

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
Westmoreland Coal Company, <i>et al.</i> ,)	
)	Case No. 18-35672 (DRJ)
Debtors.)	
)	Jointly Administered

COMMENT AND LIMITED OBJECTION OF FIRST SURETY CORPORATION AND WESTCHESTER FIRE INSURANCE COMPANY TO JOINT MOTION OF THE WLB DEBTORS AND THE WMLP DEBTORS FOR ENTRY OF AN ORDER (I) APPROVING THE SALE OF (A) SUBSTANTIALLY ALL OF THE ASSETS OF OXFORD MINING COMPANY, LLC, AND CERTAIN OF ITS SUBSIDIARIES AND (B) THE BUCKINGHAM MINE, (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH, AND (III) GRANTING RELATED RELIEF, INCLUDING APPROVAL OF THE RELATED SALE PROCESS

First Surety Corporation (“First Surety”) and Westchester Fire Insurance Company (“Westchester”), by and through their undersigned counsel, hereby submit this Comment and Limited Objection to the Joint Expedited Motion of the WLB Debtors and the WMLP Debtors for Entry of an Order (I) Approving the Sale of (A) Substantially all of the Assets of Oxford Mining Company, LLC, and certain of its Subsidiaries and (B) the Buckingham Mine, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection therewith, and (III) Granting Related Relief, including Approval of the Related Sale Process (Dkt. Entry No. 1116) (the “Joint Motion”). In support of their Comment and Limited Objection, First Surety and Westchester assert and allege as follows:

I. JURISDICTION

1. This Court has jurisdiction over this “core” proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

2. Venue lies properly in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. SUMMARY

3. First Surety issued approximately \$18 million in surety bonds on behalf of the Debtors in connection with mining assets and related liabilities that are subjects of the Joint Motion. First Surety issued the bonds as consideration for the execution by the Debtors of certain indemnity and/or coal bond reclamation agreements. The Debtors' obligations to First Surety in respect of those bonds and those indemnity and/or coal bond reclamation agreements are secured by cash in possession of First Surety in the amount of approximately \$2.8 million. For its part, Westchester issued just under \$400,000 in surety bonds on behalf of the Debtors in connection with mining assets and related liabilities that are subjects of the Joint Motion. Westchester issued its bonds as consideration for the Debtors' execution of certain indemnity agreements.

4. First Surety and Westchester (collectively, the "Sureties") have consistently stated¹ that they support the efforts of the Debtors to transition their mining assets to new operators that are willing and able to obtain new mining permits and to assume all related reclamation obligations and replace all related bonds, all in accordance with applicable regulatory requirements and without otherwise impairing the Sureties' rights with respect to their existing bonds, their indemnity agreements, and their collateral. Moreover, because the WLB Debtors and the WMLP Debtors are so inter-related (i.e. the WMLP Debtors are operated by the WLB Debtors pursuant to a Shared Services Agreement) (see Objection of the WMLP Debtors to Confirmation of the Joint Chapter 11 Plan of the WLB Debtors, Docket Entry No. 1200), the Sureties (and others) have argued that the ultimate resolution of the WMLP assets and obligations will likely impact the

¹ On November 8, 2018, the Sureties filed their Objection to the WLB Debtors' Motion Authorizing the Debtors to Enter Into and Perform under the Stalking Horse Purchase Agreement and Approving Bidding Procedures with respect to Substantially All Assets (Dkt. Entry No. 368). On November 30, 2018, the Sureties objected to the WLB Debtors' Disclosure Statement (Dkt. Entry No. 633).

ability of the Debtors to realize the full value of sales contemplated by the WLB Debtors under their Plan.

5. By the Joint Motion, the WLB Debtors and the WMLP Debtors have proposed a resolution for a subset of their mining assets and related reclamation obligations. Specifically, the Joint Motion seeks approval of sales that contemplate the transition of mining assets and related reclamation liabilities (i) of WMLP Debtor Oxford Mining Company, LLC, and its subsidiaries, including, Harrison Resources, LLC (collectively the “Oxford Sellers” and the assets and related liabilities, the “Oxford Assets”) to Merida Natural Resources, LLC (the “Oxford Stalking Horse Bidder”) pursuant to a related Stalking Horse Purchase Agreement (the “Oxford APA”) and (ii) of WLB Debtors Buckingham Coal Company, LLC and WCC Land Holding Company, LLC (collectively, the “Buckingham Sellers” and the assets and related liabilities, the “Buckingham Assets”) to Bayou Coal Partners, LLC and Merida Natural Resources, LLC (collectively, the “New Buckingham Bidder”) pursuant to an Asset Purchase Agreement (the “Buckingham APA” along with the Oxford APA, sometimes, collectively, the “APAs”). These proposed transactions, along with the transactions contemplated under the WLB Plan and under a recent motion filed by the WMLP Debtors relating to Westmoreland Kemmerer Fee Coal Holdings, LLC (the “Kemmerer Transactions”) indicate that the Debtors are working toward an overall solution that addresses all reclamation obligations in accordance with the Debtors obligations under applicable law.

6. However, the Joint Motion and the related APAs lack clarity with respect to the potential (intended or unintended) impact of the transactions on the Sureties’ rights under their bonds, indemnity agreements and collateral, and additionally appear to compel the Sureties to assure obligations of entities other than those that are named as principal under the Sureties’ respective bonds.

7. For instance, both the Buckingham APA and the Oxford APA contemplate the transition of mines and mining assets to entities that are obligated to assume all related reclamation obligations. Both APAs also provide that the purchasers will replace the existing bonds. The Buckingham APA provides that the Buyer is not acquiring any collateral of the Sureties relating to the Buckingham Bonds, while the Oxford APA provides that the purchaser is acquiring collateral of the Sureties relating to the Oxford Bonds. In other words, the Debtors seem to be working on the mistaken assumption that the Sureties' collateral will be given to the purchaser prior to the purchaser obtaining release of the Sureties on the bonds that the collateral secures and satisfaction of any obligations under the existing indemnity agreements.

8. As discussed, the Sureties issued their respective bonds as consideration for the Debtors' execution of certain indemnity and related agreements. In First Surety's case, the Debtors' obligations to First Surety are secured by certain cash collateral in possession of First Surety. First Surety has no obligation to release any of its collateral unless and until its bonds have been replaced and released, and all obligations of the Debtors to First Surety have been satisfied in full. Thus, the disposition of First Surety's collateral is not subject to treatment under the APAs, and an order approving the transactions at issue should clarify that neither the transactions, the APAs, nor any other document or agreement relating to the transactions shall be deemed to alter, limit or modify the Sureties' rights under their respective bonds, their indemnity agreements, or their collateral.

9. Next, both APAs also allow the purchaser to operate mining assets under the permits prior to transfer of the permits (and related replacement of existing bonds) which, in effect, could be deemed to require the Sureties (whose bonds support the existing permits) to involuntarily "bond" the purchaser under the existing bonds without the Sureties' consent or approval. As

discussed below, the Sureties' bonds assure only the operations and obligations of the named principals under the bonds, and no further. Thus, the sureties have no obligation to assure performance of the buyers under the existing bonds and object to any provision in the APAs that requires or could be deemed to require otherwise.

10. The Sureties are working with the WLB Debtors and the WMLP Debtors and the applicable purchasers on language that would preserve and protect the Sureties' rights under their existing bonds, the existing indemnity agreements, and in the existing collateral, and provide a mechanism to transfer to the surety providing replacement bonds any collateral remaining after (i) all existing surety bonds are replaced and released, and (ii) all obligations of the WLB Debtors and the WMLP Debtors under the existing indemnity agreements are fully satisfied. First Surety is working with the Debtors and the purchasers on a surety bond facility for the purchaser, and as such, may be willing to consider mechanisms that addresses interim mining operations between the closing date and permit transfer. Westchester has advised the Debtors that it does not intend to provide replacement bonding to the purchaser, such that provisions for transfer of mining operations need to ensure that new bonding from a replacement surety is in place for the relatively few mining permits currently bonded by Westchester.

III. BACKGROUND

A. The Debtors Mining Operations and Related Environmental Obligations.

11. Domestically, the Debtors operate underground and surface coal mining operations under the authority of several state and federal environmental and mine safety laws, including the federal Surface Mining Control and Reclamation Act ("SMCRA"), the Mine Safety and Health Act of 1977 ("Mine Safety Act"), and the Clean Water Act. SMCRA and its state counterparts require that mining and related operations be conducted only under authority of a permit issued by

the applicable regulatory authority. Although it is a federal statute, SMCRA allows states to implement the program within their boundaries with federal approval. The states where Debtors operate have been granted authority by the United States Department of Interior's Office of Surface Mining ("OSM") to implement SMCRA according to approved state statutory, regulatory, and administrative programs. In the context of this chapter 11 proceeding, 28 U.S.C. § 959 requires the Debtors to operate their businesses in compliance with these laws.

12. To mitigate the potential adverse impacts on the environment, mining operations must first obtain SMCRA-mandated state mining permits that carry with them the obligation to reclaim the sites disturbed by mining. The obligations under those permits include restoring the land affected by mining to a condition capable of supporting pre-mining uses, backfilling and grading to the approximate original contour, establishing successful revegetation on the permit area and abating adverse impacts to the waters of the United States.

13. Statutory and regulatory findings demonstrate that surface and underground mining activities result in conditions that present imminent danger to the environment and to human health and safety. 30 U.S.C. § 1201(c); W.Va. Code § 22-3-2(a).² *FY 2016 AML Economic Revitalization Proposal: A Component of the President's Power Plan*, p. 2 (March 2015) (available at www.osmre.gov/resources/budget/economicRevitalizationFS.pdf).

14. Additionally, some states impose priority liens on all assets of a permittee for the amount any reclamation that is required as a result of mining activities. *See* Ohio Rev. Code Ann. § 1513.081 (West 2011).³

² According to the Ohio Department of Natural Resources Division of Mineral Resources, most reclamation is carried out to abate environmental problems. Available at minerals.ohiodnr.gov/abandoned-mine-land-reclamation/aml-reclamation-programs). The Division of Mineral Resources Management is also charged with meeting the requirements of SMCRA. *See* Ohio Rev. Code Ann. § 1513.02(A)(1)(c) (West 2007).

³ "(A) If a permittee becomes insolvent, or an alternative financial security to provide long-term water treatment or a long-term alternative water supply, or both, is not provided in accordance with [division \(F\)\(8\) of section 1513.16 of the Revised Code](#), the division of mineral resources management shall have a priority lien in front of all other interested

15. Finally, the abandonment of mines and related reclamation/environmental obligations could have a significant, detrimental impact on the ability of a purchaser or any of their respective officers, directors and/or shareholders to operate the mines as some states preclude or otherwise limit approval of mining permits for those that have been defaulted under the underlying permit and/or forfeited their performance security (like surety bonds). Further, a default under one permit could trigger automatic defaults under other permits.

B. The Sureties' Bonds and the Debtors' Indemnity and Fiduciary/Trust Obligations.

16. In order to obtain the required state mining permits, the Debtors are required to provide acceptable financial assurances to secure their obligations under the applicable permits. 30 U.S.C. § 1259.

17. Prior to the Petition Date, First Surety issued certain bonds on behalf of and at the request of the Debtors (the "First Surety Bonds") in the aggregate penal amount of approximately \$18 million. The First Surety Bonds were issued by First Surety to various states, including primarily West Virginia and Ohio, to secure the Debtors' obligations in connection with the various and coal mining and related activity permits issued to the Debtors pursuant to applicable state and federal law. In the absence of the First Surety Bonds or other forms of security, the Debtors would be unable to operate their mines in those states.

18. First Surety issued the First Surety Bonds as consideration for (i) the execution by certain of the Debtors of that certain Coal Reclamation Bond Agreement dated December 16, 2016, and related Collateral Agreement, and (ii) the execution by certain of the Debtors of that certain Coal Reclamation Bond Agreement dated June 28, 2017, and related Collateral Agreement (items

creditors against the assets of that permittee for the amount of any reclamation that is required as a result of the permittee's mining activities."

(i) and (ii), collectively the “CBRA”). The Debtors obligations under the First Surety Bonds and the CBRA are secured by cash in the possession of First Surety of approximately \$2.8 million.

19. Under the CBRA, the applicable Debtors agreed, among other things, to indemnify and save harmless First Surety from and against all liability, loss, costs, damages, attorneys’ fees and other expenses that First Surety may sustain or incur by reason of having issued the First Surety Bonds. Additionally, the CBRA grants a security interest in the cash delivered to First Surety pursuant to the CBRA, and imposes an express trust on all funds generated from the extraction of coal or from the sale and/or transfer of any mines/permits.⁴

20. The right provided under the CBRA are in addition to First Surety’s equitable subrogation rights. *See generally, Prairie State National Bank v. United States*, 164 U.S. 227, 32 Ct.Cl. 614, 17 S.Ct. 142, 41 L.Ed. 412 (1896); *Henningsen v. United States Fidelity & Guaranty Co.*, 208 U.S. 404, 28 S.Ct. 389, 52 L.Ed. 547 (1908); *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 83 S.Ct. 232, 9 L.Ed.2d 190 (1962), *National Shawmut Bank of Boston v. New Amsterdam Casualty Co.*, 411 F.2d 843 (1st Cir.1969); *In re Jones Constr. & Renovation, Inc.*, 337 B.R. 579, 583-84 (Bankr. E.D. Va. 2006); *accord Ky. Central Ins. Co. v. Brown (In re Larbar Corp.)*, 177 F.3d 439 (6th Cir. 1999).

⁴ Courts have consistently held that provisions in indemnity agreements similar to those found in the CBRA create and enforceable trust. *See Safeco Ins. Co. of Am. v. Hastings (In re Hastings)*, 2008 WL 5383586 at * 1 (Bankr. N.D. Ala. Dec. 23, 2008); *International Fidelity Ins. Co. v. Fox (In re Fox)*, 357 B.R. 770, 778 (Bankr. E.D. Ark. 2006) (“It is well-settled that the indemnity provision in the Indemnity Agreement at issue in this case creates a fiduciary relationship.”); *International Fidelity Ins. Co. v. Herndon (In re Herndon)*, 277 B.R. 765, 769 (Bankr. E.D. Ark. 2002) (“This Court agrees with the reasoning of these cases and recognizes that the express trust in the indemnity agreement created a trust relationship between the parties.”); *Mountbatten Surety Co., Inc. v. McCormick (In re McCormick)*, 283 B.R. 680, 684 (Bankr. W.D. Pa. 2002) (“We find that the language in ¶ 9 of the Indemnity Agreement creates a trust relationship between the parties. The Debtor, as trustee of the funds, owes a fiduciary duty arising from the trust.”). The use of the trust funds for payment of legitimate business expenses was held by at least one court to be “a defalcation for purposes of §523(a)(f).” *Safeco Ins. Co. of Am. v. Hastings (In re Hastings)*, 2008 WL 5383586 at * 2; *see also Cumberland Surety Ins. Co. v. Smith (In re Smith)*, 238 B.R. 664, 672-74 (Bankr. W.D. Ky. 1999) (trust account provision in indemnity agreement not condition precedent to establishment of trust and failure to make payments to beneficiaries of the trust “constitutes a textbook example of defalcation”).

21. Prior to the Petition Date, Westchester issued certain bonds on behalf of and at the request of the Debtors (the “Westchester Bonds”) in the aggregate penal amount of approximately \$372,475.00. The Westchester Bonds were issued by Westchester to the State of Ohio as obligee, to secure the Debtors’ obligations in connection with various and coal mining and related activity permits issued to the Debtors pursuant to applicable state and federal law. In the absence of the Westchester Bonds or other forms of security, the Debtors would be unable to operate the applicable mines.

22. Westchester issued the Westchester Bonds as consideration for (i) the execution by certain of the Debtors of that certain General Agreement of Indemnity dated December 16, 2016 (the “Westchester Indemnity Agreement”).

23. Under the Westchester Indemnity Agreement, the applicable Debtors agreed, among other things, to indemnify and save harmless Westchester from and against all liability, loss, costs, damages, attorneys’ fees and other expenses that Westchester may sustain or incur by reason of having issued the Westchester Bonds. The First Surety Bonds and the Westchester Bonds are referred to, collectively, as the “Bonds.”

24. Unlike insurance, which is a two-party relationship, surety bonds are tripartite agreements in which the named principal is the primary obligor and the surety is the secondary obligor on the bonded obligation owing to the obligee. *Nat’l Am. Ins. Co. v. Boh Bros. Const. Co., Inc.*, 700 So. 2d 1363, 1366 (Ala. 1997)(citing *Balboa Ins. Co. v. United States*, 775 F. 2d 1158, 1160 (Fed. Cir. 1985)). As noted by the court in *A.J. Kellos Constr. Co. v. Balboa Ins. Co.*, 495 F. Supp. 408, 412 (S.D. Ga. 1980), a surety bond is a tripartite contractual relationship wherein a third party, the surety, is answerable to an obligee for the debt, default, miscarriage, or non-performance of another (citing Restatement of Security § 82 (1941)). The courts have also

recognized that a surety bond is not an insurance policy. *See Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 139 n. 19 (1962) (“Suretyship is not insurance.”); *Meyer v. Building & Realty Serv. Co.*, 196 N.E. 250, 254 (Ind. 1935) (“We are clearly of the opinion that the contract here in question is a contract of suretyship and not an insurance policy.”); *Buck Run Baptist Church, Inc. v. Cumberland Sur. Ins. Co., Inc.*, 983 S.W. 2d 501, 504 (Ky. 1998) (“A contract of suretyship is not a contract of insurance.”).

25. In the reclamation bond context, the principal (certain of the Debtors in this case) is the permittee under the applicable permits, and the principal-Debtor is primarily obligated to perform all reclamation obligations required to be performed under the applicable permit. The surety, as secondary obligor, assures performance only if its principal fails to perform all of its obligations, including all SMCRA obligations and obligations under the Clean Water Act. Once the benefits and burdens of the applicable permit are transferred away from the principal, the surety’s obligation under the applicable bond is discharged.

26. In this case, Bonds assure no obligations other than those of the named Debtors under the Bonds. The Bonds are non-assumable financial accommodations and they are not property of the Debtors or their estates. “[T]he ‘overwhelming weight of authority,’ under both the Bankruptcy Act and Code holds that a contractor [principal] has no property interest in a surety bond issued by a third-party [surety] to guarantee the contractor’s performance on its commercial or personal services contracts.” *O’Malley Lumber Co. v. Lockard (In re Lockard)*, 884 F. 2d 1171, 1177 (9th Cir. 1989); *see also Ohio v. Mansfield Tire and Rubber Co. (In re Mansfield Tire and Rubber Co.)*, 660 F. 2d 1108, 1115 (6th Cir. 1981)(holding that a debtor could not claim any legal or equitable interest in surety bonds); *McLean Trucking Company v. Dept. of Industrial Relations (In re McLean Trucking Co.)*, 74 B.R. 820, 826 (Bankr. W.D.N.C. 1987)(holding that a surety

bond is not property of the debtor's estate); *Fintel v. Oregon (In re Fintel)*, 10 B.R. 50, 51 (Bankr. D. Or. 1981) (holding that a corporate surety bond was not property of a bankrupt debtor's estate).

IV. LIMITED OBJECTION/COMMENT

27. The Sureties object to the limited extent that the Joint Motion and the related APAs seek to compel the Sureties to assure obligations of entities other than those that are named as principal under the Sureties' respective bonds. The Sureties also object to the sales contemplated by the Joint Motion to the extent they could be deemed to impair or prejudice the Sureties' rights under their respective bonds, indemnity agreements and collateral.

28. As stated, the Sureties generally support both the WLB Debtors' and the WMLP Debtors' efforts to transition the Buckingham Assets and the Oxford Assets and related reclamation obligations so long as the purchasers assume the reclamation obligations associated with the mines and permits to be transferred and replace the bonds relating to those mines and permits. Both the Buckingham APA and the Oxford APA appear to contemplate this result.

29. But, as currently proposed, both the Buckingham APA and the Oxford APA provide that the purchaser may operate under the existing permits, supported by the existing bonds, prior to the effective date that the permits are transferred and the related bonds are replaced. As discussed above, the Sureties' bonds assure only the operations and obligations of the named principals under the bonds, and no further. Thus, the Sureties have no obligation to assure performance of the purchasers. The law of suretyship is clear that a surety is **discharged** from liability under its bond if there is an involuntary substitution of the principal under the bond, since such a change is a material modification to the underlying bonded contract that is prejudicial to the surety. *See, e.g., Becker v. Faber*, 19 N.E. 2d 997, 999 (N.Y. 1939) ("This court has said that the 'defendant's [surety's] obligation is strictissimi juris, and he is discharged by any alteration of

the contract to which his guaranty applied, whether material or not, and the courts will not inquire whether it is or is not to his injury.’ (citations omitted)). To the extent that the various states, which are obligees under the bonds, accept Buyers as new operators under the bonded permits without the consent of the applicable surety, such action would constitute an involuntary substitution of principal prejudicial to the surety. Accordingly, in that circumstance, the surety would be discharged from liability under the bond.

30. The Sureties are willing to work with the Debtors, the state regulators, and any of the purchasers that have access to adequate surety credit in order to facilitate the transfer of the permits under a process that provides a defined, reasonable timeline for the Bonds to be replaced in accordance with applicable law and released by the state obligees, to avoid any unintended lapses in bond coverage and compliance with applicable law. Indeed, First Surety is working with the Debtors and the purchasers on a surety bond facility for purchasers. Further, to the extent that the same sureties are providing replacement bonds to the buyers for their existing bonds, they may be willing to consent to the interim operator arrangement contemplated, but again they are not required to do so.

31. The Buckingham APA contemplates that First Surety’s collateral for bonds supporting the WLB Debtors’ obligations under the existing indemnity agreements and related bonds will not be acquired by the purchaser. As discussed above, First Surety has the right to retain its collateral until such time as all of its bonds have been replaced and released, and all obligations of the Debtors under the existing indemnity agreements have been satisfied in full. Thus, whether the collateral is included or excluded from the transaction, it is at all times subject to the rights and interests of First Surety.

32. The Oxford APA contemplates that the purchaser will acquire First Surety's collateral securing the bonds and indemnity obligations of the Debtors to First Surety under the existing indemnity agreements. But, upon information and belief, the Oxford Sellers and the purchaser intend that First Surety's collateral will be transferred to the surety providing replacement bonds in the transaction rather than to the purchaser. Again, First Surety has the right to retain any and all collateral until such time as all of its bonds are replaced and released, and all indemnity obligations are satisfied in full. Thus, whether it is included or excluded, the collateral is at all times subject to First Surety's rights and interests. To the extent any "excess collateral" remains after the obligations to First Surety have been fully and finally satisfied, First Surety is willing to release that collateral to the surety providing replacement bonds so long as its release of such excess collateral to the surety providing such replacement bonds is without recourse to First Surety by any party, including any of the Debtors or their lenders.

33. In summary, the Debtors' business operations have significant environmental impact that create broader public safety and related implications than those found in other chapter 11 cases. The environmental concerns in this case, as well as practical operational concerns that may be caused by defaulting on any mining permit, dictate that the Debtors' mining assets, including coal reserves, and environmental liabilities be viewed on a consolidated basis. The sales proposed by the Joint Motion, along with the transactions contemplated by the WLB and the Kemmerer Transactions, indicate that the Debtors are working toward an overall solution that addresses all reclamation obligations in accordance with the Debtors' obligations under applicable law. But, those transfers must also take into account the Sureties' rights under their respective bonds, indemnity agreements and collateral, and in their current form, the proposed transactions do not adequately consider these issues.

34. The Sureties reserve the right to supplement this Limited Objection at any time up to and including on the date of any hearing on the Motion, and to incorporate by reference any argument raised by any of the other parties in this case.

WHEREFORE, the Sureties respectfully requests that the approval of the Joint Motion be denied unless Order approving the same is modified to adequately address the matters raised in this objection.

Respectfully submitted,

/s/ Michael E. Collins

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CERTIFICATE OF SERVICE

I certify that on February 1, 2019, I caused a copy of the foregoing document to be served on the parties listed below via U.S. Mail and e-mail. I further certify that all parties entitled to notice via the Court's electronic notification system were served at the time of electronic filing.

/s/ Michael E. Collins

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