UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	Chapter 11
ARMSTRONG ENERGY, INC., *et al.*,	)	Case No. 17-47541-659
Debtors.	)	Jointly Administered
	)	Hearing Date: January 16, 2018
	)	Hearing Time: TBD
	)	Hearing Location: Courtroom 7 North

DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE DEBTORS' PROPOSED NON-INSIDER RETENTION PROGRAM AND (II) 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 "Proposed Order"):[2] (a) approving the Debtors' Non-Insider Retention Program (as defined herein) for approximately 510 non-insider employees (collectively, the "Program Participants"), providing for an award pool of approximately $255,000 in the aggregate; and (b) granting related relief. In support of this motion, the Debtors submit the declaration of Alan Boyko (the "Boyko Declaration"), the Debtors' Chief Restructuring Officer, attached hereto as **Exhibit A**.

[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").

[2] A copy of the Proposed Order will be provided to the Notice Parties (as defined below) and made available on the Debtors' case information website at https://www.donlinrecano.com/armstrong.

Introduction

2. The Debtors seek authority to honor obligations arising under the Non-Insider Retention Program that will be earned upon the effective date of the Debtors' chapter 11 plan. The Debtors have an immediate need to both motivate employees to continue to perform at their highest levels and reduce employee attrition for the duration of these chapter 11 cases. The Debtors stand poised to execute on a restructuring transaction that will maximize the value of their estates, but much work remains to be done between now and February 2018—the anticipated closing of the Debtors' transaction.

3. The Non-Insider Retention Program targets substantially all of the Debtors' non-insider, rank-and-file workforce, whose continued retention and employment is necessary to preserve and maximize value as the Debtors work to effectuate an orderly transfer of the Debtors' assets. Indeed, the Program Participants comprise the same employees that participate in the Debtors' ordinary course, non-insider incentive award programs approved as part of the *Debtors' Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* [Docket No. 201].

4. The knowledge, experience, and expertise of these rank-and-file Program Participants are essential to preserving operational stability during these chapter 11 cases. Moreover, the trajectory of these chapter 11 cases make such a retention program particularly necessary. Because the Debtors plan to transfer substantially all of their assets, the Program Participants have no guarantee of long-term employment with the Debtors or any successor.

5. The Debtors have maintained an open dialogue with their employees and have been candid that there can be no assurance that the employees will be offered a job with the entity acquiring the Debtors' assets. Indeed, because the decision to make job offers largely rests

with a third-party entity, the Debtors will be forced in the coming days to provide an advance notification of potential mass layoffs of their employees to avoid possible liabilities under the Worker Adjustment and Retraining Notification Act of 1988 (the "WARN Act"). Unless the Debtors take preventative measures, they anticipate that their WARN Act notice could result in a potential exodus of a substantial portion of their workforce. The loss of large numbers of the Debtors' personnel could seriously disrupt the Debtors' ability to operate and would be detrimental to stakeholder value.

6. The Debtors, with the assistance of their advisors, have therefore developed an appropriately tailored retention program for non-insider employees designed to maintain operational integrity and to preserve economic value. Under the Non-Insider Retention Program, Program Participants who remain employees of the Debtors through the effective date of the Debtors' chapter 11 cases (the "Effective Date") will each be granted an award of $500—in the aggregate, this amounts to no more than $255,000. Awards will be paid in a lump sum after the Effective Date, and will coincide with the Program Participants' final paychecks from the Debtors (the "Payment Date"). Payments will only be made to Program Participants that are (a) employed by the Debtors through the Effective Date and who continue to perform all of their duties and responsibilities in the ordinary course, or (b) terminated without cause prior to the Payment Date. Program Participants will receive the award regardless of whether they are offered employment by the entity acquiring the Debtors' assets. Importantly, the Program Participants are the same employees that participate in the Debtors' ordinary course, non-insider incentive award programs. No insider (as that term is defined by section 101(31) of the Bankruptcy Code) is a Program Participant.

7. The Debtors and their advisors have discussed the details of the Non-Insider Retention Program with the advisors to the ad hoc group of secured bondholders, which supports

the relief requested herein. The Debtors will continue to engage in discussions with their primary creditor constituencies, including the official committee of unsecured creditors, as well as with the Office of the United States Trustee, prior to the hearing on this motion.

8. The Debtors believe it is important to provide direction and incentive opportunities to their workforce, especially in light of their anticipated WARN Act notices. Implementing this program is essential to maintaining employee morale and minimizing the adverse effects of these chapter 11 cases on the Debtors' ongoing business operations. For the reasons described below, making payments under the Non-Insider Retention Program is reasonable in cost, will generate substantial additional value in these chapter 11 cases, and complies with all applicable provisions of the Bankruptcy Code. The Debtors accordingly ask that the Court approve the relief requested in the motion.

Background

9. The Debtors are a leading producer of low-chlorine, high-sulfur thermal coal from the Illinois Basin in Western Kentucky, 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.

10. 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. These chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 86]. 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].

Jurisdiction and Venue

11. 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 rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), 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.

12. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief requested herein are sections 363(b) and 503(c)(3) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") and Bankruptcy Rule 6004.

The Non-Insider Retention Program

13. The Debtors' proposed non-insider program (the "Non-Insider Retention Program") will provide a $500 cash payment to approximately 510 non-insider employees. The Non-Insider Retention Program provides that each Program Participant will be eligible to receive the applicable award as a single, lump sum cash payment (net of any applicable taxes or withholdings) on the Payment Date. A Program Participant will be entitled to an award if the Program Participant is either: (a) employed by the Debtors through the Effective Date and who continue to perform all of their duties and responsibilities in the ordinary course, or (b) terminated without cause prior to the Payment Date.

I. The Non-Insider Employee Retention Program Participants

14. The Debtors employ approximately 600 employees (collectively, the "Employees") on a full- or part-time basis between their mines and their headquarters. The Program Participants comprise approximately 510 non-insider employees at the supervisor level or below, including underground mechanics, roof bolters, miner operators, car drivers, and various other laborers. None of the Program Participants exercise material levels of control over the Debtors' governance, budgeting, operations, or strategic direction, as to warrant "insider" status. Furthermore, none of the Program Participants play any exclusive role in setting material company policies, but rather ensure that the Debtors' company policies are followed.

15. The Program Participants are necessary to keep the Debtors' business operating, to preserve and maximize value to stakeholders, and to effect the Debtors' proposed restructuring transaction. The Program Participants have the knowledge and skills necessary to continue the Debtors' mining operations and have garnered valuable relationships with various third parties—including vendors and customers—whose participation in the restructuring process is critical. More specifically, the Program Participants have an intimate understanding of various operational intricacies, leases, customer relationships, and vendor contracts that would be difficult to replace without also requiring the Debtors to incur substantial costs in that process. As set forth more fully in the Boyko Declaration, the Debtors and their advisors believe the award opportunities provided under the Non-Insider Retention Program are reasonable under the circumstances of these chapter 11 cases.

II. The Need for the Non-Insider Retention Program.

16. The Debtors have an immediate business need for the Non-Insider Retention Program. The Debtors believe that there is a material risk of employee loss because (a) the Debtors will not be reorganizing their estates and are instead transferring substantially all of

their assets and operations to a third-party acquirer and (b) the Debtors will be issuing a WARN Act notice to all employees shortly after filing this motion.

17. The Program Participants recognize that they will not be employed by the Debtors for the long term and may already be looking for new employment opportunities. Employee attrition during this critical phase of the restructuring could severely disrupt the Debtors' business operations and would likely force the Debtors to incur costs and suffer operational delays as the Debtors would need to spend both time and money locating, recruiting, hiring, and training new individuals to take over various critical functions at increased compensation levels, given the short-term duration of such employment, or pay substantially higher costs to have their retained professionals undertake such tasks. To avoid the potential for increased costs and disruption to their businesses, the Debtors have determined that the Non-Insider Retention Program is both necessary and appropriate.

Basis for Relief

18. The Non-Insider Retention Program reflects a sound exercise of the Debtors' business judgment and should be approved pursuant to sections 363(b) and 503(c)(3) of the Bankruptcy Code. The Debtors respectfully submit that the provisions otherwise applicable to retention programs pursuant to section 503(c)(1) of the Bankruptcy Code are inapplicable here because no "insiders" (as that term is defined by section 101(31) of the Bankruptcy Code) will participate in the proposed Non-Insider Retention Program.

I. The Non-Insider Retention Program Is a Sound Exercise of the Debtors' Business Judgment.

19. The Non-Insider Retention Program is appropriate under section 363(b)(1) of the Bankruptcy Code. Section 363(b)(1) provides, in relevant part, that debtors "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the

estate." 11 U.S.C. § 363(b)(1). Under section 363(b), courts require only that the debtor "show that a sound business purpose justifies such actions." *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted); *see also In re Patriot Coal Corp.*, 492 B.R. 518, 530–31 (Bankr. E.D. Mo. 2013) ("Any transfer made outside the ordinary course of business . . . must be justified by the facts and circumstances of the case, which ordinarily means that the business judgment standard of Section 363(b) applies"). Moreover, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that "[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task").

20. Here, the business justification supporting the Non-Insider Retention Program is clear because the Debtors need to reduce turnover during this critical phase of their chapter 11 cases. The Program Participants are intimately familiar with the Debtors' operations and many have knowledge that will expedite the Debtors' restructuring efforts and the orderly wind-down of the Debtors' business. If the Debtors lose these employees, they will need to either expend resources recruiting, hiring, and training new individuals, or pay substantially higher costs to have their professionals undertake the tasks necessary to operate their businesses and consummate their restructuring. The Debtors believe that the cost of losing the Program Participants' knowledge and skills is much greater than the aggregate cost of the Non-Insider Retention Program. Retaining the Program Participants will maintain operational stability during the restructuring process and allow the Debtors to focus their efforts on maximizing, preserving, and realizing on the value of all remaining assets of their bankruptcy estates, for the benefit of all

stakeholders. The Debtors further believe the Non-Insider Retention Program will improve employee morale overall and incentivize rank-and-file employees to remain with the Debtors during this critical period. In sum, the Debtors believe that the Non-Insider Retention Program is vital to retaining the Program Participants and protecting the value of the estates.

21. Courts in this circuit and others have approved retention programs similar to the Non-Insider Retention Program as reflecting a sound exercise of a debtor's business judgment. *See, e.g.*, *In re Patriot Coal Corp.*, 492 B.R. 518 (Bankr. E.D. Mo. 2013) (approving a retention plan for non-insider employees); *In re Falcon Products, Inc.*, No. 05-41108-399 (BSS) (Bankr. E.D. Mo. June 2, 2005) (Docket No. 578) (same); *In re Peabody Energy Corporation*, No. 16-42529-399 (BSS) (Bankr. E.D. Mo. June 16, 2016) (Docket No. 776) (same); *In re Furniture Brands Int'l, Inc.*, No. 13-12329 (CSS) (Bankr. D. Del. Oct. 11, 2013 (same); *In re Samson Resources Corporation* No. 15-11934 (CSS) (Bankr. D. Del. Feb. 9, 2016) (same). Accordingly, the Debtors respectfully submit that the Court should authorize the Debtors to implement the Non-Insider Retention Program as a sound exercise of their business judgment.

II. The Non-Insider Retention Program Is Justified By the Facts and Circumstances of These Chapter 11 Cases.

22. The Non-Insider Retention Program is also appropriate under section 503(c)(3) of the Bankruptcy Code. Section 503(c) limits payments to insiders and employees of the Debtors. Sections 503(c)(1) and (2) limit payments to insiders of a debtor; these subsections are not applicable here, as none of the Program Participants are insiders. Section 503(c)(3), which does apply, prohibits "other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to . . . officers, managers, or consultants hired after the date of the filing of the petition." 11 U.S.C. § 503(c)(3).

23. The "facts and circumstances" justification test "creates a standard no different that the business judgment standard under section 363(b) of the Bankruptcy Code." *In re Borders Grp., Inc.*, 453 B.R. 459, 473 (Bankr. S.D.N.Y. 2011) (citations omitted); *see also Patriot Coal*, 492 B.R. at 530-31 ("Any transfer made outside the ordinary course of business . . . must be justified by the facts and circumstances of the case, which ordinarily means that the business judgment standard of Section 363(b) applies."); *In re Nobex Corp.*, No. 05-20050 (MFW), 2006 WL 4063024, at * 3 (Bankr. D. Del. Jan. 19, 2006) (concluding that the standard under section 503(c)(3) reiterates the business judgment standard).

24. In determining whether a retention plan meets the business judgment test, a court may consider the following factors:

- Is there a reasonable relationship between the plan proposed and the results to be obtained, *i.e.*, will the employee stay for as long as it takes for the debtor to reorganize or market its assets, or, in the case of a performance incentive, is the plan calculated to achieve the desired performance?
- Is the cost of the plan reasonable in the context of the debtor's assets, liabilities and earning potential?
- Is the scope of the plan fair and reasonable; does it apply to all employees; does it discriminate unfairly?
- Is the plan or proposal consistent with industry standards?
- What were the due diligence efforts of the debtor in investigating the need for a plan; analyzing which employees need to be incentivized; what is available; what is generally applicable in a particular industry?
- Did the debtor receive independent counsel in performing due diligence and in creating and authorizing the incentive compensation?

Patriot Coal, 492 B.R. at 531 (citing *In re Dana Corp.*, 358 B.R. 567, 576-77 (Bankr. S.D.N.Y. 2006)). These factors all support a finding that the Non-Insider Retention Program as presented here is a sound exercise of the Debtors' business judgment.

25. The Debtors worked with their outside advisors to structure the Non-Insider Retention Program to achieve the desired results. The Non-Insider Retention Program is a sound exercise of business judgment because it allows the Debtors to avoid the cost and delay associated with the loss of personnel and experience. *See, e.g.*, *In re Residential Capital, LLC*, 491 B.R. 73, 85 (Bankr. S.D.N.Y. 2013) ("The continuity promoted, and the institutional knowledge preserved, by the retention of such employees will increase the chances of successfully implementing the Debtors' wind-down plan."). As discussed above, there is a risk of attrition of the Program Participants, and a loss of the Program Participants would disrupt the Debtors' ability to preserve and maximize value for the benefit of their stakeholders. Because the cost of the Non-Insider Retention Program is reasonable and would likely mitigate flight risk of the Program Participants, the Non-Insider Retention Program is justified by the facts and circumstances of these chapter 11 cases and is a sound exercise of the Debtors' business judgment. *See, e.g.*, *In re Mesa Air Grp., Inc.*, No. 10-10018 (MG), 2010 WL 3810899, *4 (Bankr. S.D.N.Y. Sept. 24, 2010) (holding that bonus payments are "'justified by the facts and circumstances of the case' under section 503(c)(3) [where] they are within the 'sound business judgment' of the Debtors" (citation omitted)).

26. The cost of the Non-Insider Retention Program is also reasonable considering the Debtors' assets and liabilities. The Debtors made the conscious decision to incentivize the retention of substantially all of their workforce because these employees provide vital services necessary for the functioning of the Debtors' day-to-day business operations. The Non-Insider Retention Program is large enough to cover all rank-and-file employees who remain with the Debtors through the restructuring process but costs no more than necessary to incentivize the Program Participants to continue providing these services to the Debtors.

27. Similarly, the scope of the Non-Insider Retention Program is reasonable and fair. The Debtors designed this program to cover to substantially all their non-insider employees, and did not differentiate or seek to unfairly discriminate against any certain type of employee. The Debtors maintain an efficient operation, and each of the Debtors' employees are vital to its success and essential to the business during these chapter 11 cases.

28. The Non-Insider Retention Program is also appropriate under the remaining three factors cited above. The total amount proposed is a very small amount as compared to other employee incentive and retention plans. *See Patriot Coal*, 492 B.R. at 533 (approving a $6.9 million compensation plan). In addition, because of the Debtors' small workforce, it is imperative that the Non-Insider Retention Program include substantially all of the Debtors' non-insider employees in order to provide a holistic and consistent message of appreciation and need through the Debtors' rank-and-file, and to counter any negative effects of the impending WARN Act notice.

29. In total, the Debtors respectfully submit that the Non-Insider Retention Program is a sound exercise of the Debtors' business judgment, is justified by the facts and circumstances of these chapter 11 proceedings, and that, if approved, the Non-Insider Retention Program will promote an increase in the value of the Debtors' estates for the benefit of the Debtors, their creditors, and other stakeholders.

Notice

30. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the Eastern District of Missouri; (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) counsel to the official committee of unsecured creditors; (g) the United States Attorney's

Office for the Eastern District of Missouri; (h) the Internal Revenue Service; (i) the Environmental Protection Agency; (j) the office of the attorneys general for the states in which the Debtors operate; (k) the Securities and Exchange Commission; and (l) 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

31. No prior request for the relief sought in this motion 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 Proposed Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

St. Louis, Missouri
Dated: December 12, 2017

/s/ Richard W. Engel, Jr.

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EXHIBIT A

Boyko Declaration

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	Chapter 11
ARMSTRONG ENERGY, INC., *et al.*,	)	Case No. 17-47541-659
Debtors.	)	Jointly Administered

DECLARATION OF ALAN BOYKO IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE DEBTORS' PROPOSED NON-INSIDER RETENTION PROGRAM AND (II) GRANTING RELATED RELIEF

I, Alan Boyko, hereby declare under penalty of perjury:

1. I am the Chief Restructuring Officer of Armstrong Energy, Inc. ("Armstrong" and together with its debtor affiliates, the "Debtors").[1] I have served in this position since August 2017. In such capacity, I am familiar with the Debtors' day-to-day operations, business and financial affairs, and books and records. I am above 18 years of age, and I am competent to testify.

2. I am familiar with the terms of the Debtors' Non-Insider Retention Program as set forth in the *Debtors' Motion for Entry of an Order (I) Approving the Debtors' Proposed Non-Insider Retention Program And (II) Granting Related Relief* (the "Motion"), and I am duly authorized to submit this declaration (the "Declaration") on behalf of the Debtors in support of the Motion.

[1] All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion (as defined herein).

Background and Qualifications

3. As Chief Restructuring Officer, I oversee the Debtors' accounting, finance, information systems, distribution, internal audit and loss prevention functions and advise on strategic initiatives and their financial impacts. I work closely with the Debtors' management and other professionals, and I am well-acquainted with the Debtors' operations, debt structure, business, employee, and related matters. I received an MBA from Notre Dame, and I am a Certified Insolvency Restructuring Advisor.

4. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors' operations and finances, information learned from my review of relevant documents, and information I have received from other members of the Debtors' management or the Debtors' advisors. If I were called upon to testify, I could and would testify competently to the facts set forth herein on that basis.

Background on Non-Insider Retention Program

5. The Non-Insider Retention Program was designed to help the Debtors retain their non-insider employees during the remainder of the Debtors' restructuring. I believe that the Non-Insider Retention Program provides incentives to the Debtors' rank-and-file employees, while at the same time preserving and enhancing the value of the Debtors' estates. Under the Non-Insider Retention Program, the Debtors propose to implement a retention program for approximately 510 of their employees, providing an award pool of approximately $255,000, with an award opportunity of up to $500 per participant.

I. The Non-Insider Employee Retention Program Participants

6. The Debtors employ approximately 600 employees on a full- or part- time basis between their mines and their home office. Approximately 510 of these employees are non-insider employees at the supervisor level or below, including underground mechanics, roof

bolters, miner operators, car drivers, and various other laborers (collectively, the "Program Participants"). None of the Program Participants exercise material levels of control over the Debtors' governance, budgeting, operations, or strategic direction, nor do any of the Program Participants play any exclusive role in setting material company policies. The Program Participants comprise the same employees that participate in the Debtors' ordinary course, non-insider incentive award programs approved as part of the Debtors' *Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* [Docket No. 201] (the "Wages Order").

7. The Program Participants are necessary for the Debtors to keep their business operating, preserve and maximize value for the stakeholders, and effect the Debtors' proposed restructuring transaction. The Program Participants have the knowledge and skills necessary to continue the Debtors' mining operations and have garnered valuable relationships with various third parties whose continued participation in the restructuring process is critical. Specifically, the Program Participants have an intimate understanding of various operational intricacies, leases, customer relationships, and vendor contracts.

II. The Need for the Non-Insider Retention Program

8. The Debtors have an immediate business need for the Non-Insider Retention Program. I believe there is a material risk of employee loss because (a) the Debtors will not be reorganizing their estates and are instead transferring substantially all of their assets and operations to a third-party acquirer and (b) the Debtors will be issuing a WARN Act notice to all employees shortly after filing the Motion. Employee attrition during this critical phase of the restructuring could severely disrupt the Debtors' business operations and would likely force the Debtors to incur costs and suffer operational delays as the Debtors would need to spend both

time and money locating, recruiting, hiring, and training new individuals to take over various critical functions at increased compensation levels, given the short-term duration of such employment, or pay substantially higher costs to have their retained professionals undertake such tasks.

I believe that the cost of losing the Program Participants' knowledge and skills is much greater than the aggregate cost of the Non-Insider Retention Program. The benefits of the Non-Insider Retention program outweigh any costs associated therewith, and it is a reasonable and appropriate compensation program.

III. The Non-Insider Retention Program is Appropriately Tailored to the Facts and Circumstances of the Chapter 11 Proceedings

9. I believe that the Non-Insider Retention Program is appropriately tailored to the facts and circumstances of the Debtors' restructuring.

10. **First**, the Debtors worked with their advisors to structure the Non-Insider Retention Program to achieve the desired results while providing a net positive impact to the Debtors' estates. As mentioned above, I believe that there is a risk of attrition of the Program Participants, which could significantly disrupt the Debtors' ability to preserve and maximize value for the benefit of their stakeholders. The cost of the Non-Insider Retention Program is reasonable and would likely mitigate flight risk of the Program Participants.

11. **Second**, the cost of the Non-Insider Retention Program is also reasonable in light of the Debtors' assets and liabilities. The program is large enough to cover all rank-and-file employees who remain with the Debtors through the restructuring process but costs no more than necessary to incentivize the Program Participants to continue providing these services to the Debtors. Indeed, the Non-Insider Retention Program payments on an individual basis are

relatively *de minimis* compared to the Debtors' overall assets, but are significant to the Program Participants.

12. **Third**, the Debtors have designed the program to not differentiate or unfairly discriminate against any certain type of employees. I believe that this design will help improve employee morale by providing a holistic and consistent message of appreciation and need, while also maintaining an efficient operation.

13. **Finally**, I believe the award opportunities provided under the Non-Insider Retention Program are reasonable under the circumstances.

[*Remainder of page intentionally left blank*]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed on: December 12, 2017

By: */s/ Alan Boyko*
Alan Boyko
Armstrong Energy, Inc.
Chief Restructuring Officer