U.S.C. § 9704 6

26 U.S.C. § 9704(a) 6, 25

26 U.S.C. § 9704(b) 6

26 U.S.C. § 9705 6

26 U.S.C. § 9706 6

26 U.S.C. § 9706(a) 6

TABLE OF AUTHORITIES

Page(s)

26 U.S.C. § 9707 24

26 U.S.C. § 9707(a) 6

26 U.S.C. § 9707(b) 6

26 U.S.C. § 9707(f) 6

26 U.S.C. § 9708 6

26 U.S.C. § 9711 7

26 U.S.C. § 9711(c) 25

26 U.S.C. § 9711(c)(3) 24

26 U.S.C. § 9712(a)(1) 6

26 U.S.C. § 9712(b)(2)(A) 7

26 U.S.C. § 9712(b)(2)(B) 7

26 U.S.C. § 9712(d)(1) 7

26 U.S.C. § 9712(d)(1)(B) 7, 24

26 U.S.C. § 9712(d)(2) 7

26 U.S.C. § 9712(d)(4) 25

28 U.S.C. § 157(a) 1

28 U.S.C. § 158(a) 1, 25

28 U.S.C. § 158(d)(1) 1, 25

TABLE OF AUTHORITIES

Page(s)

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1334(a) 1

28 U.S.C. § 2201... 21

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the bankruptcy court (Pet. App. 101) is published at 542 B.R. 859.

The opinion of the district court (Pet. App. 69) is published at 579 B.R. 603.

And the opinion of the court of appeals (Pet. App. 1) is published at 911 F.3d 1121.

JURISDICTION

The bankruptcy court had jurisdiction over the debtors' case under 28 U.S.C. § 1334(a) and in accordance with 28 U.S.C. § 157(a). From the bankruptcy court's December 28, 2015 order, Petitioners timely appealed to the district court, which had jurisdiction under 28 U.S.C. § 158(a). And from the district court's May 18, 2016 judgment, Petitioners timely appealed to the court of appeals, which had jurisdiction under 28 U.S.C. § 158(d)(1).

The judgment of the court of appeals was entered on December 27, 2018. On March 21, 2019, Justice Thomas extended the time for filing a petition for a writ of certiorari until May 26, 2019. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant provisions of the tax Anti-Injunction Act (26 U.S.C. § 7421(a)), the Coal Industry Retiree Health Benefit Act of 1992 (26 U.S.C. ch. 99), and the Retiree Benefits Bankruptcy Protection Act of 1988 (11 U.S.C. § 1114) are set out in the Appendix. See Pet. App. 176.

STATEMENT

After the coal industry had broken its promises to provide healthcare benefits to retired miners and their dependents, Congress passed the Coal Industry Retiree Health Benefit Act. The Act eliminated the failing, collectively bargained system for providing healthcare benefits and, in its place, created two statutory benefit plans—the United Mine Workers of America Combined Benefit Fund and the United Mine Workers of America 1992 Benefit Plan—the two Petitioners here. Under the Act, coal employers are assessed premiums for the Combined Fund and 1992 Plan, and nearly every court has held that those premiums are taxes for federal statutory purposes.

In this case, more than twenty affiliated debtors asked the bankruptcy court to insulate them from being assessed premiums for the Combined Fund and the 1992 Plan—not because the debtors believe the assessments are invalid, but because they can't or don't want to pay. Petitioners objected that the tax Anti-Injunction Act bars courts from interfering with assessments of Coal Act premiums because "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person ***." 26 U.S.C. § 7421(a).

The Eleventh Circuit rejected Petitioners' AIA arguments. Despite recognizing that premiums for the Combined Fund are taxes, the court of appeals held that the AIA does not apply when a litigant has no other way to avoid a tax. The Eleventh Circuit derived that exception from *South Carolina* v. *Regan*, 465 U.S. 367 (1984), a unique case that looks nothing like this one. Next, the Eleventh Circuit became the first court of appeals to hold that premiums for the

1992 Plan aren't taxes for AIA purposes—because Congress didn't label them "taxes."

The Eleventh Circuit's jurisdictional holding implicates circuit splits this Court should resolve now. The D.C. Circuit, the Fourth Circuit, and now the Eleventh Circuit interpret *South Carolina* v. *Regan* broadly and are the only courts of appeals to have used its exception to bypass the AIA. By contrast, the Sixth, Seventh, Eighth, and Ninth Circuits interpret *South Carolina* v. *Regan* narrowly and have never applied its exception to bypass the AIA. Under those other circuits' narrower approach to the exception, the bankruptcy court decision must be reversed.

Moreover, the Second, Fourth, and Tenth Circuits hold that 1992 Plan premiums are taxes for federal statutory purposes. The Fourth Circuit holds that 1992 Plan premiums are "any tax" for AIA purposes, and the other courts hold they are taxes for purposes of other statutes that similarly privilege and protect "any tax." The Eleventh Circuit's contrary view of 1992 Plan premiums stands alone.

These questions are critical to the Coal Act and should be resolved now. The Court should grant the petition and then hold *both* that Combined Fund premiums and 1992 Plan premiums are "any tax," and that *South Carolina* v. *Regan* does not justify restraining the assessment of those premiums just because a debtor can't or doesn't want to pay.

I. Statutory Background

In the mid-twentieth century, the United Mine Workers of America secured healthcare benefits for retired coal miners. See *Eastern Enterprises* v. *Apfel*, 524 U.S. 498, 504–11 (1996). Paying for those benefits quickly became expensive, and many companies tried to avoid the costs. Some refused to sign CBAs that required supporting the collectively bargained system. Some shrank and continued mining without union employees. Others stopped mining. See *id.* at 511; *Barnhart* v. *Sigmon Coal Co.*, 534 U.S. 438, 445 (2002).

And some companies declared bankruptcy. A flashpoint was the bankruptcy of LTV Corporation, a steel and mining conglomerate. Upon filing its petition, LTV immediately stopped paying for the healthcare benefits of 78,000 retirees. LTV theorized that retirees' claims for benefits were general unsecured claims, which LTV could not pay before the claims of secured creditors and priority unsecured creditors. See *In re Chateaugay Corp.*, 64 B.R. 990, 993 (S.D.N.Y. 1986).

The collectively bargained system for providing lifetime healthcare benefits was collapsing under the pressure. Congress stepped in and passed two laws at issue in this case. First, Congress required LTV and other Chapter 11 debtors to pay for retirees' healthcare benefits during bankruptcy—in the Retiree Benefits Bankruptcy Protection Act of 1988, Pub. L. No. 100-334, § 2, 102 Stat. 610–13 (Jun. 16, 1988), codified at Sections 1114 and 1129(a)(13) of the Bankruptcy Code. Second, Congress mandated that coal employers fulfill their promises to provide healthcare benefits to retired miners—in the Coal Act, Pub. L. No. 102-486, 106 Stat. 2776, 3036–56 (Oct. 24, 1992), codified at Chapter 99 of the Internal Revenue Code.

A. Section 1114 of the Bankruptcy Code

Section 1114 governs the payment of a debtor's "retiree benefits" during a Chapter 11 bankruptcy.

11 U.S.C. § 1114(a). For these retiree benefits, Section 1114 preserves the pre-bankruptcy status quo by mandating that a debtor "shall timely pay *** any retiree benefits" after filing a petition. *Id.* § 1114(e)(1).

Section 1114 also regulates whether, when, and how a debtor can modify its obligation to pay retiree benefits. See *ibid*. The debtor must submit "a proposal *** which provides for those necessary modifications in the retiree benefits that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably." *Id.* § 1114(f)(1)(A). The retirees, through an authorized representative, may accept the debtor's proposal and implement it without a court order. If the representative rejects the proposal, the court may implement the proposal by order, but only if the representative "refused to accept such proposal without good cause" and only if the court independently concludes that the proposal is fair, equitable, and "necessary to permit the reorganization of the debtor." *Id.* § 1114(g)(1)–(3).

B. The Coal Act

The Coal Act eliminated the coal industry's teetering collectively bargained system for providing healthcare benefits to covered miners. In its place, the Act created a rigid, statutory system that coal operators cannot manipulate or avoid. The two main parts of the statutory system are the two unique benefits plans the Act established—the Combined Fund and the 1992 Plan.

1. The Combined Fund

The Combined Fund supersedes two collectively bargained plans that were failing before the Coal Act. See 26 U.S.C. § 9702(a)(1), (b). The beneficiaries of the Combined Fund are the retirees who were receiving benefits under those plans at the cutoff date. See *id.* § 9703(f). And the benefits provided by the Combined Fund are "substantially the same as" the benefits provided under the collectively bargained plans. *Id.* § 9703(b)(1).

But unlike the collectively bargained plans, the Combined Fund is financed entirely and solely under the Coal Act. See *id.* §§ 9704–9706; see also *id.* § 9708 ("All liability for contributions to the Combined Fund that arises on and after February 1, 1993, shall be determined exclusively under this chapter *** . "). The Commissioner of Social Security assigned each Combined Fund beneficiary to a "signatory operator"—often, but not always, a company that employed the beneficiary and supported the collectively bargained plans. See *id.* § 9706(a); see also *id.* § 9701(c). These "assigned operators" are assessed annual Combined Fund premiums based on the number of Combined Fund beneficiaries assigned to them. See *id.* § 9704(a)–(b); see also *Barnhart* v. *Peabody Coal Co.*, 537 U.S. 149, 153–54 (2003).

The Coal Act contains provisions to ensure that coal companies do not evade paying Combined Fund premiums. Among them is "a penalty on the failure of any assigned operator to pay any" Combined Fund premium—$100 per beneficiary per day. 26 U.S.C. § 9707(a), (b). The penalty "shall be treated in the same manner as the tax imposed by section 4980B" of the Internal Revenue Code. *Id.* § 9707(f).

2. The 1992 Plan

The Coal Act established the 1992 Plan "separate" from the Combined Fund. *Id.* § 9712(a)(1). Whereas the Combined Fund provides benefits to retirees who were actually receiving benefits from certain collectively bargained plans as of the cutoff date, the 1992 Plan provides benefits to two different categories of retirees. One category comprises miners who were or would have been eligible for benefits under those collectively bargained plans if they had retired in time. See *id.* § 9712(b)(2)(A). The larger category comprises "orphaned" miners whose employers fail to provide them benefits under an individual employer plan. See *id.* § 9712(b)(2)(B).

Premiums for the 1992 Plan are assessed monthly on "1988 last signatory operators," which are the most recent coal industry employers of covered retirees. See 26 U.S.C. §§ 9701(c)(4), 9712(d)(1). The magnitude of a 1988 last signatory operator's 1992 Plan premiums depends on the number of 1992 Plan beneficiaries attributable to the operator. See *id.* § 9712(d)(2). Some 1988 last signatory operators pay no premiums because their retirees are covered by individual employer plans as the Coal Act requires. Those operators can be assessed 1992 Plan premiums if their individual employer plans terminate and the retirees are enrolled in the 1992 Plan as required. Whether they pay premiums or not, 1988 last signatory operators must post security, whose proceeds the 1992 Plan may collect when an operator fails to maintain an individual employer plan. *Id.* § 9712(d)(1)(B); see *id.* § 9711.

II. Case Background

1. Before bankruptcy, Walter Energy and its affiliates produced and exported metallurgical coal for the global steel industry. They also had Coal Act obligations: they paid about $147,000 per year for Combined Fund premiums (for 32 retirees, as assigned by the

Commissioner of Social Security); they maintained individual employer plans for another 572 retirees; and they posted about $4.5 million as security for the 1992 Plan. See Pet. App. 17–18.

Walter Energy and the affiliates filed voluntary Chapter 11 petitions in July 2015. The debtors remained in possession of their businesses and made some effort to reorganize. See *id.* at 109–10. By September, though, the debtors abandoned trying to reorganize. See *id.* at 104. The debtors decided to liquidate by selling their businesses to their first lien creditors—mostly investors who had purchased the debtors' debt obligations as the companies went into distress. The creditors created a new company for the purpose and offered to buy the debtors' businesses for $1.15 billion. Their offer was a credit bid—nearly all of the price was to be funded by the face value of the creditors' claims—and so the creditors paid the estate little cash. See *id.* at 111–12; see also *id.* at 17 n.17 (explaining how credit bids work).

The creditors imposed two relevant conditions on their offer. First, the creditors refused to buy the businesses if the creditors would be assessed Coal Act obligations after the sale. See *id.* at 18. Second, the creditors (inexplicably) refused to buy the businesses if the debtors themselves continued to be assessed Coal Act obligations. See *id.* at 168.

To satisfy the creditors' first condition, the debtors sought permission to sell their businesses under Section 363(f) of the Bankruptcy Code, which authorizes sale of estate property "free and clear of any interest in such property." 11 U.S.C. § 363(f). Petitioners objected that the AIA withdrew the bankruptcy court's jurisdiction over the Section 363(f) motion because Coal Act premiums are federal taxes whose assessment cannot be restrained. Without saying anything about the AIA, the bankruptcy court authorized the Section 363 sale and ruled that the purchasers could not be assessed Coal Act premiums after the sale. See Pet. App. 173–75; see also *id.* at 123–24 (addressing jurisdiction without mentioning the AIA).

The bankruptcy court's order restraining *the purchasers'* Coal Act obligations had no effect on *the debtors'* Coal Act obligations. So, to satisfy the creditors' second condition, the debtors moved under Section 1114(g) to terminate their own Coal Act obligations. Over Petitioners' objections that Coal Act obligations aren't "retiree benefits" and that the debtors' weren't "reorganizing" as Section 1114(g) requires, see *id.* at 132–41, the bankruptcy court permitted the debtors to terminate their individual employer plans and ordered that the debtors not be assessed Combined Fund or 1992 Plan premiums, see *id.* at 19–20.

2. Petitioners appealed both the Section 363(f) order and the Section 1114(g) order, and the district court affirmed both in separate decisions. The district court's opinion affirming the Section 363(f) order addressed Petitioners' AIA arguments directly. See *UMWA Combined Benefit Fund* v. *Walter Energy, Inc.*, 551 B.R. 631, 637–40 (N.D. Ala. 2016). The district court's opinion affirming the Section 1114(g) order addressed the AIA arguments by cross-reference to its opinion affirming the Section 363(f) order. See Pet. App. 99–100.

The district court acknowledged that Coal Act premiums are involuntary statutory assessments whose purpose is to defray government expenses (just like taxes), that Congress codified the Act in the Internal Revenue Code (just like taxes), and that all prior courts had held that Coal Act premiums are taxes for all statutory and constitutional purposes. See *Walter Energy*, 551 B.R. at 638. Nevertheless, citing *National Federation of Independent Business* v. *Sebelius*, 567 U.S. 519 (2012) ("*NFIB*"), the district court held that Coal Act premiums are not "any tax" for AIA purposes; in the district court's view, the AIA's application depends largely, if not entirely, on the label given to an exaction—here, "premium." See *Walter Energy*, 551 B.R. at 638–39. Thus, the district court held that Combined Fund premiums and 1992 Plan premiums are not "any tax" under the AIA.

The district court also held that the AIA would not bar the debtors' Section 1114(g) motion even if Coal Act premiums were "any tax." The court relied on *South Carolina* v. *Regan*, 465 U.S. 367 (1984), where this Court held that the AIA did not bar South Carolina from filing an original-jurisdiction action raising a Tenth Amendment challenge to an income tax assessed on private citizens. The district court inferred from *South Carolina* v. *Regan* that the AIA never applies to plaintiffs who have "no alternative legal way to challenge the validity of a tax." *Walter Energy*, 551 B.R. at 639 (quoting *Regan*, 465 U.S. at 370–71). The district court did not explain how the debtors' Section 1114(g) motion, premised on their *inability* or *unwillingness* to pay Coal Act premiums, challenged the *validity* of their Coal Act obligations.

3. On appeal of the Section 1114(g) order, the Eleventh Circuit (Judge Jill Pryor, joined by Judges Martin and Anderson) affirmed the bankruptcy

court's jurisdiction on somewhat different grounds.[1] In the Eleventh Circuit's view, *NFIB* totally changed how the AIA applies: "if Congress did not label an exaction as a tax," the AIA applies only if Congress "direct[ed] that the exaction be treated as a tax for purposes of the Anti-Injunction Act." Pet. App. 32.

Following that two-step approach, the Eleventh Circuit held, on the first step, that neither Combined Fund premiums nor 1992 Plan premiums are "any tax" because Congress labeled both exactions "premium," not "tax." *Ibid.* (1992 Plan); *id.* at 33 (Combined Fund). On the second step, the Eleventh Circuit noted that Congress expressly directed that penalties for failing to pay Combined Fund premiums are to be treated as taxes. *Id.* at 34 (citing 26 U.S.C. § 9707(f)). Because the *penalties* are treated as taxes, the Eleventh Circuit reasoned that Combined Fund *premiums* are treated as taxes for the AIA. See *ibid.* (citing *Fla. Bankers Ass'n* v. *Dep't of Treasury*, 799 F.3d 1065, 1071–72 (D.C. Cir 2015) (Kavanaugh, J.)). However, because there are no penalties for failing to pay 1992 Plan premiums, the Eleventh Circuit held that 1992 Plan premiums are not treated as taxes for the AIA. In other words, the Eleventh Circuit concluded that Combined Fund "premiums" are "any tax" protected by the AIA, but that 1992 Plan "premiums" are not, simply because the former are backed by a tax penalty while the latter are not.

In concluding that 1992 Plan premiums are not "any tax" for AIA purposes, the Eleventh Circuit re-

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[1] Petitioners abandoned their separate appeal of the Section 363(f) order after the Eleventh Circuit denied Petitioners' emergency motion to stay the sale. See Pet. App. 21 n.22.

jected an on-point decision of the Fourth Circuit—because it "was issued before the Supreme Court's decision in *NFIB*." Pet. App. 31 n.25. The Eleventh Circuit also rejected Second, Fourth, and Tenth Circuit decisions holding that Coal Act premiums are "any tax" under similar federal statutes—because none of those decisions specifically "addressed whether Coal Act premiums qualified as taxes *under the Anti-Injunction Act*." *Ibid.* (emphasis added).

The Eleventh Circuit stopped short of holding that Combined Fund premiums are "any tax" for AIA purposes. The court only *assumed* it because the court *held* that, even if they are "any tax," the *South Carolina* v. *Regan* exception applies to Section 1114(g) motions. See *id.* at 35–36. Though other circuits have interpreted the exception very narrowly, the Eleventh Circuit held that the exception broadly applies whenever a plaintiff has "no available alternative remedy." *Id.* at 35. The court concluded that Section 1114(g) is the only way a debtor who can't pay or who doesn't want to pay can escape its obligations to the Combined Fund. See *id.* at 35–36.

REASONS FOR GRANTING THE PETITION

I. This Court's Review Is Necessary To Settle How Lower Courts Should Apply The *South Carolina* v. *Regan* Exception, If At All.

For 35 years, lower courts have struggled with *South Carolina* v. *Regan* and the exception it cut out of the AIA. The dominant approaches set a high bar for plaintiffs trying to circumvent the AIA. Yet in the decision below, the Eleventh Circuit adopted an approach that makes circumventing the AIA easy. This case is an excellent vehicle for this Court to tell lower courts whether and how the *South Carolina* v. *Regan* exception applies beyond the unique facts of that case.

The text of the AIA provides:

> Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6232(c), 6330(e)(1), 6331(i), 6672(c), 6694(c), 7426(a) and (b)(1), 7429(b), and 7436, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

26 U.S.C. § 7421(a). The AIA limits federal courts' subject-matter jurisdiction. See *Bob Jones Univ.* v. *Simon*, 416 U.S. 725, 749 (1974). Though the AIA contained no exceptions when enacted, see Act of Mar. 2, 1867, § 10, 14 Stat. 475, Congress has now enumerated thirteen exceptions by cross-reference. Not only that, but Congress has emphasized that litigants cannot evade the AIA's jurisdictional bar by arguing that they are not "the person against whom such tax was assessed." See Federal Tax Lien Act, Pub. L. No. 89-719, §110(c), 80 Stat. 1144.

This Court's decisions applying the AIA display "a cyclical pattern of allegiance to the plain meaning of the Act, followed by periods of uncertainty caused by a judicial departure from that meaning, and followed in turn by the Court's rediscovery of the Act's purpose." *Bob Jones Univ.*, 416 U.S. at 742. Almost every departure from the Act's text has "produced a prompt correction in course." *Id.* at 743. Yet the Court never has revisited *South Carolina* v. *Regan*, the last case where the Court deemed the AIA's text "largely irrelevant." *Regan*, 465 U.S. at 377. And so some lower courts, like the Eleventh Circuit below, have extended the exception the Court created in that case and applied it to cases, like this one, where the plain text of the AIA should control.

In *South Carolina* v. *Regan*, the State of South Carolina sued the Secretary of the Treasury under this Court's original jurisdiction and challenged the constitutionality of a federal law that, the State alleged, violated the Tenth Amendment by taxing the interest earned by holders of State-issued bonds. See *id.* at 371–72. The Court held that the AIA did not bar South Carolina's suit. Notwithstanding the AIA's text, the Court inferred from legislative history, the AIA's purposes, and other extrinsic "circumstances of its enactment" that the AIA does not apply when "Congress has not provided the plaintiff with an alternative legal way to challenge the validity of a tax," *id.* at 373; see *id.* at 381. There being no other forum where South Carolina could challenge the constitutionality of a tax assessed on bondholders, the Court held the AIA did not bar the State's original action. See *ibid.*; see also *id.* at 403–04 (Stevens, J., concurring in part and dissenting in part) (agreeing to create an exception to the AIA).

Four Justices, led by Justice O'Connor, thought the Court should not have created a new exception to the AIA. "The Act's language, purpose, and history should leave no doubt that Congress intended to preclude both taxpayer and nontaxpayer suits, regardless of the availability of an alternative forum." *Id.* at 395 (O'Connor, J., concurring in judgment). Nevertheless, Justice O'Connor did not believe the AIA barred South Carolina's suit. Instead, to avoid answering the constitutional question whether Congress can limit this Court's original jurisdiction, Justice O'Connor interpreted the AIA's reference to "any court" as meaning only lower courts. See *id.* at 398–99; see also *California* v. *Arizona*, 440 U.S. 59, 66 (1979) ("It is extremely doubtful that [Congress has] the power to limit in this manner the original jurisdiction conferred upon this Court by the Constitution.").[2] Twenty years later, the Court suggested that Justice O'Connor's view has stood the test of time. In *Hibbs* v. *Winn*, 542 U.S. 88 (2004), the Court described *South Carolina* v. *Regan* as a "unique suit" whose import is that the AIA does "not bar this Court's exercise of original jurisdiction," *id.* at 103 n.6.

Some of the reasoning the Court used to create the *South Carolina* v. *Regan* exception is hard to square with this Court's more recent decisions. Recently, the Court has held that legislative history cannot trump clear statutory text. See, *e.g.*, *Whitfield* v. *United States*, 543 U.S. 209, 215 (2005); *Milner* v. *Dep't of Navy*, 562 U.S. 562, 572 (2011). Yet, as lower

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[2] Justice Blackmun shared Justice O'Connor's "reservations about the breadth of the approach taken by" the Court yet concurred in the judgment because, in his view, the AIA does not bar suits that will have little or no effect on tax revenues. *Regan*, 465 U.S. at 382–83 (Blackmun, J., concurring in judgment).

courts have commented, the Court in *South Carolina* v. *Regan* derived the exception from legislative history that is "contrary to the apparent meaning of the [AIA's] language." *Interfirst Bank, N.A.* v. *United States*, 769 F.2d 299, 307 n.13 (5th Cir. 1985); see *Nat'l Tr. for Historic Pres. in the U.S.* v. *FDIC*, 21 F.3d 469, 472 (D.C. Cir 1994) (Wald, J., concurring) ("In *Regan*, the Court turned to the Tax Anti-Injunction Act's legislative history, despite the fact that the Act's language 'could scarcely be more explicit.'" (quoting *Bob Jones Univ.*, 416 U.S. at 736)). Also recently, the Court has held that federal courts have "no authority to create equitable exceptions to jurisdictional requirements." *Bowles* v. *Russell*, 551 U.S. 205, 214 (2007). Yet the Court in *South Carolina* v. *Regan* created the exception in light of equitable concerns about the availability of alternative remedies. See *Regan*, 465 U.S. at 381 n.19.

For those reasons, lower courts have struggled to apply the *South Carolina* v. *Regan* exception in a principled way. Most begin by "constru[ing] the exception very narrowly." *Judicial Watch* v. *Rossotti*, 317 F.3d 401, 408 n.3 (4th Cir. 2003); see *Ambort* v. *United States*, 392 F.2d 1138, 1140 (10th Cir. 2004) (quoting *Judicial Watch*); see also *In re Am. Bicycle Ass'n*, 895 F.2d 1277, 1281 (9th Cir. 1990) (requiring "strict construction of" the exception and holding that it does not categorically allow bankruptcy courts to terminate a debtor's tax obligations). Yet from that starting spot, lower courts' approaches diverge.

The dominant approach limits the exception to plaintiffs challenging "the validity of a tax." *Regan*, 465 U.S. at 373. This approach places the exception in line with due process cases holding that Congress must give a taxpayer at least one opportunity to contest the legality of an assessment. See *Phillips* v. *Commissioner*, 283 U.S. 589, 596–97 (1931); cf. *Bob Jones Univ.*, 416 U.S. at 746–47 ("This is not a case in which an aggrieved party has no access at all to judicial review."). The Sixth Circuit holds that the exception is inapplicable when plaintiffs have no objection to a tax's validity but want only "to protect themselves from lost profits." *RYO Mach., LLC* v. *Dep't of Treasury*, 696 F.3d 467, 472 (6th Cir. 2012). The Seventh Circuit holds that the *South Carolina* v. *Regan* exception does not apply when a plaintiff seeks "to avoid (or at least postpone) the assessment of that tax on grounds unrelated to whether the tax is lawful, due and owing." *In re LaSalle Rolling Mills, Inc.*, 832 F.2d 390, 393 (7th Cir. 1987). The Eighth Circuit similarly declines to apply the exception when the plaintiff "does not dispute the validity of the tax." *Laughlin* v. *IRS*, 912 F.2d 197, 199 (8th Cir. 1990). The Ninth Circuit holds that the exception cannot aid bankruptcy debtors who—like the debtors in this case—"do not seek to determine the validity of the tax, but to prevent substantial harm to the debtor's reorganization plan." *Am. Bicycle Ass'n*, 895 F.2d at 1281; see *Confederated Tribes & Bands of Yakama Indian Nation* v. *ATF*, 843 F.3d 810, 815 (9th Cir. 2016).

Two courts of appeals have gone further and cautioned that the *South Carolina* v. *Regan* exception may have no application except in original actions in this Court, echoing Justice O'Connor's concurrence and *Hibbs*'s validation of it. See *RYO Mach.*, 696 F.3d at 472 ("[T]he context of our consideration is quite different because the *South Carolina* Court construed the AIA in light of a claim that barring South Carolina's suit would be an unconstitutional restriction on the Supreme Court's original jurisdiction."); *LaSalle Rolling Mills*, 832 F.2d at 393 (noting that "*South Carolina* v. *Regan* could be distinguished for a host of reasons, including the fact that the Court construed the statute in light of a claim that barring the suit would be an unconstitutional restriction of the Supreme Court's original jurisdiction").

The Eleventh Circuit rejected these limitations. It held that the *South Carolina* v. *Regan* exception is available in lower courts and allows the debtors' Section 1114(g) motion simply because they have "no available alternative remedy." Pet. App. 35. The Fourth Circuit staked out a similarly expansive approach to the exception in another Coal Act case, *In re Leckie Smokeless Coal Co.*, 99 F.3d 573 (4th Cir. 1996). *Leckie* involved a challenge to a free-and-clear sale under Section 363(f). Like the creditors who bought the Walter Energy debtors' mines here, the buyers of the *Leckie* mines didn't want the mines to come with any Coal Act obligations, so the *Leckie* debtors sought the bankruptcy court's permission to sell the mines free and clear of future Coal Act obligations. The Fourth Circuit held that Combined Fund premiums and 1992 Plan premiums are "any tax" under the AIA, then applied the *South Carolina* v. *Regan* exception to both premiums because the *Leckie* debtors had no "'alternative legal way' to challenge the imposition of Coal Act successor liability on the purchasers of their assets." *Id.* at 584. *Leckie* might have seemed like a one-off—indeed, later Fourth Circuit decisions have limited the exception to litigants who "challenge the validity of" a tax, *Judicial Watch*, 317 F.3d at 408—but the Eleventh Circuit's holding in this case proves otherwise.

Besides the Fourth and Eleventh Circuits, the D.C. Circuit is the only federal court of appeals that has relied on the *South Carolina* v. *Regan* exception to let a suit proceed. See *Cohen* v. *United States*, 650 F.3d 717, 726 (D.C. Cir 2011) (en banc) (holding that, in light of *South Carolina* v. *Regan*, the AIA did not bar claims that could not be raised in a refund suit); *Z Street* v. *Koskinen*, 791 F.3d 24, 31–32 (D.C. Cir. 2015) (same). All told, the number of federal appellate opinions rejecting litigants' attempts to use the exception to squeeze into federal court dwarf the number relying on the exception. And this Court hasn't applied the exception except in *South Carolina* v. *Regan* itself.

By now, most courts of appeals have weighed in and have not reached a consensus on how to apply the *South Carolina* v. *Regan* exception. Of the three prevailing approaches—(1) the exception is for original actions; (2) the exception is for challenges to the validity of a tax; and (3) the exception is for anyone with no other way to avoid a tax—Petitioners undoubtedly prevail under either of the first two. For, if the exception applies only to original actions, bankruptcy debtors obviously cannot avail themselves of it. Or if *South Carolina* v. *Regan* requires a plaintiff to challenge the validity of a tax, the debtors also cannot avail themselves of it: their Section 1114(g) motion asked the bankruptcy court to terminate their Coal Act obligations because the debtors believe paying their Combined Fund (and 1992 Plan) premiums and any penalties is financially too burdensome, not because paying premiums and penalties is unlawful or unconstitutional.

Until this Court provides definitive guidance, lower courts will continue to fracture over how to apply the *South Carolina* v. *Regan* exception. Only this Court can end the current "period[] of uncertainty" by limiting the exception to original actions or to validity challenges. *Bob Jones Univ.*, 416 U.S. at 742; see, *e.g.*, *Bowles*, 551 U.S. at 214 (limiting two of this Court's decisions "to the extent they purport to authorize an exception to a jurisdictional rule"). The Court should therefore grant the petition.

II. This Court's Review Is Necessary To Resolve Whether 1992 Plan Premiums Are "Any Tax" Under The AIA.

The Eleventh Circuit technically limited its application of the *South Carolina* v. *Regan* exception to Combined Fund premiums because, in the court's view, 1992 Plan premiums are not "any tax" for AIA purposes. See Pet. App. 32. The Eleventh Circuit's characterization of 1992 Plan premiums opened up a 3–1 split, which this Court should resolve in order to provide Petitioners complete relief.

The conflict between the Eleventh and Fourth Circuits is head-on. The Fourth Circuit holds that Coal Act premiums are "any tax" protected by the AIA because they "are involuntary pecuniary burdens imposed by Congress for the public purpose of restoring financial stability to coal miners' benefit plans." *Leckie*, 99 F.3d at 583 (citing, *inter alia*, *In re Lorber Indus.*, 675 F.2d 1062, 1066 (9th Cir. 1982)). Exactly like other federal taxes, Coal Act premiums are codified in the Internal Revenue Code and administered by federal officials. See *Elect. Welfare Tr. Fund* v. *United States*, 907 F.3d 165, 169 n.* (4th Cir. 2018) (citing *Leckie*); see also *Fed. Energy Admin.* v. *Algonquin SNG, Inc.*, 426 U.S. 548, 558 n.9 (1976) (declining to apply the AIA because the exactions were not under the Internal Revenue Code).

Following the same logic, the Fourth Circuit holds that Coal Act premiums are taxes for other federal statutory purposes. Coal Act premiums are "Federal taxes" and thus beyond the reach of the Declaratory Judgment Act, 28 U.S.C. § 2201. See *Leckie*, 99 F.3d at 582–85. And the Fourth Circuit holds that Coal Act premiums are "any internal revenue tax" and thus properly the subject of a refund action under 26 U.S.C. § 1346(a)(1). See *Pittston Co.* v. *United States*, 199 F.3d 694, 702–04 (4th Cir. 1999).

The Fourth Circuit also holds that Coal Act premiums are "any tax" for purposes of Section 503(b) of the Bankruptcy Code, 11 U.S.C. § 503(b)(1)(B), which gives administrative-expense priority to "any tax" assessed against a debtor during bankruptcy. See *Adventure Res. Inc.* v. *Holland*, 137 F.3d 786, 793–95 (4th Cir. 1998). The Second and Tenth Circuits hold the same thing. See *In re Chateaugay Corp.*, 53 F.3d 478, 498 (2d Cir. 1995); *In re Sunnyside Coal Co.*, 146 F.3d 1273, 1277–80 (10th Cir. 1998). The Second, Fourth, and Tenth Circuit's Bankruptcy Code decisions are relevant here because Section 503(b) of the Bankruptcy Code uses the same operative words as the AIA—"any tax."[3]

The Eleventh Circuit rejected all the out-of-circuit decisions. It rejected the Fourth Circuit's AIA decision because it predates *NFIB*. And it rejected the Second,

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[3] Every court of appeals to consider it "ha[s] held that Coal Act obligations are taxes" for constitutional purposes. *Unity Real Estate Co.* v. *Hudson*, 178 F.3d 649, 675 (3d Cir. 1999).

Fourth, and Tenth Circuits' decisions about the Declaratory Judgment Act, the tax refund statute, and the Bankruptcy Code because "none of them addressed whether Coal Act premiums qualified as taxes under the Anti-Injunction Act." Pet. App. 31 n.25. Neither distinction should stand in the way of this Court's review of this important question.

Citing cases stretching back almost a century, *NFIB* didn't purport to change how to ascertain whether an exaction is "any tax" for AIA purposes. See *NFIB*, 567 U.S. at 544 (citing, *inter alia*, *Bailey* v. *George*, 259 U.S. 16 (1922)). An exaction's label always has mattered, and in *NFIB*, the label was practically dispositive—the word "penalty" does not connote a revenue-raising purpose, and the same law used the word "tax" for other exactions. See *ibid.*; see also *id.* at 543 ("There is no immediate reason to think that a statute applying to 'any tax' would apply to a 'penalty.'"). Here, by contrast, the statutory label "premium" does connote a revenue-raising purpose, and the Coal Act does not use the word "tax" for other exactions. To follow *NFIB*, the court of appeals should have given "premium" its ordinary meaning—a meaning synonymous with "tax" when the premium is "imposed by the government for the purpose of defraying the expenses of an undertaking which it authorized." *In re Pan Am. Paper Mills, Inc.*, 618 F.2d 159, 162 (1st Cir. 1980) (statutory "premiums" are "taxes"); *New Neighborhoods, Inc.* v. *W.V. Workers' Comp. Fund*, 886 F.2d 714, 716 (4th Cir. 1989) (statutory "premiums" are "excise taxes"); cf. *Hotze* v. *Burwell*, 784 F.3d 984, 998 (5th Cir. 2015) ("The terms 'tax' and 'assessable payment' do not present a contradiction in the use of terms.").

The Eleventh Circuit did not explain why the term "any tax" means something unique in the AIA. Courts usually presume that identical terms in similar statutes mean the same thing. The Fourth Circuit, in fact, rejects that "the term 'tax' has 'different meanings in different contexts.'" *Pittston* 199 F.3d at 702. The Eleventh Circuit was wrong to brush off other circuits' Bankruptcy Code cases as irrelevant: the Second Circuit's decision holding that Coal Act premiums are "any tax" *under the Bankruptcy Code* was what swayed the Fourth Circuit to hold that 1992 Plan premiums are "any tax" *under the AIA*. See *Leckie*, 99 F.3d at 583 ("Finding the Second Circuit's reasoning persuasive, and discerning no basis for distinguishing the meaning of the word 'tax' in the Bankruptcy Code from the use of that term in the two statutes at issue before us, we adopt the Second Circuit's reasoning as our own.") (citing *Chateaugay*, 53 F.3d at 498).

Even if this Court, like the Eleventh Circuit, disregarded the Second, Fourth, and Tenth Circuit's decisions just because they arose in the Bankruptcy Code context, the 1–1 split between the Fourth and Eleventh Circuits over whether 1992 Plan premiums are "any tax" under the AIA still deserves immediate review. Historically, the Court has not delayed review of Coal Act splits. Two of the Court's three Coal Act opinions resolved 1–1 splits, and the third resolved a splitless question.[4] In Coal Act cases, the Court has

[4] *Eastern Enterprises* v. *Apfel*, 524 U.S. 498 (1998), decided a splitless constitutional question. See *Eastern Enterprises* v. *Chater*, 110 F.3d 150, 152 (1st Cir. 1997) (joining five other circuits in upholding the constitutionality of the Coal Act).

granted review quickly—as quickly as it does in tax cases generally—because regional differences in administration of federal tax laws are highly problematic. See *Commissioner* v. *Sunnen*, 333 U.S. 591, 599 (1948) (noting that the results of circuit splits on tax issues are "inequalities in the administration of the revenue laws, discriminatory distinctions in tax liability, and a fertile basis for litigious confusion").

III. The Questions Presented In This Case Are Important, And This Case Is An Excellent Vehicle For Answering Them.

The story of coal miners' fight to secure lifetime healthcare benefits is not a story of promises kept. It is a story of promises broken. See *Eastern Enterprises*, 524 U.S. at 504–15. Coal employers proved willing to do almost anything—even declare bankruptcy—to avoid fulfilling their promises to retirees.

Congress therefore crafted the Coal Act to ensure those promises would be broken no more. Missed payments incur penalties. See 26 U.S.C. § 9707. Operators post security that they lose if they terminate benefits. See *id.* §§ 9711(c)(3), 9712(d)(1)(B). Related persons, even those who aren't in the coal business, are jointly and severally liable for Coal Act obligations.

Barnhart v. *Sigmon Coal Co.*, 534 U.S. 438 (2002), resolved a 1–1 split over successor liability right after the Fourth Circuit broke with the D.C. Circuit. See Pet'n for a Writ of Certiorari, Case No. 00-1307, at 13, *available at* 2001 WL 34091953. An unpublished Third Circuit opinion perhaps made it a 2–1 split. See *Aloe Energy Corp.* v. *Apfel*, 225 F.3d 648 (Table) (3d Cir. 2000).

Barnhart v. *Peabody Coal Co.*, 537 U.S. 149 (2003), resolved a 1–1 split over retiree assignments right after the Sixth Circuit broke with the Fourth Circuit. See Pet'n for a Writ of Certiorari, Case No. 01-705, at 15, *available at* 2001 WL 34092025.

See *id.* §§ 9704(a), 9711(c), 9712(d)(4). And perhaps most significantly, Coal Act obligations are federal taxes, and federal taxes are notoriously difficult to avoid, inside and outside of bankruptcy. See 11 U.S.C. § 503(b).

Yet in the decision below, the Eleventh Circuit held that federal law "allows Walter Energy to break [its] promise" and use bankruptcy to escape its Coal Act obligations. Pet. App. 67. Not because a law enacted *after* the Coal Act has undermined or weakened the Act. Rather, the Eleventh Circuit held that the *South Carolina* v. *Regan* exception and Section 1114 of the Bankruptcy Code—both of which became law a few years *before* the Coal Act—expose a latent flaw that has been there from the beginning. This case therefore presents the question whether the Coal Act even does the main thing Congress intended it to do.

If past is prologue, coal employers will follow the Eleventh Circuit's AIA decision as a map for avoiding Coal Act obligations. But this Court shouldn't wait for a future case to answer the questions presented. Bankruptcy cases involving the AIA and the Coal Act might not last long enough to rise to a court of appeals, let alone to this Court, because bankruptcy-specific mootness doctrines stand in the way. Bankruptcy orders are usually appealed to a district court first; only if there's time are they appealed to a court of appeals. See 28 U.S.C. § 158(a), (d)(1). While litigants are appealing time-sensitive orders like the Section 363(f) and Section 1114(g) orders in this case, the bankruptcy court pushes the case toward conclusion. Some appellate courts hold that confirmation of a Chapter 11 plan of reorganization moots some appeals of orders issued before the plan. See generally *In re Pac. Lumber Co.*, 584 F.3d 229, 240–43 (5th Cir.

2009) (explaining the dubious doctrine of equitable mootness). And the Bankruptcy Code itself moots some appeals of Section 363(f) orders after the debtors' assets are sold. See 11 U.S.C. § 363(m). Debtors have a head start and usually win the race; they end their bankruptcy cases before appellants end their appeals. As a result, appellate decisions on these important issues are infrequent, as are opportunities for litigants to seek this Court's review.

This case is a rare one that wasn't completely mooted out. After the Section 363(f) sale of the debtors' coal mines, the debtors converted their case to Chapter 7. See Pet. App. 22. As a result, no Chapter 11 plan has been (or will be) confirmed, so equitable mootness has not been (and will not be) an issue for Petitioners' appeal of the Section 1114(g) order. By contrast, Petitioners' related appeal of the Section 363(f) order was statutorily mooted by Section 363(m): after the Eleventh Circuit denied Petitioners' emergency motion for a stay of the sale of the debtors' mines, Petitioners had little choice but to abandon that appeal. See Order, Case No. 16-10639 (11th Cir. Feb. 25, 2016); see also Pet. App. 21 n.22.

The contrast between the Eleventh Circuit's ruling on the stay and the decision below is stark. To its credit, the merits panel saw that the questions presented here are "very important and complex." Pet. App. 4. The merits panel spent more than 18 months writing the decision below. The motions panel, however, took only three days to resolve the emergency stay motion, nowhere near enough time to give the issues the attention they are due.

The questions presented here truly are "very important." *Ibid.* Petitioners, retirees, and coal employers need to know how the AIA, Section 1114, and Coal

Act interact. If the Court limits the *South Carolina* v. *Regan* exception to original-jurisdiction cases or to cases challenging the validity of a tax, the emerging threat to the Coal Act will be snuffed out. At the same time, the Court cannot be confident that it will have a chance to review the important questions presented in a future case.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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May 24, 2019

APPENDIX

United States Court of Appeals, Eleventh Circuit.

IN RE: WALTER ENERGY, INC. *et al.*, Debtor.

UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND, UNITED MINE WORKERS OF AMERICA 1992 BENEFIT PLAN,

Plaintiff-Appellants,

v.

ANDRE M. TOFFEL, as Chapter 7 Trustee for Walter Energy, Inc., STEERING COMMITTEE OF FIRST LIEN HOLDERS, WARRIOR MET COAL, INC.,

Defendant-Appellees.

No. 16-13483

Filed: December 27, 2018

Before MARTIN, JILL PRYOR and ANDERSON, Circuit Judges.

JILL PRYOR, Circuit Judge:

Coal companies in the United States long ago promised in wage agreements to provide their employees with health care benefits at no cost to the employees and to continue to provide these benefits even after the employees' retirement. A quarter century ago, Congress turned this contractual obligation into a statutory one. *See* Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act"), Pub. L. No. 102-486, 106 Stat. 2776, 3036–56 (1992). Even before the Coal Act, coal companies struggled to pay the cost of these benefits. Unfortunately, this problem has grown more severe as coal revenues have declined and health care costs have skyrocketed.

In this case we confront the question of what happens to a coal company's statutory obligation to fund retiree health care benefits when the company files bankruptcy and pursues liquidation under Chapter 11. To answer this question, we must consider the interplay of two federal statutes, the Coal Act and the Retiree Benefits Bankruptcy Protection Act of 1988 ("RBBPA"), Pub. L. No. 100-334, 102 Stat. 610 (1988). The Coal Act requires coal companies to provide certain retirees with health care benefits for life; it created two multiemployer plans—the UMWA Combined Benefit Fund and the UMWA 1992 Benefit Plan (collectively, the "Funds")—to provide such benefits. These plans are funded by premiums paid by the coal companies and their related entities and by the federal government. The RBBPA prohibits a debtor who files bankruptcy from unilaterally terminating payments for retiree health care benefits. The RBBPA nonetheless permits a bankruptcy court to terminate a debtor's obligation to fund retiree health care benefits when it finds that the termination is necessary for the debtor's reorganization.

The question before us is whether the RBBPA authorizes a bankruptcy court to terminate a debtor's statutory obligation under the Coal Act to pay premiums to the Funds when the bankruptcy court finds that such termination is necessary for the coal company to sell its assets as a going concern and avoid a piecemeal liquidation. This difficult question requires a nuanced analysis of both bankruptcy law and the unique system that Congress created to fund health care benefits for coal retirees.

Debtor Walter Energy[1] petitioned for Chapter 11 bankruptcy and sought to sell substantially all of its assets as a going concern. But the sole potential purchaser would acquire the assets only if they were transferred free and clear of Walter Energy's Coal Act obligation to provide retiree health care benefits or pay premiums to the Funds. The bankruptcy court, exercising its authority under the RBBPA, terminated Walter Energy's obligation to pay premiums, which in effect shifted the cost of these benefits to the federal government. The Funds appealed to the district court, which affirmed the bankruptcy court.

On appeal to our Court, the Funds advance three reasons why the bankruptcy court lacked the authority to terminate Walter Energy's obligation to pay premiums. First, they argue that the Anti-Injunction Act, 26 U.S.C. § 7421(a), barred the bankruptcy court from modifying the premiums because the premiums qualify as taxes for purposes of that statute, meaning they may be challenged only after the taxes are collected. Second, they contend that because the premiums paid to the Funds are imposed by a statute and not undertaken as a voluntary contractual obligation, they do not qualify as retiree benefits under the RBBPA and thus the bankruptcy court had no authority to terminate them. Third, they assert that because Walter Energy sought to sell substantially all of its assets and liquidate under Chapter 11 of the Bankruptcy Code, instead of engaging in a classic Chapter 11 reorganization, the bankruptcy court had no authority under the RBBPA to terminate the payment obligation. We

[1] This case arises out of a bankruptcy petition filed by Walter Energy, Inc. and 22 related entities. For simplicity, we refer collectively to the debtors in this case as "Walter Energy."

reject the Funds' arguments and hold that the bankruptcy court had the authority to modify the premiums that Walter Energy owed the Funds. Accordingly, we affirm the district court.

* * *

To address the very important and complex issues in this case, our opinion today necessarily is lengthy. In Part I, we provide a history of retiree health care benefits in the coal industry to explain how Congress came to transform coal companies' contractual obligation to provide retiree health care benefits into a statutory mandate. In Part II, we discuss the factual background and procedural history of this case. In Part III, we identify the applicable standard of review. In Part IV, we explain that we have jurisdiction to hear this appeal because the Anti-Injunction Act did not bar the bankruptcy court from terminating Walter Energy's obligation to pay premiums owed under the Coal Act. In Part V, we hold that the RBBPA authorized the bankruptcy court to terminate Walter Energy's obligation to pay premiums, even though the premiums were imposed by statute and Walter Energy was pursuing liquidation under Chapter 11, not a classic reorganization.

I. RETIREE HEALTH CARE BENEFITS IN THE COAL INDUSTRY

Working in a coal mine is extremely dangerous. There is the risk of fire, flood, explosion, or mine collapse. There is also the unseen risk that the dust in the coal mine may cause long-term health problems including respiratory diseases. Given the dangers inherent in their work, coal miners sought and secured lifetime health care benefits from their employers. The coal industry struggled with how to pay for these benefits, with some coal companies filing bankruptcy in an attempt to shed this obligation. In response to the bankruptcy filings, Congress passed the RBBPA to limit when companies could rid themselves of the obligation to fund retiree health care benefits. Congress also passed the Coal Act, guaranteeing certain coal retirees health care benefits for life.

A. Coal Employees, Including Retirees, Initially Secure Health Care Benefits in Wage Agreements.

In the early twentieth century, coal workers paid their own health care costs. Some coal companies used a prepayment system in which workers paid for health care through payroll deductions. But the quality of this employer-provided health care was poor and led to worker unrest. After miners organized nationwide strikes to demand health care benefits, President Harry Truman directed the federal government to take possession of all coal mines and to negotiate an agreement with the United Mine Workers of America ("UMWA"). The Secretary of Interior and the UMWA ultimately agreed that miners would be provided health care benefits.

With an agreement about benefits in place, the government returned the mines to private control. The coal companies agreed to a collective bargaining agreement with the UMWA, the National Bituminous Coal Wage Agreement of 1947 ("1947 NBCWA"), which established a multiemployer fund to provide pension and medical benefits to coal workers and their families. The coal companies funded these benefits using a pay-as-you-go system in which they paid a royalty on each ton of coal produced. The 1947 NBCWA agreement did not explicitly grant retirees health care benefits. Instead, the trustees of the multiemployer fund, who were selected by the UMWA and coal companies, were responsible for setting the level of benefits, including deciding whether retirees received benefits. Over time, the trustees added or removed benefits depending on the amount of coal that was produced and the royalties received.

About 30 years later, the coal companies and the UMWA agreed in the National Bituminous Coal Wage Agreement of 1974 ("1974 NBCWA") to expand the scope of these benefits by agreeing that coal workers and retirees would be guaranteed health care benefits for life.[2] The 1974 NBCWA also restructured the multiemployer fund that provided these benefits to comply with the Employee Retiree Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq*. Prior to the 1974 NBCWA, there was a single benefit fund that provided coal workers both pension and health care benefits. The 1974 NBCWA split this fund into four funds, with two funds providing pension benefits and two funds—the 1950 Benefit Plan and Trust and the 1974 Benefit Plan and Trust—providing health care benefits.[3] Despite these changes, the method for funding the benefits remained the same, with coal companies continuing to pay royalties to the multiemployer funds based on the volume of coal produced.

The new plans quickly encountered difficulty in covering the cost of retiree health care benefits. The

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[2] Spouses and dependents of retirees were also guaranteed health care benefits.

[3] The 1950 Benefit Plan covered miners who retired before January 1, 1976 and their dependents. The 1974 Benefit Plan covered those who retired on or after January 1, 1976.

royalties paid to the plans decreased as coal production declined. At the same time, the plans' expenses increased due to a growing number of beneficiaries and rising health care costs. To address this problem, the UMWA and the coal companies agreed to restructure the system for health care benefits for coal employees and retirees in the National Bituminous Coal Wage Agreement of 1978 ("1978 NBCWA"). They agreed generally to move from a centralized, multiemployer health care benefit plan to individual employer plans for current employees and recent retirees. Under this system, each coal company was required to establish and finance its own individual health benefit plan, which would cover its employees, certain recent retirees, and future retirees. The 1978 NBCWA represented a "shift[ ] from a defined contribution obligation, under which employers were responsible only for a predetermined amount of royalties, to a form of defined benefit obligation, under which employers were to fund specific benefits." *E. Enters. v. Apfel*, 524 U.S. 498, 510–11 (1998) (plurality).

The 1978 NBCWA did not eliminate the multiemployer plans entirely, however. The 1950 Benefit Plan continued to operate and cover those retirees who were already enrolled in the plan—that is, miners who had retired before 1976. The 1974 Benefit Plan was restructured to provide health care benefits to "orphaned" retirees—that is, retirees whose last employer was no longer in business. The 1950 Benefit Plan and 1974 Benefit Plan were funded by contributions from the coal companies that signed the 1978 NBCWA.

Despite this restructuring, the 1974 Benefit Plan continued to operate at a severe deficit. Some coal companies refused to renew their wage agreements with the UMWA. The decisions of these coal companies not to sign the 1978 NBCWA or subsequent wage agreements affected the 1974 Benefit Plan in two ways. First, when a company chose not to renew its collective bargaining agreement, it was no longer obligated to provide health care benefits to its retirees.[4] Its retirees then became orphaned and eligible for benefits under the 1974 Benefit Plan, increasing the expenses of the 1974 Benefit Plan.[5] Second, when a coal company chose not to renew its wage agreement, it stopped paying premiums to the 1974 Benefit Plan to cover the cost of benefits for orphaned retirees, leaving the remaining coal companies to shoulder a greater share of the cost of benefits for orphaned retirees.

B. Coal Companies Attempt to Shed Retiree Health Obligations by Filing for Bankruptcy, Leading Congress to Amend the Bankruptcy Code.

Desperate to reduce their expenses, some coal companies looked to reorganization under Chapter 11 as a way to rid themselves of the cost of retiree health care benefits. In 1986, a coal company known as LTV petitioned for Chapter 11 bankruptcy and immediately announced it would no longer pay for health care benefits for its approximately 78,000 retirees. Despite

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[4] *See Dist. 29, United Mine Workers of Am. v. Royal Coal Co.*, 768 F.2d 588, 589 (4th Cir. 1985) (concluding that operator who declined to renew its wage agreement was not required to provide health care benefits to retired miners beyond the expiration date of its previous wage agreement).

[5] *See Dist. 29, United Mine Workers of Am. v. United Mine Workers of Am. 1974 Benefit Plan & Trust*, 826 F.2d 280, 283 (4th Cir. 1987).

promising in wage agreements to provide its retirees with health care benefits for life, LTV stopped paying for the benefits, leaving its retirees as unsecured creditors whose only option was to try to recover the value of the promised benefits from LTV's bankruptcy estate. To protect LTV's retirees from having their health care benefits terminated, Congress quickly passed temporary legislation that required companies who petitioned for Chapter 11 bankruptcy, including LTV, to continue to pay their contributions for retiree health care benefits after filing for bankruptcy.

Congress enacted the RBBPA as permanent legislation to protect retiree health care benefits when a company files bankruptcy.[6] The RBBPA prohibits a Chapter 11 debtor in possession[7] from unilaterally terminating or modifying its obligation to pay for retired employees' health care benefits. 11 U.S.C. § 1114(e)(1). But the RBBPA permits these obligations to be modified either by an agreement between the debtor and an authorized representative of retirees receiving benefits or by order of the bankruptcy court. *Id.*[8]

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[6] The RBBPA applies not only to coal companies but also to companies in any industry.

[7] The RBBPA also prohibits a Chapter 11 trustee from unilaterally terminating such payments. For ease of reference, we use the term "debtor" to refer both to a debtor-in-possession as well as a Chapter 11 trustee. We note that the RBBPA uses these terms interchangeably. *See* 11 U.S.C. § 1114(e)(1).

[8] The process for modifying retiree health care benefits was modeled on § 1113 of the Bankruptcy Code, which sets forth when a bankruptcy court may permit a debtor to reject a collective bargaining agreement. *See* 11 U.S.C. § 1113.

The RBBPA narrowly circumscribes when a bankruptcy court may enter an order modifying or terminating a debtor's obligation to make payments for retiree health care benefits. A bankruptcy court may issue such an order only after (1) the debtor and the retiree's authorized representative negotiated and failed to reach an agreement and (2) the bankruptcy court finds that the modification or termination is necessary to permit the reorganization of the debtor, treats all affected parties equitably and fairly, and is clearly favored by the balance of the equities. *Id.* § 1114(g).

The RBBPA also dictates how a debtor's obligation to fund retiree health care benefits must be treated in a Chapter 11 plan for the plan to be confirmed. The plan must provide for continued payment of all retiree benefits "for the duration of the period the debtor has obligated itself to provide such benefits." *Id.* § 1129(a)(13). The amount of such payments must be either the amount that the debtor was paying prior to bankruptcy or, if the debtor's payments have been modified either by agreement or order of the bankruptcy court, the amount set forth in the agreement or order. *See id.*

C. Congress Passes the Coal Act to Address Funding for Retiree Health Care Benefits in the Coal Industry.

The 1950 and 1974 Benefit Plans remained in a precarious financial position. In 1989, they were on the brink of insolvency, causing coal miners to strike. In response, the Secretary of Labor convened the Coal Commission to study issues associated with retiree benefits in the coal industry. *See* Sec'y of Labor's Advisory Comm'n on United Mine Workers of Am. Retiree Health Benefits, *A Report to the Secretary of Labor and the American People*, 1–4 (1990), available at *Coal Commission Report on Health Benefits of Retired Coal Miners: Hearing Before the Subcomm. on Medicare & Long-Term Care of the S. Comm. on Fin.*, 102d Cong. 142–277 (1991).

The Coal Commission report accepted that retired coal miners were entitled to lifetime health care benefits: "Retired coal miners have legitimate expectations of health care benefits for life; that was the promise they received during their working lives and that is how they planned for their retirement years. That commitment should be honored." *Id.* at 1. But the Coal Commission explained that these benefits were in "jeopardy" because of the 1950 and 1974 Benefit Plans' massive deficits. *Id.* at 1, 3.

In response to the Coal Commission report, Congress passed the Coal Act, which turned coal companies' contractual obligation to provide health care benefits to workers who retired before October 1, 1994 into a statutory requirement.[9] The legislation was intended to "remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry." Coal Act, Pub. L. No. 102-486 § 19142(b)(1), 106 Stat. 2776, 3037. The Coal Act added a statutory mandate that coal companies provide health care benefits to their retirees through individual employer plans

[9] The Coal Act does not cover workers who retired after September 30, 1994. Coal Act, Pub. L. No. 102-486 § 19143(a), 106 Stat. 2776, 3051-53 (codified at 26 U.S.C. §§ 9711(b)(1), 9712(b)(2)). Collective bargaining agreements set forth the retiree benefits for these workers.

and created two new multiemployer plans—the Combined Fund and the 1992 Benefit Plan.

1. Individual Employer Plans

Since 1978, the coal companies and the UMWA agreed in national wage agreements that the coal companies would provide health care benefits to their retirees through individual employer plans. Under the Coal Act, a coal company that had signed the 1978 NBCWA or any subsequent NBCWA was required to continue to provide health care benefits, including to retirees, through its individual employer plan for as long as the company or a "related person" remained in business. *See* 26 U.S.C. §§ 9701(c)(2)(A), 9711(a).[10]

2. The Combined Fund

The Coal Act again reorganized the multiemployer plans. Congress created the Combined Fund by merging the 1950 and 1974 Benefit Plans so that the beneficiaries of the 1950 and 1974 Benefit Plans received their benefits from the Combined Fund.[11] 26 U.S.C. § 9702(a)(2). The Coal Act guaranteed that the Combined Fund would provide these beneficiaries with "substantially the same" health care benefits that they had previously received. *Id.* § 9703(b)(1).

The Combined Fund is funded primarily by premiums collected from coal companies and money received from the federal government. *Id.* §§ 9701(c)(5), 9704(a), 9705(b)(1). Premiums are assessed against coal companies, referred to as signatory operators,

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[10] The Coal Act contains a detailed definition of "related person," but that definition is not at issue here. *See* 26 U.S.C. § 9701(c)(2).

[11] To be covered by the Combined Fund, a beneficiary must have retired by July 20, 1992 or been the spouse or dependent of an employee who retired by that date. *See* 26 U.S.C. § 9703(f).

who signed the 1978 NBCWA (or any subsequent NBCWA). *See id.* §§ 9701(b)(1), 9701(c)(1), 9704(a). A signatory operator is required to pay an annual premium to the Combined Fund to cover the cost of health care benefits for retirees assigned to the signatory operator. *Id.* § 9704(b). The Social Security Commissioner assigns each retiree covered by the Combined Fund to a signatory operator based on the retiree's employment history and complex rules set forth in the Coal Act. *See id.* § 9706(a)(1), (2).[12] Each year, a signatory operator is charged a "health benefit premium," which is calculated by multiplying the number of retirees assigned to the signatory operator and an annual per beneficiary premium calculated by the Commissioner. *Id.* § 9704(b)(1).

A signatory operator must pay premiums to the Combined Fund for as long as it has assigned beneficiaries and "conducts or derives revenue from any business activity, whether or not in the coal industry." *See id.* §§ 9701(c)(7), 9706(a). If a signatory operator ceases all business activities, the Commissioner may assess premiums against a "related person" of the signatory operator, meaning a "successor[ ] in interest" or "business ... under common control." *Id.* §§ 9701(c)(2)(A), 9706(a). The Coal Act thus contemplates that when a company sells substantially all of its assets, the purchaser inherits the obligation to pay Combined Fund premiums. To ensure that premiums are paid, a penalty of $100 per beneficiary per day is

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[12] The Act provided that a retiree could be assigned to a coal company who did not sign the 1978 NBCWA or any later collective bargaining agreement, *see* 26 U.S.C. § 9706(a)(3), but the Supreme Court struck down that provision as an unconstitutional taking. *See E. Enters.*, 524 U.S. at 536.

assessed if a company fails to timely pay its premiums. *Id.* § 9707(a)(1), (b).

Under the rules set forth in the Coal Act, certain retirees of the Combined Fund cannot be assigned to a signatory operator. These orphaned retirees may include retirees who never have had an employer who signed the 1978 NBCWA (or any subsequent wage agreement) or whose employer ceased all business activities and left behind no related person. The Coal Act nevertheless "provid[es] stable funding for the health benefits of these 'orphaned retirees.' " *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 154 (2003). Benefits for these orphaned retirees are funded by three different sources. First, when the Combined Fund was created, it received a total of $210,000,000 from a UMWA pension plan. 26 U.S.C. § 9705(a)(1). Second, Congress has authorized annual transfers from the Abandoned Mine Reclamation Fund ("Abandoned Mine Fund")[13] to the Combined Fund. *See id.* § 9705(b)(1); 30 U.S.C. § 1232(h)(2)(A). Third, if the proceeds received fail to cover the cost of benefits for orphaned retirees, the Commissioner may collect premiums from signatory operators to cover any shortfall. *See* 26 U.S.C. § 9704(d)(2)(B).

3. The 1992 Benefit Plan

The Coal Act also created the 1992 Benefit Plan, another new multiemployer plan. 26 U.S.C. §

[13] The Abandoned Mine Fund was established for reclamation and restoration of land and water resources degraded by coal mining. 30 U.S.C. § 1231(c)(1). A coal company pays a royalty, based on the amount of coal it produces, to the Secretary of the Interior to fund the Abandoned Mine Fund. *Id.* § 1232(a). Royalties will be collected through September 2021. *Id.* § 1232(b).

9712(a)(1), (a)(2)(C). The 1992 Benefit Plan covers two groups of retirees: (1) retirees who were eligible to receive benefits from the 1950 or 1974 Benefit Plans but had not yet retired when the Coal Act was enacted and (2) orphaned retirees who would be entitled to coverage under an individual employer plan but are not receiving such coverage.[14] *Id.* § 9712(b)(2). Only individuals who retired by September 30, 1994, are eligible for the 1992 Benefit Plan. *Id.* The 1992 Benefit Plan provides beneficiaries with benefits that are "substantially the same as" the coverage that was previously offered under the 1950 and 1974 Benefit Plans. *Id.* § 9712(c)(1).

Like the Combined Fund, the 1992 Benefit Plan is funded by premiums from coal companies and transfers from the Abandoned Mine Fund. But the premiums owed to the 1992 Benefit Plan are assessed in a different manner. A smaller group of coal companies is required to pay premiums to the 1992 Benefit Plan—only those coal companies that signed the National Bituminous Coal Wage Agreement of 1988 ("1988 NBCWA"). *Id.* § 9712(d)(1), (d)(6); *see id.* § 9701(c)(3)(A). Each of these companies is responsible for paying a monthly premium for each retiree assigned to it; retirees are generally assigned to the signatory of the 1988 NBCWA that was the retiree's most recent employer. *See id.* § 9712(d)(1)(A). The company and any "related person" of the company are jointly and severally liable for these premiums. *Id.* § 9712(d)(4). The Act thus contemplates that when a company sells substantially all of its assets, the purchaser inherits the obligation to pay premiums to the

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[14] The 1992 Benefit Plan also covers spouses and certain dependents of such retirees. *See* 26 U.S.C. § 9712(b)(2).

1992 Benefit Plan. But, unlike the Act's provision for the Combined Fund, no additional penalty is imposed if a company or its related person fails to pay its premiums. *Cf. id.* § 9707.

Many beneficiaries of the 1992 Benefit Plan are unassigned to any signatory operator and are instead orphaned retirees. Several sources contribute to fund benefits for these retirees. First, companies that signed the 1988 NBCWA are required to provide security, such as a letter of credit, to the 1992 Benefit Plan to cover a portion of the projected future costs of health care benefits. *Id.* § 9712(d)(1)(B). Second, the 1992 Benefit Plan receives transfers from the Abandoned Mine Fund to cover the cost of providing health care benefits to orphaned retirees. *See id.* § 9712(a)(3); 30 U.S.C. § 1232(h)(2)(B). If these transfers are insufficient to cover the cost of benefits, then the signatories to the 1988 NBCWA may be liable for additional backstop premium payments. *See* 26 U.S.C. § 9712(d)(1)(C).

II. FACTUAL BACKGROUND

A. Walter Energy Files Bankruptcy Amid a Global Downturn in the Coal Industry.

Walter Energy, the debtor in this case, produced and exported coal from underground and surface mines located in Alabama, West Virginia, Canada, and the United Kingdom. Beginning in 2011, the global coal industry experienced a sharp downturn, which caused coal prices to plummet. Facing sharp declines in revenue, Walter Energy tried to reduce its expenses by cutting costs, idling or closing mines, selling assets, laying off workers, and suspending dividends to investors. Even so, Walter Energy's revenue still was insufficient to cover the interest payments on its debt and its labor costs, which included wages set by collective bargaining agreements as well as benefits to its employees and retirees, including pensions and postretirement healthcare. Running out of the cash needed to continue operations, Walter Energy filed a petition for Chapter 11 bankruptcy.

B. The Bankruptcy Court Permits Walter Energy to Sell Most of Its Assets in a Going-Concern Sale.

In the bankruptcy proceedings, Walter Energy sought to sell substantially all of its assets in a going-concern sale pursuant to § 363 of the Bankruptcy Code. *See* 11 U.S.C. § 363. Warrior Met,[15] an entity owned by Walter Energy's first-lien creditors, submitted a "stalking horse" bid to purchase Walter Energy's assets.[16] Walter Energy and Warrior Met entered into an asset purchase agreement in which Walter Energy agreed to sell its core Alabama mining operations to Warrior Met for $1.15 billion. The consideration for the purchase price was a credit bid.[17] In addition,

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[15] Warrior Met was originally called Coal Acquisition, LLC but later changed its name. For simplicity, we refer to it by its new name, Warrior Met.

[16] A stalking horse is a potential purchaser of a bankruptcy debtor's assets; the debtor uses the stalking horse to set a floor for later competing bids from other potential purchasers to prevent lowball offers.

[17] Under a credit bid, the holder of a secured claim offers to purchase the property that secures its loan, with the value of its secured claim offset against the amount of its bid. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 644 (2012). Credit bidding protects a secured creditor against the risk that the collateral will be sold at a depressed price by enabling it "to purchase the collateral for what it considers the fair

Warrior Met agreed to provide additional cash, fund various wind down trusts, and assume an estimated $115 million in liabilities.

Despite taking on approximately $115 million in liabilities, Warrior Met was willing to acquire the assets only if it would not be bound by Walter Energy's collective bargaining agreements, not be required to provide retiree health care benefits, and released from any obligation to pay premiums to the Funds. At the time Walter Energy filed for bankruptcy, it provided health care benefits to 572 retirees and dependents through its individual employer plan. In addition, 32 other beneficiaries assigned to Walter Energy were covered by the Combined Fund with Walter Energy paying approximately $147,000 in annual premiums to the Combined Fund.[18]

To complete the sale, Walter Energy negotiated with the UMWA and a retiree committee about the status of the collective bargaining agreements and retiree benefits. Walter Energy proposed amending the collective bargaining agreement so that it would not bind Warrior Met, terminating health and welfare benefits for retirees, and coordinating with the

market price (up to the amount of its security interest) without committing additional cash to protect the loan." *Id.* at 644 n.2.

[18] At the time Walter Energy filed bankruptcy, it was paying no premiums to the 1992 Benefit Plan as there were no plan beneficiaries assigned to it. But, as required by the Coal Act, Walter Energy had provided security to the 1992 Benefit Plan in the amount of approximately $4.5 million, which was the estimated cost to provide health care benefits to Walter Energy's retirees and their dependents for one year.

UMWA and the 1992 Benefit Plan to transition retirees covered by Walter Energy's individual employer plan to the 1992 Benefit Plan. Walter Energy's proposal, then, would result in its retirees being treated as orphaned retirees for the Combined Fund and the 1992 Benefit Plan. The UMWA rejected this offer, insisting, among other things, that Warrior Met provide retiree health care benefits.

The negotiations having failed, Walter Energy sought approval from the bankruptcy court to conduct a sale of substantially all of its assets under § 363(b) of the Bankruptcy Code.[19] 11 U.S.C. § 363(b). Walter Energy also requested that the bankruptcy court enter an order terminating Walter Energy's collective bargaining agreements as well as its obligations to provide retiree health care benefits through its individual employer plan or pay premiums to the Funds. Walter Energy explained that if the court did not grant this relief, it would: be unable to complete the § 363 sale, run out of money, and shut down its mines' operations, eliminating all jobs.[20] In contrast, if this relief were granted, Walter Energy contended that Warrior Met would be able to continue to operate at least some mines, preserving some jobs. Walter Energy also asked the court to terminate its obligation to fund retiree health care benefits after the sale occurred while it wound down operations, claiming

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[19] Section 363(b) permits the sale of property of the estate not in the ordinary course of business after notice and a hearing. 11 U.S.C. § 363(b). Under certain conditions, the property may be sold free and clear of any security interest. *See id.* § 363(f).

[20] If the mines shut down, it appeared unlikely that they would ever open back up given the costs associated with reopening them.

there would be no money left to pay these obligations. The UMWA and the Funds opposed the motion, arguing that the bankruptcy court lacked the authority to modify the collective bargaining agreements or to terminate Walter Energy's Coal Act obligations.

The bankruptcy court entered an order allowing Walter Energy to reject the collective bargaining agreements and terminating its obligations to provide retirees insurance through an individual employer plan as well as to pay premiums to the Funds (the "1113/1114 Order"). In addition, the bankruptcy court ordered that Walter Energy was not obligated to pay premiums for retiree health care benefits to the Funds while it wound up its affairs. After this order, the 572 beneficiaries who had been receiving retiree health care benefits through Walter Energy's individual employer plan became beneficiaries of the 1992 Benefit Plan. The 32 beneficiaries of the Combined Fund who had been assigned to Walter Energy continued to receive benefits from the Combined Fund. Because the bankruptcy court had terminated both Walter Energy and Warrior Met's obligation to pay premiums to the Funds, all of Walter Energy's retirees and their dependents were orphaned, meaning that the obligation to pay for their health care benefits effectively shifted to the federal government. *See* 26 U.S.C. §§ 9705(b)(1), 9712(a)(3); 30 U.S.C. § 1232(h)(2)(A), (B).

The bankruptcy court also entered an order approving the sale of substantially all of Walter Energy's assets to Warrior Met (the "Sale Order"). Warrior Met acquired the property free and clear of all liens, claims, interests, and encumbrances; was not subject to the terms of Walter Energy's collective bargaining agreements; and was not required to provide retiree health care benefits or pay premiums to the Funds. Shortly after the sale was completed, Walter Energy stopped paying premiums to the Funds.

C. The District Court Affirms the Sale Order and 1113/1114 Order.

The Funds appealed to the district court both the Sale Order and the 1113/1114 Order. They also filed a motion asking the district court to stay the sale pending appeal,[21] but the district court refused to stop the sale. In separate opinions, the district court affirmed the bankruptcy court's orders.

First, the district court affirmed the Sale Order, rejecting the Funds' argument that the bankruptcy court lacked the power to authorize a sale of assets free and clear of Walter Energy's obligation to pay premiums under the Coal Act. *UMWA Combined Benefit Fund v. Walter Energy*, *Inc.* 551 B.R. 631, 640 (N.D. Ala. 2016). The Funds argued that the bankruptcy court lacked jurisdiction to authorize the sale under the Anti-Injunction Act. *Id.* at 637. The district court disagreed, concluding that the Coal Act premiums were not taxes for purposes of the Anti-Injunction Act, and thus the bankruptcy court had jurisdiction to enter the Sale Order.[22] *Id.* at 637–40.

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[21] The UMWA separately appealed the Sale Order and the 1113/1114 Order. While the UMWA's appeals were pending in the district court, it entered into a new collective bargaining agreement with Warrior Met and dismissed its appeals, leaving only the Funds' appeals before the district court.

[22] The Funds appealed the district court's decision affirming the Sale Order. While their appeal was pending, the sale was completed. We permitted the Funds to voluntarily dismiss the appeal of the Sale Order.

Second, the district court affirmed the bankruptcy court's 1113/1114 Order. The district court concluded that the bankruptcy court had the authority under § 1114 to terminate Walter Energy's obligation to pay premiums under the Coal Act. This is the Funds' appeal of that decision.[23]

D. Walter Energy Converts Its Bankruptcy Case to a Chapter 7 Petition.

While this appeal was pending, Walter Energy continued to wind down its operations. It filed a motion in the bankruptcy court to convert its bankruptcy petition to a proceeding under Chapter 7, explaining that after consummating the sale transaction, it had transferred or obligated itself to transfer every asset it owned and thus there was no compelling need to further administer the case in Chapter 11. The bankruptcy court granted the motion.[24]

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[23] We issued a jurisdictional question asking the parties to address whether the bankruptcy court's 1113/1114 Order was a final order or otherwise immediately appealable. "Although a district court, at its discretion, may review interlocutory judgments and orders of a bankruptcy court, a court of appeals has jurisdiction over only final judgments and orders entered by a district court or a bankruptcy appellate panel sitting in review of a bankruptcy court." *In re F.D.R. Hickory House, Inc.*, 60 F.3d 724, 725 (11th Cir. 1995) (internal citations omitted) (footnotes omitted); *see* 28 U.S.C. § 158(a), (d). Walter Energy initially took the position that we lacked jurisdiction but now concedes that a final order is before us. We agree and conclude that we have jurisdiction to review the 1113/1114 Order.

[24] After the bankruptcy court converted the case to a Chapter 7 proceeding, we substituted the trustee for Walter Energy as a party to this appeal. For ease of reference, we will continue to refer to this party as Walter Energy.

The Funds claim that the amount Walter Energy owes them continues to increase. They assert that, through April 2017, Walter Energy owed premiums of approximately \$3.6 million to the 1992 Benefit Plan and approximately \$104,000 to the Combined Fund. Furthermore, they contend that each month the amount that Walter Energy owes to the 1992 Benefit Plan increases by approximately \$347,000 to reflect an additional monthly premium that Walter Energy failed to pay.

III. STANDARD OF REVIEW

When we review an order of a district court entered in its role as an appellate court reviewing a bankruptcy court's decision, we independently examine the bankruptcy court's factual and legal determinations, applying the same standards of review as the district court. *In re FFS Data, Inc.*, 776 F.3d 1299, 1303 (11th Cir. 2015). We review *de novo* conclusions of law whether by the bankruptcy court or the district court. *See In re Bilzerian*, 100 F.3d 886, 889 (11th Cir. 1996). We review the bankruptcy court's factual findings under the clearly erroneous standard. *Id.*

IV. THE ANTI-INJUNCTION ACT'S JURISDICTIONAL BAR

Before turning to the Funds' arguments about whether the bankruptcy court was permitted under the RBBPA to terminate Walter Energy's obligation to pay premiums to the Funds, we must be sure that the bankruptcy court had jurisdiction to modify the premiums.

The Anti-Injunction Act generally prohibits suits challenging the assessment or collection of a tax before the tax is collected. *See* 26 U.S.C. § 7421(a) ("[N]o suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person....”). Instead, taxes ordinarily may be challenged only after they are paid, by suing for a refund. *Nat'l Fed'n of Indep. Bus. v. Sebelius* (*NFIB*), 567 U.S. 519, 543 (2012). The Anti-Injunction Act “protects the Government's ability to collect a consistent stream of revenue, by barring litigation to enjoin or otherwise obstruct the collection of taxes.” *Id.* When the Anti-Injunction Act applies, it deprives federal courts of jurisdiction. *See id.* (recognizing that Anti-Injunction Act issue must be considered before court could address merits); *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 5 (1962) (explaining that the “object of [the Anti-Injunction Act] is to withdraw jurisdiction from the state and federal courts to entertain suits seeking injunctions prohibiting the collection of federal taxes”). Accordingly, we must address whether the Anti-Injunction Act applies before we can consider the merits of the Funds' claims.

The Funds contend that the premiums Walter Energy owed under the Coal Act qualify as taxes for purposes of the Anti-Injunction Act and that as a result the bankruptcy court lacked authority to terminate Walter Energy's obligation to pay future premiums. To determine whether the premiums owed to the Funds qualify as taxes for purposes of the Anti-Injunction Act, we look to the Supreme Court's recent decision in *NFIB*, which recognized that even when an exaction qualifies as a tax for purposes of the Constitution, it does not necessarily qualify as a tax for purposes of the Anti-Injunction Act. *See NFIB*, 567 U.S. at 544–46.

Applying *NFIB*, we conclude that premiums owed to the 1992 Benefit Plan do not qualify as taxes for purposes of the Anti-Injunction Act. The analysis for premiums owed to the Combined Fund is more complicated, though, because Congress directed that if a coal company fails to pay its premiums, a penalty shall be assessed and this penalty "shall be treated in the same manner as the tax imposed by section 4980B." 26 U.S.C. § 9707(f). Under *NFIB* this language probably indicates that the premiums and penalties owed to the Combined Fund should be treated as taxes for purposes of the Anti-Injunction Act. But we can leave this question for another day because even assuming that the premiums and penalties owed to the Combined Fund qualify as taxes for purposes of the Anti-Injunction Act, an exception to the Anti-Injunction Act applies. We thus conclude that the bankruptcy court had jurisdiction to terminate Walter Energy's obligation to pay premiums to the Funds.

A. In NFIB, the Supreme Court Addressed When an Exaction Qualifies as a Tax for Purposes of the Anti-Injunction Act.

The Anti-Injunction Act bars a lawsuit only when the exaction being collected qualifies as a tax. *See* 26 U.S.C. § 7421. In *NFIB*, the Court considered whether Congress had the authority to enact the Affordable Care Act's individual mandate—which imposed a penalty on individuals who failed to purchase health insurance—under its constitutional power to levy taxes. 567 U.S. at 546–47. Before addressing the merits of the constitutional issue, the Court considered whether the Anti-Injunction Act barred the suit and held that the penalty for failing to comply with the individual mandate did not qualify as a tax for Anti-Injunction Act purposes. *See id.* at 546.

The Court explained that the inquiry into whether an exaction qualifies as a tax for purposes of the Anti-

Injunction Act, a statute, is separate and distinct from whether the exaction qualifies as a tax for constitutional purposes. *Id.* at 544. To determine whether an exaction qualifies as a tax for purposes of the Constitution, courts apply a "functional approach," looking at the "substance and application" of the exaction, as opposed to the label that Congress used to describe it. *Id.* at 566 (internal quotation marks omitted). This functional approach ensures that "Congress may not ... expand its power under the Taxing Clause, or escape the Double Jeopardy Clause's constraint on criminal sanctions, by labeling a severe financial penalty a 'tax.' " *Id.* at 544. But the Court refused to apply such a functional approach to determine whether the exaction imposed by the Affordable Care Act qualifies as a tax for purposes of the Anti-Injunction Act. *Id.*

Because both the Anti-Injunction Act and the Affordable Care Act "are creatures of Congress's own creation," the Supreme Court explained that the way "they relate to each other is up to Congress, and the best evidence of Congress's intent is the statutory text." *Id.* To determine whether Congress intended for an exaction to be treated as a tax under the Anti-Injunction Act, the Supreme Court directed courts look to whether Congress directly or indirectly indicated that the exaction should be treated as a tax for purposes of that act. *See id.* at 543–46.

Looking to the statutory text of the Affordable Care Act, the Court concluded that Congress did not intend for the penalty imposed for failing to comply with the individual mandate to be a tax for purposes of the Anti-Injunction Act. Congress decided to describe the exaction imposed on individuals who chose to forgo health insurance "not as a 'tax' but as a 'penalty.' " *Id.* at 543. The Court treated this decision as "significant" because "[t]here is no immediate reason to think that a statute applying to 'any tax' would apply to a 'penalty.' " *Id.* at 543–44. The Court further regarded the fact that Congress labeled as taxes other exactions under the Affordable Care Act as evidence that Congress did not intend the penalty for failing to comply with the individual mandate to be a tax for purposes of the Anti-Injunction Act. *Id.* at 544.

The Supreme Court accepted that in narrow circumstances Congress could "describe something as a penalty but direct that it nonetheless be treated as a tax for purposes of the Anti-Injunction Act." *Id.* The Court used as an example § 6671 of the Internal Revenue Code, which states that "any reference in this title to 'tax' imposed by this title shall be deemed also to refer to the penalties and liabilities" set forth in subchapter 68B of the Internal Revenue Code. *Id.* (citing 26 U.S.C. § 6671(a)). The Court explained that this provision deemed the penalties set forth in subchapter 68B to be taxes for purposes of the Anti-Injunction Act, located in the Internal Revenue Code, even though Congress did not directly label the exactions set forth in subchapter 68B as taxes. *Id.* at 544–45. But § 6671 did not turn the penalty for failure to comply with the individual mandate into a tax for purposes of the Anti-Injunction Act because the individual mandate was not found in subchapter 68B of the Internal Revenue Code. *Id.* at 545.

After accepting that Congress could indicate indirectly that an exaction should be treated as a tax for purposes of the Anti-Injunction Act, the Court considered a second potential argument about why the penalty for failing to comply with the individual mandate should be treated as a tax. The provision setting the penalty for failing to comply with the mandate stated that the penalty shall be "assessed and collected in the same manner" as an assessable penalty under subchapter 68B, 26 U.S.C. § 5000A(g)(1), and Congress directed that assessable penalties under subchapter 68B are "assessed and collected in the same manner as taxes," *id.* § 6671(a). *NFIB*, 567 U.S. at 545. Although it was argued that these provisions together indicated that Congress intended the penalty for failing to comply with the mandate to be treated as a tax for purposes of the Anti-Injunction Act, the Court rejected the argument. *Id*. The Court explained that "§ 5000A(g) is a directive only to the Secretary of the Treasury to use the same methodology and procedures to collect the penalty that he uses to collect taxes." *Id.* (internal quotation marks omitted). Because the Anti-Injunction Act "says nothing about the procedures to be used in assessing and collecting taxes," the Court concluded that Congress had not expressed an indirect intent that the penalty should be treated as a tax for purposes of the Anti-Injunction Act. *Id.* at 545–46.

B. An Exception to the Anti-Injunction Act Applies When No Alternative Remedy Is Available to Challenge the Tax.

Even when an exaction appears to qualify as a tax under the Anti-Injunction Act, a party still may be permitted to challenge the exaction before it is collected. The Supreme Court has held that the Anti-Injunction Act will not bar a claim if its application would "entirely deprive [a party] of any opportunity to obtain review of its claims." *South Carolina v. Regan*, 465 U.S. 367, 380 (1984).

In *Regan*, the Court recognized this exception and allowed South Carolina to sue the Secretary of Treasury when there was no alternative means for the

State to challenge a federal tax imposed on the State's bearer bonds. *Id.* at 370–71. A provision of the Internal Revenue Code generally exempted from a taxpayer's gross income interest earned on any state bond. *Id.* at 370 (citing 26 U.S.C. § 103(a)). Congress amended the Code so that only bonds in registered, rather than bearer, form qualified for the exemption. *Id.* at 370–71. Because South Carolina issued its bonds in bearer form, under this amendment, the interest investors earned on its bonds would be taxable. *Id.* at 371. South Carolina claimed that as a result of the tax, it would have to pay its bondholders a higher rate of interest on its bearer bonds and, in effect, would be forced to issue its bonds in registered form. *Id.* at 371–72. Invoking the Supreme Court's original jurisdiction, South Carolina sought leave to file a complaint against the Secretary of the Treasury to mount a constitutional challenge to the statute, arguing that the law violated the Tenth Amendment. *Id.* at 370. In response, the Secretary argued that South Carolina's lawsuit was barred by the Anti-Injunction Act. *Id.* at 370.

The Supreme Court concluded that the Anti-Injunction Act did not bar the action and allowed South Carolina to file its complaint. *Id.* Although South Carolina was attempting to enjoin the collection or assessment of a tax, the Court concluded that the Anti-Injunction Act did not bar the suit because the State had no alternative means for challenging the tax. *Id.* at 379–80. The Court explained that the "circumstances of [the Anti-Injunction Act's] enactment strongly suggest that Congress intended the Act to bar a suit only in situations in which Congress had provided the aggrieved party with an alternative legal avenue by which to contest the legality of a particular tax." *Id*. at 373. South Carolina had no alternative remedy because the bondholders, not the State, were liable for the tax on the interest earned on the bonds. *Id.* at 378–80. Because South Carolina did not owe the tax on the bonds, it could not pay the disputed tax and then file suit for a refund, raising its constitutional challenge to the tax. *Id.* Given that South Carolina was "unable to utilize any statutory procedure to contest the constitutionality" of the relevant statute, the Court held the Anti-Injunction Act did not bar the State's complaint. *Id.* at 380.

C. The Anti-Injunction Act Did Not Bar the Bankruptcy Court from Modifying the Premiums Owed to the 1992 Benefit Plan.

With this background about the scope of the Anti-Injunction Act in mind, we turn to whether the Anti-Injunction Act deprived the bankruptcy court of jurisdiction to modify the premiums that Walter Energy owed the Funds. We begin with the premiums owed to the 1992 Benefit Plan. Applying the Supreme Court's reasoning in *NFIB*, we conclude that these premiums do not qualify as taxes for purposes of the Anti-Injunction Act.

The Funds' primary argument is that the premiums owed to the 1992 Benefit Plan qualify as taxes for purposes of the Anti-Injunction Act because the premiums are functionally similar to taxes. Although this argument may explain why the exactions qualify as taxes for purposes of a constitutional inquiry, the Court made clear in *NFIB* that we do not use such a functional approach to determine whether an exaction qualifies as a tax under the Anti-Injunction Act. Because both the Anti-Injunction Act and the Coal Act "are creatures of Congress's own creation," the way that these statutes "relate to each other is up to

Congress." *NFIB*, 567 U.S. at 544. We thus look to the text of the Coal Act to determine whether Congress intended for premiums owed to the 1992 Benefit Plan to be treated as taxes for purposes of the Anti-Injunction Act.[25]

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[25] The Funds cite decisions from other circuits applying a functional approach to hold that the premiums owed under the Coal Act qualified as taxes. But only one of these decisions addressed whether the premiums qualified as a tax under the Anti-Injunction Act. *See In Re Leckie Smokeless Coal Co.*, 99 F.3d 573 (4th Cir. 1996). The Fourth Circuit's decision in *Leckie* was issued before the Supreme Court's decision in *NFIB*, however.

We find unpersuasive the remaining decisions the Funds cite, as none of them addressed whether Coal Act premiums qualified as taxes under the Anti-Injunction Act. Instead, they examined whether the premiums qualified as taxes to resolve unrelated issues. *See Pittston Co. v. United States*, 199 F.3d 694, 701 (4th Cir. 1999) (considering whether Coal Act premiums were taxes such that a coal company could bring an action against the United States to recover premiums under a statute providing a cause of action to recover a "tax" that was wrongfully assessed); *In re Sunnyside Coal Co.*, 146 F.3d 1273, 1278-80 (10th Cir. 1998) (considering whether the Coal Act premiums were taxes and thus entitled to administrative priority under the Bankruptcy Code); *Adventure Res., Inc. v. Holland*, 137 F.3d 786, 793–95 (4th Cir. 1998) (same); *Carbon Fuel Co. v. USX Corp.*, 100 F.3d 1124, 1126, 1133–34 (4th Cir. 1996) (concluding that a pre-Coal Act private contract that transferred a coal company's liability for retiree health obligations was unenforceable because the Coal Act imposed a tax on the coal company); *Lindsey Coal Mining Co. v. Chater*, 90 F.3d 688, 695 (3d Cir. 1996) (determining that the Coal Act did not impose an unconstitutional taking in violation of the Fifth Amendment because the statutory scheme imposed "essentially a tax to continue a benefits program"); *In re Chateaugay Corp.*, 53 F.3d 478, 498 (2d Cir. 1995) (considering whether the Coal Act premiums were "taxes" and thus entitled to administrative priority under the Bankruptcy Code).

Applying the proper approach from *NFIB*, we are convinced that Congress expressed no intent for the premiums owed to the 1992 Benefit Plan to be treated as taxes for purposes of the Anti-Injunction Act. We must treat as "significant" Congress's decision to label the exactions owed to the 1992 Benefit Plan not as taxes but as premiums. *See NFIB*, 567 U.S. at 544. We have "no immediate reason to think that a statute applying to 'any tax'," that is the Anti-Injunction Act, would apply to an exaction labeled a premium. *Id.* at 543.

We acknowledge that even if Congress did not label an exaction as a tax, it nevertheless could direct that the exaction be treated as a tax for purposes of the Anti-Injunction Act. *See id.* at 544. But the parties have identified no provision in the Coal Act or the Internal Revenue Code indicating that Congress intended to treat the premiums owed to the 1992 Benefit Plan as taxes under the Anti-Injunction Act. For example, Congress expressed that any reference to "tax" in the Internal Revenue Code, which includes the Anti-Injunction Act, should be deemed to refer to the penalties and liabilities in subchapter 68B. *See* 26 U.S.C. § 6671(a). But § 6671(a) does not help here because the provision requiring companies to pay premiums to the 1992 Benefit Plan is located in subchapter 99C, not subchapter 68B, of the Internal Revenue Code. *Cf. NFIB*, 567 U.S. at 544–45. We conclude that Congress did not intend for the premiums owed to the 1992 Benefit Plan to qualify as taxes for purposes of the Anti-Injunction Act. The bankruptcy court thus had jurisdiction to terminate Walter Energy's obligation to pay such premiums.

D. The Anti-Injunction Act Did Not Bar the Bankruptcy Court from Modifying the Premiums Owed to the Combined Fund.

We now turn to a more difficult question: whether the premiums owed to the Combined Fund qualify as taxes for purposes of the Anti-Injunction Act. Congress may have indirectly indicated that the premiums should be treated as taxes for purposes of the Anti-Injunction Act. But even if we assume that Congress indicated that the Combined Fund premiums should be treated as taxes, the Anti-Injunction Act did not bar the bankruptcy court from terminating or modifying Walter Energy's obligation to pay premiums to the Combined Fund because Walter Energy had no alternative way to seek relief under 11 U.S.C. § 1114.

1. Congress May Have Indicated Indirectly that the Combined Fund Premiums Should Be Treated as Taxes for Purposes of the Anti-Injunction Act.

As with the 1992 Benefit Plan, Congress did not directly indicate that the exactions owed to the Combined Fund should be treated as taxes because it labeled the annual exaction as a "premium," 26 U.S.C. § 9704(a), and the exaction imposed for a company's failure to pay the premium as a "penalty," *id.* § 9707(a)(1). But Congress may have indirectly indicated that the premiums and penalties should be treated as taxes for purposes of the Anti-Injunction Act when it provided that "[f]or purposes of this title," the penalty "shall be treated in the same manner as the tax imposed by section 4980B." *Id.* § 9707(f).[26] The Supreme Court accepted in *NFIB* that Congress could direct that an exaction "be treated as a tax for purposes of the Anti-Injunction Act." *NFIB*, 567 U.S. at 544. It appears that Congress did precisely this by specifying that the penalty "shall be treated in the same manner as [a] tax" for purposes of Title 26, which includes the Anti-Injunction Act. *See* 26 U.S.C. § 9707(f). We thus assume for purposes of this appeal that Congress intended for the penalty set forth in § 9707(f) to be treated as a tax for purposes of the Anti-Injunction Act.

If Congress intended for the *penalties* owed to the Combined Fund to be treated as taxes for purposes of the Anti-Injunction Act, then the Anti-Injunction Act also would bar a pre-enforcement suit challenging the assessment of the *premiums* owed to the Combined Fund. The Anti-Injunction would bar such a suit because a bankruptcy court order relieving a coal company of its obligation to pay Combined Fund premiums would effectively restrain the assessment and collection of a "tax" by making it impossible for the Combined Fund to assess or collect a tax—that is, the penalty imposed by the Coal Act for a company's failure to pay its premiums. *See Fla. Bankers Ass'n v. U.S. Dep't of Treasury*, 799 F.3d 1065, 1071–72 (D.C. Cir. 2015) (treating lawsuit raising challenge to regulation imposing a reporting requirement as "a challenge to the tax imposed for failure to comply with that reporting requirement" because "[i]nvalidating

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[26] Section 4980B imposes a "tax" on a group health care plan that fails to provide adequate continuation coverage to its beneficiaries. 26 U.S.C. § 4980B(a),

the reporting requirement would necessarily 're-strain' the assessment and collection of the tax"). We thus also assume for purposes of this appeal that Congress indicated that the premiums owed to the Combined Fund should be treated as taxes for purposes of the Anti-Injunction Act.

2. An Exception to the Anti-Injunction Act Applies Because Walter Energy Has No Alternative Avenue to Seek to Terminate Its Obligation to Pay the Combined Fund Premiums.

Even assuming that the premiums and penalties owed to the Combined Fund qualify as taxes for purposes of the Anti-Injunction Act, we are persuaded that an exception to the Anti-Injunction Act applies here because Walter Energy had no available alternative remedy. Walter Energy could not obtain relief by waiting to be assessed Combined Fund premiums, failing to pay those premiums, being assessed a penalty, and then bringing a suit in district court against the Secretary of the Treasury seeking to be relieved from the obligation to pay retiree benefits pursuant to § 1114 of the Bankruptcy Code.

Congress indicated in the Bankruptcy Code that the relief offered in § 1114—modifying or terminating retiree health obligations—could be awarded only by a bankruptcy court in a Chapter 11 bankruptcy action. Section 1114 is codified in subchapter I of chapter 11 of the Bankruptcy Code, and Congress directed that the provisions in this subchapter "apply only in a case under [Chapter 11]." 11 U.S.C. § 103(g). If Walter Energy waited to pay its annual Combined Fund premium and then brought an action in district court against the Secretary of the Treasury, arguing that it was entitled to a termination of its obligation under

§ 1114, the district court would have to conclude, based on § 103(g), that it had no power to award such relief in a case brought outside of a Chapter 11 proceeding.[27] Because Walter Energy has no alternative remedy to seek relief under § 1114, we conclude that the exception to the Anti-Injunction Act identified in *Regan* applies, and the bankruptcy court was permitted to terminate Walter Energy's obligation to the Combined Fund. Because the Anti-Injunction Act imposes no jurisdictional bar, we now proceed to the merits.

V. LEGAL ANALYSIS

The Coal Act mandated that Walter Energy provide its retirees with retiree health care benefits or pay the Funds premiums to cover the cost of those benefits. *See* 26 U.S.C. §§ 9704(a), 9711(a), 9712(d)(1)(A). But the bankruptcy court concluded that it had the authority under § 1114 of the Bankruptcy Code to erase Walter Energy's obligation to provide retiree health care through its individual employer plan, as well as its obligation to pay premiums to the Funds. We turn to whether the bankruptcy court had authority under § 1114 to terminate Walter Energy's obligation to pay premiums to the Funds.

Under the RBBPA, a debtor company may not unilaterally terminate payments that qualify as "retiree benefits," but a bankruptcy court may enter an order terminating the debtor's obligation to make such payments if the court finds, among other things, that the

[27] This is not to say that a company could not raise other challenges to Combined Fund premiums or penalties in a post-assessment action against the Secretary of the Treasury.

termination "is necessary to permit the reorganization of the debtor." 11 U.S.C. § 1114(g)(3). The Funds argue that the bankruptcy court erred in entering such an order here because (1) the premiums Walter Energy paid to the Funds do not qualify as "retiree benefits," and (2) the termination was not necessary to permit Walter Energy's reorganization because Walter Energy sought to sell substantially all its assets in Chapter 11 bankruptcy, not engage in a classic reorganization. We address these arguments in turn.

A. The Bankruptcy Court Had Authority to Terminate Walter Energy's Obligation to Pay Premiums to the Funds Because the Payments Qualify as "Retiree Benefits."

The Funds first argue that the bankruptcy court lacked authority under § 1114 to terminate Walter Energy's obligation to pay premiums to the Funds because the premiums do not qualify as "retiree benefits" under § 1114. Section 1114 defines "retiree benefits" as:

> payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program ... maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under this title.

Id. § 1114(a). Here, the bankruptcy court concluded that the premiums Walter Energy owed to the Funds qualified as "retiree benefits." But the Funds challenge the bankruptcy court's conclusion, arguing that

Walter Energy did not "maintain[ ]" the Funds as required by § 1114(a).[28]

To address when Walter Energy "maintained" the Funds under § 1114(a), we must begin "where courts should always begin the process of legislative interpretation, and where they often should end it as well, which is with the words of the statutory provision." *CBS Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1222 (11th Cir. 2001) (internal quotation marks omitted). When a statute does not define a term, "we look to the common usage of words for their meaning." *Id.* (internal quotation marks omitted). To determine the ordinary meaning of a term, we often look to dictionary definitions for guidance. *Id.* at 1223. But we must be mindful that to ascertain the plain meaning of a statute, "[w]e do not look at one word or term in isolation, but instead we look to the entire statutory context." *United States v. DBB, Inc.*, 180 F.3d 1277, 1281 (11th Cir. 1999). The canons of construction also serve as interpretative tools to assist us in understanding the broader statutory context. *CBS*, 245 F.3d at 1225.

We begin by looking to the ordinary meaning of the term "maintain." The parties agree that the term generally means "to keep in a state of repair, efficiency, or validity: preserve from failure or decline." Maintain, *Webster's Third New International Dictionary*

[28] The term "retiree benefits" also may refer to payments made under a plan, fund, or program "established in whole or in part by the debtor." 11 U.S.C. § 1114(a). Because the parties agree that Congress, not Walter Energy, created the Funds, the premiums can qualify as retiree benefits only if the Funds were maintained in whole or in part by Walter Energy. As such, we focus our analysis on the meaning of the term "maintained."

1362 (2002). The Funds concede that the premium payments are an important source of money for the Funds. The Funds nonetheless contend that Walter Energy did not maintain the Funds because it did not voluntarily incur the obligation to pay premiums.[29] They assert that the statutory context and canons of construction indicate that a company does not "maintain" a fund when its payments are required by statute rather than a voluntary contractual agreement.

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[29] We observe that § 1114(a) specifies that the debtor must have maintained a fund "*prior* to filing a petition" under Chapter 11. 11 U.S.C. § 1114(a) (emphasis added). This means that a bankruptcy court lacks authority to modify or terminate a debtor's obligation to make payments to a fund, program, or plan when the payment obligation is triggered after the debtor filed bankruptcy. Here, Walter Energy undoubtedly maintained the Combined Fund prior to filing bankruptcy because for many years it paid annual premiums.

Answering the question of whether Walter Energy maintained the 1992 Benefit Plan prior to filing bankruptcy is more complicated. At the time Walter Energy filed bankruptcy, it was paying no premiums to the 1992 Benefit Plan, but it had provided a letter of credit as security. It appears that Walter Energy's obligation to pay premiums to the 1992 Benefit Plan arose only after it shut down its individual employer plan, which resulted in its retirees becoming beneficiaries of the 1992 Benefit Plan. *See id.* § 9712(b)(2)(B). By that point, the bankruptcy court had terminated Walter Energy's obligation to pay premiums to the 1992 Benefit Plan, and there is no indication in the record that Walter Energy ever paid a premium to the 1992 Benefit Plan. But the 1992 Benefit Plan raises no argument that § 1114(a) is inapplicable on the basis that Walter Energy's obligation to maintain the 1992 Benefit Plan was triggered only after it filed bankruptcy, not before. We thus consider the argument waived. *See Williams v. Bd. of Regents of Univ. Sys. of Ga.*, 477 F.3d 1282, 1303 (11th Cir. 2007) (explaining that a party waives arguments that it "fail[s] to raise ... properly on appeal").

They also contend that the Coal Act shows that Congress did not intend for bankruptcy courts to be able to exercise their authority under § 1114 to modify premiums owed to the Funds. We disagree.

1. The Statutory Context Supports the Conclusion That Making Payments Arising from a Statutory Obligation Constitutes "Maintaining" a Plan.

The Funds assert that when a company is obligated by a statute to make payments for health care benefits, it does not "maintain" the plan or fund. Their argument rests on the assertion that, because an employer generally undertakes a voluntary contractual obligation to make payments for retiree benefit plans or funds, a payment must be made under a voluntary obligation to qualify as "maintaining" a plan.

Certainly, the Funds are correct that Walter Energy's obligation to pay premiums to the Funds is different in nature from payments for other retiree benefits because Walter Energy has a statutory obligation to pay the premiums, instead of a contractual obligation. But it is not enough for the Funds to point out this difference. They must show that Congress intended to limit the definition of "retiree benefits" to payments made under a plan or fund only when the debtor voluntarily undertook the obligation to make such payments. The Funds claim that evidence of such Congressional intent includes: (1) the remainder of § 1114, which indicates that the obligation must be able to be modified in a negotiation; (2) section 1129(a)(13), which specifies that a retiree benefit refers only to an obligation that the debtor has obligated itself to; and (3) the general purpose underlying the RBBPA, which was to protect retirees from having a company file bankruptcy and terminate benefits.[30] As we explain in more detail below, we have carefully considered these provisions and conclude that Congress drew no distinction between payments that a debtor makes under a contract and the specific type of statutory obligation created in the Coal Act. We thus disagree that Congress expressed an intent to exclude

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[30] The Funds also urge us to look to our cases interpreting the term "maintain" under ERISA. In the ERISA context, we consider whether an employer maintained an employee benefit plan to determine whether ERISA preempts state laws relating to the employee benefit plan. *See* 29 U.S.C. § 1144(a) (explaining that the provisions of ERISA preempt any state law that "relate[s] to any employee benefit plan"); *Metro. Life Ins. v. Taylor*, 481 U.S. 58, 62 (1987) (holding that § 1144(a) preempts state common law claims). ERISA defines an "employee benefit plan" to include, among other things, "any plan, fund, or program ... established or maintained by an employer ... for the purpose of providing for its participants or their beneficiaries ... medical, surgical, or hospital care or benefits...." 29 U.S.C. § 1002(1), (3).

The Funds argue that our prior ERISA decisions establish that a company must do more than pay premiums to be said to maintain a plan and urge us to apply this reasoning to § 1114(a). *See Randol v. Mid-West Nat'l Life Ins. Co. of Tenn.*, 987 F.2d 1547 (11th Cir. 1993). In *Randol*, we held that an employer "maintained" a plan for purposes of ERISA when it wrote the first check purchasing the policies, paid a portion of its employees' premiums, made payroll deductions to collect its employees' share of the premiums, and paid the premiums to the insurance company through a bank draft from its corporate account. *Id.* at 1551. But nothing in *Randol* addressed whether an employer who takes fewer actions—say, by only paying premiums—can be said to maintain a plan in whole or in part, which is the question presently before our Court. We cannot conclude from this ERISA decision that Walter Energy did not maintain the Funds.

obligations established by a statute from the definition of "retiree benefits" simply by including the requirement that the debtor "maintain" the plan.[31]

First, the Funds assert that other provisions in § 1114 show that Congress intended to limit the term "retiree benefits" to obligations that the debtor can negotiate and change, not those that are mandated by statute. Section 1114 permits a bankruptcy court to modify "retiree benefits" only if the debtor proposed the modification to an authorized representative of the affected retirees, the debtor negotiated the modification in good faith, and the authorized representative refused to accept the proposal without good cause. 11 U.S.C. § 1114(f), (g). The Funds argue that these provisions taken together show that an obligation must be negotiable to qualify as a "retiree benefit," and because Walter Energy's premium obligations are non-negotiable, they should not be treated as "retiree benefits."

Although we agree with the Funds that the structure of § 1114 shows that an obligation must be negotiable to qualify as a "retiree benefit," we conclude that the obligation to pay premiums is to some extent negotiable. As Walter Energy points out, the Funds have engaged in such negotiations in the past and, in fact, have agreed to modify a debtor's premium obligations. *See In re Bethlehem Steel Corp.*, No. 01-15288, 2004 WL 601656, at *2 (Bankr. S.D.N.Y. Feb. 9, 2004) (reflecting that the Funds received $10 million in exchange for, among other

[31] *See In re Horizon Nat. Res. Co.*, 316 B.R. 268, 275 (Bankr. E.D. Ky. 2004) (explaining that the statutory definition of retiree benefits "makes no distinction between contractual and non-contractual benefits.").

things, agreeing not to bring any legal action to seek funding for health care benefits that the 1992 Benefit Plan provided to the debtors' retirees). That the Funds have agreed to modify premiums in the past shows that the obligations are negotiable.

Second, the Funds argue that § 1129(a)(13) shows that Walter Energy's payment of premiums did not constitute "maintaining" the Funds. Section 1129 sets forth the requirements for when a bankruptcy court may confirm a Chapter 11 plan. When Congress enacted the RBBPA, it amended § 1129 to add the requirement that a confirmed plan must provide for the continuation of payment of all retiree benefits, at the level established either by agreement of the trustee and the retirees' authorized representative or by bankruptcy court order, "for the duration of the period the debtor has obligated itself to provide such benefits." RBBPA § 2(b), 102 Stat. 613 (codified at 11 U.S.C. § 1129(a)(13)). Because § 1129(a)(13) indicates that a "retiree benefit" must be a payment that the debtor "obligated itself to provide," the Funds' argument goes, Congress intended that statutory obligations cannot qualify as retiree benefits.

It is a close question, but we are ultimately unpersuaded by the Funds' argument. The Funds are correct that coal companies never voluntarily undertook the obligation to pay the *premiums* due under the Coal Act. But the coal companies did in fact voluntarily obligate themselves—in earlier wage agreements—to provide the lifetime retiree health care benefits that are now delivered through the Funds. Given that coal companies did in some sense previously obligate themselves to provide the retiree health care benefits that are now delivered through the Funds, it is not inconsistent with § 1129(a)(13) to treat the premiums that a coal company pays to the Funds as retiree benefits.

Third, the Funds contend that we should construe the definition of retiree benefits narrowly to remain consistent with the purpose underlying the RBBPA, which is to "protect[ ] retiree benefits during Chapter 11 proceedings" and "solv[e] the legal problem the LTV bankruptcy squarely presented." Appellants' Br. at 30. In considering statutory context, the general policy underpinning the law may be relevant to our analysis. *See Kelly v. Robinson*, 479 U.S. 36, 43 (1986) ("In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." (internal quotation marks omitted)). But the Funds' argument oversimplifies Congress's purpose in enacting the RBBPA. True, Congress enacted the RBBPA in the aftermath of LTV's filing bankruptcy and attempting to *unilaterally* terminate all retiree health payments to its retirees. We can infer from this context that Congress intended the RBBPA to prevent a debtor from unilaterally terminating payments for retiree health care benefits after filing bankruptcy. But we cannot say from this context that Congress intended § 1114 to provide absolute protection to retiree health care benefits in *all* circumstances. Instead, as the text of § 1114 reflects, Congress empowered bankruptcy courts to modify or terminate payments for retiree health care benefits in certain situations.

In sum, the Funds argue that we should narrow the definition of "retiree benefits" to payments made on obligations that were voluntarily undertaken and exclude those obligations imposed by statute. We reject this argument because the Funds have failed to identify any statement or indication from Congress that the definition of "retiree benefits" should be limited in this way.

2. The Canons of Construction Provide No Support for Narrowing the Definition of "Maintain."

The Funds also contend that the canons of construction direct us to narrow the meaning of "maintain" to exclude obligations imposed by statute. They argue that we must apply a narrower definition of "maintain" to avoid an interpretation that renders a portion of the definition of "retiree benefits" meaningless and because the ordinary definition of "maintain" gives the definition of "retiree benefits" near infinite breadth. We disagree.

(a) The Canon to Avoid an Interpretation That Renders Statutory Language Superfluous, Void, or Insignificant Is Inapplicable.

First, the Funds argue that we cannot apply the ordinary meaning of "maintain" because it renders a portion of the definition of "retiree benefit" meaningless and mere surplusage. They contend that if a debtor can "maintain" a plan by making payments to the plan, the definition of "retiree benefits" becomes circular as retiree benefits are (1) payments a debtor makes (2) under a program to which the debtor makes payments. Of course, we generally construe a statute so that "no clause, sentence, or word" is rendered "superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19 (2001) (internal quotation marks omitted). But this canon does not apply when a statutory provision would remain operative under the interpretation in question in at least some situations. *See Black Warrior Riverkeeper, Inc. v. Black Warrior*

Minerals, Inc., 734 F.3d 1297, 1304 (11th Cir. 2013). Here, applying the ordinary definition of maintain renders no part of the definition of "retiree benefits" superfluous.

A close reading of § 1114(a) shows why. The first part of § 1114(a)'s definition limits "retiree benefits" to payments made in connection with a retired employee for a specific purpose—that is, "payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death." 11 U.S.C. § 1114(a). The remainder of the definition imposes a separate requirement based upon the employer's relationship to the plan, fund, or program—that is, it must have been "maintained or established in whole or in part by the debtor" before the debtor filed its bankruptcy petition. *Id.* These two parts impose separate requirements because the first part of the definition looks to the purpose of the debtor's payment, and the second part focuses on the debtor's relationship with the entity receiving the payment.

Simple examples illustrate that both prongs of the definition continue to hold meaning under our interpretation. Say a debtor company decides to give a retired employee a single payment of $1,000 to cover the cost of a medical procedure. This payment qualifies as a "retiree benefit" under the first prong of the definition because it is a payment made for the purpose of providing the debtor's retired employee with health care benefits. But the payment fails to meet the second prong of the definition because it was a single payment and not made to a plan, fund, or program to which the debtor, prior to filing bankruptcy, provided ongoing support.

Conversely, say a debtor, prior to filing bankruptcy, contributes $100 each pay period to fund an employee pension plan that provides its retirees with periodic cash payments. These payments would qualify as "retiree benefits" under the second prong of the definition because the debtor's monthly payments maintained the plan. But the first part of the definition would not be satisfied because the payments were not made "for the purpose of providing ... medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death." 11 U.S.C. § 1114(a).

We cannot agree with the Funds that by treating a debtor's ongoing financial support as sufficient to maintain a plan, we are rendering the first portion of the definition of retiree benefits superfluous, void, or insignificant. A careful read of § 1114(a) illustrates that all parts of the statute continue to carry meaning.

(b) The Canon to Avoid an Interpretation That Gives a Term Infinite Breadth Is Inapplicable.

Second, the Funds argue that "maintain" must have a narrower meaning because applying the plain meaning would give the term maintain "near-infinite breadth." Appellants' Br. at 24. In certain circumstances, the Supreme Court has explained that "a non-hyperliteral reading is needed to prevent [a] statute from assuming near-infinite breadth." *FERC v. Elec. Power Supply Ass'n*, —— U.S. ——, 136 S.Ct. 760, 774 (2016). But this canon of construction is inapplicable here.

In *Electric Power Supply*, the Supreme Court considered the scope of the authority of the Federal Energy Regulatory Commission ("FERC"). Congress authorized FERC to regulate the sale of wholesale electric energy in interstate commerce and gave it the authority to implement rules or practices "affecting such rates." *Id.* at 766 (internal quotation marks omitted). The case arose after FERC issued a rule regulating what power companies could pay users to encourage them to reduce their consumption during peak periods of power consumption. *Id.* at 771. The rule was challenged on the ground that FERC lacked the authority to regulate the sale of retail, not wholesale, electric energy. *Id.* at 772.

In concluding that FERC did not exceed its authority when it issued the rule, the Supreme Court interpreted the statute that gave FERC the authority to implement rules or practices "affecting" the sale of wholesale electric energy in interstate commerce. *Id.* at 773–74. The Court explained that the statute could be interpreted as giving FERC the authority to regulate anything that could in any way affect the wholesale cost of electricity, which potentially would include fuel prices, steel prices, or labor practices. *Id.* at 774. The Court could not "imagine" that Congress intended to give FERC authority to regulate all these areas that have only indirect effects on the wholesale cost of electricity. *Id.* The Court instead applied a "common-sense construction" and limited FERC's jurisdiction to rules or practices that "directly affect" wholesale rates for electric energy. *Id.* The Court explained that this interpretation was consistent with earlier decisions that had given "non-hyperliteral reading[s]" to phrases like "relating to" and "in connection with" in order to "prevent the statute[s] from assuming near-infinite breadth." *Id.*

Nothing in *Electric Power Supply* dictates that we narrow the definition of "maintain" here. Unlike the terms the Supreme Court discussed in *Electric Power Supply*, "maintain" is not a term that has a "near-infinite breadth." *Id.* The term "maintain" restricts the definition of retiree benefits to a specific class of payments—those made under a plan, fund, or program that the debtor, prior to filing bankruptcy, has kept in an existing state. The term "maintain" limits the universe of payments that could qualify as retiree benefits under § 1114(a); thus, we may apply the ordinary definition of maintain. *Id.*[32]

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[32] The Funds also contend that the term "maintain" must be narrowed to avoid an interpretation that would treat every person's tax payment as maintaining the Funds. They argue that a broader interpretation of "maintain" would mean that every taxpayer maintains the Funds because the Funds receive transfers from general Treasury funds, which in turn come from federal tax payments. Even if we accept that taxpayers in some sense "maintain" the Funds when they pay taxes, the Funds cannot show that § 1114 assumes near-infinite breadth. This is because under § 1114 a bankruptcy court may modify or terminate only "retiree benefits." 11 U.S.C. § 1114(e). An individual's tax payment does not qualify as a retiree benefit under § 1114(a) because an individual does not pay her taxes for the purpose of providing retired employees with medical, surgical, or hospital care benefits or benefits in the event of sickness, accident, disability, or death.

(c) In the Coal Act, Congress Did Not Express an Intent That the Premiums Should Not Qualify as Retiree Benefits.

The Funds also assert that Congress expressed in the Coal Act an intent to keep bankruptcy courts from using § 1114 to modify or terminate premiums owed under the Coal Act, which they argue shows that Congress did not intend for the premiums to be treated as retiree benefits. They argue that three provisions of the Coal Act—§§ 9704, 9708, and 9722—show Congress intended that Coal Act premiums could not be modified by a bankruptcy court and thus do not qualify as "retiree benefits." But after carefully considering these statutory provisions, we cannot agree that Congress expressed in the Coal Act an intent to bar bankruptcy courts from modifying these premiums.

First, the Funds point to § 9704(e)(1), which, they assert, means that only the trustees of the Funds "maintain" the Funds. But they overstate the effect of § 9704. This provision simply directs that the Combined Fund's trustees must "establish and maintain ... accounts for each of the premiums." 26 U.S.C. § 9704(e)(1). Although this provision shows that the Combined Fund trustees must maintain the Fund's bank accounts, nothing in § 9704 addresses who maintains the Funds themselves.

Second, the Funds assert that the Coal Act prohibits them from agreeing to—and a bankruptcy court from ordering—any modification to the premiums owed because § 9708 specifies that liability for contributions to the Combined Fund is determined "exclusively" under the Coal Act, which indicates that a bankruptcy court lacks authority to modify the premiums that a coal company owes to the Funds. We understand § 9708 differently.

Section 9708, when read in context, in no way prohibits a bankruptcy court from modifying the premiums that a company owes to the Funds. As we discussed above, coal companies had agreed in a series of wage agreements dating back to at least 1974 to provide their retirees with health care benefits for life. Because the Coal Act transformed this contractual obligation into a statutory mandate, in § 9708, titled "Effect on pending claims or obligations," Congress addressed the status of coal companies' contractual obligations to the 1950 and 1974 Benefit Plans. Section 9708 states:

> All liability for contributions to the Combined Fund that arises on and after February 1, 1993, shall be determined exclusively under this chapter, including all liability for contributions to the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for coal production on and after February 1, 1993. However, nothing in this chapter is intended to have any effect on any claims or obligations arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993....

Id.

This section, read as a whole, shows that Congress intended § 9708 to serve a specific, narrow purpose: to address the effect that the creation of the Combined Fund had on coal companies' existing and future obligations to the 1950 and 1974 Benefit Plans. In the first sentence, Congress explained that because the Combined Fund was replacing the 1950 and 1974 Benefit Plans, the Coal Act—not the wage agreements—would determine coal companies' liabilities for contributions going forward. The next sentence clarified that to the extent that a coal company owed obligations to the 1950 and 1974 Benefit Plans that pre-dated the creation of the Combined Fund, those obligations would remain.[33] We see nothing in § 9708 indicating that Congress intended to bar bankruptcy courts from exercising their authority under § 1114 to modify or terminate a coal company's obligation under the Coal Act to pay premiums to the Funds.[34]

Third, the Funds rely on § 9722 of the Coal Act to show that Congress intended to bar bankruptcy courts from modifying the premiums owed to the Funds. Section 9722, titled "Sham transactions," provides that liability under the Coal Act shall continue without regard to a transaction "[i]f a principal purpose" of the transaction is to "evade or avoid liability"

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[33] Section 9708 applies only to the Combined Fund, which covered retirees who were beneficiaries of the 1950 and 1974 Benefit Plans. Congress did not include a corollary provision pertaining to the 1992 Benefit Plan because no beneficiaries of the 1992 Benefit Plan were receiving retiree health care benefits under a predecessor plan. *See* 26 U.S.C. § 9712(b)(1), (2).

[34] Even if we assume that § 9708 is ambiguous, making it appropriate to consider legislative history, *see United States v. Alabama*, 778 F.3d 926, 939 (11th Cir. 2015), our conclusion would not change. The conference report reflects that § 9708 was intended to "relate[ ] to pending litigation involving the UMWA Benefit Plans and certain companies." 132 Cong. Rec. S34,004 (daily ed. Oct. 8, 1992) (Conference Report on Coal Act). The report explained that for period prior to February 1, 1993, "the plan documents, collective bargaining agreements[,] and litigation shall determine respective rights, duties[,] and obligations." *Id.* Nothing in the conference report suggests that § 9708 was intended to limit the power of bankruptcy courts to exercise their authority under § 1114 in disputes about a coal company's obligation for premiums due under the Coal Act.

under the Coal Act. *Id.* § 9722. The Funds argue that this provision bars the bankruptcy court's order, which terminated Walter Energy's obligation to pay premiums to the Funds, from having any effect, because the principal purpose of the bankruptcy court's order was to allow Walter Energy to avoid liability under the Coal Act. We disagree that § 9722 applies here.

Section 9722 applies only when the principal purpose of the *transaction* is to evade or avoid liability under the Coal Act. The relevant transaction here is Walter Energy's sale of substantially all of its assets to Warrior Met. The bankruptcy court's findings establish that the purpose of the sale was to provide the best possible outcome for the various stakeholders because it would allow some of Walter Energy's mines to continue operating. Nothing in the bankruptcy court's findings suggest that the principal purpose of the § 363 going-concern sale was to evade or avoid liability under the Coal Act. Given the purpose of the broader transaction, we conclude that § 9722 imposed no bar on the Funds negotiating or the bankruptcy court ordering a modification to the premiums owed to the Funds.

The Funds have identified no provision in the Bankruptcy Code or the Coal Act in which Congress expressed that a bankruptcy court lacks the authority under § 1114 to modify or terminate the obligations that a debtor owes to the Funds under the Coal Act. Instead, the Funds ask us to treat the Coal Act as implicitly amending § 1114 by placing a restriction on a bankruptcy court's authority to modify or terminate a certain type of retiree benefits—that is, premiums owed to the Funds. But repeal or amendment by implication is "not favored" and will be presumed only when the legislature's intention to repeal or amend the earlier legislation is "clear and manifest." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 662 (2007) (internal quotation marks omitted).

Additionally, it seems particularly inappropriate to conclude that the Coal Act implicitly amended the RBBPA given the relationship between the two statutory schemes. The Supreme Court has recognized the "basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum." *Traynor v. Turnage*, 485 U.S. 535, 547–48 (1988) (internal quotation marks omitted). Stated succinctly, "[w]hen two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Id.* at 548 (internal quotation marks omitted).

Here, we discern no clear and manifest indication that Congress intended the Coal Act, the later statute, to limit the scope of § 1114. Section 1114 was enacted as part of the RBBPA to address a narrow, precise, and specific subject—the status of a company's obligation to pay retiree health care benefits when it petitions for Chapter 11 bankruptcy. Although the Coal Act applies to only one industry, it is more generalized than the RBBPA because the Coal Act addresses the obligation of a coal company to provide retiree health care benefits regardless of whether the company filed bankruptcy. Given the relationship between these two statutes, we must construe both statutes to be effective, rather than construing the Coal Act as implicitly amending and narrowing the definition of retiree benefits in § 1114. It seems to us that if Congress had wished to exclude premiums owed to the Funds from the reach of a bankruptcy court's authority under § 1114, it would have added language in § 1114—perhaps by limiting the definition of "retiree benefits"—or in the Coal Act—perhaps by providing that the obligation to pay premiums remained unaffected by operation of the Bankruptcy Code. But Congress included no such express statutory language.

After considering the statutory text of both § 1114 and the Coal Act as well as the canons of construction, we conclude that the premiums owed to the Funds qualify as retiree benefits.[35]

B. The Bankruptcy Court Had Authority to Terminate Walter Energy's Obligation to Pay Premiums Because Walter Energy Was Reorganizing When It Pursued a Chapter 11 Liquidation.

The Bankruptcy Code permits a bankruptcy court to modify or terminate retiree benefits only if, among

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[35] In the alternative, the Funds argue that even if the premiums qualify as retiree benefits, the bankruptcy court lacked the authority to terminate the payments because Walter Energy never negotiated with the retirees' authorized representative about the obligations. A bankruptcy court is permitted to modify or terminate retiree benefits only after the debtor has negotiated with "the authorized representative of the retirees." 11 U.S.C. § 1114(g)(2). The Funds claim that Walter Energy failed to satisfy this requirement because it negotiated only with the UMWA, which was not the retirees' authorized representative. But the Funds failed to raise this argument in the bankruptcy court. Because the Funds raised the argument challenging whether the UMWA was the retirees' authorized representative for the first time on appeal to the district court, we, like the district court, decline to address the merits of the argument. *See In re Egidi*, 571 F.3d 1156, 1163 (11th Cir. 2009)

other things, the court finds that "such modification is necessary to permit the reorganization of the debtor." 11 U.S.C. § 1114(g)(3). The Funds argue that when a debtor files for Chapter 11 bankruptcy and then seeks to sell substantially all of its assets, it is not pursuing a "reorganization," and so the bankruptcy court lacks authority to modify or terminate retiree benefits under § 1114(g). But we interpret the term "reorganization" to refer to all types of debt adjustment under Chapter 11, including a sale of assets on a going-concern basis. We thus conclude that the bankruptcy court had the authority under § 1114 to terminate Walter Energy's obligation.[36]

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[36] Although the Funds argue that Walter Energy's sale of substantially all of its assets in a § 363 going to concern sale to Warrior Met did not qualify as a "reorganization" under § 1114(g), they are not challenging the bankruptcy court's conclusion that the termination of the benefits was "necessary" for the going-concern sale to go forward. The bankruptcy court found, under the evidence before it, that Walter Energy's assets could not be sold if the purchaser was liable for paying premiums to the Funds. We acknowledge that there is some evidence suggesting that the termination of these benefits was not necessary to the transaction. Warrior Met made a credit bid of $1.25 billion to acquire Walter Energy's assets and assumed approximately $115 million in other liabilities. In comparison, the liability associated with the Coal Act premiums is considerably smaller. At the time Walter Energy filed bankruptcy, it was paying only about $147,000 in annual premiums to the Combined Fund. And the 1992 Benefit Plan claims that Walter Energy should be paying it approximately $347,000 in monthly premiums for its retirees.

But the question of whether the bankruptcy court erred in finding that the termination of these benefits was necessary is not before us because the Funds have not challenged the bank-

1. Under the Bankruptcy Code, a Corporate Debtor May Seek to Liquidate Under Chapter 7 or Chapter 11 or to Restructure Under Chapter 11.

To understand what the term "reorganization" as used in § 1114(g) means, we begin by discussing the options available to a corporation that petitions for bankruptcy. A corporation may file for bankruptcy under Chapter 7, entitled "Liquidation," or Chapter 11, entitled "Reorganization."

When a corporate debtor petitions for bankruptcy under Chapter 7, the trustee generally sells all of the debtor's assets piecemeal and distributes the proceeds from the sale to the creditors. When a corporate debtor files under Chapter 7, it generally stops operating and the bankruptcy trustee sells its property for cash. *See* 11 U.S.C. § 704(a)(1) (directing trustee to "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of the parties in interest"). The debtor's assets become property of the bankruptcy estate. *See id.* § 541(a)(1). The trustee then controls the bankruptcy estate, overseeing the sale of the estate's property. *Id.* § 704(a)(1). The trustee must distribute the cash proceeds generated from the sale of the estate's property according to the priority rules set forth in the Bankruptcy Code. *Id.* § 726. Although the Bankruptcy Code permits the

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ruptcy court's finding. We emphasize that nothing in this opinion should be read as addressing whether the bankruptcy court would have erred if it had found that the termination of the premiums was not necessary for the going-concern sale to go forward.

trustee to sell the company as a going concern, as opposed to ceasing operations and selling the assets piecemeal, "[i]n practice ... this almost never happens ... as a firm with any hope of emerging from bankruptcy intact files under Chapter 11 instead." Richard Squire, *Corporate Bankruptcy and Financial Reorganization* 14 (2016).

There are more options available to a corporate debtor who proceeds under Chapter 11. The debtor may elect to sell its assets piecemeal and distribute the proceeds to its creditors, sell its assets as a going concern and distribute the proceeds to its creditors, or restructure its finances and continue to operate.

When a corporate debtor files under Chapter 11, the business generally continues to operate as a going concern. Again, the company's assets become property of the bankruptcy estate. *See* 11 U.S.C. § 541(a)(1). But instead of a trustee, the debtor's existing management team often manages the estate. *Id.* §§ 1101(1), 1106, 1107(a).

In a classic reorganization or restructuring, the debtor negotiates with its creditors to reduce its debts, often by offering to exchange debt for equity in the company that emerges from bankruptcy. Squire, *supra*, at 14. A Chapter 11 bankruptcy proceeding ordinarily culminates in the confirmation of a reorganization plan. *See* 11 U.S.C. § 1129. The plan lays out the blueprint for restructuring the company by "determin[ing] how much and in what form creditors will be paid, whether stockholders will continue to retain any interests, and in what form the business will continue." *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983). In such a restructuring, the plan provides that the debtor's business continues to operate but may provide payments to creditors over time. *See*

Czyzewski v. Jevic Holding Corp., —— U.S. ——, 137 S. Ct. 973, 979 (2017).

Chapter 11 also permits a debtor to liquidate by selling all or substantially all of its assets as a going concern under a sale pursuant to § 363 of the Bankruptcy Code. *See Fla. Dep't of Rev. v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 37 n.2 (2008). The debtor then may submit a plan to distribute the proceeds resulting from the sale. *Id.* Although such a transaction under Chapter 11 is referred to as a "liquidation" because the debtor sells substantially all of its assets through a § 363 sale, the transaction is different in kind from a Chapter 7 liquidation. When a debtor files under Chapter 11 and then pursues a § 363 sale, "the debtor liquidates in the sense that its assets are sold off, but not in the sense that its business is shut down." Squire, *supra*, at 17.

The end result of a Chapter 11 liquidation may be that the debtor's secured creditors take control of the bankruptcy estate's assets but keep the business operating. When a debtor pursues a liquidation under Chapter 11 through a § 363 sale of substantially all of its assets, its secured creditors may "credit bid" for the assets that serve as the collateral securing their loans. *See* 11 U.S.C. § 363(k); *see also RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 644 n.2 (2012) (explaining credit bidding). If the secured creditors submit the highest (or only) bid for the company and acquire the bankruptcy estate's assets, the creditors are, in effect, able to use the § 363 sale to trade their debt for control of the business. In these cases, the end result of a Chapter 11 liquidation bears a close resemblance to the end result of a classic reorganization in which creditors trade their debt for equity.

There is an important difference between a Chapter 11 liquidation and a classic reorganization, though. A creditor may be able to take control of the debtor's assets much more quickly in a Chapter 11 liquidation. A § 363 sale transferring all or substantially all of a debtor's assets may occur after a hearing. *See* 11 U.S.C. § 363(b)(1) (permitting a trustee "after notice and a hearing ... [to] sell ..., other than in the ordinary course of business, property of the estate"). In comparison, in a classic reorganization, the bankruptcy plan generally needs to be approved by all creditors, which may take more time. *See id.* § 1129(a)(8) (requiring each class of creditors to consent to a plan of reorganization, unless they are not impaired under the plan).

2. The Term "Reorganization" as Used in § 1114(g)(3) Refers Both to Restructurings and Liquidations Under Chapter 11.

With these background principles about corporate bankruptcy proceedings in mind, we now turn to the question before the Court: whether a bankruptcy court has authority to modify or terminate retiree benefits when a debtor who files bankruptcy under Chapter 11 intends to sell substantially all of its assets in a going-concern sale. Section 1114 permits a bankruptcy court to modify or terminate a debtor's obligation to fund retiree benefits only if the court finds, among other things that "such modification is necessary to permit the reorganization of the debtor." 11 U.S.C. § 1114(g)(3). The Funds contend that when a debtor intends to sell its assets as a going concern in a § 363 sale the debtor is not engaged in a reorganization and, as a result, the bankruptcy court has no authority to modify or terminate the debtor's obligation to fund retiree benefits. This issue turns on whether the term "reorganization" as used in § 1114 refers only to classic reorganizations or more broadly to any proceeding under Chapter 11, including when a debtor liquidates by selling its business as a going concern in a § 363 sale.

Because the Bankruptcy Code does not define the term reorganization, we turn to dictionary definitions for guidance. *See CBS*, 245 F.3d at 1223. The term reorganization is defined as follows: "[A] reconstruction of a business corporation, including a marked change in capital structure, often following a failure and receivership or bankruptcy trusteeship." Reorganization, *Random House Dictionary of the English Language* 1632 (2d ed. 1987); *see* Reorganization, *Merriam-Webster Dictionary Online* (2018) ("financial reconstruction of a business concern"); Reorganization, *Webster's Third New International Dictionary* 1923 (2002) ("[T]he rehabilitation of the finances of a business concern under procedures prescribed by federal bankruptcy legislation.").[37]

We understand these definitions to mean that to qualify as a reorganization, at a minimum, the business concern must continue to operate. A classic reorganization, then, qualifies as a "reorganization" because the business generally continues to operate while making payments to creditors over time. *See Czyzewski*, 137 S.Ct. at 979. Likewise, a Chapter 11 liquidation where a debtor sells substantially all of its

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[37] The RBBPA was enacted in 1988, but no party contends that the meaning of "reorganization" has changed since 1988. We thus have considered some dictionaries printed after the RBBPA's enactment.

assets as a going concern also could qualify as a "reorganization" because the debtor's business continues operating as a going concern, albeit under new ownership. *See Piccadilly Cafeterias*, 554 U.S. at 37 n.2. In contrast, a Chapter 7 liquidation in which a trustee generally ceases the debtor's operations and sells off its assets piecemeal would not qualify as a "reorganization" because the debtor's business does not continue operations. *See* Squire, *supra*, at 14.

The Funds urge us to interpret the term "reorganization" more narrowly because they contend that the context of the Bankruptcy Code shows that Congress intended the terms "reorganization" and "liquidation" to be entirely distinct with no overlap. They assert that "liquidation is the opposite of reorganization." Reply Brief at 12. But the Bankruptcy Code does not support this interpretation.

The Bankruptcy Code reflects that Congress recognized some overlap between the terms "reorganization" and "liquidation." Congress chose to title Chapter 11 "Reorganization."[38] Because Chapter 11 permits both classic reorganization as well as liquidations, this title suggests that Congress understood that the term "reorganization" also referred to some liquidations. *See* 11 U.S.C. § 1123(b)(4) (recognizing that a Chapter 11 plan may "provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale" to credi-

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[38] We acknowledge that the title of Chapter 11 cannot trump the plain meaning of its text. But we may consider the title to "shed light" on an ambiguous word or phrase in the text. *See Bhd. of R.R. Trainmen v. Baltimore & O.R. Co.*, 331 U.S. 519, 528-29 (1947).

tors). By titling Chapter 11 "Reorganization" and permitting debtors to use Chapter 11 to liquidate their estates, it seems to us that Congress intended for the term "reorganization" to include Chapter 11 liquidations.

The Funds argue that a Chapter 11 liquidation cannot qualify as a reorganization because in § 1129(a)(11) Congress provided that a bankruptcy court may confirm a plan only if the plan "is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." *Id.* § 1129(a)(11). They contend that our interpretation—which treats a Chapter 11 liquidation as a type of reorganization—violates the canon of construction that a statute should be construed so that no word is rendered superfluous because our interpretation renders the word "liquidation" in the phrase "liquidation or reorganization" meaningless. *See TRW*, 534 U.S. at 31. But we conclude that this canon is inapplicable here.

Section 1129(a)(11) imposes a "feasibility requirement," meaning that a bankruptcy court should not confirm a plan if it is likely to be followed by a future liquidation or further reorganization of the debtor. *In re T-H New Orleans Ltd. P'ship*, 116 F.3d 790, 801 (5th Cir. 1997); *accord Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988). The purpose of this feasibility requirement is to ensure that a bankruptcy court confirms a plan only if it finds that the plan creates "a reasonable assurance of commercial viability." *T-H New Orleans*, 116 F.3d at 801 (internal quotation marks omitted). Under this requirement, a bankruptcy court may confirm a plan only if there is a reasonable assurance that the plan will not be followed by a Chapter 7 liquidation, a Chapter 11 liquidation, or a Chapter 11 classic reorganization.

Under our interpretation, the term "liquidation" is not rendered wholly meaningless or superfluous. The reference to "liquidation" in § 1129(a)(11) means there must be a reasonable assurance that after the plan the debtor will not seek a Chapter 7 liquidation or a Chapter 11 liquidation. And the reference to "reorganization" in that provision means there must be a reasonable assurance that after the plan the debtor will not seek a Chapter 11 classic reorganization or a Chapter 11 liquidation. Certainly, there is some overlap or redundancy between the two terms because a Chapter 11 liquidation qualifies as both a "liquidation" and a "reorganization." *See* Squire, *supra*, at 491 ("[L]iquidation need not mean *piecemeal* liquidation, and reorganization need not preclude a sale.").

But neither term is superfluous because each retains some independent meaning. After all, there are some "reorganizations" that are not "liquidations"—classic reorganizations under Chapter 11. And there are some "liquidations" that are not "reorganizations"—Chapter 7 liquidations. So we cannot say that treating the term "reorganization" as referring both to a classic reorganization as well as liquidation with a going concern renders the term "liquidation" in § 1129(a)(11) meaningless. Although courts should disfavor an interpretation of a statute that renders language superfluous, the canon is inapplicable here because each word in the statute retains some meaning. *See Black Warrior Riverkeeper*, 734 F.3d at 1304.

The Funds argue that we must define the term "reorganization" more narrowly to remain consistent with the Supreme Court's decision in *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513 (1984), *superseded* *on other grounds by* 11 U.S.C. § 1113. In *Bildisco*, the Court stated that "[t]he fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." *Id.* at 528. Although the Court in *Bildisco* treated reorganization and liquidation as separate concepts, the context of the Court's discussion (with its focus on loss of jobs) shows that the term "liquidation" was used to refer only to a Chapter 7 liquidation in which the debtor company stops operations, employees lose jobs, and the assets are sold piecemeal. Because the Court was not using the term "liquidation" to refer to a Chapter 11 liquidation in which the entity continues to operate as a going concern, albeit one with new management, *Bildisco* does not help the Funds.

The Funds argue next that the statutory context shows Congress did not intend for § 1114 to apply to Chapter 11 liquidations because § 1114 requires the debtor and authorized representative of the retirees to have engaged in good faith negotiations. The Funds contend that that it is impossible for such negotiations to occur in a Chapter 11 liquidation because the authorized representative is "hard pressed to decline" the debtor's demand to terminate retiree benefits when the termination of benefits is a required condition of the sale. Appellants' Br. at 37. The Funds' argument is based on the premise that negotiations cannot be meaningful when a termination of benefits is necessary to avoid shutting down the operations of the business. But this argument proves too much. A bankruptcy court may terminate retiree benefits under a Chapter 11 classic reorganization or liquidation only when the termination is "necessary to permit the reorganization of the debtor." *See* 11 U.S.C.

§ 1114(g)(3). Because the termination will be, by definition, necessary for the company to continue to operate, the authorized representative will always be "hard pressed" to decline. And so we cannot agree with the Funds that the fact that a termination of the benefits is necessary means that good faith negotiations are impossible.

We also observe that no other court has adopted the Funds' interpretation. Other courts considering similar issues have concluded that a debtor who pursued a Chapter 11 liquidation was undergoing a reorganization such that a bankruptcy court could modify the debtor's obligation to fund retiree health care benefits under § 1114 or the debtor's collective bargaining agreements under § 1113.[39] *See In re Horizon Nat. Res. Co.*, 316 B.R. 268, 281–82 (Bankr. E.D. Ky. 2004) (concluding that "[s]ections 1113 and 1114 apply in liquidation Chapter 11 cases"); *In re Family Snacks, Inc.*, 257 B.R. 884, 895 (8th Cir. BAP 2001) ("While 'reorganization' is not a statutorily defined term, it is generally understood to include all types of debt adjustment, including a sale of assets, piecemeal or on a going concern basis, under § 363 followed by a plan of reorganization which distributes the proceeds of the sale to creditors in accordance with the Bankruptcy Code's priority scheme."); *In re Ionosphere Clubs, Inc.*, 134 B.R. 515, 524 (Bankr. S.D.N.Y. 1991) (concluding that § 1114's "placement in Chapter 11 requires its application to liquidating Chapter 11 cases"); *see also In re Chicago Constr. Specialties, Inc.*, 510 B.R. 205, 215–16 (Bankr. N.D. Ill. 2014) (rejecting argument

[39] As we mentioned above Congress modeled § 1114 on § 1113, *see* supra note 8, so cases interpreting § 1113 are relevant to our understanding of § 1114.

that relief under § 1113 was unavailable to debtor pursuing liquidation through Chapter 11).

For purposes of § 1114(g), a Chapter 11 liquidation qualifies as a type of "reorganization." We thus conclude that the bankruptcy court had the authority to terminate Walter Energy's obligation to pay premiums to the Funds.

VI. CONCLUSION

Walter Energy long ago promised its retirees that it would provide them with health care benefits for life. We acknowledge that our decision today allows Walter Energy to break that promise. Fortunately for Walter Energy's retirees, they nonetheless will continue to receive health care benefits at no cost from the Funds.

We render our decision today as a court interpreting the statutes that Congress has enacted, not as policymakers. The resolution of competing policy choices to determine whether a company, after promising its employees that they would receive health care benefits for life, should be permitted to file bankruptcy, shed this obligation, and leave the federal treasury on the hook for the cost of these retirees' health care is Congress's job, not ours. *See Burrage v. United States*, 571 U.S. 204, 218 (2014) ("The role of this Court is to apply the statute as it is written—even if we think some other approach might accord with good policy." (internal quotation marks omitted)). We hold today only that § 1114 of the Bankruptcy Code and the Coal Act permitted the bankruptcy court to terminate Walter Energy's obligation to fund its retirees' health care and, in effect, shift that obligation to the federal government. If changes in these laws are desirable from a policy standpoint, it is up to Congress to make them.

For the reasons set forth above, we conclude that the bankruptcy court had the authority under § 1114 to modify Walter Energy's retiree benefits, which included the premiums that it owed to the Funds under the Coal Act. We therefore affirm the bankruptcy court and district court.

AFFIRMED.

United States District Court, N.D. Alabama, Southern Division.

UNITED MINE WORKERS OF AMERICA 1974 PENSION PLAN AND TRUST, et al., Appellants,

v.

WALTER ENERGY, INC., et al., Appellees.

Case No.: 2:16-cv-00057-RDP

Signed May 18, 2016

MEMORANDUM OPINION

R. DAVID PROCTOR, United States District Judge

I. INTRODUCTION

This case is before the court on an appeal from the United States Bankruptcy Court for the Northern District of Alabama's December 28, 2015 Memorandum Opinion and Order Granting Debtors' Motion for an Order Authorizing the Debtors to (A) Reject Collective Bargaining Agreements, (B) Implement Final Labor Proposals, and (C) Terminate Retiree Benefits; and Granting Related Relief (the "1113/1114 Order") (Doc. # 1-3).[1] Appellants[2] raise arguments regarding the reach of 11 U.S.C. §§ 1113 and 1114, and whether

[1] The 1113/1114 Order is also available as *In re Walter Energy, Inc.*, 542 B.R. 859 (Bankr. N.D. Ala. 2015), and is located at (Doc. # 17-4 A258–A314).

[2] Because the Coal Act Funds (defined herein) are appealing the 1113/1114 Order, they will be referred to interchangeably in this opinion as "Appellants" and "Coal Act Funds."

the Bankruptcy Court properly applied those statutes when ordering the termination and modification of Debtors-Appellees' collective bargaining agreement ("CBA") with non-party United Mine Workers of America ("UMWA"), and obligations to Appellants under the Coal Industry Retiree Health Benefit Act, 26 U.S.C. §§ 9701–9724 (the "Coal Act"). Specifically, this court must determine the following four issues:

1. Whether the phrase "necessary to permit the reorganization of the debtor," contained in Sections 1113 and 1114, allows a debtor to avoid benefit obligations in a Chapter 11 plan of liquidation.

2. Whether Coal Act obligations may be modified or terminated under Section 1114.

3. Whether the Tax Anti-Injunction Act ("AIA"), 26 U.S.C. § 7421, acts as a jurisdictional bar to the Bankruptcy Court's modification of Coal Act obligations pursuant to Section 1114.

4. Whether Debtors obeyed the proper procedure and substantive requirements of Section 1113, thereby allowing the Bankruptcy Court to order a rejection of their CBA with the UMWA.

This appeal is fully briefed, and the relevant record has been transmitted. (Docs. # 17, 28, 29, 34; *see also* Docs. # 35, 37). The court heard oral argument on February 1, 2016 concerning the request for a stay pending appeal in this and related appeals. Because the parties addressed many of the issues presented here at that argument, and the parties' briefs suffice in other regards, the court does not find it necessary to hold a hearing related to this appeal. After careful review, and for the following reasons, this court concludes that the Bankruptcy Court is due to be affirmed.

II. BACKGROUND AND PROCEEDINGS BELOW

The 1113/1114 Order terminated both the Debtors' CBA with the UMWA and obligations to make payments under the Coal Act and pursuant to four employee and retiree benefit plans established by CBAs. These terminations set an end date to Debtor's obligations under those liabilities, and would prevent the proposed purchaser (and interested party in this appeal), Warrior Met Coal, LLC, f/k/a Coal Acquisition LLC ("Warrior Met"), from assuming them.

A. The Coal Act

The Coal Act applies to Debtors. This court has previously addressed the origin and purpose of the Coal Act:

> The Coal Act requires present and former coal operators, such as the plaintiffs in this case, to pay for the health benefits of coal industry retirees and their dependents. 26 U.S.C. §§ 9702, 9704. Congress passed the Coal Act in 1992 to ensure that retired coal miners and their dependents and widows continue to receive the lifetime health benefits guaranteed by earlier collective bargaining agreements with coal operators. Before the Coal Act was passed, the two multi-employer health care plans that provided benefits to retired miners (the "Plans") were operating at a deficit. The financial instability of the Plans led to a breakdown in labor relations, the cessation of operator contributions to the Plans, and an eleven-month strike by mine workers. *National Coal Association v. Chater*, 81 F.3d 1077, 1078–79 (11th Cir. 1996). In an effort to remedy the funding problems yet maintain a

> privately financed program, Congress consolidated the Plans into the Combined Fund with financing primarily provided by coal operators.

AJ Taft Coal Co., Inc. v. Barnhart, 291 F. Supp. 2d 1290, 1295 (N.D. Ala. 2003). In addition to the Combined Fund, the Coal Act established the 1992 Plan (together the "Coal Act Funds"). 26 U.S.C. § 9712. The 1992 Plan provides benefits to two groups of retired coal miners: (1) those otherwise eligible for Combined Fund benefits, but who retired after the cut-off date, and (2) those whose former employers have failed to provide benefits under individual employer plans ("IEPs"). *Id.* Any employer that provided healthcare benefits to retirees through an IEP as of February 1, 1993, must continue to do so for as long as the employer remains in business. *Id.* at § 9711(a).

The Coal Act Funds are funded primarily through statutorily required "premiums." 26 U.S.C. §§ 9704, 9711, 9712. Combined Fund premiums are assessed against "assigned operators," and those assigned operators' related persons and successors in interest are jointly and severally liable. *See id.* at §§ 9701(c), 9704(a), 9706. The amount of the Combined Fund assessment fluctuates annually, depending on the number of retirees and the premium rate set by the Commissioner of Social Security. *Id.* at § 9704(a)-(b), (g). Under the 1992 Plan, Premiums are assessed monthly against "last signatory operators" (defined as the most recent coal industry employers of the retirees, including "related persons" and their successors in interest) based on the number of 1992 Plan beneficiaries assigned to that last signatory operator. *Id.* at §§ 9701(c), 9711(g), 9712(d)(2)–(4). If these funding schemes prove insufficient, Congress has created means for addressing shortfalls in Coal Act Funds premiums to be paid. *See U.S. Steel Corp. v. Astrue*, 495 F.3d 1272, 1276–77 (11th Cir. 2007) (explaining statutory backstop for retirees under Combined Fund); 26 U.S.C. § 9712 (allowing for transfer of moneys from other statutorily created Funds). Congress designed the Coal Act to protect against the "chance of the miners being denied their benefits" if an employer or signatory to a covered Plan goes bankrupt. *Holland v. Williams Mountain Coal Co.*, 256 F.3d 819, 821 (D.C. Cir. 2001).

B. Sections 1113 and 1114 of the Bankruptcy Code

Congress enacted Section 1113 in response to the Supreme Court's decision in *NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984). *Wheeling–Pittsburg Steel Corp. v. United Steelworkers of Am.*, 791 F.2d 1074, 1089 (3d Cir. 1986). In *Bildisco*, the Supreme Court "held that a debtor may unilaterally reject a collective bargaining agreement under section 365(a) of the Bankruptcy Code by showing that the agreement 'burdens the estate, and that after careful scrutiny, the equities balance in favor of rejecting the labor contract.' " *In re AMR Corp.*, 477 B.R. 384, 405 (Bankr. S.D.N.Y. 2012) (quoting *Bildisco*, 465 U.S. at 526). Congress then enacted Section 1113 "to replace the *Bildisco* standard with one that was more sensitive to the national policy favoring collective bargaining agreements...." *Wheeling–Pittsburgh*, 791 F.2d at 1089. It is intended "to ensure that well-informed and good faith agreements occur in the market place, not as part of the judicial process." *N.Y. Typographical Union No. 6 v. Maxwell Newspapers, Inc. (In re Maxwell Newspapers, Inc.*), 981 F.2d 85, 90 (2d Cir. 1992). Section 1113 "requires that a debtor take a number of procedural steps prior to rejecting a [CBA].” *AMR Corp.*, 477 B.R. at 406.

Section 1114 was adopted as part of the Retiree Benefits Bankruptcy Protection Act of 1988, Pub. L. No. 100–334, 102 Stat. 610, 613 (1988), and applies to all Chapter 11 cases commenced after June 16, 1988. *In re N.Y. Trap Rock Corp.*, 126 B.R. 19, 21 (Bankr. S.D.N.Y. 1991). Congress enacted it in response to the termination of the health and life insurance benefits of approximately 79,000 retirees in the LTV Corporation Chapter 11 bankruptcy. *Id.; see LTV Steel Co., Inc. v. United Mine Workers of Am. (In re Chateaugay Corp.*), 922 F.2d 86, 88–89 (2d Cir. 1990). Pursuant to Section 1114, a Chapter 11 trustee or “a debtor in possession is required to continue to pay retiree benefits throughout reorganization under a ‘plan, fund, or program’ and at the levels maintained prior to the filing of the bankruptcy case, until or unless a modification is agreed to by the parties or ordered by the court.” *N.Y. Trap Rock*, 126 B.R. at 21–22. The term “retiree benefits” is defined in Section 1114. 11 U.S.C. § 1114(a). A court is required to appoint an “authorized representative” in accordance with Section 1114(c)(2) if a trustee or debtor in possession seeks to modify or terminate retiree benefits. *N.Y. Trap Rock*, 126 B.R. at 22. If no agreement results from negotiations between the trustee or debtor in possession and the retirees’ authorized representative, the trustee or debtor in possession may move for a court-approved modification under Section 1114(g). *Id.*

The statutory “requirements for modification of retiree benefits are...substantially the same as the requirements for rejection of collective bargaining agreements.” *In re Horizon Nat. Res. Co.*, 316 B.R.

268, 281 (Bankr. E.D. Ky. 2004). Thus, courts (including the Bankruptcy Court here) routinely analyze motions for relief under Sections 1113 and 1114 simultaneously. *See id.* at 280–81; (Doc. # 1-3 at 22). In doing so, courts typically utilize a nine-part test which employs the statutory requirements in Sections 1113 and 1114 set forth in *In re American Provision Co.*, 44 B.R. 907, 909 (Bankr. D. Minn. 1984); *see also Horizon Nat. Res. Co.*, 316 B.R. at 281 (finding *American Provision* test equally applicable to Sections 1113 and 1114).

C. The Walter Energy Bankruptcy and the 1113/1114 Order

Debtors—that is, Walter Energy and twenty-two affiliated companies (collectively, "Walter Energy")—produce and export metallurgical coal for the global steel industry, with mineral reserves in the United States, Canada, and the United Kingdom. (Doc. # 1-3 at 3). "Debtors also extract, process, and market thermal and anthracite coal and produce metallurgical coke and coal bed methane gas." (*Id.*). The No. 4 and No. 7 mines at Jim Walter Resources, Inc. (one of Walter Energy's affiliated companies) were formerly "the heart of the Debtors' operations." (*Id.*).

On July 15, 2015, due to market forces, Walter Energy was compelled to file petitions for relief under Chapter 11 of the Bankruptcy Code. (Doc. # 1-3 at 3). After unsuccessfully attempting to restructure under Chapter 11, Walter Energy marketed its assets in anticipation of a sale pursuant to Section 363 of the Bankruptcy Code.[3] (*Id.* at 8–12). There was only one

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[3] In other words, Debtors switched to and anticipated a going-concern sale and a Chapter 11 plan of liquidation.

potential buyer. "After two months of negotiations,...Debtors executed an asset purchase agreement...with Coal Acquisition, LLC, an entity owned by the First Lien Creditors" (the "Stalking Horse APA").[4] (*Id.* at 8). (*See also* Doc. # 28-3 at A668–833). Coal Acquisition (now known as Warrior Met) agreed to purchase Walter Energy's core Alabama mining operations for certain consideration including a $1.15 billion credit bid by the lenders and an additional $185.5 million in cash, trust funding, and assumed liabilities. (Doc. # 1-3 at 8–9). But, under this "Proposed 363 Sale," Coal Acquisition would only purchase these assets if they were free and clear of legacy and current labor costs, and all claims, liens, interests and encumbrances, including the assumption of Coal Act payment responsibilities.[5] (*Id.* at 9–11).

On July 30, 2015, the Bankruptcy Administrator for the Northern District of Alabama appointed members to the Official Committee of Unsecured Creditors. (Doc. # 1-3 at 18). On that same date, the Bankruptcy Court entered an order authorizing the formation of a committee of retired employees pursuant to Sections 1114(c)(2) and 1114(d) of the Bankruptcy Code (the "Section 1114 Committee"). (*Id.*). The

[4] "A 'stalking horse' contract is a first, favorable bid strategically solicited by the bankrupt company to prevent low-ball offers." *In re WestPoint Stevens, Inc.*, 600 F.3d 231, 239 n. 3 (2d Cir. 2010). In the Bankruptcy Court, Coal Acquisition was a "stalking horse bidder;" however, because no other bids were made for the purchase of Debtors' assets, it became the "Stalking Horse Purchaser." (*See* Doc. # 1-3).

[5] The Proposed 363 Sale is named for Section 363(f) of the Bankruptcy Code, which allows for a sale of property "free and clear" of certain interests in that property. *See* 11 U.S.C. § 363(f).

UMWA and the United Steel Workers were members of both committees.[6] (*Id.*). The Bankruptcy Court did not appoint a trustee or examiner in the bankruptcy case. (*Id.*).

The UMWA, Debtors, the Section 1114 Committee, and the proposed core assets purchaser (that is, Warrior Met) undertook various negotiations on the CBAs and retiree benefits to which Debtors were beholden, but they reached no agreements before Debtors filed their 1113/1114 Motion in November 2015. (Doc. # 1-3 at 12–15). In fact, five days after entering into the Stalking Horse APA, Debtors withdrew their prior proposal to the UMWA and presented their final proposal. (*Id.* at 13–14). In pertinent part, the final proposal would have required Debtors to provide healthcare and other welfare benefits to laid-off employees up until the Proposed 363 Sale, allowed Debtors to terminate health and welfare benefits for retirees no later than the Proposed 363 Sale closing date, and required the UMWA and the UMWA 1992 Plan officials to coordinate "to arrange for the transition of retirees entitled to Coal Act Benefits to the UMWA 1992 Benefit Plan with no loss of benefits." (*Id.*). The UMWA rejected that final proposal, and countered that it would agree to facilitate the termination or modification of the UMWA CBA obligations "only upon" ratification of a new CBA with the proposed buyer that addresses healthcare, among other things. (*Id.* at 14).

After briefing, the Bankruptcy Court issued the 1113/1114 Order on December 28, 2015. It provides,

[6] The Coal Act Funds were not members of the Section 1114 Committee.

in summary, as follows: Sections 1113 and 1114 contain substantially the same statutory requirements for modification or termination of CBAs and retiree benefits, thus the nine-part *American Provision* test applies to both; both Sections 1113 and 1114 apply in a liquidating Chapter 11 case and Debtors do not need to demonstrate an ability to confirm a liquidating Chapter 11 plan as a condition precedent; Coal Act benefits may be modified or terminated pursuant to Section 1114; Debtors satisfied the statutory requirements of Sections 1113 and 1114 (and satisfied the *American Provision* test); and the balance of equities favors rejection of the UMWA CBA and termination of retiree benefits. (Doc. # 1-3). Objections had been raised by Appellants (and others, including the UMWA and Section 1114 Committee), and were addressed and overruled in the 1113/1114 Order, concerning: (1) the applicability of Sections 1113 and 1114 to a Chapter 11 liquidation, and (2) the modification or termination of Coal Act benefits under Section 1114. (*Id.*). In its December 30, 2015 Order the Bankruptcy Court then amended paragraph 93 of the 1113/1114 Order based upon the Section 1114 Committee's motion to alter the 1113/1114 Order. (Doc. # 1-4).

On January 8, 2016, the Bankruptcy Court issued an Order approving the free and clear sale of Debtors' core assets (the "Sale Order").[7] (Doc. # 28-3 at A632–

[7] That is, the Order (I) Approving the Sale of the Acquired Assets Free and Clear of Claims, Liens, Interests and Encumbrances; (II) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief. (Doc. # 28-3 at A632–667). This court affirmed the Sale Order on March 8, 2016. *See United Mine Workers of Am.*

667). Among other things, that Order granted Debtors the right to sell their core assets to Warrior Met free and clear of the UMWA CBA and Coal Act obligations. (*Id.*). The parties initially informed this court that the sale of Debtors' core assets (which is affected by both the Sale Order and, at least in part, the 1113/1114 Order) would occur sometime around the end of February or early March 2016. *See United Mine Workers of Am. Combined Benefit Fund v. Walter Energy*, Case No. 2:16–cv–64–RDP (Doc. # 29). The court was later told in early March 2016 that the sale date had been moved to around the end of March 2016. The core asset sale commenced as of March 31, 2016. *See United Mine Workers of Am. v. Walter Energy, Inc.*, Case No. 2:16–cv–56–RDP (Doc. # 28); *United Mine Workers of Am. v. Walter Energy, Inc.*, Case No. 2:16–cv–65–RDP (Doc. # 33).

In the meantime, in mid-February 2016, the UMWA withdrew without prejudice its appeals. *See* Case Nos. 2:16–cv–56–RDP (Doc. # 27), 2:16–cv–65–RDP (Doc. # 32). Dismissal with prejudice of those appeals was contingent upon the closing of the core asset sale. *See id.* After the sale closed, the UMWA and Debtors filed joint stipulations of dismissal, and the court dismissed those appeals with prejudice on April

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Combined Benefit Fund v. Walter Energy, Case No. 2:16–cv–64–RDP (Docs. # 55, 56). That affirmation and this court's affirmance of a similar Order of sale of Debtors' non-core assets, *see United Mine Workers of Am. Combined Benefit Fund v. Walter Energy*, Case No. 2:16–cv–249–RDP (Docs. # 1–2, 5), were on appeal before the Eleventh Circuit. On April 5, 2016, the Eleventh Circuit dismissed the Sale Order appeal. *See* Case No. 2:16–cv–64–RDP (Doc. # 67). And, on April 20, 2016, the Eleventh Circuit granted the voluntary dismissal with prejudice of the non-core asset Sale Order. *See* Case No. 2:16–cv–249–RDP (Doc. # 15).

5, 2016. Case Nos. 2:16–cv–56–RDP (Docs. # 28, 29), 2:16-cv-65-RDP (Doc. # 33, 34).

III. PROCEDURAL HISTORY

Shortly after the Bankruptcy Court issued the Sale Order on January 8, 2016, Appellants unsuccessfully moved in that court for an emergency stay. (Doc. # 28-3 at A915–A921). Subsequently, both Appellants and the UMWA appealed the Bankruptcy Court's Sale Order and 1113/1114 Order, and moved for an emergency stay of the Sale Order. (Doc. # 1); Case No. 2:16–cv–64–RDP (Doc. # 16); *see also* Case Nos. 2:16–cv–56–RDP, 2:16–cv–65–RDP. This court denied a stay, *see* Case No. 2:16–cv–64–RDP (Doc. # 26), but granted an expedited briefing schedule for this appeal.[8] (Doc. # 15). (After this court denied Appellants' and the UMWA's Motions for Stay, UMWA withdrew its appeals without prejudice, and those appeals have now been dismissed with prejudice. *See* Case Nos. 2:16–cv–56–RDP (Docs. # 27, 29), 2:16–cv–65–RDP (Docs. # 32, 34)). What remains is Appellants' present appeal. Appellants filed an opening brief and a reply brief. (Docs. # 17, 34). Debtors filed a responsive brief that Walter Met joined. (Docs. # 28, 29).

IV. STANDARD OF REVIEW

A district court reviews the Bankruptcy Court's decision for abuse of discretion. *In re Hillsborough Holdings*, 127 F.3d 1398, 1401 (11th Cir. 1997); *Steele v. Heard*, 487 B.R. 302, 307 (S.D.Ala. 2013). When a district court hears an appeal from a bankruptcy

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[8] Appellants' motions in the Eleventh Circuit for a writ of mandamus and to stay the sale pending appeal were also denied. Case No. 2:16–cv–64–RDP (Docs. # 49, 51).

court, its job is not to make independent factual findings; rather, the task of fact finding is the purview of the bankruptcy court. *See* Fed. R. Bankr. P. 7052; *In re Sublett*, 895 F.2d 1381, 1384 (11th Cir. 1990). This court will overturn the Bankruptcy Court's factual findings only if they are "clearly erroneous." *Hillsborough Holdings*, 127 F.3d at 1401. Factual findings are clearly erroneous if the court is "left with the definite and firm conviction that the [bankruptcy] court erred." *In re Walker*, 515 F.3d 1204, 1212 (11th Cir. 2008) (citation and internal quotation marks omitted). Of course, this court reviews *de novo* a bankruptcy court's legal conclusions. *In re Tennyson*, 611 F.3d 873, 875 (11th Cir. 2010) (citation omitted); *Consumer Portfolio Servs. v. Coleman*, 342 B.R. 817, 819 (N.D. Ala. 2006).

V. ANALYSIS

This court has carefully reviewed the Bankruptcy Court's extensive factual findings and determines that they are not "clearly erroneous." *Hillsborough Holdings*, 127 F.3d at 1401. Accordingly, the court will not disturb those findings of fact.

The real issue in this case is whether the Bankruptcy Court had the authority under Sections 1113 and 1114 to order the termination of Debtors' CBA with the UMWA and obligations under the Coal Act. *In re Tennyson*, 611 F.3d 873, 875 (11th Cir. 2010). Debtors also raise jurisdictional challenges to Appellants' ability to bring this appeal.

A. This Court Has No Jurisdiction to Consider the Bankruptcy Court's Rejection of the CBA Under Section 1113; But, the Court Has Jurisdiction over the Termination of Coal Act Benefits Pursuant to Section 1114

Debtors argue that Appellants lack standing to appeal the 1113/1114 Order. (Doc. # 28 at 18–22). Alternatively, they argue that the Section 1113 aspects of the 1113/1114 Order rejecting the CBA are moot. (*Id.* at 22–25). Because standing and mootness are jurisdictional, the court must initially address these issues before addressing any aspect of the merits of the briefs filed by the parties. *See CAMP Legal Def. Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1269 (11th Cir. 2006) (standing); *North Carolina v. Rice*, 404 U.S. 244, 246 (1971) (mootness). The court agrees that Appellants lack standing to seek review of the Section 1113 portions of the 1113/1114 Order, and, in any event, disputes over that portion of the Order are moot. But, the court concludes Appellants have standing to challenge the termination of Coal Act benefits under Section 1114.

1. Appellants Do Not Have Standing Concerning Section 1113

The United States Constitution limits the subject matter jurisdiction of federal courts to "Cases" and "Controversies." U.S. Const. art. III, § 2. "[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). It "is the threshold question in every federal case, determining the power of the court to entertain the suit." *Warth v. Seldin*, 422 U.S. 490, 499 (1975). " 'In the absence of standing, a court is not free to opine in an advisory capacity about the merits of a plaintiff's claims,' and 'the court is powerless to continue.' " *CAMP Legal*, 451 F.3d at 1269 (quoting *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005); *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 409 (11th Cir. 1999)).

The Supreme Court has instructed that "the irreducible constitutional minimum of standing contains three elements." *Lujan*, 504 U.S. at 560. A plaintiff (or, as in this case, an appellant) bears the burden of showing "(1) an injury in fact, meaning that an injury is concrete and particularized, and actual or imminent, (2) a causal connection between the injury and the causal conduct, and (3) a likelihood that the injury will be redressed by a favorable decision." *Granite State Outdoor Advert., Inc. v. City of Clearwater, Fla.*, 351 F.3d 1112, 1116 (11th Cir. 2003). Each element is "indispensable" and "must be supported in the same way as any other matter on which the [appellant] bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan*, 504 U.S. at 561.

In the context of bankruptcy appeals, the "person aggrieved doctrine restricts standing more than Article III standing, as it allows a person to appeal only when they are 'directly and adversely affected pecuniarily by the order.' " *See Westwood Cmty. Two Assoc., Inc. v. Barbee* (*In re Westwood Cmty. Two Assoc., Inc.*), 293 F.3d 1332, 1335 (11th Cir. 2002) (quoting *In re Troutman Enters., Inc.*, 286 F.3d 359, 364 (6th Cir. 2002)). In other words, "the person aggrieved doctrine limits standing to appeal a bankruptcy court order to those individuals who have a financial stake in the order being appealed." *Id.* (citations omitted). A party has a financial stake in the bankruptcy court's order when that order "diminishes their property, increases their burdens or impairs their rights." *Id.* (quoting *Troutman*, 286 F.3d at 364).

Here, the court concludes Appellants lack standing to pursue an appeal of the Bankruptcy Court's rejection of the CBA agreement pursuant to Section 1113. First, as the party invoking this court's jurisdiction, Appellants bear the burden of establishing the three elements that would permit the existence of jurisdiction. *See Lujan*, 504 U.S. at 561. Yet they have offered no arguments in reply to Debtors' challenge to their standing to appeal the Section 1113 aspects of the 1113/1114 Order, and do not attack the Section 1113 portion of that Order in their reply. (*See* Doc. # 34). In this respect, Appellants have not demonstrated the three *Lujan* elements. Second, because Section 1113 allows for the modification or rejection of a CBA, and Appellants are funds providing retiree benefits pursuant to the Coal Act, the Bankruptcy Court's termination of the UMWA CBAs does not render Appellants "persons aggrieved." They have not shown any financial stake in the CBAs. Therefore, Appellants lack standing to appeal the Bankruptcy Court's Section 1113 determinations in the 1113/1114 Order.

The Section 1114 component of the 1113/1114 Order is a different matter, however. Appellants have standing to appeal the Section 1114 aspect of the 1113/1114 Order.[9] To be sure, the Coal Act Funds

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[9] Moreover, the court concludes that Appellants' challenge to the Section 1114 Coal Act benefits termination is not rendered moot simply based on the withdrawal of the UMWA from the appeals. Whether it is equitably moot is not an issue properly under consideration before this court, even though Debtors contend it

were not members of the Section 1114 Committee.[10] (*See* Doc. # 1-3 at 18). But, they assert, and have, a financial stake in the 1113/1114 Order. The Coal Act Funds rely on Coal Act premiums from various operators. Even if the Coal Act provides means for backstop funding in case of a diminished number of operators with Coal Act obligations, that statutory backstop does not deprive Appellants of their interest "directly and adversely affected pecuniarily by" the Bankruptcy Court here. *Westwood Cmty. Two*, 293 F.3d at 1335. Accordingly, the Coal Act Funds are "persons aggrieved" by the Section 1114 termination of Coal Act benefits in the 1113/1114 Order, and have standing to appeal it.

2. Alternatively, the Parties' Section 1113 Dispute Is Now Moot

Debtors contend that, in any event, Appellants cannot appeal the Section 1113 termination in the

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likely is. (Doc. # 28 at 23–24). (Equitable mootness is a "pragmatic principle grounded in the notion that, with the passage of time after a judgment in equity and implementation of that judgment, effective relief on appeal becomes impractical, imprudent, and therefore inequitable." *In re Citation Corp.*, 371 B.R. 518, 522 (N.D. Ala. 2007) (quoting *MAC Panel Co. v. Va. Panel Corp.*, 283 F.3d 622, 625 (4th Cir. 2002))). But, their argument focuses primarily on the UMWA and the CBAs, which this court concludes Appellants in this case cannot challenge. (*See id.*). The two sentences otherwise addressing the Coal Act Funds and the 1113/1114 Order do not provide sufficient argument for the court to determine whether Appellants' present appeal is equitably moot.

[10] The court addresses *infra* at section V(C) of this opinion the Coal Act Funds' argument that they cannot be an "authorized representative" under Section 1114 because Coal Act obligations and benefits cannot be negotiated. (*See* Doc. # 34 at 2).

1113/1114 Order because that issue is moot due to Debtors' settlement with the UMWA. The court agrees and addresses this issue below.

Under Section 1113, a "debtor in possession,...may assume or reject a collective bargaining agreement only in accordance with the provisions of this section." 11 U.S.C. § 1113(a). After filing its Chapter 11 petition, and before filing an application seeking rejection of a CBA, a debtor in possession must "make a proposal to the authorized representative of the employees covered by such an agreement...." *Id.* at 1113(b)(1)(A). In the bankruptcy proceedings underlying this appeal, the UMWA was the authorized representative of the employees covered by the now-rejected CBA.[11] (*See* Doc. # 1-3 at 23) (citing *In re American Provision Co.*, 44 B.R. 907, 909 (Bankr. D. Minn. 1984)).

[11] Moreover, it logically follows that the UMWA— that is, the union— would be the properly interested party in negotiating and litigating regarding the rejected CBA, not the Coal Act Funds' trustees. And, the UMWA brought its own appeal of the 1113/1114 Order, but then settled with Debtors, resulting in the dismissal with prejudice of that appeal. Furthermore, in its merits brief, Appellants make Section 1113 arguments on behalf of the UMWA and not themselves. (*See* Doc. # 17 at 26–29; *see also* 2:16-cv-56-RDP (Docs. # 1, 1-3, 27, 29)). Thus, the UMWA (that is, the authorized representative of the employees covered by the now-rejected CBA) is no longer part of this or any other appeal of the 1113/1114 Order. That settlement and dismissal with prejudice were events occurring subsequent to the filing of the Chapter 11 petition and 1113/1114 Order appeals. Because these events "deprive the court of the ability to give the plaintiff or appellant meaningful relief, then [that portion of] the case is moot and must be dismissed." *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001) (citations omitted).

B. Section 1114 in Chapter 11 Liquidation

Appellants next contend that the plain language of Section 1114 expressly prohibits its application to a Chapter 11 liquidation like the one here. *See* 11 U.S.C. §§ 1114(f)(1)(A), (g)(3) (stating "such modification is necessary to permit the reorganization of the debtor"); *see also* 11 U.S.C. § 1113(b)(1)(A) (same).[12] The court disagrees.

Section 1114 provides in pertinent part as follows:

> (f)(1) Subsequent to filing a petition and prior to filing an application seeking modification of the retiree benefits, the trustee shall—
>
> (A) make a proposal to the authorized representative of the retirees,...which provides for those necessary modifications in the retiree benefits that are *necessary to permit the reorganization of the debtor*,....
>
> (g) The court shall enter an order providing for modification in the payment of retiree benefits if the court finds that—

[12] The court has determined that Appellants lack standing to attack the Section 1113 aspects of the Bankruptcy Court's 1113/1114 Order, and, in any event, that those issues are moot. Nevertheless, the court examines case law regarding Section 1113 in the Chapter 11 liquidation context because Sections 1113 and 1114 contain "substantially the same" requirements, and the case law construing those sections borrow from each other. *In re Horizon Resources Co.*, 316 B.R. 268, 281 (Bankr. E.D. Ky. 2004). Thus, although the court has determined that it lacks jurisdiction to review Appellants' argument that Section 1113 does not apply in Chapter 11 liquidations, the conclusion that Section 1114 applies in Chapter 11 liquidations necessarily means that Section 1113 also applies.

> (1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (f);
>
> (2) the authorized representative of the retirees has refused to accept such proposal without good cause; and
>
> (3) such modification is *necessary to permit the reorganization of the debtor*....

11 U.S.C. § 1114 (emphasis added). Appellants argue that the use of the phrase "necessary to permit reorganization" means that Section 1114 cannot apply to Debtors, whose Chapter 11 plan is to liquidate its assets.[13] (Docs. # 17, 34). In support of their argument, Appellants point to the Eleventh Circuit's instruction that "[i]t is well-settled that courts are required to apply the plain meaning canon of statutory construction in interpretation of the Bankruptcy Code." *In re Am. Steel Prod., Inc.*, 197 F.3d 1354, 1356 (11th Cir. 1999).

Indeed, "as long as the statutory scheme is coherent and consistent, there generally is no need for a

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[13] Appellants repeatedly assert that the Bankruptcy Court's use of Section 1114 essentially and impermissibly places it in a Chapter 7 context. (*See* Doc. # 34). Even if the underlying bankruptcy ultimately is converted to Chapter 7—and, to be clear, it has not been so converted at this point—Appellants' assertion ignores Chapter 11's anticipation of liquidation pursuant to a Chapter 11 plan. *See, e.g.*, *Fla. Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 36 n.2 (2008) (citing 11 U.S.C. § 1129(a)(11)) ("Although the central purpose of Chapter 11 is to facilitate reorganizations rather than liquidations (covered generally by Chapter 7), Chapter 11 expressly contemplates liquidations."); *see also In re Mirabilis Ventures, Inc.*, 2010 WL 1644915, at *5 (M.D. Fla. Apr. 21, 2010) ("Numerous cases recognize that a liquidation under Chapter 11 differs from one under Chapter 7").

court to inquire beyond the plain language of the statute." *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 240 (1989). However, "a court should go beyond the literal language of a statute if reliance on that language would defeat the plain purpose of the statute." *Bob Jones Univ. v. United States*, 461 U.S. 574, 586 (1983). "Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis." *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006). Here, a *Dolan* analysis leads the court to conclude that "necessary to permit the reorganization of the debtor" applies when the debtor is liquidating under Chapter 11. 11 U.S.C. §§ 1114(f)(1)(A), (g)(3).

The statutory title of Chapter 11 is "Reorganization." *See* 11 U.S.C. ch. 11. But, "[a]lthough the central purpose of Chapter 11 is to facilitate reorganizations..., Chapter 11 expressly contemplates liquidations." *Fla. Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 36 n. 2 (2008); *see also In re Holmes*, 298 B.R. 477, 484 (Bankr. M.D.Ga. 2003) (quoting *United States v. Deer Park, Inc. (In re Deer Park, Inc.)*, 136 B.R. 815, 818 (9th Cir. BAP 1992), *aff'd* 10 F.3d 1478 (9th Cir. 1993)) ("Although the word 'reorganization' might commonly bring to mind ongoing operations, Congress explicitly placed language providing for liquidation within Chapter 11, which is titled "Reorganization."). Section 1129(a)(11) of the Bankruptcy Code provides that a court shall confirm a Chapter 11 plan if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C.

§ 1129(a)(11). *See also* 11 U.S.C. § 1123(b)(4) (a plan under Chapter 11 may "provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests"). "Had Congress not intended to include liquidation as an acceptable type of reorganization plan, then presumably all provisions dealing with liquidation would fall within Chapter 7....We must therefore assume Congress placed this provision in Chapter 11 intentionally." *Holmes*, 298 B.R. at 484 (quoting *Deer Park*, 136 B.R. at 818). "A Chapter 11 plan, even though a liquidating plan, must still conform to the statutory requirements of any other Chapter 11 reorganization." *Id.* Therefore, this "court should go beyond the literal language of [Section 1114 because] reliance on that language would defeat the plain purpose of the statute." *Bob Jones Univ.*, 461 U.S. at 586.

Further, although there is not controlling case law on point, this court's interpretation is bolstered by case law from other courts concluding that Section 1114 applies to Chapter 11 liquidations. *See Horizon Nat. Res.*, 316 B.R. at 281–82 ("Sections 1113 and 1114 apply in liquidation Chapter 11 cases.") (collecting cases). For example, the court in *In re Garfinckels, Inc.*, determined that "Section 1114 simply was not written with a liquidating Chapter 11 plan in mind." 124 B.R. 3, 4 (Bankr. D.D.C. 1991) (quoting statement of Senator Metzenbaum from 134 Cong. Rec. H3, 486 (May 23, 1988)). Nevertheless, the *Garfinckels* court, calling Section 1114 "inartfully written at best," held that "[t]he obvious congressional inattentiveness to liquidating Chapter 11 cases does not make § 1114 inapplicable to such cases."

Likewise, after reaching the "inescapable" conclusion that Section 1114 cannot apply in Chapter 7 bankruptcies, the court in *In re Ionosphere Clubs, Inc.* held that, legislative history aside, Section 1114 "is an unrestrained provision in Chapter 11 and cannot be ignored." 134 B.R. 515, 521 (Bankr. S.D.N.Y. 1991). That court continued: "Since there are no material differences between the mechanics of liquidation in Chapter 11 or Chapter 7, Congress could not have intended the results of such liquidations to differ so markedly by enhancing the claim of retirees in one instances (a Chapter 11 liquidation) but not [in] the other (a Chapter 7 liquidation)." *Id.* at 523. And, this court agrees with the *Ionosphere Clubs* court's conclusion: "absent corrective or clarifying legislation [which has not been passed], [Section 1114]'s placement in Chapter 11 requires its application to liquidating Chapter 11 cases." *Id.* at 524.

Appellants' request for this court to hold that Section 1114's language means that it can never apply in a Chapter 11 liquidation, although passionately argued, ignores the Supreme Court's directives concerning statutory interpretation. Applying those directives, this court concludes that Section 1114 applies to Chapter 11 liquidations.

C. Section 1114 and Rejection of Coal Act Benefits

Section 1114(a) provides as follows:

> For purposes of this section, the term "retiree benefits" means payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents...under any plan, fund, or program (through the purchase

> of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under [Chapter 11 of the Bankruptcy Code].

11 U.S.C. § 1114(a).

Appellants argue that the "retiree benefits" defined by Section 1114(a) "are certain, *private* obligations a debtor may have contracted for." (Doc. # 17 at 22 (emphasis in original)). Appellants do not point the court to any law supporting this contention. Instead, they suggest that the court read the clause "maintained or established in whole or in part by the debtor" with an emphasis on the prepositional phrase "by the debtor." (*Id.*). Appellants contend that reading the clause in this manner implies that a debtor cannot maintain or establish a statutory obligation like Coal Act premiums. (*Id.*). The court disagrees.

"The starting point in every case involving construction of a statute is the language itself." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975) (Powell, J., concurring); *see also Am. Steel Prod.*, 197 F.3d at 1356. Appellants' suggested reading overlooks the plain language of Section 1114.[14] The clause at issue reads "maintained <u>or</u> established in whole or in party by debtors"; it does not require that the plan, fund, or program be "established by and thereafter maintained by debtors." *See* 11 U.S.C. § 1114(a) (emphasis added). Although the Coal Act

[14] And, here, the plain language reading and application of "maintained or established in whole or in part by the debtor" does not defeat the purpose of Section 1114, or of Chapter 11 of the Bankruptcy Code. 11 U.S.C. § 1114(a).

Funds may be *established* by statute, they are *maintained* by Debtors. *Horizon Nat. Res.*, 316 B.R. at 276 ("even if the plan, fund, or program was 'established' by statute, it is 'maintained' by the debtors"). *Cf. also Feinstein v. Lewis*, 477 F.Supp. 1256, 1260 (S.D.N.Y. 1979) (interpreting an ERISA provision concerning plans "established or maintained" by a government entity and holding that a plan funded by the government is "maintained" by it), *aff'd*, 622 F.2d 573 (2d Cir. 1980); *accord Rose v. Long Island R.R. Pension Plan*, 828 F.2d 910, 920 (2d Cir. 1987) (same). Congress's decision to use the disjunctive "or" is imperative to the conclusion here that Debtors must either establish *or* maintain (that is, fund) the Coal Act Plans. *See Feinstein*, 477 F.Supp. at 1259–60. Accordingly, because Debtors maintained in part the Coal Act Plans by funding them, the Plans are retirement benefits subject to Section 1114.[15] *See* 26 U.S.C. §§ 9704, 9711, 9712.

Even accepting this construction, Appellants argue that the statutory context supports their litigation position. (Doc. # 17 at 22) (citing *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 7 (2011) ("interpretation of this phrase 'depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis' " (quoting *Dolan*, 546 U.S. at 486). Their argument goes something like this: because Section 1114 mandates that a debtor negotiate proposed changes to retiree

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[15] Moreover, although the nomenclature it is not controlling here, the 1992 Plan and Combined Benefit Fund are both called a "private plan" in the applicable Coal Act sections establishing them. *See* 26 U.S.C. §§ 9702, 9712.

benefits with the affected retirees' "authorized representative," Section 1114 cannot apply to Coal Act benefits since the language of the Coal Act implies they cannot be negotiated.[16] (Doc. # 17 at 22–23) (citing 11 U.S.C. § 1114(b), (f)(2), (f)(3)(1)(A), (g)(1)-(2); 26 U.S.C. § 9722).

Again, Appellants' argument overlooks the plain language of Section 1114, and over reads the language in the Coal Act. Although Appellants contend that "Congress specifically precluded companies from negotiating to avoid the Coal Act's requirements," they do not point the court to any language in the Coal Act or in Section 1114 supporting that contention.[17] (Doc.

[16] In their reply brief, Appellants assert that neither the UMWA, the United Steel Workers, nor the Section 1114 Committee "is a representative of the Coal Act Funds," so none "of those entities [can] negotiate with respect to non-negotiable Coal Act obligations." (Doc. # 34 at 5). However, upon review of the appellate record, the court has not located, nor have Appellants pointed to any place in the record, that Appellants raised objections with the Bankruptcy Court that none of the foregoing entities could represent them in negotiations. (*See, e.g.*, Doc. # 17-6 at A486–A532, Doc. # 17-10 at A841–A1115). Thus, Appellants failed to preserve that issue for appeal, and it is not properly before the court for consideration. *See In re Lorenzo*, 606 Fed.Appx. 548, 551 n. 3 (holding that because appellant in appeal from a bankruptcy did not raise an argument in the bankruptcy court but instead raised it first in the district court the appellant waived that argument) (citing *Formby v. Farmers & Merchants Bank*, 904 F.2d 627, 634 (11th Cir. 1990) ("As a general rule, an appellate court will not consider a legal issue or theory raised for the first time on appeal.")).

[17] To be sure, Appellants cite to both 26 U.S.C. § 9722 and *Eastern Enterprises v. Apfel*, 524 U.S. 498, 501 (1998). (Doc. # 17 at 23). But neither that statutory provision nor that case support

17 at 23). They also do not cite any controlling or on-point case law for the proposition; instead, they merely point to the underlying purpose of the Coal Act.[18] Even if Congress intended to protect retirees

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Appellants' contention. Section 9722 by its plain language requires Coal Act obligations to continue applying to sham transactions where the "principal purpose...is to evade or avoid liability under" the Coal Act. 26 U.S.C. § 9722. Here, Debtors followed Congress' statutory requirements set forth in Section 1114, and sought review by the Bankruptcy Court. It would stretch the legal imagination to conclude that Debtors' principal purpose of seeking a modification or termination of Coal Act (and other retiree benefits) through Chapter 11 in the Bankruptcy Court was to avoid Coal Act obligations. And, in any event, Section 9722 actually makes it more difficult for signatories to plans under the Coal Act to simply withdraw from those obligations, because the Coal Act was established to tackle the very problem of coal mining operators withdrawing from retiree funding. *See Apfel*, 524 U.S. at 511–15 (explaining history of Coal Act). As the Supreme Court recently stated, "even the most formidable argument concerning the statute's purposes could not overcome the clarity...in the statute's text." *Nichols v. United States*, ––– U.S. ––––, 136 S.Ct. 1113 (2016) (quoting *Kloeckner v. Solis*, 568 U.S. 41, 133 S.Ct. 596, 607 n. 4 (2012)).

[18] Appellants suggest that *In re Sunnyside Coal Co.*, 146 F.3d 1273 (10th Cir. 1998), demonstrates that Coal Act obligations are "non-negotiable" and, therefore, "no one is authorized to modify them." (Doc. # 34 at 4). However, *Sunnyside Coal* is easily distinguishable from this case. First, the underlying bankruptcy in *Sunnyside Coal* had been converted from Chapter 11 to Chapter 7, so Section 1114 could not apply in that case. *See* 146 F.3d at 1276. Second, Appellants' selective quotation from that case referring to "the undeniably involuntary nature of these assessments as crafted by the Coal Act" concerns the Tenth Circuit's holding that Coal Act premiums are qualified as taxes. *Sunnyside Coal*, 146 F.3d at 1278. The manner in which the premiums are classified is inapposite to whether Coal Act premiums may be modified under Section 1114, particularly given that this

subject to benefits under the Coal Act Plans, the language of the statutes written by Congress simply does not support Appellants' specific-preclusion argument. Congress said nothing in that respect.

In areas where Congress has not spoken through the plain text of a statute, the court must use the rules of statutory construction. The Supreme Court has instructed that, " 'when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.' " *J.E.M. AG Supply, Inc. v. Pioneer Hi–Bred Intl., Inc.*, 534 U.S. 124, 143–44 (2001) (quoting *Morton v. Mancari*, 417 U.S. 535, 551 (1974)).

> "It is a basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum," unless the later statute " 'expressly contradict[s] the original act' " or unless such a construction is " 'absolutely necessary...in order that [the] words of [the later statute] shall have any meaning at all.' " "The courts are not at liberty to pick and choose among congressional enactments, and when

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court has already concluded that even if Coal Act premiums are constitutionally considered taxes, they are not *per se* taxes for other purposes. *See* Case No. 2:16–cv–64–RDP (Doc. # 55 at 9–10). And, even if Coal Act premiums were considered taxes for other purposes, the Fourth Circuit has held that these premiums, as taxes, may be terminated pursuant to a different section of the Bankruptcy Code than that at issue here (*i.e.*, 11 U.S.C. § 363(f)). *See United Mine Workers of Am. 1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573 (4th Cir. 1996).

> two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective."

Traynor v. Turnage, 485 U.S. 535, 547–48 (1988) (quoting *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976); *Mancari*, 417 U.S. at 551) (changes and quotations in original and internal citations omitted). Accordingly, and as applicable here, the analysis provided by the Bankruptcy Court for the Eastern District of Kentucky in *In re Horizon Natural Resources* is on point:

> [T]he Coal Act, enacted in 1992, does not "expressly contradict" § 1114 of the Bankruptcy Code, enacted in 1988. Section 1114 deals with a narrow, precise, and specific subject: it governs the modification of retiree benefits only when the former employer is a debtor in a Chapter 11 case and only to the extent necessary for the reorganization effort [which, as concluded above, includes a Chapter 11 liquidation]. The Coal Act, on the other hand, [ ] "covers a more generalized spectrum" in that it does not specify whether the former employer is or is not a debtor in possession. The application of § 1114 to retiree benefits covered by the Coal Act does not deprive the latter statute of "any meaning at all:" the Coal Act would remain fully applicable where the last signatory operator is not a Chapter 11 debtor in possession or cannot satisfy § 1114's requirements.

316 B.R. at 276.

Moreover, Section 1114 supports the same goal as the Coal Act Plans: "the protection of retiree benefits."[19] *Horizon Nat. Res.*, 316 B.R. at 276 ("The intent of each statute is the same...."). Section 1114 does not allow a debtor to simply withdraw from maintaining retiree benefits. Again, as the court explained in *Horizon Natural Resources*,

> In enacting § 1114, Congress sought to minimize the impact of Chapter 11 on retirees while, at the same time, recognizing that modifications of retiree benefits may be necessary to the debtor's reorganization. Congress balanced these competing interests by permitting retiree benefit modifications only if good faith attempts to reach a compromise fail, the modifications are necessary to the reorganization, all parties are treated fairly and equitably, and the balance of the equities clearly favors permitting the modifications. While the Coal Act imposes a general prohibition against certain retiree benefit modifications, the Bankruptcy Code agrees with that general prohibition but establishes an extremely limited exception.

316 B.R. at 277.

> If Congress wished to exclude Coal Act benefits from the reach of § 1114 of the bankruptcy law, it could have done so by providing exceptions to the court's authority to modify such

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[19] Any additional funding problems for Coal Act benefits that arise from Debtors' termination or of their Coal Act obligations pursuant to Section 1114 should be addressed by Congress, not this court.

> obligations or by limiting the definition of retiree benefits in the Bankruptcy Code or by providing express language in the Coal Act that obligations remain unaffected by operation of the Bankruptcy Code.

Id. at 279 (quoting *In re Lady H Coal Co.*, 199 B.R. 595, 603 (S.D. W. Va. 1996), *aff'd*, *United Mine Workers of Am. 1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573 (4th Cir. 1996)). But, Congress did none of these things. Therefore, the court concludes that Section 1114 allows the modification and termination of Coal Act retiree benefits. Accordingly, the Bankruptcy Court's well-documented and reasoned decision demonstrating that the requirements of Section 1114 were met is due to be affirmed.

D. The Tax Anti-Injunction Act Does Not Bar the Bankruptcy Court's Jurisdiction

Finally, Appellants argue the Tax AIA precludes the Bankruptcy Court's jurisdiction and, thus, it did not have the power to terminate Debtors' Coal Act obligations. (Doc. # 17 at 25–26, Doc. # 34 at 10–11). Debtors counter that argument by asserting that Appellants have raised the Tax AIA argument for the first time on appeal, and, in any event, that the Tax AIA is inapplicable to Section 1114. (Doc. # 28 at 35–36). The court has previously addressed these questions in the context of the Sale Order, and concluded the Tax AIA does not operate as a bar to the Sale Order. *See* Case No. 2:16–cv–64–RDP (Doc. # 55 at 7–12). That reasoning is equally applicable here in addressing the parties' arguments concerning Section 1114 (instead of Section 363), and the court adopts it in this appeal.[20] Accordingly, the court concludes that the Tax AIA did not deprive Bankruptcy Court of the jurisdiction necessary to enter the 1113/1114 Order.

VI. CONCLUSION

For all these reasons, the court concludes that the Bankruptcy Court had jurisdiction and entered a valid termination of retirement benefits pursuant to Section 1114, and that this court lacks jurisdiction to consider Appellants' challenge to the Bankruptcy Court's ruling under Section 1113. Accordingly, the 1113/1114 Order is due to be affirmed. A separate order will be entered.

DONE and **ORDERED** this May 18, 2016.

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[20] To be sure, some of the case law relied upon in that analysis concerned 11 U.S.C. §§ 363 and 365 (*i.e.*), *In re Leckie Smokeless Coal Co.*, 99 F.3d 573. Case No. 2:16–cv–64–RDP (Doc. # 55 at 11–12). But, those statutory sections do not alter the analysis of the Tax AIA's application here. Section 1114 allows for the modification or termination of retiree benefit payments; Section 365 allows for the assumption or rejection of any executory contract or unexpired lease; and Section 363 allows for the use, sale, or lease of property, including a free and clear sale. 11 U.S.C. §§ 363, 365, 1114. All of these sections help further the administration of a bankrupt estate.

Further, and in any event, it is immaterial for purposes of the Tax AIA under which section of the Bankruptcy Code Coal Act premiums are terminated so long as the Bankruptcy Court had lawful authority to terminate the premiums. This court has already affirmed the Bankruptcy Court's ordering of the sale of Debtors' assets free and clear (under Section 363(f)) of Coal Act obligations. Cases no. 2:16–cv–64–RDP (Docs. # 55, 56), 2:16–cv–249 (Doc. # 5). The court here affirms the Bankruptcy Court's termination of Coal Act benefits under Section 1114.

United States Bankruptcy Court, N.D. Alabama, Southern Division.

IN RE: WALTER ENERGY, INC., *et al.*,[1] Debtors.

Case No. 15–02741–TOM11 Jointly Administered

Signed December 28, 2015

Amended December 30, 2015

Memorandum Opinion and Order Granting Debtors' Motion for an Order (I) Authorizing the Debtors to (A) Reject Collective Bargaining Agreements, (B) Implement Final Labor Proposals, and (C) Terminate Retiree Benefits; and (II) Granting Related Relief

TAMARA O. MITCHELL, United States Bankruptcy Judge

This case came before the Court for hearing on December 15 and 16, 2015 on *Debtors' Motion for an Order (I) Authorizing the Debtors to (A) Reject Collective*

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

Bargaining Agreements, (B) Implement Final Labor Proposals, and (C) Terminate Retiree Benefits; and (II) Granting Related Relief; and Establishing Other Deadlines (hereafter "1113/1114 Motion") [Doc. No. 1094] dated November 23, 2015, and objections to the 1113/1114 Motion filed by the United Mine Workers of America (hereafter "UMWA") [Doc. No. 1189] and the United Mine workers of America 1974 Pension Plan and Trust and its Trustees, United Mine Workers of America 1992 Benefit Plan and its Trustees, United Mine Workers of America 1993 Pension Plan and Trust and its Trustees, United Mine Workers of America 2012 Retiree Bonus Account Trust and its Trustees, United Mine Workers of America Cash Deferred Savings Trust of 1988 and its Trustees, United Mine Workers of America Combined Benefit Fund and its Trustees (hereafter "UMWA Funds")[Doc. No. 1198] (collectively "objections").[2]

INTRODUCTION

At the outset, the Court notes and recognizes the impact any ruling on the pending Motion and objections has on multiple stake holders in these Chapter 11 cases. As noted on the record during the hearing, the dollar or quantitative monetary impact on each employee or retiree may not be as high an amount as to other creditors. However, the impact on each employee and each retiree is huge, and may be difficult for many, if not all, to understand, much less accept as fair, equitable or just.

In *In re Patriot Coal,* the following was noted:

[2] Objections to the 1113/1114 Motion were also filed by the Retiree Committee and the Steel Workers, but those were resolved as noted on the record in open court.

> [T]here is unquestionably no dispute that the lives and livelihood of Debtors' employees, both, union and non-union, current, and retired, depend on the outcome of Debtors' reorganization. "The retirees' health and access to health care depend on the outcome of these cases. Indeed, without the dedication and sacrifice of the coal miners and their families, there would be no coal, and there would be no Patriot Coal."[3]

The *Patriot Coal* court also noted, without "men and women willing to bend their knees to excavate coal" there would be no need for the Chapter 11 cases or the mines.[4]

This Court recognizes that the miners are the backbone and crucial workforce in these mining operations. Essentially, the dilemma facing the Court is whether to shut down the mines or allow the possibility that the mining operations continue in the hopes that coal prices will rebound in time and the miners keep valuable jobs, and are able to benefit when better times and better coal prices occur.

FINDINGS OF FACT[5]

1. The Debtors produce and export metallurgical coal ("met coal") for the global steel industry with

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[3] *In re Patriot Coal Corp.,* 493 B.R. 65, 78 (Bankr. E.D. Mo. 2013) (quoting *In re Patriot Coal Corp.,* 482 B.R. 718, 722 (Bankr. S.D.N.Y. 2012).

[4] *Patriot Coal,* 493 B.R. at 78.

[5] Pursuant to Rule 201 of the Federal Rules of Evidence, the Court may take judicial notice of the contents of its own files. See *ITT Rayonier, Inc. v. U.S.,* 651 F.2d 343 (5th Cir. Unit B July

mineral reserves in the U.S., Canada and the United Kingdom. The Debtors also extract, process, and market thermal and anthracite coal and produce metallurgical coke and coal bed methane gas. [Zelin Decl. ¶ 7.] The No. 4 and 7 mines at Jim Walter Resources, Inc. ("Jim Walter"), with depths over 2,000 feet, are the heart of the Debtors' operations. [Zelin Decl. ¶ 8.] However, despite the high quality of met coal that the Debtors sell, the Debtors, like many other U.S. coal producers, were unable to survive the sharp decline in the global met coal industry and filed for Chapter 11 relief on July 15, 2015 (the "Petition Date"), commencing these cases (the "Chapter 11 Cases"). After a failed attempt to restructure pursuant to a Chapter 11 plan process and a restructuring support agreement, the Debtors are now liquidating their assets pursuant to a going concern sale to an entity owned by their first lien creditors (the "First Lien Creditors"). The proposed buyer, however, will not take the Debtors' assets subject to their legacy and current labor costs. Accordingly, pursuant to sections 1113 and 1114 of the Bankruptcy Code, the Debtors are seeking to reject their collective bargaining agreements (the "CBAs" as further defined below) to eliminate the successorship provisions and to implement their final proposals pursuant to which, upon the closing of the proposed sale, the Debtors will terminate their retiree benefit obligations and any other obligations remaining under the CBAs, so the Debtors' assets may be sold free and clear any obligations pursuant to the CBAs or otherwise required.

1981); *Florida v. Charley Toppino & Sons, Inc.,* 514 F.2d 700, 704 (5th Cir. 1975).

2. The Debtors[] filed a motion on November 9, 2015 to approve bidding procedures and for the sale of all or substantially all of its assets. The bidding procedures have been approved, there is a Stalking Horse Bidder, an auction is scheduled for January 5, 2016 and a hearing on the sale set for January 6, 2016. The record in this case, as well as the testimony offered at this hearing, indicate the proposed going concern sale is the best chance for selling the Debtors' Alabama mines and to provide potential future employment for the Debtors' represented employees. If the sale is not approved or the sale fails to close, the Debtors will have no choice but to immediately pursue shut downs of the mines and/or convert to Chapter 7, thereby destroying the going concern value of the mines and eliminating future employment opportunities.

A. The Debtors' Labor Obligations.

3. The Debtors are party to two collective bargaining agreements and a memorandum of understanding. Specifically, (a) Jim Walter is party to the June 2011 Contract between the United Mine Workers of America and the Bituminous Coal Operators Association (the "BCOA") (together with any side letters of agreement and closing agreements and the memorandum of understanding between Jim Walter and the UMWA, the "UMWA CBA"); and (b) Walter Coke, Inc. ("Walter Coke") is party to an Agreement dated March 25, 2010, between the USW on behalf of Local Union No. 12014 and Walter Coke (the "USW CBA").[6]

[6] As noted on the record, the Debtors' and the USW stipulated that all relief requested in the Debtors' 1113/1114 Motion was withdrawn, therefore no relief is granted in this Order as to the USW or the USW CBA.

The UMWA CBA covers approximately 700 active employees.

4. In addition, the Debtors owe retiree benefits (as such term is defined by section 1114 of the Bankruptcy Code, the "Retiree Benefits") to approximately 3,100 retirees and spouses represented by either the UMWA or the USW, together with approximately 100 non–Union retirees and spouses represented by the statutory committee of retirees appointed in these Chapter 11 Cases (the "Section 1114 Committee"). These Retiree Benefits include those owed under: (i) the UMWA CBA (the "UMWA Retiree Medical Plan") which, as of December 31, 2014, had approximately $579.2 million in unfunded liabilities; (ii) a collective bargaining agreement that does not cover any active employees with the UMWA (the "Taft Retiree Medical Plan") that, as of December 31, 2014, had approximately $3.4 million in unfunded liabilities; (iii) the USW CBA (the "Walter Coke Retiree Medical Plan" and the "Walter Coke Retiree Life Plan") that, as of December 31, 2014, had approximately $11.0 million and $0.5 million in unfunded liabilities, respectively; and (iv) the medical plan for non-Union retirees[7] (the "Salaried Retiree Medical Plan") that, as of December 31, 2014, had approximately $4.3 million in unfunded liabilities. (See Scheller Decl. ¶ 4; Farrell Decl. ¶ 4; Zelin Decl. ¶ 27.)

5. The Debtors are also responsible for numerous forms of pension liabilities and retiree benefit obligations arising from the Debtors' relationship with the UMWA, including, as defined below, the 1974 Pension Plan, the Coal Act Funds, the 1993 Benefit Plan, the

[7] A separate Stipulation and Order has been entered (Doc. No. 1333) resolving all non-union retiree issues.

Account Plan, and the CDSP (collectively, the "UMWA Funds"). Specifically, in 2014, Jim Walter Resources contributed (a) over $17 million to the 1974 Pension Plan;[8] (b) over $80,000 to the CDSP[9]; and (c) approximately $3.6 million to the 1993 Benefit Plan.[10] The Debtors also have an annual premium of approximately $170,000 (payable monthly) owed to the Combined Benefit Fund,[11] and currently administer a

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[8] The United Mine Workers of America 1974 Pension Plan and Trust (the "1974 Pension Plan") is a multiemployer, defined-benefit pension plan established pursuant to 29 U.S.C. § 186(c)(5). The 1974 Pension Plan is responsible for pension and death benefits to approximately 90,000 retired or disabled miners and their eligible surviving spouses. *See Objection of UMWA Health and Retirement Funds to the Debtors' Motion for an Order (A) Approving the Debtors' Key Employee Retention Plan and (B) Granting Related Relief* (the "UMWA Funds KERP Objection")[Docket No. 1148], ¶¶ 7–8.

[9] The United Mine Workers of America Cash Deferred Savings Plan of 1988 (the "CDSP") is a multiemployer savings plan established by the 1988 CBA between the UMWA and the BCOA. The CDSP is funded by both voluntary employee wage deferrals and numerous contributions from employers. *See* UMWA Funds KERP Objection, ¶ 12.

[10] The United Mine Workers of America 1993 Benefit Plan and Trust (the "1993 Benefit Plan") provides retiree health benefits to approximately 10,837 retired coal miners and dependents. *See* UMWA Funds KERP Objection, ¶ 13; Declaration of William G. Harvey in Support of First Day Motions (the "Harvey Declaration")[Docket No. 3]; ¶ 85.

[11] The United Mine Workers of America Combined Benefit Fund (the "Combined Benefit Fund") provides health and death benefits to coal industry retirees who, as of July 20, 1992, were receiving benefits from the 1950 Benefit Trust or the 1974 Benefit Trust. The Combined Benefit Fund is financed by an annual pre-

Coal Act individual employer plan (an "IEP") that provides retiree health benefits to approximately 572 retirees and their dependents.[12] Finally, in 2014, Jim Walter contributed approximately $5.1 million to a retiree bonus Account Plan.[13]

6. In aggregate, the Debtors pay approximately $25–30 million per year on account of their Retiree Benefits.

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mium assessed every October and certain transfers from the federal government. UMWA Funds KERP Objection, ¶ 5; Harvey Declaration, ¶ 83.

[12] The United Mine Workers of America 1992 Benefit Plan (the "1992 Plan," and, together with the Combined Benefit Fund, the "Coal Act Funds") provides benefits to (a) those who, based on their age and service record as of February 1, 1993, could have retired and received benefits under the 1950 Benefit Trust or the 1974 Benefit Trust if those trusts had not been merged by statute, and who actually retired between July 20, 1992 and October 1, 1994; and (b) those who would be covered by an IEP maintained pursuant to the Coal Act but who no longer receive such coverage. *See* UMWA Funds KERP Objection, ¶ 6, Harvey Declaration, ¶ 83.

[13] The United Mine Workers of America 2012 Retiree Bonus Account Plan (the "Account Plan") was established in the 2011 NBCWA to make annual single-sum payments to beneficiaries on November 1, 2014, November 1, 2015, and November 1, 2016. Depending on the beneficiary's pension under the 1974 Pension Plan, a beneficiary receives either $455 or $580 from the Account Plan. *See* UMWA Funds KERP Objection, ¶ 11, Harvey Declaration, ¶ 86.

B. The Chapter 11 Cases and Going–Concern Sale.

7. The decline of the global met coal industry since 2011 is well established and has devastated the industry. Fundamental downward shifts in the Chinese economy, coupled with the increase of low-cost supply of met coal from Australia and Russia, have driven met coal prices down from their historic high of $330 per metric ton in 2011 to their current low of $89 per metric ton. [Zelin Decl. ¶ 8.] The spot price for met coal is currently less than $80 per metric ton. As met coal prices began to decline, the Debtors' management responded to the changing industry environment by implementing numerous operational and cash-flow savings measures.[14] [Zelin Decl. ¶ 9.]

8. Despite these efforts, the burden on the Debtors of their funded debt obligations and labor-related liabilities was unsustainable. With cash reserves of as of July 15, 2015, of approximately $250 million, inclusive of cash at their Canadian and U.K. entities, the Debtors continued to suffer substantial losses from operations despite the far-reaching cost cuts already taken. Accordingly, the Debtors' investment banking and financial advisors began negotiating with advisors to an informal committee that comprises the holders of a majority in amount of the Debtors' first lien senior secured debt (the "Steering Committee").

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[14] These included a reduction of SG & A by 20% ($32 million), 25% ($33 million) and 28% ($28 million) in 2012, 2013 and 2014 respectively. The Debtors also cut their capital expenditures by 10% ($45 million), 61% ($238 million), and 28% ($28 million) in 2012, 2013 and 2014 respectively. Among other things, the Debtors idled numerous mines and implemented significant reduction in force initiatives. [Zelin Decl. ¶ 9.]

The negotiations culminated in a Restructuring Support Agreement (the "RSA") and the terms of an agreed order approving the Debtors' use of the First Lien Creditors' cash collateral. [Zelin Decl. ¶ 12.]

9. The RSA created a dual-track framework for the Debtors' restructuring: the Debtors would first seek to confirm a debt-for-equity Chapter 11 restructuring plan (the "Plan"), but at the same time, the Debtors would also pursue a going-concern sale in the event that the Debtors could not confirm the Plan. [Zelin Decl. ¶ 12.] In fact, one of the milestones in the RSA mandated that the Debtors commence the marketing of their assets on or before August 19, 2015, in case a going-concern sale became the only viable option. [Zelin Decl. ¶ 12.]

10. The Court held contested hearings on the Debtors' motion to assume the RSA on September 2 and 3, 2015. On September 14, 2015, the Court entered an order approving the RSA on amended terms. [Doc. No. 723.] Subsequently, on September 18, 2015, the Steering Committee filed a motion, which the Debtors later joined, seeking confirmation that the RSA had terminated on its own terms. [Doc. Nos. 746, 774.] Following a hearing on September 24, 2015, the Court entered an order confirming that the RSA had terminated. [Doc. No. 796.]

11. When the RSA terminated, the Debtors were left with its cash resources and liquidity running out and no viable source of funding. The Debtors evaluated all of their options but could not find a feasible path towards consummating a Plan. [*See* Zelin Decl. ¶ 13.] In addition, no third party buyer had come forward for the Debtors' core assets. [*See* Zelin Decl. ¶ 14.] As a result, the Debtors commenced negotiations

with the Steering Committee and its advisors with respect to a going-concern sale. [*See* Zelin Decl. ¶ 14.] In particular, the Debtors were focused on (i) preserving the Debtors' Alabama Coal Operations (as defined below) to the greatest extent possible, (ii) maximizing potential for future employment for the Debtors' workers, and (iii) ensuring that the Debtors' estates after a sale closing would retain sufficient assets to wind-down in a safe and orderly manner. [*See* Zelin Decl. ¶ 15, 29.]

12. After two months of negotiations, on November 5, 2015, the Debtors executed an asset purchase agreement (the "Stalking Horse APA") with Coal Acquisition LLC, an entity owned by the First Lien Creditors (the "Proposed Buyer"). [Zelin Decl. ¶ 15.] Under the Stalking Horse APA, the Debtors will sell their core Alabama mining operations (i.e., the Jim Walter No. 4 and 7 mines, related methane gas operations, and certain additional assets incidental thereto) (the "Alabama Coal Operations") to the Proposed Buyer for $1.15 billion (the "363 Sale"). The consideration for the purchase price will be a credit bid by the First Lien Creditors of their prepetition liens and their adequate protection claims. In addition, the Proposed Buyer will (a) purchase the Debtors' avoidance actions for $5.4 million in cash (subject to certain reductions); (b) fund various wind down trusts to safely liquidate the Debtors' assets remaining after consummation of the sale to the Proposed Buyer; and (c) assume an estimated $115 million in liabilities, including Black Lung obligations, reclamation, trade payables, cure costs and professional fees and expenses. The Stalking Horse APA is subject to higher or better offers and an open auction at which other qualified bidders may seek to purchase the Alabama

Coal Operations and other assets on higher or better terms.

13. The testimony presented at this hearing indicated that the discussions between the Debtors and their advisors and the Proposed Buyer and its advisors were protracted, difficult, contentious, frustrating, but at arm's-length. [*See also* Zelin Decl. ¶ 15.] To facilitate continued negotiations, the Steering Committee agreed to extend the Debtors' use of Cash Collateral twice during this time: first on October 8, 2015, extending the use of Cash Collateral to November 20, 2015, and again on November 17, 2015, extending the use of Cash Collateral to December 1, 2015.[15] [Doc. Nos. 857, 1053.] In response to the Debtors' deteriorating financial condition, the Steering Committee also agreed to defer the adequate protection payments due on October 15 and November 15 that the Debtors were otherwise obligated to make to the First Lien Creditors. [Doc. Nos. 890, 1037.]

14. The Proposed Buyer refused to acquire the Alabama Coal Operations burdened by the Debtors' legacy and current labor costs. The Stalking Horse APA thus requires a sale "free and clear" of legacy union liabilities. [Zelin Decl. ¶ 16.] Towards that end, the Stalking Horse APA requires the elimination of any clause or provision imposing on the Debtors the requirement that any buyer assume the Debtors' CBAs or any of the Debtors' liabilities or obligations under

[15] On December 1, 2015, the Steering Committee granted an additional extension, permitting the Debtors' use of Cash Collateral to January 8, 2016. [Doc. No. 1158.]

their CBAs (collectively, the "Successorship Provisions") or alternatively, rejection of the Debtor's collective bargaining agreements.

15. Successorship clauses are contractual provisions in collective bargaining agreements that seek to require an employer to bind a purchasing employer to all the terms and conditions of an existing collective bargaining agreement in the event of a sale or assignment of the business. The UMWA CBA provides, for example:

> This Agreement shall be binding upon all signatories hereto, including those Employers which are members of signatory associations, and their successors and assigns. In consideration of the Union's execution of this Agreement, each Employer promises that its operations covered by this Agreement shall not be sold, conveyed, or otherwise transferred or assigned to any successor without first securing the agreement of the successor to assume the Employer's obligations under this Agreement. Immediately upon the conclusion of such sale, conveyance, assignment or transfer of its operations, the Employer shall notify the Union of the transaction. Such notification shall be by certified mail to the Secretary–Treasurer of the International Union and shall be accompanied by documentation that the successor obligation has been satisfied. Provided that the Employer shall not be a guarantor or be held liable for any breach by the successor or assignee of its obligations, and the UMWA will look exclusively to the successor or assignee for compliance with the terms of this Agreement.

UMWA CBA, p. 5.

16. Because the Proposed Buyer is unwilling to purchase the Alabama Coal Operations subject to the CBAs, with respect to the UMWA CBA, the Stalking Horse APA provides:

> On the Closing Date, the Acquired Assets shall be transferred to Buyer and/or one or more Buyer Designees, as applicable, free and clear of all Encumbrances and Liabilities (including, for the avoidance of doubt, all successor liability, ***including any successorship obligations under any Collective Bargaining Agreement,*** and/or with respect to any Benefit Plan that is not an Buyer Benefit Plan), other than the Permitted Encumbrances and the Assumed Liabilities, including any Reclamation obligations that are Assumed Liabilities.

Stalking Horse APA § 7.12 (emphasis added).

17. The Stalking Horse APA further requires as a closing condition that:

> (i) the Bankruptcy Court shall have determined that Sellers can sell the Acquired Assets free and clear of any successor clause in the UMWA Collective Bargaining Agreements, (ii) the UMWA shall have agreed to waive or remove the successor clause in the UMWA Collective Bargaining Agreements, or (iii) ***the Bankruptcy Court shall have granted a motion acceptable to Buyer filed by the applicable Seller pursuant to Section 1113(c) of the Bankruptcy Code***

> ***authorizing the applicable Seller to reject the UMWA Collective Bargaining Agreements***.

Stalking Horse APA § 9.9(a)(i) (emphasis added).

18. Despite extensive efforts, the Debtors did not find any buyer willing to purchase the Debtors' assets subject to the CBAs. In fact, no buyer other than the Proposed Buyer expressed any interest in the Alabama Coal Operations at all. This was true even though, as of the date of the Section 1113/1114 Motion, the Debtors' investment banking advisor PJT Partners LP ("PJT") had contacted 47 strategic acquirers (including domestic coal producers, international coal producers and integrated steel companies) and 37 financial sponsors. Throughout the marketing process, PJT did not receive a single indication of interest to purchase all of the Debtors' Alabama Coal Operations although PJT did receive a few proposals with respect to certain of the Debtors' other assets. [Zelin Decl. ¶ 25; *see also* Tab 10, Zelin Trial Notebook.]

19. Today, the Debtors continue to rapidly lose cash, even excluding interest expenses and notwithstanding substantial cash conservation initiatives the Debtors implemented. If the Stalking Horse APA is not approved, and if no alternative successful bidder emerges, the Debtors will run out of cash by early 2016 and will have no choice but to liquidate. [Zelin Decl. ¶ 29; *see also* Tab 1, Zelin Trial Notebook.] In addition, if the proposed 363 Sale is consummated, the Debtors will be left with insufficient funds to make payments on the Retiree Benefits and any ongoing obligations under the UMWA CBA. [Zelin Decl. ¶ 16.]

C. The Debtors' Labor Negotiations with the UMWA.[16]

20. Starting before the Petition Date, the Debtors have met and negotiated with the UMWA concerning proposed modifications to the UMWA CBA. [Scheller Decl. ¶ 5.] When the Chapter 11 Cases first commenced, the Debtors negotiated with the UMWA intending to reorganize and confirm a Chapter 11 plan consistent with the RSA. [Scheller Decl. ¶ 11.] Prior to the Petition Date, on July 8, 2015, the Debtors met with the UMWA to provide the UMWA with an overview of market conditions, the Debtors' historical financial performance, and the reasons and goals for the Debtors' anticipated restructuring. [Scheller Decl. ¶ 6.]

21. On August 26, 2015, the Debtors presented the UMWA with their first proposal (the "First UMWA Proposal") for a set of terms and conditions to effectuate a reorganization as contemplated in the RSA, including deletion of the Successorship Provisions. [Scheller Decl. ¶ 13.] In the First UMWA Proposal, the Debtors also sought aggregate annual savings of approximately $150 million which they then believed was the minimum needed to eventually return the Debtors to profitability. [Scheller Decl. ¶ 12.] Even with those savings, the Debtors' financial advisors projected that the feasibility of any Chapter 11 plan

[16] "The UMWA is a labor union which was formed in Columbus, Ohio on January 22, 1890 with the stated purpose of 'educating all mine workers in America to realize the necessity of unity of action and purpose, in demanding and securing by lawful means the just fruits of our toil.' " *Patriot Coal,* 493 B.R. at 80 (quoting Mair B. Fox, *United We Stand: The United Mine Workers of America 1890–1990* 22 (International Union, United Mine Workers of America 1990, in turn citing the UMWA Preamble, 1890).

would require significant capital investment over a period of years. [Zelin Decl. ¶ 17.]

22. The Debtors met with the UMWA to discuss the First UMWA Proposal five times in September 2015. The First UMWA Proposal included elimination of Retiree Benefits and modifications to healthcare, all of which were discussed in these meetings. [Scheller Decl. ¶ 14.] Following those discussions, on October 1, 2015, the UMWA made its first counter-proposal to the First UMWA Proposal. [Scheller Decl. ¶ 15.]

23. When the RSA was terminated and confirmation of a plan of reorganization proved impossible, the Debtors switched their focus to a sale path and continued to meet with the UMWA to discuss the Debtors' options in light of the sale process. [Scheller Decl. ¶ 17.] As the Stalking Horse APA was crystallizing, the Debtors engaged again with the UMWA to discuss the UMWA CBA. [*See* Scheller Decl. ¶¶ 19–21.] Specifically, the Debtors met with the UMWA twice in October to provide status reports on the Stalking Horse APA negotiations and the Debtors' deteriorating liquidity position. [Scheller Decl. ¶¶ 20–21.]

24. Five days after entering into the Stalking Horse APA, the Debtors met with the UMWA, withdrew their First Proposal and presented their final proposal (the "Final UMWA Proposal"). [Scheller Decl. ¶ 23 & Ex. 2.] The Final UMWA Proposal included the following terms:

> (a) Successorship clause. Deletion of the successorship clause in its entirety to comply with the terms of the Stalking Horse APA and facilitate the 363 Sale process. [Scheller Decl. ¶ 24.]

(b) Healthcare for laid-off employees. Elimination of the requirement to provide healthcare benefits for employees who are laid off for up to 12 months after the month in which the layoff occurs, providing instead that no healthcare or other welfare benefits will be provided to any active or laid-off employee after the sale of the mines under the 363 Sale closes. [Scheller Decl. ¶ 24.]

(c) Termination of agreement. Termination effective as of the date the 363 Sale closes, on which date all of the Debtors' obligations to make any payment that arises from any contractual requirement, grievance settlement, arbitration decision or other obligation that vested or was incurred prior to the date of the sale of the mines to the Proposed Buyer under the Stalking Horse APA would also terminate. [Scheller Decl. ¶ 24.]

(d) Effects bargaining. Continued good faith discussions regarding any proposal that the UMWA may have concerning the effects of the sale of the mines on the UMWA's members. [Scheller Decl. ¶ 24.]

(e) Health and welfare benefits for retirees. Termination of health and welfare benefits, including the UMWA Retiree Medical Plan and Taft Retiree Medical Plan, for all of the UMWA's retirees effective no later than the closing date of the Section 363 Sale, as the Buyers are not agreeing to assume responsibility for such healthcare benefits for retirees under the Stalking Horse APA, and the Debtors will no longer have any funds available to

> provide any benefits to the UMWA retirees post-closing. [Scheller Decl. ¶ 24.]
>
> (f) Coal Act retirees. Coordination with the UMWA and with the UMWA 1992 Plan officials to arrange for the transition of retirees entitled to Coal Act Benefits to the UMWA 1992 Benefit Plan with no loss of benefits. (The Coal Act provides that when an employer becomes financially unable to provide healthcare benefits to its Coal Act-eligible retirees, the UMWA 1992 Benefit Plan will enroll the impacted retirees and provide their benefits.) [Scheller Decl. ¶ 24.]

25. On November 20, 2015, the UMWA rejected the Debtors' Final UMWA Proposal. [Scheller Decl. ¶ 27 & Ex. 3.] The UMWA response was that it would agree to facilitate the termination or modification of the UMWA CBA obligations "as appropriate for the winding down of JWR and its exit from the coal industry" but "only upon" ratification of a new collective bargaining agreement with the Proposed Buyer that, among other things, addresses healthcare for retired Jim Walter miners. [*Id.*]

26. The testimony at the hearing showed that the UMWA has been negotiating with the Proposed Buyer. On November 6, 2015, the day after the Stalking Horse APA was signed, Mr. Doug Williams, CEO of Coal Acquisitions, LLC, sent a letter to Cecil E. Roberts, the UMWA's President, introducing himself to Mr. Roberts and hoping to set the stage for further discussions and negotiations. Further, Mr. Williams advised that Coal Acquisition planned to begin interviewing individuals for employment after a sale and that some of the individuals who may be interviewed

are currently represented by the UMWA at Jim Walter's number 4 and 7 mines, surface facilities and preparation plants. After the letter was sent to Mr. Roberts, the advisors to the Proposed Buyer exchanged numerous emails and calls and meetings with the UMWA were scheduled for and held November 16, December 2, and December 8, 2015, and another meeting is scheduled for December 18, 2015. [Williams Decl. ¶ 5 and testimony.] At the November 16th meeting, the Proposed Buyer made an initial contract proposal to the UMWA, subject to a number of conditions, including the Proposed Buyer providing offers of employment to the bargaining unit employees previously employed at Jim Walter's mines numbers 4 and 7, preparation plants and surface facilities, and a majority of those bargaining unit employees accepting such offers. [Williams Decl. ¶ 6.] A counterproposal has since been provided by the UMWA, and the hearing, the testimony indicated the parties intend to continue to negotiate.

27. Throughout the negotiation process, the Debtors provided the UMWA with full access to extensive diligence information, including approximately 75,000 pages of the relevant operational, financial, business planning and other documents. Towards that end, the Debtors established an electronic data room to facilitate information sharing on a confidential basis. The data room was made available to the UWMA on July 14, 2015. [Scheller Decl. ¶ 8.] In addition to providing access to thousands of pages of data, the Debtors and their advisors gave the UMWA numerous detailed presentations about the Company, its businesses, financial conditions, business plan and projected performance. [Scheller Decl. ¶ 9.]

D. The Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 1113(c), and 1114(g).

28. On November 23, 2015, the Debtors filed this Section 1113/1114 Motion pursuant to sections 105(a), 1113(c), and 1114(g) of title 11 of the United States Code for an order (I)(A) authorizing the rejection of the collective bargaining agreements of Jim Walter and Walter Coke, (B) implementing Jim Walter's and Walter Coke's final labor proposals, and (C) terminating the Debtors' retiree benefits and related obligations; and (II) granting related relief. Along with the Motion, Debtors filed declarations of Steven Zelin, a Partner at PJT Partners, Debtors' financial advisor; Walter J. Scheller, III, the CEO of Walter Energy, Inc.; and Carol W. Ferrell, President of Walter Coke, Inc. In addition, as a proponent of the Motion, the lenders filed the declaration of Stephen Douglas Williams, the CEO of Coal Acquisitions, LLC, the Stalking Horse Bidder. In addition to these declarations admitted as evidence at the hearing, Mr. Zelin, Mr. Scheller and Mr. Williams testified.

29. In the Section 1113/1114 Motion, the Debtors request the authority to (a) reject the UMWA CBA in its entirety and (b) implement the Final Proposals pursuant to which any Successorship Provision would be eliminated and upon the closing of the 363 Sale, the UMWA CBA and the other obligations remaining under the UMWA CBA, as well as the Retiree Benefits, would terminate.

30. The UMWA[17] and the UMWA Funds,[18] (collectively, the "Objectors") filed objections to the Section 1113/1114 Motion.[19] The Objectors make the following arguments: (a) relief under sections 1113 and 1114 of the Bankruptcy Code is not appropriate here, where the Debtors are selling substantially all of their assets only to then possibly liquidate in a Chapter 7, as opposed to restructuring or reorganizing; (b) even

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[17] *See Objection of the United Mine Workers of America to Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 1113(c) and 1114(g) for an Order (I) Authorizing the Debtors to (A) Reject Collective Bargaining Agreements, (B) Implement Final Labor Proposals, and (C) Terminate Retiree Benefits; and (II) Granting Related Relief* [Doc. No. 1189] (the "UMWA Objection").

[18] *See Objection of the United Mine Workers of American 1974 Pension Plan and Trust, the United Workers of America 1993 Benefit Plan, the United Mine Workers of America 2012 Retiree Bonus Account Plan, the United Mine Workers of America Cash Deferred Savings Plan of 1988, the United Mine Workers of America Combined Benefit Plan and the United Mine Workers of America 1992 Benefit Plan to (1) Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 1113(c) and 1114(g) for an Order (I) Authorizing the Debtors to (A) Reject Collective Bargaining Agreements, (B) Implement Final Labor Proposals, and (C) Terminate Retiree Benefits; and (II) Granting Related Relief* [Doc. No. 1198] (the "UMWA Funds Objection").

[19] The USW also filed an objection to the Section 1113/14 Motion. *See Opposition of the United Steelworkers to the Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 1113(c) and 1114(g)* [Doc. No. 1195] (the "USW Objection"). The Debtors filed a notice of withdrawal of the Section 1113/14 Motion as it relates to the USW [Doc. No. 1227]. The Court confirmed with USW counsel that he had no objection to the withdrawal and that essentially the withdrawal constituted a stipulation of dismissal as to the USW provisions of the Motion.

assuming that a liquidating debtor can seek relief under sections 1113 and 1114 of the Bankruptcy Code, at a minimum, these sections require the Debtors to demonstrate an ability to confirm a Chapter 11 plan, which the Debtors cannot do here because they lack the funding needed to satisfy accrued but unpaid administrative claims, including environmental, pension, and certain other legacy retiree/employee liabilities; (c) the Section 1113/1114 Motion inappropriately seeks to terminate the Debtors' obligations to its employees and retirees under the Coal Act statutory obligations that the Debtors cannot modify under section 1114 of the Bankruptcy Code; and (d) the Section 1113/1114 Motion fails to satisfy the substantive requirements of sections 1113 and 1114 of the Bankruptcy Code for a plethora of other reasons, including that termination of the Successorship Provisions is not necessary to permit the reorganization of the Debtors as contemplated by the Bankruptcy Code and that the requested relief is otherwise not fair and equitable.

JURISDICTION[20]

31. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b).

32. The statutory and legal predicates for the relief sought herein are sections 105(a), 1113(c), and

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[20] This Memorandum Opinion and Order constitutes findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, applicable to adversary proceedings in bankruptcy pursuant to Federal Rule of Bankruptcy Procedure 7052.

1114(g) of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.

33. On July 30, 2015, the Bankruptcy Administrator for the Northern District of Alabama appointed an eleven member Official Committee of Unsecured Creditors (the "Creditors Committee"). [Doc. No. 268.] On August 4, 2015, the Bankruptcy Administrator appointed two additional members to the Creditors Committee [Doc. Nos. 336, 342.]

34. On July 30, 2015, the Court entered an order authorizing the formation of a committee of retired employees pursuant to sections 1114(c)(2) and 1114(d) of the Bankruptcy Code (the "Section 1114 Committee"). [Doc. No. 264.] Both the UMWA and the United Steelworkers (the "USW," and, together with the UMWA, the "Unions") are members of the Creditors Committee and each serves as the authorized representative of the retirees of their respective Unions on the Section 1114 Committee. [Doc. Nos. 268, 264.] No trustee or examiner has been appointed in the Chapter 11 Cases.

CONCLUSIONS OF LAW

A. Sections 1113 and 1114 of the Bankruptcy Code.

35. Congress enacted section 1113 of the Bankruptcy Code in response to the Supreme Court's decision in *NLRB* v. *Bildisco & Bildisco,* 465 U.S. 513, 104 S.Ct. 1188, 79 L.Ed.2d 482 (1984). In *Bildisco,* the Supreme Court "held that a debtor may unilaterally reject a collective bargaining agreement under section 365(a) of the Bankruptcy Code by showing that the agreement 'burdens the estate, and that after careful scrutiny, the equities balance in favor of rejecting the

labor contract.' "[21] To address concerns that the Supreme Court's decision would permit debtors to use bankruptcy as a weapon in the collective bargain process, Congress enacted section 1113 to "replace the *Bildisco* standard with one that was more sensitive to the national policy favoring collective bargaining agreements...."[22] Section 1113 accordingly is intended "to ensure that well-informed and good faith negotiations occur in the market place, not as part of the judicial process."[23] It does so by imposing more stringent standards and rigorous procedures for rejecting a collective bargaining agreement than apply to an ordinary executory contract. Section 1113 thereby encourages the debtor-employer and the union to reach a negotiated settlement. *See* Collier on Bankruptcy ¶ 1113.01 (citing the language and history of section 1113).

36. Section 1113 provides in relevant part:

> (a) The debtor in possession, or the trustee if one has been appointed under the provisions of this Chapter, other than a trustee in a case covered by subchapter IV of this Chapter and by title I of the Railway Labor Act, may assume or reject a collective bargaining agreement only in accordance with the provisions of this section.

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[21] *In re AMR Corp.,* 477 B.R. 384, 405 (Bankr. S.D.N.Y. 2012) (quoting *NLRB v. Bildisco & Bildisco,* 465 U.S. 513, 526, 104 S.Ct. 1188, 79 L.Ed.2d 482 (1984)).

[22] *Wheeling–Pittsburgh Steel Corp. v. United Steelworkers of America,* 791 F.2d 1074, 1089 (3d Cir. 1986).

[23] *New York Typographical Union No. 6 v. Maxwell Newspapers, Inc.* (*In re Maxwell Newspapers, Inc.*), 981 F.2d 85, 90 (2d Cir. 1992).

(b) (1) Subsequent to filing a petition and prior to filing an application seeking rejection of a collective bargaining agreement, the debtor in possession or trustee (hereinafter in this section "trustee" shall include a debtor in possession), shall–

(A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

(B) provide, subject to subsection (d)(3), the representative of the employees with such relevant information as is necessary to evaluate the proposal.

(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1) and ending on the date of the hearing provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.

(c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that—

(1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);

(2) the authorized representative of the employees has refused to accept such proposal without good cause; and

(3) the balance of the equities clearly favors rejection of such agreement.

37. "Section 1113(b) requires that a debtor take a number of procedural steps prior to rejecting a collective bargaining agreement."[24] At the outset, the debtor must provide the union with its proposed modifications to a collective bargaining agreement prior to filing an application with the court to reject the agreement. Moreover, the proposed modifications must be (a) "based on the most complete and reliable information available at the time of the proposal," (b) "necessary to permit the reorganization of the debtor," and (c) "assure[ ] that all creditors, the debtor and all of the affected parties are treated fairly and equitably."[25] The debtors must also provide the union with the relevant information necessary for the union to evaluate the proposal.[26] Finally, "the debtor must bargain in good faith with the union in an attempt to reach an agreement" between the time that the section 1113 proposal is made by the debtor and the date that any section 1113 application is set to be heard.[27]

38. Section 1113(c) also requires that a debtor establish the following three substantive requirements to reject a collective bargaining agreement: (a) that

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[24] *AMR Corp.,* 477 B.R. at 406.

[25] 11 U.S.C. § 1113(b)(1)(A); *AMR Corp.,* 477 B.R. at 406 (citing 11 U.S.C. § 1113(b)(1)(A).

[26] *Id.*

[27] *AMR Corp.,* 477 B.R. at 406.

the debtor's section 1113 proposal fulfills the requirements of the statute, (b) that the union refused to accept the proposal without good cause, and (c) that the balance of the equities favors rejection of the agreement.[28] "The debtor bears the burden of proof by the preponderance of the evidence on the elements of section 1113."[29]

39. Similarly, the debtor may modify or terminate retiree benefits upon satisfying the following conditions:

> (1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (f);
>
> (2) the authorized representative of the retirees has refused to accept such proposal without good cause; and
>
> (3) such modification is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor, and all of the affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities;
>
> except that in no case shall the court enter an order providing for such modification which provides for a modification to a level lower than that proposed by the trustee in the proposal found by

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[28] 11 U.S.C. § 1113(c); *AMR Corp.,* 477 B.R. at 406.

[29] *AMR Corp.,* 477 B.R. at 406 (citing *Truck Drivers Local 807 v. Carey Transp., Inc.* (*Carey Transp. II*), 816 F.2d 82, 88 (2d Cir. 1987); *In re Nw. Airlines Corp.,* 346 B.R. 307, 320–21 (Bankr. S.D.N.Y. 2006)).

> the court to have complied with the requirements of this subsection and subsection (f) ...[30]

40. Subsection (f) requires as follows:

> (1) Subsequent to filing a petition and prior to filing an application seeking modification of the retiree benefits, the trustee shall—
>
>> (A) make a proposal to the authorized representative of the retirees, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the retiree benefits that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and
>>
>> (B) provide, subject to subsection (k)(3), the representative of the retirees with such relevant information as is necessary to evaluate the proposal.
>
> (2) During the period beginning on the date of the making of a proposal provided for in paragraph (1), and ending on the date of the hearing provided for in subsection (k)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such retiree benefits.[31]

41. The statutory "requirements for modification of retiree benefits are ... substantially the same as the

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[30] 11 U.S.C. § 1114(g).

[31] 11 U.S.C. § 1114(f).

requirements for rejection of collective bargaining agreements."[32] Thus, the nine-part analysis found in *In re American Provision Company,* discussed below, applies equally to both.[33] Courts thus routinely analyze motions for relief under sections 1113 and 1114 together, and the Court will do so here.[34] Accordingly, the following discussion relating to the requirements under section 1113 also applies to the relief the Debtors request under section 1114 and as applicable to the UMWA and UMWA Funds.[35] Applicable Standard Under Sections 1113 and 1114 of the Bankruptcy Code.

42. The requirements of section 1113 were restated in a nine-part test in *In re American Provision Co.*, 44 B.R. 907, 909 (Bankr. D. Minn. 1984).[36] The test requires that the following be met:

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[32] *In re Horizon Natural Res. Co.,* 316 B.R. 268, 281 (Bankr. E.D. Ky. 2004)

[33] *In re Horizon Natural Res.,* 316 B.R. at 280–81. *See In re American Provision Co.,* 44 B.R. 907, 909 (Bankr. D. Minn. 1984).

[34] *See, e.g., Horizon Natural Res.,* 316 B.R. at 279–83; *In re Horsehead Indus., Inc.,* 300 B.R. 573, 583 (Bankr. S.D.N.Y. 2003).

[35] Thus any reference in this Opinion to the UMWA also, if applicable, shall be a reference to the UMWA Funds.

[36] *In re Alabama Symphony Ass'n,* 155 B.R. 556, 573 n. 38 (Bankr. N.D. Ala. 1993) ("This test is almost universally followed in the bankruptcy courts."), *rev'd on other grounds, Birmingham Musicians' Protective Ass'n, Local 256–733, of the Am. Fed. Of Musicians v. Alabama Symphony Ass'n* (*In re Alabama Symphony Ass'n*), 211 B.R. 65 (N.D. Ala. 1996).

(a) The debtor in possession must make a proposal to the union to modify the collective bargaining agreement;

(b) The proposal must be based on complete and reliable information available at the time of the proposal;

(c) The proposed modifications must be "necessary to permit the reorganization of the debtor;"

(d) The proposed modifications must assure that all creditors, the debtor and all of the affected parties are treated fairly and equitably;

(e) The debtor must provide to the union such relevant information as is necessary to evaluate the proposal;

(f) Between the time of the making of the proposal and the time of the hearing on approval of the rejection of the existing collective bargaining agreement, the debtor must meet at reasonable times with the union;

(g) At the meetings the debtor must confer in good faith in attempting to reach mutually satisfactory modifications of the collective bargaining agreement;

(h) The union must have refused to accept the proposal without good cause; and

(i) The balance of the equities must clearly favor rejection of the collective bargaining agreement.

43. Before turning to this nine-factor *American Provision* test, the Court addresses the Objectors' arguments that (a) relief under sections 1113 and 1114 of the Bankruptcy Code is not appropriate here where

the Debtors are selling substantially all of their assets and liquidating, (b) the Debtors must demonstrate the ability to confirm a liquidating Chapter 11 plan, which the Debtors cannot do because they lack the funding needed to satisfy accrued but unpaid administrative claims, including environmental, pension, and certain other legacy retiree/employee liabilities, and (c) the Section 1113/1114 Motion inappropriately seeks to terminate the Debtors' obligations to its employees and retirees under the Coal Act, statutory obligations that the Debtors cannot modify under section 1114.

B. Sections 1113 and 1114 Apply in a Liquidating Chapter 11 Case and the Debtors Need Not Demonstrate an Ability to Confirm a Liquidating Chapter 11 Plan.

44. The Objectors argue that sections 1113 and 1114 do not apply in a liquidating Chapter 11 case, and accordingly, the Debtors' relief should be denied.[37] The Bankruptcy Code does not limit liquidation to Chapter 7 cases.[38] To the contrary, Chapter 11 expressly provides for liquidating Chapter 11 plans of reorganization.[39] As a result, when a Chapter 11

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[37] UMWA Obj. at ¶¶ 70–76.

[38] *See e.g., In re Chicago Constr. Specialties, Inc.,* 510 B.R. 205, 214–16 (Bankr. N.D. Ill. 2014).

[39] 11 U.S.C. § 1129(a)(11) (enumerating as a confirmation requirement that "[c]onfirmation of the plan is not likely to be followed by ... liquidation ... unless such liquidation ... is proposed in the plan"); *see also* 11 U.S.C. § 1123(b)(4) (Chapter 11 plan may "provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale

debtor is being sold or is liquidating rather than reorganizing, courts apply the requirements for section 1113(c) relief "contextually, rather than strictly," and "with the impending liquidation of the Debtor firmly in mind."[40] And while some courts have found that " 'the procedural requirements imposed by § 1113 appear ill-suited to a liquidation proceeding,' "[41] courts have routinely applied the provision in liquidating Chapter 11 cases.[42] Moreover, neither section 1113

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among holders of claims or interests[.]"); *Chicago Constr. Specialties,* 510 B.R. at 215.

[40] *Chicago Constr. Specialties, Inc.,* 510 B.R. at 217–18; *In re U.S. Truck Co. Holdings,* 2000 Bankr.LEXIS 1376, at *26–28 (Bankr. E.D. Mich. Sept. 29, 2000) ("[A]pplying § 1113 to a liquidating Chapter 11 ... is somewhat problematic because many of the § 1113 requirements and the case law interpreting them focus on or presuppose efforts to rehabilitate an ongoing business [but] ... these standards must necessarily be construed, if possible, in a way that gives them meaning in this liquidation setting."); *United Food & Commercial Workers Union, Local 211 v. Family Snacks, Inc. (In re Family Snacks, Inc.),* 257 B.R. 884, 893 (8th Cir. BAP 2001) ("[E]ach court that has addressed the meaning of the phrase 'reorganization of the debtor,' as found in § 1113(b)(1)(A), has held or assumed that § 1113 applies in a case where the debtor will not be engaged in business because it is selling its assets.").

[41] *Chicago Constr. Specialties,* 510 B.R. at 215 (quoting *Carpenters Health and Welfare Trust Funds v. Robertson (In re Rufener Constr., Inc.),* 53 F.3d 1064, 1067 (9th Cir. 1995).

[42] *See, e.g., In re Maxwell Newspapers, Inc.,* 981 F.2d 85, 91 (2d Cir. 1992) ("The union ... contends that the debtor has not shown that a collective bargaining agreement may be rejected to serve the interests of a purchaser of assets. The two lower courts believed that 11 U.S.C. § 1113 applied to this transaction because what is to emerge, if the sale is consummated, is the Daily News reorganized as an ongoing business. We agree."); *In re Hoffman Bros. Packing Co., Inc.,* 173 B.R. 177, 186–87 (9th Cir. BAP 1994)

nor 1114 require that the debtor establish the feasibility of a liquidating Chapter 11 plan as a condition precedent to relief.

45. The placement of sections 1113 and 1114 "in Chapter 11 requires its application to liquidating Chapter 11 cases."[43] Even though Congress uses the term "reorganization" in both sections 1113 and 1114, the Bankruptcy Code does not define the term.[44] Courts, however, interpret "reorganization" to include all types of debt adjustment, including going-concern asset sales pursuant to section 363 of the Bankruptcy Code.[45] Permitting a debtor to avail itself of section 1113 and 1114 relief to consummate a going-concern sale where the debtor cannot confirm a Chapter 11

("We agree, and hold that § 1113 does not preclude rejection of CBAs where the purpose or plan of the debtor is to liquidate by a going concern sale of the business."); *accord Chicago Constr. Specialties,* 510 B.R. at 215; *In re Karykeion, Inc.,* 435 B.R. 663, 679 (Bankr. C.D. Cal. 2010); *Family Snacks,* 257 B.R. at 893. Indeed, this well-established proposition is even supported by a case that the UMWA cites liberally in its objection. *See In re Lady H. Coal Co.,* 193 B.R. 233, 240–43 (Bankr. S.D. W. Va. 1996) (denying the debtor's section 1113 motion but noting that "a collective bargaining agreement ('CBA') may be rejected in contemplation of the sale of a substantial portion of a debtor's assets as such sale is effectively the reorganization plan of a debtor").

[43] *In re Ionosphere Clubs, Inc.,* 134 B.R. 515, 524 (Bankr. S.D.N.Y. 1991).

[44] 11 U.S.C. §§ 1113(b)(1)(a), 1114(f)(1)(A).

[45] *See, e.g., In re Karykeion, Inc.,* 435 B.R. 663, 679 (Bankr. C.D. Cal. 2010) ("[T]he only reorganization option for the debtor is the sale of [its hospital] to [buyer] and that sale is contingent on the court approving the debtor's rejection of these CBAs.").

comports with Congressional intent that sections 1113 and 1114 serve a rehabilitative purpose.

46. Sections 1113 and 1114 do not require the Debtors to establish that the requested relief will result in a confirmable Chapter 11 plan of liquidation.[46] The Objectors confuse the rehabilitative effect of a going concern sale of the Debtors' Alabama Coal Operations to a new owner with the attendant wind-down and liquidation of the remaining bankruptcy estates, a process that occurs *after* the sale of the Debtors' Alabama Coal Operations as a going concern. Applying the "necessary to permit the reorganization of the debtor" requirement of section 1113(c) relief "contextually, rather than strictly," sections 1113 and 1114 apply in a liquidating Chapter 11 case regardless of the debtor's ability to confirm a liquidating Chapter 11 plan.

C. Benefits Under the Coal Act May Be Modified or Terminated Pursuant to Section 1114 of the Bankruptcy Code.

47. The Objectors also argue that the Section 1113/1114 Motion cannot be granted because the Final Proposals are inconsistent with federal law to the extent they seek to terminate healthcare coverage for retirees and dependents eligible for such coverage under the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act").[47] Modification of Coal Act retiree benefits may be permitted if such modifications are necessary to facilitate a going concern sale, rather than a piecemeal liquidation. For the reasons set forth

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[46] UMWA Obj. at ¶ 77; 1114 Committee Obj. at ¶ 11, 62.

[47] 26 U.S.C. §§ 9701–22. *See also Patriot Coal,* 493 B.R. at 83–84 for an explanation of the Coal Act and its predecessors.

below, the Debtors' Final Proposals meet this standard.

48. By way of background, the Coal Act contains three "vehicles" to provide healthcare benefits for certain coal industry retirees. *First,* the Coal Act merges the 1950 and 1974 benefit plans into the "UMWA Combined Fund." *Second,* the Coal Act requires signatory operators who are obligated under the 1978 or any later NBCWA to provide benefits under an IEP to continue to provide such coverage to certain retirees. *Third,* the Coal Act establishes the UMWA "1992 Benefit Plan to cover two classes of beneficiaries who are not covered under the Combined Fund or [an IEP]: (a) those who, based on age and service as of February 1, 1993, would otherwise have been eligible for benefits from the 1950 or 1974 plans were it not for the merger of those plans and the cut-off date set forth in the Coal Act, and (b) any person with respect to whom coverage under an [IEP] is required but is not provided."[48] The Combined Fund and the UMWA 1992 Benefit Plan are financed by monthly and annual premiums.[49]

49. Only one published decision, *In re Horizon Natural Resources Co.,* 316 B.R. 268 (Bankr. E.D. Ky. 2004), squarely addresses whether a debtor may modify or terminate Coal Act obligations pursuant to section 1114 and concludes that it does.[50] In *Horizon,* the

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[48] *Holland v. Double G Coal Co., Inc.,* 898 F.Supp. 351, 354 (S.D. W. Va. 1995).

[49] *In re Leckie Smokeless Coal Co.,* 99 F.3d 573, 576–77 (4th Cir. 1996).

[50] *In re Horizon Natural Res.,* 316 B.R. at 276.

debtors initially pursued a plan of reorganization by which they would retain their operating assets, but later changed their focus to liquidating through Chapter 11.[51] The debtors moved under sections 1113 and 1114 to reject their collective bargaining agreements and modify or terminate retiree benefits because "[t]he unrefuted evidence ... is that the debtors' assets cannot be sold subject to the collective bargaining agreements and retiree benefits...."[52]

50. The Coal Act Funds objected, arguing that regardless of section 1114 of the Bankruptcy Code, which permits modification of retiree benefits, section 9711 of the Coal Act expressly prohibits the modification of retiree benefits for as long as the employer or its successor remains in business.[53] The Coal Act Funds maintained that the term "retiree benefits" as used in the Bankruptcy Code includes only benefits received pursuant to contract, not statutory benefits like those provided under the Coal Act.[54] The court disagreed, finding that the Bankruptcy Code defines "retiree benefits" to include both statutory benefits (*i.e.,* those arising under the Coal Act) and non-statutory benefits (*i.e.,* those arising under a collective bargaining agreement).[55]

51. Section 1114 expressly "contemplates the modification of non-contractual obligations, because it authorizes the appointment of a committee of retirees to

[51] *Id.* at 271.

[52] *Id.* at 282.

[53] *See id.* at 275.

[54] *See id.*

[55] *Id.* at 275–76

serve as the authorized representative ... of those persons receiving any retiree benefits *not covered by a collective bargaining agreement*."[56] Moreover, in reconciling the Coal Act with the Bankruptcy Code, the *Horizon* court found that the Coal Act does not expressly contradict section 1114 of the Bankruptcy Code. Rather, section 1114 deals with "a narrow, precise, and specific subject: it governs the modification of retiree benefits only when the former employer is a debtor in a Chapter 11 case and only to the extent necessary for the reorganization effort. The Coal Act, on the other hand, ... 'covers a more generalized spectrum' in that it does not specify whether the former employer is or is not a debtor in possession."[57] In other words, application of section 1114 to retiree benefits covered by the Coal Act "does not deprive the Coal Act of 'any meaning at all'; the Coal Act would remain fully applicable where the last signatory operator is not a Chapter 11 debtor in possession or cannot satisfy § 1114's requirements."[58]

52. The *Horizon* court relied on *In re Lady H Coal Co.,* 199 B.R. 595 (S.D. W. Va. 1996), a decision addressing the relationship between the Coal Act and section 363(f) of the Bankruptcy Code. In *Lady H,* the Court considered the debtors' motion seeking a piecemeal liquidation of their assets free and clear of all liabilities, including those under the Coal Act.[59] The Coal Act Funds objected, but the *Lady H* court held

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[56] *Id*. at 275 (emphasis in original).

[57] *Id.* at 276

[58] *Id.*

[59] *Lady H,* 199 B.R. at 599–600.

that assets may be sold free and clear of Coal Act obligations under section 363(f) of the Bankruptcy Code.[60] The *Lady H* court reasoned that "[i]f Congress wished to exclude Coal Act liabilities from the reach of bankruptcy law, it could have done so ... by providing express language in the Coal Act that liabilities remain unaffected by operation of the Bankruptcy Code."[61]

53. Based on *Lady H* and the reasoning above, the *Horizon* court granted the debtors' motion under section 1114 to modify retiree benefits arising under the Coal Act, holding that "the Coal Act imposes a general prohibition against certain retiree benefit modifications, [and] the Bankruptcy Code agrees with that general prohibition but establishes an extremely limited exception."[62] The *Horizon* court further justified its holding by noting that "[i]t is in the best interests of the Coal Act Plan and Fund and their beneficiaries and creditors generally that the debtors' assets be sold for the best possible price, not on a piecemeal basis. If the modification of the Coal Act retiree benefits

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[60] *Id.* at 603.

[61] *Id.*; *see also In re Leckie Smokeless Coal Co.,* 99 F.3d 573, 585 (4th Cir. 1996) ("[T]he Bankruptcy Court may extinguish Coal Act successor liability pursuant to 11 U.S.C. § 363(f)(5)."); *Horizon Natural Resources,* 316 B.R. at 279 ("[A]ny additional financial problems encountered by the 1992 Fund resulting from the application of § 1114 to Coal Act obligations should be addressed by Congress and do not justify 'disturb[ing] the statutory scheme as we have found it.' ") (quoting *Leckie Smokeless Coal Co.,* 99 F.3d at 586).

[62] *Horizon Natural Resources,* 316 B.R. at 277.

is necessary to accomplish that goal and the other requirements of § 1114 are satisfied, modification must be permitted."[63]

54. The Objectors rely on *In re Sunnyside Coal Co.,* 146 F.3d 1273 (10th Cir. 1998) and other similar cases that consider the treatment of Coal Act claims in bankruptcy (but do not directly address whether a debtor can terminate Coal Act obligations under Section 1114), to argue that the Debtors cannot use Section 1114 here to terminate these obligations. Their reliance on these cases, none of which are binding on this Court, is misplaced. In *Sunnyside,* for example, the Court of Appeals for the Tenth Circuit held that Coal Act premiums under section 9712 of the Coal Act are "taxes incurred by the estate"[64] a conclusion with which the Court of Appeals for the Fourth Circuit agreed.[65] As is evident, these cases focus on the priority to which claims under the Coal Act are entitled in bankruptcy, an issue that is not before the Court.

55. The UMWA Funds cite to the bankruptcy court oral ruling in *Sunnyside* as "directly on point," noting that the court there denied the debtor's application under Section 1114 to terminate its Coal Act obligations.[66] This case is readily distinguishable. At the time the *Sunnyside* debtor sought termination of the

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[63] *Id.* at 279.

[64] *In re Sunnyside Coal Co.,* 146 F.3d 1273, 1280 (10th Cir. 1998).

[65] *Adventure Resources Inc. v.Holland,* 137 F.3d 786, 794 (4th Cir. 1998) (focusing primarily on "the question of whether the taxes levied by the Coal Act were ... 'incurred by the estate[s].' " (quoting § 503(b)(1)(B)(i)).

[66] *In re Sunnyside Coal Co.,* No. 94–12794–CEM (Bankr. D. Colo. July 29, 1994) (slip opinion).

Coal Act obligations, the debtor had ceased its active mining operations. It had shut off power and let the mine fill, thereby foreclosing any possibility of reopening the mine and conducting operations. Nor did the debtor intend to engage in active coal mining. In short, the *Sunnyside* debtor was liquidating and at issue in the Section 1114 application was whether the Coal Act claims could be terminated or were entitled to priority in payment from the liquidating estates. That is not the case here. Moreover, the *Sunnyside* bankruptcy court ruling does not analyze why Section 1114 cannot modify Coal Act obligations of such obligations constitute "retiree benefits." It simply states its conclusion. *Sunnyside* is not helpful to the analysis here, and in any event, that ruling is not binding on this Court.[67]

56. For the reasons set forth in *Horizon,* the Debtors may use section 1114 to modify Retiree Benefits arising under the Coal Act if the other requirements of section 1114 are satisfied. For the reasons set forth below, the Debtors have met the statutory standard of sections 1113 and 1114 to terminate the Retiree Benefits on the terms set forth in the Final Proposals.

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[67] Even the bankruptcy court was not convinced of its own conclusion. *Id.* at 18 ("The reality is that it is a point subject to argument, but you are here asking for my judgment in this proceeding and that's what you get. I'm sure that this problem will haunt other Courts.... ").

D. The Debtors Have Satisfied the Statutory Requirements of Sections 1113 and 1114 of the Bankruptcy Code.

1. The Debtors Made Proposals to the UMWA to Modify the UMWA CBA.

57. Section 1113 requires the Debtors to provide the UMWA with proposed modifications to the UMWA CBA *prior to* filing an application to reject the agreement.[68] The bar for satisfying this requirement is low because in most cases, this factor is a "routine formality."[69] The Debtors made numerous proposals to the UMWA throughout the Chapter 11 Cases. When the RSA terminated and the Chapter 11 Cases pivoted to a sale track, the Debtors had no alternative but make the Final Proposal to the UMWA. The Debtors' Final Proposal to the UMWA post-dated the filing of the Chapter 11 Cases and pre-dated the filing of the Section 1113/1114 Motion, which was filed on November 23, 2015. The statute requires submitting a proposal before filing the Section 1113/1114 Motion, which the Debtors did. However, neither section 1113 nor 1114 require completion of negotiations before filing the motion. To the contrary, section 1114 expressly contemplates that negotiations may take place after the filing of the motion, and the testimony and the evidence demonstrates that is what happened

[68] 11 U.S.C. § 1113(b)(1)(A); *see also In re Nw. Airlines Corp.,* 346 B.R. 307, 320 (Bankr. S.D.N.Y. 2006).

[69] *See, e.g., Chicago Constr. Specialties,* 510 B.R. at 218.

here,[70] so the Final Proposal to the UMWA met this requirement.

58. The Objectors argue that the Final Proposal to the UMWA was a "take it or leave it" unilateral rejection of the UMWA CBA and Retiree Benefits dictated by the Proposed Buyer under the Stalking Horse APA. Even if the Objectors are correct that the Final Proposal was necessitated by the Stalking Horse APA and the Debtors' financial circumstances, and even if these exigencies preclude further negotiations with the UMWA and Section 1114 Committee, the Final Proposal in and of itself was not improper. First, the Final Proposal included those modifications necessary to consummate the Stalking Horse APA. This includes elimination of the Successorship Provisions or rejection of the UMWA CBA. The Debtors had no choice about including these terms in the Stalking Horse APA. The Debtors' investment banker testified that after an extensive marketing process, no buyers emerged willing to purchase the Alabama Coal Operations as a going-concern, let alone as a going-concern burdened by the UMWA CBA. No contrary testimony or evidence was offered. Certainly, no entity is more familiar with coal operators than the UMWA, and if they had been aware of any potential purchasers, surely their representatives would have made that known.[71] The fact that certain terms of the Final Proposal were non-negotiable for reasons beyond the

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[70] Even counsel for the UMWA noted that a court may stop the 1113/1114 hearing and request or require the parties to negotiate.

[71] *See Lady H,* 199 B.R. at 607 ("Therefore, it is now time for the UMWA and the 1992 Plan to do what every creditor has a right to do at such a sale; encourage bidders who they would like to

Debtors' control does not render the Final Proposals defective or proffered in bad faith.

59. Second, by its terms, the Final Proposal to the UMWA made clear that the Debtors were submitting proposals and were willing to negotiate, notwithstanding the dire circumstances in which the Debtors find themselves. Thus, for example, the UMWA Final Proposal provides:

> JWR confirms that, in addition to the foregoing [proposals], it is willing to discuss any proposal that the Union may have concerning the effects of the sale of the mines on the Union's members.[72]

60. Finally, not unlike many Chapter 11 cases, but even more so in these cases, the Debtors have had to move at "warp" speed. From day one, the Debtors, and every witness for the Debtors, at every hearing, have repeatedly made it known that the "cash burn" was occurring faster even than anticipated. Repeatedly the Debtors have advised that they had to move the cases quickly to get to an end before the cash was completely gone. Also, as in any Chapter 11, Debtors, their counsel and advisors, and the management, are not only dealing with ongoing routine business issues, but are attempting to deal with, negotiate and resolve issues on multiple fronts with multiple players. The

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have operate these properties, consider investing in or becoming an owner of the enterprise, or enter into an agreement with a buyer to assure that some of the profitability problems of the past are solved upon purchase of the Debtors' assets.")

[72] Scheller Decl. ¶ 26 & Ex. 2.

UMWA labor issues are clearly not the only party or problems being addressed, all simultaneously.[73]

61. In sum, the Objectors ignore the express language of the Final Proposal, which clearly invites further discussion, and in fact, such discussions took place. The extent to which the Debtors' circumstances may limit the opportunity to negotiate does not, of itself, determine whether the first factor of the nine-part *American Provision* test has been satisfied.[74] Here, the Debtors submitted the Final Proposal within the timeframe the Bankruptcy Code contemplates, and the Court thus finds that the Final Proposal to the UMWA meets the standard required and that this factor is satisfied.[75]

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[73] The court notes that even while preparing for this hearing, the Debtors resolved the 1114 Non–Union Retiree issues. Further, a settlement was reached with the Unsecured Creditors Committee. The UMWA attorney tried to turn these accomplishments around by suggesting that everyone was getting something but the UMWA. The court disagrees, in a complex "mega" Chapter 11, every resolution counts and all help the Debtors reach the goal line.

[74] *See In re Alabama Symphony,* 155 B.R. 556, 573 (Bankr. N.D. Ala. 1993) (noting that the Bankruptcy Code "requires only that a debtor make *one* proposal, and that proposal must occur after the filing of the petition and before the application for rejection is made.") (emphasis in original); *see also Chicago Constr. Specialties,* 510 B.R. at 219 ("[I]t may indeed be the case that opportunity to negotiate is limited by the facts. That, however, is not a consideration in determining whether the first factor of the nine-factor test has been satisfied.").

[75] Contents of 67

2. The Debtors' Final Proposal Was Based on the Most Complete and Reliable Information, and the Debtor Provided Relevant, Necessary Information to the UMWA.

62. Both the second and fifth factors of the *American Provision* test pertain to the information necessary to support rejection of a collective bargaining agreement or retiree benefits under sections 1113 and 1114. The second factor addresses the information upon which the Debtors base their decision to reject the UMWA CBA or terminate benefits. The fifth factor, on the other hand, addresses the information the Debtors provide to the union or retirees.[76] In both cases, a debtor must gather the "most complete information at the time and ... base its proposal on the information it considers reliable," excluding "hopeful wishes, mere possibilities and speculation."[77] "The breadth and depth of the requisite information will vary with the circumstances, including the size and complicacy of the debtor's business and work force;

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[76] 11 U.S.C. §§ 1113(b)(1)(A) and (B), 1114(f)(1)(A) and (B); *Chicago Constr. Specialties,* 510 B.R. at 219; *AMRCorp.,* 477 B.R. at 409.

[77] *Chicago Constr. Specialties,* 510 B.R. at 219 (*quoting AMR Corp.,* 477 B.R. at 409); *see also In re Karykeion, Inc.*, 435 B.R. 663, 678 (Bankr. C.D. Cal. 2010) ("Just as section 1113 precludes a debtor from altering union contracts based on wishful thinking and speculation, a debtor facing imminent closure cannot base its rejection of its only suitor on a speculative white knight with greater riches."); *In re Patriot Coal,* 493 B.R. 65, 119 (Bankr. E.D. Mo. 2013) (debtors must provide "*sufficient information* for the UMWA to evaluate the [p]roposals.").

the complexity of the wage and benefit structure under the collective bargaining agreement; and the extent and severity of modifications the debtor is proposing."[78] To satisfy the second and fifth procedural requirements, a debtor need only provide that information that is within its power to provide.[79]

63. The Final Proposal to the UMWA meets the second and fifth factors of the *American Provision* test. The evidence establishes that the Debtors filed these Chapter 11 Cases fully expecting to reorganize pursuant to a Chapter 11 plan. The Debtors' proposals to the UMWA sought relief tailored to that objective.[80] Once the RSA was terminated and reorganization through a Chapter 11 plan was no longer a possibility, the Debtors formulated the Final Proposal to the UMWA based on the requirements needed to consummate the sale(s). The Final Proposal was a result of the Debtors' severe and increasingly liquidity constraints which show that the Debtors did not, and would not, have any cash to fund operations after January 2016, and that once the sale(s) closes, the Debt-

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[78] *AMR Corp.,* 477 B.R. at 409 (*quoting In re Mesaba Aviation, Inc.* (*Mesaba I*), 341 B.R. 693, 714 (Bankr. D. Minn. 2006), *aff'd in part, rev'd in part sub nom. Ass'n of Flight Attendants–CWA–AFL–CIO v. Mesaba Aviation, Inc.* (*Mesaba II*), 350 B.R. 435 (D. Minn. 2006)).

[79] *See In re Pinnacle Airlines Corp.,* 483 B.R. 381, 411 (Bankr. S.D.N.Y. 2012).

[80] *See* Scheller Decl. ¶¶ 11, 13.

ors will not have any money to pay for obligations remaining under the UMWA CBA.[81] No credible evidence was offered that this information is incomplete or unreliable.

64. Similarly, the Debtors provided the UMWA all the relevant information necessary to evaluate their proposals.[82] The relevant time for evaluating the sufficiency of the information is early November 2015 and thereafter, when the Chapter 11 Cases pivoted to a sale process. By the time the Debtors filed the sale motion on November 5, 2015, (a) there was no escaping the fact that reorganization under a plan was an impossibility, and (b) the Proposed Buyer had committed to purchasing the Alabama Coal Operations as a going-concern. It was not until the Debtors had no other choice but to pursue the Stalking Horse APA that they filed the Section 1113/1114 Motion. By this time, the "relevant information" was simple and apparent for all to see: the Debtors could not survive absent a sale in the near term, the Proposed Buyer had emerged as the only viable bidder that would purchase the Alabama Coal Operations as a going-concern, the sale of the Alabama Coal Operations as a going-concern provides the best chance for future employment of the Debtors' employees, and the Stalking Horse APA requires elimination of the Successorship Provisions or rejection of the UMWA CBA. Moreover, upon closing of the sale(s) (or outright liquidation), the Debtors will have no money to pay Retiree Benefits.

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[81] *See* Zelin Decl. ¶ 16.

[82] *See* 11 U.S.C. §§ 1113(b)(1)(A) and (B), 1114(f)(1)(A) and (B).

65. Under these facts and circumstances, the UMWA received from the Debtors all the relevant information necessary for them to evaluate the Final Proposal. Beginning July 2015, the Debtors provided the UMWA's members and advisors with access to an electronic data room that contains more than 75,000 pages of operational, financial, business planning and other documents relevant to the Objectors' evaluation of the Debtors' various proposals throughout these Chapter 11 Cases.[83] Once the RSA terminated, the Debtors continued to meet with the UMWA to apprise it of the status of the Chapter 11 Cases. Importantly, no party has challenged the reliability of the financial basis for the Debtors' decision to sell the Alabama Coal Operations as a going-concern, although the Objectors take issue with terms of the proposed sale(s). But no party has come forward willing to purchase all f the Debtors' Alabama Coal Operations burdened with the UMWA CBA and Retiree Benefits.[84]

66. The Objectors argue that they are entitled to "a thorough analysis of all of the incidents of income and expense that would bear on the [debtor's] ability to maintain a going-concern in the future" and that the union's objections must "go to whether the Debtor mustered a sufficiently comprehensive, detailed portrait of its financial posture and prospects before it formulated its proposals."[85] The Objectors suggested by their cross examination of witnesses, that because no business plan for the Proposed Buyer had been pro-

[83] Zelin Decl. at ¶ 28.

[84] Zelin Decl. at ¶ 30.

[85] UMWA Obj. at ¶ 95, 99 (quoting *Mesaba I,* 341 B.R. at 712–13); 1114 Committee Obj. at ¶¶ 57–60.

vided, that the information was insufficient to evaluate the proposals. The Court finds otherwise, the Proposed Purchaser was formed almost simultaneously with the signing of the APA, little over one month ago. The Proposed Buyer, Coal Acquisitions, selected Mr. Williams as its CEO. He had been an advisor to the Lenders, and had been observing Debtors' operations. It is clear to this Court from Mr. Williams' testimony, that other than further streamlining and pairing expenses wherever it can, the operations are expected to continue much the same. Also, Objectors claim that the Debtors have failed to provide the information sections 1113 and 1114 require because the Debtors made the Final Proposal without providing a wind-down plan for the payment of accrued and/or vested administrative expenses owed under the UMWA CBA and without leaving sufficient assets to pay accrued post-petition obligations owed to represented employees and retirees.[86]

67. The Debtors formulated the Final Proposal to facilitate the 363 Sale, a going-concern sale of their Alabama Coal Operations the Debtors entered into because their only other alternative is to shut down the mines, unlikely leaving an opportunity to be reopened, and to liquidate. This alternative seems the more dire and severe—it would preclude almost to a certainty, any future job opportunities for the UMWA and its members. The Debtors provided the Objectors with clear and comprehensive financial, business and operational information detailing the Debtors' cash needs and the likelihood that the Debtors would run out of money in January 2016 unless the 363 Sale

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[86] UMWA Obj. at ¶ 98; 1114 Committee Obj. at ¶ 63.

closed before then. This information was far more detailed and substantive than just a "snap-shot of current finances."[87] In these circumstances, that information suffices to demonstrate the necessity of the section 1113 and 1114 relief. The Debtors are not required to state what the "gap" is between their current financial performance and the performance needed to emerge, as the UMWA maintains, or what proportion of the gap is filled by the proposed labor concessions.[88] By definition, in a going-concern sale, the Debtors are *not* emerging from Chapter 11 in their current form, and the purpose of the proposed labor concessions is to enable the sale, not to fill some hypothetical financial void.

68. For the same reason, the Debtors need not demonstrate the cost savings necessary to fund their post-sale wind-down.[89] Sections 1113 and 1114 require only that the Debtors demonstrate that the Final Proposal is "necessary to permit the reorganization of the Debtors," which in this context means those modifications necessary to consummate the going-concern sale of their Alabama Coal Operations. Whether the labor concessions suffice to fund the subsequent wind-down of the estates, after the Debtors' Alabama Coal Operations have already been sold to a new owner, has no bearing on the section 1113 standard.

69. Here, the irrefutable evidence establishes that the Debtors have no reasonable or good alternative

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[87] UMWA Obj. at ¶ 105.

[88] UMWA Obj. at ¶ 103.

[89] UMWA Obj. at ¶ 106.

but to sell the Alabama Coal Operations to the Proposed Buyer. Based on the above, the Court finds that the Debtors based their Final Proposal on the most complete information available at the time and that the Debtors provided the UMWA with the relevant information necessary to evaluate the Final Proposals.

3. The Final Proposals are Necessary to Permit the Going–Concern Sale and the Debtors' Reorganization.

70. A debtor's proposed modifications to its collective bargaining agreements or retiree benefits must be "necessary to permit the reorganization of the debtor."[90] In the context of a liquidation or sale of substantially all of a debtor's assets, the phrase " 'necessary to an effective reorganization' means ... necessary to the Debtor's liquidation."[91] This factor is the most debated among the nine *American Provision* factors, and its interpretation now exists in two divergent forms: the "absolutely essential" view espoused by the Court of Appeals for the Third Circuit in *Wheeling–Pittsburgh Steel Corp. v. United Steelworkers of America, AFL–CIO–CLC,* 791 F.2d 1074 (3d Cir. 1986), and the "necessary, but not absolutely minimal" view formulated by the Court of Appeals for the

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[90] 11 U.S.C. §§ 1113(b)(1)(A), 1114(g)(3).

[91] *Chicago Constr. Specialties,* 510 B.R. at 221; *see also Karykeion,* 435 B.R. at 678–79 (finding rejection of the CBA is "necessary to permit the debtor's reorganization" where "the only reorganization option for the debtor is the sale of [its hospital] to [buyer] and that sale is contingent on the court approving the debtor's rejection of these CBAs"); *Ionosphere Clubs,* 134 B.R. at 522 (discussing inability to apply literally section 1114's analogous "necessary to permit the reorganization of the debtor" language to a debtor liquidating in Chapter 11).

Second Circuit in *Truck Drivers Local 807, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Carey Transportation, Inc.,* 816 F.2d 82 (2d Cir. 1987).

71. In *Wheeling–Pittsburgh,* the Third Circuit tracked the legislative history of section 1113 at length and concluded that the "necessary" language required that the debtor's proposal contain only the "minimum modifications ... that would permit the reorganization."[92] The Third Circuit found this consistent with the purpose behind section 1113, which was to overturn the lenient *Bildisco* standard in favor of a more stringent standard.[93] It considered whether the modifications were intended to foster the debtor's ability to reorganize for the long-term, or whether they were only those that allowed the debtor to avoid liquidation. Based on its understanding of the legislative history, the Third Circuit determined that section 1113 required application of a stricter standard and that "necessary" modifications were only those that served the short term goal of preventing the debtor's liquidation.[94]

72. The Second Circuit, on the other hand, takes the view that "necessary" does not equate with "essential."[95] Thus, the Second Circuit's test formulates the "necessary" requirement as putting the burden on the debtor to make a proposal in good faith that includes

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[92] *See Alabama Symphony,* 155 B.R. at 574 (*quoting Wheeling–Pittsburgh,* 791 F.2d at 1087).

[93] *Id.* at n. 42.

[94] *Id.* at 574 (*discussing Wheeling–Pittsburgh,* 791 F.2d at 1089).

[95] *Id.* (*discussing Carey Transp. II,* 816 F.2d at 89).

necessary changes that will enhance the debtor's ability to successfully reorganize.[96] Under either the *Wheeling–Pittsburgh* standard or the *Carey Transportation* standard, the Debtors have satisfied their burden under the third factor of the *American Provision* test. The Final Proposal—by eliminating the Successorship Provisions—seek only those modifications necessary to consummate the sale(s), thereby selling the Alabama Coal Operations as a going-concern and preventing the Debtors' piecemeal liquidation and/or shut down of the coal mines.

73. More specifically, the unrefuted evidence before the Court is that the Debtors' Alabama Coal Operations cannot be sold subject to the collective bargaining agreements and Retiree Benefits. The Debtors have engaged in and continue to engage in active efforts to sell their assets subject to the obligations, but no such offers have been received and none are anticipated. The amount of the employee legacy costs, including the costs of medical benefits for hourly rate retirees and for Coal Act beneficiaries and the liability arising from the Debtors' withdrawal from the 1974 Pension Plan, are substantial. The testimony and evidence shows that even if the Debtors obtained savings of $150 million from the Unions, the Debtors would have required hundreds of millions of dollars in new capital on emergence to remain viable. The Court finds credible that no potential buyers have an interest in assuming such obligations, let alone assuming such obligations *and* investing such new capital. The Debtors have, accordingly, carried their burden of showing that, absent the rejection of the UMWA CBA and the termination of the Retiree Benefits, the

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[96] *See*

sale(s) will not close and conversion of these cases to Chapter 7 and a piecemeal liquidation would ensue. Therefore, the relief sought is necessary to permit the Debtors' reorganization within the meaning of sections 1113 and 1114.

74. The UMWA argues that there is no way the Debtors can establish that any of their present demands are necessary to the sale(s) transaction until the UMWA concludes its negotiations with the Proposed Buyer. The UMWA submits that it is only after the UMWA and the Proposed Buyer have had sufficient time to bargain that it would be appropriate to consider whether it is necessary to eliminate the Successorship Provisions. But the Stalking Horse APA states unequivocally that termination of the Successorship Provisions in the UMWA CBA or rejection of the UMWA CBA is a condition *precedent* to completion of the sale(s).[97] Unless the Debtors' obtain the requested relief, there will be no Proposed Buyer with whom the UMWA can bargain. Moreover, the Debtors will run out of cash by early January 2016. No time exists to delay the sale(s) solely for purposes of maximizing the UMWA's leverage in their negotiations with the Proposed Buyer.

75. Sections 1113 and 1114 only require that the Debtors' Final Proposal be necessary to permit the *Debtors'* reorganization—*i.e.,* in these Chapter 11 Cases, those modifications necessary to consummate a going-concern sale. The Bankruptcy Code does not impose any obligation on the Debtors to ensure that the UMWA can negotiate the best possible deal with the new owner of the Debtors' Alabama Coal Operations. The section 1113 inquiry focuses solely on the

[97] *See* Stalking Horse APA § 7.12.

proposal made by the Debtors, not the other parties, and the UMWA is not entitled to a veto power over a going concern sale when the undisputed evidence establishes that it is the best way to maximize value for all creditors and provide the best chance for future employment for the Debtors' employees, including, but not limited to, UMWA-represented employees.[98] Section 1113 was never intended to give unions such power. Its purpose is to prevent the Debtors from unilaterally rejecting the UMWA CBA, to encourage negotiations with the UMWA, and to plainly articulate the process for seeking rejection. Here, the Debtors have complied with these requirements and established that the modifications are necessary to permit their reorganization within the meaning of sections 1113 and 1114.

76. The Debtors' situation in these Chapter 11 Cases is very similar to that of the debtor in *In re Karykeion, Inc.,* 435 B.R. 663 (Bankr. C.D. Cal. 2010), and the reasoning of that case is persuasive. In *Karykeion,* the Chapter 11 debtor operated a community hospital that was almost out of money, and moved to reject its collective bargaining agreements with its unions in order to facilitate a going-concern sale to a third party. As is the case here, in *Karykeion,* the sale of the hospital as a going-concern to a third-party buyer was the only reorganization option for the debtor, and the sale was contingent on the court approving the

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[98] *See AMR Corp.,* 477 B.R. at 414 (noting that "courts have rejected attempts to focus the Section 1113 inquiry on a proposal made by a party other than the debtor")

debtor's rejection of the collective bargaining agreements, including the successor clauses.[99] Given these circumstances, and having found that the Debtors satisfied the requirements for rejection set forth in section 1113, the *Karykeion* court authorized the debtor to reject its collective bargaining agreement.[100]

77. The Objectors' reliance on *In re Bruno's Supermarkets, LLC,* 2009 WL 1148369 (Bankr. N.D. Ala. Apr. 27, 2009) is misplaced given the facts and circumstances of each case. The Debtors' situation differs markedly from that of *Bruno's.* As the *Karykeion* court noted:

> In *Bruno's,* the evidence showed that the debtor was seeking to reject a similar CBA successorship clause because it felt it could more effectively market itself without such a requirement. There was no specific sale identified and all buyers were still just potential suitors. While a number of prospective buyers had expressed concern about the successorship clause, there was testimony that certain potential buyers might still be willing to negotiate parts of the union contract. The debtor here is not simply seeking to "enhance the market value" of its assets, as the court concluded in *Bruno's*. The debtor tried to find a buyer who would assume the CBAs and tried to reorganize its existing structure without rejecting any CBAs. It is now pursuing the only course of action left to it other than shut-

[99] *Karykeion,* 435 B.R. at 679.

[100] *Id.* at 684.

> ting down immediately and has already exhausted negotiations with the only prospective buyer still willing to proceed. Whether the debtor could have avoided being painted into this corner can be debated, but it is now crowded into the corner along with the other interested parties in the case.[101]

78. The same reasoning articulated by the *Karykeion* court applies here. The Debtors have presented overwhelming evidence that the deal with the Proposed Buyer will collapse unless the Successorship Provisions are terminated or the UMWA CBA is rejected. The Proposed Buyer refused to agree to a sale transaction without that requirement and, given the depressed condition of the coal industry and the Debtors themselves, no other potential buyers have emerged to purchase the Debtors as a going-concern. In addition, once the sale(s) close, the Debtors will have no money to pay the Retiree Benefits or any other obligations remaining under the UMWA CBA. The "wisdom" of the Proposed Buyer's position regarding which of the Debtors' liabilities it is willing to assume or pay is irrelevant.[102] The only consideration is whether the Debtors' proposed elimination of the Successorship Provisions or rejection of the CBAs is necessary to permit the going-concern sale of the Alabama Coal Operations. The 363 Sale will not close unless the Successorship Provisions are eliminated or the CBAs are rejected, and consequently, this requirement has been met.

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[101] *Id.* at 679.

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4. The Final Proposals Assure That All Parties Are Treated Fairly and Equitably.

79. Sections 1113 and 1114 also require that a debtor's proposed modifications affect all parties in a fair and equitable manner.[103] This requirement "spread[s] the burden of saving the company to every constituency while ensuring that all sacrifice to a similar degree."[104] "Courts take a flexible approach in considering what constitutes fair and equitable treatment due to the difficulty in comparing the differing sacrifices of the parties in interest."[105] A debtor can meet the requirement "by showing that its proposal treats the union fairly when compared with the burden imposed on other parties by the debtor's additional cost-cutting measures and the Chapter 11 process generally."[106]

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[103] 11 U.S.C. §§ 1113(b)(1)(A); 1114(g)(3).

[104] *See AMR Corp.,* 477 B.R. at 408 (quoting *Carey Transp. II,* 816 F.2d at 90); *see also In re Century Brass Prods. Inc.,* 795 F.2d 265, 273 (2d Cir. 1986); *In re Elec. Contracting Servs. Co.,* 305 B.R. 22, 28 (Bankr. D. Colo. 2003) ("A debtor will not be allowed to reject a union contract where it has demanded sacrifices of its union without shareholders, non-union employees and creditors also making sacrifices."). Neither *AMR Corporation, Century Brass,* nor *Electric Contracting* discuss § 1114. However, as previously noted, "[t]he requirements for modification of retiree benefits are ... substantially the same as the requirements for rejection of collective bargaining agreements." *Horizon,* 316 B.R. at 281; *see also Ionosphere,* 134 B.R. at 520.

[105] *AMR Corp.,* 477 B.R. at 408.

[106] *Nw. Airlines,* 346 B.R. at 326 (*citing Carey Transp. II,* 816 F.2d at 90).

80. Bankruptcy Courts display significant discretion with respect to this part of the *American Provision* test. For example, courts have found the requirement fulfilled where non-union employees and managers received increased responsibilities as a result of a reduction-in-force rather than pay cuts *per se.*[107] Additionally, at least one court has held that where union salaries and benefits constitute the bulk of the debtor's costs, and union employees generally earn more than their non-union counterparts, the "fair and equitable" requirement does not mandate perfectly proportionate burdens on both union and non-union employees.[108]

81. The "fair and equitable" requirement does not mean that the non-union employees must take pay reductions in equal percentages.[109] To the contrary, the Bankruptcy Code requires that the Court look to how "all of the affected parties" are treated.[110] The affected parties in this case include those who have intangible interests, such as the city, the state, the vendors who

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[107] *In re Patriot Coal Corp.,* 493 B.R. 65, 131 (Bankr. E.D. Mo. 2013) (*citing Carey Transp. II,* 816 F.2d at 90).

[108] *See In re Allied Delivery System Co.,* 49 B.R. 700, 702–03 (Bankr. N.D. Ohio 1985) ("Fair and equitable treatment does not of necessity mean identical or equal treatment."); *see also Carey Transp. II,* 816 F.2d at 90–91 ("[W]here ... the employees covered by the pertinent bargaining agreements are receiving pay and benefits above industry standards, it is not unfair or inequitable to exempt the other employees from pay and benefit reductions.").

[109] *Alabama Symphony,* 155 B.R. at 575.

[110] *Id.* (*quoting American Provision,* 44 B.R. at 909); 11 U.S.C. § 1113(b)(1)(A).

supply the Alabama Coal Operations, and most importantly, the employees who depend on the going concern sale as the best chance for future employment.

82. Here, just like the UMWA retirees, the Debtors' salaried employees are also facing termination of their Retiree Benefits upon consummation of the proposed sale(s). Other creditors are also either not getting paid or are receiving far less than the debt owed. Finally, the evidence establishes that the Debtors have undertaken aggressive cost-cutting measures across their business to address the Debtors' financial troubles and preserve jobs; management has taken steps to cut excess costs and overhead before approaching labor to request economic concessions.[111] Such cuts include significant reductions in force among salaried employees, renegotiating key contracts, and other creditor concessions. The Final Proposal thus does not discriminate against Union employees or retirees.

83. The Objectors argue that the Debtors' proposed key employee retention plan (the "KERP")[112] evidences that the UMWA represented parties and retirees shoulder a disproportionate share of the Debtors' financial distress. They argue that the existence of

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[111] *See In re Carey Transp.* (*Carey Transp. I*), 50 B.R. 203, 210 (Bankr. S.D.N.Y. 1985) ("It is rare that management approaches labor seeking economic concessions without being able to demonstrate that is has already taken steps to cut costs and overhead.")

[112] *See Debtors' Motion for an Order (A) Approving the Debtors' Key Employee Retention Plan and (B) Granting Related Relief* [Doc. No. 1032] (the *"KERP Motion")*.

the KERP, which they claim favors senior management to the detriment of the UMWA represented employees and retirees, renders the Final Proposal inherently unfair and inequitable.[113] But the mere fact that the Debtors are pursuing the KERP does not mean that the Final Proposal is not fair and equitable with respect to employees and retirees. How the Final Proposal affects employees and retirees and whether any constituent unfairly shoulders the burden of their impact under Sections 1113 and 1114 presents a separate and distinct inquiry from whether the KERP is justified under the facts and circumstances of these Chapter 11 Cases under Section 503(c)(3). The Court will address the KERP on its own merits in the context of adjudicating the KERP motion. However, the Court notes that the evidence establishes that the overriding purpose of the KERP is to ensure the retention of twenty-six employees (not senior management generally) who the Debtors' believe are critically necessary to preserve the Alabama Coal Operations as a safe and functioning operation that can be sold as a going concern. These objectives are consistent with those of the Final Proposal, and the existence of the KERP on its own therefore does not demonstrate that the Final Proposal is not fair and equitable. Further, the testimony regarding the KERP was clear, credible and unrefuted that the funds available for the KERP are not available for any other purpose. Again, the goal of the KERP is completely consistent and promotes the fair and equitable treatment in that it further ensures Debtors continue to operate as required and necessary to accomplish the sale.

[113] UMWA Obj. at ¶ 112; UMWA Funds Obj. at ¶ 78; 1114 Committee Obj. at ¶ 63.

84. The evidence establishes that the Alabama Coal Operations cannot be sold without rejection of the UMWA CBA and Retiree Benefits. Thus, absent the rejection, those operations would be closed and sold on a piecemeal basis. On the other hand, if the sale(s) consummate and the Alabama Coal Operations are sold as a going-concern, Debtors' employees have the best chance of future employment. Consummating the sale(s) is also necessary to achieve fairness to creditors including the unsecured creditors (trade vendors and other businesses that provided goods and/or services to the Debtors), the secured and administrative creditors who would receive considerably less as a result of a piecemeal Chapter 7 liquidation. Finally, consummating the sale(s) also serves the public interest, here, represented by the local community in which the mines operate. For example, the Proposed Buyer is assuming responsibility under various mine reclamation laws and regulations which benefits the governmental agencies charged with enforcing such laws. Further, if the mines continue to operate, the local community and its economy benefit.

85. Based on the foregoing, that the Debtors have shown that the Final Proposal treats all affected parties fairly and equitably, without placing a disproportionate burden on the Union members. The Debtors have accordingly satisfied the fourth factor of the *American Provision* test.

5. The Debtors Met With the UMWA at Reasonable Times and in Good Faith.

86. Sections 1113 and 1114 require that a debtor "meet, at reasonable times" to confer "in good faith in

attempting to reach mutually satisfactory modifications to [their collective] bargaining agreement."[114] "'[O]nce the debtor has shown that it has met with the Union representatives, it is incumbent upon the Union to produce evidence that the debtor did not confer in good faith.' "[115] A failure to reach agreement may be "the result of the difficultness of the task, rather than the lack of 'good faith' of either party."[116]

87. "Determining what amounts to "reasonable times" to meet depends on the circumstances of the situation".[117] Here, the Debtors have met repeatedly with the UMWA to bargain and negotiate with it at every step of these Chapter 11 Cases.[118] The Debtors requested meetings on numerous occasions. Not once did the Debtors decline a single request from the UMWA to negotiate.[119]

88. The Debtors have also met in good faith with the UMWA. The good faith requirement under section 1113 has been interpreted to mean that the debtor must make a serious effort to negotiate.[120] Here, the evidence establishes that the Debtors were sincere

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[114] 11 U.S.C. §§ 1113(b)(2), 1114(f)(2).

[115] *Carey Transp. I,* 50 B.R. at 211 (quoting *American Provision,* 44 B.R. at 910).

[116] *Id.* (quoting *In re Salt Creek Freightways,* 47 B.R. 835, 840 (Bankr. D. Wyo. 1985)).

[117] *See Karykeion,* 435 B.R. at 681.

[118] Scheller Decl. ¶¶ 9–14, 16–17, 20–21, 23.

[119] *Id.* at ¶ 9.

[120] *Alabama Symphony,* 155 B.R. at 576 (*citing In re Ky. Truck Sales, Inc.,* 52 B.R. 797 (Bankr. W.D. Ky. 1985).

about their efforts to plow some middle ground before resorting to the measures allowed by section 1113. Indeed, the Debtors' willingness to meet frequently with the UMWA is itself compelling evidence of the Debtors' good faith.[121]

89. The Objectors argue that the Debtors did not meet in good faith because the Final Proposal was required by the Stalking Horse APA and [was] not subject to negotiation.[122] The evidence establishes, however, that the Debtors made multiple proposals to the UMWA and met with the UMWA throughout the Chapter 11 Cases. It was only when a sale was inevitable, and the Debtors were close to running out of money, that the Debtors submitted the Final Proposal seeking elimination of the Successorship Provisions or rejection of the UMWA CBA. The UMWA's reliance on *In re Lady H Coal, Inc.,* 193 B.R. 233 (Bankr. S.D.W. Va. 1996) is thus misplaced. In *Lady H Coal,* the court found good faith lacking where the debtors had already obligated themselves prior to initiating modification negotiations.[123] Here, however, the

[121] *See In re Sol–Sieff Produce Co.,* 82 B.R. 787, 795 (Bankr. W.D. Pa. 1988) (concluding that the debtor negotiated in good faith where the "Debtor ha[d] at all times been ready, willing, and able to negotiate" with its union).

[122] *See In re Delta Air Lines,* 342 B.R. 685, 697 (Bankr. S.D.N.Y. 2006) ("[A] debtor cannot be said to comply with its obligation under Section 1113(b)(2) ... when it steadfastly maintains that its initial proposal under subsection (b)(1)(A) is non-negotiable.").

[123] *Lady H Coal, Inc.,* 193 B.R. at 242 ("[T]he Debtors could not have bargained in good faith as the Debtors were, *prior to any negotiations with the union,* locked into at [sic] an agreement where the purchaser was not assuming the [CBA].") (emphasis added).

Debtors were not locked in at the time negotiations commenced. They approached the UMWA to discuss labor cost reductions before commencing the Chapter 11 Cases, and met with the UMWA repeatedly throughout their restructuring process.

90. Notably, once the Stalking Horse APA was executed, the Debtor encouraged the Proposed Buyer to meet and confer with the UMWA. In fact, the Proposed Buyer has met with, and continues to negotiate with, the UMWA. And while the UMWA understandably objects to the Proposed Buyer's insistence on the condition in the Stalking Horse APA requiring rejection of the UMWA CBA or termination of the Successorship Provisions, the relevant inquiry for purposes of the Section 1113/1114 Motion is the good faith of the Debtors and the UMWA, not the Proposed Buyer's negotiation of the Stalking Horse APA. The Debtors have shown that they negotiated in good faith. No evidence exists to the contrary.

5. The UMWA and Section 1114 Committee Rejected the Final Proposals without Good Cause.

91. Sections 1113 and 1114 also require a debtor to demonstrate that its unions have "refused to accept [its] proposal without good cause."[124] Once the debtor establishes that its proposal is necessary, fair, and in good faith, the unions must produce sufficient evidence to justify their refusal to accept the proposal.[125] "[A]lmost invariably, if a debtor-in-possession goes

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[124] 11 U.S.C. §§ 1113(c)(2), 1114(g)(2).

[125] *Nw. Airlines,* 346 B.R. at 328 (*citing Carey Transp. II,* 816 F.2d at 92).

through the procedural prerequisites for its motion, and if the substance of the proposal ultimately passes muster ..., its union(s) will not have good cause to have rejected the proposal."[126]

92. Where a proposal is necessary for the debtor's viability and the other section 1114 requirements are met, no good causes exists to reject the proposal, even if the proposal requires sacrifices by the union or retirees.[127] "Good cause" does not include demands that are not economically feasible or alternatives that would not permit the debtor to reorganize successfully.[128]

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[126] *Assoc. of Flight Attendants–CWA, AFL–CIO v. Mesaba Aviation, Inc.* (*Mesaba II*), 350 B.R. 435, 461 (D. Minn. 2006) (internal quotation omitted).

[127] *Mesaba II,* 350 B.R. at 462 ("While the low wages imposed by the Proposals understandably motivated the Unions to reject the Proposal, they do not constitute good cause under the Bankruptcy Code."); *see also In re Valley Steel Products Co., Inc.,* 142 B.R. 337, 342 (Bankr. E.D. Mo. 1992) ("It is clear that the Proposals would have a negative impact on the Teamster Drivers' incomes. It is equally clear that if the Debtors do not receive these concessions they will be forced to liquidate and the Teamsters will be unemployed.").

[128] *See Nw. Airlines,* 346 B.R. at 328; *see also Salt Creek Freightways,* 47 B.R. at 840 ("[T]he court must view the Union's rejection utilizing an objective standard which narrowly construes the phrase 'without good cause' in light of the main purpose of Chapter 11, namely reorganization of financially distressed businesses."); *Alabama Symphony,* 155 B.R. at 577 (union rejected the proposal without good cause where it merely insisted that the debtor comply with the terms of the CBA before beginning negotiations because the union "knew that the [debtor] did not have the funds to pay them").

93. Here, the UMWA lacks good cause for rejecting the Debtors' Final Proposal. The Debtors' dire circumstances require them to undertake the 363 Sale, or else they will cease operations and all employees' jobs will be lost. And, under the terms of the Stalking Horse APA, the 363 Sale cannot be consummated unless the Successorship Provisions of the UMWA CBA are eliminated. Similarly, the other obligations remaining under the UMWA CBA and Retiree Benefits must be terminated upon closing the 363 Sale because the Debtors will not have the money to pay them.

94. When the Chapter 11 Cases pivoted from a plan to a sale process, the Debtors encouraged the UMWA and the Proposed Buyer to meet with each other to negotiate the terms of an initial collective bargaining agreement.[129] In fact, the Proposed Buyer reached out to the UMWA as a courtesy the day after the Stalking Horse APA was signed.[130] The Proposed Buyer continues to meet with the UMWA, has already made an initial contract proposal to it, and a further meeting is already scheduled with the UMWA.[131] As a result, the fact that the Stalking Horse APA requires elimination of the Successorship Provisions and the other section 1113/1114 relief as a condition to close the 363 Sale does not itself provide the UMWA with good reason to reject the Debtors' proposals.[132]

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[129] *See* Scheller Decl. ¶ 25.

[130] *See* Williams Decl. ¶¶ 3–4.

[131] *See* Williams Decl. ¶¶ 6–7.

[132] *Cf. In re Bruno's Supermarkets, LLC,* 2009 WL 1148369, at *18–19 (Bankr. N.D. Ala. Apr. 27, 2009) (finding that the union refused the debtor's proposal under section 1113 with good cause

95. Nor were the Debtors required to accept the UMWA's "counter-proposal" in which the UMWA expressed a willingness to engage in further negotiations with the Debtors, but only upon ratification of a collective bargaining agreement with the Proposed Buyer, provided such agreement addresses retiree healthcare. First, given the Debtors' lack of cash, no more time exists to simply allow negotiations to proceed in the hope that all of the UMWA's demands will be met before a going concern sale is no longer possible. Second, the Debtors must eliminate the Successorship Provisions to consummate the 363 Sale. If the Successorship Provisions are not eliminated, there will be no Proposed Buyer with whom the UMWA can reach an initial collective bargaining agreement. Third, the UMWA's "counter-proposal" provides that the sale could not close and the Debtors would have to liquidate piecemeal if, despite the good faith efforts of the Proposed Buyer and the UMWA, such parties are unable to reach agreement on an initial collective bargaining agreement and/or such initial collective bargaining agreement is not ratified prior to closing. Fourth, the UMWA is already negotiating an initial collective bargaining agreement with the Proposed Buyer and nothing precludes them from continuing those negotiations.

96. The Court finds the statutory language "without good cause" troubling and previously found and

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where the debtor failed to encourage negotiations between potential purchasers and the union); *In re Patriot Coal Corp.,* No. 15–32450 (Bankr. E.D. Va. Sept. 1, 2015), ECF No. 1043, Hearing Transcript at 145:5–10 (adjourning section 1113/1114 hearing for two days and ordering proposed buyer and union to "sit down across a table from each other" during that period).

held that this is not the same as nor synonymous with "in bad faith."[133] Rather, this requirement imposes on the Court an objective standard consistent with goals and purposes of Chapter 11 generally. "[T]he union must indicate a willingness to work with the debtor in its attempts to reorganize."[134] In this case, for the UMWA to make a counterproposal requiring a deal with the Proposed Buyer, which was and is completely beyond the control of the Debtors, is not a sufficient effort to work with the Debtors, and without good cause. It was not, and is not, reasonable, or good cause, for the Union to outright reject a proposal by demanding conduct or action the Debtors do not control. Further, the UMWA counterproposal did not offer, suggest, or open a door to other options or alternatives other than having a new CBA with the Proposed Buyer.

97. In the end, the Debtors and the UMWA have reached a stalemate with respect to elimination of the Successorship Provisions. The existence of a stalemate, however, does not constitute "cause" to reject the Debtors' proposal, especially when the Debtors have no other options and the UMWA is in negotiations with the Proposed Buyer to reach an initial agreement. As a result, the Debtors have demonstrated that the UMWA lacked good cause to reject the Debtors' proposal.

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[133] " 'Without good cause' is not synonymous with 'in bad faith.' " *Alabama Symphony,* 155 B.R. at 577 (citing *In re Salt Creek Freightways,* 47 B.R. 835 (Bankr. D. Wyo. 1985)).

[134] *Alabama Symphony,* 155 B.R. at 577.

6. The Balance of the Equities Clearly Favor Rejection.

98. Finally, the balance of the equities overwhelmingly favors rejection of the UMWA CBA and termination of the Retiree Benefits, as required for approval of a motion under sections 1113 and 1114.[135] When applying this test, "bankruptcy courts 'must focus on the ultimate goal of Chapter 11 ... [as the] Bankruptcy Code does not authorize freewheeling consideration of every conceivable equity, but rather only how the equities relate to the success of the reorganization.'"[136] This is a fact-specific inquiry, and courts consider the following six factors:

(a) the likelihood and consequences of liquidation if rejection is not permitted;

(b) the likely reduction in the value of creditors' claims if the bargaining agreement remains in force;

(c) the likelihood and consequences of a strike if the bargaining agreement is voided;

(d) the possibility and likely effect of any employee claims for breach of contract if rejection is approved;

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[135] *See* 11 U.S.C. §§ 1113(c)(3), 1114(g)(3).

[136] *Nw. Airlines,* 346 B.R. at 329 (ellipses in original) (quoting *NLRB v. Bildisco & Bildisco,* 465 U.S. 513, 527, 104 S.Ct. 1188, 79 L.Ed.2d 482 (1984)); *see also Ky. Truck Sales,* 52 B.R. at 806 ("[T]he primary question in a balancing test is the effect the rejection of the agreement will have on the debtor's prospects for reorganization.").

(e) the cost-spreading abilities of the various parties, taking into account the number of employees covered by the bargaining agreement and how various employees' wages and benefits compare to those of others in the industry; and

(f) the good or bad faith of the parties in dealing with the debtor's financial dilemma.[137]

99. In addition, "[t]he balance of the equities ... clearly favors rejection when it is apparent that a debtor is in need of substantial relief under a union contract and the bargaining process has failed to produce any results and is unlikely to produce results in the foreseeable future."[138]

100. Here, the Debtors' liquidation is almost certain if this Court does not approve the rejection of the UMWA CBA; the testimony on this point was clear, convincing, unrefuted, and credible.[139] The alternative to the Debtors' requested relief will be far worse for all constituencies: the Debtors will soon run out of cash with no ability to attract additional financing. Under such a scenario, the evidence establishes that the value of the Debtors' estates will plummet, all of the Debtors' stakeholders will suffer, all of the Debtors' employees will lose their jobs, all of the Debtors' key vendors will lose a business partner, and the Central Alabama community will lose a valuable contributor to its economy and corporate life.

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[137] *Carey Transp. II,* 816 F.2d at 93.

[138] *In re Royal Composing Room, Inc.,* 62 B.R. 403, 408 (Bankr. S.D.N.Y. 1986).

[139] *See* Zelin Decl. ¶ 29.

101. All of the remaining factors also favor granting the requested relief. As described above, the recoveries of all parties in these Chapter 11 Cases, including the unsecured creditors, administrative creditors and the Debtors' secured creditors, are at significant risk. The Proposed Buyer and the UMWA are engaged in negotiations for an initial collective bargaining agreement, each side has made a full contract proposal, and the parties have had three meetings and have scheduled a subsequent meeting, which minimizes the likelihood and consequences of a strike. If the Court does not grant the relief requested, employee breach claims are almost a certainty, as the Debtors will be unable to afford the remaining obligations under their UMWA CBA.[140] Finally, for the reasons discussed above, the Debtors have acted in good faith and requested only those savings and changes that they truly need, with the burden of those savings spread equitably among the Debtors' various constituencies.

102. The balance of the equities clearly favors implementing the Final Proposal and the Court finds this final factor of the *American Provision* test has been satisfied.

CONCLUSION

The Union has objected to, and strongly urges this Court to deny, the Motion. It seems the Union is hopeful that if the Motion is denied, either 1) the Proposed Buyer would close the sale anyway, or 2) the Proposed Buyer would expedite and fast track the negotiations and reach an agreed-upon CBA that could be ratified so the sale could proceed. The Court notes that the

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[140] *See* Zelin Decl. ¶ 16.

sale motion hearing is set for January 6, 2015. Many objections to the sale have been filed, some by counsel for represented parties, but many have been filed by individuals employed by or retired from Walter energy. Their concerns are legitimate and clearly they seek only to retain what they have, and hope not to lose their pay, income, medical care benefits, pension benefits, and the like. This Court has reviewed these objections, even though not filed regarding this hearing and the Court has considered these concerns, as well as those voiced by UMWA counsel at the hearing. As noted in detail in one *Patriot Coal* reported decision, these miners and retirees endured "horrendous conditions," worked hard for decades below ground, many may have permanent disabilities, physical and mental limitations, and now face frightening health care issues.[141]

Even though this Court fully appreciates the enormous potential hardship on many, the Court must follow the law and in doing so must decide what is best for ALL creditors and parties, including union and non-union employees. While the Union appears willing to risk the sale by insisting the Court deny the Motion, the Court is not in position to do so. This Court must assume the terms of the APA are firm and that if any condition is not met, there will be no sale. This Court finds that maintaining the coal operations as a going concern[142], keeping the mines open, offering future job opportunities and continuing to be a

[141] *Patriot Coal,* 493 B.R. at 79.

[142] The Court notes that many large businesses have been through bankruptcy and some are well known and have continued in business. Thus, many employees have retained jobs, local economies have benefited, other businesses have continued to

productive member of the business community all require this Court to overrule the UMWA and the UMWA Funds' objections.

This result is based on the Court's conclusion that the 1) Debtors are out of time to close a sale; 2) the Proposed Buyer will not close the sale unless all the conditions are met, including rejection of the UMWA CBA and elimination of any liability for the UMWA Funds' as to the Proposed Buyer; and, 3) based on the statutory and substantial case law cited: a) the elimination of CBA obligations is not new or novel in bankruptcy cases; and, b) there is substantial and persuasive case law to support the Proposed Buyer's conditions regarding the CBA and related obligations. The relief sought in the Debtor's Motion pursuant to 11 U.S.C. §§ 1113 and 1114 is due to be granted. Accordingly, it is hereby

ORDERED, ADJUDGED and DECREED that the objections by the UMWA and UMWA Funds are **OVERRULED.** It is further

ORDERED, ADJUDGED and DECREED that the Motion filed by the Debtor is **GRANTED,** the Collective Bargaining Agreement is **REJECTED,** and any Sale of Assets shall be free and clear of any encumbrances and liabilities under either the CBA or with respect to any UMWA Funds.

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stay in business, and consumers have continued to use and enjoy products and services produced. The following are some will recognized names of business that have emerged from bankruptcy and are still in business: General Motors, Chrysler, Kmart, Kodak, Wall Street Deli, as well as multiple companies owned and operated by Donald Trump.

STATUTORY ADDENDUM

11 U.S.C. § 1114

Payment of insurance benefits to retired employees

(a) For purposes of this section, the term "retiree benefits" means payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under this title.

(b)

(1) For purposes of this section, the term "authorized representative" means the authorized representative designated pursuant to subsection (c) for persons receiving any retiree benefits covered by a collective bargaining agreement or subsection (d) in the case of persons receiving retiree benefits not covered by such an agreement.

(2) Committees of retired employees appointed by the court pursuant to this section shall have the same rights, powers, and duties as committees appointed under sections 1102 and 1103 of this title for the purpose of carrying out the purposes of sections 1114 and 1129(a)(13) and, as permitted by the court, shall have the power to enforce the rights of persons under this title as they relate to retiree benefits.

(c)

(1) A labor organization shall be, for purposes of this section, the authorized representative of those persons receiving any retiree benefits covered by any collective bargaining agreement to which that labor organization is signatory, unless (A) such labor organization elects not to serve as the authorized representative of such persons, or (B) the court, upon a motion by any party in interest, after notice and hearing, determines that different representation of such persons is appropriate.

(2) In cases where the labor organization referred to in paragraph (1) elects not to serve as the authorized representative of those persons receiving any retiree benefits covered by any collective bargaining agreement to which that labor organization is signatory, or in cases where the court, pursuant to paragraph (1) finds different representation of such persons appropriate, the court, upon a motion by any party in interest, and after notice and a hearing, shall appoint a committee of retired employees if the debtor seeks to modify or not pay the retiree benefits or if the court otherwise determines that it is appropriate, from among such persons, to serve as the authorized representative of such persons under this section.

(d) The court, upon a motion by any party in interest, and after notice and a hearing, shall order the appointment of a committee of retired employees if the debtor seeks to modify or not pay the retiree benefits or if the court otherwise determines that it is appropriate, to serve as the authorized representative, under this section, of those persons receiving any retiree benefits not covered by a collective bargaining agreement. The United States trustee shall appoint any such committee.

(e)

(1) Notwithstanding any other provision of this title, the debtor in possession, or the trustee if one has been appointed under the provisions of this chapter (hereinafter in this section "trustee" shall include a debtor in possession), shall timely pay and shall not modify any retiree benefits, except that—

(A) the court, on motion of the trustee or authorized representative, and after notice and a hearing, may order modification of such payments, pursuant to the provisions of subsections (g) and (h) of this section, or

(B) the trustee and the authorized representative of the recipients of those benefits may agree to modification of such payments,

after which such benefits as modified shall continue to be paid by the trustee.

(2) Any payment for retiree benefits required to be made before a plan confirmed under section 1129 of this title is effective has the status of an allowed administrative expense as provided in section 503 of this title.

(f)

(1) Subsequent to filing a petition and prior to filing an application seeking modification of the retiree benefits, the trustee shall—

(A) make a proposal to the authorized representative of the retirees, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the retiree benefits that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

(B) provide, subject to subsection (k)(3), the representative of the retirees with such relevant information as is necessary to evaluate the proposal.

(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1), and ending on the date of the hearing provided for in subsection (k)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such retiree benefits.

(g) The court shall enter an order providing for modification in the payment of retiree benefits if the court finds that—

(1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (f);

(2) the authorized representative of the retirees has refused to accept such proposal without good cause; and

(3) such modification is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor, and all of the affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities;

except that in no case shall the court enter an order providing for such modification which provides for a modification to a level lower than that proposed by the trustee in the proposal found by the court to have complied with the requirements of this subsection and subsection (f): *Provided, however*, That at any time after an order is entered providing for modification in the payment of retiree benefits, or at any time after an agreement modifying such benefits is made between the trustee and the authorized representative of the recipients of such benefits, the authorized representative may apply to the court for an order increasing those benefits which order shall be granted if the increase in retiree benefits sought is consistent with the standard set forth in paragraph

(3): *Provided further*, That neither the trustee nor the authorized representative is precluded from making more than one motion for a modification order governed by this subsection.

(h)

(1) Prior to a court issuing a final order under subsection (g) of this section, if essential to the continuation of the debtor's business, or in order to avoid irreparable damage to the estate, the court, after notice and a hearing, may authorize the trustee to implement interim modifications in retiree benefits.

(2) Any hearing under this subsection shall be scheduled in accordance with the needs of the trustee.

(3) The implementation of such interim changes does not render the motion for modification moot.

(i) No retiree benefits paid between the filing of the petition and the time a plan confirmed under section 1129 of this title becomes effective shall be deducted or offset from the amounts allowed as claims for any benefits which remain unpaid, or from the amounts to be paid under the plan with respect to such claims for unpaid benefits, whether such claims for unpaid benefits are based upon or arise from a right to future unpaid benefits or from any benefits not paid as a result of modifications allowed pursuant to this section.

(j) No claim for retiree benefits shall be limited by section 502(b)(7) of this title.

(k)

(1) Upon the filing of an application for modifying retiree benefits, the court shall schedule a hearing to be held not later than fourteen days after the date of the filing of such application. All interested parties may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ten days before the date of such hearing. The court may extend the time for the commencement of such hearing for a period not exceeding seven days where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and the authorized representative agree.

(2) The court shall rule on such application for modification within ninety days after the date of the commencement of the hearing. In the interests of justice, the court may extend such time for ruling for such additional period as the trustee and the authorized representative may agree to. If the court does not rule on such application within ninety days after the date of the commencement of the hearing, or within such additional time as the trustee and the authorized representative may agree to, the trustee may implement the proposed modifications pending the ruling of the court on such application.

(3) The court may enter such protective orders, consistent with the need of the authorized representative of the retirees to evaluate the trustee's proposal and the application for modification, as may be necessary to prevent disclosure of information provided to such representative where such disclosure could compromise the position of the debtor with respect to its competitors in the industry in which it is engaged.

(l) If the debtor, during the 180-day period ending on the date of the filing of the petition—

(1) modified retiree benefits; and

(2) was insolvent on the date such benefits were modified;

the court, on motion of a party in interest, and after notice and a hearing, shall issue an order reinstating as of the date the modification was made, such benefits as in effect immediately before such date unless the court finds that the balance of the equities clearly favors such modification.

(m) This section shall not apply to any retiree, or the spouse or dependents of such retiree, if such retiree's gross income for the twelve months preceding the filing of the bankruptcy petition equals or exceeds $250,000, unless such retiree can demonstrate to the satisfaction of the court that he is unable to obtain health, medical, life, and disability coverage for himself, his spouse, and his dependents who would otherwise be covered by the employer's insurance plan, comparable to the coverage provided by the employer on the day before the filing of a petition under this title.

26 U.S.C. § 7421

Prohibition of suits to restrain assessment or collection

(a) Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6232(c), 6330(e)(1), 6331(i), 6672(c), 6694(c), 7426(a) and (b)(1), 7429(b), and 7436, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

26 U.S.C. § 9701

§ 9701. Definitions of general applicability

Effective: March 23, 2018

(a) Plans and funds.—For purposes of this chapter—

(1) UMWA Benefit Plan.—

(A) In general.—The term "UMWA Benefit Plan" means a plan—

(i) which is described in section 404(c), or a continuation thereof; and

(ii) which provides health benefits to retirees and beneficiaries of the industry which maintained the 1950 UMWA Pension Plan.

(B) 1950 UMWA Benefit Plan.—The term "1950 UMWA Benefit Plan" means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired before 1976.

(C) 1974 UMWA Benefit Plan.—The term "1974 UMWA Benefit Plan" means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired on or after January 1, 1976.

(2) 1950 UMWA Pension Plan.—The term "1950 UMWA Pension Plan" means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired before 1976.

(3) 1974 UMWA Pension Plan.—The term "1974 UMWA Pension Plan" means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired in 1976 and thereafter.

(4) 1992 UMWA Benefit Plan.—The term "1992 UMWA Benefit Plan" means the plan referred to in section 9712.

(5) Combined Fund.—The term "Combined Fund" means the United Mine Workers of America Combined Benefit Fund established under section 9702.

(b) Agreements.—For purposes of this section—

(1) Coal wage agreement.—The term "coal wage agreement" means—

(A) the National Bituminous Coal Wage Agreement, or

(B) any other agreement entered into between an employer in the coal industry and the United Mine Workers of America that required or requires one or both of the following:

(i) the provision of health benefits to retirees of such employer, eligibility for which is based on years of service credited under a plan established by the settlors and described in section 404(c) or a continuation of such plan; or

(ii) contributions to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or any predecessor thereof.

(2) Settlors.—The term "settlors" means the United Mine Workers of America and the Bituminous Coal Operators' Association, Inc. (referred to in this chapter as the "BCOA").

(3) National Bituminous Coal Wage Agreement.—The term "National Bituminous Coal Wage Agreement" means a collective bargaining agreement negotiated by the BCOA and the United Mine Workers of America.

(c) Terms relating to operators.—For purposes of this section—

(1) Signatory operator.—The term "signatory operator" means a person which is or was a signatory to a coal wage agreement.

(2) Related persons.—

(A) In general.—A person shall be considered to be a related person to a signatory operator if that person is—

(i) a member of the controlled group of corporations (within the meaning of section 52(a)) which includes such signatory operator;

(ii) a trade or business which is under common control (as determined under section 52(b)) with such signatory operator; or

(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.

A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).

(B) Time for determination.—The relationships described in clauses (i), (ii), and (iii) of subparagraph (A) shall be determined as of July 20, 1992, except that if, on July 20, 1992, a signatory operator is no longer in business, the relationships shall be determined as of the time immediately before such operator ceased to be in business.

(3) 1988 agreement operator.—The term "1988 agreement operator" means—

(A) a signatory operator which was a signatory to the 1988 National Bituminous Coal Wage Agreement,

(B) an employer in the coal industry which was a signatory to an agreement containing pension and health care contribution and benefit provisions which are the same as those contained in the 1988 National Bituminous Coal Wage Agreement, or

(C) an employer from which contributions were actually received after 1987 and before July 20, 1992, by the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan in connection with employment in the coal industry during the period covered by the 1988 National Bituminous Coal Wage Agreement.

(4) Last signatory operator.—The term "last signatory operator" means, with respect to a coal industry retiree, a signatory operator which was the most recent coal industry employer of such retiree.

(5) Assigned operator.—The term "assigned operator" means, with respect to an eligible beneficiary defined in section 9703(f), the signatory operator to which liability under subchapter B with respect to the beneficiary is assigned under section 9706.

(6) Operators of dependent beneficiaries.—For purposes of this chapter, the signatory operator, last signatory operator, or assigned operator of any eligible beneficiary under this chapter who is a coal industry retiree shall be considered to be the signatory operator, last signatory operator, or assigned operator with respect to any other individual who is an eligible beneficiary under this chapter by reason of a relationship to the retiree.

(7) Business.—For purposes of this chapter, a person shall be considered to be in business if such person conducts or derives revenue from any business activity, whether or not in the coal industry.

(8) Successor in interest.—

(A) Safe harbor.—The term "successor in interest" shall not include any person who—

(i) is an unrelated person to an eligible seller described in subparagraph (C); and

(ii) purchases for fair market value assets, or all of the stock, of a related person to such seller, in a bona fide, arm's-length sale.

(B) Unrelated person.—The term "unrelated person" means a purchaser who does not bear a relationship to the eligible seller described in section 267(b).

(C) Eligible seller.—For purposes of this paragraph, the term "eligible seller" means an assigned operator described in section 9704(j)(2) or a related person to such assigned operator.

(d) Enactment date.—For purposes of this chapter, the term "enactment date" means the date of the enactment of this chapter.