

IN THE UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE: )  
 )  
JAMES RIVER COAL COMPANY, et al., ) Case No. 303-04095  
 ) Chapter 11  
 ) Jointly Administered  
Debtors. ) Judge Harrison

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THE DEADLINE FOR FILING A TIMELY RESPONSE IS: DECEMBER 6, 2004  
IF A RESPONSE IS TIMELY FILED, THE INITIAL SETTLEMENT AND PRETRIAL CONFERENCE WILL BE HELD ON:  
JANUARY 24, 2005, AT 1:30 P.M. IN COURTROOM THREE, CUSTOM HOUSE, 701 BROADWAY, 2<sup>ND</sup> FLOOR,  
NASHVILLE, TENNESSEE

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AMENDED NOTICE OF OBJECTION OF THE TRUSTEE FOR THE JRCC UNSECURED  
CREDITOR LIQUIDATING TRUST TO CLAIMS HELD BY CREDITORS THAT  
RECEIVED TRANSFERS DURING THE PREFERENCE PERIOD

Anthony H.N. Schmelling, Trustee of the JRCC Unsecured Creditor Liquidating Trust (the "Liquidating Trust"), the duly appointed and authorized representative of the Liquidating Trust, has objected to certain claims held by creditors that received transfers during the preference period.

**YOUR RIGHTS MAY BE AFFECTED.** If you do not want the Court to sustain the Objection and enter an order granting the relief requested by the Liquidating Trustee, or if you want the Court to consider your views on the Objection, then on or before December 6, 2004, you or your attorney must file with the Court your written Response to the Objection explaining your position at:

Electronic Filing: <https://ecf.tnmb.uscourts.gov/>

Your Response must state that the deadline for filing responses is December 6, 2004, the date of the scheduled Initial Settlement and Pretrial Conference is January 24, 2005, and that you are responding to the Objection of the Trustee for the JRCC Unsecured Creditor Liquidating Trust to Claims Held by Creditors that Received Transfers During the Preference Period.

**YOU MUST ALSO** mail, fax, or e-mail a copy of your response to:

David M. Anthony  
Smythe & Puryear  
144 Second Avenue North  
The Pilcher Building, Suite 333  
Nashville, Tennessee 37201  
(615) 255-4855 (Fax)  
[danthonv@smythepuryear.com](mailto:danthonv@smythepuryear.com)

Sean D. Malloy  
Jean R. Robertson  
Sherri L. Dahl  
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Cleveland, Ohio 44114  
(216) 348-5474 (Fax)  
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[sdahl@mcdonaldhopkins.com](mailto:sdahl@mcdonaldhopkins.com)

If a timely response is filed, the hearing will be held at the time and place indicated above. **THERE WILL BE NO FURTHER NOTICE OF THE HEARING DATE.** You may check whether a timely response has been filed by calling the Clerk's office at (615) 736-5584, or viewing the case on the Court's CM/ECF website at <https://ecf.tnmb.uscourts.gov/>. If you received this notice by mail, you may have three additional days in which to file a timely response under Rule 9006(f) of the Federal Rules of Bankruptcy Procedure.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Objection and may enter an order granting the relief sought.

Date: November 4, 2004

/s/ David M. Anthony  
David M. Anthony  
144 Second Avenue North  
The Pilcher Building, Suite 333  
Nashville, TN 37201

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

In re: ) Case No. 3 03-04095  
)  
JAMES RIVER COAL COMPANY, et al., ) Chapter 11  
)  
Debtors. ) Judge Harrison

**OMNIBUS LIMITED OBJECTION OF THE TRUSTEE FOR THE JRCC  
UNSECURED CREDITOR LIQUIDATING TRUST TO CLAIMS HELD BY  
CREDITORS THAT RECEIVED TRANSFERS DURING THE PREFERENCE PERIOD**

Anthony H.N. Schnelling (the "Trustee"), Trustee of The JRCC Unsecured Creditor Liquidating Trust (the "Liquidating Trust"), the duly appointed and authorized representative of the Liquidating Trust, hereby objects on a limited basis to claims held by creditors that received transfers of funds during the Preference Period (defined below), and seeks entry of an order, pursuant to section 502(d) of Title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"), and Section 6.2(h) of the Plan (defined below), postponing determination of the allowance of any such claim until: (a) the later of (i) March 25, 2005, and (ii) the time of resolution of such claim in a preference adversary proceeding; or (b) the Trustee files a notice stating that he has settled or determined not to bring a preference adversary proceeding against the holder of such claim.

In support of this Motion, the Trustee respectfully represents as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction to consider this Objection because: (a) this is a core proceeding, pursuant to section 157(b) of Title 28 of the United States Code (the "Judicial Code"); and (b) pursuant to Section 6.2 of the Plan (defined below), this Court retained

jurisdiction over the resolution of disputed claims. Venue is proper before this Court pursuant to sections 1408 and 1409 of the Judicial Code.

### Background

2. On March 25, 2003, James River Coal Company and 19 affiliated entities filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On March 21, 2003, another affiliate, Johns Creek Coal Company, also filed a chapter 11 petition (collectively, these 21 entities are referred to herein as the "Debtors").

3. On April 22, 2004, the Court entered an order, Docket No. 726 (the "Confirmation Order"), confirming the Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Plan"). Section 5.5(c) of the Plan and Paragraph 33 of the Confirmation Order provide for the establishment of the Liquidating Trust for the benefit of unsecured creditors. The Liquidating Trust became effective on May 6, 2004, the Effective Date (as defined by the Plan) of the Plan. The Plan also authorized: (a) the transfer of certain assets to the Liquidating Trust, including certain causes of action and the right to certain funds (Sections 1.1(108) and 5.5(c)); and (b) the Liquidating Trust to "make and file objections" to general unsecured claims (Section 6.2(b)(1)).

### Potential Avoidance Actions

4. The Plan permits the Trustee to initiate avoidance actions. Section 5.5(c) of the Plan provides for the transfer of "all Unsecured Creditor Liquidating Trust Assets" to the Liquidating Trust. Section 1.1(108) of the Plan defines Unsecured Creditor Liquidating Trust Assets to include "the Trust Causes of Action." Section 1.1(104) defines Trust Causes of Action to include:

[A]ll Causes of Action arising prior to the Effective Date that (a) accrued to the Debtors as debtors in possession under Chapter 5 of the Bankruptcy Code,

including, but not limited to, any and all such Causes of Action against parties who are identified on the Schedules; or (b) accrued to (i) unsecured creditors of the Debtors under applicable non-bankruptcy law prior to the Commencement Date, but are deemed under the Bankruptcy Code and applicable interpretive case law to be derivative of the Estates' interests and therefore became property of the Estates upon the commencement of the Chapter 11 Cases; or (ii) the Debtors or their Estates, in either case including, but not limited to, the Identified Actions; *provided, however*, that Trust Causes of Action shall not include (x) Causes of Action expressly released or discharged under the Plan, including, but not limited to, Causes of Action against the Senior Secured Lenders released pursuant to Section 4.2(i) of the Plan; and (y) the Retained Actions.

Actions to avoid "preferential transfers" occurring during the 90 days prior to the initiation of bankruptcy proceedings (the "Preference Period") arise under section 547 of chapter 5 of the Bankruptcy Code (the "Preference Actions") and are included in the Trust Causes of Action.

5. The Trustee is in the process of reviewing transfers that occurred during the Preference Period. To date, the Trustee has identified approximately 700 entities that received transfers of funds from the Debtors during the Preference Period. These entities may be subject to potential Preference Actions. Exhibit A attached hereto lists the potential Preference Action defendants identified thus far (collectively, the "Claimants"). Most if not all of the Claimants either: (a) have filed proofs of claim against one or more of the Debtors; or (b) have been listed on the Debtors' schedules of assets and liabilities (the "Schedules") as holding claims against one or more of the Debtors that are not contingent, disputed, or unliquidated. This Limited Objection applies to claims that arise from the filing of a proof of claim or the listing of a liability on the Schedules.

#### Relief Requested

6. Pursuant to section 502(d) of the Bankruptcy Code and Section 6.2(h) of the Plan, the Trustee hereby objects on a limited basis to the allowance and payment of any claims held by the Claimants. Section 502(d) of the Bankruptcy Code prohibits allowance of claims held by

creditors owing unpaid liabilities to the bankruptcy estates, including liabilities based upon section 547 Preference Actions. Section 502(d) states:

the Court shall disallow any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 547 . . . unless such entity or transferee has paid the amount . . . for which such entity or transferee is liable[.]

Section 6.2(h) of the Plan also prohibits allowance of claims and corresponding payments to creditors that have not yet paid liabilities stemming from Preference Actions. Section 6.2(h) states:

no payments or distributions will be made on account of any Claims of holders from which property is recoverable or alleged to be recoverable pursuant to any Trust Causes of Action. Such Claims will be disallowed in their entirety until such time as such holder has paid the amount . . . or an Unsecured Creditor Trust Cause of Action has been dismissed with prejudice or prosecuted to final judgment in favor of such holder.

7. The Trustee has not yet concluded his investigation into the approximately 700 potential Preference Actions. Pursuant to the Plan and prior orders of this Court, however, the deadline for the Trustee to object to non-insider claims in these cases is November 2, 2004. Accordingly, it is necessary at this time for the Trustee to file this Limited Objection to preserve his rights under section 502(d) of the Bankruptcy Code. This Limited Objection does not constitute an objection to the claims of the Claimants on any other grounds.

8. After the Trustee resolves the disputes regarding the transfers made during the Preference Period, then the Claimants' claims can be reconciled against the paid preference amounts. The Trustee estimates that it will take approximately five months to complete the investigation of transfers made during the Preference Period. Section 546(a) of the Bankruptcy Code prohibits the commencement of avoidance actions "after . . . 2 years after the entry of the order for relief[.]" In this case, avoidance actions must be initiated by March 21, 2005, or March 25, 2005, respectively, depending upon which Debtor initiated the avoidable transfers.

Accordingly, the Trustee requests that the Court postpone allowing any of the claims identified on Exhibit A until the Trustee determines not to bring a Preference Action or until March 25, 2005. If, at the time, the Trustee has not yet filed a Preference Action against a Claimant, then the claim of such Claimant may be allowed (to the extent otherwise allowable). If the Trustee does bring a Preference Action against a Claimant, the validity of the relevant claim can be determined in the context of the adversary proceeding.

9. The Trustee seeks the relief requested herein in an abundance of caution. Although the Trustee believes that section 502(d) of the Bankruptcy Code and Section 6.2(h) of the Plan would prohibit any distribution to these creditors prior to the resolution of potential Preference Actions, the Trustee files this Objection to provide notice to the Claimants of the status of their claims.

#### Conclusion

WHEREFORE, for the foregoing reasons, the Trustee respectfully requests that the Court enter an order, in substantially the form attached hereto as Exhibit B, and postpone determination of the allowance of claims held by each Claimant until: (a) the later of (i) March 25, 2005; or (ii) the time of resolution of the validity of each Claimant's claim in the relevant Preference Action; or (b) the Trustee files a notice stating that he has settled or determined not to bring a Preference Action against such Claimant.

November 2, 2004

Respectfully submitted,

/s/ David M. Anthony  
Daniel H. Puryear, Esq.  
David Anthony, Esq.  
144 Second Avenue, North  
The Pilcher Building, Suite 333  
Nashville, TN 37201

and

Jean R. Robertson, Esq.  
Sean D. Malloy, Esq.  
Sherri L. Dahl, Esq.  
McDonald Hopkins Co., LPA  
600 Superior Avenue East  
Suite 2100  
Cleveland, OH 44114

**CO-COUNSEL FOR THE TRUSTEE OF THE JRCC  
UNSECURED CREDITORS LIQUIDATING TRUST**

# EXHIBIT A<sup>1</sup>

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<sup>1</sup> Individuals listed on Exhibit A may be listed alphabetically by either first or last names.

EXHIBIT A

Consolidated List of Entities That Received  
Transfers From the Debtors During the Preference Period  
Prepared November 2, 2004

Name	Claim Nos.
A & C Equipment & Supply Co	302-305
A & L Surveying & Engineering	
A & M Auto Repair LLC	
A L Lee Corp	
A M S. Inc.	221
A Oathman, M D	
A. Hugh Ewing III	
A J. & J. Trucking Co.	
A W. Chesteron	
A+ Portable Restrooms	930
AAA Mine Service, Inc	
Abbot Mine Sales & Service, Inc.	1133
AC & Conroe Hostels	
Accordia Employment Service, Inc	
Accordia National	
ACSYS	
Ada Carol Turner	
Adams Heating and Cooling, Inc	
Air BP Credit Card Processing Center	353
AIC Industries	
Alder Books	
Albert Oil	279, 290
All Type Cylinder Services, Inc	520
Alltel	
Alma B. York	1186
Alma Coal Corporation	998
Alma Land Company	1000
American Block Co., Inc.	643-645
American Commercial, Inc	
American Electric Power	
American International Recovery, Inc	
American Lubricants Co., Inc.	419
Ann Mitchell Froley	
Ann Spive Hawkins	598
Ann F. McKinney	
Anthony L. & Linda K. Brashear	
Ant's Vulcanizing Service	
Andy Fields	
Appalachian Electrical Supply	
Appalachian Land Company	999
Appalachian Machine Mine Repair, Inc	
Appalachian Mining & Engineering, Inc	6
Appalachian Realty Company	
Appalachian Steel Construction, Inc	
Appalachian Timber	
Appalachian Wireless	
Aramark	
Argo Partners	5
Arnold R. Strahel	

Aspen Air, M.D., F.A.C.P.	736, 751
Asher & Son Welding	
Assist Connections Technologies, Inc.	247
Associated Contracting, LLC	974
A.T.S.I.	
Avaya Financial Services	
Aycard	
B & C Machine Shop, Inc.	
B & D Mfg Supply, Inc.	
B & M Machine Shop, Inc.	361, 1180-1182
B & R Supply Co., Inc.	
B & W Turner Company, Inc.	1017-1021, 1049-1053
B&B Contracting, Inc.	
Bard & Bard, P.S.C.	1054, 1055
Barris-Miller Supply of Kentucky	35, 284
Baxter Medical and Mfg	
Baxter Dialysis, Jr.	
Bearing Distributors, Inc.	565
Benson H. Davis, Trustee of the	
Bogby Lumber Company, Inc.	
Bolt South	140
Bolt Connection, Inc.	
Bonebrack Mining Materials, Inc.	
Bog K, Inc.	50, 65, 651, 748
Bog Sandy Company, L.P.	721, 722
Bog Bros	
Bog's Electronics, Inc.	145
Bog Joe, Taylor	
Boswell Office Equipment	
Bissell's, Inc.	665
BLC Properties, LLC	319, 1229, 1232
Bledsoe Coal Leasing Company	
Blue Ridge Diesel Injection, Inc.	297
Bluegrass Mining Co., Inc.	623, 525
Bob Boashy	
Bob Perrino's Diesel Service	
Bobby R. Minor	605
Brock Engineering, Inc.	
Boston Properties Limited Partnership	136
Boyd Contracting	739, 1189
Boyles Brothers Drilling	
Brannan Machinery & Supply Co.	213-215
Brannan's Motor & Alternator, Inc.	461
Brattigan	
Brodie, Inc.	
Brookville Mining Equipment Corp.	
Brookwood Engineering, Inc.	
Bryan Hays	
Buchanan Engineers	352
Buchanan Pump Service & Supply	1022, 1023, 1038
Buen Automotive & Supply, Inc.	
Bunker Repair Service, Inc.	
Burtall Mining Products, Inc.	151
Business Forms Specialty, Inc.	
BWE Enterprise	197
C & A Cutter Head, Inc.	

C & S Electric Co	57 98 349-351
C T Engineering	
C Ross Coal Company	511 514 516
C B J Piping & Machine of Tennessee	
C D Conwell	1005
C W Hoskins Hears	885, 886, 1048 1224
CAS for H.R., Div. Of Unemp't Ins	
Cabin Creek, Inc	
Cable H. Robinson	
Cahery Coal Co. Inc	989
Cambridge Associates, Inc	300
Campher Oil & Mine Supply, Inc.	113-123
Canada Coal Co and Albert F. Grason	1037
Capital Club	
Carl & Neil Wilson	
Carl Engine Rebuilder	
Carlson Wagonlit	
Carole Maxrose & Karon Walker (Trustee)	394
Caroyln Crawlers	553
Carole Minard	382
Carroll Engineering, Inc	
Case Credit Corporation	26
Cathy A. Whigma	600
Caucell Seed and Warehouse Co., Inc	730 731 1172, 1173
CDC Engineers & Affiliates LLC	517 518 551
CEJ Piping & Machine Inc	39, 40, 990, 991, 975, 976, 90
CCH Incorporated	
CDW Computer Centers, Inc	72
CEC Credit Office	
Celtular One	
Central Associates Engineers, Inc	
Central Automotive Company	185-187
Central Child Support Receiving Unit	
Central Hydraulics Services, Inc	531
Central Parking System	
Centrifugal & Mechanical, Inc	
Century Lubricants Company	
Ceramic Technology	
Champion Mine Supply	506-509
Chapman Painting Co	308
Chapter 13 Trustee	
Chapter 13 Trustee EDKY	
Charles & Wendell Eiza	
Charles E. Hoskins	291, 587
Charles J. and Carolyn Benz	
Charlotte Thompson	453
Chris Puffer	
Christine Bawoway & Aaron Bawoway	
Christine Turner	
Circular Saw Machinery Company	254
Cingular Wireless	
Clayton Hopkinson Company	
Clifford & Marguerite Hoskins	
Cluck River Corp	673
Clyde & Sharon Caudill	
Clyde Taylor Jr.	

Coal Software & Systems Inc.	183, 184
Coastal Coal Company, LLC	
Cochran Industries, Inc.	1204
Cogar Mine Products	
Color Copy Express	
Commercial Testing & Engineering	
Commonwealth Personnel	
Compro Systems	
Cronation Welding Systems	23, 468
Conley Tire	1104, 1121-1123
Connie Madden	
Cony-Weld Industries, Inc	17, 22
Consolidated Steel, Inc.	752, 753
Continental Conveyor & Equipment Co	
Conveyer Mkt & Supply	750, 751, 754
Conway Central Express, Inc	
Coal-Tire, Inc	76, 77, 331, 332
Cordia M Chappell	
Corporate Express	37
Cowherd Banner & Carlson Engineers	895
Coyne Textile Services	1141-1143
Creech Chevy Olds Buick Pontiac, Inc	1201
Cresp Manufacturing Company	99-101
Cross Plan & Equipment	132
Croughorn Equipment Co., Inc.	
CSX Transportation	25, 28, 29, 42-45, 1236
Cultural Resource Analysts, Inc	
Cumberland Mine Services	810-813
Cumberland Valley Electric, Inc	295
Cumberland Valley Engineering, Inc	
Cumberland Valley Office Supply	
Cynthia Lyon Wagner	385
Daniel L. Wagner	529
Daniel Leslie Butler	
Darby Construction Company	
Dave Jones & Associates, Ltd	630
David Hort	
David M Orr	292
DBT America	735, 737, 740-753
Deborah Ann Wagner	
Deceptor Machine, Inc	
Dexter Products	1167
Delores & LeRoy Tabor	569
Della Natural Gas Co., Inc	
Department of Biological Services	
Dillard Mixture	543
Domination Aviation Services, Inc	
Donarc Welding	1217
Dennis Barnes	
Donna Madden	
Donnie E. Minard	542
Dorothy Vanover	328
Douglas Mack Justice	
Downard Hydraulics, Inc	1139
Dr Edward A. Snyder	
Drill Steel Services, Inc	485-488

Drives & Conveyors	1045-1045, 1027
Drucilla and James D. Dotson	
Durham Printing, Inc	
Dynamic Securities, Inc.	194-196
Dynalock Electronics, Inc.	241 246 261, 262
E. Dillon & Company	
Eagle Electrical Contractors	
Earl M. Cornett	
East Kentucky Energy Corporation	936 937
East Kentucky Water, Inc	
Eastern Mining & Industrial, LLC	
Eastern Products Co., Inc	203
Eastern Screens & Drives, Inc.	
EcoSource, Inc.	
Edlin J. and Charles H. Huber	
Edna Cornett	
Eileen Browning & Jim Browning	
EIMCO Coal Machines, Inc (Baker)	
Elaine H. & Thurman Byrd	399
Electric Line Co., Inc	373
Electroplate Battery	
Elizabeth Arnold	
Elizabeth C. Anderson	
Ellison Engineering, Inc	249
Elkhorn Stone Company	
Elmer Madden & Helen Madden	
Elmer Stahl and Vanda Stahl	
Engineering Consulting Services, Inc	189, 484
Environmental Solutions & Innovations, LLC	
Enviro-Pro, Inc	1033, 1190
Evans Management, Inc	
Evofyn York & Bill York	
Eversole Hears	718
Excelloy Industries, Inc	
E-Z Hawk, Inc	1081-1083
Facility Design, Inc	
Fairchild International	179-181
Farrar Law Company	913
Ferguson Enterprises, Inc	
First Insurance Funding Corp	
Flow Technologies Co	274
Floyd Wells Coal & Land Company	570, 1231
FMC Corporation	299
Foods Coal Energy Corporation	650
Forest Products, Inc	
Frances Cunningham Lewis	
Frank Couch-Simple Trust	
Frank & Jane Brock	
Fred & Betty Vorney	
Fred's Body Shop	
Freedom Industries	
G. F. White	
Garrett Enterprises	
Gates Supply	
Gateway Pipe & Supply	
Gauley Robertson	

Gealey Sales Company	
Gene P & Lorella Leslie	80 93
General Kinematics, Inc	146
General Rubber & Plastics Co	00-84-555-558
George D & Abbe T Kendrick	662
Georgia Power Company	1228
Germale Lowie	
GFS Industries	
Gene's Trenching	
Glick Associates Inc	141
Goodman Conveyor Company	584-688
Golden Pumps	
Gratam Heating & AC	
Gray's Excavating, Inc	275 276
Green Hill Water District	
Greenebaum Doll & McDonalds PLLC	1001-1004
H & H Towing & Company	
H & R Surveying	310
H. Frank Hatcher and Roger Kendrick	
H T. Hackney Inc.	
Haddix Sales	329 338, 339
Hall Equipment & Supply Company	
Harden Day Enterprise	
Hartan Cress	
Hanan Motor Company	
Harold W. Gubels Inc	
Harvey L. & Marilyn Brasher	400
Hatfield Supply	
Hausman Corporation	723
Howards Equipment Sales	
Hazard Auto & Truck Parts	
Heatzmann Corporation	1010-1012
Heglar's Machinery Corp - Ky Div	198 189
H-H-Law	33
Hill Inc	
Home Lumber Co Inc	
Hosch Company	509
Hoyea Shell Partner	
Howard Engineering & Geology, Inc	54, 274
Howard I Daniels Sand Co, Inc	
Howard Robinson	
Huckley Rebuild & Electric Inc	1088
Hugner Supply Inc	
Huntington Steel & Supply Co	148
Hunton & Williams	
Hurberns Inc	264 285
Husky Coal, Inc	
Hyden Leslie County Water District	
IBET	
Imagistica	
Imperial Supply	
Industrial Fabrication & Repair Inc	
Industrial Rubber Products Co	188
Industrial Services	532
Industrial Supply Co.	977-979
Innovative Sales & Service, Inc	1119

