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

AT LEXINGTON
JERRY D. TRUITT, CLERK
U.S. BANKRUPTCY COURT

IN RE

Chapter 11 Proceeding

LODESTAR ENERGY, INC.
LODESTAR HOLDINGS, INC.,

Case Nos. 01-50969 and 01-50972

Debtors.

Jointly Administered under
Case No. 01-50969

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Judge Joseph M. Scott, Jr.

LODESTAR ENERGY, INC., ET AL.

Adv. Proceeding No. 02-5001

PLAINTIFFS

vs.

THE STATE OF UTAH, ET AL.

DEFENDANTS.

AGREED ORDER

This matter having come before the Court (i) in this adversary proceeding upon the Complaint for Injunctive Relief filed by Lodestar Energy, Inc. ("LEI") and Lodestar Holdings, Inc. ("LHI" and, collectively with LEI, the "Debtors" or the "Plaintiffs"), the Plaintiffs' Motion for Temporary Restraining Order and/or Preliminary Injunction, and the Memorandum of Law in Opposition to Plaintiffs' Motion for Temporary Restraining Order and to Plaintiffs' Motion for

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ATTORNEY GENERAL
Natural Resource Division

an Order Determining That (A) Certain Proposed Actions by the State of Utah Would Violate the Automatic Stay; and (B) the State of Utah has Willfully Violated the Automatic Stay (the "Objection") filed by the State of Utah (the "State"), the successor to Kathleen Clarke, Executive Director of State of Utah Department of Natural Resources, Division of Oil, Gas & Mining ("DOGM") and Lowell P. Braxton, Division Director of DOGM (collectively, the "Defendants"); and (ii) in the within chapter 11 cases (the "Cases") on the Debtors' Motion for an Order Determining That (A) Certain Proposed Actions by the State of Utah Would Violate the Automatic Stay; and (B) the State of Utah has Willfully Violated the Automatic Stay, and on the Defendants' Objection; and it appearing to the Court that the parties, and Wexford Capital LLC ("Wexford"), have agreed to settle and fully resolve all of the disputes and controversies between them on the terms and conditions set forth in this Agreed Order (this "Order"); and the Court finding that approval of such settlement and resolution is in the best interests of the Debtors, their estates and their creditors and that good and sufficient cause exists for entry of this Order; now, therefore,

IT IS HEREBY AGREED AND THE COURT FINDS THAT:

Jurisdiction and Venue

1. On March 30, 2001, involuntary petitions (the "Involuntary Petitions") were filed in this Court against the Debtors under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code"). On April 27, 2001 (the "Relief Date"), upon the consent of the Plaintiffs to the relief requested in the Involuntary Petitions, the Court entered an Order for Relief Under Chapter 11 of the Bankruptcy Code in the Cases.

2. Since the Relief Date, the Plaintiffs have continued in possession of their property and are operating and managing their businesses and property and financial affairs as debtors and debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

3. This Court has jurisdiction over the Cases and this adversary proceeding under 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2).

4. Venue for the Cases and this adversary proceeding is proper in this District under 28 U.S.C. § 1409.

Background

5. For purposes of this Order, the Debtors' operations in Utah are the "White Oak Mines" #1 and #2 (known locally in Utah as the "Whisky Creek Mine") under DOGM Permit No. ACT/007/001, as amended (the "White Oak Operations") and the "Horizon Mine" under DOGM Permit No. ACT/007/020 (the "Horizon Operations" and, collectively with the White Oak Operations, the "Debtors' Utah Operations") (DOGM Permit No. ACT/007/001, as amended, and DOGM Permit No. ACT/007/020, as amended, are hereafter collectively referred to as either "Permit" or "Permits").

6. Frontier Insurance Company ("Frontier") is the surety for all of the Debtors' performance bonds relating to the Debtors' Utah Operations (the "Frontier Bonds").

7. Both prior to and after the Relief Date, one or more of the Defendants or their representatives notified Plaintiffs that they were required to replace the Frontier Bonds by reason of the financial condition of Frontier and that Frontier had its Certificate of Authority to conduct or transact business within the State of Utah revoked (the "Rebonding Demand").

8. The Plaintiffs contested the Rebonding Demand and sought orders of this Court in this adversary proceeding and in the Cases that would, among other things, enjoin the Defendants from taking any action to require the Debtors to cease coal extraction and processing operations and otherwise comply with the Rebonding Demand and/or issuing to Plaintiffs notices of non-compliance or cessation orders, and/or suspending LEI's mining permits and/or taking any other enforcement action adverse to the Plaintiffs (individually or collectively, the "Adverse Actions") as a consequence of the Debtors' failure to comply with the Rebonding Demand.

9. Defendants have moved to dismiss the adversary proceeding and have opposed the Debtors' motions in the respective Cases, contending, among other defenses, that the Rebonding Demand and the Adverse Actions are proper exercises of Defendants' regulatory and police power under both state and federal law, are exempt from the automatic stay under 11 U.S.C.A. Section 362(b)(4), and that the Plaintiffs, as Debtors in Possession operating on property within the State of Utah, must conduct their business in accordance with state law pursuant to the provisions of 28 U.S.C.A. Section 959. The Plaintiffs and Defendants dispute each others' claims, but have agreed, without admission of liability, and only for the purposes of compromising disputed claims and avoiding further costs of litigation, to settle such claims on the terms and conditions set forth herein.

10. The Defendants have agreed not to take Enforcement Action (as defined below) except upon the terms and conditions set forth in this Order. For purposes of this Order, "Enforcement Action" means, individually or collectively, any of the Adverse Actions or any other action (a) to enforce the Rebonding Demand, or (b) otherwise to require the Plaintiffs to replace the Frontier Bonds.

11. The parties hereto neither admit nor deny that the Permits are executory contracts that may be assumed or rejected pursuant to the provisions of 11 U.S.C. section 365. However, if it is hereafter determined that either or both of such Permits are rejected under 11 U.S.C. section 365, such rejection shall not affect the rights or obligations of any party under this Order.

The Settlement Agreement

Sharing of Wexford Superpriority

12. In the Final Order Authorizing (1) Debtors, Pursuant to Section 364 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure, to (A) Obtain Supplemental Post-Petition Financing from Wexford Capital LLC, (B) Grant Senior Liens, Priority Administrative Expense Status and Adequate Protection to Wexford Capital LLC, and (C) Modify the Automatic Stay, and (2) Amendments to Financing Agreements with Congress Financial Corporation, as Agent, and the CIT Business Group/Business Credit, Inc., as Co-Agent, entered on October 18, 2001 and the "Agreed Order Amending Final Order" entered on November 2, 2001 (collectively referred to as the "Wexford DIP Order"), the obligations of the Debtors to Wexford under the Loan Documents and all Supplemental Indebtedness (as defined in the Wexford DIP Order; referred to herein as the "Wexford Claim") shall have priority pursuant to 11 U.S.C. § 364(c)(1) over any and all costs and expenses of administration or other priority claims in this Chapter 11 case or any subsequent Chapter 7 case, including those described in 11 U.S.C. §§ 503(b) and 507(b), and, except for the Senior Encumbrances (as defined in the Wexford DIP Order), shall not be subordinated to any other security interest or lien granted under 11 U.S.C. § 364 or § 105 or otherwise (the "Wexford Superpriority Status").

13. To provide the Defendants with adequate assurance that the Debtors' reclamation

obligations and all other obligations under the Permits for the Debtors' Utah Operations will be satisfied in the event that the Frontier Bonds are not replaced (the costs of the reclamation obligations and all other obligations under the Permits for the Debtors' Utah Operations pursuant to the Frontier Bonds shall be defined as the "State Claim"), through an Acquisition or Plan (as those terms are defined below), with bonds that comply with 30 U.S.C.A. §1201 et. seq. and U.C.A. 40-10-1 et. seq. and Rules enacted thereunder (collectively referred to as the "Regulations"), Wexford has agreed to allow the State to share in the Wexford Superpriority Status on the following terms and conditions:

(a) the State with its State Claim shall share with the Wexford Claim in its Wexford Superpriority Status pursuant to the terms of Paragraph 13(c) of this Order until such time that the Plaintiffs have performed all of their reclamation and other Permit obligations regarding the Debtors' Utah Operations under the Regulations;

(b) the State shall share the Wexford Superpriority Status only to the extent that Frontier fails to perform or pay a claim within one hundred and eighty (180) days after the State submits a written demand for payment to Frontier under the Frontier Bonds¹; and

(c) unless increased in accordance with the provisions of paragraph 23 below, the Wexford Superpriority Status extended to the State Claim shall be \$1,000,000 (the "First Utah Share"). Any payment, if any, in respect of the Wexford Superpriority Status shall be paid 10% to the State and 90% to Wexford; *provided*, that under no circumstances shall the State receive more than \$1,000,000 in the aggregate for the First Utah Share. If Wexford receives a

¹ The terms of this Paragraph 13(b) shall not be deemed as a change in any of the terms or conditions of the Frontier Bonds as transacted between the State and Frontier.

distribution from the assets of the Plaintiffs under the Wexford Superpriority Status, the State's 10% share shall be held in the escrow account of Sawyer & Glancey, attorneys for Wexford, until such time as all terms and the time limit of paragraph no. 13 (b) above have occurred and expired, respectively, regarding the State's written demand for payment within one hundred and eighty (180) days thereof against Frontier on the Frontier Bonds.² Finally, Wexford shall not grant, convey, transfer or share any of the Wexford Superpriority Status with any other creditor of the Debtors, entity or any other party without the express written consent of the State.

The Wexford Acquisition Track

14. During the first sixty (60) days after the entry of this Order (the "First Wexford Acquisition Period"), the Defendants shall not take any Enforcement Action, during which time Wexford may seek to consummate a transaction whereby Wexford would acquire, lease or contract mine from the Debtors the Debtors' White Oak Operations and/or Horizon Operations through a transaction that includes replacement, in full, immediately upon closing, of the Frontier Bonds with performance bonds that comply with the Regulations (an "Acquisition"). The State shall assign to Wexford, if required by Wexford upon reasonable written notice, effective upon Wexford's replacement in full of the Frontier Bonds with performance bonds that comply with the Regulations (whether such replacement occurs pursuant to an Acquisition or a Wexford Plan [as defined below]), the State Claim; provided, however, no assignment shall occur until it is determined by the parties hereto that the State Claim can be preserved as a matter of law. If Wexford elects not to take assignment of the State Claim, Defendants acknowledge that, when

² It is the intent of the parties that for purposes of calculating the State's distribution from the assets of the Plaintiffs, if the State receives any recovery from Frontier after the 180 day period described in paragraph 13(b) above, then such recovery shall be included in the calculation of the State's distribution under paragraph 13(c) and paragraph 23, if applicable.

the Frontier Bonds have been replaced in their entirety to the satisfaction of the State in its reasonable discretion by either the efforts of Debtors, Wexford or any other party, the Defendants shall withdraw that portion or portions of their claim related to the State Claim and shall amend their proof of claim accordingly (Defendants, however, reserve the right to amend their proof of claim to assert any claims other than the State Claim, if any).

15. For purposes of this Order, the term "Enforcement Relief" shall mean a right of the Defendants to take any Enforcement Action, unless otherwise consented to in writing by the State, without prior order of this Court and unaffected by these Cases, including conversion thereof to cases under chapter 7, or any subsequent case or proceeding that the Debtors, or either of them, may commence or have commenced against them, as to which Enforcement Action the Debtors and any other party claiming by or through the Debtors and Wexford shall have no right to seek an injunction or stay. NOTICE IS HEREBY GIVEN TO ALL INTERESTED PARTIES THAT THE TERMS OF THIS PARAGRAPH DEVIATE FROM THIS COURT'S LOCAL RULE 4001-2(c). If Wexford has not closed an Acquisition by the end of the First Wexford Acquisition Period, the Defendants shall immediately be entitled to Enforcement Relief; *provided, however*, that if Wexford shall have provided to the Defendants' counsel, Matthew B. Bunch or W. Thomas Bunch ("Defendants' Counsel"), on or before the last day of the First Wexford Acquisition Period, written notice which demonstrates that Wexford is in good faith pursuing an Acquisition (the "Wexford Acquisition Extension Notice") or has contracted for the Acquisition but cannot obtain a Court date for approval thereof due only to the Court's own scheduling conflict within the First Wexford Acquisition Period, then Wexford shall have an additional sixty (60) day period commencing on the day after the end of the First Wexford

Acquisition Period (the "Second Wexford Acquisition Period")³ to close an Acquisition.

16. The Defendants shall not take any Enforcement Action during the Second Wexford Acquisition Period.

17. If Wexford fails to (a) give a Wexford Acquisition Extension Notice prior to the end of the First Wexford Acquisition Period, or (b) consummate an Acquisition prior to the end of the Second Wexford Acquisition Period, then the Defendants shall immediately be entitled to Enforcement Relief *unless* any of the following occurs: (x) Wexford has not given a Wexford Acquisition Extension Notice prior to the end of the First Wexford Acquisition Period, but has, prior to the end of the First Wexford Acquisition Period, given to Defendants' Counsel written notice (a "Wexford Plan Notice") that Wexford intends to sponsor or propose a plan or plans of reorganization in the Cases (a "Plan"); (y) Wexford has given a Wexford Acquisition Extension Notice, and prior to the end of the Second Wexford Acquisition Period, Wexford has given a Wexford Plan Notice; or (z) the Debtors have given to Defendants' Counsel written notice, prior to the end of the First Wexford Acquisition Period, that the Debtors intend to propose a Plan (a "Debtor Plan") that is not sponsored or proposed by Wexford but provides for replacement, in full, no later than the eleventh (11th) day after entry of an order confirming the Plan (such entry date being hereafter referred to as the "Confirmation Date" and said order shall be tendered to the Court for entry within three business days after such confirmation hearing date), of the Frontier Bonds with reclamation bonds that comply with the Regulations (a "Debtor Plan Notice"). In the event that Wexford has given a Wexford Plan Notice, then the rights and

³ It is understood that the Second Wexford Acquisition Period ends on the one hundred and twentieth (120th) day after the date of entry of this Order.

obligations of the parties shall be governed by the provisions of paragraphs 18 through 25 below under the subheading "The Wexford Plan Track". In the event that the Debtors have given a Debtor Plan Notice, then the rights and obligations of the parties shall be governed by the provisions of paragraphs 26 through 36 below under the subheading "The Debtors Plan Track".

The Wexford Plan Track

18. Wexford may give a Wexford Plan Notice no later than one hundred and twenty (120) days after the date of entry of this Order. In the event that Wexford timely gives a Wexford Plan Notice, a Plan proposed or sponsored by Wexford that provides for replacement, in full, no later than the eleventh (11th) day after the Confirmation Date, of the Frontier Bonds with reclamation bonds that comply with the Regulations (a "Wexford Plan") shall be filed no later than two hundred and forty (240) days after the date of entry of this Order (the "Wexford Plan Deadline").

19. The Defendants shall not take any Enforcement Action during the period from the date upon which a Wexford Plan Notice is given through the Wexford Plan Deadline and, if a Wexford Plan is filed, shall not take any Enforcement Action except as provided in paragraphs 21 through 25 below.

20. Subject to the provisions of paragraphs 26 through 36 below, if applicable, in the event that a Wexford Plan is not filed on or before the Wexford Plan Deadline, then the Defendants shall immediately be entitled to Enforcement Relief.

21. In the event that a Wexford Plan is filed on or before the Wexford Plan Deadline, then no later than the date on which the Wexford Plan is transmitted to creditors for voting (the "Wexford Plan Voting Commencement Date"), Wexford shall provide to Defendants' Counsel a

copy of a written commitment from a surety qualified under the Regulations to provide performance bonds (a "Qualified Surety") to replace in full the Frontier Bonds no later than the Confirmation Date (a "Bond Replacement Commitment").

22. Subject to the provisions of paragraphs 26 through 36 below, if applicable, in the event that Wexford fails to provide Defendants' Counsel a copy of a Bond Replacement Commitment on or before the Wexford Plan Voting Commencement Date, then the Defendants shall immediately be entitled to Enforcement Relief.

23. Subject to the provisions of paragraphs 26 through 36 below, if applicable, in the event that a Wexford Plan is filed on or before the Wexford Plan Deadline, and in the further event that Wexford provides to Defendants' Counsel a copy of a Bond Replacement Commitment on or before the Wexford Plan Voting Commencement Date, but an order confirming the Wexford Plan is not entered on or before sixty (60) days after the Wexford Plan Deadline (the "Initial Wexford Confirmation Deadline"), then the Defendants shall immediately be entitled to Enforcement Relief; *provided, however*, that if Wexford provides to Defendants' Counsel, prior to the Initial Wexford Confirmation Deadline, a notice that Wexford elects to extend the period in which to obtain confirmation of a Plan (the "Wexford Extension Notice"), then the Defendants shall not take any Enforcement Action during the period from the date upon which the Wexford Extension Notice is given through the date that is sixty (60) days after the Initial Wexford Confirmation Deadline (the "Ultimate Wexford Confirmation Deadline"). Wexford's giving of the Wexford Extension Notice shall automatically result in a further extension of the Wexford Superpriority Status to the State Claim by an additional \$1,000,000 (the "Second Utah Share"), and, thereafter, any payment, if any, in respect of the Wexford

Superpriority Status shall be paid 20% to the State and 80% to Wexford; *provided*, that under no circumstances shall the State receive more than \$2,000,000 in the aggregate for the First Utah Share and the Second Utah Share.

24. Subject to the provisions of paragraphs 26 through 36 below, if applicable, in the event that an order confirming the Wexford Plan is not entered on or before the Ultimate Wexford Confirmation Deadline, then the Defendants shall immediately be entitled to Enforcement Relief.

25. Subject to the provisions of paragraphs 26 through 36 below, if applicable, in the event that an order confirming the Wexford Plan is entered on or before the Initial Wexford Confirmation Deadline or the Ultimate Wexford Confirmation Deadline, but a Qualified Surety does not replace in full the Frontier Bonds within eleven (11) days after entry of such confirmation order, notwithstanding an appeal or stay of such confirmation order, then the Defendants shall immediately be entitled to Enforcement Relief.

The Debtors Plan Track

26. The Debtors may give a Debtor Plan Notice not later than sixty (60) days after the date of entry of this Order (the "Debtor Plan Notice Deadline").

27. The Defendants shall not take any Enforcement Action during the period prior to the Debtor Plan Notice Deadline.

28. In the event that the Debtors timely give a Debtor Plan Notice, the Debtors shall, within sixty (60) days after the Debtor Plan Notice Deadline (the "Debtor Plan Funding Notice Deadline"), give notice to Defendants' Counsel which notice shall contain or be accompanied by evidence that the Debtors have a source of adequate funding for a viable Debtor Plan (the

"Debtor Plan Funding Notice").

29. Subject to the provisions of paragraphs 18 through 25 above, if applicable, in the event that the Debtors fail to give a Debtor Plan Funding Notice on or before the Debtor Plan Funding Notice Deadline, then the Defendants shall immediately be entitled to Enforcement Relief.

30. If the Debtors give a timely Debtor Plan Funding Notice, the Defendants shall not take any Enforcement Action from the Debtor Plan Funding Notice Deadline through the one hundred and twentieth (120th) day after the Debtor Plan Funding Notice Deadline (the "Debtor Plan Deadline").

31. The Defendants shall not take any Enforcement Action during the period from the date upon which a Debtor Plan Funding Notice is given through the Debtor Plan Deadline and, if a Debtor Plan is filed, shall not take any Enforcement Action except as provided in paragraphs 32 through 36 below.

32. Subject to the provisions of paragraphs 18 through 25 above, if applicable, in the event that a Debtor Plan is not filed on or before the Debtor Plan Deadline, then the Defendants shall immediately be entitled to Enforcement Relief.

33. In the event that a Debtor Plan is filed on or before the Debtor Plan Deadline, then no later than the date on which the Debtor Plan is transmitted to creditors for voting (the "Debtor Plan Voting Commencement Date"), the Debtors shall provide to Defendants' Counsel a copy of a Bond Replacement Commitment from a Qualified Surety.

34. Subject to the provisions of paragraphs 18 through 25 above, if applicable, in the event that the Debtors fail to provide to Defendants' Counsel a copy of a Bond Replacement

Commitment from a Qualified Surety on or before the Debtor Plan Voting Commencement Date, then the Defendants shall immediately be entitled to Enforcement Relief.

35. Subject to the provisions of paragraphs 18 through 25 above, if applicable, in the event that a Debtor Plan is filed on or before the Debtor Plan Deadline, and in the further event that the Debtors provide to Defendants' Counsel a copy of a Bond Replacement Commitment from a Qualified Surety on or before the Debtor Plan Voting Commencement Date, but an order confirming the Debtor Plan is not entered on or before sixty (60) days after the Debtor Plan Deadline (the "Debtor Confirmation Deadline"), then the Defendants shall immediately be entitled to Enforcement Relief.

36. Subject to the provisions of paragraphs 18 through 25 above, if applicable, in the event that an order confirming the Debtor Plan is entered on or before the Debtor Confirmation Deadline, but a Qualified Surety does not replace the Frontier Bonds within eleven (11) days after entry of such confirmation order, notwithstanding an appeal or stay of such confirmation order, then the Defendants shall immediately be entitled to Enforcement Relief.

Other Provisions

37. Defendants shall have the right to conduct weekly inspections of the Debtors' Utah Operations to determine the Debtors' compliance with all regulations applicable thereto.

38. The Debtors and Wexford agree not to object to any request or application filed by the Defendants for allowance of an administrative expense claim for Defendants' attorneys' fees and costs, under section 503(b)(3)(D) of the Bankruptcy Code, in an amount not to exceed \$50,000.00, and further agree not to urge any other entity, creditor or interested party to object to any such request or application on any basis, including but not limited to, the basis that the

Defendants assert or contend that they, by means of this Agreed Order, have made a substantial contribution for the benefit of the Debtors, their estates and the creditors therein.

39. If the Defendants are entitled to Enforcement Relief at any time as outlined in this Agreed Order but the right to such relief thereunder has not been exercised by the Defendants, such Enforcement Relief shall not be deemed waived by the Defendants and the Defendants may later specifically invoke such relief at any time without prior notice.

40. Any cash payments made to the State by any party in satisfaction of the State Claim made (1) prior to the Frontier Bonds being replaced in their entirety or (2) in advance of any failure or default by the Debtors to perform their reclamation obligations under the Permits, immediately upon receipt, reduce the First Utah Share or Second Utah Share, whichever is applicable, dollar for dollar; provided, however, that such payments shall not (a) require a partial release of any Frontier Bonds from the State; (b) be deemed as a waiver of any of the State's rights against Frontier under the Frontier Bonds; or (c) a reduction of Frontier's liability under the Frontier Bonds.

41. Since all matters and issues in Adversary Proceeding No. 02-5001 have been resolved, said adversary proceeding and the Debtors' Motion for an Order Determining That (A) Certain Proposed Actions by the State of Utah Would Violate the Automatic Stay; and (B) the State of Utah has Willfully Violated the Automatic Stay should be and the same hereby are dismissed with prejudice with each party to bear its own costs, expenses and attorney's fees, except as specifically provided in paragraph 38 of this Order. There being no just cause for delay, this is a final and appealable order.

JOHN MAYCOCK, ESQ.
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COUNSEL FOR WEXFORD CAPITAL LLC

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 ten (10) days hereof.

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