UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re: WILSON CREEK ENERGY, LLC, *et al.*,[1] Debtors.	Case No.: 25-70001-JAD Chapter 11 *Jointly Administered*
WILSON CREEK ENERGY, LLC, *et al.*, Debtors-Movants, -vs- LCT ENERGY LP, et al., Respondents.	Related to Document Nos.: 116, 189 Hearing Date: March 27, 2025 Hearing Time: 10:00 AM (EST) Response Deadline: March 26, 2025 at Noon (Eastern)

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' LIMITED OBJECTION AND RESERVATION OF RIGHTS TO ENTRY OF FINAL ORDERS ON THE DEBTORS' MOTION FOR ENTRY OF ORDERS (A) APPROVING SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (B) APPROVING BIDDING PROCEDURES FOR SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (C) AUTHORIZING THE DEBTORS TO DESIGNATE STALKING HORSE BIDDER AND APPROVING PROPOSED STALKING HORSE BID PROTECTIONS, (D) SCHEDULING AUCTION FOR AND HEARING TO APPROVE THE SALE OF THE DEBTORS' ASSETS, (E) APPROVING FORM AND MANNER OF NOTICE OF SALE, AUCTION, AND SALE ORDER HEARING, (F) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, (G) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (H) GRANTING RELATED RELIEF

[1] The Debtors in these Chapter 11 Cases are: Wilson Creek Energy, LLC; Wilson Creek Holdings, Inc.; Maryland Energy Resources, LLC; Mincorp Acquisition Corp.; Mincorp Inc.; PBS Coals, Inc.; Roxcoal, Inc.; Quecreek Mining, Inc.; Croner, Inc.; Elk Lick Energy, Inc.; and Corsa Coal Corp.

The Official Committee of Unsecured Creditors of Wilson Creek Energy *et al.* (the "Committee"), by and through its undersigned proposed counsel, hereby submits this limited objection ("Objection") to entry of an order approving the sale of the Debtors' causes of action to LCT Energy LP and its affiliates, including but not limited to Robindale Energy (together, "LCT") under the terms of the *Order (A) Approving Bidding Procedures for Sale of All or Substantially All of the Debtors' Assets, (B) Authorizing the Debtors to Designate Stalking Horse Bidder and Approving Proposed Stalking Horse Bid Protections, (C) Scheduling Auction for and Hearing to Approve the Sale of the Debtors' Assets, (D) Approving Form and Manner of Notice of Sale, Auction, and Sale Order Hearing, (E) Approving Assumption and Assignment Procedures, (F) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (G) Granting Related Relief* [Docket No. 193] (the "Bid Procedures"), and respectfully states as follows:

PRELIMINARY STATEMENT

1. The Committee does not object to the sale of assets by the above-captioned debtors (the "Debtors") under the terms of the Bid Procedures Order *per se*, however, the Committee objects to the sale of causes of action that the Debtors' bankruptcy estates have against LCT (the "LCT Causes of Action") at this time. The LCT Causes of Action: have not been properly described or disclosed; were not identified as assets for sale under the terms of the Bid Procedures Order; and – as this Court noted at a prior hearing – were not noticed as being effectively compromised via rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). The Committee has sought informal discovery from the Debtor on the LCT Causes of Action, which was just received yesterday, and has sought formal discovery from LCT on the LCT Causes of Action, but has not yet received anything. The Court should not authorize the sale of

the LCT Causes of Action at this time under these circumstances, but should delay the transfer of or carve out the LCT Causes of Action from the assets the Debtors propose to sell to LCT.

2. Further, the Committee reserves the right to raise additional arguments and objections to the form of proposed sale order and the details of the sale of the Debtors' other assets. The Debtors have not yet received proposed forms of sale orders or seen finalized asset purchase agreements for the Debtors' proposed sales.

BACKGROUND

3. On January 6, 2025 (the "Petition Date"), the Debtors commenced their chapter 11 cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with this Court.

4. Othe Petition Date, the Debtors filed the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Post-Petition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Status, (IV) Approving Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 27] (the "DIP Motion") by which they requested that the Court, among other things, authorize the Debtors to obtain debtor-in-possession financing. A condition of that financing was that the Debtors enter into the Bidding Procedures on an expedited time frame. The Committee objected to the DIP Motion on a limited basis [Docket No. 138] because, among other things, the expedited time frame required of the Bidding Procedures would not have maximized estate value.

5. On January 16, 2025, the Debtor filed the *Debtors' Motion for Entry of Orders (A) Approving Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Approving Bidding Procedures for Sale of All or Substantially*

All of the Debtors' Assets, (C) Authorizing the Debtors to Designate Stalking Horse Bidder and Approving Proposed Stalking Horse Bid Protections, (D) Scheduling Auction for and Hearing to Approve the Sale of the Debtors' Assets, (E) Approving Form and Manner of Notice of Sale, Auction, and Sale Order Hearing, (F) Approving Assumption and Assignment Procedures, (G) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (H) Granting Related Relief [Docket No. 116] (the "Motion") and a motion to expedite a hearing on the Motion [Docket No. 119]. That same day, the Bankruptcy Court entered an order scheduling a hearing on the Motion for Tuesday, January 28, 2025 and setting January 27, 2025 as the deadline to object to the Motion.

6. On January 17, 2025, the Office of the United States Trustee (the "UST") formed the Committee. The members of the Committee are: (i) Tijon Company, Inc.; (ii) Joy Global Underground Mining, LLC; and (iii) Hallaton, Inc.

7. On January 27, 2025, the Committee filed a limited objection to the Motion on January 27, 2025 [Docket No. 153] because, among other things, the proposed sale deadline would not have maximized the value of the assets for all creditors—including general unsecured creditors.

8. On January 28, 2025, the Court entered its *Order (A) Approving Bidding Procedures for Sale of All or Substantially All of the Debtors' Assets, (B) Authorizing the Debtors to Designate Stalking Horse Bidder and Approving Proposed Stalking Horse Bid Protections, (C) Scheduling Auction for and Hearing to Approve the Sale of the Debtors' Assets, (D) Approving Form and Manner of Notice of Sale, Auction, and Sale Order Hearing, (E) Approving Assumption and Assignment Procedures, (F) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (G) Granting Related Relief* [Docket No. 193] (the "Sale Order").

Among other things, the Sale Order established March 7, 2025 as the Bid Deadline, March 10, 2025 as the Auction Date, March 11, 2025 as the deadline for supplemental objections, and March 12, 2025 as the Sale Order hearing date.

9. Also on January 28, 2025, the Court entered its *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Approving Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 196] (the "DIP Order"). The DIP Order, among other things, authorized the Debtors to obtain postpetition financing from KIA II LLC (the "DIP Lender") in the aggregate amount of $15 million in new money loans (the "DIP Facility").

10. On February 25, 2025, the Debtors filed their *Emergency Motion for Entry of an Order: (I) Compelling Compliance with Bidding Procedures and Confidentiality Agreement; (II) Compelling Destruction of all Confidential Information Obtained by LCT Energy, LP, Pursuant to Confidentiality Agreement; and (III) Granting Related Relief* [Docket No. 293] (the "Emergency Motion"). In the Emergency Motion, the Debtors alleged that LCT misappropriated confidential information of the Debtors in violation of a confidentiality agreement that LCT signed to enter the dataroom and conduct due diligence in connection with the Debtors' sale of assets (the "Confidentiality Agreement"). The Emergency Motion also indicated that the Debtors considered LCT to be disqualified as a potential bidder.

11. On March 3, 2025, LCT filed its *Response of LCT Energy, LP to Emergency Motion for Entry of an Order: (I) Compelling Compliance with Bidding Procedures and Confidentiality Agreement; (II) Compelling Destruction of All Confidential Information Obtained by LCT Energy, LP, Pursuant to Confidentiality Agreement; and (III) Granting Related Relief* [Docket No. 309]

(the "Emergency Motion Response"). In its Emergency Motion Response, LCT argued, among other things, that the Debtors' allegations in the Emergency Motion are baseless and chilling the bidding process.

12. On March 5, 2025, the Court held a hearing on the Emergency Motion and the Emergency Motion Response [Docket No. 322.] Because the Debtors agreed to withdraw the Emergency Motion in exchange for LCT's promise to submit a bid on the Debtors' assets, the Court denied the Emergency Motion without prejudice.

13. On March 7, 2025, various parties submitted bids for the Debtors' assets. Notably, Rosebud Mining Company ("Rosebud") made a bid for many of the Debtors' assets as did LCT. The Rosebud bid contained cash consideration in the amount of $15,000,000 and sought to acquire many of the Debtors' assets including the operating Casselman Mine. The LCT bid (the "LCT Bid") contained cash consideration in the amount of $1,500,000, and sought to acquire a number of mining permits and real estate parcels as well as "all Claims and Causes of Action of [the Debtors] against [LCT] and its Affiliates, and each their (sic) respective officers, directors, members, stockholders or other equity holders, managers, employees, agents, advisers, and representatives, including any legal counsel, accountants, Tax and financial advisors." "Causes of Action" is defined in the APA as "any claims, interests, obligations, rights, liabilities, actions, causes of actions, choses in action, suits, debts, demands, damages, expenses and/or losses of whatever kind or nature, in each case held as an asset by [the Debtors] or its estate relating to the Purchased Assets, the Mines, or the Business."

14. On March 10, 2024, in accordance with the Bid Procedures Order, the Debtors conducted an auction. That day the Debtors accepted three bids: (i) Rosebud's bid in the amount of $15,000,000; (ii) the DIP Lender's bid for equipment not included within the assets purchased

by Rosebud in the amount of $7,000,000; and (iii) a modified form of the LCT Bid (the "Modified LCT Bid"). Notably, though most of the equipment, real estate, and permits initially included in the original LCT Bid were not included in the Modified LCT Bid, LCT kept its purchase price at $1,500,000. The Modified LCT Bid does, however, include within it the purchase of the "Causes of Action."

15. On March 11, 2025, the Debtors, Committee, and the Debtors' pre-petition secured lender KeyBank N.A. ("KeyBank") stipulated to adjourn the hearing to consider the sales of the Debtors' assets until March 27, 2025 and extend the supplemental objection deadline to and through March 26, 2025 [Docket No. 345].

16. On March 12, 2025, the Court held a status conference on March 12, 2025 and continued the hearing on the Sale Order to March 27, 2025 at 10:00 a.m. [Docket No. 348].

17. On March 24, 2025, the Debtor concluded the auction for the sale of its assets. Although the Debtor received an additional bid, in its business judgment it did not receive a higher or better bid than the Rosebud bid, the DIP Lender's bid, and the Modified LCT Bid. The Debtors have not yet circulated proposed forms of sale order or the latest drafts of asset purchase agreements for each of the bids.

OBJECTION

18. Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." A sale of estate property under section 363(b) of the Bankruptcy Code "must be approved by the Court to ensure the asset's value is preserved for the benefit of creditors." *In re Aller*, 649 B.R. 662, 666 (Bankr. W.D. Pa. 2023). Before approving a sale, the Court "must find: (1) there is a '[s]ound business reason' for the sale; (2) the debtor has provided '[a]ccurate and reasonable

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notice' of the transaction; (3) the proposed sale price is 'fair and reasonable;' and (4) '[g]ood faith exists.'" *Id.* (quoting *In re Primel*, 629 B.R. 790, 798 (Bankr. W.D. Pa. 2021)). Because sale agreements under Section 363(b) of the Bankruptcy Code are often considered on an expedited basis, "[t]he strength of the showing necessary to satisfy each of these elements is heightened." *In re After Six, Inc.*, 154 B.R. 876, 881 (Bankr. E.D. Pa. 1993).

19. Bankruptcy Rule 9019 provides, "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." FED. R. BANKR. P. 9019. To the extent that a "sale effectuates a settlement of claims held by the estate, the Court also must evaluate the agreement between the [debtor] and [buyer] as a compromise under Fed. R. Bankr. P. 9019." *In re Nicole Energy Services, Inc.*, 385 B.R. 201, 210 (Bankr. S.D. Ohio 2008); *see also In re Diocese of Camden*, 653 B.R. 722, 734-35 (Bankr. D.N.J. 2023) ("When a cause of action, such as a right to pursue insurance policies, is sold to a present or potential defendant, the transaction must be evaluated both under the sound business judgment test of section 363 and the fair and equitable test governing compromises under Rule 9019."); *In re Hernandez*, BAP No. SC-23-1016-BCF, 2023 WL 8453137 at *4 (9th Cir. BAP December 6, 2023) ("Because Agreement A contained the elements of both a sale and a compromise, the bankruptcy court evaluated it under § 363 and Rule 9019").

20. Determining whether a compromise is fair and equitable under Bankruptcy Rule 9019 "requires a bankruptcy judge to assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." *In re Martin*, 91 F.3d 389, 393 (3d Cir, 1996) (citing 9 *Collier on Bankruptcy* ¶ 9019.03m (15th ed. 1993)).

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21. Here, the sale of the LCT Causes of Action to LCT should not be approved at this time. The Motion does not describe the LCT Causes of Action or their value; there was no information relating to the LCT Causes of Action available for parties to evaluate in the Debtors' dataroom; the LCT Causes of Action were not noticed as being for sale in the Bid Procedures Order; the Debtors' have not described the LCT Causes of Action in any supplemental pleading since the LCT Bid was made; and the Committee does not yet have any response to its expedited discovery requests to LCT so that it can diligence the sale. With this lack of information, neither the Committee nor other parties in interest can evaluate the value of the LCT Causes of Action and whether the purchase price is reasonable.

22. The sale of the LCT Causes of Action has not been noticed as required by Bankruptcy Rule 9019 and to date, neither LCT nor the Debtors have provided a legal and economic analysis for the proposed sale. For this reason alone, the sale of the LCT Causes of Action should not be approved at this time.

23. The Committee proposes that to the extent that the sale of assets to Rosebud and the DIP Lender is approved, that the sale of assets to LCT be delayed or the sale of everything in the Modified LCT Bid be approved absent the LCT Causes of Action. The Committee is not opposed to the LCT Causes of Action ever being sold, but they should be sold or compromised only after an investigation can be completed and proper notice provided to all parties in interest under Bankruptcy Rule 9019.

RESERVATION OF RIGHTS

24. The Committee explicitly reserves the right to make comments, revisions and other arguments at the hearing to approve the sale related to issues identified in the form of sale orders

and final forms of asset purchase agreement, which documents have not yet been made available to the Committee.

CONCLUSION

For the foregoing reasons, the Committee respectfully requests that the Court enter an order consistent with the terms hereof so that to the extent final sale orders are entered, that the sale of the LCT Causes of Action not be approved at this time.

Dated: March 26, 2025

Respectfully submitted,

/s/ Thomas D. Maxson
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Counsel to the Official Committee of Unsecured Creditors

CERTIFICATE OF SERVICE

I certify that on March 26, 2025, the above and foregoing document was filed electronically using CM/ECF and a true and correct copy of the above and foregoing was served as follows:

X upon filing, the Court's electronic noticing system sent notice to all parties participating in the CM/ECF system in this matter.

/s/ Thomas D. Maxson
Thomas D. Maxson