IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CLIFFS NATURAL RESOURCES INC. and CLF PINNOAK LLC, Plaintiffs, v. SENECA COAL RESOURCES, LLC, et al., Defendants.	C.A. No. 17-567-GAM **REDACTED -- PUBLIC VERSION**
SENECA COAL RESOURCES, LLC, Counterclaim-Plaintiff, v. CLIFFS NATURAL RESOURCES INC. and CLF PINNOAK LLC, Counterclaim-Defendants.	

PLAINTIFFS' MOTION
FOR LEAVE TO AMEND COMPLAINT OR FOR ALTERNATIVE RELIEF

Plaintiffs Cleveland-Cliffs Inc. f/k/a Cliffs Natural Resources Inc. and CLF PinnOak LLC (collectively, "Cliffs"), by and through their undersigned counsel, hereby request leave to amend their complaint pursuant to Federal Rules of Civil Procedure 15(a) and 16(b). Cliffs' proposed amended complaint, including exhibits, is attached here as Exhibit 1. A redline comparison of the proposed amended complaint is attached as Exhibit 2.

Based on facts recently revealed in the course of discovery, Cliffs seeks leave to plead a claim for relief pursuant to §§ 1962(a), 1962(c) and 1962(d) of the Racketeer Influenced and Corrupt Organizations provisions of the Organized Crime Control Act of 1970, 18 U.S.C. §§ 1961–1968. The reasons for the relief requested herein are set forth in the accompanying

Consolidated Answering Brief in Response to Defendants' Motion to Dismiss and Opening Brief in Support of Plaintiffs' Request for Leave to Amend or for Alternative Relief ("Cliffs' Brief").

In the alternative and if the Court finds that the current action should be dismissed for lack of subject matter jurisdiction, Cliffs hereby requests that the Court structure the dismissal consistent with Federal Rules of Civil Procedure 1, 41, and 42 to allow Cliffs' proposed amended complaint to be immediately filed and deemed a related case pursuant to Local Rule 3.1, that the dismissal occur only upon the filing of the related case, and that the Court award Cliffs its costs pursuant to 28 U.S.C. § 1919. The reasons supporting this alternative relief are set forth in Cliffs' Brief.

WHEREFORE, Cliffs respectfully requests that the Court grant the request for leave to amend or the alternative relief to immediately refile as a related case, and enter the proposed order attached hereto to grant the request that the Court deems fit.

Dated: April 2, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Pilar G. Kraman, hereby certify that on April 2, 2018, I caused to be electronically filed a true and correct copy of the foregoing sealed document with the Clerk of the Court using CM/ECF, which will send notification of such filing to registered participants.

I further certify that on April 2, 2018**,** I caused the foregoing sealed document to be served by e-mail on the following counsel of record:

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Dated: April 2, 2018

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CLIFFS NATURAL RESOURCES INC.
200 Public Square, 33rd Floor
Cleveland, OH 44114

CLF PINNOAK LLC
200 Public Square, 33rd Floor
Cleveland, OH 44114

Plaintiffs,

v.

SENECA COAL RESOURCES, LLC,
15 Appledore Lane
P.O. Box 87
Natural Bridge, Virginia 24578

THOMAS M. CLARKE
16620 Lee Highway
Buchanan, VA 24066

ANA M. CLARKE
16620 Lee Highway
Buchanan, VA 24066

KENNETH R. MCCOY
7608 Trail Blazer Trail
Wake Forest, NC 27587

JASON R. MCCOY
9113 Linslade Way
Wake Forest, NC 27587

CHARLES A. EBETINO, JR.
3694 Seaford Drive
Columbus, OH 43220

LARA NATURAL RESOURCES, LLC
5228 Valleypointe Parkway
Suite 1, Building B
Roanoke, VA 24019

C.A. No. 17-567-GAM-SRF

FOURTH AMENDED COMPLAINT

REDACTED PUBLIC VERSION

DEMAND FOR JURY TRIAL ENDORSED HEREON

also serve

LARA NATURAL RESOURCES, LLC
c/o Corporation Service Company
Bank of America Center, 16th Floor
Richmond, VA 23219

IRON MANAGEMENT II, LLC
6801 Falls of Neuse Rd., Suite 100
Raleigh, NC 27615

Defendants.

Plaintiffs Cleveland-Cliffs Inc. f/k/a Cliffs Natural Resources Inc. ("Cliffs") and CLF PinnOak LLC ("CLF"), for their Fourth Amended Complaint against Defendants Seneca Coal Resources, LLC ("Seneca"), Thomas M. Clarke, Ana M. Clarke, Kenneth R. McCoy, Jason R. McCoy, Charles A. Ebetino, Jr. (collectively, the "Individual Defendants"), Lara Natural Resources, LLC ("Lara Natural Resources") and Iron Management II, LLC ("Iron Management" and along with Seneca, the Individual Defendants, and Lara Natural Resources, the "Defendants") specifically allege the following:

INTRODUCTION

1. This is an action for damages for violations of 18 U.S.C. §§ 1962(a), 1962(c) and 1962(d), fraudulent conveyance, common law conspiracy, and breach of contract. It arises from a systematic and sustained scheme by Defendants to defraud Plaintiffs of the funds and assets that Seneca owed them, and the ultimate laundering of those funds and remaining Seneca assets into a new criminal enterprise, Mission Coal Company, LLC. Defendants carried out this fraudulent scheme through a sustained pattern, over an extended period of time, of illicit and illegal transfers of Seneca's assets and funds to their own personal accounts and to other legal entities that they controlled.

2. The scheme, to which all Defendants agreed, was hatched by Thomas Clarke. As detailed below, it comes from a playbook that he has developed over the course of his career. The existence and scope of this scheme did not become clear until recent discovery and further factual investigation allowed Defendants to finally connect the dots.

3. Defendants formed Seneca in December 2015 for the sole purpose of purchasing two coal mines from Cliffs. That purchase included ongoing obligations based on the operation of the mines transferred to Seneca. But Seneca has not honored those obligations. Instead, the Individual Defendants, as part of a continuous and ongoing scheme to defraud, have regularly and repeatedly used Seneca for their own ends. Defendants have transferred Seneca's funds and assets to themselves, Lara Natural Resources, Iron Management, and other Seneca affiliates. The Individual Defendants, separately among themselves as well as with the corporate Defendants, combined, conspired, confederated and agreed to treat Seneca as their personal piggy bank, rather than paying money due and owing to Cliffs and CLF on or around the time of the transfers. And despite submitting sworn statements to a federal court in early 2017 promising not to distribute Seneca funds without thirty days' notice to Cliffs, discovery has revealed that such distributions have continued into 2018.

4. In January 2018, Defendants transferred the assets of Seneca and other affiliated companies into a newly created entity, Mission Coal Company, LLC ("Mission Coal"). Defendants then had this new entity pledge its assets in order to obtain more than [redacted] in additional financing, a significant portion of which was immediately distributed for the benefit of Thomas Clarke (and possibly other Individual Defendants as well). Although the financing was obtained based, in part, on Seneca's assets, none of the funds were reserved for the millions of dollars that Clarke has admitted Seneca owes Cliffs.

5. Since acquiring the two coal mines from Cliffs in December 2015, Defendants have committed many acts of wire and mail fraud in furtherance of their ongoing scheme to pilfer the assets of Seneca for their own benefit while moving assets in a way designed to avoid the legitimate claims of creditors, including Cliffs. More plainly, Defendants turned Seneca into a criminal enterprise, the regular way of doing business of which centered on this systematic pattern of fraudulent conveyances to Defendants and others affiliated with Seneca. And the extent of this ruse is still coming into focus. Cliffs learned that the Mission Coal transaction had occurred and of the corresponding distribution to Mr. Clarke for the first time in a February 2018 deposition. Even today, Defendants refuse to provide complete documentation of the refinancing and distribution, despite committing to working to make such information available.

6. None of this is new for Thomas Clarke. Over the course of this litigation Plaintiffs have learned that the fraudulent scheme the Defendants have implemented comes straight out of a playbook developed by Clarke over the past three decades. A review of his business transactions shows a remarkably similar and evolving pattern: acquire a legitimate company, leverage that company in order to take in substantial funds, pay those funds (under the guise of "management" or purportedly valid fees) to himself or other entities he controls, default on the acquired company's debts, delay or simply ignore payments to creditors, and leave the former entity in ruins or bankruptcy.

7. From May 1987 to 1991, Clarke was treasurer and chief financial officer of Berkshire Health Systems, Inc. ("Berkshire"), an operator of medical facilities based in Pittsfield, Massachusetts. Scott Van Hooris, *Lenox Healthcare Inc. eyes Berkshire's Nursing Homes*, Boston Bus. J. (Mar. 31, 1997), https://goo.gl/8JqKiv ("*Lenox Healthcare*"). Clarke was fired from Berkshire in 1991, after the company amassed in excess of $60 million in debt under

Clarke's aggressive expansion plan as chief financial officer. *Id.* The Massachusetts attorney general also investigated allegedly unauthorized intercompany transfers of $8.5 million. Matt Robinson and Bryan Gruley, *What's a Nursing-Home Operator Doing Running an Iron Mine?*, BLOOMBERG BUSINESSWEEK (Mar. 21, 2018), https://goo.gl/Y7q2c6 ("*Nursing-Home Operator*"). With Clarke gone, Berkshire agreed to specific changes to its corporate governance to address the problems. *Nursing-Home Operator*. Even after he was terminated, Clarke attempted to capitalize on Berkshire's financial woes, proposing that Berkshire sell its nursing-home division to a company that Clarke owned. *Lenox Healthcare*. Having seen Clarke's methods up close, Berkshire rejected the offer. As the company's new chief financial officer explained, "[g]iven Tom's history in the debacle of the early 1990s related to the financial issue here, the board at this time has no interest at all in doing business with Mr. Clark [*sic*]." *Id.*

8. Others close to Clarke reached similar conclusions about his business practices. In 2004, Clarke and his then-wife, Linda, divorced after 24 years of marriage. Linda had also been Clarke's business partner. In a post-divorce lawsuit, she accused him of shifting money among corporate entities he controlled in order to keep it from her. "Mr. Clarke has a history of not paying vendors," one of his ex-wife's filings says. *Nursing-Home Operator*. "He manages to keep the companies going from cash flow, one company constantly borrows from the other to stay afloat." *Id.*

9. While facing a threatened IRS collection matter in 2005 for unpaid payroll taxes, Clarke moved to Venezuela (which has no extradition treaty with the US) for approximately seven months. While there he charged his company Senior Care Management Services, Inc. ("SCMS") for his living expenses and to charter a private jet for his honeymoon with his new wife, Individual Defendant Ana Clarke. At the time, the company owed vendors more than $1.5

million. In addition to his salary, he took an additional $150,000 from the company in what were referred to as "donations." These funds were normally wired to different accounts set up by Clarke and referred to as "donation accounts."

10. In one email, Clarke bragged about his ability to stymie creditors through byzantine organizational structures and international entities.

> From: tom Clarke [mailto:[redacted]@hotmail.com]
> sent: Mon 4/4/2005
> 7:05AM
> To: Clarke, Linda; Glass, Gail
> Cc: [redacted]@hotmail.com
> Subject: senior care management services lawsuits
>
> gail and linda….tbe number of lawsuits against senior care management services is staggering…when people learn about our insurance policy and single purpose entities they assume the gold mine is in senior care…**ha ha**…but every once and awhile they go crazy like our friends in virginia and we end up spending tons of time and money to protect the entire company…also the judgments against senior care effect our credit and could result in asset seizure…**I am going to set up a venezuelan corporation to be the new manager…this makes sense since i will be a dual citizen and I live here…it can not be perceived as a shell…and linda I will incorporate all of our divorce settlement provisions in the new entity…gail can you think of issues surrounding this? I think it would be fun to get service on the Venezuelan entity…tom**

11. In 2010, the former chief operating officer of Kissito (another Clarke company) sounded a similar alarm, accusing Clarke of deliberately creating dozens of entities in different States in order to frustrate the efforts of anyone who sued the company. *Nursing Home Operator.* In a whistleblower lawsuit alleging that Clarke had overbilled Medicare, the former executive also asserted that Clarke "underinsures his facilities in order to avoid paying any potential large judgments or fines." *Id.*

12. When others have discovered his practices, Clarke has simply moved on, finding new opportunities for exploitation. In another of his ventures, Virginia Conservation Legacy Fund, Inc. and ERP Compliant Fuels, LLC ("ERP"), Clarke raised money to acquire two mines in West Virginia—one active, one in reclamation—with stated plans to operate both. With the promise of continued employment, Mr. Clarke secured an eight-figure commitment from the United Mine Workers for the project. But within two years, the only operating mine was closed, taking with it 300 jobs. *Id.* A spokesman for the United Mine Workers stated: "Our experience with Mr. Clarke has been quite frustrating and disappointing." *Id.* "What was once a showcase mine just a few years ago became an example of how fast a mine can sink into disrepair when its ownership loses interest." *Id.*

13. ERP was also the vehicle that Clarke used to acquire assets of Magnetation, including an Indiana pelletizing plant, three Minnesota ore concentrator plants, and one rail loading center. Magnetation filed for bankruptcy in 2015, and Clarke (through ERP) acquired it in February 2017. Dee Pass, *Rebirth Plans for Old Magnetation Site Put on Hold*, Minn. Star Tribune (Nov. 24, 2017), https://goo.gl/1pfAs8. Clarke announced plans to restart the ore concentrator plant in Grand Rapids, Minnesota, that same year, bringing with it 140 jobs. *Id.* Shortly thereafter, however, ERP announced that it would not be able to restart the plants on the promised timeline. According to the president of the Iron Range Building and Construction Trades, "The whole thing throws big red flags up with all the trade groups around here." *Id.*

14. In each of these instances Clarke or others close to him have received payments from these unsuccessful projects, draining seemingly legitimate entities of assets for their own personal gain. These ill-fated endeavors reflect Clarke's *modus operandi*: drain substantial funds from his projects into a web of related companies—through which he can then use funds

for his own benefit—all while delaying payment or entirely defaulting on legitimate debts owed to creditors which made deals with Clarke believing him to be operating in good faith. That is the same scheme that Clarke and the other Defendants have implemented in this case.

15. In this case, Defendants' coordinated and extensive pattern of fraudulent activity violates the Racketeer Influenced and Corrupt Organizations provisions of the Organized Crime Control Act of 1970, commonly known as RICO (18 U.S.C. §§ 1961–1968). The factual allegations giving rise to these claims are set forth in detail below. A summary chart of the various entities, reorganizations, and known internal distributions is set forth in Ex. A.

16. Defendants' conduct also gives rise to claims for fraudulent conveyance, conspiracy, and breach of contract. Lara Natural Resources, Iron Management, and the other Seneca affiliates to which Defendants have transferred funds are not legitimate creditors of Seneca, and those conveyances were not for value, but rather made with the intent to hinder, delay, or defraud Cliffs. Seneca also sold coal to its affiliates (or other companies owned or managed by Defendants) at prices substantially below market rates and not for reasonably equivalent value—again, with the intent to hinder, delay, or defraud Cliffs. These conveyances and the refinancing associated with Mission Coal have drained Seneca of assets and rendered it unable to meet its obligations to Cliffs and CLF. Instead of complying with its post-closing obligations and paying monies due to Cliffs and CLF, Seneca has failed and/or refused to comply with its contractual obligations, causing damage to Cliffs and CLF.

THE PARTIES, JURISDICTION, AND VENUE

17. Cliffs is an Ohio corporation and, for 170 years, Cliffs has had, and continues to have, its principal place of business in Cleveland, Ohio. Cliffs is a leading mining and natural resources company and is a major supplier of iron ore pellets to the North American steel industry from its mines and pellet plants located in Michigan and Minnesota.

18. CLF is a Delaware corporation with its principal place of business in Cleveland, Ohio. Cliffs is the ultimate parent of CLF.

19. Seneca is a Delaware limited liability company with its principal place of business in Virginia, the majority ownership of which is divided among Iron Management and Lara Natural Resources. Upon information and belief, its controlling members are Kenneth McCoy, Jason McCoy, and Thomas Clarke. Charles Ebetino ("Chuck Ebetino") is a minority shareholder of Seneca.

20. Thomas M. Clarke is a citizen of Virginia.

21. Ana M. Clarke is a citizen of Virginia.

22. Kenneth R. McCoy is a citizen of North Carolina.

23. Jason R. McCoy is a citizen of North Carolina.

24. Charles A. Ebetino, Jr. is a citizen of Ohio.

25. Lara Natural Resources is a Virginia limited liability company with its principal place of business in Virginia. Its sole members are Thomas and Ana Clarke.

26. Iron Management is a North Carolina limited liability company with its principal place of business in North Carolina. Its majority members are Kenneth and Jason McCoy.

27. Seneca, Lara Natural Resources, and Iron Management are all part of a connected web of entities over which the Individual Defendants are owners. Seneca is one of many companies affiliated with ERP Compliant Fuels, LLC and its sister entities, all of whom are affiliated with or owned by Thomas Clarke and/or at least one of the Individual Defendants. According to a publicly available organizational chart, ERP Compliant Fuels, LLC is affiliated with Virginia Conservation Legacy Fund, Inc., Seneca, ERP Environmental Fund, Inc., ERP Federal Mining Complex, LLC, Seminole Coal Resources, LLC, and ERP Compliant Coke, LLC, among others (the "Affiliate Companies"). A list of affiliates and organizational chart can

be found here: https://goo.gl/aKCMYY. Contrary to the foregoing, however, ERP Compliant Coke, LLC also holds itself out to be a subsidiary of ERP Compliant Fuels, LLC. *See* https://goo.gl/KRTZBw.

28. Cliffs initially filed this matter in the Northern District of Ohio, Case No. 1:16CV3034. On March 30, 2017, Seneca filed a motion to transfer venue under 28 U.S.C. § 1404(a), to the District of Delaware pursuant to the forum selection clause contained in the Unit Purchase Agreement executed by and among Cliffs and Seneca, among others. [D.I. 42.]

29. On May 12, 2017, the Northern District of Ohio granted Seneca's motion to transfer venue to the United States District Court for the District of Delaware. [D.I. 59.] In briefing that motion, Defendants expressly represented "that there exists a justiciable case or controversy with Plaintiff to vest this court with subject matter jurisdiction," based on diversity of citizenship. [D.I. 8-1 at 13–14.]

30. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because the Plaintiffs' claims arise under federal law, and under 18 U.S.C. § 1964(c) because this action alleges violations of the Racketeer Influenced and Corrupt Organizations provisions of the Organized Crime Control Act of 1970, 18 U.S.C. §§ 1961–1968. This Court also has supplemental jurisdiction over the Plaintiffs' state law claims under 28 U.S.C. § 1367.

31. Pursuant to the Northern District of Ohio's ruling, Defendants' consent, and the Unit Purchase Agreement, this Court has personal jurisdiction over the parties to this matter, and venue is proper in this forum.

FACTUAL ALLEGATIONS

The Unit Purchase Agreement

32. On December 22, 2015, Cliffs, CLF, and Seneca entered into a Unit Purchase Agreement (the "UPA"), whereby Cliffs, through CLF, agreed to sell the outstanding equity

interests of Cliffs North American Coal LLC ("CNAC") to Seneca. The value of the transaction at closing was $268 million, based on Seneca assuming all liabilities of CNAC and its subsidiaries. The UPA is attached as Ex. B.

33. Also on December 22, 2015, and contemporaneous with the execution of the UPA, Seneca, Cliffs, and CLF executed an Override Right Agreement (the "Override Agreement"), which obligated Seneca to make quarterly payments to an Escrow Account, for the benefit of Cliffs and CLF, up to a certain maximum amount. Each quarter, Seneca is obligated to calculate the average quarterly per ton price of coal sales pursuant to a specific formula. If the average quarterly per ton price is above a certain threshold, then Seneca must pay to the Escrow Account a certain percentage of the amount that is above that threshold price multiplied by the tons sold in such quarter (the "Tonnage Payments"). The Override Agreement is not attached hereto as it is confidential and Seneca has a copy in its possession.

34. Among the liabilities that were assumed by Seneca under the UPA as of December 22, 2015, were all workers' compensation obligations in respect of CNAC's and its subsidiaries' current and former employees and workers.

35. In addition to Seneca's assumption of liability, Seneca promised to perform certain post-closing requirements, including replacing certain bonds and guarantees in an amount of $16.7 million, replacing Cliffs' letters of credit regarding workers' compensation, as well as reimbursing Cliffs for certain expenses made prior to and after entering into the UPA in an amount in excess of $2 million. With respect to replacing the nearly $16.7 million of bonds, Seneca promised to file replacement surety bonds and cause the release of Cliffs' bonds no later than February 5, 2016, *i.e.* within 45 days of the Closing Date (December 22, 2015). As a result of assuming all workers' compensation liabilities, Seneca was obligated to release the Cliffs' letters of credit in excess of $13.5 million.

36. The parties also agreed to a broad indemnification provision, whereby Seneca agreed to indemnify and hold harmless Cliffs from any and all Losses arising out of or resulting from the breach of any agreement of Seneca in the UPA, the Bonds and Guarantees (as defined in the UPA), and certain legal matters that were disclosed in the UPA, including attorneys' fees.

37. In addition to its obligations under the UPA, Seneca had an obligation under the Override Agreement to make Tonnage Payments into an Escrow Account, for the benefit of Cliffs and/or CLF. With respect to these Tonnage Payments, Seneca expressly agreed that it would act in good faith and not take any actions that would be unfairly prejudicial or discriminatory to the interests of Cliffs and/or CLF in receiving Tonnage Payments. In direct violation of those obligations, Seneca has never made a payment into the Escrow Account. Seneca also has failed to make a representative available to Cliffs to discuss this information and has failed to provide Cliffs reasonable access to all relevant work papers, schedules, memoranda or other documents supporting its failure to make payments into the Escrow Account as required by the Override Agreement.

Seneca And Its Owners Have Ignored Its Obligations To Make Payments

38. Despite Seneca's clear responsibility from December 22, 2015, to reimburse Cliffs at least $2 million, replace nearly $16.7 million of bonds within 45 days, and promptly assume workers' compensation liabilities secured by Cliffs' letters of credit, Seneca failed to do so. Instead, at the direction of the Individual Defendants, Seneca made millions of dollars of cash transfers to Lara Natural Resources and Iron Management. These failures forced Cliffs to incur millions of dollars of out-of-pocket costs. Seneca has failed to reimburse Cliffs for those costs.

39. Despite Seneca's clear and acknowledged responsibility to reimburse Cliffs for certain expenses, such as lease repayments, workers' compensation costs, medical out-of-pocket

costs, bond premiums, payroll funding and services, and certain legal costs, Seneca has failed and/or refused to reimburse Cliffs for those expenses.

40. Despite Seneca's acknowledgment of the need for Seneca to obtain workers' compensation insurance for existing claims and replace in excess of $9 million of letters of credit, Seneca has failed to do so. Seneca has also failed to assume the administration and funding of ongoing workers' compensation matters, as required by the UPA and acknowledged by Seneca.

41. Cliffs has sent monthly invoices to Seneca and has had frequent communications with Seneca regarding its duties under the UPA. Cliffs also has had multiple conversations and meetings with Seneca in which Seneca acknowledged its obligations. Seneca, however, has continued to breach the UPA.

The BB&T Litigation And Settlement Agreement

42. In March 2016, BB&T Equipment Finance Corporation filed a lawsuit in the Northern District of Ohio against Seneca's company, Oak Grove Resources, and Cliffs (as guarantor) for Seneca's failure to make timely lease payments (the "BB&T Litigation"), including a lease payment of approximately $437,000 that was due on February 6, 2016.

43. On March 23, 2016, Cliffs notified Seneca that Cliffs had been named a party to the BB&T Litigation. Cliffs requested indemnification from Seneca regarding the BB&T Litigation, and Seneca agreed to indemnify Cliffs for all expenses incurred as a result of the BB&T Litigation.

44. Effective July 14, 2016, the parties agreed to a settlement agreement to resolve the BB&T Litigation (the "Settlement Agreement"). As part of that Settlement Agreement, Cliffs specifically reserved all rights against Seneca, including any and all defaults under the UPA, and Cliffs' right to seek indemnification from Seneca for Cliffs' losses in the BB&T

Litigation, including attorneys' fees. Seneca also reserved all rights against Cliffs in the Settlement Agreement.

45. As part of the Settlement Agreement, the parties agreed that "Judge Polster and the Federal District Court for the Northern District of Ohio, Eastern Division shall retain jurisdiction to enforce the terms of this Agreement or otherwise."

46. On July 14, 2016, the Court dismissed the BB&T Litigation with prejudice, specifically retaining jurisdiction under the Settlement Agreement.

47. Although Seneca agreed to indemnify Cliffs for all expenses incurred in the BB&T Litigation, Seneca has failed and/or refused to reimburse Cliffs for those expenses, including attorneys' fees and interest incurred in the BB&T Litigation. Instead, it has and continues to make transfers to Lara Natural Resources and Iron Management rather than paying its legitimate creditor, Cliffs.

Seneca Disregards Its Obligations Under The Override Agreement

48. Pursuant to the Override Agreement, Seneca had an obligation to provide Cliffs and CLF with quarterly statements that set forth the quantity of coal sold per quarter, along with the average sales price per ton for such coal. In the event the average weighted quarterly sales price for such coal exceeded an agreed-upon per ton price, Seneca had an obligation to make the Tonnage Payments into an Escrow Account, which would subsequently be paid to Cliffs and/or CLF.

49. Thus, if the quarterly average weighted price of coal per ton exceeded the agreed upon price, Cliffs and CLF would benefit. In addition, the higher the amount of tons sold per quarter, the more money Seneca must pay in the Tonnage Payments.

50. As part of its obligations, Seneca agreed to act in good faith and take no actions that would be unfairly prejudicial or discriminatory to the interests of Cliffs and CLF.

51. Seneca also has a duty under the Override Agreement to make a representative available to Cliffs to discuss the information set forth in the Override Reports and provide Cliffs reasonable access to all relevant work papers, schedules, memoranda and other documents prepared by Seneca or its representatives in connection with the preparation of the quarterly calculations.

52. On or about April 4, 2017, Cliffs and CLF received a 4th Quarter 2016 Override Royalty Calculation (the "2016 Override Report") from Seneca, which contains the quantity of coal sold (*i.e.* tons sold), the party to whom Seneca sold the coal, along with the average weighted price per ton, as required by the Override Agreement.

53. On or about June 29, 2017, Cliffs and CLF received a 1st Quarter 2017 Override Royalty Calculation (the "2017 Override Report") from Seneca, which contains the quantity of coal sold (*i.e.* tons sold), the party to which Seneca sold the coal, along with the average weighted price per ton, as required by the Override Agreement.

54. The 2016 and 2017 Override Reports, as well as other data, demonstrate that Seneca sold coal to its affiliate ERP Compliant Coke, LLC on nearly 50 occasions at a price substantially below market rates. Seneca sold coal to ERP Compliant Coke, LLC at an average price of [redacted] per ton in Q3 of 2016 and [redacted] in Q4 of 2016, while its price for the rest of its customers equaled [redacted] and [redacted] per ton, respectively. These prices are significantly below the market price for metallurgical coal. Seneca's actions, while benefitting its affiliate, were in direct breach of its obligations to act in good faith and not take any actions that would be unfairly prejudicial or discriminatory to Cliffs and CLF.

55. In addition, the 2016 and 2017 Override Reports, as well as other data, demonstrate that Seneca has sold coal substantially below market price to customers and has taken actions that have resulted in substantially lower coal production per quarter than normal.

These acts breach Seneca's obligations to act in good faith and not take any actions that would be unfairly prejudicial or discriminatory to Cliffs and CLF.

56. Although Seneca has a clear duty to provide these reports on a quarterly basis, it has failed to timely provide the reports to Cliffs or fulfill other obligations. Seneca is thus currently in breach of the Override Agreement.

57. Furthermore, Seneca has refused to make a representative available to Cliffs to discuss the information set forth in the Override Reports and refused to provide Cliffs reasonable access to all relevant work papers, schedules, memoranda and other documents prepared by Seneca or its representatives in connection with the preparation of the Override Reports, in direct breach of the Override Agreement.

58. The 2016 and 2017 Override Reports, as well as other data, demonstrate that Seneca breached its contractual duties to act in good faith and not take actions that would be unfairly prejudicial or discriminatory to the interests of Cliffs and CLF in receiving the Tonnage Payments.

59. Through Seneca's breach of the Override Agreement, Cliffs and CLF have been damaged in an amount estimated to be $50 million.

Defendants' Coordinated And Systematic Campaign To Drain Seneca's Funds For Their Own Benefit

60. In December 2015 or earlier, before the execution of the UPA, Defendants combined, conspired, confederated, and agreed to defraud Cliffs and Seneca's other creditors. Their plan and agreement was to use Seneca as an ATM to fund their personal interests and their affiliate companies rather than paying Cliffs and Seneca's other creditors. In furtherance of this conspiracy, on December 18, 2015, Thomas Clarke sent an email to Jason and Kenneth McCoy confirming their plan and agreement. The email attached Seneca's cash projections as of

January 31, 2016, which included a [redacted] bridge loan to Seneca from an entity named [redacted] Referring to the attachment, Clarke exclaimed that "this is an amazing 'BLESSING'!" The amazing "Blessing" was that his projections for the month of January indicated cash of [redacted] for Seneca. Clarke stated that in the calculation he "included the [redacted] ["bridge loan" to Seneca], ***so we can all pay down our debt*** . . . . ***both corporately and personally***." A copy of Clarke's December 18, 2015 email confirming the purpose of the conspiracy and the agreement between the Defendants is attached hereto as Ex. C. Thus, this overt act of the conspiracy was initiated only 4 days before Seneca signed the UPA with Cliffs and CLF. The scheme to use Seneca funds and assets to fund personal and corporate interests of the Individual Defendants, rather than paying Cliffs and other creditors, has continued unimpeded through the day of the filing of this Fourth Amended Complaint.

61. As of December 22, 2015, pursuant to the UPA, Seneca was immediately liable to Cliffs for reimbursement of current workers' compensation claims, and replacement of certain letters of credit. Pursuant to the UPA, the liability of pending and future workers' compensation costs and claims was assumed by Seneca. The ongoing workers' compensation claims were disclosed to Seneca during the due diligence prior to the execution of the UPA, and therefore Seneca was aware that its obligations to Cliffs began immediately upon the execution of the UPA.

62. Likewise, as of December 22, 2015, Seneca was immediately liable to Cliffs for the replacement of nearly $16.7 million of bonds. Seneca likewise knew of this financial obligation to Cliffs.

63. Further, as of December 22, 2015, Seneca was liable to Cliffs for more than $2 million in payroll expenses and other reimbursements. This obligation continues to this day, and Seneca ultimately defaulted on its repayment obligations.

64. Although Seneca had immediate outstanding financial obligations to Cliffs, the Defendants caused the first withdrawals from the Seneca ATM within days of the December 22, 2015 execution of the UPA. Defendants have produced daily "cash sheets" reflecting these related-party transfers, but only through June 17, 2017. A summary of transfers through that date is set forth in Exs. D, E, F and G and the underlying cash sheets are attached as Ex. H. Similar transfers have occurred at least as recently as on or about February 1, 2018, but Defendants refused to produce the underlying documents showing the specific amounts.

65. Rather than pay Cliffs, Defendants caused the transfer of [redacted], out of the [redacted] bridge loan that Seneca received from [redacted] to the Individual Defendants and their companies. In furtherance of the conspiracy, on December 24, 2015, Seneca transferred $50,000 to Lara Natural Resources. [*See* Declaration of Thomas Clarke and Ana Clarke (the "Clarke Declaration"), ¶1, D.I. 8-2; Declaration of Kenneth and Jason McCoy (the "McCoy Declaration"), ¶1, D.I. 8-3.]

66. On December 30, 2015, despite owing millions of dollars of liabilities to Cliffs, and in furtherance of the conspiracy to use Seneca assets to benefit the Individual Defendants both "corporately and personally," Defendants caused Seneca to transfer $2.3 million to ERP Compliant Fuels, an affiliate owned by Thomas Clarke.

67. On January 5, 2016, in furtherance of the conspiracy, Thomas Clarke, as a representative for Lara Natural Resources, and Jason McCoy, as representative for Iron Management, agreed in a phone conversation to transfer equal amounts of $1 million of Seneca assets for their personal benefit. This phone conversation was memorialized in a January 5, 2016 email, a copy of which is attached hereto as Ex. I. That same day, Seneca wired $1 million to Clarke's company Lara Natural Resources and $1,050,000 to Jason McCoy's company Iron

Management. The extra $50,000 to Iron Management was made to equalize the $50,000 transfer Defendants caused to be made to Lara Natural Resources on December 24, 2015.

68. These amounts were used not for any legitimate business purpose, but instead for the Individual Defendants' personal benefit. Thomas Clarke admits that the $2.1 million transferred to Lara Natural Resources and Iron Management was "not used to fund the operations of Seneca." Instead, Kenneth and Jason McCoy evenly split the $1,050,000 transferred to Iron Management. Kenneth McCoy moved his half directly into his personal bank account; Jason McCoy used some or all of his half to settle a personal debt with a friend. Similarly, the other $1,050,000 was transferred to Lara Natural Resources, whose account is controlled by Thomas and Ana Clarke. The Clarkes used these funds to cover personal expenses.

69. The above transfers of $4.4 million of Seneca assets for the benefit of the Individual Defendants were made without adequate consideration or equivalent value, made to insiders such that the interest in the assets were retained by the transferor, and rendered Seneca unable to pay its debts to Cliffs as they became due.

70. This was only the beginning of Seneca's pattern of transfers of its assets for the benefit of the Individual Defendants without receiving any or adequate consideration. On January 6, 2016, Bill Campbell, a consultant at ERP Compliant Fuels, sent a detailed email informing Thomas Clarke and Kenneth McCoy, among others, that several affiliates of Seneca were [redacted] and would be facing [redacted] by mid-January. (Ex. J.) Clarke responded with a single-sentence: [redacted] (*Id.*)

71. The next day, January 7, 2016, one of these "several things" occurred, as Seneca made another "loan" transfer to Clarke's ERP Compliant Fuels, LLC—this time for $1 million. As with the prior loan of $2.3 million dollars, this loan was made despite owing $2 million to

Cliffs, a replacement obligation of $16.7 million for bonds, and a replacement obligation of millions of dollars in letters of credit.

72. Less than a week later, on January 12, 2016, Seneca made two more "loan" transfers—a $2 million transfer to ERP Federal Mining Co. and a $1 million transfer to ERP Environmental Fund, Inc. Both entities are owned in part by the Individual Defendants and/or their affiliated entities.

73. In furtherance of the conspiracy, on or around January 26, 2016, Jason McCoy contacted representatives from Thomas Clarke's ERP Compliant Fuels, LLC to discuss additional transfers from Seneca to both Lara Natural Resources and Iron Management under the guise of so-called "management fees." At that time, Defendants combined, conspired, confederated, and agreed to make these payments from Seneca to their respective individual companies without providing equivalent value. Seneca and the Individual Defendants set no dollar amount based on any negotiated terms, and instead simply agreed to transfer money on a monthly basis to their individual companies, all the while leaving Seneca without the ability to pay its creditors.

74. On January 29, 2016, the Defendants caused Seneca to transfer $70,000 to Iron Management and $116,000 to Lara Natural Resources under the guise of a "management fee," allegedly meant to compensate Lara Natural Resources and Iron Management for the use of their employees' time related to Seneca matters. These two entities, however, do not have any full-time employees other than the Individual Defendants who own the companies. In truth, these fees were simply distributions to insider affiliate companies and were neither for value nor for any pre-arranged debt or bargained-for services.

75. Before the deadline to release the nearly $16.7 million of bonds and guarantees on February 5, 2016, and while Seneca had a duty to assume workers' compensation obligations and

thereby release millions of dollars in letters of credit posted by Cliffs and reimburse Cliffs at least $2 million, Defendants had already caused Seneca to transfer over $12.9 million without value for the benefit of the Individual Defendants and their affiliated companies, including another $300,000 transfer to ERP Environmental on February 3, 2016. The recipients of these transfers were entities owned in part by Thomas Clarke, Ana Clarke, Kenneth McCoy, and/or Jason McCoy.

76. On February 5, 2016, Seneca failed to release the nearly $16.7 million of bonds and guarantees, which Cliffs had posted, including paying any amounts necessary to do so. Due to the foregoing millions of dollars of transfers, Seneca was then insolvent or thereby rendered insolvent and unable to satisfy this obligation as it became due.

77. Furthermore, on February 6, 2016, Seneca defaulted on its $437,000 lease payment to BB&T, which was guaranteed by Cliffs. Even so, on February 9, 2016, Seneca transferred an additional $300,000 to Iron Management. [*See* D.I. 8-2, 8-3.] On February 24, 2016, after defaulting on the BB&T payment, Seneca transferred $31,923.18 to Lara Natural Resources.

78. All told, Defendants caused Seneca to transfer at least $12.9 million for the benefit of the Individual Defendants and their affiliates who were not legitimate creditors of Seneca for things like a personal vacation by Ana Clarke to Italy. In fact, Interrogatory No. 1 attached to the Expedited Discovery Motion required Seneca, Thomas Clarke, Ana Clarke, Kenneth McCoy, and Jason McCoy to state what Seneca received in return for the transfers set forth in their declarations. In response, neither the Clarkes nor the McCoys identified any consideration for the transfers.

79. These funds were not used for any legitimate business purpose. Charles Ebetino, Bill Campbell, and Jason McCoy have admitted that there was no consideration for, no interest on, and no repayment of these loans.

80. During the time when Seneca and the Individual Defendants combined, conspired, confederated, and agreed to cause these transfers, Seneca was in default of its obligations to Cliffs including its failures to assume and pay the workers' compensation liabilities and to replace Cliffs' bonds totaling nearly $16.7 million. Seneca also failed to get a release of Cliffs' guarantee on the BB&T lease, missed the $437,000 BB&T lease payment on which Cliffs was guarantor (which resulted in BB&T suing Cliffs), failed to pay the $2 million in payroll, and failed to release the letters of credit for workers' compensation.

81. Additionally, from March 11, 2016 through October 10, 2017, Cliffs issued 20 monthly invoices for the reimbursement of other expenses that Seneca was obligated to pay under the UPA. Seneca failed to pay these invoices when due, even though Seneca has not contested that the expenses were reimbursable and due and owing to Cliffs. Instead of paying the net total of $7.9 million on these invoices, releasing over $9 million in letters of credit and releasing the $16.7 million of bonds, Defendants caused Seneca to transfer $2.1 million in owner distributions to Lara Natural Resources and Iron Management, a net total of approximately $31,421,214.31 to the Individual Defendants' affiliates, and monthly "management fees" to Lara Natural Resources and Iron Management of between $20,000 to $30,000 per month through 2017—all without providing equivalent value. A chart of Cliffs' invoice dates, along with corresponding transfers made by Seneca, is attached hereto as Ex. K. These transfers rendered Seneca unable to pay its obligations to Cliffs as they became due.

82. At times, Defendants used the money owed to Cliffs to defraud *other* creditors, thereby compounding their wrongdoing. In April 2016, Defendants transferred $500,000 from

Seneca to ERP Mineral Reserves, LLC; ERP Mineral Reserves in turn moved the $500,000 to Iron Group (an entity that pays salaries to those associated with Iron Management). The purpose of these transfers was to enable Iron Group to temporarily [redacted] a $500,000 loan that it had received from a friend of Jason McCoy, so that Iron Group's finances would appear cleaner as it attempted to secure an even larger loan—for roughly $900,000—to finance the purchase of a helicopter. As McCoy explained, this would enable him [redacted] But those better financials were illusory, as the $500,000 loan would not actually be paid off. Instead, McCoy explained that he would only proceed with this plan if he were [redacted] —just long enough to deceive the bank into committing $900,000 to Iron Group. In outlining this plan, McCoy noted that this was [redacted] (Ex. L.) This was thus simply one round of a shell game in which the Defendants used Seneca funds that were owed to Cliffs to instead finance the operations of other entities, to Defendants' benefit.

83. Internally, Defendants were crystal clear about what they were doing. On June 14, 2016, Thomas Clarke and several other individuals associated with the Seneca affiliates received an email from Adam Munson, Cliffs' Director of Business Development and Group Counsel. Munson explained that Seneca owed Cliffs roughly $1.05 million to settle outstanding amounts due on several invoices, and asked about [redacted] (Ex. M.) In a subsequent internal email to Clarke and others, an employee of one of Seneca's affiliates expressed her understanding that [redacted] (*Id.*) Of course, and consistent with their scheme, the Defendants omitted to disclose the materiality of this purpose to Munson.

84. On October 12, 2016, an email confirming the continuing conspiracy of the Defendants to cause the transfer of Seneca assets, without providing equivalent value, for the

benefit of the Individual Defendants and their affiliates, and to the detriment of Cliffs, was sent by Defendant Chuck Ebetino, a minority owner of Seneca. In that email, which is attached hereto as Ex. N, Ebetino complained to Thomas Clarke, Kenneth McCoy, and Jason McCoy: "why are Seneca revenues being transferred to ERP Minerals where the minority owners of Seneca have no ownership interest?" Mr. Ebetino was objecting to the violation of the Defendants' agreement, as discussed above in Paragraph 60, to share in the "amazing BLESSING!" of using the assets of Seneca to pay the personal debts of the Individual Defendants and their corporate affiliates as memorialized in Mr. Clarke's December 18, 2015 email (Ex. C). In other words, when the transfers from the Seneca ATM benefitted all of the owners of Seneca, there was no objection, but when funds leaving Seneca were sent to a company in which only the Clarkes and the McCoys had an interest, the Defendants' mutually beneficial conspiratorial agreement had been breached.

85. On November 8, 2016, despite owing Cliffs $4 million, plus its payroll obligations of $2 million, and its obligation to replace the nearly $16.7 million in bonds and millions of dollars in letters of credit, Seneca paid a $31,923.18 "management fee" to Lara Natural Resources with the understanding of the Defendants that $25,000 would be redirected to Ana Clarke, even though no value was received. Thus, Ana Clarke joined the conspiracy with the Defendants as of November 8, 2016, at the latest, with $25,000 from Seneca intended to be directed, and actually directed, to her.

86. During the same period that they were avoiding their debts to Cliffs, Defendants agreed upon and carried out a second fraudulent scheme. In this second scheme, Defendants fraudulently induced Cliffs to pay money that Seneca owed to third parties and then refused to reimburse Cliffs for those payments. The UPA required Seneca to reimburse Cliffs for certain

payments to third parties. (*See, e.g.*, Ex. B (UPA §§ 6.8, 6.11).) Defendants, however, decided that they would instead simply stick Cliffs with these bills.

87. To that end, in emails and conversations with Cliffs, Seneca representatives repeatedly and falsely stated that Seneca lacked the funds needed to pay debts to third parties. Because Cliffs had corporate guarantees and letters of credit on much of the third party debt, Cliffs continued to use its own money to wire the payments while Seneca promised to pay Cliffs back. But Seneca never did so. Instead, Defendants moved millions of dollars from Seneca to affiliates, so that Defendants could use the money personally and for other corporate schemes. (Exs. D–H.)

88. Once again, when communicating amongst themselves, Defendants were quite clear about what they were doing. On August 12, 2016, Chuck Ebetino forwarded to Thomas Clarke and others a composite of amounts owed to Cliffs as reimbursement for payments to third parties. Ebetino advised that Seneca should [redacted] as Cliffs [redacted] (Ex. O.) According to Ebetino, Seneca would be in a better position to negotiate a settlement of its debts *after* Cliffs had made additional payments. He concluded that the [redacted] to work out a settlement [redacted] by which time Cliffs will [redacted] (*Id.*) Clarke responded later that day, stating: [redacted] (*Id.*) Once again, and consistent with their scheme, Defendants omitted to disclose the materiality of this purpose to Cliffs.

89. Consistent, however, with Clarke's proclamation, Ebetino and others continued to carry out this fraudulent scheme throughout 2016. Over the course of the year, Cliffs repeatedly sent monthly invoices to Seneca, seeking reimbursement for payments to third parties. And repeatedly, Ebetino falsely stated that Seneca was unable to make these reimbursement

payments. In an email sent on December 12, 2016, Ebetino told Cliffs' counsel that Seneca did [redacted] for amounts paid to third parties on Seneca's behalf. (Ex. P.) Accordingly, Seneca did not reimburse Cliffs for any portion of this debt. Meanwhile, from December 5 to December 20, 2016, Seneca moved $3.6 million to affiliates Seminole Coal Resources, ERP Federal Mining Complex, and ERP Compliant Fuels for no consideration. (Exs. D–H.) Seneca had made similar misrepresentations throughout 2016.

90. On December 20, 2016, Cliffs filed its initial complaint in this matter against Seneca, Thomas Clarke, Ana Clarke, Kenneth McCoy, and Jason McCoy with claims for breach of contract and declaratory judgment. [D.I. 1.] The complaint alleged that Seneca planned "to transfer and/or divert monies and/or funds from Seneca to affiliated companies and/or owners with the actual intent to hinder, delay, or defraud Cliffs." [*Id*. at ¶45.] To that end, Cliffs sought a declaration from the Court that the defendants were not entitled to any such transfer made from Seneca to affiliated companies or owners until Cliffs right to payment from Seneca had been satisfied by Seneca.

91. In addition to Cliffs' complaint, on December 20, 2016, Cliffs also filed a Motion for Expedited Discovery (the "Expedited Discovery Motion") in which it sought, among other things, information regarding whether Seneca had made, or expected to make, any transfers to any of its owners, members, corporate parents, subsidiaries, or affiliates from January 2016 to the present. [D.I. 3.]

92. In response Cliffs' Expedited Discovery Motion, on December 27, 2016, counsel for the Individual Defendants sent to Cliffs' counsel declarations executed by the Individual Defendants, which admitted to the transfers to Lara Natural Resources and Iron Management in

December 2015 and January 2016, as well as management fees. [These declarations are attached to the original defendants' Motion to Dismiss, D.I. 8-2, 8-3.]

93. The declarations, which were signed by all the Individual Defendants under penalty of perjury, promised Cliffs and the Court that "[i]f a transfer is contemplated in the future, the undersigned agree to provide Cliffs with written notice thirty (30) days prior to the contemplated transfer." [*Id*.] In these statements, Seneca represented to the Court that there was no need for expedited discovery in this case and that Cliffs' request for expedited discovery should be denied. [D.I. 7.] Seneca again doubled-down on this statement in its motion to dismiss Cliffs' original complaint, stating to the Court that "Defendants also offered express assurances to Plaintiff that they would provide thirty-day's advance written notice to Plaintiff if such a future transfer was contemplated." [D.I. 8-1.] Unbeknownst to Cliffs, Defendants promptly and continuously breached these promises to Cliffs and the Court and made millions of dollars in such transfers.

94. Exhibit D shows that despite the declarations of the Individual Defendants, and their promise to both the Court and Cliffs that after January 12, 2017, Seneca "would provide Cliffs with written notice thirty (30) days prior to the contemplated transfer," Defendants have breached that promise and continued to fraudulently transfer funds away from the reach of its creditors. [*See* D.I. 8-2, 8-3.] In fact, from the time that they submitted the declarations until at least June 20, 2017 (the last day on which Seneca produced information regarding transfers), Defendants caused Seneca to make nearly 60 transfers to affiliates, for tens of millions of dollars, without once giving notice to Cliffs. (Exs. D–H.)

Defendants Create Mission Coal To Perpetuate Their Scheme

95. Not only have Defendants ignored their duty to notify Cliffs and the Court, in advance, of transfers from Seneca—while this litigation has been pending, they have taken affirmative steps to *enhance* their fraudulent efforts.

96. In January 2018, Defendants created a new entity, Mission Coal Company, LLC. (Mission Coal's operating agreement, which was executed on January 31, 2018, is attached hereto as Ex. Q.) Mission Coal's largest stakeholders are Iron Management II, LLC, and Iron Management III, LLC—both companies within the same corporate structure as Seneca.

97. Mission Coal's creation was tied to a corporate restructuring involving Seneca. In late January or early February, Defendants finalized a loan from [redacted] Defendants pledged all of Seneca's assets to secure this loan. The loan proceeds, however, did not go to Seneca. Instead, approximately [redacted] went to Mission Coal for [redacted] and another approximately [redacted] went to [redacted] Defendants thus used Seneca's assets—inflated by Defendants' fraudulent avoidance of debts owed to Cliffs and CLF—in establishing and operating Mission Coal.

98. As part of the same transaction, Defendants also restructured Seneca so that it now operates as a subsidiary of Mission Coal. (Seminole Coal Resources, LLC, has also become a Mission Coal subsidiary.) To execute this restructuring, Mission Coal used part of the [redacted] loan to pay off a note to Thomas Clarke.

99. Despite their promise to do so, Defendants did not disclose to Cliffs that a transaction would occur until after the pledging of Seneca's assets and the restructuring of its corporate ownership had been completed. Worse yet, by giving Cliffs partial information about the possibility of a future transaction and while omitting material information, Defendants implied that with respect to any significant restructuring, Cliffs would be given notice. Instead,

this information was discovered only under questioning in depositions at the end of February 2018.

The Defendants' Avoidance Of Seneca's Debts To Cliffs And CLF Are Unlawful

100. Neither Lara Natural Resources nor Iron Management are legitimate creditors of Seneca.

101. The "other affiliate companies owned by the members," including but not limited to ERP Compliant Fuels, LLC, Virginia Conservation Legacy Fund, Inc., ERP Environmental Fund, Inc., ERP Federal Mining Complex, LLC, Seminole Coal Resources, LLC, and ERP Compliant Coke, LLC, to which Seneca and the Individual Defendants combined, conspired, confederated, and agreed to make "loan" transfers are not legitimate creditors of Seneca, nor were Seneca's "loan" transfers to affiliates made for adequate consideration or equivalent value.

102. After Seneca made "loans" to these affiliate companies, the Individual Defendants took distributions from them. "Loans" made from Seneca to affiliate companies were used to pay off individual debts, personal vacations, private jet travel, clothing allowances, and other personal expenses of the Individual Defendants.

103. The assets transferred to Lara Natural Resources, Iron Management, and the "affiliates" are not for reasonably equivalent value nor in good faith.

104. Furthermore, as set forth in detail above in Exs. D through H, transfers of cash and other assets continued throughout 2016, and into 2017, despite Seneca owing millions of dollars to Cliffs.

105. Beginning in 2016, Cliffs issued monthly invoices to Seneca. Despite Cliffs' attempts to obtain payment from Seneca, both Seneca and the Individual Defendants told Cliffs that Seneca did not have the funds to repay Cliffs. Despite these statements, Seneca and the Individual Defendants have continued to make transfers to insiders rather than paying Seneca's

legitimate debts to Cliffs, including monthly "management fees" to Lara Natural Resources of approximately $30,000 and Iron Management of $20,000.

106. Defendants have also stated that Seneca is in dire financial condition, was insolvent or near insolvency, and was struggling to meet its December 2016 payroll. On December 31, 2016, Seneca defaulted on an admitted obligation to reimburse Cliffs $2 million for payroll expenses that was incurred on December 22, 2015, bringing the unpaid invoices to a total of over $7.6 million, plus a duty to obtain new financial assurances sufficient to release Cliffs' letters of credit for workers' compensation insurance.

107. Seneca's debts to Cliffs have grown steadily since the signing of the UPA. Those debts continue to grow today, because Seneca still has not completed the assumption of responsibility for all liabilities for which it is responsible under the UPA (including the over $9 million for workers' compensation matters), and because Defendants are continuing to raid Seneca's funds for their own benefit.

108. Furthermore, pursuant to the Override Agreement, Cliffs and CLF were and continue to be entitled to Tonnage Payments for any coal sold by Seneca whose average weighted price per ton was over an agreed-upon price. As a result, Cliffs and CLF are legitimate creditors of Seneca.

109. Rather than fulfill its obligations to Cliffs and CLF under the Override Agreement, Seneca sold coal to its affiliate, ERP Compliant Coke, LLC, at a price substantially below market rates and not for reasonably equivalent value, in turn keeping possession of the property at a reduced price.

110. Upon information and belief, these coal sales were made with the intent to hinder, delay, or defraud Cliffs and CLF.

111. These actions were not disclosed to Cliffs and CLF at the time of the sales. Cliffs and CLF only became aware after the fact via the Override Reports.

CLAIMS FOR RELIEF

COUNT I
(Violation of RICO, 18 U.S.C. § 1962(c))

112. Cliffs and CLF reaffirm and reallege the allegations contained in paragraphs 1 through 111 of this Fourth Amended Complaint as if rewritten fully herein.

113. Section 1962(c) of RICO provides that "[i]t shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity."

114. Defendants Thomas M. Clarke, Ana M. Clarke, Kenneth R. McCoy, Jason R. McCoy, Charles A. Ebetino, Jr., Lara Natural Resources, LLC, and Iron Management II, LLC (collectively, "the RICO Defendants") have violated § 1962(c) by conducting the affairs of Seneca—"the Seneca Enterprise"—through a pattern of racketeering activity, for the purpose of fraudulently representing to Cliffs and CLF that Seneca was unable to pay amounts that it owed to those entities (including amounts owed as reimbursement for payments that Cliffs or CLF made to third parties), and diverting Seneca's funds and assets to be used for the benefit of the RICO Defendants and other affiliates of Seneca.

115. Each RICO Defendant is a "person" within the meaning of 18 U.S.C. § 1961(3).

116. Seneca Coal Resources, LLC, a corporation, is an enterprise within the meaning of § 1961(4).

117. The Seneca Enterprise is engaged in or affects interstate or foreign commerce. Seneca Coal Resources regularly transacts business in a number of States, and is directly

engaged in the production, distribution, or acquisition of goods, services, money, or other property in interstate or foreign commerce. Moreover, the Seneca Enterprise has engaged in the following activities across State boundaries: the transmission and publication of false and misleading information concerning Seneca's finances and ability to pay amounts owed to Cliffs and CLF; the payment from Seneca to the RICO Defendants and other Seneca affiliates of funds that were owed to Cliffs and CLF; and the use by the RICO Defendants and other Seneca affiliates of those funds to pay for expenses for their own benefit.

118. The transfers to the RICO Defendants are not for any legitimate business purpose, let alone a purpose that would override Seneca's obligation to make payments to Cliffs and CLF as set forth in the UPA and the Override Agreement. Instead, these transfers have been for the purpose of benefitting the RICO Defendants. Although the RICO Defendants have attempted to portray transfers to Lara Natural Resources and Iron Management as legitimate by styling these transfers as "management fees" or other business-related payments, neither entity has any full-time employees other than the Individual Defendants who own the companies, several RICO Defendants have admitted that such transfers were for no consideration, and even where styled as loans have no interest, and were not repaid. These payments were thus intended simply to benefit the RICO Defendants personally, and not to cover any actual business expenses.

119. Each RICO Defendant was employed by or associated with the Seneca Enterprise, as each was aware of the general nature of the Seneca Enterprise and aware that the Seneca Enterprise extended beyond each RICO Defendant's individual role to encompass a broader pattern of fraudulent activity.

120. Each RICO Defendant conducted or participated in the conduct of the Seneca Enterprise's affairs, directly or indirectly. Among other things, each RICO Defendant participated in the operation or management of the Seneca Enterprise in the following ways:

(a) Thomas Clarke arranged for or directed a number of transfers of funds from Seneca to himself or to Seneca affiliates, so that he could use those funds for his own benefit or for the benefit of one or more other RICO Defendants or other Seneca affiliates, rather than using those funds to pay debts owed to Cliffs or CLF. Clarke also took control of funds fraudulently transferred from Seneca to Lara Natural Resources, and used those funds for his own benefit or for the benefit of one or more other RICO Defendants or other Seneca affiliates, rather than using those funds to pay debts owed to Cliffs or CLF. In addition, Clarke falsely represented to Cliffs or CLF, on Seneca's behalf, that Seneca lacked the funds needed to reimburse Cliffs or CLF for amounts that Seneca owed them, when in fact Seneca was capable of making payments. And Clarke fraudulently represented that amounts that Seneca transferred to Lara Natural Resources and other Seneca affiliates represented "management fees," when in fact those affiliates had not performed any services as consideration for these transfers.

(b) Ana Clarke took control of funds fraudulently transferred from Seneca to Lara Natural Resources, and used those funds for her own benefit or for the benefit of one or more other RICO Defendants or other Seneca affiliates, rather than using those funds to pay debts owed to Cliffs or CLF. Ms. Clarke also fraudulently represented that amounts that Seneca transferred to Lara Natural Resources represented "management fees," when in fact Lara Natural Resources had not performed any services as consideration for these transfers.

(c) Kenneth McCoy arranged for or directed a number of transfers of funds from Seneca to himself or to Seneca affiliates, so that he could use those funds for his own benefit or for the benefit of one or more other RICO Defendants or other Seneca affiliates, rather than using those funds to pay debts owed to Cliffs or CLF. McCoy also took control of funds fraudulently transferred from Seneca to Iron Management, and used those funds for his own benefit or for the benefit of one or more other RICO Defendants or other Seneca affiliates, rather than using those funds to pay debts owed to Cliffs or CLF. In addition, McCoy fraudulently represented that amounts that Seneca transferred to Iron Management and other Seneca affiliates represented "management fees," when in fact Iron Management had not performed any services as consideration for these transfers.

(d) Jason McCoy arranged for or directed a number of transfers of funds from Seneca to himself or to Seneca affiliates, so that he could use those funds for his own benefit or for the benefit of one or more other RICO Defendants or other Seneca affiliates, rather than using those funds to pay debts owed to Cliffs or CLF. McCoy also took control of funds fraudulently transferred from Seneca to Iron Management, and used those

funds for his own benefit or for the benefit of one or more other RICO Defendants or other Seneca affiliates, rather than using those funds to pay debts owed to Cliffs or CLF. In addition, McCoy fraudulently represented that amounts that Seneca transferred to Iron Management and other Seneca affiliates represented "management fees," when in fact Iron Management had not performed any services as consideration for these transfers.

(e) Chuck Ebetino arranged for or directed a number of transfers of funds from Seneca to himself or to Seneca affiliates, so that he could use those funds for his own benefit or for the benefit of one or more other RICO Defendants or other Seneca affiliates, rather than using those funds to pay debts owed to Cliffs or CLF. Ebetino also took control of funds fraudulently transferred from Seneca to Seneca affiliates, and used those funds for his own benefit or for the benefit of one or more other RICO Defendants or other Seneca affiliates, rather than using those funds to pay debts owed to Cliffs or CLF. In addition, Ebetino falsely represented to Cliffs or CLF, on Seneca's behalf, that Seneca lacked the funds needed to reimburse Cliffs or CLF for amounts that Seneca owed them, when in fact Seneca was capable of making payments.

(f) Lara Natural Resources repeatedly accepted transfers of funds from Seneca, so that it could use those funds for its own benefit or for the benefit of one or more other RICO Defendants or other Seneca affiliates, rather than using those funds to pay debts owed to Cliffs or CLF. Lara Natural Resources also fraudulently represented that amounts that Seneca transferred to it represented "management fees," when in fact Lara Natural Resources had not performed any services as consideration for these transfers.

(g) Iron Management repeatedly accepted transfers of funds from Seneca, so that it could use those funds for its own benefit or for the benefit of one or more other RICO Defendants or other Seneca affiliates, rather than using those funds to pay debts owed to Cliffs or CLF. Iron Management also fraudulently represented that amounts that Seneca transferred to it represented "management fees," when in fact Iron Management had not performed any services as consideration for these transfers.

121. Through this conduct, the RICO Defendants acted with the specific intent to deceive Cliffs and CLF, and defrauded Cliffs and CLF of money that they were owed by Seneca.

122. Each RICO Defendant conducted or participated directly in the conduct of the Seneca Enterprise's affairs through a pattern of racketeering activity, including acts indictable

under 18 U.S.C. §§ 1341 (mail fraud) and 1343 (wire fraud). In addition to the foregoing and in addition to those acts of racketeering activity set forth in Exs. R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, and PP, this pattern of racketeering activity involved hundreds of separate instances of use of the U.S. Mail or interstate wire facilities in furtherance of the unlawful scheme to defraud Cliffs and CLF. These communications and transmissions include, but are not limited to:

(a) communications with and among the enterprise participants regarding amounts that Seneca owed to Cliffs or CLF, the avoidance of such debts, and the use of funds Seneca owed to Cliffs or CLF for the benefit of the RICO Defendants and other Seneca affiliates;

(b) communications with Cliffs and CLF regarding Seneca's inability to make payments owed to Cliffs or CLF;

(c) transmittal and receipt of funds from Seneca to the RICO Defendants in the course of and resulting from the RICO Defendant's fraudulent scheme; and

(d) transmittal of funds received from Seneca for the benefit of the RICO Defendants and other Seneca affiliates, rather than to pay amounts owed to Cliffs or CLF.

123. In addition to these acts of mail and wire fraud, additional acts are reflected in the materials attached to this Complaint. Also, there are multiple additional acts of mail and wire fraud that are currently known only to Defendants, but which will become known to the Plaintiffs through further discovery.

124. Each of these fraudulent mailings and interstate wire transmissions constitutes "racketeering activity" within the meaning of 18 U.S.C. § 1961(1)(B). Collectively, and in light of the continuing nature of these activities that now exceed two (2) years, these violations constitute a "pattern of racketeering activity," within the meaning of 18 U.S.C. § 1961(5), through which the RICO Defendants defrauded Cliffs and CLF.

125. The RICO Defendants' racketeering activities amounted to a common course of continued conduct, with a similar pattern and purpose, that was not isolated, and that was intended to deceive Cliffs and CLF. Each separate use of the U.S. Mail and/or interstate wire facilities employed by the RICO Defendants was related, had similar intended purposes, involved similar participants and methods of execution, and had the same results affecting the same victims, including Cliffs and CLF. The RICO Defendants engaged in the pattern of racketeering activity for the purpose of conducting the ongoing business affairs of the Seneca Enterprise.

126. The RICO Defendants' pattern of racketeering activity also poses a threat of continuous criminal activity, as the RICO Defendants committed these acts over a substantial period of time and continue to do so. The RICO Defendants began engaging in these acts no later than December 2015, when they commenced a series of transactions that caused the movement of $2.1 million from Seneca to Lara Natural Resources and Iron Management. Moreover, the pattern of racketeering activity alleged herein is continuing as of the date of this Fourth Amended Complaint, and, upon information and belief, will continue into the future unless enjoined by this Court. As recently as June 20, 2017, the RICO Defendants had caused Seneca to transfer tens of millions of dollars to affiliates (including themselves), without providing the advance notice that they had sworn to provide in a declaration submitted to this Court. Defendants have not provided any written documentation regarding transfers since June 20, 2017, but have continued—and will continue—to conduct the Seneca Enterprise in the same fraudulent manner. The RICO Defendants have engaged in this pattern of racketeering activity as a regular way of doing business.

127. The pattern of racketeering activity alleged herein and the Seneca Enterprise are separate and distinct from each other. Likewise, each RICO Defendant is distinct from the Seneca Enterprise.

128. Cliffs and CLF have been injured in their business or property by reason of the RICO Defendants' fraudulent scheme. The RICO Defendants have worked together to deprive Cliffs of the funds that were rightly owed to Cliffs and CLF as legitimate creditors of Seneca. As the intended result of the RICO Defendants' actions in conducting the Seneca Enterprise, Cliffs and CLF have been injured in the amount of the funds that the RICO Defendants fraudulently transferred from Seneca, in an amount to be determined at trial.

129. Cliffs' and CLF's injuries were directly and proximately caused by the RICO Defendants' racketeering activity.

130. Cliffs and CLF, both directly and indirectly, relied on the RICO Defendants' representations as to Seneca's ability to pay amounts owed to Cliffs and CLF. The RICO Defendants induced and perpetuated this reliance by taking the steps detailed above to misrepresent Seneca's finances and ability to pay amounts owed to Cliffs and CLF and by omitting to disclose the true course and materiality of their fraudulent conduct.

131. By virtue of these violations of § 1962(c), Defendants are liable to Cliffs and CLF for three times the damages sustained, plus the costs of this suit, including reasonable attorneys' fees.

COUNT II
(Violation of RICO, 18 U.S.C. § 1962(a))

132. Cliffs and CLF reaffirm and reallege the allegations contained in paragraphs 1 through 131 of this Fourth Amended Complaint as if rewritten fully herein.

133. Section 1962(a) of RICO provides that "[i]t shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce."

134. The RICO Defendants have violated § 1962(a) by using or investing the income derived from the pattern of racketeering activity described above—namely, the fraudulent transfer of funds from Seneca to the RICO Defendants and other Seneca affiliates—in the establishment or operation of the Mission Coal Enterprise.

135. Each RICO Defendant is a "person" within the meaning of 18 U.S.C. § 1961(3).

136. Mission Coal Company LLC, a corporation, is an enterprise within the meaning of § 1961(4).

137. The Mission Coal Enterprise is engaged in or affects interstate or foreign commerce, as it has received funds transmitted across state lines from Seneca and other Seneca affiliates that were owed to Cliffs and CLF, and has transmitted such funds across state lines to the RICO Defendants and other Seneca affiliates, so that those individuals and entities could use the funds for their own benefit.

138. The RICO Defendants derived income from a pattern of racketeering activity. As set forth above, the RICO Defendants engaged in hundreds of acts of mail and wire fraud, through which they fraudulently represented to Cliffs and CLF that Seneca was unable to pay amounts that it owed to Cliffs and CLF, and fraudulently diverted Seneca's funds and assets to be used for the benefit of the RICO Defendants and other affiliates of Seneca. Each fraudulent

mailing and interstate wire transmission constitutes "racketeering activity" within the meaning of 18 U.S.C. § 1961(1)(B). Collectively, these violations constitute a "pattern of racketeering activity," within the meaning of 18 U.S.C. § 1961(5). Moreover, this pattern of racketeering activity enabled the RICO Defendants to fraudulently retain millions of dollars in the possession of Seneca or Seneca affiliates, thereby generating income, directly or indirectly, from their pattern of racketeering activity.

139. The RICO Defendants, directly or indirectly, used or invested this income derived from a pattern of racketeering activity in acquiring an interest in, establishing, or operating the Mission Coal Enterprise. To secure an approximately [redacted] loan to Mission Coal, Defendants pledged Seneca's assets and then restructured Seneca as a subsidiary of Mission Coal. Mission Coal then immediately paid a portion of this loan to Thomas Clarke and possibly other Individual Defendants, thus continuing the scheme of fraudulent transfers. Mission Coal did not use any of the loan to pay debts owed to Cliffs or CLF. By transferring Seneca's assets to Mission Coal—so that Mission Coal could obtain a substantial refinancing loan and continue Defendants' fraudulent shell game—the RICO Defendants used or invested income derived from a pattern of racketeering activity in acquiring an interest in, establishing, or operating the Mission Coal Enterprise.

140. Cliffs and CLF and have been injured in their business or property by reason of the RICO Defendants' violations of § 1962(a). The RICO Defendants have worked together to deprive Cliffs of the funds that were rightly owed to Cliffs and CLF as legitimate creditors of Seneca, and have sought to make these funds inaccessible by moving them to Mission Coal. As the intended result of the RICO Defendants' actions in conducting the Mission Coal Enterprise, Cliffs and CLF have been injured in the amount of the funds that the RICO Defendants fraudulently used or invested in operating Mission Coal, in an amount to be determined at trial.

141. Cliffs' and CLF's injuries were directly and proximately caused by the RICO Defendants' investment of the proceeds of their pattern of racketeering activity into Mission Coal.

142. By virtue of these violations of § 1962(a), Defendants are liable to Cliffs and CLF for three times the damages sustained, plus the costs of this suit, including reasonable attorneys' fees.

COUNT III
(Conspiracy to Commit a RICO Violation, 18 U.S.C. § 1962(d))

143. Cliffs and CLF reaffirm and reallege the allegations contained in paragraphs 1 through 142 of this Fourth Amended Complaint as if rewritten fully herein.

144. Section 1962(d) of RICO provides that "[i]t shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section."

145. The RICO Defendants have violated § 1962(d) by conspiring to violate § 1962(c). The object of this conspiracy has been and is to conduct or participate in, directly or indirectly, the conduct of the affairs of the Seneca Enterprise described above through a pattern of racketeering activity. The RICO Defendants combined, conspired, confederated, and agreed with, inter alia, one another and other Seneca affiliates, to fraudulently represent to Cliffs and CLF that Seneca was unable to pay amounts that it owed to those entities, and to divert Seneca's funds to be used for the benefit of the RICO Defendants and other Seneca affiliates.

146. The RICO Defendants are "persons" within the meaning of 18 U.S.C. § 1961(3).

147. Each RICO Defendant knowingly agreed with one or more other RICO Defendants to facilitate or further a scheme which, if completed, would constitute violations of § 1962(c) and (a). That is, each RICO Defendant knowingly agreed to conduct or to participate, directly or indirectly, in the conduct of an enterprise's affairs through a pattern of racketeering

activity and to use income derived from a pattern of racketeering activity to acquire and maintain an interest in an enterprise.

148. Each RICO Defendant, moreover, joined this agreement or conspiracy knowing of its objective to conduct or participate, directly or indirectly, in the conduct of an enterprise's affairs through a pattern of racketeering activity, and to use income derived from a pattern of racketeering activity to acquire and maintain an interest in an enterprise. And each RICO Defendant intended to further an endeavor which, if completed, would satisfy all of the elements of a violation of § 1962(c) and a violation of § 1962(a).

149. Cliffs and CLF have been injured in their business or property by reason of the RICO Defendants' conspiracy to violate § 1962(c) and (a), and by the overt acts that the RICO Defendants have taken in furtherance of that conspiracy.

150. Cliffs' and CLF's injuries were directly and proximately caused by the RICO Defendants' conduct in forming this conspiracy and performing overt acts in furtherance thereof.

151. By virtue of these violations of § 1962(d), Defendants are liable to Cliffs and CLF for three times the damages sustained, plus the costs of this suit, including reasonable attorneys' fees.

COUNT IV
(Breach of Contract—The UPA)

152. Cliffs and CLF reaffirm and reallege the allegations contained in paragraphs 1 through 151 of this Fourth Amended Complaint as if rewritten fully herein.

153. The UPA is a valid and enforceable contract.

154. Cliffs and CLF have performed their obligations under the UPA in good faith.

155. Seneca has failed or refused to reimburse Cliffs and CLF for expenses incurred, as promised in the UPA.

156. Seneca has failed or refused to indemnify Cliffs and CLF for expenses incurred in the BB&T Litigation.

157. Seneca failed or refused to replace certain bonds and guarantees, forcing Cliffs and/or CLF to incur additional expenses that Seneca failed or refused to pay.

158. Seneca failed or refused to obtain workers' compensation insurance for existing claims, obtain new financial assurance sufficient to release Cliffs' letters of credit around $10 million, and take over the administration and funding of workers' compensation matters as required under the UPA and as acknowledged by Seneca.

159. As a direct and proximate result of Seneca's breach of contract, Cliffs and CLF have suffered compensatory damages in an amount to be determined at trial, but in excess of $7.9 million, exclusive of interest, and have been damaged by the on-going costs of supplying letters of credit in an amount in excess of $9 million.

160. As a direct and proximate result of Seneca's breach of contract, Cliffs is entitled to a mandatory and permanent injunction, requiring Seneca to post collateral sufficient to replace the collateral that Cliffs has had to post for the letters of credit.

161. In addition, Cliffs and CLF are entitled to their attorneys' fees in this action under the parties' indemnification provision in the UPA.

COUNT V
(Breach of Contract—The Override Agreement)

162. Cliffs and CLF reaffirm and reallege the allegations contained in paragraphs 1 through 161 of this Fourth Amended Complaint as if rewritten fully herein.

163. The Override Agreement is a valid and enforceable contract.

164. Cliffs and CLF have performed their obligations under the Override Agreement.

165. Seneca has breached its obligations under the Override Agreement by, among other things, selling coal to its affiliates at rates substantially below market price. This action has denied Cliffs and CLF the Tonnage Payments to the Escrow Account it would otherwise be entitled.

166. Seneca has also breached its contractual duties to produce and sell coal in good faith and not take actions that would be unfairly prejudicial or discriminatory to the interests of Cliffs and CLF in receiving the Tonnage Payments.

167. As a direct and proximate result of Seneca's breach of the Override Agreement, Cliffs and CLF have suffered compensatory damages in excess of $50 million. Upon information and belief, Seneca's breaches are continuing and Cliffs and CLF's damages will continue to escalate with each quarterly Override Royalty Report received an amount which will be determined at trial.

COUNT VI
(Fraudulent Conveyance)

168. Cliffs and CLF reaffirm and reallege the allegations contained in paragraphs 1 through 167 of this Fourth Amended Complaint as if rewritten fully herein.

169. Based upon the UPA, Defendant Seneca has an outstanding debt to Cliffs for reimbursement and indemnification. This debt started from December 22, 2015, with $2 million in payroll obligation, over $13.5 million dollars in workers' compensation obligations, the obligation to replace nearly $16.7 million in bonds, other reimbursement obligations (including amounts owed pursuant to the Override Agreement), and continues to increase and is due and owing to Cliffs and CLF despite repeated attempts by Cliffs and CLF to obtain payment from Seneca in satisfaction of the debt.

170. Seneca does not dispute that this debt is legitimate and is due and owing to Cliffs and CLF. As such, Cliffs and CLF are creditors of Seneca.

171. Instead of using Seneca's funds, including the [redacted] bridge loan for company expenses, for payment to Cliffs and CLF in satisfaction of the debt, Seneca transferred or diverted monies and/or funds to Lara Natural Resources, Iron Management, and "other affiliate companies owned by the members," including but not limited to ERP Compliant Fuels, LLC, Virginia Conservation Legacy Fund, Inc., ERP Environmental Fund, Inc., ERP Federal Mining Complex, LLC, Seminole Coal Resources, LLC, and ERP Compliant Coke, LLC—all of which are owned in part by at least one of the Individual Defendants, with the actual intent to delay, hinder, or defraud Cliffs or CLF.

172. Lara Natural Resources, Iron Management, and the "affiliates" with common ownership are insiders of Seneca with knowledge of the debt owed to Cliffs and CLF. Therefore, any transfer from Seneca to these entities served the purpose of retaining possession of Seneca's assets or an interest in those assets. None of the insiders took or received transfers from Seneca in good faith.

173. The transfers made to Lara Natural Resources, Iron Management, and the "affiliates" commenced shortly after Seneca assumed the corporate liabilities estimated to be $268 million, after immediately incurring debt to Cliffs in the form of $2 million in payroll obligation, millions of dollars in workers' compensation obligations, and the obligation to replace nearly $16.7 million in bonds.

174. The transfer of $50,000 and $1,000,000 to Lara Natural Resources on December 24, 2015 and January 5, 2016, and $1,050,000 to Iron Management on January 5, 2016, occurred shortly after the parties executed the UPA, after Seneca had incurred at least $2 million of debt to Cliffs, further debt associated with workers' compensation claims for which it had a contractual

obligation to reimburse Cliffs, millions of dollars in letters of credit to replace, and an immediate obligation to replace nearly $16.7 million in bonds.

175. The transfer to Iron Management of $300,000 and $30,000 to Lara Natural Resources occurred shortly after Seneca failed to make the $437,000 lease payment on the BB&T lease and failed to replace Cliffs' bonds in the amount of $16.7 million as required under the UPA. These failures are events upon which Seneca could have reasonably anticipated litigation.

176. Transfers for these management fees to Lara Natural Resources and Iron Management have continued on a monthly basis in an amount of approximately $30,000 and $20,000 respectively, even as Cliffs issues its monthly invoices and Seneca has refused to pay those invoices.

177. Seneca's loan transfers to affiliate companies, which have a net total of over $30 million dollars, have occurred consistently since Seneca executed the UPA and have occurred after Cliffs issued its invoices to Seneca. They started after Seneca incurred significant debt to Cliffs, and continued even as Seneca missed its deadline to replace the bonds and guarantees, failed to make the BB&T payment, failed to make other capital lease payments, failed to replace the letters of credit, and failed to reimburse the $7.9 million owed Cliffs.

178. Upon information and belief, the Individual Defendants received distributions from these affiliate entities, the purpose of which was to conceal the distributions under the guise of "loans" to affiliate companies.

179. These transfers from Seneca to affiliate companies, along with transfers to Lara Natural Resources and Iron Management, ultimately resulted in distributions to the Individual Defendants.

180. Upon information and belief, Seneca received inadequate consideration or no equivalent value in exchange for the transfer of funds to Lara Natural Resources, Iron Management, or the "affiliates." Despite being required in Interrogatory No. 1 to identify any consideration or value exchanged for the transfers by Seneca, the Individual Defendants have identified none in the Clarke and McCoy Declarations.

181. According to Seneca, it is unable to pay the outstanding invoices because of financial difficulties. Therefore, the transfers made by Seneca have rendered Seneca insolvent or unable to make payment to its creditors, including Cliffs and CLF.

182. Seneca, Lara Natural Resources, Iron Management, and the "affiliates" concealed these transfers from its creditors, Cliffs and CLF, until Cliffs filed its Expedited Discovery Motion which required Defendants to disclose information regarding transfers. Thereafter, Defendants concealed the subsequent transfers even after promising to Cliffs and the Court that they would provide prior notice before making any transfers.

183. Furthermore, emails between Thomas Clarke, Jason McCoy, Kenneth McCoy, and other employees of Seneca and the affiliated companies confirm that the Individual Defendants all directed, participated in, and/or ratified the transfers and the concealment of the transfers from Cliffs. (*See* Exs. C, J, L, R–PP.)

184. Jason McCoy, Kenneth McCoy, and Thomas Clarke's control over Seneca is so complete that Seneca has no separate mind, will, or existence of its own.

185. Jason and Kenneth McCoy's control over Iron Management is so complete that Iron Management has no separate mind, will, or existence of its own.

186. Thomas Clarke and Ana Clarke's control over Lara Natural Resources is so complete that Lara Natural Resources has no separate mind, will, or existence of its own.

187. Individual Defendants' control over Seneca, Iron Management, and Lara Natural Resources, respectively, was exercised in such a manner as to commit fraud against Cliffs and CLF.

188. Cliffs and CLF suffered injury or unjust loss as a result of Individual Defendants' control and wrongdoing.

189. Furthermore, based on Seneca's obligations to Cliffs and CLF under the UPA and Override Agreement, Seneca has an outstanding debt to Cliffs and CLF. As a result, Cliffs and CLF are legitimate creditors of Seneca.

190. Rather than fulfill its obligations to Cliffs and CLF under the UPA and Override Agreement, including the $2 million Seneca incurred as of December 22, 2015, $16.7 million of bonds, millions of dollars in letters of credit, and the millions of dollars owed to Cliffs throughout 2016, Seneca sold coal to insider and/or affiliate ERP Compliant Coke, LLC at a price substantially below market rate with the actual intent to hinder, delay, and defraud Cliffs and CLF.

191. ERP Compliant Coke, LLC shares common ownership with Seneca by way of the Individual Defendants and had knowledge of Seneca's obligations under the UPA, Override Agreement, and debts owed to Cliffs and CLF. ERP Complaint Coke, LLC failed to take or receive the sale of coal in good faith.

192. Seneca did not receive adequate consideration or reasonably equivalent value in terms of payment received from ERP Compliant Coke, LLC; instead it received a substantially reduced price from the going market rates.

193. Because Seneca sold its coal to insiders and/or affiliates, Seneca and its owners kept possession of the property at a reduced price.

194. These actions were not disclosed to Cliffs and CLF at the time of sale. Cliffs and CLF only became aware after the fact via the Override Reports.

195. These events continued to occur even after this litigation had already commenced and Seneca was threatened with substantial liability to Cliffs. Even though Individual Defendants told the Court that it would give thirty days' notice of any transfers by Seneca, Defendants failed to do so even as they transferred millions of dollars to insiders.

196. As a result of the foregoing, Cliffs and CLF have suffered damages in an amount to be proven at trial, and is entitled to the avoidance and return of any funds transferred to Lara Natural Resources, Iron Management, and the "affiliates," return of any profit lost as a result of fraudulent sales of coal to affiliates, along with a judgment against all Defendants, jointly and severally, for the value of the transfers.

197. In addition, Cliffs and CLF are entitled to an injunction prohibiting Seneca, Lara Natural Resources, and/or Iron Management from transferring money or assets from Seneca, Lara Natural Resources, and/or Iron Management to anyone until Cliffs' rights to payment from Seneca (including the replacement of the collateral for the workers' compensation policies) have been satisfied by Seneca.

198. In addition, the acts were committed with actual malice, including that all Defendants knew of and consciously disregarded Cliffs and CLF's rights and knew that the fraudulent transfers would cause substantial harm to Cliffs and CLF. Cliffs and CLF are entitled to an award of punitive damages and attorneys' fees against all Defendants, jointly and severally.

199. Further, Cliffs is entitled to sanctions and attorneys' fees against Defendants.

COUNT VI
(Conspiracy to Commit Fraudulent Transfer)

200. Cliffs and CLF reaffirm and reallege the allegations contained in paragraphs 1 through 199 of this Fourth Amended Complaint as if rewritten fully herein.

201. The Individual Defendants in this matter are members of the fraudulent transferor, Seneca, and the transferees, Lara Natural Resources, and/or Iron Management, who received at least $2.4 million in assets from Seneca plus hundreds of thousands in "management fees." In addition, Defendant Thomas Clarke and the other Individual Defendants are the owner/managing members of the multitude of insiders and/or affiliates who received transfers from Seneca and coal at below market value from Seneca.

202. Thomas and Ana Clarke are the sole members of Lara Natural Resources; Kenneth and Jason McCoy are majority members of Iron Management; and Kenneth McCoy, Jason McCoy, and Thomas Clarke are majority members of Seneca.

203. As a result of their respective ownership interests in Seneca, Lara Natural Resources, and/or Iron Management, the Individual Defendants had a personal financial interest in ensuring that Seneca's funds would not be used to repay its debts to Cliffs and CLF, but rather to divert such funds away to themselves "corporately and personally" based upon their interest in Lara Natural Resources, Iron Management, and other owned "affiliates" of Seneca, and to sell coal to affiliates of Seneca owned by Thomas Clarke at below market prices.

204. To that end, on or before December 18, 2016, Thomas Clarke, Jason McCoy, and Kenneth McCoy entered into a conspiracy the purpose of which was to use the assets of Seneca to fund their personal and corporate objectives to the detriment of Cliffs and other creditors. The Defendants commenced the conspiracy by using the proceeds of a [redacted] bridge loan to Seneca to immediately "pay down [their] debt . . . both corporately and personally." (*See* Ex. B.)

205. Furthermore, on or about January 5, 2015, Thomas Clarke spoke with Jason McCoy regarding self-payment in the amount of $1 million dollars each to Lara Natural Resources and Iron Management. This agreement, which was mutually beneficial to both parties involved, manifested itself in a transfer of $1 million to Lara Natural Resources and $1,050,000 to Iron Management on the very same day of the conversation. The total amount of payments to Lara Natural Resources and Iron Management in late December and early January are exactly the same: $1,050,000 each.

206. Likewise, on or about January 29, 2016, Jason McCoy communicated with representatives of ERP Compliant Fuels, Inc. regarding engaging in siphoning money away from Seneca through a "management fee." Jason McCoy, Kenneth McCoy, and Thomas Clarke thereafter repeatedly engaged in email communication regarding fraudulently transferring funds via this management fee. This agreement manifested itself in a monthly transfer away from Seneca to Lara Natural Resources and Iron Management in lieu of payment to Seneca's creditor, Cliffs.

207. Furthermore, the Defendants combined, conspired, confederated, and agreed to transfer funds away from Seneca to affiliate companies owned by the Individual Defendants via "loans" in order to either fund these companies or make distributions to the Individual Defendants. This agreement among the Defendants ensured that while Seneca would be unable to pay Cliffs and its other creditors, the money would still remain in the control of the Individual Defendants.

208. On November 8, 2016, at the latest, Ana Clarke joined the conspiracy by receiving $25,000 intended to be disguised as a "management fee" from Seneca.

209. Prior to, during, and after the transfers of tens of millions of dollars from Seneca, Seneca owed, and continues to owe, millions of dollars to Cliffs.

210. The Defendants maliciously collaborated and contrived to deprive Cliffs of the funds that were rightly owed to Cliffs and CLF as legitimate creditors of Seneca. This collaborative effort to transfer funds and sell coal at below market prices to the detriment of Cliffs and CLF was purposeful to injure Cliffs and CLF without reasonable or lawful excuse.

211. None of the Individual Defendants were acting within the scope of their corporate role, but rather pursuant to their personal interests to "pay down [their] debt."

212. Each of the Defendants participated in, authorized, ratified and/or adopted the fraudulent transfers for their benefit. Each of the Defendants knew that Cliffs and CLF were legitimate creditors and Lara Natural Resources, Iron Management, and the "affiliates" were not legitimate creditors of Seneca.

213. As a result of the malicious effort of the multiple Defendants, the independent unlawful tortious act of actual and constructive fraudulent transfer occurred in which Seneca fraudulently transferred funds to Lara Natural Resources, Iron Management, and "affiliates" at the expense of its legitimate creditors, Cliffs and CLF, and sold coal at below market prices to ERP Compliant Coke, LLC with the intent to defraud Cliffs and CLF.

214. As a result of malicious effort of the multiple Defendants, Cliffs and CLF have been injured by the fraudulent transfers in an amount which will be determined at trial.

215. In addition, the acts were committed with actual malice, including that all Defendants knew of and consciously disregarded Cliffs and CLF's rights and knew that the fraudulent transfers would cause substantial harm to Cliffs and CLF. Thus, Cliffs and CLF are entitled to an award of punitive damages and attorneys' fees against all Defendants, jointly and severally.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiffs Cliffs Natural Resources Inc. and CLF PinnOak LLC respectfully requests that the Court enter judgment in its favor as follows:

A. Compensatory damages against Seneca in an amount to be determined at trial, but no less than $7.9 million, plus interest and increasing monthly until trial;

B. An injunction requiring Seneca to replace the letters of credit in an amount now in excess of $9 million, or post collateral sufficient to replace the collateral that Cliffs has had to post for the letters of credit;

C. Costs, interest and attorneys' fees against Seneca under the parties' indemnification provision in the UPA;

D. Costs, interest and attorneys' fees against Defendants for fraudulent transfer;

E. Compensatory damages against Seneca for its breach of the Override Agreement, in an amount of $50 million;

F. An injunction ordering Seneca to provide Cliffs with access to the books and records regarding the Override Reports;

G. An accounting of all intercompany transfers;

H. An injunction prohibiting Seneca, Lara Natural Resources, and/or Iron Management from transferring money or assets from Seneca to anyone until Cliffs' rights to payment from Seneca (including the replacement of the collateral for the workers' compensation policies) have been satisfied by Seneca;

I. Compensatory damages against all Defendants, jointly and severally, for the value of any transfers made by Seneca to the other Defendants in an amount not less than $35 million;

J. Compensatory damages against all Defendants, jointly and severally, for the value of the coal sold below market value to Seneca's affiliates or insiders, in an amount to be determined at trial;

K. As to the RICO Defendants, jointly and severally, three times the damages Plaintiffs have sustained as a result of the RICO Defendants' unlawful conduct in violation of RICO, plus Plaintiffs' costs, including attorneys' fees;

L. An award of punitive damages and attorneys' fees against all Defendants, jointly and severally; and

M. Any other relief this Court may deem just and appropriate under the circumstances.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b) and Local Rule 38.1, Cliffs and CLF demand a trial by jury on all issues so triable.

Respectfully submitted,

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EXHIBIT A

SENECA OWNERSHIP CHANGES BY PERCENTAGES & DATES

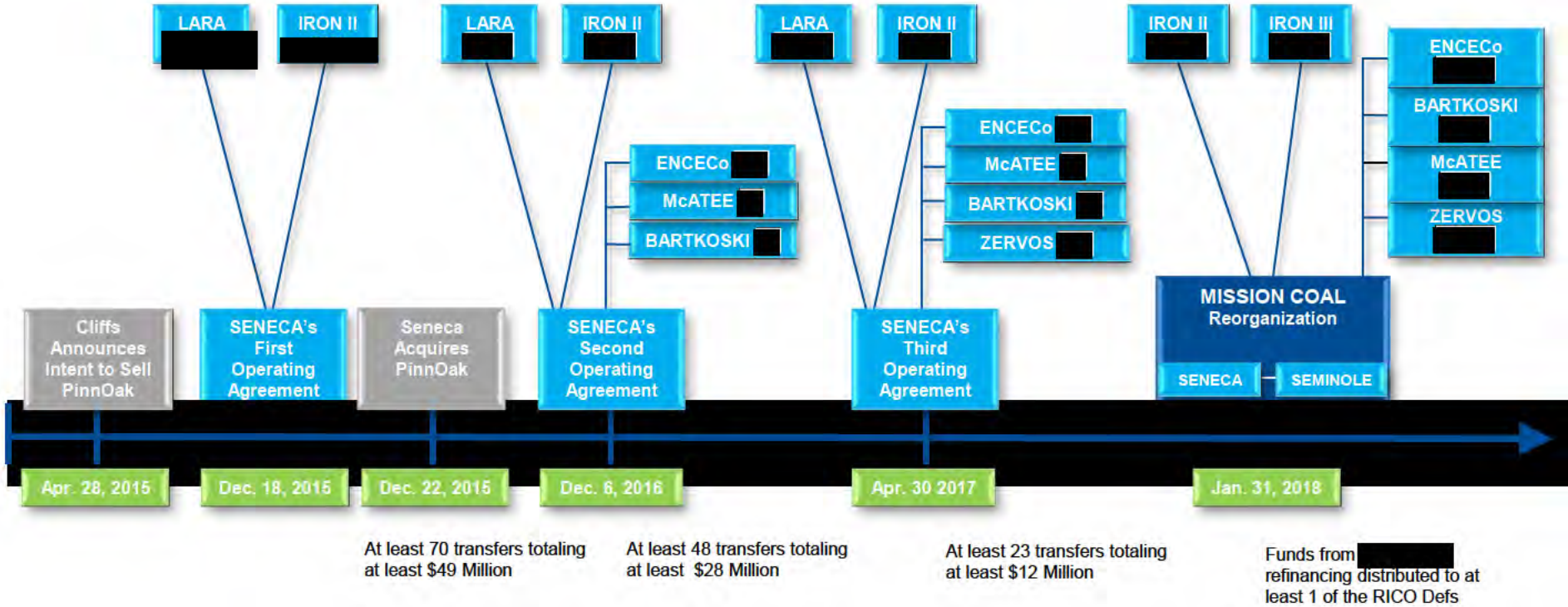

EXHIBIT B

REDACTED IN ITS ENTIRETY

EXHIBIT C

REDACTED IN ITS ENTIRETY

EXHIBIT D

REDACTED IN ITS ENTIRETY

EXHIBIT E

REDACTED IN ITS ENTIRETY

EXHIBIT F

REDACTED IN ITS ENTIRETY

EXHIBIT G

REDACTED IN ITS ENTIRETY

EXHIBIT H

REDACTED IN ITS ENTIRETY

EXHIBIT I

REDACTED IN ITS ENTIRETY

EXHIBIT J

REDACTED IN ITS ENTIRETY

EXHIBIT K

REDACTED IN ITS ENTIRETY

EXHIBIT L

REDACTED IN ITS ENTIRETY

EXHIBIT M

REDACTED IN ITS ENTIRETY

EXHIBIT N

REDACTED IN ITS ENTIRETY

EXHIBIT O

REDACTED IN ITS ENTIRETY

EXHIBIT P

REDACTED IN ITS ENTIRETY

EXHIBIT Q

REDACTED IN ITS ENTIRETY

EXHIBIT R

REDACTED IN ITS ENTIRETY

EXHIBIT S

REDACTED IN ITS ENTIRETY

EXHIBIT T

REDACTED IN ITS ENTIRETY

EXHIBIT U

REDACTED IN ITS ENTIRETY

EXHIBIT V

REDACTED IN ITS ENTIRETY

EXHIBIT W

REDACTED IN ITS ENTIRETY

EXHIBIT X

REDACTED IN ITS ENTIRETY

EXHIBIT Y

REDACTED IN ITS ENTIRETY

EXHIBIT Z

REDACTED IN ITS ENTIRETY

EXHIBIT AA

REDACTED IN ITS ENTIRETY

EXHIBIT BB

REDACTED IN ITS ENTIRETY

EXHIBIT CC

REDACTED IN ITS ENTIRETY

EXHIBIT DD

REDACTED IN ITS ENTIRETY

EXHIBIT EE

REDACTED IN ITS ENTIRETY

EXHIBIT FF

REDACTED IN ITS ENTIRETY

EXHIBIT GG

REDACTED IN ITS ENTIRETY

EXHIBIT HH

REDACTED IN ITS ENTIRETY

EXHIBIT II

REDACTED IN ITS ENTIRETY

EXHIBIT JJ

REDACTED IN ITS ENTIRETY

EXHIBIT KK

REDACTED IN ITS ENTIRETY

EXHIBIT LL

REDACTED IN ITS ENTIRETY

EXHIBIT MM

REDACTED IN ITS ENTIRETY

EXHIBIT NN

REDACTED IN ITS ENTIRETY

EXHIBIT OO

REDACTED IN ITS ENTIRETY

EXHIBIT PP

REDACTED IN ITS ENTIRETY

EXHIBIT 2

REDACTED IN ITS ENTIRETY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CLIFFS NATURAL RESOURCES INC. and CLF PINNOAK LLC, Plaintiffs, v. SENECA COAL RESOURCES, LLC, et al., Defendants.	C.A. No. 17-567-GAM
SENECA COAL RESOURCES, LLC, Counterclaim-Plaintiff, v. CLIFFS NATURAL RESOURCES INC. and CLF PINNOAK LLC, Counterclaim-Defendants.	

[PROPOSED] ORDER

The Court having considered the pleadings and evidence submitted by the parties, the pleadings and record on file, and the arguments of counsel, finds the following and orders that:

[Granting Plaintiffs' Motion for Leave to Amend]

Pursuant to Federal Rule of Civil Procedure 15(a) and for good cause, Plaintiffs should be granted leave to file their Fourth Amended Complaint. Accordingly, it is hereby

ORDERED this _____ day of _____, 2018, that Plaintiffs' request for leave to amend is GRANTED, and that Plaintiffs may file the Fourth Amended Complaint attached as Exhibit 1 to their Motion, and that Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction is DENIED as moot.

[Denying Plaintiffs' Motion but Granting Plaintiffs' Alternative Relief]

Pursuant to Federal Rule of Civil Procedure (12)(h)(3), this action as currently pleaded must be dismissed for lack of subject matter jurisdiction. Because the Court has dismissed the action, it will not grant Plaintiffs' request for leave to file its Fourth Amended Complaint. But to avoid unnecessary cost and delay consistent with Federal Rules of Civil Procedure 1, 41, and 42, it is hereby

ORDERED this _____ day of _____, 2018, that Plaintiffs' motion to amend is DENIED. Plaintiffs shall file the proposed Fourth Amended Complaint as a new matter in the United States District Court for the District of Delaware within one (1) business day, identifying the above-captioned case as related pursuant to Local Rule 3.1. Upon filing, the above-captioned matter will be dismissed for lack of subject matter jurisdiction.

It is further ORDERED that Plaintiffs' request for costs pursuant to 28 U.S.C. § 1919 is GRANTED.

Dated:

_____
The Honorable Gerald A. McHugh
U.S. District Court Judge