

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:	:	Chapter 11
	:	
FM COAL, LLC, <i>et al.</i> , ¹	:	Case No. 20-02783 (TOM)
	:	
Debtors.	:	Jointly Administered
	:	

**NOTICE OF HEARING TO CONSIDER
CONFIRMATION OF THE CHAPTER 11 PLAN FILED BY
FM COAL, LLC AND CERTAIN OF ITS
DEBTOR AFFILIATES AND RELATED VOTING AND OBJECTION DEADLINES**

PLEASE TAKE NOTICE THAT on December 1, 2020, the United States Bankruptcy Court for the Northern District of Alabama (the “Court”) entered an order [Docket No. 282] (the “Solicitation Procedures Order”): (a) authorizing the above-captioned debtors and debtors in possession (collectively, the “Debtors”), to solicit acceptances for the *Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (as modified, amended, or supplemented from time to time, the “Plan”),² (b) approving the *Disclosure Statement for the Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the “Disclosure Statement”) as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code, (c) approving the solicitation materials and documents to be included in the solicitation packages (the “Solicitation Packages”), and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

PLEASE TAKE FURTHER NOTICE THAT the hearing at which the Court will consider confirmation of the Plan (the “Confirmation Hearing”) will commence on **January 25, 2021, at 10:00 a.m.**, prevailing Central Time, before the Honorable Tamara O. Mitchell, in the United States Bankruptcy Court for the Northern District of Alabama, located at 1800 Fifth Avenue North, Birmingham, Alabama 35203. The Confirmation Hearing will be held telephonically. Parties wishing to attend the telephonic Confirmation Hearing may do so by dialing (877) 366-1280 and entering access code 2653346#.

PLEASE BE ADVISED: THE CONFIRMATION HEARING MAY BE CONTINUED FROM TIME TO TIME BY THE COURT OR THE DEBTORS **WITHOUT FURTHER NOTICE** OTHER THAN BY SUCH ADJOURNMENT BEING ANNOUNCED IN OPEN

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: FM Coal, LLC (1768); Cane Creek, LLC (3207); M. S. & R. Equipment Co., Inc. (3487); Cedar Lake Mining, Inc. (6132); Best Coal, Inc. (2487); and Xinergy of Alabama, Inc. (3009).

² Capitalized terms not otherwise defined herein have the same meanings as set forth in the Plan.

COURT OR BY A NOTICE OF ADJOURNMENT FILED WITH THE COURT AND SERVED ON ALL PARTIES ENTITLED TO NOTICE.

CRITICAL INFORMATION REGARDING VOTING ON THE PLAN

Voting Record Date. The voting record date is **November 30, 2020**, which is the date for determining which holders of Claims in Classes 3 and 4 are entitled to vote on the Plan.

Voting Deadline. The deadline for voting on the Plan is on **January 5, 2021 at 5:00 p.m.**, prevailing Central Time (the “**Voting Deadline**”). If you received a Solicitation Package, including a Ballot and intend to vote on the Plan you ***must***: (a) follow the instructions carefully; (b) complete ***all*** of the required information on the ballot; and (c) execute and return your completed Ballot according to and as set forth in detail in the voting instructions so that it is ***actually received*** by the Debtors’ notice and claims agent, Donlin, Recano & Company, Inc. (the “**Notice and Claims Agent**”) on or before the Voting Deadline. ***A failure to follow such instructions may disqualify your vote.***

CRITICAL INFORMATION REGARDING THE ADMINISTRATIVE CLAIMS BAR DATE

All requests for payment of Administrative Claims must be filed and served on the Debtors no later than the Administrative Claims Bar Date, which will be the first Business Day that is thirty (30) days after the Effective Date. Holders of Administrative Claims that are required to file and serve a request for payment of such Administrative Claims that do not file and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, or their property and such Administrative Claims shall be deemed discharged as of the Effective Date.

The Administrative Claims Bar Date shall not apply to (a) Claims for Accrued Professional Compensation, or (b) Allowed Administrative Claims that arise in the ordinary course of the Debtors’ business, including Administrative Claims arising from or with respect to the sale of goods or services on or after the Petition Date, executory contracts and unexpired leases, and all Administrative Claims that are Intercompany Claims, shall be paid or otherwise satisfied in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to, such transactions without further action by the Holders of such Administrative Claims or further approval by the Bankruptcy Court.

CRITICAL INFORMATION REGARDING OBJECTING TO THE PLAN

Any objections, if any, to the Plan ***must***: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the court (contemporaneously with a proof of service), so that it may be **actually received** by the following parties, prior to **January 5, 2021, at 5:00 p.m.**

<u>Counsel to the Debtors</u>	<u>U.S. Bankruptcy Administrator</u>
<p>Waller Lansden Dortch & Davis, LLP 1901 Sixth Avenue North, Suite 1400 Birmingham, Alabama 35203 Attn: Jesse S. Vogtle, Jr. Eric T. Ray Paul Greenwood</p> <p>and</p> <p>Waller Lansden Dortch & Davis, LLP 511 Union Street, Suite 2700 Nashville, Tennessee 37219 Attn: John Tishler Tyler N. Layne</p>	<p>Office of the U.S. Bankruptcy Administrator Northern District of Alabama 1800 5th Ave. N, Suite 325 Birmingham, Alabama 35203 Attn.: Thomas Corbett</p>
<u>Counsel to the Official Committee of Unsecured Creditors</u>	<u>Counsel to the Administrative and Collateral Agent under the Debtors' prepetition Credit Agreement</u>
<p>Rumberger, Kirk & Caldwell, P.C. Renasant Place 2001 Park Place North, Suite 1300 Birmingham, Alabama 35203 Attn: R. Scott Williams Robert H. Adams Frederick D. Clarke, III</p> <p>and</p> <p>Walding, LLC 2227 First Avenue South, Suite 100 Birmingham, Alabama 35233 Attn: Brian R. Walding</p>	<p>Reed Smith, LLP 1717 Arch Street, Suite 3100 Philadelphia, Pennsylvania 19103 Attn: Matthew E. Tashman</p> <p>and</p> <p>Burr & Forman, LLP 420 North 20th Street, Suite 3400 Birmingham, Alabama 35203 Attn: Derek F. Meek</p>

RELEASES, EXCULPATIONS, AND INJUNCTIONS

ARTICLE IX OF THE PLAN CONTAINS RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS, AND **ARTICLE IX.C.2 CONTAINS A THIRD-PARTY RELEASE**. THUS, YOU ARE ADVISED TO REVIEW AND CONSIDER THE PLAN CAREFULLY BECAUSE YOUR RIGHTS MIGHT BE AFFECTED THEREUNDER.

RELEVANT DEFINITIONS

“*Exculpated Parties*” means each of (a) the Debtors; (b) the Committee and each of its members, solely in their capacities as such; (c) the Reorganized Debtors, solely if acting in a capacity as fiduciaries for the Estates; and (d) with respect to each of the foregoing entities in clauses (a) through (c), each of their current and former affiliates, solely with respect to conduct from the

Petition Date through the date on which the Chapter 11 Cases are closed while acting as a fiduciary for the Debtors' estates; and (e) with respect to each of the foregoing entities in clauses (a) through (d) and solely with respect to conduct from the Petition Date through the date on which the Chapter 11 Cases are closed while acting as a fiduciary for the Debtors' estates, such entities' current and former equity holders, subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

“Released Parties” each of (a) the Debtors, (b) each Debtor's current and former equity holders, subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such, (c) the Administrative and Collateral Agent, (d) the Lenders, (e) with respect to each entity in clauses (c) and (d), each such entity's current and former equity holders, subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

“Releasing Parties” means (a) all Holders of Claims and Equity Interests that are deemed to accept the Plan; (b) all Holders of Claims and Equity Interests who vote to accept the Plan; (c) all Holders of Claims and Equity Interests that (i) abstain from voting on the Plan and who do not opt out of the releases in the Plan, (ii) vote to reject the Plan and who do not opt out of the releases in the Plan, or (iii) are deemed to reject the Plan and who do not opt out of the releases in the Plan.

RELEVANT PROVISIONS

Releases by the Debtors and their Estates.³ Notwithstanding anything contained in the Plan to the contrary, as of the Effective Date, and to the fullest extent permitted by applicable law, the adequacy of which is hereby confirmed, for the good and valuable consideration provided by each of the Released Parties, each of the Debtors, the Estates, each of the Debtors' and the Estates' current and former affiliates (collectively, the ***“Debtor Releasing Parties”***) shall be deemed to have provided a full, complete, unconditional, and irrevocable release to the Released Parties from any and all Causes of Action and any other debts, obligations, rights, suits, judgments, damages, actions, remedies and liabilities whatsoever, whether accrued or unaccrued, whether known or unknown, foreseen or unforeseen, existing on or before the Effective Date, in law, at equity, whether for tort, contract, violations of statutes (including but not limited to the federal or state securities laws), or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way to the Debtors, including, without limitation, those that any of the Debtors would have been legally entitled to assert, including those in any way

³ The Debtors' investigation into potential Causes of Action is ongoing. The releases by the Debtors are subject to the conclusion of the investigation and determination with respect any potential claims or causes of action, if any, identified therein, and the Debtors expressly reserve the right to bring and do not release any such Claims.

related to the Chapter 11 Cases, the Plan, the Plan Supplement, the Disclosure Statement, and any related agreements, instruments, or documents; *provided, however*, that the foregoing release shall not prohibit the Reorganized Debtors from asserting any and all defenses and counterclaims in respect of any Disputed Claim asserted by any of the Released Parties; *provided further*, that the Released Parties shall not be released from any act or omission that constitutes fraud, willful misconduct, or gross negligence as determined by a Final Order.

Notwithstanding anything to the contrary in the foregoing, the releases set forth in Article IX.C.1 of the Plan do not release (1) any Causes of Action identified in the Schedule of Retained Causes of Action or (2) any post-Effective Date obligations of any party or Entity: (A) arising under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; or (B) expressly set forth in and preserved by the Plan, the Plan Supplement, or related documents.

Releases by Holders of Claims and Equity Interests.⁴ For good and valuable consideration, as of the Effective Date, each of the Releasing Parties (regardless of whether a Releasing Party is a Released Party), shall be deemed to have, to the fullest extent permitted by applicable law, the adequacy of which is hereby confirmed, fully, completely, unconditionally, irrevocably, and forever released the Released Parties of and from any and all Causes of Action, and any other debts, obligations, rights, suits, judgments damages, actions, remedies and liabilities whatsoever, whether accrued or unaccrued, whether known or unknown, foreseen or unforeseen, existing on or before the Effective Date, in law, at equity, whether for tort, contract, violations of statutes (including but not limited to the federal or state securities laws), or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way to the Debtors, including those in any way related to the Chapter 11 Cases, the Plan, the Plan Supplement, the Disclosure Statement, and any related agreements, instruments, or documents; *provided, however* that the Released Parties shall not be released from any act or omission that constitutes fraud, willful misconduct, or gross negligence as determined by a Final Order.

Notwithstanding anything to the contrary in the foregoing, the releases set forth in Article IX.C.2 of the Plan do not release any post-Effective Date obligations of any party or Entity arising under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

Exculpation.⁵ Notwithstanding anything contained in the Plan to the contrary, the Exculpated Parties shall neither have nor incur any liability to any Entity for any act or

⁴ The Debtors' investigation into potential Causes of Action is ongoing. The releases by Holders of Claims and Equity Interests are subject to the conclusion of the investigation and determination with respect to any potential claims or causes of action, if any, identified therein, and the Debtors expressly reserve the right to bring and do not release any such Claims.

⁵ The Debtors' investigation into potential Causes of Action is ongoing. The exculpation set forth in this paragraph is subject to the conclusion of the investigation and determination with respect to any potential claims or causes of

omission arising after the Petition Date and through the Effective Date in connection with, or related to, formulating, negotiating, preparing, disseminating, implementing, administering, confirming or consummating the Plan, the Disclosure Statement, or any other contract, instrument, release, other agreement or document created or entered into in connection with the Plan, or any other post-petition act taken or omitted to be taken in connection with the Chapter 11 Cases; *provided, however*, that the foregoing provisions of Article IX.D of the Plan shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted fraud, willful misconduct, or gross negligence.

Injunctive Provisions. Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold or may hold Claims or Equity Interests that have been released, discharged or are subject to exculpation pursuant to Article IX of the Plan, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, and/or the Released Parties:

1. commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Equity Interests;
2. enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against such Entities on account of or in connection with or with respect to any such Claims or Equity Interests;
3. creating, perfecting or enforcing any lien or encumbrance of any kind against such Entities or the property or the Estates of such Entities on account of or in connection with or with respect to any such Claims or Equity Interests;
4. asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Equity Interests unless such Holder has filed a motion requesting the right to perform such setoff; and
5. commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Equity Interests released or settled pursuant to the Plan.

Notwithstanding anything to the contrary in the foregoing, the injunction does not enjoin any party under the Plan or under any document, instrument or agreement (including those attached to the Disclosure Statement or included in the Plan Supplement) executed to

action, if any, identified therein, and the Debtors expressly reserve the right to bring and do not release any such Claims.

implement the Plan from bringing an action to enforce the terms of the Plan or such document, instrument or agreement (including those attached to the Disclosure Statement or included in the Plan Supplement) executed to implement the Plan.

ADDITIONAL INFORMATION

Obtaining Solicitation Materials. The materials in the Solicitation Package are intended to be self-explanatory. If you should have any questions, however, please feel free to contact Donlin, Recano & Company, Inc., the notice and claims agent retained by the Debtors in the chapter 11 cases (the “Notice and Claims Agent”), by: (a) calling the Notice and Claims Agent at (866) 627-2494 (toll free), (b) visiting the Debtors’ restructuring website at: <https://www.donlinrecano.com/Clients/fm/Index>, (c) writing to the Notice and Claims Agent at Donlin, Recano & Company, Inc., Re: FM Coal, LLC, *et al.*, P.O. Box 199043, Blythebourne Station, Brooklyn, NY 11219; or (d) emailing fminfo@donlinrecano.com and requesting paper copies of the corresponding materials previously received in electronic format. You may also obtain copies of any pleadings filed in the chapter 11 cases for a fee via PACER at: <https://ecf.alnb.uscourts.gov>. Please be advised that the Notice and Claims Agent is authorized to answer questions about, and provide additional copies of, solicitation materials, but may not advise you as to whether you should vote to accept or reject the Plan.

The Plan Supplement. The Debtors will file the Plan Supplement (as defined in the Plan) at least 7 days prior to the Voting Deadline or such later date as may be approved by the Bankruptcy Court, and will serve notice on all holders of Claims entitled to vote on the Plan, which will: (a) inform parties that the Debtors filed the Plan Supplement, (b) list the information contained in the Plan Supplement, and (c) explain how parties may obtain copies of the Plan Supplement.

BINDING NATURE OF THE PLAN:

IF CONFIRMED, THE PLAN SHALL BIND ALL HOLDERS OF CLAIMS AND INTERESTS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WHETHER OR NOT SUCH HOLDER WILL RECEIVE OR RETAIN ANY PROPERTY OR INTEREST IN PROPERTY UNDER THE PLAN, HAS FILED A PROOF OF CLAIM IN THE CHAPTER 11 CASES, OR FAILED TO VOTE TO ACCEPT OR REJECT THE PLAN OR VOTED TO REJECT THE PLAN.

Dated: December 1, 2020
Birmingham, Alabama

WALLER LANSDEN DORTCH & DAVIS, LLP

/s/ Jesse S. Vogtle, Jr.

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