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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
(LEXINGTON DIVISION)

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| **IN RE** | : | **Chapter 11 Proceeding** |
| **LODESTAR ENERGY, INC.**<br>**LODESTAR HOLDINGS, INC.,** | : | **Case Nos. 01-50969 and 01-50972** |
| **Debtors.** | : | **Jointly Administered under Case No. 01-50969** |
| | : | **Judge Joseph M. Scott, Jr.** |
| **LODESTAR ENERGY, INC.**<br>**LODESTAR HOLDINGS, INC.** | : | **Adv. Proceeding No. _____** |
| **PLAINTIFFS** | : | |
| **vs.** | : | |
| **THE STATE OF UTAH, ET AL.,** | : | |
| **DEFENDANTS.** | : | |

**ORDER**

This matter came on before the Court on Thursday, January 3, 2002 upon Complaint for Injunctive Relief with Exhibits and Motion for Temporary Restraining Order and/or Preliminary Injunction filed by Plaintiffs, Lodestar Energy, Inc. and Lodestar Holdings, Inc. (collectively, "Lodestar"). The Court has previously issued its Findings of Fact and Conclusions of Law.

Based upon the pleadings, arguments of counsel and evidence adduced, the Court finds that Plaintiffs' Motion for Temporary Restraining Order and/or Preliminary Injunction is well taken and same is hereby GRANTED.

Lodestar has satisfied the standards as set forth in In re DeLorean Motor Co., 755 F.2d 1223, 1228 (6th Cir. 1985). Specifically, the Court finds that Lodestar has demonstrated: (i) a strong likelihood of success on the merits of the claims asserted in the Complaint; (ii) that entry of an injunction will protect Lodestar from irreparable harm; (iii) that others will not be harmed by entry of an injunction; and (iv) an injunction will serve the public interest under the present circumstances. The Court finds that there is no imminent threat to public health, safety or welfare which justifies the complained of conduct. The Court finds that a balancing of equities strongly militates in favor of the requested relief in that there exists no immediate threat of harm arising from the enjoining of the complained of actions and that the consequences of not issuing the injunction are the likely destruction of Lodestar and the disruption of the very reclamation process the Defendants seek to protect.

Accordingly, and consistent with the Findings of Fact and Conclusions of Law issued by the Court, the Court hereby enjoins Defendants, individually and collectively, and their agents, employees and/or subordinates, from proceeding to require Plaintiffs to cease coal extraction and processing operations or otherwise comply with the demands of the Defendants as set forth in the correspondence dated October 5, 2001 and/or November 13, 2001 (copies of which are attached as Exhibits L and O, respectively, to the Complaint and introduced into evidence), issuing notices of noncompliance or cessation orders, suspending Lodestar's mining permits, and/or taking other enforcement actions adverse to Lodestar (individually and collectively, the "Adverse

Actions") based solely upon Lodestar not obtaining surety bonds to replace those bonds provided to the State of Utah Department of Natural Resources, Division of Oil, Gas & Mining ("DOGM") by Frontier Insurance Company in connection with mining permits issued to Lodestar to secure performance of its reclamation obligations. The Court hereby further orders Defendants Kathleen Clarke, Executive Director, State of Utah DOGM and Lowell P. Braxton, Division Director, State of Utah DOGM, to direct all of their respective agents and/or employees of the State of Utah supervised by them, and/or subordinates of theirs who might take or implement any Adverse Actions against Lodestar to refrain from doing so.

This Order is issued without bond. It shall remain in effect until further order of the Court.

Entered: _____

_____
HON. JOSEPH M. SCOTT, JR., JUDGE
UNITED STATES BANKRUPTCY COURT

TENDERED BY:

**SQUIRE, SANDERS & DEMPSEY, L.L.P.**

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**COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION**

Pursuant to Local Rule 9022-1(c), Taft A. McKinstry or Ellen Arvin Kennedy shall cause a copy of this Order to be served on each of the parties designated to receive this Order pursuant to Local Rule 9022-1(a) and shall file with the court a certificate of service of the Order upon such parties within (10) days hereof.

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
(LEXINGTON DIVISION)

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|---|---|
| **In re:**<br><br>**LODESTAR ENERGY INC., et al.,**<br><br>**Debtors.** | **Case Nos. 01-50969 and 01-50972**<br><br>**Chapter 11**<br><br>**Jointly Administered under Case No. 01-50969** |
| **LODESTAR ENERGY INC. AND LODESTAR HOLDINGS, INC.,**<br><br>**Plaintiffs,**<br><br>**v.**<br><br>**THE STATE OF UTAH, et al.,**<br><br>**Defendants.** | **Judge Joseph M. Scott, Jr.**<br><br>**Adv. Pro. No. _____** |

**MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

Lodestar Energy, Inc. and Lodestar Holdings, Inc. (collectively "Plaintiffs" or "Lodestar"), debtors and debtors in possession in the above-captioned Chapter 11 cases, pursuant to 11 U.S.C. § 105 and Rule 7065 of the Federal Rules of Bankruptcy Procedure, hereby move the Court for entry of a temporary restraining order and/or a preliminary injunction enjoining the

Defendants, individually and collectively, their agents, employees and/or subordinates, from proceeding in any way in demanding or requiring Lodestar to cease coal extraction and processing operations and/or otherwise comply with demands of the Defendants as set forth in their correspondence to Lodestar dated October 5, 2001 and/or November 13, 2001 (copies of which are attached as Exhibits L and O, respectively, to Plaintiffs' Complaint for Injunctive Relief [the "Complaint"]), issuing notices of non-compliance or cessation orders, suspending Lodestar's mining permits, and/or taking other enforcement actions adverse to Lodestar (individually and collectively, the "Adverse Actions") based solely upon Lodestar not obtaining surety bonds to replace those bonds provided to the State of Utah Department of Natural Resources, Division of Oil, Gas & Mining ("DOGM"), by Frontier Insurance Company in connection with mining permits issued to Lodestar to secure performance of its reclamation obligations.

As grounds for this Motion, Lodestar relies upon the Complaint, including the exhibits filed therewith, and the Memorandum of Law in Support of: (i) Motion for Temporary Restraining Order and/or Preliminary Injunction and Complaint for Injunctive Relief; and (ii) Motion for an Order Determining That (A) Certain Proposed Actions by State of Utah Would Violate the Automatic Stay; and (B) the State of Utah Has Willfully Violated the Automatic Stay, filed contemporaneously herewith, and such further evidence and/or arguments to be presented at a hearing on this matter.

Lodestar submits that it is entitled to the requested relief because it has satisfied all of the applicable factors identified by the Sixth Circuit. *See In re DeLorean Motor Co.,* 755 F.2d 1223, 1228 (6th Cir. 1985). Specifically, Lodestar has demonstrated: (i) a strong likelihood of success on the merits of the claims asserted in the Complaint; (ii) that entry of an injunction will protect

Lodestar from irreparable harm; (iii) that others will not be harmed by entry of an injunction; and (iv) an injunction will serve the public interest under the present circumstances.

Accordingly, Lodestar respectfully requests that this motion be granted and that the Court enter a temporary restraining order and/or a preliminary injunction: (i) enjoining the Defendants, individually and collectively, as well as their agents, employees and/or subordinates from proceeding to take or implement any Adverse Actions against Lodestar; and (ii) ordering the Defendants, individually and collectively, affirmatively to direct all of their respective agents and/or employees and/or subordinates who might take or implement any Adverse Actions against Lodestar, to refrain from so doing.

## NOTICE

Notice is hereby given that the foregoing Motion shall be brought on for hearing before the Honorable Joseph M. Scott, Jr., United States Bankruptcy Judge for the Eastern District of Kentucky, 100 East Vine Street, 2nd Floor, Lexington, Kentucky, on Thursday, January 3, 2002, at the hour of 1:30 p.m.

Dated: January 2, 2002

Respectfully submitted,

**SQUIRE, SANDERS & DEMPSEY L.L.P.**

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Jeffrey A. Marks
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eakennedy@fmblaw.com

**COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION**

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon those persons listed below by hand-delivery or U.S. Mail, postage pre-paid, as indicated, on this the 2 day of January, 2002:

Matthew B. Bunch, Esq.
271 West Short Street, Suite 805
P.O. Box 2086
Lexington, Kentucky 40588-2086
CO-COUNSEL FOR PACIFIC EMPLOYERS
INSURANCE COMPANY AND STATE OF UTAH
***Hand-Delivery***

John Maycock, Esq.
ASSISTANT ATTORNEY GENERAL, STATE OF UTAH
c/o Matthew B. Bunch, Esq.
271 West Short Street, Suite 805
P.O. Box 2086
Lexington, Kentucky 40588-2086
***Hand-Delivery***

THE STATE OF UTAH
Mark Shurtleff
Attorney General
State Capitol Office
236 State Capitol
Salt Lake City, UT 84114-0810
***U.S. Mail, Postage Pre-Paid***

Kathleen Clarke, Executive Director
STATE OF UTAH DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining
Or Her Successor in Interest
1594 West North Temple, Suite 1210
Salt Lake City, UT 84114-5801
***U.S. Mail, Postage Pre-Paid***

Lowell P. Braxton, Division Director
STATE OF UTAH DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS & MINING
1594 West North Temple, Suite 1210
Salt Lake City, UT 84114-5801
***U.S. Mail, Postage Pre-Paid***

Ellen Ann Kennedy
**COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION**

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UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
(LEXINGTON DIVISION)

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| **In re:** | **Case Nos. 01-50969 and 01-50972** |
| **LODESTAR ENERGY INC., et al.,** | **Chapter 11** |
| **Debtors.** | |
| **LODESTAR ENERGY INC. AND LODESTAR HOLDINGS, INC.,** | **Jointly Administered under Case No. 01-50969** |
| **Plaintiffs,** | **Judge Joseph M. Scott, Jr.** |
| **v.** | |
| **THE STATE OF UTAH, et al.,** | **Adv. Pro. No. _____** |
| **Defendants.** | |

**MEMORANDUM OF LAW IN SUPPORT OF: (i) MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION AND COMPLAINT FOR INJUNCTIVE RELIEF; AND (ii) MOTION FOR AN ORDER DETERMINING THAT (A) CERTAIN PROPOSED ACTIONS BY STATE OF UTAH WOULD VIOLATE THE AUTOMATIC STAY; AND (B) THE STATE OF UTAH HAS WILLFULLY VIOLATED THE AUTOMATIC STAY**

Lodestar Energy, Inc. and Lodestar Holdings, Inc. (collectively, "Plaintiffs" or "Debtors" or "Lodestar"), debtors and debtors in possession, contemporaneously herewith filed a Complaint for Injunctive Relief (the "Complaint") and Motion for Temporary Restraining Order

and/or Preliminary Injunction (the "Preliminary Injunction Motion") in this Court commencing an adversary proceeding against the Defendants The State of Utah (the "State") and certain officials (the "Defendant Officials") of the State's Department of Natural Resources, Division of Oil, Gas & Mining ("DOGM"). In addition, the Debtors have filed in their Chapter 11 cases their Motion for an Order Determining That (A) Certain Proposed Actions by State of Utah Would Violate the Automatic Stay; and (B) the State of Utah Has Willfully Violated the Automatic Stay (the "Automatic Stay Motion" and, together with the Preliminary Injunction Motion, the "Motions"). In support of the Motions, Lodestar states as follows:

## PRELIMINARY STATEMENT

The Complaint alleges, *inter alia*, that the Defendants are engaging in ongoing and prospective violations of federal law, including violations of various provisions of the United States Bankruptcy Code (the "Bankruptcy Code"). The Complaint further alleges that the Defendants are violating the Supremacy Clause, U.S. Const. art. VI § 2 and thereby damaging the Debtors and their bankruptcy estates. The relief sought in the Preliminary Injunction Motion and the Complaint is injunctive relief necessary to prevent the Defendants from continuing to harm the Debtors and their bankruptcy estates by their ongoing and threatened violations of federal law.

In addition, in the Automatic Stay Motion, the Debtors request that the Court determine that the State would violate the automatic stay of 11 U.S.C. § 362(a) by (a) demanding or requiring that the Debtors cease coal extraction and processing operations and/or otherwise comply with demands of the State set forth in correspondence to Lodestar dated October 5, 2001 and/or November 13, 2001 (copies of which are attached as Exhibits L and O, respectively, to

the Complaint); (b) issuing notices of non-compliance or cessation orders; (c) suspending Lodestar's mining permits; and/or (d) taking other enforcement actions adverse to the Debtors (individually and collectively, the "Adverse Actions") based solely upon Lodestar not obtaining surety bonds to replace those bonds provided to DOGM by Frontier Insurance Company ("Frontier") in connection with mining permits issued to Lodestar to secure performance of its reclamation obligations. The Debtors also request in that motion that the Court determine that the State has willfully violated the automatic stay by continuing to threaten the Adverse Actions notwithstanding the State's actual knowledge of these cases and of this Court's prior determination that substantially identical actions proposed to be taken by the Commonwealth of Kentucky constitute a violation of the automatic stay.

## NOTICE

The State and the Defendant Officials have adequate notice of the hearing scheduled for January 3, 2002 on the Motions. The Complaint, the Motions and this Memorandum have been served this date on the State's counsel, Matthew B. Bunch, Esq. of Lexington, Kentucky, and John Maycock, Esq., Assistant Attorney General, State of Utah. However, the State's counsel has known since December 21, 2001 of the January 3, 2002 hearing date, when such hearing was scheduled during a hearing on other matters in these Chapter 11 cases at which Mr. Bunch was present.

Moreover, the State has been aware, since well *before* December 21, 2001, that in the absence of an agreed temporary or permanent resolution of the issues raised in the Complaint and Motions before the January 7, 2002 deadline imposed by the State for replacement of the reclamation bonds, the Debtors would proceed to request substantially identical relief that the

Court granted to the Debtors with respect to the Kentucky. As the State is fully aware, having been served with all relevant pleadings, orders and findings of fact and conclusions of law, in the latter part of November 2001, this Court determined that the automatic stay applied to stay certain actions that Kentucky proposed to take against the Debtors that were substantively identical to the Adverse Actions as a result of the Debtors not replacing certain Frontier reclamation bonds provided to Kentucky. Further, the Court determined that Kentucky should be enjoined from taking such actions.

Starting no later than December 14, 2001, Debtors' counsel and Utah's counsel began discussing the fact that the Debtors would be compelled to seek relief from the Court absent a consensual resolution. On December 18, Debtors' counsel, Stephen D. Lerner, Esq., sent the following email to Mr. Bunch:

> Matt:
>
> I am writing to follow up our conversation in the Courtroom on Friday and to confirm that you received yesterday the transcript of the hearing in which the Court granted the injunction in November against the Kentucky state employees. As you know, Lodestar has requested that the State of Utah agree to an injunction against the exercise by Utah state employees of remedial action resulting from the inability of Lodestar to replace its Frontier bonds. As discussed, it is our firm view that, given the Court's decision with respect to Kentucky, the Court will grant the identical injunction as to Utah. Lodestar desires to reach an amicable resolution with Utah and the avoidance of unnecessary litigation and expense. Given that there are few business days between now and the January 7th deadline, we require a very prompt response to Lodestar's request before Lodestar will feel compelled to seek an injunction.
>
> Please contact me at your earliest possible convenience to discuss this.
>
> Thanks,
>
> Stephen

Mr. Bunch responded by email on December 18 as follows:

Steve, I have Federal Expressed your Findings of Fact and C of L to my client today. My contact person should receive it on Wednesday, and we have scheduled a telephonic conference for Thursday morning. I will contact you Thursday afternoon as to a proposal due to the shortness of time to resolve this issue amicably,
Matt Bunch

On December 19, Mr. Lerner emailed the following:

Matt:

Thanks for responding and your phone call of yesterday evening. While I will need to discuss it with Lodestar and some of its constituencies, your tentative proposal for a voluntary extension by the State of Utah of the January 7th deadline to February 15th for replacing the Frontier bonds is attractive unless conditions are placed on the extension. As we discussed, Lodestar certainly is desirous of reaching an amicable resolution of the bond replacement issue and there realistically is not sufficient time to have meaningful discussions toward such a resolution between now and January 7th. If we are not able to obtain an extension of time, Lodestar would have no other option than to pursue an injunction prior to January 7th. That is not our first choice and we hope that Utah will agree with your concept that an extension is warranted and appropriate under the circumstances.

As we discussed, I understand that you will discuss with your client the possibility of an extension and that you will get back to me tomorrow midday. I will look forward to your call.

Thanks,

Stephen

Thereafter, as noted above, at a hearing held December 21, the Court scheduled the January 3 hearing in light of the possibility that the Debtors would need to seek the necessary relief.

On December 24 at 10:12 a.m., Mr. Lerner sent the following email to Mr. Bunch, reiterating the Debtors' position and requesting that he communicate the State's position:

Matt:

Since I did not hear from you later in the day on Friday and since I will be out of the office through January 7th, I thought it appropriate to summarize where the parties are with respect to our discussions concerning the Frontier bonding situation. As you know, Lodestar's current deadline to replace the Frontier bonds in Utah is January 7, 2002. We

understand that the State has agreed to postpone any determination as to remedy for failure to replace the bonds until a February 27, 2002 hearing. This is sincerely appreciated. However, Lodestar and its major creditor constituencies firmly believe that if the January 7 date itself is not pushed back without conditions, Lodestar will be prejudiced by the passage of the deadline. You have indicated that the date cannot be postponed due to certain notice requirements imposed by Utah law. Thus, alternatively, Utah has offered to sign a stipulation establishing that the passage of the January 7 deadline without bond replacement will have no impact whatsoever on Lodestar, in fact or in law, in the event that the matter becomes subject to litigation. I am confident that we will be able to agree on such a stipulation. The problem, however, is Utah's current insistance on coupling this stipulation with either a cessation of mining or replacement of the bonds. Neither of these conditions is acceptable to or negotiable by Lodestar.

**The bottom line is that unless an appropriate stipulation (without conditions) is entered into or Utah agrees to postpone the January 7 deadline to a date no earlier than mid-February, Lodestar will have no choice but to move forward with its request for a preliminary injunction at the hearing currently scheduled for Jaunary 3, 2002 at 1:30 p.m.** As we have stated repeatedly, this is not Lodestar's first choice as Lodestar would prefer to resolve this matter without litigation. On Friday afternoon, in the context of trying to provide Utah with "consideration" for an agreement to postpone the January 7th date, you asked for assurances from Lodestar with respect to when bond replacement will occur. The fact of the matter, however, is that prior to meaningful discussions (that must include Wexford), which discussions necessarily cannot take place until after January 7th, Lodestar is not able to provide Utah with a date certain for bond replacement as you have requested. That will have to be part of the discussions that we are trying to arrange with you for later in January.

The ball is in Utah's court to determine whether the conditions currently being demanded will be removed. **In my absence, please communicate Utah's position on this matter directly to Jeff Marks** (513.361.1242 or jemarks@ssd.com).

Thanks,

Stephen

(emphasis added)

Not hearing from Utah's counsel in response to Mr. Lerner's request that Utah's position be communicated, Debtors' counsel, Jeffrey A. Marks, on December 28 at 10:57 a.m., sent the following email:

Matt,

As I had not heard from you in response to this email from Stephen Lerner, Eb Davis and I called you this morning to inquire about Utah's position. We were advised that you were not in the office but would be in later. Please call me at your earliest opportunity so that the parties will know where things stand. Obviously, with a January 3 hearing date, Lodestar must begin preparing the necessary filings if this matter is not resolved with the unconditional stipulation described by Stephen Lerner. Moreover, if the matter is to be resolved, all parties would prefer that the estate not incur the unnecessary expense of filings, hearing preparation, etc.

Thank you for your attention to this matter. I look forward to hearing from you.

Jeffrey A. Marks

Later in the day, at 4:39 p.m., another email was sent:

Matt,

Unfortunately, as I have still not heard from you, we will proceed to protect the estates' interests with the appropriate legal actions. If you wish to contact me over the weekend to discuss resolving this matter, my home telephone number is 513-761-1749. I would welcome the opportunity to discuss this with you.

Jeffrey A. Marks

Finally, at 5:11 p.m. on December 28, 2001, Mr. Bunch conveyed the State's position regarding an agreed resolution to avoid litigation:

Mark [sic], I have unfortunately received Steve Lerner's email rejecting our settlement offer. Since his "unconditional stipulation" was not any type of true counteroffer, the ball is still in your court to propose reasonable terms, at which time my client will decide whether such terms are reasonable and whether to consider same.
Best wishes.
Matt Bunch

The foregoing chronology makes clear that: the State has been aware since no later than December 14, 2001 that the Debtors would have to seek relief from the Court absent an agreed resolution of the State's demand for bond replacement by January 7, 2002; the State was aware on December 21 of the scheduling of the January 3 hearing; Mr. Lerner's December 24 email made clear to the State the Debtors' position regarding a possible agreed temporary resolution of the matter; and, because Mr. Bunch's December 28 email made clear that the State did not even

deem the Debtors' position worthy of serious consideration, the State has known unequivocally since December 24 *at the latest* that the January 3, 2002 hearing would occur. Accordingly, any argument by the Defendants that they have inadequate notice of the matters to be heard on January 3 should be summarily rejected. The Debtors should not be penalized for refraining from incurring the substantial expense of preparing and filing their Complaint and Motion papers until they became aware of the State's position regarding a possible agreed resolution.[1]

## FACTS

Plaintiffs incorporate by reference the factual allegations set forth in the Complaint. Each term defined in the Complaint has the same meaning herein unless the context clearly requires otherwise.

## ARGUMENT

### I. This Court Has Jurisdiction and Authority to Hear This Action and Grant The Relief Requested in the Motion.

In general, the Court, exercising the subject matter jurisdiction referred to it by the District Court for the Eastern District of Kentucky, has broad and comprehensive subject matter jurisdiction over the Debtors' cases and related proceedings. *See* 28 U.S.C. § 157 and 1334. This includes exclusive jurisdiction of all of the Debtors' property, wherever located, as of the date the Involuntary Petitions were filed, and all of the property of the Debtors' estates. *See* 28 U.S.C. § 1334(e). In addition, the Court has supplemental jurisdiction to hear and adjudicate state and federal claims that do not arise under the Bankruptcy Code. *See* 28 U.S.C. § 1367.

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[1] Additionally, it should be noted that the Office of the Clerk was closed on December 31, 2001.

Initially, the Debtors note that unlike Kentucky, which had not filed proofs of claim based upon the Debtors' reclamation obligations, the State of Utah has filed such proofs of claim. As noted in the Complaint, the State has filed two proofs of claim, relating to the two permits issued by the State to the Debtors. In each of the claims, the debts to the State are described as "Mine Reclamation obligation under Federal and State Coal Mining Reclamation Acts".[2]

Section 106(b) of the Bankruptcy Codes provides as follows:

> A governmental unit that has filed a proof of claim in the case is deemed to have waived sovereign immunity with respect to a claim against such governmental unit that is property of the estate and that arose out of the same transaction or occurrence out of which the claim of such government arose.

Although the *abrogation* of sovereign immunity that is set forth in Section 106*(a)* of the Bankruptcy Code has been the subject of serious constitutional challenge, the Debtors submit that the *waiver* of sovereign immunity set forth in Section 106*(b)*, in conjunction with the State's filing of their proofs of claim, works to vest jurisdiction and authority in this Court to hear a suit by the Debtors against the State. Accordingly, the Debtors have named the State itself as a defendant in this adversary proceeding, in addition to the Defendant Officials. However, assuming *arguendo* that Section 106(b) is constitutionally infirm or that the State's proofs of claim do not otherwise constitute a waiver of sovereign immunity, the Debtors will proceed to demonstrate that the Court has jurisdiction and authority to grant the relief sought against the Defendant Officials.

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[2] Copies of the proofs of claim are attached to the Complaint as Exhibit E.

Although the Eleventh Amendment to the United States Constitution[3] and the subsequent decision of the United States Supreme Court in *Hans v. Louisiana*[4] would (but for the sovereign immunity waiver addressed above) combine to deprive the Court of jurisdiction to hear suits brought by the Debtors against the State without the State's consent, the Debtors are not without remedy for violations of federal law committed under color of state law. The doctrine described by the Supreme Court in *Ex Parte Young*, 209 U.S. 123 (1908), and its progeny make it clear that the Court is authorized to grant the relief requested by the Plaintiffs in the Complaint and the Preliminary Injunction Motion against the Defendant Officials. Previously, this Court has recognized that the "theory and use of *Young* is to vindicate the supreme authority of federal law." *Technologies Int'l Holdings, Inc. v. Commonwealth of Ky. (In re Technologies Int'l Holdings, Inc.)*, 234 B.R. 699, 714 (Bankr. E.D. Ky. 1999) (Howard, J.). That vindication is essential here.

The Supreme Court held in *Ex Parte Young* that state officials are amenable to suit in federal court for equitable relief to prevent violations of federal law, even where the state itself is immune from suit under the Eleventh Amendment. *Young*, 209 U.S. at 155-66. *See also Telespectrum, Inc. v. Public Serv. Comm'n of Ky.*, 227 F.3d 414, 419 (6th Cir. 2000) (defining the *Young* doctrine to establish that "suits against state officers seeking equitable relief for ongoing violations of federal law are not barred by the Eleventh Amendment"). During the intervening

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3 The Eleventh Amendment provides that "the Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another state, or by Citizens or Subjects of any Foreign State."

4 *Hans v. Louisiana*, 134 U.S. 1 (1890) (holding that the Eleventh Amendment divests federal courts of jurisdiction over suits brought against a state, not just by citizens of other states, but also by its *own* citizens).

years since the Supreme Court decided *Young*, courts have elaborated upon and refined the *Young* doctrine. These decisions cumulatively make it clear that the Court's jurisdiction over the Defendant Officials is properly exercised pursuant to the *Young* doctrine where (a) the State itself is not the real party in interest,[5] (b) the prospective injunctive relief requested is appropriate because Congress has not otherwise prescribed a detailed remedial scheme for the violations of federal law at issue[6] and (c) granting the relief does not impermissibly impinge on the State's special sovereignty interests.[7] As discussed below, the Debtors have met each of these conditions. Accordingly, the Court possesses the necessary jurisdiction to grant the relief requested in the Motion with respect to the Defendant Officials.

First, the Debtors properly have invoked the *Young* doctrine because the State is not the real party in interest in the adversary proceeding. A state is not the real party in interest when the relief requested is limited to prospective equitable relief designed to ensure a state official's future compliance with federal law. *See Edelman v. Jordan*, 415 U.S. 651, 668 (1974) (holding that *Young* does not permit an award of money damages because it would be payable from the state's treasury); *Nelson v. Miller*, 170 F.3d at 646 (holding that *Young* does not permit retroactive relief because it usually takes the form of money damages, which are payable from

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5 *See, e.g., Technologies Int'l Holdings*, 234 B.R. at 713 (stating that the Eleventh Amendment bars a suit against a state's officials when the state's officials are merely nominal defendants and the state itself is the real party in interest).

6 *See Seminole Tribe v. Florida*, 517 U.S. 44, 74 (1996) (prohibiting plaintiff from proceeding under the *Young* doctrine because "Congress had prescribed a detailed remedial scheme for the enforcement against a State of a statutorily created right").

7 *See Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261, 269 (1997) (holding that relief under the *Young* doctrine is inappropriate where the relief would be an offense to the state's "special sovereignty interests"); *In re LTV Steel Co., Inc.*, 264 B.R. 455, 469 (Bankr. N.D. Ohio 2001) (finding that the Eleventh Amendment bars prospective injunctive relief against a state's officials where the relief would be so offensive and intrusive that it would obliterate the state's ability to regulate the field in which it has a special sovereignty interest).

the state's treasury and thereby implicating the state as the real party in interest); *In re LTV Steel Co., Inc.*, 264 B.R. 455, 465-67 (Bankr. N.D. Ohio 2001) (holding that a state is not the real party in interest when its treasury is only indirectly impacted by the cost of complying with the relief ordered against its officials). Here, the Preliminary Injunction Motion requests only prospective injunctive relief against the Defendant Officials and does not seek either retroactive or monetary relief. Thus, the State is not the real party in interest. The Debtors merely are seeking relief from the Court that compels the Defendant Officials to comply with federal law in the future. *See Nelson v. Miller*, 170 F.3d at 646 (finding that the *Young* doctrine is properly invoked when the prospective injunctive relief merely compels an official's future compliance with federal law); *Technologies Int'l Holdings*, 234 B.R. at 713 (denying motion to dismiss complaint against state officials where the relief sought with respect to them was injunctive relief against future actions violating various provisions of the Bankruptcy Code).

Second, the injunctive relief sought by the Debtors in the Preliminary Injunction Motion is appropriate because Congress has not otherwise prescribed a detailed scheme that provides the Debtors with remedies against the State for the asserted violations of federal law. *See LTV Steel*, 264 B.R. at 465, n2 (concluding that Congress did not provide a detailed remedial scheme where the remedy that <u>was</u> provided in the Bankruptcy Code, among other things, is "not overly detailed, does not make any mention of actions against a state [and] does not provide special procedures or remedies for actions against a state); *Technologies Int'l Holdings*, 234 B.R. at 713 (noting that the existence of a detailed remedial scheme would indicate that "Congress has a separate plan to provide relief" to plaintiffs but holding that no such remedial scheme is identified in the Bankruptcy Code); *Guiding Light Corp. v. Louisiana Dep't of Health & Hosps.*

*(In re Guiding Light Corp.)*, 213 B.R. 489, 492 (Bankr. E.D. La. 1997) (concluding that Congress has not provided a detailed remedial scheme for violations of the Bankruptcy Code that would preclude injunctive relief under the *Young* doctrine).

Third, the relief requested in the Preliminary Injunction Motion does not inappropriately impinge on special sovereignty interests of the State. Here, the Debtors' situation is analogous to the situation addressed by the bankruptcy court in *LTV Steel*, where the court held that the State of Minnesota's sovereignty interests were not sufficiently offended as to preclude relief under the *Young* doctrine:

> [W]e do not think that the relief requested here is so invasive of Minnesota's tax collection efforts as to cross the Eleventh Amendment line. Granting the relief requested by LTV will not invalidate the tax, will not prohibit the state from levying this particular tax against other entities in the future, will not require the state to relinquish possession and control over any real property and will not deprive the state of its ability to pass laws regarding the assessment of taxes in the future.
>
> Furthermore, the requested relief will not even deprive the state of its ability to ultimately collect all or some portion of the tax from LTV, as the state will be entitled to share in distributions from LTV's estate. The only indignity that the state can be said to suffer is that it will have to wait in line with all of LTV's other creditors before it can collect its debt.

*LTV Steel*, 264 B.R. at 469-70 (holding at 471 that the *Young* doctrine authorized the court to order the state officials to remove postpetition liens they placed on property of the debtor's estate that purported to secure the state's otherwise unsecured claim). Here, enjoining the Defendant Officials from requiring the Debtors to expend estate assets to purchase additional security for any claim they might have for reclamation costs is no more an affront to the State's sovereignty than the order issued in *LTV*. It does not prevent the State from legislating in the field or from making any such demands on other entities in the future. It merely ensures that the

State will have no greater rights with respect to property of the Debtors' estates than any other similarly-situated creditors. *See LTV Steel*, 264 B.R. at 471 (finding that the Eleventh Amendment is intended to be used only as a shield and not a sword to improve the position of the state *vis-à-vis* other creditors).

The Debtors have met every requirement of the *Young* doctrine. Accordingly, the Eleventh Amendment does not shield the Defendant Officials from the relief requested in the Motion.

## II. The Defendants' Actions Violate The Automatic Stay of 11 U.S.C. §362(a).

The automatic stay provisions set forth in section 362(a) of the Bankruptcy Code are one of the fundamental debtor protections provided by the bankruptcy laws, designed to give debtors a breathing spell from their creditors and, thus, provide them with an opportunity to reorganize their affairs. *See, Legislative History, House Report No. 95-595, 95th Cong., 1st Session 340-2 (1997); Senate Report No. 95-989, 95th Cong., 2d Session 49-51 (1978).* The stay concomitantly protects creditors by ensuring equal treatment consistent with the Bankruptcy Code and "preventing the chaotic and uncontrolled scramble for the debtor's assets in a variety of uncoordinated proceedings in different courts." *Chao v. Hospital Staffing Servs., Inc.*, 2001 U.S. App. LEXIS 23426, *15 (6th Cir. Oct. 31, 2001) (citations omitted).

The automatic stay prohibits, among other things:

> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
>
> * * *

> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; and
>
> * * *
>
> (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a).

There are a limited number of exceptions to the automatic stay, including the police power exception, which allows governmental units "to enforce such governmental unit's or organization's police or regulatory power." 11 U.S.C. § 362(b)(4). This exception, however, is not absolute and does not protect actions taken by governmental units to improve their position in their capacity as a creditor, to enforce money judgments, or otherwise pursue their pecuniary interests free from the restrictions of the automatic stay. 11 U.S.C. § 362(b); *see also Chao*, 2001 U.S. App. LEXIS 23426 at *26.

Moreover, even if a governmental unit is not precluded from exercising its police and regulatory powers by the automatic stay, the Court can still enjoin such conduct under section 105 of the Bankruptcy Code to the extent that the exercise of such powers is inconsistent with the Bankruptcy Code. *See American Imaging Servs., Inc. v. Opincar (In re Eagle-Picher Indus., Inc.),* 963 F.2d 855, 858 (6th Cir 1992).

To determine whether an action qualifies as the exercise of police or regulatory power, and, thus, falls outside the scope of the automatic stay, the Sixth Circuit applies the pecuniary interest and public policy tests.

> Under the pecuniary interest test, reviewing courts focus on whether the governmental proceeding related primarily to the protection of the government's pecuniary interest in the debtor's property, and not to matters of public safety. Those proceedings which relate **primarily** to matters of public safety are

> excepted from the stay. Under the public policy test, reviewing courts must distinguish between proceedings that adjudicate private rights and those that effectuate public policy. Those proceedings that effectuate a public policy are excepted from the stay.

*Chao*, 2001 U.S. App. LEXIS 23426 at *26, *citing Word v. Commerce Oil Co. (In re Commerce Oil Co.),* 847 F.2d 291, 295 (6th Cir. 1988) (emphasis added). The focus of the pecuniary interest test is "whether the enforcement action would result in a pecuniary advantage to the government *vis-à-vis* other creditors of the bankruptcy estate." *Id.* at 35, n.9.

By the Adverse Actions, the Defendants would seek to improve the position of the State *vis-à-vis* Lodestar's creditors by attempting to force Lodestar to replace its reclamation bonds under threat of suspension of its mining permits. The purpose of the bonding requirement is to ensure that funds will be available for reclamation of land mined in the State (*i.e.,* to secure through third party sources Lodestar's unliquidated contingent reclamation obligations to the DOGM).

Lodestar continues to perform reclamation operations in conjunction with its coal extraction operations. The sole reason the Defendants are seeking replacement bonds is to obtain a potential source of additional funding to reclaim Lodestar's mines. The Defendants are now threatening, under color of state law, to force the expenditure of estate assets to improve the DOGM's position as a creditor of Lodestar.

Moreover, the DOGM's demand for replacement bonds is primarily an action to preserve the private rights and interests of the State as a creditor of Lodestar and not to effectuate a public policy. The goal of reclamation is best served by Lodestar's continued contemporaneous coal extraction and reclamation operations and not the forced closure of Lodestar's mines by the taking of Adverse Actions due to the failure to post replacement bonds.

The overall statutory and regulatory scheme of Utah (and of the United States with respect to the Surface Mining Control and Reclamation Act) admittedly is underpinned by sound environmental policy. However, the reclamation bonding requirements contained therein predominantly serve the private financial interests of the State by, *inter alia,* seeking to secure funding through sureties to reclaim land mined within the State should a mine owner become insolvent and unable to perform its reclamation obligations.

The pecuniary and private nature of the bonding requirement is evident by the structure and language of the applicable code provisions and regulations. First, the amount of the required bond is determined in part by the probable difficulty of reclamation and the detailed estimated cost determined by the permittee. UCA § 40-10-15; Utah Admin. Rules R645-301-830.130 and 830.140. Furthermore, the amount of the bond must be sufficient to assure the completion of the reclamation plan if DOGM must complete the reclamation work upon the failure of the permittee to do so. UCA §40-10-15; Utah Admin. Rules R645-301-830.200. The pecuniary nature of the bonding requirement is self-evident as the level of bonding required seeks to secure adequate funding for effective reclamation.

The State's private financial interests in requiring bonds are implicated in several ways by the bonding requirement. Most fundamentally, if Lodestar is rendered unable to reorganize, ceases operations, and cannot fulfill its reclamation obligations, the State will bear responsibility to reclaim the land.

Due to the initiation of rehabilitation proceedings against Frontier, the DOGM and the State are now concerned that Frontier will be unable to satisfy its bond obligations and that the costs of reclamation will be borne by the State. Accordingly, the Defendants have initiated a

preemptive strike to minimize the State's financial exposure by demanding replacement bonds. However, by doing so, the Defendants are seeking to exercise control over estate assets to preserve the State's financial interests as a creditor of the Debtors rather than effectuate the fundamental goal of UCA Title 40 Chapter 10, which is to regulate the operation and reclamation of mines within the State in a manner so as to minimize the harm to the environment.

Lodestar is operating in full compliance with applicable mining regulations and continues to reclaim land in its possession and Lodestar continues to possess reclamation bonds that are valid under applicable insurance law. The DOGM, however, is pursuing the State's private pecuniary interests as a creditor of Lodestar, rather than effectuating the overarching public policy concerns of UCA Title 40 Chapter 10 by taking actions that will force the closure of Lodestar's mines, the cessation of voluntary reclamation operations, and the elimination of a revenue stream to fund reclamation.

The Defendants' conduct clearly violates 11 U.S.C. §362(a). Further, because the Defendants are primarily seeking to preserve private rights of the State in derogation of public policy and improve the position of the DOGM *vis-à-vis* Lodestar's other creditors, their conduct is not subject to any exception set forth in 11 U.S.C. §362(b).

## III. The Defendants' Actions Violate 11 U.S.C. §§ 363, 365, 507 and 541.

Pursuant to section 541 of the Bankruptcy Code, the commencement of a case under the Bankruptcy Code creates an estate comprised of all of a debtor's interest in property, wherever located and by whomever held. *See* 11 U.S.C. § 541. Further, pursuant to sections 363 and 365 Bankruptcy Code, the trustee has the right to use, sell or lease property of the estate and has the right to perform, assume, reject or assign executory contracts. *See* 11 U.S.C. §§ 363 and 365.

As a debtor in possession, Lodestar has the same rights, with exceptions not relevant here, as a trustee. 11 U.S.C. § 1107. Finally, section 507 of the Bankruptcy Code sets forth the Bankruptcy Code's priority scheme for the payment of allowed claims of creditors.

The Adverse Actions by the Defendants would unlawfully impair Lodestar's rights and interests under sections 363, 365 and 541 of the Bankruptcy Code and subvert the priority scheme set forth in section 507 of the Bankruptcy Code. By demanding the replacement of Lodestar's reclamation bonds, despite their continued validity, and ordering Lodestar to cease operations if it is unable to procure replacement bonds, the Defendants would interfere with Lodestar's use and enjoyment of property of its estate and undermine Lodestar's contracts with its suppliers, customers and insurance providers. The Adverse Actions, if taken by the Defendants, will jeopardize the ability to recover at all under the existing bonds and reinsurance agreement. Therefore, such conduct not only depletes and/or diminishes Lodestar's estate and its right to recover under the bonds, it is ultimately self-defeating for the State. That the adverse actions will adversely affect recovery rights is documented by general counsel to the Berkshire Hathaway Group (See Exhibit K to the Complaint). Moreover, the Defendants would employ the coercive power of the State to improve its position by requiring the expenditure of estate assets to obtain third party surety bonds and/or cash bonds directly from Lodestar to minimize the State's exposure relative to its reclamation claims against the Debtors' estates. All of these actions are inconsistent with the Bankruptcy Code.

## IV. The Defendant's Actions Violate the Supremacy Clause of the United States Constitution.

Article I, Section 8 of the United States Constitution provides that Congress shall have the power "to establish uniform Laws on the subject of Bankruptcies throughout the United

States." U.S. Const. Art. I, § 8. By enacting the Bankruptcy Code, Congress clearly and completely preempted the states in bankruptcy matters.

Article VI, Section 2 of the United States Constitution further provides that the "Constitution, and laws of the United States . . . shall be the supreme law of the land." U.S. Const. Art. VI, § 2.

By seeking to force Lodestar, under color of state law, to expend assets of its estate to improve the position of the State *vis-à-vis* Lodestar's other potential creditors, the Defendants are seeking to interfere with the operation of the Bankruptcy Code in violation the Supremacy Clause. *See Technologies Int'l Holdings*, 234 B.R. at 715 (emergency regulation that reordered priorities contrary to Bankruptcy Code violated supremacy clause).

## V. The Plaintiffs Are Entitled to Injunctive Relief Under 11 U.S.C. § 105.

Even if this Court finds that the actions of the Defendants related to their demand that Lodestar expend estate assets to improve the State's position *vis-à-vis* Lodestar's other potential creditors do not violate the automatic stay of 11 U.S.C. § 362(a), the Court should exercise its authority under section 105(a) of the Bankruptcy Code to enjoin the Defendants from taking any Adverse Actions due to Lodestar's failure to improve the State's position as a creditor of Lodestar by expending estate assets to obtain replacement performance bonds.

Section 105(a) of the Bankruptcy Code provides that:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

In deciding whether to issue a temporary restraining order or preliminary injunction under section 105(a), the Court must consider those factors relevant to the granting of such relief under Rule 65 of the Federal Rules of Civil Procedure (which is made applicable to adversary proceedings by Rule 7065 of the Federal Rules of Bankruptcy Procedure), which are:

> (1) the likelihood of plaintiff's success on the merits; (2) whether plaintiff will suffer irreparable injury without the injunction; (3) the harm to the others which will occur if the injunction is granted, and (4) whether the injunction would serve the public interest.

*American Imaging Servs.*, 963 F.2d at 858.

"Issuance of an injunction under section 105 is appropriate where the threatened state activity would unduly interfere with the proper functioning of the Bankruptcy Code. In such circumstances state law is preempted by the Bankruptcy Code." *In re Security Gas & Oil, Inc.*, 70 B.R. 786, 793 (Bankr. N.D. Cal. 1987).

Each of the factors necessary to obtain injunctive relief is satisfied in this case.

**A. <u>Lodestar Can Demonstrate the Likelihood of Success on the Merits</u>.**

In the bankruptcy context, the "likelihood of success on the merits logically must refer to whether the debtor can show that enforcement of the state laws will unduly interfere with the bankruptcy adjudication." *Id.* Demanding that Lodestar obtain replacement bonds unduly interferes with its bankruptcy case by requiring Lodestar to replace bonds that are still in effect at a tremendous cost to the Debtors' estates. To the extent that Lodestar is unable to procure replacement bonds it would need to post cash bonds, which would severely deplete the assets of the Debtors' estates. Moreover, the issuing of replacement bonds under such circumstances would effectively destroy the system of priorities set forth in section 507 of the Bankruptcy Code

by using estate assets to obtain third party surety bonds, or pledge estate assets as cash bonds, to improve the security for the claims asserted by DOGM.

Moreover, if DOGM were to suspend Lodestar's mining permits, Lodestar would be required to immediately cease its Utah operations, thus seriously impairing its ability to reorganize and continue its ongoing reclamation operations. The Defendants' actions may result in the forced liquidation of the business, not as a going concern, but piecemeal, to the extreme prejudice of all parties concerned, including citizens and communities of the State.

**B. Lodestar Will Suffer Irreparable Injury Unless the Court Grants the Requested Injunctive Relief.**

It is undeniable that Lodestar will suffer irreparable harm if the Defendants were to take any Adverse Actions. Such actions would force Lodestar to cease the Utah mining operations, or face potential civil and criminal penalties. The threat of criminal penalties would force Lodestar's officers to resign, the business to cease, and thus destroy Lodestar's ability to continue to pursue ongoing reclamation of its mines. The Adverse Actions would further operate to the extreme detriment of the Debtors' estates, creditors, customers and employees by seriously jeopardizing the Debtors' reorganization efforts.

**C. The Defendants Will Suffer No Harm From the Requested Relief.**

If the Court grants the relief requested by the Debtors in the Motion, the DOGM and the Defendants will suffer no harm. The Debtors will continue with their present mining and reclamation activities. With the Debtors performing reclamation activities in the ordinary course of their businesses, the DOGM will lose nothing.

On the other hand, if the Defendants are permitted to take Adverse Actions, they actually will cause harm to the DOGM by potentially driving Lodestar out of business, eliminating jobs

of the citizens of the State and destroying Lodestar's means to continue ongoing reclamation of its mines. The Defendants are actually in a better position now because Lodestar continues to reclaim land in its possession. On the other hand, Lodestar's viability will be seriously threatened along with its ability to perform its reclamation obligations if the requested relief is not granted.

### D. Injunctive Relief Will Serve the Public Interest.

If the Defendants take an Adverse Action, Lodestar would be forced to immediately cease operations in Utah, thereby destroying both jobs and Lodestar's ability to complete its reclamation activities. The closure of Lodestar's Utah coal extraction operations would further destroy the productive nature of the land and eliminate the revenue stream available to reclaim the mines. Accordingly, forcing the closure of Lodestar's mines would not serve the public interest. However, enjoining the Defendants from taking Adverse Actions will serve the public interest. Lodestar, as an operating entity, has the means to continue to perform reclamation activities, employ citizens of the State and pay taxes.

## VI. The Doctrine of *Stare Decisis* Should Compel the Court to Decide This Matter in Plaintiffs' Favor, as the Court Did in Prior Litigation With Kentucky

The legal issues and factual circumstances giving rise to this action are substantially identical to those giving rise to Adversary Proceeding No. 01-5248 (the "Kentucky Litigation") instituted by the Plaintiffs against certain officers of the Commonwealth of Kentucky. As in the Kentucky Litigation, the driving force behind this adversary proceeding is the State's regulatory scheme requiring bonding for the performance of reclamation activities by mining companies, the Debtor's use of Frontier as its bonding company, the eventual rehabilitation action with respect to Frontier, and the State's subsequent request that the Plaintiffs replace the Frontier

bonds or cease mining operations and immediately complete reclamation. In the Kentucky Litigation, this Court found that such requests by the officers of the Commonwealth of Kentucky violated the automatic stay and enjoined those officers from taking any further actions against the Plaintiffs' Frontier bonds.

Considering that the State was not a party to the Kentucky Litigation (although it received all of the associated pleadings and was certainly aware of the issues and facts involved), that prior decision may not be used as *res judicata* against the State. However, that decision by this very Court forms a precedent that, pursuant to the vital doctrine of *stare decisis*, must be adhered to in this instance. *See Cold Metal Process Co. v. E.W. Bliss Co.*, 285 F.2d 231, 236 (6th Cir. 1960) ("In the present case in which we have a prior ruling from our own Court, the rule of stare decisis is applicable."). In *Cold Metal*, the district court below reluctantly upheld the validity of a patent it questioned on the grounds that the court, and the Sixth Circuit, had upheld the patent in prior litigation. The Sixth Circuit upheld the district court's (and its own decision) on the patent pursuant to *stare decisis*. The court acknowledged that "this doctrine means . . . that when a point has been once settled by judicial decision, it forms a precedent for the guidance of courts in similar cases,' precedents which cannot be distinguished should be followed until modified or overruled, and the interest of uniformity, certainty and stability in the law thus promoted. Certainty of a rule is often of equal importance with theoretical accuracy." *Id* (citation omitted); *cited with approval by In re Fulton*, 211 B.R. 247, 256-57 (Bankr. S.D. Ohio 1997).

Bankruptcy Courts have also recognized the importance of *stare decisis*. In *In re Gaylor*, 123 B.R. 236 (Bankr. E.D. Mich. 1991), while the court was addressing the applicability to

bankruptcy courts of precedent from the district court in a multi-judge district, the court noted that "an important aspect of the rule of *stare decisis* is that each court is bound to follow its own prior decisions." *Id.* at 242. And in *In re Fulton*, the court quoted the United States Supreme Court's statement that "[t]ime and time again, this Court has recognized that the doctrine of stare decisis is of fundamental importance to the rule of law. Adherence to precedent promotes stability, predictability, and respect for judicial authority." *In re Fulton*, 211 B.R. at 256; *quoting Hilton v. South Carolina Public Rys. Comm'n*, 502 U.S. 197, 202 (1991).

In the case at hand, the Court is faced with practically identical factual circumstances to those faced in the Kentucky Litigation: a regulatory scheme requiring performance bonds for reclamation activities; the Plaintiffs' use of Frontier for such bonds; Frontier's subsequent rehabilitation; and the actions of the State and the State's officers to cause the Plaintiffs to replace the Frontier bonds or immediately cease mining operations and complete reclamation work. The legal issues are also identical to those in the Kentucky Litigation: do the actions of the State and the State's officers constitute violations of the automatic stay; should the consequences of those actions be enjoined; and should those officers be enjoined from undertaking any further action with respect to the Frontier bonds. If a set of circumstances called for application of the doctrine of *stare decisis*, it is certainly in those facing the Court today. The Court has decided these very issues in the Plaintiffs' favor once before and should do the same with respect to the relief requested in the Motion.

## CONCLUSION

For all of the foregoing reasons, the Plaintiffs are entitled to the injunctive relief sought in the Complaint, the Preliminary Injunction Motion and the Automatic Stay Motion. Accordingly, the Plaintiffs respectfully request that the Court enter an order granting the relief requested in the Complaint and in the Motions and granting such other and further relief as is just and proper.

Dated: January 2, 2002

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon those persons listed below by hand-delivery or U.S. Mail, postage pre-paid, as indicated, on this the 2 day of January, 2002:

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UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
(LEXINGTON DIVISION)

| | |
|---|---|
| **In re:** | **Case Nos. 01-50969 and 01-50972** |
| **LODESTAR ENERGY INC., et al.,** | **Chapter 11** |
| **Debtors.** | **Jointly Administered under Case No. 01-50969** |
| **LODESTAR ENERGY INC. AND LODESTAR HOLDINGS, INC.,** | **Judge Joseph M. Scott, Jr.** |
| **Plaintiffs,** | |
| **v.** | **Adv. Pro. No. _____** |
| **THE STATE OF UTAH, et al.,** | |
| **Defendants.** | |

**MOTION OF DEBTORS FOR AN ORDER AUTHORIZING REDUCTION OF NOTICE PERIOD FOR MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION ("EMERGENCY MOTION")**

Lodestar Energy, Inc. and Lodestar Holdings, Inc., through counsel, respectfully move this Court for an order shortening the notice period for hearing the Emergency Motion. In support of this Motion, the Debtors state as follows:

1. The Debtors have filed the foregoing Emergency Motion contemporaneously with this Motion.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. The Emergency Motion concerns the administration of the Debtors' estate and is, therefore, a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

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

4. By this Motion, the Debtors seek to have the Court shorten the notice period for the Emergency Motion to be heard Thursday, January 3, 2002, at the hour of 1:30 p.m., United States Bankruptcy Court for the Eastern District of Kentucky, 100 East Vine Street, 2nd Floor, Lexington, Kentucky.

5. Pursuant to Bankruptcy Rule 9006(c), cause exists for the Court to reduce the notice in the manner requested herein, due to (i) the Debtors' immediate need to obtain the relief sought in the Emergency Motion; (ii) the standard (traditional) nature of the relief requested in the Emergency Motion; and (iii) the absence of injury to any party that does not receive notice as all potential interests will be adequately represented by those parties who received notice.

WHEREFORE, the Debtors request that this Court grant the relief sought herein by (i) allowing the Emergency Motion; (ii) determining that the notice period is appropriate in these circumstances; and (iii) granting such other and further relief as the Court deems just and proper.

## NOTICE

Notice is hereby given that the foregoing Motion shall be brought on for hearing before the Honorable Joseph M. Scott, Jr., United States Bankruptcy Judge for the Eastern District of Kentucky, 100 East Vine Street, 2nd Floor, Lexington, Kentucky, on Thursday, January 3, 2002, at the hour of 1:30 p.m.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon those persons listed below by hand-delivery or U.S. Mail, postage pre-paid, as indicated, on this the 2 day of January, 2002:

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Ellen Ann Kennedy

**COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION**

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**UNITED STATES BANKRUPTCY COURT**
**FOR THE EASTERN DISTRICT OF KENTUCKY**
**(LEXINGTON DIVISION)**

| | |
|---|---|
| In re:<br><br>LODESTAR ENERGY INC., et al.,<br><br>Debtors. | Case Nos. 01-50969 and 01-50972<br><br>Chapter 11<br><br>Jointly Administered under<br>Case No. 01-50969 |
| LODESTAR ENERGY INC. AND<br>LODESTAR HOLDINGS, INC.,<br><br>Plaintiffs,<br><br>v.<br><br>THE STATE OF UTAH, et al.,<br><br>Defendants. | Judge Joseph M. Scott, Jr.<br><br>Adv. Pro. No. _____ |

**ORDER REGARDING SHORTENED NOTICE ON HEARING OF EMERGENCY MOTION**

This cause having come before the Court upon the Motion of Lodestar Energy, Inc. and Lodestar Holdings, Inc. For an Order Authorizing Reduction of Notice Period For Motion Of Debtors For An Order Authorizing Reduction Of Notice Period For Motion For Temporary

Restraining Order And/Or Preliminary Injunction ("Emergency Motion"), and the Court having reviewed same, and being advised, it is hereby

ORDERED THAT:

1. The Court finds good cause exists for shortened notice of hearing on the Emergency Motion.

2. The notice provided is sufficient in these particular circumstances based upon the relief requested and the need for prompt action thereon.

3. The Motion to Shorten Notice is SUSTAINED.

Entered: _____

_____
HON. JOSEPH M. SCOTT, JR., JUDGE
UNITED STATES BANKRUPTCY COURT

TENDERED BY:

**SQUIRE, SANDERS & DEMPSEY, L.L.P.**

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**COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION**

Pursuant to Local Rule 9022-1(c), Taft A. McKinstry or Ellen Arvin Kennedy shall cause a copy of this Order to be served on each of the parties designated to receive this Order pursuant to Local Rule 9022-1(a) and shall file with the court a certificate of service of the Order upon such parties within (10) days hereof.

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