

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:)
ARMSTRONG ENERGY, INC., *et al.*,) Case No. 17-47541-659
) CHAPTER 11
)
) (Jointly Administered)
)
 Debtors.) Hearing Date: December 18, 2017
) Hearing Time: 10:00 a.m. prevailing
) Central Time
) Hearing Location: Courtroom 7 North

**DEBTORS' MOTION FOR ENTRY OF AN
ORDER (I) APPROVING THE ADEQUACY OF
THE DISCLOSURE STATEMENT, (II) APPROVING
THE SOLICITATION AND NOTICE PROCEDURES WITH
RESPECT TO CONFIRMATION OF THE DEBTORS' PROPOSED
JOINT CHAPTER 11 PLAN, (III) APPROVING THE FORMS OF BALLOTS AND
NOTICES IN CONNECTION THEREWITH, (IV) SCHEDULING CERTAIN DATES
WITH RESPECT THERETO, AND (V) GRANTING RELATED RELIEF**

Armstrong Energy, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"),¹ respectfully state the following in support of this motion:

Relief Requested

1. The Debtors seek entry of an order (the "Order") granting the following relief and such other relief as is appropriate:
 - a. ***Disclosure Statement.*** Approving the *Disclosure Statement for the Debtors' Joint Chapter 11 Plan* substantially in the form attached to the Order as Schedule 1 (the "Disclosure Statement") as containing "adequate information" pursuant to section 1125 of

¹ A detailed description of the Debtors' businesses and the reasons for commencing the chapter 11 cases is set forth in the *Declaration of Alan Boyko of Armstrong Energy, Inc., in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 5] (the "First Day Declaration").

chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”);

- b. ***Solicitation and Voting Procedures.*** Approving procedures for: (i) soliciting, receiving, and tabulating votes to accept or reject the Plan;² (ii) voting to accept or reject the Plan; and (iii) filing objections to the Plan (the “Solicitation and Voting Procedures”), substantially in the form attached to the Order as Schedule 2;
- c. ***Ballots.*** Approving the Class 3 and 4 master and beneficial holder ballots, and the Class 4 ballot (collectively, the “Ballots”), substantially in the forms attached to the Order as Schedules 3A, 3B, and 3C;
- d. ***Solicitation Packages.*** Finding that the solicitation materials and documents included in the solicitation packages (the “Solicitation Packages”) that will be sent to, among others, Holders of Claims entitled to vote to accept or reject the Plan, comply with Rules 3017(d) and 2002(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”);
- e. ***Cover Letter.*** Approving the form of letter (the “Cover Letter”) that the Debtors will send to Holders of Claims entitled to vote to accept or reject the Plan urging such parties to vote in favor of the Plan, substantially in the form attached to the Order as Schedule 7;
- f. ***Confirmation Hearing Notice.*** Approving the form and manner of notice of the hearing to be held by the Court to consider Confirmation of the Plan (the “Confirmation Hearing,” and the notice thereof, the “Confirmation Hearing Notice”) pursuant to section 1129 of the Bankruptcy Code, substantially in the form attached to the Order as Schedule 8;
- g. ***Non-Voting Status Notices.*** Approving: (i) the form of notice applicable to Holders of Claims and Interests that are Unimpaired under the Plan and who are, pursuant to section 1126(f) of the Bankruptcy Code, conclusively presumed to accept the Plan; (ii) the form of notice applicable to Holders of Claims and Interests that are Impaired under the Plan and who are, pursuant to section 1126(g) of the Bankruptcy Code, conclusively deemed to reject the Plan; and (iii) the form of notice applicable to Holders of Claims that are subject to a pending objection by the Debtors and who are not entitled to vote the disputed portion of such Claim (each, a “Non-Voting Status Notice”), substantially in the forms

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Disclosure Statement.

attached to the Order as Schedule 4, Schedule 5, and Schedule 6, respectively;

- h. ***Assumption and Rejection Notices.*** Approving the form of notices to counterparties to Executory Contracts and Unexpired Leases that will be assumed or rejected pursuant to the Plan, (the “Assumption Notice” and the “Rejection Notice,” respectively) substantially in the forms attached to the Order as Schedule 9 and Schedule 10, respectively;
- i. ***Confirmation Timeline.*** Establishing the following dates and deadlines with respect to Confirmation, subject to modification as necessary (the “Confirmation Timeline”):

Event	Date	Description
Date of Service of Disclosure Statement Hearing Notice	November 13, 2017	Date upon which the Debtors shall serve the Disclosure Statement and notice of the hearing to consider the same
Disclosure Statement Objection Deadline	December 11, 2017, at 4:00 p.m., prevailing Central Time	Deadline by which objections to the Disclosure Statement must be filed with the Court and served so as to be <i>actually received</i> by the appropriate notice parties (the “ <u>Disclosure Statement Objection Deadline</u> ”)
Disclosure Statement Hearing	December 18, 2017, at 10:00 a.m. prevailing Central Time	Date and time for the hearing at which the Court will consider approval of the Disclosure Statement (the “ <u>Disclosure Statement Hearing Date</u> ”)
Voting Record Date	December 18, 2017	Date for determining (i) which Holders of Claims in the Voting Classes, as defined herein, are entitled to vote to accept or reject the Plan and (ii) whether Claims have been properly assigned or transferred to an assignee under Bankruptcy Rule 3001(e) such that the assignee or transferee, as applicable, can vote to accept or reject the Plan as the Holder of a Claim (the “ <u>Voting Record Date</u> ”)
Solicitation Deadline	December 22, 2017	Deadline for distributing Solicitation Packages, including Ballots, to Holders of Claims entitled to vote to accept or reject the Plan (the “ <u>Solicitation Deadline</u> ”)
Publication Deadline	December 22, 2017	Last date by which the Debtors will submit the Confirmation Hearing Notice in a format modified for publication (the “ <u>Publication Notice</u> ”)

Event	Date	Description
Plan Supplement	January 5, 2018	Date by which the Debtors shall file the Plan Supplement
Voting Deadline	January 19, 2018 at 4:00 p.m., prevailing Central Time	Deadline by which <i>all</i> Ballots must be properly executed, completed, and delivered so that they are <i>actually received</i> (the “ <u>Voting Deadline</u> ”) by Donlin Recano, the proposed claims, noticing, and solicitation agent retained by the Debtors in the chapter 11 cases (the “ <u>Claims and Noticing Agent</u> ”)
Plan Objection Deadline	January 19, 2018, at 4:00 p.m., prevailing Central Time	Deadline by which objections to the Plan must be filed with the Court and served so as to be actually received by the appropriate notice parties (the “ <u>Plan Objection Deadline</u> ”)
Deadline to File Confirmation Brief	January 26, 2018 at 4:00 p.m., prevailing Central Time	Date by which the Debtors shall file their brief in support of Confirmation (the “ <u>Confirmation Brief Deadline</u> ”)
Plan Objection Response Deadline	January 26, 2018 at 4:00 p.m., prevailing Central Time	Deadline by which responses to objections to the Plan must be filed with the Court and served so as to be <i>actually received</i> by the appropriate notice parties (the “ <u>Plan Objection Response Deadline</u> ”)
Deadline to File Voting Report	January 26, 2018 at 4:00 p.m., prevailing Central Time	Date by which the report tabulating the voting on the Plan (the “ <u>Voting Report</u> ”) shall be filed with the Court pursuant to Local Bankruptcy Rule 3018(A)
Confirmation Hearing Date	January 31, 2018, at 10:00 a.m., prevailing Central Time	Date and time for the hearing at which the Court will consider Confirmation of the Plan (the “ <u>Confirmation Hearing Date</u> ”).

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Eastern District of Missouri (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 81.901(B)(1) of the Local Rules of the United States District Court for the Eastern District of Missouri. The Debtors confirm their consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by the Court in connection with this motion to the extent that it is later determined

that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105, 363, 1125, 1126, and 1128 of the Bankruptcy Code, Bankruptcy Rules 2002, 3016, 3017, 3018, and 3020, and rules 2002-1 and 3017-1 of the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the Eastern District of Missouri (the “Local Bankruptcy Rules”).

Background

5. The Debtors produce low-chlorine, high-sulfur thermal coal from the Illinois Basin, with both surface and underground mines. The Debtors market their coal primarily to proximate and investment grade electric utility companies as fuel for their steam-powered generators. Based on 2016 production, the Debtors are the sixth largest producer in the Illinois Basin and the second largest in Western Kentucky.

6. On November 1, 2017 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On the Petition Date, the Court entered the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 86], in which the Court approved procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases. On November 8, 2017, the Office of the United States Trustee for the Eastern District of Missouri (the “U.S. Trustee”) formed the official committee of unsecured creditors (the “Creditors’ Committee”) pursuant to section 1102 of the Bankruptcy Code [Docket No. 145].

Plan Summary

7. The Debtors commenced these cases with a Restructuring Support Agreement, Transaction Agreement, and Plan that have the support of the Debtors' three primary stakeholders: (a) holders of approximately 78 percent in amount of the Debtors' senior secured notes (the "Supporting Noteholders"); (b) the Debtors' primary mineral interest provider, Thoroughbred Resources, L.P., for itself and on behalf of its Affiliates and subsidiaries (collectively, "Thoroughbred"); and (c) the Debtors' 97-percent equity owner, Rhino Resource Partners Holdings LLC ("RRHP"). The Restructuring Support Agreement, Transaction Agreement, and the Plan also have the support of Knight Hawk Holdings, LLC ("Knight Hawk"), a contemplated co-investor with the Supporting Noteholders for purposes of consummating the transactions contemplated under the Plan.

8. Generally, pursuant to these transactions and as further described in the Plan, the Debtors will create a new holding company ("HoldCo") and a new subsidiary (or subsidiaries) of HoldCo ("NewCo") to which they will transfer substantially all of their assets and certain of their liabilities. Thereafter, the Debtors' senior noteholders will receive 100 percent of the common equity in HoldCo (subject to dilution on account of common equity in HoldCo, if any, issued to Knight Hawk in connection with the Sale Transaction) in satisfaction of not less than \$90 million of the senior noteholders' secured claims. Knight Hawk, who will oversee the management of the day-to-day business of NewCo post-closing, will then receive preferred equity in HoldCo and common equity or other economic consideration in exchange for, among other things, contributing to NewCo cash necessary to (a) pay certain cure costs payable by NewCo under the terms of the Transaction Agreement associated with the assumption and assignment to NewCo of certain of the Debtors' contracts and leases (including prepetition Cure Costs of Assumed Contracts, but excluding Debtor Cure Costs), (b) purchase the Debtors' coal inventory,

(c) capitalize NewCo in an amount agreed upon by the Supporting Holders and Knight Hawk, and (d) pay the cash value of certain prepaid expenses, as described in the Transaction Agreement. Following completion of the Sale Transaction, the Debtors will commence an orderly wind-down and liquidation of the Debtors' remaining assets in order to maximize the value of recoveries for their creditors.

9. The Plan provides for the full and final resolution of the Claims against the Debtors and appoints a Plan Administrator to administer Claims and complete the wind-down and liquidation of the Debtors' remaining assets. The Plan provides for 100 percent recoveries for Holders of Allowed Administrative Claims, Priority Tax Claims, Other Secured Claims, and Other Priority Claims. Confirmation of the Plan will preserve the going concern value of the Debtors' businesses and maximize value for the benefit of the Debtors' stakeholders. As shown below, the Disclosure Statement provides adequate information in respect of the Plan, ensuring that Holders of Claims entitled to vote on the Plan will receive information of a kind and in sufficient detail to make an informed judgment regarding acceptance or rejection of the Plan. The proposed schedule and procedures to confirm and consummate the Plan move these chapter 11 cases forward in a timely manner while ensuring due process and providing for the procedural safeguards mandated under the Bankruptcy Code, Bankruptcy Rules, and Local Bankruptcy Rules.

10. The Plan contemplates classifying Holders of Claims and Interests into certain Classes of Claims and Interests for all purposes, including with respect to voting on the Plan, pursuant to section 1126 of the Bankruptcy Code. The following chart represents the Classes of Claims and Interests under the Plan:³

³ The Plan constitutes a separate chapter 11 plan of liquidation for each Debtor. The classifications set forth in Classes 1 through 8 shall be deemed to apply to each Debtor, but any Class that is vacant as to a particular

Class	Claim/Interest	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)
2	Other Secured Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)
3	Senior Notes Secured Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Intercompany Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
6	Interests in Armstrong	Impaired	Not Entitled to Vote (Deemed to Reject)
7	Intercompany Interests	Impaired	Not Entitled to Vote (Deemed to Reject)
8	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)

11. Based on the foregoing (and as discussed in greater detail herein), the Debtors are proposing to solicit votes to accept or reject the Plan from Holders of Claims in Classes 3 and 4 (each, a “Voting Class” and collectively, the “Voting Classes”). The Debtors are *not* proposing to solicit votes from Holders of Claims and Interests in Classes 1, 2, 5, 6, 7, and 8 (each a “Non-Voting Class” and collectively, the “Non-Voting Classes”).

Basis for Relief

I. The Court Should Approve the Disclosure Statement.

A. The Standard for Approval of the Disclosure Statement.

12. Pursuant to section 1125 of the Bankruptcy Code, the proponent of a proposed chapter 11 plan must provide “adequate information” regarding that plan to holders of impaired claims and interests entitled to vote on the plan. 11 U.S.C. § 1125. Specifically, section 1125(a)(1) of the Bankruptcy Code provides, in relevant part, as follows:

Debtor will be treated in accordance with Article III.E of the Plan. The Debtors reserve the right to modify the Plan in accordance with Article XII thereof, including the right to withdraw the Plan as to an individual Debtor at any time before the Confirmation Date.

‘[A]dequate information’ means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the Holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a)(1).

13. The primary purpose of a disclosure statement is to provide all material information that creditors and interest Holders affected by a proposed plan need to make an informed decision regarding whether or not to vote for the plan. *See, e.g., In re Apex Oil Co.*, 101 B.R. 92, 98 (Bankr. E.D. Mo. 1989) (“The disclosure statement is primarily a source of information upon which creditors make an informed judgment about the merits of a plan of reorganization.”); *Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) (“[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.”); *In re Medley*, 58 B.R. 255, 256 (Bankr. E.D. Mo. 1986) (finding that a disclosure statement must provide “detailed information such that a hypothetical reasonable investor may make an informed judgment about the plan” as opposed to a “superficial outline”); *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985) (“The primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan.”). Congress intended that such informed judgments would be needed to both negotiate the terms of, and vote on, a plan of reorganization. *Century Glove, Inc.*, 860 F.2d at 100.

14. “Adequate information” is a flexible standard, based on the facts and circumstances of each case. 11 U.S.C. § 1125(a)(1) (“‘adequate information’ means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records”); *see also Oneida*

Motor Freight, Inc. v. United Jersey Bank, 848 F.2d 414, 417 (3d Cir. 1988) (“From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case.”); *First Am. Bank of N.Y. v. Century Glove, Inc.*, 81 B.R. 274, 279 (D. Del. 1988) (noting that adequacy of disclosure for a particular debtor will be determined based on how much information is available from outside sources); S. Rep. No. 95-989, at 121 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5907 (“the information required will necessarily be governed by the circumstances of the case”).

15. Courts in the Eighth Circuit and elsewhere acknowledge that determining what constitutes “adequate information” for the purpose of satisfying section 1125 of the Bankruptcy Code resides within the broad discretion of the court. *See, e.g., In re Puff*, No. BR 10-01877, 2011 WL 2604759, at *3–5 (Bankr. N.D. Iowa June 30, 2011) (“The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court.”) (citations omitted); *In re Tranel*, 940 F.2d 1168, 1175 (8th Cir. 1991) (“Implicit in section 1125 of the Bankruptcy Code is the recognition that “[i]n reorganization cases, there is frequently great uncertainty, [and t]herefore the need for flexibility is greatest.”) (quoting H.R.Rep. No. 595, 95th Cong., 1st Sess., 408-409 (1977), U.S. Code Cong. & Admin. News 1978, pp. 5787, 6364, 6365); *In re Dakota Rail, Inc.*, 104 B.R. 138, 143 (Bankr. D. Minn. 1989) (noting that the definition of adequate information leaves the bankruptcy court with “wide discretion”).

16. In making a determination as to whether a disclosure statement contains adequate information as required by section 1125 of the Bankruptcy Code, courts typically look for disclosures related to topics such as:

- a. the events that led to the filing of a bankruptcy petition;
- b. the relationship of the debtor with its affiliates;

- c. a description of the available assets and their value;
- d. information relevant to the company's liquidation;
- e. the source of information stated in the disclosure statement;
- f. the debtors' condition while in chapter 11;
- g. claims asserted against the debtor;
- h. the estimated return to creditors under a chapter 7 liquidation;
- i. information relevant to the plan administrator;
- j. the chapter 11 plan or a summary thereof;
- k. financial information, valuations, and projections relevant to a creditor's decision to accept or reject the chapter 11 plan;
- l. information relevant to the risks posed to creditors under the plan;
- m. the actual or projected realizable value from recovery of preferential or otherwise avoidable transfers;
- n. litigation likely to arise in a nonbankruptcy context; and
- o. tax attributes of the debtors.

See, e.g., In re Puff, 2011 WL 2604759, at *3 (collecting cases and factors); *In re U.S. Brass Corp.*, 194 B.R. 420, 424–25 (Bankr. E.D. Tex. 1996) (listing the factors courts have considered in determining the adequacy of information provided in a disclosure statement); *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988) (same); *In re Metrocraft Pub. Serv., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (same). Disclosure regarding all topics is not necessary in every case; the above factors are only a general “yardstick” and need to be modified as the circumstances and size of each case warrant. *See In re Puff*, 2011 WL 2604759 at *4; *In re U.S. Brass Corp.*, 194 B.R. at 424; *see also In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (“[C]ertain categories of information which may be necessary in one case may be omitted in another; no one list of categories will apply in every case.”).

B. The Disclosure Statement Contains Adequate Information in Accordance with Section 1125 of the Bankruptcy Code.

17. The Disclosure Statement provides “adequate information” to allow Holders of Claims in the Voting Classes to make informed decisions about whether to vote to accept or reject the Plan. Specifically, the Disclosure Statement contains a number of categories of information that courts consider “adequate information,” including, without limitation:

Category	Description	Location in Disclosure Statement
Debtors’ Corporate History, Structure, and Business Overview	An overview of the Debtors’ corporate history, business operations, organizational structure, and capital structure.	Article III
Events Leading to the Chapter 11 Cases	An overview of the Debtors’ out-of-court restructuring efforts in response to deteriorating economic conditions, including the negotiations with respect to the Plan.	Article IV
Administration of the Chapter 11 Cases	A summary of the motions filed on the Petition Date as well as some significant events of these chapter 11 cases.	Article V
Solicitation and Voting Procedures	A description of the procedures for soliciting votes to accept or reject the Plan and voting on the Plan.	Article VII
Confirmation of the Plan	Confirmation procedures and statutory requirements for Confirmation and Consummation of the Plan, including a liquidation analysis, financial projections, and a valuation.	Article VII
Risk Factors	Certain risks associated with the Debtors’ businesses, as well as certain risks associated with forward-looking statements and an overall disclaimer as to the information provided by and set forth in the Disclosure Statement.	Article VIII
Certain United States Federal Income Tax Consequences of the Plan	A description of certain U.S. federal income tax law consequences of the Plan.	Article IX
Recommendation	A recommendation by the Debtors that Holders of Claims in the Voting Classes should vote to accept the Plan.	Article X

18. Based on the foregoing, the Debtors submit that the Disclosure Statement complies with all aspects of section 1125 of the Bankruptcy Code and addresses the information set forth above in a manner that provides adequate information to Holders of Claims entitled to vote to accept or reject the Plan. Accordingly, the Debtors submit that the Disclosure Statement contains “adequate information” and therefore should be approved.

C. The Disclosure Statement Provides Sufficient Notice of Injunction, Release, and Exculpation Provisions in the Plan.

19. Bankruptcy Rule 3016(c) requires that, if a plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code, the plan and disclosure statement must describe, in specific and conspicuous language, the acts to be enjoined and the entities subject to the injunction. Fed. R. Bankr. P. 3016(c).

20. Article X.F of the Plan describes in detail the entities subject to an injunction under the Plan and the acts that they are enjoined from pursuing. Further, the language in Article X.F of the Plan is in bold, making it conspicuous to anyone who reads it. Moreover, Articles X.A, B, C, and D of the Plan describe in detail entities subject to or providing a release under the Plan, and the Claims and Causes of Action so released, and Article X.E of the Plan describes in detail the entities entitled to exculpation under the Plan. Each of the foregoing sections is set forth, conspicuously, in bold. Accordingly, the Debtors respectfully submit that the Disclosure Statement complies with Bankruptcy Rule 3016(c) by conspicuously describing the conduct and parties enjoined, released, or exculpated by the Plan.

II. The Court Should Approve the Solicitation and Voting Procedures, Including the Voting and Tabulation Procedures, the Materials, and the Timeline for Soliciting Votes on the Plan.

A. The Standard for Approval of Voting and Tabulation Procedures.

21. Section 1126(c) of the Bankruptcy Code provides that:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under section (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected the plan.

11 U.S.C. § 1126(c). Additionally, Bankruptcy Rule 3018(c) provides, in part, that “[a]n acceptance or rejection [of a plan] shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security Holder or an authorized agent and conform to the appropriate Official Form.” Fed. R. Bankr. P. 3018(c). Consistent with these requirements, the Debtors propose to use the Solicitation and Voting Procedures, which procedures include specific voting and tabulation requirements and processes, as follows (the “Voting and Tabulation Procedures”). In light of the current posture of these chapter 11 cases, the Debtors submit that the proposed timeline pertaining to the Voting and Tabulation Procedures is reasonable and appropriate under the circumstances and comports with the milestones set forth in the Restructuring Support Agreement.

B. Completion of Ballots.

22. To facilitate the process of tabulating all votes received, the Debtors propose that a Ballot be counted in determining the acceptance or rejection of the Plan only if it satisfies certain criteria. Specifically, the Voting and Tabulation Procedures provide that the Debtors not count a Ballot if it is, among other things, illegible, submitted by a Holder of a Claim that is not entitled to vote on the Plan, unsigned, or not clearly marked. Further, the Debtors, subject to a contrary order of the Court, may waive any defects or irregularities as to any particular Ballot at any time, either before or after the close of voting, and any such waivers shall be documented in the Voting Report.

C. General Ballot Tabulation and Voting Procedures.

23. The proposed Voting and Tabulation Procedures set forth specific criteria with respect to the general tabulation of Ballots, and voting procedures applicable to Holders of Claims. The Debtors believe that the proposed Voting and Tabulation Procedures will facilitate the Plan confirmation process. Specifically, the procedures will clarify any obligations of Holders of Claims entitled to vote to accept or reject the Plan and will create a straightforward process by which the Debtors can determine whether they have satisfied the numerosity requirements of section 1126(c) of the Bankruptcy Code. In compliance with Local Bankruptcy Rule 3018(A), the Debtors will file a written summary of the Ballots cast (the "Voting Report") and shall serve a copy of the Voting Report on the Master Service List (as defined in Local Bankruptcy Rule 9013-3(D)) or on those who would be on such a list, any party who has filed an objection to the Plan, and any party whose Ballot was received but not counted at least 72 hours prior to the Confirmation Hearing, or by 4:00 p.m. (prevailing Central Time) on January 26, 2018. Accordingly, the Debtors submit that the Voting and Tabulation Procedures are in the best interests of their estates, Holders of Claims, and other parties in interest, and that good cause supports the relief requested herein.

D. The Court Should Approve the Forms of the Ballots.

24. In accordance with Bankruptcy Rule 3018(c), the Debtors have prepared and customized the Ballots. Although based on Official Form, the Ballots have been modified to (a) address the particular circumstances of the chapter 11 cases and (b) include certain additional information that is relevant and appropriate for Claims in certain of the Voting Classes. The proposed Ballots for each Voting Class are annexed as Schedules 3A, 3B, and 3C, to the Order. The Debtors respectfully submit that the forms of the Ballots comply with Bankruptcy Rule 3018(c) and, therefore, should be approved.

E. The Court Should Approve the Form and Distribution of the Solicitation Packages and Cover Letter to Parties Entitled to Vote on the Plan.

25. Bankruptcy Rule 3017(d) specifies the materials to be distributed to Holders of allowed claims upon approval of a disclosure statement, including the court-approved plan and disclosure statement and notice of the time within which acceptances and rejections of the plan may be filed. Fed. R. Bankr. P. 3017(d).

26. In accordance with this requirement, the Debtors propose to send the Solicitation Packages to provide Holders of Claims in the Voting Classes with the information they need to be able to make informed decisions with respect to how to vote on the Plan. Specifically, on or before the Solicitation Deadline, the Debtors will cause the Solicitation Packages to be distributed by first-class U.S. mail to those Holders of Claims in the Voting Classes. Each Solicitation Package will include the following materials:

- a. a copy of the Solicitation and Voting Procedures;
- b. a Ballot, together with detailed voting instructions and a pre-addressed, postage prepaid return envelope;
- c. the Cover Letter;
- d. the Disclosure Statement (and exhibits thereto, including the Plan);
- e. the Order (without exhibits except the Solicitation and Voting Procedures, as set forth above);
- f. the Confirmation Hearing Notice; and
- g. such other materials as the Court may direct.

27. The Debtors request that they be authorized to distribute the Plan, the Disclosure Statement, and the Order (without exhibits, except for the Solicitation and Voting Procedures) to Holders of Claims entitled to vote on the Plan in electronic format (*i.e.*, on a CD-ROM or flash drive). The Ballots, the Cover Letter, and the Confirmation Hearing Notice will **only** be provided in paper format. Distribution in this manner will translate into significant monetary

savings for the Debtors' estates by reducing printing and postage costs. Bankruptcy courts in this district and across the country have permitted debtors to transmit solicitation documents in electronic format in other large chapter 11 cases in the interest of saving printing and mailing costs. *See, e.g., In re Payless Holdings LLC*, No. 17-42267 (KAS) (Bankr. E.D. Mo. June 15, 2017) (authorizing the debtors to transmit solicitation documents in flash drive format); *accord In re 21st Century Oncology Holdings, Inc.*, No. 17-22770 (RDD) (Bankr. S.D.N.Y. Oct. 17, 2017) (same); *In re GenOn Energy, Inc.*, No. 17-33695 (DRJ) (Bankr. S.D. Tex. Oct. 5, 2017) (same); *In re rue21, Inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. July 14, 2017) (same); *In re The Gymboree Corp.*, No. 17 32986 (KLP) (Bankr. E.D. Va. July 11, 2017) (same).⁴

28. Additionally, the Debtors will provide (a) complete Solicitation Packages to the U.S. Trustee and (b) the Order (in electronic format) and the Confirmation Hearing Notice to all parties required to be notified under Rule 2002 of the Bankruptcy Rules and Rule 2002-1 of the Local Bankruptcy Rules (the "2002 List") as of the Voting Record Date. Any party that receives the materials in electronic format but would prefer paper format may contact the Claims and Noticing Agent and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense), by: (a) visiting the Debtors' restructuring website at <https://www.donlinrecano.com/armstrong>; (b) writing to the Claims and Noticing Agent at Donlin, Recano & Company, Inc., Re: Armstrong Energy, Inc. Ballot Processing, 6201 15th Avenue, Brooklyn, New York 11219; (c) emailing DRCVote@DonlinRecano.com; and/or (d) calling the Debtors' Claims and Noticing Agent hotline at (866) 416-0556 (toll free) or (212) 771-1128 (international). Parties in interest can also obtain these documents and any other pleadings filed in the chapter 11 cases (for a fee) via

⁴ Because of the voluminous nature of the orders cited herein, such orders are not attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

PACER at: <https://ecf.moeb.uscourts.gov>. The Debtors will not mail Solicitation Packages or other solicitation materials to Holders of Claims that have already been paid in full during the chapter 11 cases or that are authorized to be paid in full in the ordinary course of business pursuant to an order previously entered by this Court.

29. The Debtors respectfully request that the Claims and Noticing Agent be authorized (to the extent not authorized by another order of the Court) to assist the Debtors in (a) distributing the Solicitation Package, (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by Holders of Claims against the Debtors, (c) responding to inquiries from Holders of Claims and Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Packages, and all other related documents and matters related thereto, including the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan, (d) soliciting votes on the Plan, and (e) if necessary, contacting creditors regarding the Plan.

F. The Court Should Approve Procedures for the Resolution of Disputed Claims for Voting Purposes.

30. The Debtors have established Solicitation and Voting Procedures, which includes procedures for the treatment of Claims in a Voting Class subject to pending objections. Such procedures contemplate furnishing the Holder of such Claim with a Disputed Claim Notice and deeming the Holder not entitled to vote to accept or reject the Plan on account of such Claim until the occurrence of a Resolution Event (as such terms are defined in the Solicitation and Voting Procedures). The Debtors respectfully request this Court authorize the procedures for the resolution of Disputed Claims as such procedures are customary and should be approved.

G. The Court Should Approve the Notice of Confirmation Hearing.

31. Bankruptcy Rules 2002(b) and (d) require no less than 28 days' notice to all holders of claims and equity interests of the time fixed for filing objections to the hearing on confirmation of a chapter 11 plan. Local Bankruptcy Rule 3017(D) requires that notice of a confirmation hearing comply with Local Form 15, and include the time within which objections to confirmation shall be served pursuant to Local Bankruptcy Rule 3020(A). L. Bankr. R. 3017(D). In turn, Local Bankruptcy Rule 3020(A) requires objections be served on the Debtors, among other parties, at least seven days before the confirmation hearing. L. Bankr. R. 3020(A).

32. The Debtors will serve the Confirmation Hearing Notice on all known Holders of Claims and Interests and the 2002 List (regardless of whether such parties are entitled to vote on the Plan) by no later than December 22, 2017, which will provide all parties in interest with more than 28 days' notice of the Plan Objection Deadline and the Confirmation Hearing. The Confirmation Hearing Notice will include the following: (a) instructions as to how to view or obtain copies of the Disclosure Statement (including the Plan and the other exhibits thereto), the Order, and all other materials in the Solicitation Package (*excluding* Ballots) from the Claims and Noticing Agent and/or the Court's website via PACER; (b) notice of the Voting Deadline; (c) notice of the date by which the Debtors will file the Plan Supplement; (d) notice of the Plan Objection Deadline; and (e) notice of the Confirmation Hearing Date and information related thereto.

33. Bankruptcy Rule 2002(l) permits the Court to "order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice." Fed. R. Bankr. P. 2002(l). Therefore, in addition to the foregoing distribution of the Confirmation Hearing Notice, the Debtors will publish the Publication Notice within seven days after the Solicitation on one occasion in the *USA Today* (national edition) and the *St. Louis Post-Dispatch*.

The Debtors believe that the Publication Notice will provide sufficient notice of, among other things, the entry of the Order, the Voting Deadline, the Plan Objection Deadline, and the Confirmation Hearing to parties who did not otherwise receive notice thereof by mail. Additionally, service and publication of the Confirmation Hearing Notice comports with the requirements of Bankruptcy Rule 2002 and should be approved.

H. The Court Should Approve the Form of Notices to Non-Voting Classes.

34. As discussed above, the Non-Voting Classes are *not* entitled to vote on the Plan. As a result, they will *not* receive Solicitation Packages and, instead, the Debtors propose that such parties receive a Non-Voting Status Notice. Specifically, in lieu of solicitation materials, the Debtors propose to provide the following to Holders of Claims and Interests in Non-Voting Classes:

Classes	Status	Treatment
1, 2	Unimpaired— Conclusively Presumed to Accept	Will receive a notice, substantially in the form attached to the Order as <u>Schedule 4</u> , in lieu of a Solicitation Package.
5, 6, 7, 8	Impaired—Deemed to Reject	Will receive a notice, substantially in the form attached to the Order as <u>Schedule 5</u> , in lieu of a Solicitation Package.
N/A	Disputed Claims	Holders of Claims that are subject to a pending objection by the Debtors are not entitled to vote the disputed portion of their claim. As such, Holders of such Claims will receive a notice, substantially in the form attached to the Order as <u>Schedule 6</u> (which notice shall be served together with such objection).

35. The Debtors will not provide the Holders of Class 5 Intercompany Claims, Class 6 Interests in Armstrong, Class 7 Intercompany Interests, or Class 8 Section 510(b) Claims with a Solicitation Package or any other type of notice in connection with solicitation. Intercompany Claims, Interests in Armstrong, Intercompany Interests, and Section 510(b) Claims, will be cancelled with no distribution made on account of the Intercompany Claims, Interests in

Armstrong, Intercompany Interests, and Section 510(b) Claims (as applicable). Thus, Holders of Intercompany Claims, Interests in Armstrong, Intercompany Interests, and Section 510(b) Claims will not be entitled to vote to accept or reject the Plan. Nevertheless, in light of the fact that the Intercompany Claims and Intercompany Interests are all held by the Debtors or affiliates of the Debtors, the Debtors are requesting a waiver from any requirement to serve Solicitation Packages upon such Holders of Intercompany Claims and Intercompany Interests. Moreover, approximately 97 percent of the Interests in Armstrong are held by RRHP, which has previously committed to support this Plan, and the Debtors do not believe that there are any Section 510(b) Claims. Therefore, a waiver of the requirement to serve Solicitation Packages upon Holders of Claims and Interests set forth in Classes five through eight is appropriate.

36. Each of the Non-Voting Status Notices will include, among other things: (a) instructions as to how to view or obtain copies of the Disclosure Statement (including the Plan and the other exhibits thereto), the Order, and all other materials in the Solicitation Package (*excluding* Ballots) from the Claims and Noticing Agent free of charge and/or the Court's website via PACER; (b) a disclosure regarding the settlement, release, exculpation, and injunction language set forth in Article X of the Plan; (c) notice of the Plan Objection Deadline; (d) notice of the Confirmation Hearing Date; and (e) information related thereto.

37. The Debtors believe that the mailing of Non-Voting Status Notices in lieu of Solicitation Packages satisfies the requirements of Bankruptcy Rule 3017(d). Accordingly, unless the Court orders otherwise, the Debtors do not intend to distribute Solicitation Packages to Holders of Claims and Interests in the Non-Voting Classes.

38. The Debtors further request that they not be required to mail Solicitation Packages or other solicitation materials to: (a) Holders of Claims that have already been paid in full during

the chapter 11 cases or that are authorized to be paid in full in the ordinary course of business pursuant to an order previously entered by this Court; or (b) any party to whom the Disclosure Statement Hearing Notice was sent but was subsequently returned as undeliverable.

I. The Court Should Approve the Notices to Contract and Lease Counterparties.

39. Article V of the Plan, except as otherwise provided herein, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, including, without limitation, any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be assumed or assumed and assigned to NewCo or another third party, as applicable, as set forth in the Transaction Agreement; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; (5) is a D&O Policy; or (6) is the Transaction Agreement or the HoldCo/NewCo Documentation. Entry of the Confirmation and Sale Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments, and rejections, including the assumption and assignment of the Executory Contracts or Unexpired Leases as provided in the Transaction Agreement and the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. *See* Plan at Art. V.A. Additionally, Article V.C. of the Plan provides that the Debtors will provide Cure Notices of proposed assumption and proposed amounts of Cure Claims to the applicable third parties. *Id.* at Art. V.C.

40. To ensure that counterparties to Executory Contracts and Unexpired Leases receive notice of assumption or rejection of their Executory Contract or Unexpired Lease (and any corresponding Cure Claim) pursuant to the Plan, the Debtors will mail an Assumption Notice or a Rejection Notice, as appropriate, within the time periods specified in the Plan.

J. The Court Should Approve the Voting Record Date, Solicitation Deadline, and Voting Deadline.

41. Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection with the confirmation of a plan, “creditors and equity security Holders shall include Holders of stocks, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes. Fed. R. Bankr. P. 3018(a). Similarly, Bankruptcy Rule 3017(c) provides that before approving a disclosure statement, the Court must fix a time within which holders of claims and interests may accept or reject a plan and may fix a date for the hearing on confirmation of a plan. *See* Fed. R. Bankr. P. 3017(c).

42. The Debtors request that the Court exercise its authority under Bankruptcy Rules 3017(d) and 3018(a) and Local Bankruptcy Rule 3018 to establish December 18, 2017, as the Voting Record Date. Moreover, the Debtors propose that, with respect to any transferred Claim, the transferee shall be entitled to receive a Solicitation Package and, if the Holder of such Claim is entitled to vote with respect to the Plan, cast a Ballot on account of such Claim *only if*: (a) all actions necessary to effectuate the transfer of the Claim pursuant to Bankruptcy Rule 3001(e) have been completed by the Voting Record Date or (b) the transferee files by the Voting Record Date (i) the documentation required by Bankruptcy Rule 3001(e) to evidence the

transfer and (ii) a sworn statement of the transferor supporting the validity of the transfer. In the event a Claim is transferred after the Voting Record Date, the transferee of such Claim shall be bound by any vote on the Plan made by the Holder of such Claim as of the Voting Record Date.

43. The Debtors request that, after the Debtors distribute Solicitation Packages to Holders of Claims entitled to vote on the Plan by the Solicitation Deadline, the Court require that all Holders of Claims entitled to vote on the Plan complete, execute, and return their customized Ballots so that they are *actually received* by the Claims and Noticing Agent on or before the Voting Deadline.

44. The foregoing timing and materials will afford Holders of Claims entitled to vote on the Plan at least 28 days within which to review and analyze such materials and subsequently make an informed decision as to whether to vote to accept or reject the Plan before the Voting Deadline consistent with the requirements of the applicable Bankruptcy Rules. *See* Fed. R. Bankr. P. 3017(d) (after approval of a disclosure statement, the debtor must transmit the plan, the approved disclosure statement, a notice of the time within which acceptances and rejections of such plan may be filed, and any other information that the court may direct to certain Holders of claims). Accordingly, the Debtors request that the Court approve the form of, and the Debtors' proposed procedures for distributing, the Solicitation Packages to the Holders of Claims in the Voting Classes.

III. The Court Should Approve the Procedures for Confirming the Plan.

A. The Court Should Approve the Confirmation Hearing Date.

45. Section 1128 of the Bankruptcy Code provides that a court shall hold a hearing on confirmation of a plan and provides that parties in interest can object to confirmation. 11 U.S.C. § 1128. Additionally, Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure statement, a court may fix a time for the hearing on confirmation of a plan. Fed. R.

Bankr. P. 3017(c). In accordance with Bankruptcy Rule 3017(c) and section 1128 of the Bankruptcy Code, the Debtors request that the Court establish January 31, 2018, at 10:00 a.m. prevailing Central Time as the Confirmation Hearing Date. The Debtors further request that the Confirmation Hearing may be continued from time to time by the Court or the Debtors without further notice to parties in interest other than such adjournment announced in open court and/or a notice of adjournment filed with the Court and served on the 2002 List.

B. The Court Should Approve the Procedures for Filing Objections to the Plan.

46. Bankruptcy Rules 2002(b) and (d) require no less than 28 days' notice to all Holders of Claims of the time fixed for filing objections to the hearing on confirmation of a chapter 11 plan. The Debtors request that the Court establish January 19, 2018, at 4:00 p.m. prevailing Central Time as the Plan Objection Deadline.

47. The Debtors also request that the Court direct the manner in which parties in interest may object to confirmation of the Plan. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served "within a time fixed by the court." Fed. R. Bankr. P. 3020(b)(1). The Confirmation Hearing Notice will require that objections to confirmation of the Plan or requests for modifications to the Plan, if any, must:

- a. be in writing;
- b. conform to the Bankruptcy Rules, the Local Bankruptcy Rules, and any orders of the Court;
- c. state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection; and
- d. be filed with the Court (contemporaneously with a proof of service) upon the applicable notice parties so to be *actually received* on or before the Plan Objection Deadline.

48. The Debtors also request that they (and other parties in support of the Plan) be permitted to file a reply to any objections to Confirmation of the Plan by January 26, 2018, at 4:00 p.m., prevailing Central Time.

49. Finally, the Debtors request that the Court establish January 26, 2018, at 4:00 p.m., prevailing Central Time, as the Confirmation Brief Deadline.

50. The Debtors believe that the Plan Objection Deadline, the Plan Objection Response Deadline, and the Confirmation Brief Deadline will afford the Court, the Debtors, and other parties in interest reasonable time to consider the objections and proposed modifications prior to the Confirmation Hearing.

Non-Substantive Modifications

51. The Debtors request authorization to make non-substantive changes to the Disclosure Statement, Disclosure Statement Hearing Notice, Plan, Confirmation Hearing Notice, Solicitation Packages, Non-Voting Status Notices, Ballots, Publication Notice, Cover Letter, Solicitation and Voting Procedures, Assumption and Rejection Notices, Voting and Tabulation Procedures, and related documents without further order of the Court, including changes to correct typographical and grammatical errors, if any, and to make conforming changes to the Disclosure Statement, the Plan, and any other materials in the Solicitation Packages before distribution, in each case in accordance with the Restructuring Support Agreement and the Plan, as applicable.

Reservation of Rights

52. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' or any other party in interest's rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their right to

contest any claim related to the relief sought herein. Likewise, if the Court grants the relief sought herein, any payment made pursuant to an order of the Court is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

Modification of Local Rule 3018-C

53. The Debtors propose that they should be required to bring electronic images of the original Ballots returned to the proposed Claims and Noticing Agent to the Confirmation Hearing in flash drive or similar format and make such electronic copies available to any party at the Confirmation Hearing. The Debtors submit that, because of the voluminous number of Ballots that the proposed Claims and Noticing Agent expects to receive, it would be extremely burdensome to bring the original Ballots to the Confirmation Hearing, as otherwise would be required under Local Bankruptcy Rule 3018-C.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

54. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

55. The Debtors will provide notice of this motion to: (a) the U.S. Trustee; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the indenture trustee under the Debtors' 11.75% senior secured notes due 2019; (d) counsel to the ad hoc group of holders of the Debtors' 11.75% senior secured notes due 2019; (e) counsel to Knight Hawk Holdings, LLC; (f) the United States Attorney's Office for the Eastern District of Missouri; (g) the Internal Revenue Service; (h) the Environmental Protection

Agency; (i) the office of the attorneys general for the states in which the Debtors operate; (j) the Securities and Exchange Commission; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

56. No prior motion for the relief requested herein has been made to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Order, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

St. Louis, Missouri

Dated: November 8, 2017

/s/ Richard W. Engel, Jr.

Richard W. Engel, Jr. (MO 34641)

Erin M. Edelman (MO 67374)

John G. Willard (MO 67049)

ARMSTRONG TEASDALE LLP

7700 Forsyth Boulevard, Suite 1800

St. Louis, Missouri 63105

Telephone: (314) 621-5070

Facsimile: (314) 621-2239

Email: rengel@armstrongteasdale.com
eedelman@armstrongteasdale.com
jwillard@armstrongteasdale.com

- and -

James H.M. Sprayregen, P.C.

Ross M. Kwasteniet, P.C. (admitted *pro hac vice*)

William A. Guerrieri (admitted *pro hac vice*)

Travis M. Bayer (admitted *pro hac vice*)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

Email: james.sprayregen@kirkland.com
ross.kwasteniet@kirkland.com
will.guerrieri@kirkland.com
travis.bayer@kirkland.com

-and-

Jonathan S. Henes, P.C.

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Email: jonathan.henes@kirkland.com

Counsel to the Debtors