

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

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

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**THE DEADLINE FOR FILING A TIMELY RESPONSE IS: October 6, 2004.**  
**IF A RESPONSE IS TIMELY FILED, THE INITIAL SETTLEMENT AND PRETRIAL CONFERENCE**  
**WILL BE HELD ON: November 8, 2004, at 1:30 p.m., in Courtroom Three, 2<sup>nd</sup> Floor, Customs House, 701**  
**Broadway, Nashville, Tennessee.**

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**NOTICE OF OMNIBUS OBJECTION PURSUANT TO 11 U.S.C. §§502(b) AND 365 TO CERTAIN  
CLAIMS RELATED TO ASSUMED LEASES OR CONTRACTS**

The Reorganized Debtors have objected to the proof(s) of claim as set forth in the attached Objection.

**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 Reorganized Debtors, or if you want the Court to consider your views on the Objection, then on or before **October 6, 2004** (the "Response Deadline"), you or your attorney must file with the Court your written Response to the Objection explaining your position:

By Mail: U.S. Bankruptcy Court, P.O. Box 24890, Nashville, TN 37202-489090  
In Person: U.S. Bankruptcy Court, 701 Broadway, 1<sup>st</sup> Floor, Nashville, TN (Monday-Friday, 8:00 a.m.-4:00 p.m.)

**Your Response must state that the deadline for filing responses is October 6, 2004, the date of the scheduled Initial Settlement and Pretrial Conference is November 8, 2004, and that you are responding to the Reorganized Debtors' Objection to Claim.** If you want a file stamped copy returned, you must include an extra copy and a self-addressed, stamped envelope.

You must also mail or fax a copy of your Response, so as to be received by the Response Deadline, to:

Paul G. Jennings  
Gene L. Humphreys  
Bass, Berry & Sims PLC  
315 Deaderick Street, Suite 2700  
Nashville, TN 37238  
Fax: (615) 742-0404

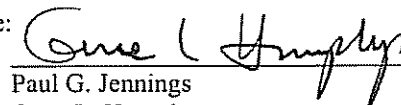
Sean D. Malloy  
McDonald Hopkins, LPA  
2100 Bank One Center  
600 Superior Avenue, East  
Cleveland, OH 44114  
Fax: (216) 348-5474

If a timely Response is filed, an Initial Settlement and Pretrial Conference will be held at the time and place indicated above. It will **not** be necessary for the parties to prepare a Joint Pretrial Statement for the Initial Settlement and Pretrial Conference. **THERE WILL BE NO FURTHER NOTICE OF THE INITIAL SETTLEMENT AND PRETRIAL CONFERENCE DATE.**

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 that relief.

Date: September 1, 2004

Signature: \_\_\_\_\_



Paul G. Jennings  
Gene L. Humphreys  
BASS, BERRY & SIMS PLC  
315 Deaderick Street, Suite 2700  
Nashville, Tennessee 37238-3001  
Telephone: (615) 742-6200  
Facsimile: (615) 742-6293  
Attorneys for Reorganized Debtors

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

-----X	:	
<b>In re:</b>	:	
	:	
<b>JAMES RIVER COAL COMPANY,</b>	:	<b>Chapter 11</b>
<i>et al.,</i>	:	<b>Case No. 303-04095</b>
	:	
	:	<b>Jointly Administered</b>
<b>Reorganized Debtors.</b>	:	<b>Judge Harrison</b>
-----X		

**OMNIBUS OBJECTION PURSUANT TO  
11 U.S.C. §§502(b) AND 365 TO CERTAIN CLAIMS  
RELATED TO ASSUMED LEASES OR CONTRACTS**

The above-captioned reorganized debtors (collectively, the “Reorganized Debtors”),<sup>1</sup> hereby file this Omnibus Objection (the “Objection”) Pursuant to 11 U.S.C. §502(b) to Certain Claims Related to Assumed Leases or Contracts filed by various Claimants identified on the attached Exhibit A, and request entry of an order (the “Order”) substantially in the form attached hereto as Exhibit B. In support of this Objection, the Reorganized Debtors respectfully represent as follows:

**BACKGROUND**

1. On March 25, 2003 (the “Petition Date”), the Reorganized Debtors each filed voluntary petitions<sup>2</sup> in this Court for reorganization relief under Title 11 of the United States

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<sup>1</sup> The Debtors include: James River Coal Company; James River Coal Sales, Inc.; James River Coal Service Company; Leeco, Inc.; Leeco Processing Company; BDCC Holding Co., Inc.; Blue Diamond Export Company; Eolia Resources, Inc.; Blue Diamond Coal Company; Leatherwood Processing Company; Bledsoe Coal Corporation; Shamrock Coal Company, Incorporated; Bledsoe Processing Company; Johns Creek Elkhorn Coal Corporation; McCoy Elkhorn Coal Corporation; Pike County Resources, Inc.; Primary Energies Corporation; Johns Creek Processing Company; Bell County Coal Corporation; Hignite Processing Company; Bledsoe Coal Leasing Company; and, Johns Creek Coal Company.

<sup>2</sup> One of the Debtors, Johns Creek Coal Company, actually filed its voluntary petition in this Court on March 21, 2003.

Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”). On March 26, 2003, this Court entered an order providing for the joint administration of the Reorganized Debtors’ Chapter 11 cases. Between the Petition Date and May 6, 2004 (the “Effective Date”), the Reorganized Debtors each remained as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On September 24, 2003, the Court entered an Order (Docket No. 413, the “Bar Date Order”) establishing November 17, 2003 as the last day for timely filing proofs of claim for general unsecured claims (the “General Bar Date”) and establishing January 16, 2004 as the last day for timely filing proofs of claim for governmental units (the “Governmental Bar Date”). On April 27, 2004, the Court entered an Order (Docket No. 737, the “Administrative Bar Date Order”) establishing June 30, 2004 as the last day for timely filing administrative claims (the “Administrative Bar Date”). (The Bar Date Order and the Administrative Bar Date Order are sometimes collectively referred to herein as the “Bar Date Orders.” The General Bar Date, the Governmental Bar Date, and the Administrative Bar Date, are sometimes collectively referred to herein as the “Bar Date.”)

3. On April 21, 2004, the Court held a confirmation hearing on the Reorganized Debtors’ Second Amended Joint Plan of Reorganization on April 21, 2004 (Docket No. 718, the “Plan”). The Court entered its Order confirming the Plan on April 22, 2004 (Docket No. 726, the “Confirmation Order”). The Confirmation Order confirmed the appointment of a Liquidating Trustee to administer a Liquidating Trust, which is the vehicle for making distributions to general unsecured creditors on account of their claims. The Plan provided that the Liquidating Trustee has the right to object to claims to the extent they involve General Unsecured Claims.

4. The Effective Date, as that term is defined in the Plan, occurred on May 6, 2004.

5. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. §157(b)(2). Venue of these cases in this district is proper pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicates for the relief requested herein are sections 102(1), 105(a), 365, and 502 of the Bankruptcy Code and Rule 3007 of the Federal Rules of Bankruptcy Procedure.

### **RELIEF REQUESTED**

6. The claimants listed on Exhibit A hereto (the “Claimants”) filed proofs of claims and/or cure claims (the “Cure Claims” or the “Claims”) related to executory contracts or unexpired leases of non-residential real property (the “Leases”) that the Reorganized Debtors assumed during these chapter 11 cases.<sup>3</sup> Because the Cure Claims have been or will be satisfied in hundred cent dollars as “cure claims” under section 365 of the Bankruptcy Code, the Claimants are not entitled to be treated as a Class 4 general unsecured claim as defined in the Plan. Thus, the Cure Claims, to the extent allowed, will be paid by the Reorganized Debtors, and the Cure Claims are not entitled to a general unsecured creditor distribution on account thereof. As a result, the Reorganized Debtors hereby object to the Cure Claims.<sup>4</sup>

7. In addition, certain Cure Claims exceed the amount allowable under agreement or applicable law. Therefore, by this Objection, the Reorganized Debtors object to the allowance of

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<sup>3</sup> One or more of the Claimants listed on Exhibit A may have elected the “cash option” on the ballot voting on confirmation of the Plan (hereinafter, a “Convenience Claimant”). All Convenience Claimants’ Claims have been fully satisfied by payment pursuant to the terms of the confirmed Plan. Thus, the fact that a Convenience Claimant is listed on Exhibit A does not entitle that Convenience Claimant to any further distribution from the Reorganized Debtors’ bankruptcy estates, even if the “maximum allowable amount” is higher than the Convenience Claim. In addition, the fact that a Convenience Claimant is listed on Exhibit A does not affect the distribution already received by the Convenience Claimant.

<sup>4</sup> In addition, the Reorganized Debtors reserve the right, pursuant to section 3.2(a) of the Plan, to file a motion after the Confirmation Date to reject any executory contract or unexpired lease to which a Claimant is a party, if the Reorganized Debtors determine in their sole discretion that in light of the asserted Cure Amount Claim, assumption of such executory contract or unexpired lease is not in the best interests of the Reorganized Debtors.

the Cure Claims under section 502(b) of the Bankruptcy Code and request that the Court enter the Order disallowing the Cure Claims to the extent they exceed the amount allowable under agreement or applicable law against the Reorganized Debtors.

### **BASIS FOR RELIEF**

8. The Cure Claims listed on Exhibit A relate to Leases that the Reorganized Debtors have assumed. Any timely filed cure claim in connection with these Leases has been paid or will be satisfied through the agreement of the parties or in connection with an order of the Court upon notice and a hearing. Accordingly, the Reorganized Debtors' bankruptcy estates have no liability on any of the Cure Claims. The Cure Claims are not entitled to receive a distribution from the Liquidating Trustee.

9. To the extent there is an amount other than "0.00" listed in the "maximum allowable amount" column on Exhibit A, the Reorganized Debtors have reviewed their books and records, the relevant Proofs of Claim, and any documentation filed in support thereof. After such review, the Reorganized Debtors assert that they are not liable to the Claimants in the amounts asserted in the Proofs of Claim. Rather, the last column on Exhibit A states the Reorganized Debtors' Maximum Allowable Amount of the Cure Claim, which will be paid (to the extent allowed) by the Reorganized Debtors.

10. Section 502(b)(1) of the Bankruptcy Code provides that a claim asserted in a proof of claim shall be allowed, except to the extent "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law." 11 U.S.C. §502(b)(1). The Cure Claims asserted by the Claimants in the Proofs of Claim are not enforceable against the Reorganized Debtors for the amounts set forth in the Proofs of Claim. Therefore, the Cure Claims should be disallowed to the extent they exceed the amounts that are

enforceable under applicable law or agreement, which amounts are listed as the Maximum Allowable Amount in the last column of Exhibit A.

### **RESPONSES TO THE OBJECTIONS**

11. Any response to this Objection must be filed by the Response Deadline listed on the accompanying Notice and must comply with the requirements on the Notice. In addition, any response should contain the following information:

- (a) a description of the basis for the amount of the asserted Claims;
- (b) a concise statement specifically setting forth the reasons why the Claim should not be disallowed or modified by the Court in the manner set forth in this Objection, including, but not limited to, the specific factual and legal bases in support of the Response;
- (c) all documentation or other evidence of the Claim, to the extent not included with the Claim previously filed with the Court; and
- (d) the name, address, and telephone number of the person (which may be a legal representative) possessing ultimate authority to reconcile, settle, or otherwise resolve the Claim.

12. If a Response contains an address different from that stated on the objected to Claim, the address in the Response shall control and shall be the service address for other future service of papers.

13. On August 13, 2004, the Court entered an Order establishing procedures for claim objections (the "Claims Procedures Order"), a copy of which is attached hereto as Exhibit C. Pursuant to the Claims Procedures Order, if a timely Response is filed to a claim objection, the Claim will be treated as a Contested Claim. If a timely Response is filed, an initial settlement and pretrial conference will be held at the time established on the Notice accompanying this

Objection. Joint pretrial statements will not be required before the initial settlement and pretrial conference has been held. If the Contested Claim is not resolved by the initial settlement and pretrial conference, a Pretrial Order will be entered setting a substantive pretrial conference and requiring the parties to prepare a joint pretrial statement.

**FURTHER OBJECTION RESERVED**

14. **The Reorganized Debtors' objection(s) to the Claims are presently limited to the grounds asserted above. The Reorganized Debtors expressly reserve all rights for themselves and for the Liquidating Trustee to raise other objections to the Claims (subject to the provisions of the Bankruptcy Code and the confirmed Plan) , until such time as the Claim has been finally resolved by Court order. Such amendments may include, without limitation, additional objections to the amount of the Claim.**

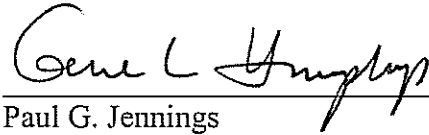
**FURTHER INFORMATION**

15. Questions about the Objection or requests for additional information about the proposed disposition of the Claims should be directed to the Reorganized Debtors' counsel either: (i) in writing at Bass, Berry & Sims PLC, 315 Deaderick Street, Suite 2700, Nashville, TN 37238 (Attn.: Gene L. Humphreys, Esq.); or (ii) by telephone at (615) 742-7757. The Claimants should not contact the Clerk of the Court to discuss the merits of the Claim.

WHEREFORE the Reorganized Debtors respectfully request that the Court enter an order disallowing and/or reclassifying the Claims as requested.

Dated: Nashville, Tennessee  
September 1, 2004

RESPECTFULLY SUBMITTED:

A handwritten signature in cursive script, reading "Gene L. Humphreys". The signature is written in black ink and is positioned above a horizontal line.

Paul G. Jennings

Gene L. Humphreys

BASS, BERRY & SIMS PLC

315 Deaderick Street, Suite 2700

Nashville, TN 37238-0002

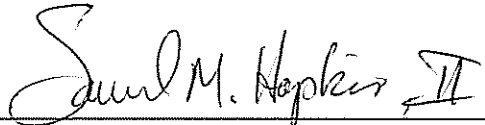
Tel: (615) 742-6200

Fax: (615) 742-6293

Attorneys for Reorganized Debtors

**Declaration Under Penalty of Perjury**

I, Samuel M. Hopkins II, am Chief Accounting Officer for James River Coal Company, and I have personal knowledge of the books and records of the Reorganized Debtors. I have read the foregoing Objection and reviewed the Claims and/or claims register where appropriate. As a result of my personal knowledge and review of documents, I have concluded that all of the factual assertions and statements made in support of the foregoing Objection are true to the best of my knowledge and information.

  
\_\_\_\_\_  
Samuel M. Hopkins II

**EXHIBIT A**  
**Cure Claims**

CLAIMANT	CLAIM NUMBER(S)	CLAIM DATE	TOTAL CLAIM(S) AMOUNT	MAXIMUM ALLOWABLE AMOUNT
CASE CREDIT CORPORATION	26	4/21/2003	11,599.32	1,099.98
CSX TRANSPORTATION	28, 29, 42, 43, 44, 45, 1236	10/30/2003	93,369.99	4,650.00
MARLIN LEASING CORP.	31	5/12/2003	1,784.59	148.79
PECK, MARJORIE, AND ROBERT AND DONALD PORTER	1239	6/25/2004	15,425.52	15,000.00
PITNEY BOWES CREDIT CORPORATION	27, 41, 83, 104, 137	10/30/2003	43,747.21	3,126.48
THACKER, OTTO	1178, 1179	10/17/2003	4,410,116.09	2,219.11
TRIVETTE, VELMA	(letter, DN 796)	6/3/2003	-	0.00
VERIZON CREDIT INC	248	5/30/2003	11,774.98	606.51
WAGNER, PHILIP W.	588, 600	10/14/2003	426.49	0.00
WELLS FARGO FINANCIAL LEASING, INC.	48	5/19/2003	1,675.65	0.00

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

-----X		
<b>In re:</b>	:	
	:	
<b>JAMES RIVER COAL COMPANY,</b>	:	<b>Chapter 11</b>
<i>et al.,</i>	:	<b>Case No. 303-04095</b>
	:	
	:	<b>Jointly Administered</b>
<b>Reorganized Debtors.</b>	:	<b>Judge Harrison</b>
-----X		

**ORDER ON OMNIBUS OBJECTION PURSUANT TO  
11 U.S.C. §§502(b) AND 365 TO CERTAIN CLAIMS  
RELATED TO ASSUMED LEASES OR CONTRACTS**

Upon the omnibus objection dated \_\_\_\_\_, 2004 (Docket No. \_\_\_\_\_, the “Objection”),<sup>1</sup> of the above-captioned Reorganized Debtors, to certain claims as more fully described in the Objection; and the deadline for responding to the Objection having passed; and there having been no responses to the Objection timely filed and served; and it appearing that the relief requested is in the best interest of the Reorganized Debtors, their estate, creditors and other parties in interest; all parties in interest having been heard or having had the opportunity to be heard, it appearing that good and sufficient notice of the Objection having been given and a reasonable opportunity to respond to, or be heard regarding, the relief requested in the Objection has been afforded to any entity known to have an interest in the Claim, and no other or further notice of the Objection or of the entry of this Order need be provided; and upon the entire record herein; and good and sufficient cause appearing therefor,

IT IS ORDERED, ADJUDGED, AND DECREED:

1. The Reorganized Debtors’ Objection is hereby SUSTAINED.

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<sup>1</sup> Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Objection.

2. Each Cure Claim identified on the Exhibit attached hereto is DISALLOWED to the extent that it exceeds the "Maximum Allowed Amount" contained in the final column of the Exhibit attached hereto. If the "Maximum Allowed amount" is identified as "0.00," the Claim is DISALLOWED in its entirety.<sup>2</sup>

3. The rights of the Reorganized Debtors and/or Liquidating Trustee to object to any of the Claims on any other ground is hereby preserved.

ENTER this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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Hon. Marian F. Harrison  
United States Bankruptcy Judge

APPROVED FOR ENTRY:

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Paul G. Jennings  
Gene L. Humphreys  
BASS, BERRY & SIMS PLC  
315 Deaderick Street, Suite 2700  
Nashville, TN 37238-0002  
Tel: (615) 742-6200  
Fax: (615) 742-6293

Attorneys for Reorganized Debtors

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<sup>2</sup> One or more of the Claimants listed on Exhibit A may have elected the "cash option" on the ballot voting on confirmation of the Plan (hereinafter, a "Convenience Claimant"). All Convenience Claimants' Claims have been fully satisfied by payment pursuant to the terms of the confirmed Plan. Thus, the fact that a Convenience Claimant is listed on Exhibit A does not entitle that Convenience Claimant to any further distribution from the Reorganized Debtors' bankruptcy estates, even if the "maximum allowable amount" is higher than the Convenience Claim. In addition, the fact that a Convenience Claimant is listed on Exhibit A does not affect the distribution already received by the Convenience Claimant.

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

RECEIVED  
FOR ENTRY

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U.S. BANKRUPTCY COURT  
MIDDLE DISTRICT OF TN.

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In re: :  
: :  
JAMES RIVER COAL COMPANY, : Chapter 11  
*et al.*, : Case No. 303-04095  
: :  
: : Jointly Administered  
Debtors. : Judge Harrison  
-----X

**ORDER APPROVING CLAIMS RESOLUTION PROCEDURES  
AND SETTING INITIAL SETTLEMENT AND PRETRIAL CONFERENCE  
DATES FOR CLAIMS OBJECTIONS**

Upon the Motion of the Reorganized Debtors for Order Approving Claims Resolution Procedures and Setting Initial Settlement and Pretrial Conference Dates for Claims Objections (Docket No. 836, the "Motion"), and upon the entire record in these cases; and the Court being satisfied that the relief set forth herein is appropriate under the circumstances; and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Reorganized Debtors' Motion is hereby SUSTAINED.
2. Any Objection<sup>1</sup> to a Claim shall be served on the Claimant at the address provided on the Claim and shall be served by regular mail, postage prepaid, along with a Notice. The Notice shall include a date and time for an Initial Settlement and Pretrial Conference, which date shall be at least 60 days after the date of the Notice. If the Reorganized Debtors file an

<sup>1</sup> All capitalized terms used herein and not otherwise defined shall have the same meaning ascribed to them in the Motion.

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Objection, it shall also be served on the Liquidating Trustee's counsel. If the Liquidating Trustee files an Objection, it shall also be served on the Reorganized Debtors' counsel.

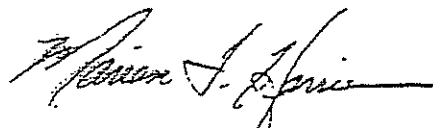
3. All Contested Claims shall be scheduled for a Initial Settlement and Pretrial Conference on one of the following dates, as designated by the Reorganized Debtors in the Notice of Objection, at the United States Bankruptcy Court for the Middle District of Tennessee, Courtroom Three, Second Floor Customs House, 701 Broadway, Nashville, Tennessee:

- November 8, 2004 at 1:30 P.m.
- December 13, 2004 at 1:30 P.m.
- January 24, 2005 at 1:30 P.m.
- March 7, 2005 at 1:30 P.m.

or such other date(s) as may be provided by the Court.

4. Any Objections that remain unresolved after the scheduled Initial Settlement and Pretrial Conference shall be set for a substantive pretrial conference before the Court, pursuant to a separate pretrial order.

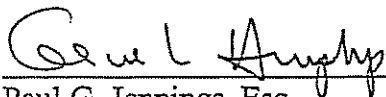
ENTER this \_\_\_\_ day of August, 2004.



AUG 13 2004

Hon. Marian Harrison

APPROVED FOR ENTRY:



Paul G. Jennings, Esq.  
Gene L. Humphreys, Esq.  
BASS, BERRY & SIMS PLC  
315 Deaderick Street, Suite 2700  
Nashville, Tennessee 37238-2700  
Telephone: (615) 742-6200  
Facsimile: (615) 742-6293  
Attorneys for Reorganized Debtors

A copy of this order shall be mailed in accordance with Fed. R. Bankr. P. 2002, LBR 9013-1 and 9013-3 by

- Debtor or Dr's Atty
- Trustee or Tr's Atty
- Atty for Movant

8-16-04

- Clerk's Office only
- Chief Deputy
- Financial Clerk
- Judgment Book
- Adversary Case
- UST
- Debtor and Dr's Atty
- Trustee or Tr's Atty
- Movant & or Mvt's Atty
- All parties to agreed order
- All parties in cert of svc
- All creditors