

integrated, non-executory contract that is not subject to assumption or rejection under section 365 of the Bankruptcy Code.

2. STB admits the first sentence of paragraph 2 to the extent that RLC is required to make ongoing overriding royalty payments to STB for coal that RLC or its affiliates mine and sell from certain coal reserves, and denies the remaining allegations contained therein. The second sentence of paragraph 2 of the Complaint purports to state legal conclusions to which no response is required. To the extent that a response is required to the allegations set forth in the second sentence of paragraph 2 of the Complaint, STB denies those allegations.

3. Paragraph 3 of the Complaint purports to state legal conclusions to which no response is required.

4. Paragraph 4 of the Complaint is a characterization of RLC's claims, and purports to state legal conclusions to which no response is required. To the extent that any response is required, STB denies the allegations set forth in paragraph 4 of the Complaint, except that STB admits that RLC is seeking a declaration that the STB Override Agreement is a standalone, integrated, non-executory contract that is not subject to assumption or rejection under section 365 of the Bankruptcy Code.

JURISDICTION AND VENUE

5. STB admits the allegations set forth in paragraph 5 of the Complaint.

6. STB admits the allegations set forth in paragraph 6 of the Complaint.

7. Paragraph 7 of the Complaint purports to state legal conclusions to which no response is required.

8. Paragraph 8 of the Complaint purports to state legal conclusions to which no response is required.

9. Paragraph 9 of the Complaint purports to state legal conclusions to which no response is required.

PARTIES

10. STB lacks knowledge or information sufficient to admit or deny the allegations set forth in paragraph 10 of the Complaint.

11. STB admits the allegations set forth in paragraph 11 of the Complaint.

BACKGROUND

12. STB admits the allegations set forth in paragraph 12 of the Complaint.

13. The allegations contained in paragraph 13 of the Complaint purport to make characterizations or legal conclusions regarding the transactions consummated under the Asset Purchase Agreement and, therefore, a response is not required. Please refer to the Asset Purchase Agreement for a true and correct characterization of the terms and conditions thereunder. In the event that a response is required for any of the allegations contained in Paragraph 13 of the Complaint, STB admits such allegations to the extent that that the Asset Purchase Agreement sets forth the terms of the agreement between the Sellers and Purchasers, but denies the remaining allegations contained therein.

14. The allegations contained in paragraph 14 of the Complaint purport to make characterizations or legal conclusions regarding the Guyan Lease Assignment and, therefore, a response is not required. Please refer to the Guyan Lease Assignment for a true and correct characterization of the terms and conditions thereunder. In the event that a response is required for any of the allegations contained in Paragraph 14, STB admits such allegations to the extent that Ark Land executed the Guyan Lease Assignment, the Lawson Heirs Lease and the Kelly-Hatfield Lease, but denies the remaining allegations contained therein.

15. The allegations contained in paragraph 15 of the Complaint purport to make characterizations or legal conclusions regarding the STB Override Agreement and, therefore, a response is not required. Please refer to the STB Override Agreement for a true and correct characterization of the terms and conditions thereunder. In the event that a response is required for any of the allegations contained in Paragraph 15, STB admits such allegations to the extent that Ark Land executed the STB Override Agreement, but denies the remaining allegations contained therein.

16. The allegations contained in paragraph 16 of the Complaint purport to make characterizations or legal conclusions regarding Section 8 of the STB Override Agreement and, therefore, a response is not required. Please refer to all of Section 8 of the STB Override Agreement for a true and correct characterization of the terms and conditions thereunder. In the event that a response is required for any of the allegations contained in paragraph 16, STB denies the allegations contained therein.

17. The allegations contained in paragraph 17 of the Complaint purport to make characterizations or legal conclusions regarding the Ark Assignment Agreement and, therefore, a response is not required. Please refer to the Ark Assignment Agreement for a true and correct characterization of the terms and conditions thereunder. In the event that a response is required for any of the allegations contained in paragraph 17, STB admits such allegations to the extent that Ark executed the Ark Assignment Agreement, but denies the remaining allegations contained therein.

18. Paragraph 18 of the Complaint purports to state legal conclusions to which no response is required. To the extent that any response is required, STB denies the allegations set forth in paragraph 18 of the Complaint.

COUNT I

Declaratory Judgment

19. In response to paragraph 19 of the Complaint, STB repeats and re-alleges its responses to paragraphs 1 through 18 as if fully set forth in this paragraph.

20. Paragraph 20 of the Complaint purports to state legal conclusions as to which no response is required.

21. Paragraph 21 of the Complaint purports to characterize the nature of the action brought and the relief sought, and thus no response is required.

GENERAL DENIAL

22. Except as otherwise expressly admitted above, STB denies every allegation contained in paragraphs 1 through 21 of the Complaint, including without limitation, the headings and subheadings contained in the Complaint. STB expressly reserves the right to amend and/or supplement its Answer.

AFFIRMATIVE DEFENSES

23. STB asserts the following affirmative defenses:

First Affirmative Defense

24. The Complaint, and each and every claim stated therein, fails to state a claim upon which relief, either legal or equitable, can be granted.

Second Affirmative Defense

25. Plaintiff's claims are barred by the doctrines of estoppel, laches, ratification and acquiescence.

Third Affirmative Defense

26. Plaintiff's claims are barred by waiver.

Fourth Affirmative Defense

27. Plaintiff's claims are barred by the failure to provide consideration.

Fifth Affirmative Defense

28. Plaintiff's claims are barred by the terms of the agreements.

Sixth Affirmative Defense

29. Plaintiff's obligations to pay the relevant portions of the STB Override constitute real property interests that run with the Lawson Heirs Premises and the Kelly-Hatfield Premises (each as defined below). As such, RLC's obligation to pay the relevant portion of the STB Override must be met in order for it to retain its rights to the leased Premises.

Seventh Affirmative Defense

30. RLC's obligation to pay the relevant portion of the STB Override is integrated with the Amended and Restated Partial Assignment, the Magnum PSA (each as defined below), the Asset Purchase Agreement, the Kelly-Hatfield Lease, the Lawson Heirs Lease and/or the Ark Assignment Agreement. Consequently, and thus such obligation cannot be treated separately from such agreements.

31. STB reserves all of its rights to assert additional affirmative defenses based on further investigation and discovery.

COUNTERCLAIMS

STB, as for its counterclaims, hereby alleges as follows:

NATURE OF COUNTERCLAIMS

1. In these counterclaims, STB seeks:

(a) a declaratory judgment that RLC's obligation to pay the relevant portion of the royalties required to be paid under the STB Override Agreement is integrated with and nonseverable from the Amended and Restated Partial Assignment, the Initial Partial Assignment, the Magnum PSA, the Asset Purchase Agreement, the Kelly-Hatfield Lease, the Lawson Heirs

Lease and/or the Ark Assignment Agreement, pursuant to which agreements RLC became obligated to pay the relevant portion of the STB Override and which agreements are executory;

(b) a declaratory judgment that RLC's obligation to pay the STB Override remained tied to and runs with the leased coal properties on which it was based, and payment of such amounts became incorporated conditions of the Kelly-Hatfield Lease and the Lawson Heirs Lease;

(c) damages for post-petition breach of the STB Override Agreement; and

(d) a finding that RLC is unjustly enriched by being able to retain the benefits under the Leases without payment of the STB Override, and that the proceeds of coal mined and sold from the leased Premises (to the extent of the amounts owed under the STB Override Agreement) are held in constructive trust for the benefit of STB.

JURISDICTION AND VENUE

2. This Court has jurisdiction over RLC under 28 U.S.C. §§ 157 and 1334, and supplemental jurisdiction under 28 U.S.C. § 1367 because STB's counterclaims arise out of the subject matter of the original action and are brought under Rule 13 of the Federal Rules of Civil Procedure and Rule 7013 of the Federal Rules of Bankruptcy Procedure.

3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1409.

PARTIES

4. STB is a Virginia corporation with its principal place of business in Grundy, Virginia.

5. Intervenor Defendant Arch Coal, Inc. ("Arch") is a Delaware corporation with its principal place of business in St. Louis, Missouri. Intervenor Defendant Arch is a party to the Guaranty (as defined below).

6. Intervenor Defendant Ark Land Company (“Ark Land”) is a Delaware corporation with its principal place of business in St. Louis, Missouri. Intervenor Defendant Ark Land is a party to the Ark Assignment Agreement, the Initial Partial Assignment (as defined below), the Amended and Restated Partial Assignment (each as defined below), the Kelly-Hatfield Lease and the Lawson Heirs Lease.

7. Intervenor Defendant Ark Land KH, Inc. (“Ark KH”) is a Delaware corporation with its principal place of business in St. Louis, Missouri. Intervenor Defendant Ark KH is a party to the Amended and Restated Partial Assignment and the Kelly-Hatfield Lease.

8. On information and belief, Plaintiff RLC is a Delaware limited liability company. RLC is a party to the Ark Assignment Agreement, the Initial Partial Assignment and the Amended and Restated Partial Assignment. RLC and certain of its affiliates are debtors before this Court in cases proceeding under jointly administered case no. 12-12900.

FACTUAL BACKGROUND

9. As described in detail below, RLC is obligated to pay the relevant portions of the STB Override Agreement, and the obligation arose out of a series of three transactions.

Ark’s 1994 Transaction with STB

10. On October 31, 1994, Ark and Apogee, which until 2005 was a subsidiary of Arch, entered into the Asset Purchase Agreement² with STB, Eagle Minerals Company, Guyan Mining Company, and Guyan Equipment Company (collectively, the “Sellers”) whereby the Sellers sold certain assets to Ark and Apogee (the “STB Transaction”). Such assets included, among other things, the Sellers’ interests in three coal leases pertaining to certain premises located in Logan and Boone Counties, West Virginia, (the “Premises”).

² The STB Asset Purchase Agreement was filed under seal as Exhibit B to RLC’s Complaint in this adversary proceeding.

11. On the same day the Asset Purchase Agreement was executed, the Premises were demised to Ark pursuant to two leases: (i) the Lawson Heirs Lease (the premises demised under such lease, the “Lawson Heirs Premises”) and (ii) the Kelly-Hatfield Lease (the premises demised under such lease, the “Kelly-Hatfield Premises”).³

12. Also on October 31, 1994, pursuant to § 2.02(b)(i) of the Asset Purchase Agreement, Ark executed and delivered the STB Override Agreement⁴ as “additional consideration” for delivery of the assets, which obligated Ark and its heirs, successors and assigns to pay to STB an overriding royalty equal to 1.5% of the gross sales price on all coal mined and sold from the premises demised in such Leases (the “STB Override” or the “Override Payments”).

13. It is clear on the face of the STB Override Agreement that it is part of the larger STB Transaction and that it is meant to be construed together with the Leases. For example, the STB Override Agreement expressly references the Kelly-Hatfield Lease and the Lawson Heirs Lease. The second whereas clause of the STB Override Agreement states that the “parties contemplate that the Premises shall be demised by those two certain novation leases from (i) Lawson Heirs, Inc. to [Ark Land], dated October 31, 1994; and (ii) the Kelly-Hatfield Land Company, to [Ark Land], dated October 31, 1994 . . .” And, section 3 of the STB Override Agreement provided, among other things, that the “[t]erms and conditions within the Leases shall govern as to royalty determination, late payment penalties, and all similar purposes.”

14. Likewise, the STB Override Agreement expressly references the Asset Purchase Agreement. The first whereas clause of the STB Override Agreement states that “pursuant to

³ The Lawson Heirs Lease was filed under seal as Exhibit D to RLC’s Complaint in this adversary; the Kelly-Hatfield Lease was filed under seal as Exhibit E to RLC’s Complaint.

⁴ See STB Override Agreement filed as Exhibit A to RLC’s Complaint in this adversary.

that certain Asset Purchase Agreement, of even date, by and among [Ark, Apogee and the Sellers], Sellers have sold and transferred to [Ark and Apogee] the Acquired Assets . . .” And, the Now, Therefore clause of the STB Override Agreement states that the agreements contained in the STB Override Agreement were given “in consideration of the mutual covenants and agreements contained herein and in the Asset Purchase Agreement”) (emphasis added).

15. The express language of the Asset Purchase Agreement also makes clear that the STB Override Agreement is a part of the larger STB Transaction. For example, the entire agreement clause of the Asset Purchase Agreement includes the STB Override Agreement, the Guyan Lease Assignment, the Liabilities Undertaking Agreement, the Kelly-Hatfield Lease and the Lawson Heirs Lease as part of the “entire agreement” of the parties to the Asset Purchase Agreement. Specifically, the entire agreement clause of the Asset Purchase agreement states that the Asset Purchase Agreement “(including the documents referred to [t]herein) . . . constitute the entire agreement of the parties [t]hereto . . .” See Asset Purchase Agreement § 9.07. The STB Override Agreement is referenced in section 2.02(b)(i) of the Asset Purchase Agreement; the Guyan Lease Assignment is referenced in section 2.03(b)(iii) of the Asset Purchase Agreement; the Liabilities Undertaking Agreement is referenced in section 2.02(b)(iv) of the Asset Purchase Agreement; and the Kelly-Hatfield Lease and the Lawson Heirs Lease are novation leases of the leases assigned to Ark Land pursuant to the Guyan Lease Assignment, and such anticipated novation is referred to in the second clause of the STB Override Agreement.

16. The language of the entire agreement clause of the STB Override Agreement is also consistent with the fact that the STB Override Agreement is an integral part of the broader STB Transaction. The entire agreement clause of the STB Override Agreement specifies that the STB Override Agreement is integrated only “in respect of the Overriding Royalty specified

[t]herein.” It does not state that the STB Override Agreement is a standalone integrated instrument in and of itself. See STB Override Agreement § 8.

17. Ark’s agreement to pay the relevant portion of the Override Payments with respect to coal mined on the Premises constituted a material portion of the consideration given by Ark and Apogee under the Asset Purchase Agreement, and STB would not have entered into the Asset Purchase Agreement or the transactions related thereto, but for a covenant by Ark and its heirs, successors and assigns to pay the Override Payments.

18. Also, in connection with the STB Transaction, Arch Mineral Corporation, predecessor in interest to Intervenor Defendant Arch Coal Inc., executed a Guaranty dated October 31, 1994 (the “Guaranty”)⁵ in favor of STB whereby Arch agreed to guarantee all of Ark’s and Apogee’s obligations under the Asset Purchase Agreement and all documents delivered pursuant thereto – including the STB Override Agreement. STB has asserted that Arch will be obligated under the Guaranty if RLC does not pay the STB Override.

Arch and Ark’s 2005 Transaction with Magnum and RLC

19. On December 31, 2005, Arch, the then parent to Ark, entered into a Purchase and Sale Agreement (the “Magnum PSA”) with Magnum Coal Company (n.k.a. Magnum Coal Company, LLC, “Magnum”), a debtor in these jointly administered Chapter 11 proceedings⁶ whereby Arch sold assets, including Arch’s equity interests in RLC and several other entities, each of which is now a debtor in the Debtors’ jointly administered Chapter 11 cases, to Magnum (the “Magnum Transaction”).

⁵ The Guaranty was filed as Exhibit 4 to Arch, et al’s Answer in this adversary.

⁶ The Magnum PSA (excluding the Schedules and Exhibits thereto) was filed as Exhibit 5 to Arch, et al’s Answer in this adversary.

20. To facilitate the Magnum Transaction, on December 30, 2005 – one day prior to the execution of the Magnum PSA – Ark and RLC executed the Ark Assignment Agreement pursuant to which Ark assigned the Lawson Heirs Lease, the Asset Purchase Agreement, and the STB Override Agreement (with respect to coal mined from the Lawson Heirs Premises) to RLC, and RLC agreed to assume the duties and obligations under the Asset Purchase Agreement, the Lawson Heirs Lease, and the STB Override Agreement (with respect to coal mined from the Lawson Heirs Premises), including, without limitation, the obligation to pay the STB Override with respect to the Lawson Heirs Premises.⁷

21. Also in connection with the Magnum Transaction, on the same day as the execution of the Magnum PSA – December 31, 2005 – Ark and RLC executed a Partial Assignment and Assumption of Lease (the “Initial Partial Assignment”)⁸ whereby Ark assigned a portion of the Kelly-Hatfield Premises (the “2005 Assigned Lease Portion”) to RLC, and RLC agreed to pay the STB Override to the extent that the STB Override applies to coal mined from the 2005 Assigned Lease Portion. Moreover, RLC agreed to indemnify Ark for any failure to perform its obligations, including its obligation to pay the relevant portion of the STB Override.⁹

22. The parties to the Ark Assignment Agreement and the Initial Partial Assignment understood and intended RLC’s obligations to pay the STB Override with respect to coal mined and sold from the Lawson Heirs Premises and the 2005 Assigned Lease Portion to be part of the same bundle of rights and obligations as the right to mine the Lawson Heirs Premises and the 2005 Assigned Lease Portion.

⁷ See Ark Assignment Agreement filed under seal as Exhibit F to RLC’s Complaint, ¶ 2, Schedule 1 at p. 16.

⁸ See Initial Partial Assignment filed as Exhibit 2 to Arch, et al.’s Answer.

⁹ See *id.* at ¶ 2.

Ark and Ark KH's 2007 Transaction with RLC

23. Two years later, after Ark KH had purchased the Kelly-Hatfield Premises, Ark, Ark KH and RLC executed the Amended and Restated Partial Assignment and Assumption of Lease dated May 22, 2007 (the "Amended and Restated Partial Assignment")¹⁰ pursuant to which Ark assigned an additional portion of the Kelly-Hatfield Premises (the "2007 Assigned Lease Portion") to RLC. In that document, RLC agreed to pay the STB Override with respect to the 2007 Assigned Lease Portion and ratified that it was obligated to pay the STB Override with respect to the 2005 Assigned Lease Portion. Moreover, RLC agreed to indemnify Ark and Ark KH for any failure to perform their obligations under the Kelly-Hatfield Lease, including the obligation to pay the STB Override with respect to the 2005 Assigned Lease Portion and the 2007 Assigned Lease Portion.¹¹

24. As with the STB Transaction and the Magnum Transaction, the parties to the Amended and Restated Partial Assignment understood and intended RLC's obligation to pay the STB Override with respect to coal mined and sold from the 2007 Assigned Lease Portion to be part of the same bundle of rights and obligations as the right to mine the 2007 Assigned Lease Portion.

25. The Ark Assignment Agreement, the Initial Partial Assignment and the Amended and Restated Partial Assignment are hereinafter collectively referred to as the "Lease Assignment Agreements."

26. The covenants by RLC to assume the duties and obligations under the Lawson Heirs Lease, the Kelly-Hatfield Lease, the STB Override Agreement, and the Lease Assignment

¹⁰ See Amended and Restated Partial Assignment filed as Exhibit 3 to Arch, et al.'s Answer.

¹¹ See *id.* at ¶ 3.

Agreements constituted a material portion of the consideration given by RLC under the Lease Assignment Agreements, and Ark would not have entered into such Lease Assignment Agreements or the other documents entered into in connection therewith, without such covenants by RLC.

27. Since entering the Lease Assignment Agreements and up until the filing of the Petition, RLC performed its obligations under the Lawson Heirs Lease, the Kelly-Hatfield Lease, the STB Override Agreement, and the Lease Assignment Agreements, including paying \$13,667,879.86 in Override Payments pursuant to the terms of the STB Override Agreement up until it filed for bankruptcy protection.

28. In particular, RLC paid the Override Payments in the following amounts per year:

STB Ventures, Inc.		
<i>Royalty Income Summary</i>		
Year	Annual Royalty Income	
2006	\$	1,786,202.00
2007	\$	1,691,529.00
2008	\$	2,183,686.00
2009	\$	2,257,159.00
2010	\$	2,398,657.00
2011	\$	2,538,061.00
2012 (Pre-Petition)	\$	812,585.86
Total	\$	13,667,879.86

29. Since filing the Petition in July 2012, RLC has continued to pay on the Leases assigned to it under the Lease Assignment Agreements, but has not paid STB any of the STB Override on coal mined and sold from the Premises.

30. The exact amount owed to STB under the STB Override Agreement since the filing of the Petition is currently unknown because it will depend on the amount of coal mined and sold from the Premises. However, based on prior history, the amount owed would average

approximately \$210,000.00 per month, such that the total owed for the almost nine months since the filing of the Petition would be approximately \$1.89 million.

31. The deadline for Debtors to assume or reject nonresidential real property leases was February 4, 2013. In anticipation of that deadline, Debtors filed their Motion for Authorization to (i) Assume or (ii) Reject Unexpired Leases of Nonresidential Real Property on January 15, 2012. In the Motion they proposed to assume the 1994 Kelly-Hatfield and Lawson Heirs Leases as unexpired leases of nonresidential real property, but deferred assumption or rejection of the STB Override Agreement and the Lease Assignment Agreements.¹²

32. On January 22, 2013, STB and Arch, Ark and Ark KH filed objections to the proposed assumption of the Leases on the grounds that payment of the STB Override Agreement is a condition of the Leases such that the Leases cannot be assumed without RLC paying all past due amounts owed under the STB Override Agreement, and/or that the STB Override Agreement is integrated with and not severable from the Leases such that Debtors cannot assume the Leases without also assuming the STB Override Agreement, among other arguments.

33. The Debtors have adjourned the hearing on the STB and Arch, et al. objections until February 26, 2013. [Doc. 2342 in the jointly administered Patriot Coal bankruptcy, case no. 12—51502].

COUNT I

(Declaratory Judgment)

34. STB repeats and realleges paragraphs 1 through 33 of the Counterclaims as though fully set forth herein.

¹² See Debtors' Motion for Authorization to (i) Assume or (ii) Reject Unexpired Leases of Nonresidential Real Property [Doc. 1995 in the jointly administered Patriot Coal, et al. bankruptcies, case No. 12—51502] at Schedule A, p. 3 and Schedule C, pp. 2, 4.

35. An actual controversy exists between STB and RLC as to (i) whether RLC's obligation to pay the relevant portions of the STB Override is integrated with or is severable from any other agreements and (ii) whether such obligation is executory.

36. Accordingly, pursuant to 28 U.S.C. § 2201 and Bankruptcy Rule 7001, STB respectfully requests that this Court enter a declaratory judgment that (i) RLC's obligation to pay the relevant portion of the STB Override is integrated with and not severable from the Magnum PSA, the Kelly-Hatfield Lease, the Lawson Heirs Lease, the Initial Partial Assignment, the Amended and Restated Partial Assignment, the Asset Purchase Agreement and/or the Ark Assignment Agreement, (ii) RLC's obligations to pay the relevant portions of the STB Override are executory and (iii) RLC is obligated to pay the relevant portions of the STB Override under section 365(d)(3) of the Bankruptcy Code pending assumption or rejection of the Kelly-Hatfield Lease and the Lawson Heirs Lease and/or, if such leases have been assumed under section 365 of the Bankruptcy Code, to cure the defaults under the STB Override Agreement.

COUNT II

Declaratory Judgment

37. STB repeats and realleges paragraphs 1 through 36 of the Counterclaims as though fully set forth herein.

38. As a result of the transactions referenced above, RLC's obligation to pay the STB Override remained tied to and runs with the leased coal properties on which it was based, and payment of such amounts became incorporated conditions of the Kelly-Hatfield Lease and the Lawson Heirs Lease.

39. An actual controversy exists between STB and RLC as to whether RLC's obligation to pay the STB Override remained tied to and runs with the leased coal properties on

which it was based, and payment of such amounts became incorporated conditions of the Kelly-Hatfield Lease and the Lawson Heirs Lease.

40. Accordingly, pursuant to 28 U.S.C. § 2201 and Bankruptcy Rule 7001, STB respectfully requests that this Court enter a declaratory judgment that (i) RLC's obligation to pay the STB Override remained tied to and runs with the leased coal properties on which it was based, and payment of such amounts became incorporated conditions of the Kelly-Hatfield Lease and the Lawson Heirs Lease, and (ii) RLC is obligated to pay the relevant portions of the STB Override under section 365(d)(3) of the Bankruptcy Code pending assumption or rejection of the Kelly-Hatfield Lease and the Lawson Heirs Lease, and/or, if such leases have been assumed under section 365 of the Bankruptcy Code, to cure the defaults under the STB Override Agreement.

COUNT III

(Post-Petition Breach of Contract)

41. STB repeats and realleges paragraphs 1 through 40 of the Counterclaims as though fully set forth herein.

42. As described above, in 1994, STB assigned to Ark its interests as lessee under the Lawson Heirs Lease and the Kelly-Hatfield Lease in exchange for Ark's payment of certain consideration and assumption of certain liabilities.

43. As additional consideration for STB's assignment of its interest in the Leases, Ark agreed to pay the STB Override pursuant to the STB Override Agreement, and Ark's agreement to pay the relevant portion of the STB Override with respect to the demised premises constituted a material portion of the consideration for such assignments, and STB would not have entered into the assignments or the other documents entered into in connection therewith without such covenants by Ark.

44. Through a series of transactions, Ark assigned to RLC the entire Lawson Heirs Lease, a significant portion of the Kelly-Hatfield Lease, the Asset Purchase Agreement, the relevant portions of the STB Override Agreement with respect to the leased premises, and RLC covenanted to pay the relevant portions of STB Override Agreement with respect to the leased premises.

45. Such covenants by RLC to pay the relevant portion of the STB Override with respect to the leased premises constituted a material portion of the consideration for such assignments, and Ark would not have entered into such assignments or the other documents entered into in connection therewith without such covenants by RLC.

46. RLC, as Ark's successor-in-interest, has ceased to pay the STB Override, but continues to mine coal on the Premises. This failure constitutes a breach of material terms of the STB Override Agreement, Ark Assignment Agreement, the Initial Partial Assignment, the Amended and Restated Partial Assignment and any agreements integrated therewith (including the Magnum PSA, the Asset Purchase Agreement, the Kelly-Hatfield Lease and/or the Lawson Heirs Lease), and STB has suffered damages as a result of such breach.

47. Furthermore, the damages from such mining and breach, to the extent conducted post-petition, are incurred for the benefit of the Plaintiff's estate and thus are allowable as an administrative expense pursuant to 11 U.S.C. § 503(b).

COUNT IV

Unjust Enrichment/Constructive Trust

48. STB repeats and realleges paragraphs 1 through 47 of the Counterclaims as though fully set forth herein.

49. As stated above, in 1994 STB assigned to Ark its interests as lessee under the Lawson Heirs Lease and the Kelly-Hatfield Lease in exchange for Ark paying certain consideration and assuming certain liabilities.

50. As additional consideration for STB's assignment of its interest in the Leases, Ark agreed to pay STB an overriding royalty equal to 1.5% of the gross sales price on all coal mined and sold from the premises demised in such Leases pursuant to the STB Override Agreement.

51. Ark's agreement to pay the relevant portion of the STB Override with respect to the demised premises constituted a material portion of the consideration for such assignments, and STB would not have entered into the Asset Purchase Agreement or any other transactions or documents contemplated thereunder without Ark's agreement to pay the STB Override pursuant to the terms of the STB Override Agreement.

52. Through a series of transactions, Ark assigned to RLC the entire Lawson Heirs Lease, a significant portion of the Kelly-Hatfield Lease, the Asset Purchase Agreement, and the relevant portions of the STB Override Agreement with respect to the leased premises, and RLC covenanted to pay the relevant portions of STB Override Agreement with respect to the leased premises.

53. Such covenants by RLC to pay the relevant portion of the STB Override with respect to the leased premises constituted a material portion of the consideration for such transactions, and Ark would not have entered into such transactions or the other documents entered into in connection therewith without such covenants by RLC.

54. RLC now seeks to have this Court declare the STB Override Agreement as severable and independent from the Leases and other related agreements, and that it may reject

STB Override Agreement, and retain the Kelly-Hatfield Lease and the Lawson Heirs Lease without the additional cost of the STB Override.

55. RLC, as the successor-in-interest of Ark, has obtained the benefits of the Leases only due to its agreement to pay the STB Override Agreement, and it would be unconscientious and unjust for RLC to retain those benefits without payment of the corresponding consideration in the form of the STB Override.

56. Where, as in this case, a party holds property which in equity and good conscience should be possessed by the other party, the transaction can be the basis for imposing a constructive trust.

57. Accordingly, STB requests that the Court find that RLC is unjustly enriched by being able to retain the benefits under the Leases without payment of the STB Override, and that the proceeds of coal mined and sold from the leased Premises (to the extent of the amounts owed under the STB Override Agreement) are held in constructive trust for the benefit of STB.

WHEREFORE, STB respectfully requests that judgment be entered in its favor as follows:

- (i) Dismissing the Complaint;
- (ii) Entering a declaratory judgment that (a) RLC's obligation to pay the relevant portion of the STB Override is integrated with and not severable from the Magnum PSA, the Kelly-Hatfield Lease, the Lawson Heirs Lease, the Initial Partial Assignment, the Amended and Restated Partial Assignment, the Asset Purchase Agreement, the Lawson Heirs Lease and/or the Ark Assignment Agreement, (b) RLC's obligations to pay the relevant portions of the STB Override are executory and (c) RLC is obligated to pay the relevant portions of the STB Override under section 365(d)(3) of the Bankruptcy Code pending assumption or rejection of the Kelly-Hatfield Lease and the Lawson Heirs Lease, and/or, if such leases have been assumed under section 365 of the Bankruptcy Code, to cure the defaults under the STB Override Agreement;
- (iii) Entering a declaratory judgment that (a) RLC's obligation to pay the STB Override Agreement remained tied to and runs with the lease coal

properties on which it was based, and payment of such amounts became incorporated conditions of the Kelly-Hatfield Lease and the Lawson Heirs Lease, and (b) RLC is obligated to pay the relevant portions of the STB Override under section 365(d)(3) of the Bankruptcy Code pending assumption or rejection of the Kelly-Hatfield Lease and the Lawson Heirs Lease and/or, if such leases have been assumed under section 365 of the Bankruptcy Code, to cure the defaults under the STB Override Agreement;

- (iv) Awarding STB damages in an amount to be determined at trial on its Third Counterclaim and allowing such damages as administrative expenses pursuant to 11 U.S.C. § 503(b);
- (v) Finding that RLC is unjustly enriched by being able to retain the benefits under the Leases without payment of the STB Override, and that the proceeds of the coal mined and sold from the leased Premises (to the extent of the amounts owed under the STB Override Agreement) are held in constructive trust for the benefit of STB.
- (vi) Awarding costs, expenses and attorneys fees to STB; and
- (vii) Granting STB such other relief as the Court deems just and proper.

SHOOK, HARDY & BACON L.L.P.

Dated: February 19, 2013

By: /s/ Mark Moedritzer
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19 day of February, 2013, a true and correct copy of the above and foregoing was served via CM/ECF notification on all parties receiving such notification.

/s/ Mark Moedritzer
Attorney for Defendant
STB Ventures, Inc.