EFiled: Jul 02 2018 10:37PM EDT
Transaction ID 62198265
Case No. 2018-0478-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SENECA COAL RESOURCES, LLC, Plaintiff, v. CLEVELAND-CLIFFS INC. f/k/a CLIFFS NATURAL RESOURCES INC., CLF PINNOAK LLC, CLIFFORD T. SMITH, and ADAM MUNSON, Defendants.	)	C.A. No.: _____

VERIFIED COMPLAINT FOR NEGLIGENT MISREPRESENTATION, REFORMATION, AND OTHER EQUITABLE RELIEF

Plaintiff SENECA COAL RESOURCES, LLC ("**Seneca**"), by its attorneys, files this Verified Complaint against Defendants Cleveland-Cliffs Inc. f/k/a Cliffs Natural Resources Inc. ("**Cliffs**"), CLF PinnOak LLC ("**CLF**"), Clifford T. Smith ("**Smith**"), and Adam Munson ("**Munson**") (collectively, "**Defendants**") and, in support thereof, states and alleges as follows:[1]

[1] This Verified Complaint mirrors in substance a Counterclaim being filed on this date in the Complex Commercial Litigation Division of the Superior Court of the State of Delaware in the pending matter of *Cleveland-Cliffs Inc., et al. v. Seneca Coal Resources, LLC, et al.*, C.A. No. N18C-05-058 PRW CCLD ("Superior Court Action"). For the convenience of the Court and the parties, Plaintiff Seneca Coal Resources, LLC, has included all equitable and legal claims, as well as all claims for equitable and legal relief, asserted by them against the Defendants in this Verified Complaint. All equitable claims and claims for equitable relief asserted herein are within the subject matter jurisdiction of the Court of Chancery, and all legal claims and claims for legal relief asserted herein are within the subject matter

The Parties

1. Seneca is a Delaware limited liability company with its principal place of business in Tennessee.

2. On information and belief, Cliffs is an Ohio Corporation with its principal place of business in Ohio.

3. On information and belief, CLF is a Delaware limited liability company with its principal place of business in Ohio.

4. On information and belief, at all relevant times, Clifford Smith was Cliffs' Executive Vice President of Business Development and CLF's President.

5. On information and belief, at all relevant times, Adam Munson was Cliffs' Director of Business Development and Group Counsel.

6. This Court has personal jurisdiction over Smith and Munson pursuant to 10 Del. C. § 3104 and the contractual forum selection and consent to jurisdiction clause of the UPA. In addition, upon information and belief, Smith is the President of CLF, a Delaware limited liability company, and as such is subject to personal jurisdiction in Delaware pursuant to 6 Del. C. §18-109. Furthermore, upon

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jurisdiction of the Superior Court in the Superior Court Action. In the interest of judicial and party economy, Plaintiff Seneca Coal Resources, LLC, reserves all rights, consistent with applicable statutory and case law and the Court of Chancery Rules and Superior Court Civil Rules, to seek a consolidation of this Court of Chancery action and the Superior Court Action and to seek the designation of The Honorable Paul R. Wallace as a Vice Chancellor pursuant to Del. Const. art. IV, § 13(2), to hear and consider all such equitable claims and claims for equitable relief.

information and belief, Smith and Munson solicited, negotiated, facilitated, made representations with respect to, induced, and/or executed the sale of Cliffs North American Coal LLC, a Delaware limited liability company ("**CNAC**"), and its subsidiaries, Pinnacle Mining Company, LLC; Pinnacle Land Company, LLC; Oak Grove Resources, LLC; and Oak Grove Land Company, LLC, all of which are Delaware limited liability companies.

General Allegations

7. This case centers around Cliffs' fraud and breaches of contract in connection with the divestiture of its coal business, and in particular Cliffs' last two mines—the Oak Grove mine in Alabama and the Pinnacle mine in West Virginia—owned and operated by entities whose 100% record and beneficial owner was Cliffs North American Coal LLC ("**CNAC**").

8. CNAC's subsidiaries included (i) Pinnacle Mining Company, LLC ("**Pinnacle**"), (ii) Pinnacle Land Company, LLC, (iii) Oak Grove Resources, LLC ("**Oak Grove**"), (iv) Oak Grove Land Company, LLC, and (v) Beard Pinnacle, LLC.

9. In or about August 2014, because Cliffs was losing money on the business and facing hundreds of millions of dollars in claimed exposure (including but not limited to union dues and litigation matters), Cliffs initiated "Project Cosmos" to exit the coal business and rid itself of CNAC. Cliffs engaged an

investment banker to assist it with evaluating and marketing Cliffs' coal properties.

10. Upon information and belief, in connection with its plan to divest the mines, Cliffs stopped making necessary capital investments into the properties and allowed the Pinnacle and Oak Grove mines' equipment and supplies to deteriorate.

11. On information and belief, in or about October 2015, Cliffs decided to lay off all of its employees at the mines and shut them down. It suspended development of longwall panels at both mines, stopped active mining operations, and provided WARN notices at both mines, stating its plans to lay off hundreds of workers.

12. Before the mines were actually fully shut down, however, Cliffs entered into a transaction with Seneca to take ownership of the Pinnacle and Oak Grove mines upon terms further described below. In connection with the transaction, the parties entered into a letter of intent in November 2015, and Seneca conducted an expedited due diligence period process. On December 22, 2015, Cliffs, CLF, and Seneca executed a Unit Purchase Agreement (the "**UPA**"), and related Escrow Agreement and Override Agreement, under which Cliffs, through CLF, agreed to sell to Seneca all of the equity interests of CNAC and its subsidiaries, including Pinnacle and Oak Grove, and Seneca agreed to assume all of the liabilities of those entities.[2]

[2] Seneca did not make a cash payment for the mines, but agreed to certain limited

13. In its haste to exit the coal business and extricate itself from continuing liabilities and expenses, however, Defendants intentionally induced Seneca into consummating the transaction by making affirmative false and fraudulent misrepresentations about the business and concealing critical information about known liabilities from Seneca. Cliffs and CLF also breached the UPA and the representations and warranties made therein, as further detailed below.

14. Cliffs and CLF misrepresented the accounts payable and accrued expenses Seneca was agreeing to take on. Cliffs and CLF misrepresented the nature of financial assurances required by Cliffs' insurance companies with respect to workers compensation insurance policies – concealing that such companies would require approximately $10 million in cash collateral.

15. Defendants also concealed threatened litigation contending that Pinnacle had destroyed a mine owned by the governor of West Virginia – a litigation that had been temporarily withdrawn and dismissed without prejudice, but which Defendants actually knew the plaintiffs in that case planned to refile after the transaction with Seneca. That litigation was in fact refiled against Pinnacle and Seneca among others and the plaintiffs in that case are seeking over $600 million in damages.

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profit sharing with Cliffs through the terms of the Override Agreement, that would be triggered in the event the mines achieved coal prices above $95 per ton.

16. Cliffs and CLF concealed an audit of employee benefit plans.

17. Cliffs and CLF concealed that it had actually underfunded the employee benefit plans by hundreds of thousands of dollars.

18. Doubling down on its oppressive conduct – and for the purpose of creating improper litigation leverage over Seneca, a much smaller company – Cliffs and CLF have disputed Seneca's right to offset these concealed liabilities against profit-share amounts that Seneca would otherwise be required to place in an escrow account for Cliffs and CLF's benefit, as the parties had agreed in writing. In fact, Cliffs and CLF have now taken the bad faith position that Seneca has no setoff rights for pre-acquisition litigation liabilities at all, in contravention of the plain language and intent of the UPA and Escrow Agreement.

19. This Complaint seek relief and damages resulting from Defendants' misconduct.

FIRST CAUSE OF ACTION
(Fraud in the Inducement – Undisclosed Threatened Bluestone Litigation)
(Against Cliffs and CLF)

20. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 19 of its Complaint as if rewritten fully herein.

21. On April 16, 2015, in the middle of Cliffs' divestiture efforts but prior to the commencement of negotiations between Cliffs and Seneca, Bluestone Coal Corporation and Double-Bonus Mining Company (collectively, "**Bluestone**") sued

Pinnacle in the United States District Court for the Southern District of West Virginia (the "**Bluestone II Action**").[3]

22. Bluestone's complaint alleged that a borehole drilled by Pinnacle's subcontractor in 2013 and 2014 caused "catastrophic" flooding of Bluestone's mine and irreparable harm to the property.

23. On information and belief, on June 1, 2015, Cliffs tendered the Bluestone II Action as a potential claim to Cliffs' insurer, ACE North American Insurance Company. On June 3, 2015, ACE acknowledged the tender and sent the matter to be processed for claims administration.

24. In July 2015, after Bluestone's counsel described to Pinnacle's counsel the "continuing damages" that Bluestone's mine was purportedly incurring, the parties stipulated to a voluntary dismissal of the proceeding to allow Bluestone more time to evaluate the circumstances and with the understanding that Bluestone would be re-filing the case after performing additional diligence. A copy of the stipulated dismissal was sent to Cliffs' in-house counsel Jason Veloso.

25. Cliffs and CLF knew, however, that Bluestone's claims were only temporarily gone, not forgotten, and Bluestone planned to re-file. On August 6, 2015, Bluestone's counsel David Nelson emailed Pinnacle's counsel about alleged

[3] *Bluestone Coal Corp. v. Pinnacle Mining Co., LLC*, No. 15-04905 (S.D.W. Va.). This is designated "Bluestone II" because there was a previous action between the parties which the parties commonly referred to as "Bluestone I."

continuing flooding and access issues at the Double-Bonus mine. Shortly thereafter, Pinnacle's counsel informed Cliffs' in-house counsel Jason Veloso about these communications by phone conference on August 10, 2015. Pinnacle's counsel also informed Pinnacle's management including Mark Nelson and David Trader on August 10, 2015 regarding Bluestone's assertions as to the alleged flooding issues and ongoing damages at the Double-Bonus mine.

26. In September 2015, Bluestone's counsel David Nelson remained in contact with Pinnacle's counsel about the ongoing flooding dispute, including communications on September 16 and September 30. On each occasion, Pinnacle's counsel communicated those discussions to Cliffs' in-house counsel Jason Veloso.

27. In November 2015, Seneca's representatives, including Charles Ebetino, Thomas Clarke, and Jason McCoy met at Cliffs' headquarters in Cleveland, Ohio to discuss Seneca's potential acquisition of CNAC, including the Pinnacle and Oak Grove mines.

28. On or about November 18, 2015, Cliffs, CLF, and Seneca executed a letter of intent ("**LOI**") outlining the terms under which Cliffs, through CLF, would sell all of CNAC's outstanding equity interests to Seneca in exchange for Seneca's agreement to assume all of the liabilities of CNAC and its subsidiaries. Under the terms of the LOI, Seneca would also agree to potentially make quarterly profit-sharing payments up to a total of $50 million based on actual sale prices of

coal, subject to explicit setoff rights to be enumerated in an escrow agreement (including, without limitation, legal costs and any costs of settlement or judgment). The executed LOI acknowledged the parties' intent that escrowed funds would not cap Seneca's remedies "in the case of fraud."

29. Seneca conducted an expedited diligence process during December 2015 to assess matters not represented or warranted to by Cliffs in its capacity as a seller.

30. In the midst of this process, on December 7, 2015, the West Virginia Department of Environmental Protection emailed Pinnacle managers Mark Nelson, David Trader, and Mike Isabell to request information regarding the ongoing borehole dispute with Bluestone regarding the Double-Bonus mine. Mark Nelson, David Trader, and Mike Isabell then contacted Pinnacle's counsel and held a telephone conference with the Pinnacle team to discuss the issues at the Double-Bonus mine. None of these communications or meetings were ever disclosed to Seneca at any time prior to closing.

31. On December 22, 2015, Cliffs, CLF, and Seneca executed the UPA.

32. In the UPA, Cliffs and CLF represented and warranted that no threatened or pending litigation existed other than those disclosed in Section 4.6 of the Disclosure Schedule to the UPA:

> Section 4.6 Absence of Litigation. Except as set forth in Section 4.6 of the Disclosure Schedule as of [December 22, 2015], … there are no Actions pending or, to the Knowledge of Parent, threatened against CNAC or any Subsidiary of CNAC or any of their respective assets or properties that would have a Material Adverse Effect or would prevent Parent or Seller from consummating the transactions contemplated hereby ….
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> Section 1.1 "Material Adverse Effect" means any fact, condition, change or event that would, or could reasonably be expected to, individually or in the aggregate, materially and adversely affect (a) the results of operations or financial condition of the Business, taken as a whole, or (b) the ability of CNAC and its Subsidiaries to operate the Business immediately after the Closing in the manner operated immediately prior to the Closing ….
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> Section 1.1 "Knowledge of Parent" means the actual knowledge of [Clifford T. Smith, Mark D. Nelson (with respect to Pinnacle), and Lawrence J. Millburg (with respect to Oak Grove)], in each case after reasonable inquiry of management of CNAC and its Subsidiaries.

33. Cliffs and CLF had actual knowledge that Bluestone intended to re-file the litigation that Bluestone had dismissed without prejudice so that Bluestone could evaluate the extent of its claimed damages.[4] Even if Cliffs and CLF had not had actual knowledge, at a minimum, a reasonable inquiry of the management of CNAC and its subsidiaries, including Pinnacle, would also have revealed Bluestone's plans to imminently re-file against Pinnacle for the alleged

[4] By referencing Cliffs' concealment of the threatened Bluestone litigation, Seneca is not conceding that either it or Pinnacle actually caused any form of damage to Bluestone's mine. The significance of the allegations in the text is that Cliffs intentionally concealed a threatened and imminent lawsuit in which it knew that Pinnacle would be sued for a purported catastrophic loss.

"catastrophic" flooding and continuing damages allegedly sustained at Bluestone's Double-Bonus mine.

34. Notwithstanding Cliffs and CLF's knowledge of Bluestone's imminent re-filing of its claims against Pinnacle, Cliffs and CLF falsely and fraudulent concealed the threatened litigation by omitting it from the relevant disclosure schedule incorporated into the UPA. Misleadingly, Cliffs and CLF did list eleven other actions against both Pinnacle and Oak Grove in the Disclosure Schedule.

35. To make matters worse, Cliffs and CLF placed into the diligence datasite a copy of the dismissal of the Bluestone II complaint, *without including any contemporaneous or subsequent communications indicating Bluestone's imminent plan to re-file.* Upon information and belief, Cliffs and CLF's intent in concealing this critical information was to create the misimpression that the Bluestone claim had fully and finally concluded and was not threatened.

36. On information and belief, Cliffs and CLF intentionally concealed the threatened Bluestone III Action to induce Seneca to execute the UPA so that Seneca would acquire Pinnacle's liabilities.

37. On December 22, 2015, Seneca executed the UPA, under which it assumed substantially all of Pinnacle's liabilities, in reliance on Cliffs and CLF's representations in the UPA and Disclosure Schedule regarding the existence of any

threatened litigation against Pinnacle.

38. On July 7, 2016, Bluestone re-filed its claims against Pinnacle in the United States District Court for the Southern District of West Virginia (the "**Bluestone III Action**").[5] Bluestone's lawsuit is based on the same borehole drilling incident alleged in the Bluestone II Action. Bluestone seeks damages of approximately $600 million. On March 23, 2017, Bluestone amended its complaint to add Seneca and Cliffs as defendants to the Bluestone III Action.

39. Compounding the harm, Cliffs and CLF also failed to disclose in the UPA or anywhere else insurance policies under which Pinnacle was a named insured which would have provided coverage to Pinnacle for any losses and expenses in connection with the Bluestone III Action.

40. To this day, Cliffs and CLF have refused to voluntarily provide Seneca with the insurance policies for the assets Seneca purchased.[6] On information and belief, Cliffs has interfered with Pinnacle's ability to obtain insurance coverage in connection with the Bluestone matter, including through direct communications with Pinnacle's carriers.

41. Cliffs and CLF's actions constituted intentional, reckless, wanton, and grossly negligent conduct manifesting actual malice.

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[5] *Bluestone Coal Corp. v. Pinnacle Mining Co., LLC*, No. 16-06098 (S.D.W. Va.).

[6] At the end of 2017, Seneca received certain insurance policies through discovery provided by Cliffs in the Bluestone III Action. Seneca still does not know whether other insurance policies may provide additional insurance coverage.

42. The threatened Bluestone III Action was material to the UPA transaction because Seneca would not have executed the UPA in its existing form or agreed to assume the liabilities of the Pinnacle mine on such terms had it known the full facts surrounding the dismissal of the Bluestone II action or Cliffs and CLF's communications with Bluestone following the stipulated dismissal.

43. As a result of Seneca's reliance on Cliffs and CLF's false representations regarding the threatened claims of which they had knowledge, as well as Cliffs and CLF's deliberate concealment of the threatened Bluestone III Action, Seneca has suffered, and continues to suffer, ongoing damages in substantial costs, expenses, and attorneys' fees to defend against the Bluestone III Action, in an amount of not less than $2 million and potentially over $600 million, which are increasing daily and may remain unknown until the Bluestone III Action is resolved.

44. Seneca also has suffered other damages and costs because of Cliffs and CLF's fraud, and which have naturally and proximately resulted from Cliffs and CLF's fraud, in an amount which will be determined at trial.

45. As an alternative to damages, Seneca seeks reformation of the UPA, including striking the Bluestone III litigation as an assumed liability and requiring indemnification from Cliffs and CLF to account for the costs and expenses Seneca has incurred in defending against the Bluestone III Action, and other damages that

Seneca has suffered and continues to suffer as a natural and proximate cause of Cliffs and CLF's fraud.

46. Seneca is entitled to the value of lost business goodwill resulting from the Bluestone III Action, and the past and future lost profits for the Pinnacle mine, which Seneca acquired in reliance on Cliffs and CLF's fraudulent misrepresentations.

47. As a result of Cliffs and CLF's intentional, reckless, wanton, and grossly negligent conduct, Seneca is entitled to punitive and exemplary damages in an amount to be determined at trial.

48. In addition, Seneca is entitled to its attorneys' fees in this action under the indemnification provisions in Section 8.2 of the UPA.

SECOND CAUSE OF ACTION
(Negligent Misrepresentation – Undisclosed Threatened Bluestone Litigation)
(Against Cliffs and CLF)

49. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 48 of its Complaint as if rewritten fully herein.

50. Prior to the closing of the UPA, Cliffs and CLF supplied Seneca false information that affected Seneca's business decisions with respect to its acquisition of Pinnacle, the consideration Seneca paid to acquire Pinnacle, and Seneca's assumption of Pinnacle's liabilities.

51. Despite Cliffs and CLF's agreement to disclose all known claims and

actions threatened against Pinnacle in Section 4.6 of the Disclosure Statement, Cliffs and CLF failed to exercise reasonable care or competence in obtaining or communicating information about the threatened Bluestone III Action to Cliffs and CLF in the Disclosure Statement. Cliffs and CLF also failed to disclose their communications with Bluestone regarding the continuing damages and ongoing flooding and borehole issues at the Bluestone and Double-Bonus mines.

52. In addition, Cliffs and CLF's placement of the Bluestone II complaint and stipulated dismissal into a massive datasite imposed a duty upon Cliffs and CLF to fully disclose the facts and circumstances surrounding the dismissal of Bluestone II, including their ongoing communications with Bluestone and others regarding the continuing damages, flooding issues, borehole issues, and pending concerns at the Bluestone and Double-Bonus mines. Cliffs and CLF had a duty to fully disclose these material facts because it was necessary to dispel the misleading impressions that Cliffs and CLF had created through their partial disclosure of the facts.

53. In reliance on Cliffs and CLF's misrepresentations regarding the existence of any threatened action against Pinnacle, Seneca executed the UPA, under which it assumed substantially all of Pinnacle's liabilities.

54. Seneca's reliance on Cliffs and CLF's negligent misrepresentation(s) have caused it to sustain ongoing pecuniary losses in substantial costs, expenses,

and attorneys' fees to defend against the Bluestone III Action, in an amount of not less than $2 million and potentially over $600 million, which are increasing daily and may remain unknown until the Bluestone III Action is resolved.

55. Seneca has also sustained other pecuniary losses because of Cliffs and CLF's negligent misrepresentation(s), and which have naturally and proximately resulted from Cliffs and CLF's negligent misrepresentation(s), in an amount which will be determined at trial.

56. As a result of Cliffs and CLF's intentional, reckless, wanton, and grossly negligent conduct, Seneca is entitled to punitive and exemplary damages in an amount to be determined at trial.

57. In addition, Seneca is entitled to damages and attorneys' fees under the indemnification provisions in Section 8.2 of the UPA.

THIRD CAUSE OF ACTION
(Breach of Contract/Express Warranty – Undisclosed Threatened Bluestone Litigation)
(Against Cliffs and CLF)

58. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 57 of its Complaint as if rewritten fully herein.

59. Through the UPA, Cliffs and CLF made certain representations and warranties with respect to the transaction and the liabilities acquired by Seneca.

60. In Section 4.6 of the UPA, Cliffs and CLF represented and warranted that neither Pinnacle, its assets, nor its properties were threatened with any claim,

action, or lawsuit that could reasonably be expected to materially and adversely affect the results of operations or financial conditions of the business, other than those listed in Section 4.6 of the Disclosure Schedule.

61. Cliffs and CLF were required to list in Section 4.6 of the Disclosure Schedule all such threatened actions against Pinnacle, in order to make their representations and warranties in Section 4.6 of the UPA complete and accurate.

62. Cliffs and CLF breached their express representations and warranties in Section 4.6 of the UPA by failing to disclose the threatened Bluestone III Action in Section 4.6 of the Disclosure Schedule.

63. As a result of Cliffs and CLF's failure to disclose the threatened Bluestone III Action, Cliffs and CLF breached their express warranties in Section 4.6 of the UPA, and their obligations to provide complete and accurate disclosures under the UPA.

64. Seneca relied on Cliffs and CLF's express warranties and representations in Section 4.6 the UPA, and Cliffs and CLF's disclosures in Section 4.6 of the Disclosure Schedule, when Seneca bargained for and agreed to the core terms of the UPA contract, including the consideration it paid to acquire the assets and liabilities of CNAC and its subsidiaries, including Pinnacle.

65. Seneca performed its obligations under the UPA.

66. As a result of Cliffs and CLF's breach of Section 4.6 of the UPA and

their express warranties thereunder, Seneca has suffered, and continues to suffer, damages in an amount in an amount of not less than $2 million and potentially over $600 million, which are increasing daily and may remain unknown until the Bluestone III Action is resolved.

67. In addition, Seneca is entitled to damages and attorneys' fees under the indemnification provisions in Section 8.2 of the UPA.

FOURTH CAUSE OF ACTION
(Declaratory Relief – Setoff, Recoupment, and Indemnification for Undisclosed Threatened Bluestone Litigation)
(Against Cliffs and CLF)

68. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 67 of its Complaint as if rewritten fully herein.

69. Seneca seeks a declaration that any damages resulting from Cliffs and CLF's failure to disclose the threatened Bluestone III Action may be used to setoff and/or recoup any amounts that Seneca allegedly owes to Cliffs and CLF in this litigation or otherwise under the UPA, Override Agreement, or Escrow Agreement, and that such amounts are not limited by the UPA, Override Agreement, or Escrow Agreement.

70. Seneca also seeks a declaration that it is entitled to indemnification for damages and attorneys' fees caused by Cliffs and CLF's fraudulent failure to disclose the threatened Bluestone III Action, under Section 8.2 of the UPA, which provides:

> [Cliffs and CLF shall indemnify Seneca] for and against any and all losses, damages, claims and judgments, including attorney's fees (both those incurred in connection with the defense or prosecution of the indemnifiable claim and those incurred in connection with the enforcement of this provision), actually suffered … arising out of or resulting from: (a) the breach of any representation or warranty made by [Plaintiffs] contained in [the UPA], determined in each case without regard to qualification by Material Adverse Effect or materiality or similar exceptions or qualifications; [and] (b) the breach of any covenant or agreement of [Plaintiffs] contained in [the UPA].

71. Seneca also seeks a declaration that, to the extent it is entitled to a recovery based on Cliffs and CLF's fraudulent failure to disclose the threatened Bluestone III Action, its recovery is not limited to a setoff against amounts that Seneca purportedly owes under the UPA, Override Agreement, or Escrow Agreement.

72. Seneca also seeks a declaration that Cliffs and CLF are not entitled to indemnification under the UPA, Override Agreement, or Escrow Agreement because of their failure to disclose the threatened Bluestone III Action.

73. Seneca also seeks a declaration that it is entitled to indemnification under Section 8.2 of the UPA for damages and attorneys' fees caused by Cliffs and CLF's negligent misrepresentation(s) or breach of contract or express warranty in failing to disclose the threatened Bluestone III Action.

74. This controversy is ripe for a judicial determination and involves Seneca's rights with respect to damages it has sustained as a result of Cliffs and

CLF's fraud, negligent misrepresentation, breach of contract, and breach of express warranty.

75. Cliffs and CLF have an interest in contesting this cause of action to, among other things, limit Seneca's fraud damages to a setoff against amounts that Seneca purportedly owes under the UPA, Override Agreement, or Escrow Agreement.

FIFTH CAUSE OF ACTION
(Fraud in the Inducement – Undisclosed Accounts Payable and Accrued Expenses)
(Against Cliffs and CLF)

76. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 75 of its Complaint as if rewritten fully herein.

77. On the closing date of the UPA, December 22, 2015, Cliffs provided Seneca with an accounts payable schedule reflecting a balance of $13.36 million in liabilities that would be transferred to Seneca. Cliffs and CLF contemporaneously agreed to and/or paid certain accounts payable at closing, thereby adjusting the represented accounts payable balance to be $11.35 million, which was transferred to Seneca upon closing.

78. After the closing date, Seneca became aware of invoices from vendors for goods provided and services rendered to CNAC and its subsidiaries before the closing date that were not included in the "accounts payable" schedule that Cliffs and CLF had provided to Seneca.

79. After careful investigation, Seneca determined that Cliffs and CLF failed to disclose substantial vendor liabilities and other accrued expenses in excess of $1.5 million that CNAC and its subsidiaries had incurred before the closing date, which were previously unknown to Seneca.

80. Cliffs and CLF also had knowledge of the undisclosed and unrecorded accounts payable and other accrued expenses because a reasonably inquiry of the management of CNAC and its subsidiaries would have revealed the existence of those liabilities. Upon information and belief, Cliffs intentionally failed to make a reasonable effort to ensure the accuracy of the "accounts payable" schedule provided to Seneca.

81. The undisclosed accounts payable and other accrued expenses in excess of $1.5 million were material because had Seneca known the truth, it would not have agreed to the UPA as written. For example, in the course of final negotiations Cliffs agreed to pay over $2 million of the known outstanding accounts payable. Had Seneca known the true amount of outstanding accounts payable it would have demanded additional payments by Cliffs.

82. Cliffs and CLF concealed the undisclosed accounts payable and other accrued expenses to induce Seneca to execute the UPA agreement and assume the liabilities of CNAC and its subsidiaries.

83. In reliance on the inaccurate accounts payable schedule that Cliffs and

CLF provided on December 22, 2015, Seneca executed the UPA as written.

84. As a result of Seneca's reliance on Cliffs and CLF's partial and misleading disclosure of the accounts payable that would be transferred, Seneca suffered damages in excess of $1.5 million in vendor liabilities, accounts payable, and other accrued expenses that Cliffs and CLF failed to disclose.

85. Cliffs and CLF's conduct was intentional, reckless, wanton, and grossly negligent and manifested actual malice. As a result, Seneca is entitled to punitive and exemplary damages in an amount to be determined at trial.

86. In addition, Seneca is entitled to damages and attorneys' fees under the indemnification provisions in Section 8.2 of the UPA.

SIXTH CAUSE OF ACTION
(Negligent Misrepresentation – Undisclosed Accounts Payable and Accrued Expenses)
(Against Cliffs and CLF)

87. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 86 of its Complaint as if rewritten fully herein.

88. As discussed above, before the closing, Cliffs provided Seneca with a schedule that misrepresented the accounts payable of CNAC and its subsidiaries.

89. Cliffs and CLF had a duty to disclose the actual amount of accounts payable and other accrued expenses that would be transferred to Seneca at closing.

90. Cliffs and CLF breached that duty by failing to disclose the actual amount of accounts payable and other accrued expenses that Seneca would be

assuming on the closing date. To date, Cliffs or CLF have not provided Seneca with a schedule reflecting the total balance of CNAC and its subsidiaries' accounts payable and other accrued expenses as of the UPA closing date.

91. Cliffs and CLF failed to exercise reasonable care or competence in obtaining and communicating the actual amount of accounts payable and other accrued expenses that would be transferred to Seneca.

92. In reliance on the accounts payable schedule that Cliffs and CLF provided to Seneca on December 22, 2015, Seneca executed the UPA as written.

93. As a result of Seneca's reliance on Cliffs and CLF's negligent misrepresentation(s), Seneca has suffered damages in excess of $1.5 million in vendor liabilities, accounts payable, and other accrued expenses that Cliffs and CLF failed to disclose.

94. In addition, Seneca is entitled to its attorneys' fees in this action under the indemnification provisions of the UPA.

SEVENTH CAUSE OF ACTION
(Declaratory Relief – Setoff, Recoupment, and Indemnification for Undisclosed Accounts Payable and Accrued Expenses)
(Against Cliffs and CLF)

95. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 94 of its Complaint as if rewritten fully herein.

96. Seneca seeks a declaration that any damages resulting from Cliffs and CLF's failure to disclose the threatened Bluestone III Action may be used to setoff

and/or recoup any amounts that Seneca allegedly owes to Cliffs or CLF in this litigation or otherwise under the UPA, Override Agreement, or Escrow Agreement, and that such amounts are not limited by the UPA, Override Agreement, or Escrow Agreement.

97. Seneca also seeks a declaration that it is entitled to indemnification under Section 8.2 of the UPA for damages and attorneys' fees caused by Cliffs and CLF's failure to disclose CNAC and its subsidiaries' accounts payable and other accrued expenses.

98. Seneca seeks a declaration that, to the extent Seneca is entitled to a recovery based on Cliffs and CLF's failure to disclose CNAC and its subsidiaries' accounts payable and other accrued expenses, Seneca's recovery is not limited to a setoff against amounts that Seneca purportedly owes under the UPA, Override Agreement, or Escrow Agreement.

99. Seneca also seeks a declaration that Cliffs and CLF are not entitled to indemnification under the UPA, Override Agreement, or Escrow Agreement because of their fraudulent failure to disclose CNAC and its subsidiaries' accounts payable and other accrued expenses.

100. Seneca seeks a declaration that it is entitled to indemnification under Section 8.2 of the UPA for damages and attorneys' fees caused by Cliffs and CLF's negligent misrepresentation(s) in failing to disclose CNAC and its

subsidiaries' accounts payable and other accrued expenses.

101. This controversy is ripe for a judicial determination and involves Seneca's rights to damages incurred as a result of Cliffs and CLF's fraud and negligent misrepresentation.

102. Cliffs and CLF have an interest in contesting this cause of action to, among other things, limit Seneca's fraud damages to a setoff against amounts that Seneca purportedly owes under the UPA, Override Agreement, or Escrow Agreement.

EIGHTH CAUSE OF ACTION
(Fraud in the Inducement – Undisclosed Material Information)
(Against Cliffs and CLF)

103. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 102 of its Complaint as if rewritten fully herein.

104. During the due diligence period before the closing, Seneca's representative Charles Ebetino, Jr., among others, conducted due diligence on the liabilities of CNAC and its subsidiaries that Seneca would assume at the closing of the UPA.

105. As part of his inquiries into the financial liabilities that Seneca would assume, Mr. Ebetino inquired numerous times about the financial assurances such as letters of credit for which Cliffs and CLF were responsible with respect to CNAC and its subsidiaries, relating to workers compensation liabilities.

106. On numerous occasions, Mr. Ebetino asked Cliffs' representatives whether Cliffs had given any financial assurances relating to workers compensation liabilities, for the Pinnacle and Oak Grove mining operations. He was specifically told that there were none.

107. For example, in the week before closing, Mr. Ebetino traveled to Cliffs' offices in Cleveland, Ohio to meet with Cliffs' accounting representative, Matt Holihan. During that meeting, Mr. Ebetino was specifically told there were no financial assurances for the coal mining operations. Mr. Ebetino also asked Cliffs' representatives what financial assurances had been provided in connection with the workers' compensation policies at the Pinnacle and Oak Grove mines. Again, he was specifically told that there were none.

108. Cliffs also refused to show Mr. Ebetino and Seneca the actuarial reports for the existing workers' compensation policies at the coal mines.

109. By email dated December 2, 2015, Mr. Ebetino sent Clifford Smith, Cliffs' Executive Vice President of Business Development, a diligence request asking for, among other things, a list of all bonds and the collateral behind them. Clifford Smith testified in deposition that he did not fully and accurately respond to Mr. Ebetino's request because, as Mr. Smith testified at his deposition, "our collateral is for our business, not someone else's business."

110. Neither the UPA nor any of the disclosures in the UPA contained any

reference to letters of credit to cover legacy workers' compensation claims at the acquired mines.

111. In reliance on Cliffs and CLF's misrepresentations, Seneca executed the UPA as written.

112. In 2016, after the closing date, the carriers of the coal mines' workers' compensation policies informed Seneca of the existence of cash-collaterized letters of credit totaling in excess of $10 million covering legacy workers' compensation claims at the coal mines. Seneca discovered that these previously undisclosed letters of credit covered, among other things, future black lung claims at the coal mines involving exposures that occurred before the UPA closing.

113. Cliffs and CLF had knowledge of the undisclosed letters of credit.

114. The undisclosed letters of credit totaling more than $10 million were material because had Seneca known the truth, Seneca would not have executed the UPA as written.

115. Cliffs and CLF concealed the letters of credit to induce Seneca to execute the UPA agreement and assume the liabilities of CNAC and its subsidiaries.

116. As a result of Seneca's reliance on Cliffs and CLF's false representations regarding the financial assurances related to workers' compensation policies at the coal mines, Seneca sustained damages in an amount

to be determined at trial.

117. As an alternative to money damages, Seneca seeks reformation of the UPA, and/or equitable relief requiring Cliffs and CLF to maintain the existing cash collateralized letters of credit that they failed to disclose.

118. Similarly, Cliffs and CLF intentionally misled Seneca regarding the assignment of an existing equipment lease with BB&T Equipment Finance Corporation ("**BB&T**").

119. In 2012, Oak Grove and BB&T entered into a Master Equipment Lease Agreement, under which Oak Grove leased two longwall systems worth approximately $8.2 million from BB&T, in exchange for quarterly rent payments of approximately $437,000 over a 60-month term (the "**BB&T Lease**"). The continuation of the BB&T Lease was essential for coal mining operations at the Oak Grove mine.

120. Cliffs and CLF falsely represented that securing assignment of the BB&T Lease would not present a problem for Seneca, that Cliffs would assist in securing the assignment, that BB&T would be happy that the Oak Grove mine was going to continue operating (since Cliffs decided to suspend active mining there), and that BB&T would be amenable to waiving the provision in the BB&T Lease that required BB&T's prior approval to avoid a default if Cliffs ever sold Oak Grove.

121. In fact, BB&T had not stated that it would agree to assignment of the BB&T Lease to Seneca and Cliffs and CLF knew that their representations were false when they made them.

122. In reliance on Cliffs and CLF's false representations relating to the BB&T Lease, Seneca entered into the UPA as written, but Seneca would not have done so had it known the truth.

123. On January 20, 2016, less than one month after the UPA closed, BB&T demanded from Oak Grove an accelerated payment of approximately $3.6 million. In or around this time Seneca attempted to make a quarterly payment due under the lease to BB&T. BB&T refused to accept the payment.

124. Thereafter, BB&T filed an action against Oak Grove in the United States District Court for the Northern District of Ohio,[7] alleging that its "mining equipment lease with Oak Grove … went into default when Cliffs sold Oak Grove, entitling [BB&T] to all rent due, a Stipulated Loss Value specified by the lease, and payment of all other sums owing under the lease, including the costs and attorney's fees associated with this action" (the "**BB&T Litigation**"). Both the BB&T Litigation and the subsequent Settlement Agreement that Seneca entered into with BB&T resulted in significant damages to Seneca in an amount to be proven at trial.

[7] *BB&T Equipment Finance Corp. v. Oak Grove Resources, LLC*, No. 1:16-cv-00672-DAP (N.D. Ohio filed Mar. 18, 2016).

125. Cliffs and CLF's false representations relating to the BB&T Lease were material because Seneca would not have executed the UPA in its existing form had it known the truth.

126. Cliffs and CLF intentionally made the above misrepresentations related to the BB&T Lease to induce Seneca to execute the UPA.

127. As a result of Seneca's reliance on Cliffs and CLF's false representations regarding the BB&T Lease, Seneca has sustained damages in an amount to be determined at trial.

128. Similarly, Cliffs and CLF intentionally misled Seneca regarding Pinnacle's lease with Berwind Land Company, the land owner of a portion of the Pinnacle mine (the "**Berwind Lease**"). The Pinnacle mine was operating under that lease at the time of the UPA's closing.

129. Cliffs and CLF falsely represented that the Berwind Lease was not immediately or imminently required for coal mining at Pinnacle, that obtaining assignment of the Berwind Lease would not be essential to Seneca's operations there, that securing assignment of the Berwind Lease would not present a problem for Seneca, that the lessor of the Berwind Lease would be happy that the Pinnacle mine was going to continue operating (since Cliffs decided to suspend active mining there), and that the Berwind Land Company was amenable to waiving the non-assignability provision in the Berwind Lease.

130. Cliffs and CLF knew that their representations were false when they made them. Cliffs and CLF admit that they did not provide notice to the Berwind Land Company regarding the sale of Pinnacle. Further, a reasonable inquiry of Pinnacle's management, including its knowledge of the Berwind Lease, would have revealed that Cliffs and CLF's representations were false or misleading.

131. Seneca relied upon Cliffs and CLF's representations relating to the Berwind Lease in entering into the UPA and its related agreements as written.

132. Contrary to Cliffs and CLF's misrepresentations, the Berwind Lease was, in fact, essential for Seneca to continue operations at the Pinnacle mine, and Berwind Land Company did object to the assignment of the lease to Seneca. This resulted in millions of dollars in damages to Seneca.

133. In order to secure the rights to the lease with Berwind Land Company after the closing date, Seneca entered into a lease amendment with Berwind Land Company in March 2016, pursuant to which Seneca was required to make a one-time payment of $200,000 and agreed to pay royalties of 5% of mining revenue derived from the land rights granted in the Berwind Lease, which represented a 1% increase from the 4% royalty rate that existed prior to Seneca's inheritance of the Berwind Lease. The Berwind Lease amendment will ultimately cost Seneca millions of dollars.

134. Cliffs and CLF's false representations relating to the Berwind Lease

were material because Seneca would not have executed the UPA as written, had it known the truth.

135. Cliffs and CLF intentionally made the above false representations relating to the Berwind Lease to induce Seneca to execute the UPA.

136. As a result of Seneca's reliance on Cliffs and CLF's false representations regarding the Berwind Lease, Seneca has sustained damages in an amount to be determined at trial.

137. By deliberately failing to disclose the letters of credit, and the true facts with respect to the BB&T and Berwind Leases, Cliffs and CLF's conduct was intentional, reckless, wanton, and grossly negligent and manifested actual malice. As a result, Seneca is entitled to punitive and exemplary damages in an amount to be determined at trial.

138. In addition, Seneca is entitled to damages and attorneys' fees under the indemnification provisions in Section 8.2 of the UPA.

NINTH CAUSE OF ACTION
(Negligent Misrepresentation – Undisclosed Material Information)
(Against Cliffs and CLF)

139. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 138 of its Complaint as if rewritten fully herein.

140. At a minimum, Cliffs and CLF failed to exercise reasonable care or competence in obtaining and/or communicating accurate information to Seneca

regarding the actual required financial assurances related to legacy workers' compensation claims, the BB&T Lease and the Berwind Lease.

141. As a result of Seneca's reliance on Cliffs and CLF's negligent misrepresentation(s), Seneca has sustained pecuniary losses in an amount to be determined at trial.

142. In addition, Seneca is entitled to its attorneys' fees in this action under the indemnification provisions of the UPA.

TENTH CAUSE OF ACTION
(Breach of Contract/Express Warranty – Undisclosed Letters of Credit)
(Against Cliffs and CLF)

143. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 142 of its Complaint as if rewritten fully herein.

144. In Section 4.5(d) of the UPA, Cliffs and CLF represented and warranted that:

> Except as set forth in Section 4.5(d) of the Disclosure Schedule or in the Interim Financial Statements [dated November 30, 2015], neither CNAC nor any of its Subsidiaries had at the date of the Interim Financial Statements, or since that date has incurred, any Liabilities of any nature, whether absolute, accrued, contingent or otherwise and whether due or to become due ….
>
> Section 1.1 "Liabilities" means, as to any [legal entity], all debts, liabilities and obligations, direct, indirect, absolute or contingent, of such [legal entity], whether accrued, vested or otherwise, whether in contract, tort, strict liability or otherwise.

145. Neither the Interim Financial Statements nor Section 4.5(d) of the Disclosure Schedule disclosed the existence of cash-collaterized letters of credit totaling more than $10 million to cover legacy workers' compensation claims at the Pinnacle and Oak Grove mines.

146. Under the UPA, Cliffs and CLF were required to list those letters of credit in Section 4.5(d) of the Disclosure Schedule in order to make their representations and warranties in the UPA complete and accurate.

147. Cliffs and CLF breached their express representations and warranties in Section 4.5(d) of the UPA by failing to disclose the letters of credit in either the UPA or Section 4.5(d) of the Disclosure Schedule. In fact, when Seneca asked Cliffs and CLF during the due diligence process whether there were any financial assurances related to the workers' compensation policies at the Pinnacle and Oak Grove mines, Cliffs falsely represented to Seneca that there were none.

148. Cliffs and CLF's disclosures under the UPA were not complete and accurate, in breach of Section 4.5(d) of the UPA.

149. Seneca relied on Cliffs and CLF's express warranties and representations in Section 4.5(d) the UPA, and Cliffs and CLF's disclosures in Section 4.5(d) of the Disclosure Schedule, when it agreed to the UPA as written.

150. Seneca performed its obligations under the UPA.

151. As a result of Cliffs and CLF's breach of Section 4.5(d) of the UPA

and their express warranties and representations thereunder, Seneca has suffered damages in an amount to be determined at trial.

152. In addition, Seneca is entitled to damages and attorneys' fees under the indemnification provisions in Section 8.2 of the UPA.

ELEVENTH CAUSE OF ACTION
(Declaratory Relief – Setoff, Recoupment, and Indemnification for Undisclosed Material Information)
(Against Cliffs and CLF)

153. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 152 of its Complaint as if rewritten fully herein.

154. Seneca seeks a declaration that any damages it is entitled to as a result of Cliffs and CLF's failure to disclose letters of credit related to CNAC and its subsidiaries' workers' compensation policies, or Cliffs and CLF's misrepresentations regarding the BB&T and Berwind Leases, may be used to setoff and/or recoup any amounts that Seneca allegedly owes to Cliffs or CLF in this litigation or under the UPA, Override Agreement, or Escrow Agreement, and that such amounts are not limited by the UPA, Override Agreement, or Escrow Agreement.

155. Seneca also seeks a final judgment that it is entitled to indemnification under Section 8.2 of the UPA for damages and attorneys' fees caused by Cliffs and CLF's failure to disclose letters of credit related to CNAC and its subsidiaries' workers' compensation policies, or Cliffs and CLF's misrepresentations regarding

the BB&T and Berwind Leases.

156. Seneca seeks a declaration that, to the extent it is entitled to a recovery based on Cliffs and CLF's failure to disclose letters of credit related to CNAC and its subsidiaries' workers' compensation policies, or Cliffs and CLF's misrepresentations regarding the BB&T and Berwind Leases, Seneca's recovery is not limited to a setoff against amounts that Seneca purportedly owes under the UPA, Override Agreement, or Escrow Agreement.

157. Seneca also seeks a declaration that Cliffs and CLF are not entitled to indemnification or any damages for any alleged breach of the UPA, Override Agreement, or Escrow Agreement by Seneca with respect to the letters of credit because of Cliffs' failure to disclose letters of credit, or Cliffs and CLF's misrepresentations regarding the BB&T and Berwind Leases.

158. This controversy is ripe for a judicial determination and involves Seneca's rights to damages it has incurred as a result of Cliffs and CLF's fraud, negligent misrepresentation, breach of contract, and breach of express warranty.

159. Cliffs and CLF have an interest in contesting this cause of action to, among other things, limit Seneca's fraud damages to a setoff against amounts that Seneca purportedly owes under the UPA, Override Agreement, or Escrow Agreement.

TWELFTH CAUSE OF ACTION
(Fraud in the Inducement – Failure to Disclose UMWA Audit and Contribute to UMWA Plans)
(Against Cliffs and CLF)

160. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 159 of its Complaint as if rewritten fully herein.

161. After the UPA was executed on December 22, 2015, and previously unknown to Seneca, Seneca discovered that Cliffs and CLF had failed to make certain required contributions to four employee pension benefit plans—the United Mine Workers of America ("**UMWA**") 1974 Pension Plan, 1993 Benefit Plan, Cash Deferred Savings Plan, and 2012 Retiree Bonus Account Plan. Those plans are administered by the Trustees of the UMWA Health and Retirement Funds ("**UMWA Funds**") pursuant to the Employee Retirement Income Security Act of 1974.

162. On March 14, 2016, Michael Keaton, Senior Audit Manager for the UMWA Funds, notified Seneca that an audit of Oak Grove covering the period January 1, 2007 through September 30, 2015 was being completed and revealed that "monthly hours on which contributions were paid were underreported by a total of about 54,425 hours."

163. By letter dated March 30, 2016, the Assistant General Counsel for UMWA Funds notified Seneca that the resulting indebtedness from Oak Grove' failure to pay contributions on 54,425.87 hours was $397,030.27. UMWA Funds

also notified Seneca that its "auditors conducted the audit work at the offices of Oak Grove's former parent Cliffs Natural Resources in Cleveland Ohio in 2015, prior to Seneca's December 22, 2015 closing on the purchase of Oak Grove."

164. Prior to and during the closing of the UPA, Cliffs and CLF had knowledge of the ongoing audit and their legal exposure for underpayment of contributions to the UMWA plans. Clifford Smith, Cliffs' Executive Vice President of Business Development and CLF's President, testified in deposition that he was aware of the UMWA Funds' ongoing audit of Oak Grove at the time of the UPA closing on December 22, 2015, but did not disclose the existence of the audit to anyone at Seneca before the closing.

165. Instead, Cliffs and CLF falsely represented in Section 4.13(i) of the UPA that "there are no Actions, suits, hearings, **audits**, arbitrations, inquiries, investigations or other proceedings or any events for such (other than routine claims for benefits) pending or, to the Knowledge of Parent, threatened with respect to any Employee Plan."

166. Cliffs and CLF also falsely represented in Section 4.13(k)(vi) that "[CLF] has provided or made available to [Seneca] true and complete copies [of] … all material correspondence received from any governmental agency with respect to [each UMWA] Plan."

167. In Section 4.13(c) of the UPA, Cliffs and CLF falsely represented that

"[n]one of CNAC, any Subsidiary of CNAC or any ERISA Affiliate has any liability with respect to any Employee Plan, or any other benefit or compensation plan, program, policy, Contract or arrangement, other than for contributions, payments or benefits due in the ordinary course or other ordinary course expenses under the Employee Plans."

168. In Section 4.13(d) of the UPA, Cliffs and CLF falsely represented that "CNAC, its Subsidiaries, and the ERISA Affiliates have timely made all contributions required under Law or Contract to" the UMWA plans.

169. In reliance on Cliffs and CLF's misrepresentations, Seneca executed the UPA.

170. Cliffs and CLF made these misrepresentations to Seneca and/or deliberately concealed the UMWA Funds' audit of Oak Grove with the intent to induce Seneca to execute the UPA and acquire the liabilities of CNAC and its subsidiaries, including Oak Grove.

171. The existence of the UMWA Funds' audit and Oak Grove's potential legal exposure for underpayment of contributions to the UMWA plans was material because had Seneca known the truth, it would not have signed the UPA as written.

172. As a result of Seneca's reliance on Cliffs and CLF's false representations, Seneca has suffered and continues to suffer damages in an amount

to be determined at trial.

173. Shortly after learning of Cliffs and CLF's failure to contribute to the UMWA plans, Seneca notified Cliffs and CLF of their obligations to the UMWA Funds, but Cliffs and CLF failed to make the required contribution payments.

174. Cliffs and CLF have refused to assist Seneca and provide documents that would allow Seneca to defend itself against the UMWA Fund's claim.

175. In addition, Seneca has been informed that the UMWA Funds intends to conduct an audit of another mine asset (the Pinnacle Mine) that Seneca acquired from Cliffs and CLF under the UPA. If that audit also reveals that Cliffs or CLF failed to meet their contribution obligations to the UMWA Funds prior to December 22, 2015, Seneca will be forced to incur additional legal liability risks and legal representation costs.

176. Seneca has also suffered other damages and costs because of Cliffs and CLF's fraud, and which have naturally and proximately resulted from Cliffs and CLF's fraud, in an amount which will be determined at trial.

177. Cliffs and CLF's false representations regarding ongoing audits or inquiries, failure to meet their obligations to the UMWA Funds after being notified of their underpayment, and failure to assist Seneca by providing documents that would allow Seneca to defend itself against the UMWA Fund's claims constitute intentional, reckless, wanton, and grossly negligent conduct manifesting actual

malice. As a result, Seneca is entitled to punitive and exemplary damages in an amount to be determined at trial.

178. In addition, Seneca is entitled to damages and attorneys' fees under the indemnification provisions in Section 8.2 of the UPA.

THIRTEENTH CAUSE OF ACTION
(Negligent Misrepresentation – Failure to Disclose UMWA Audit)
(Against Cliffs and CLF)

179. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 178 of its Complaint as if rewritten fully herein.

180. At a minimum, Cliffs and CLF failed to exercise reasonable care or competence in obtaining or communicating the existence of the UMWA Funds' audit to Seneca prior to the closing.

181. In reliance on Cliffs and CLF's representations and warranties in the UPA, Seneca executed the UPA.

182. As a result of Seneca's reliance on Cliffs and CLF's negligent misrepresentations, Seneca has suffered and continues to suffer damages in an amount to be proven at trial.

183. In addition, Seneca has been informed that the UMWA Funds intends to conduct an audit of another mine asset (the Pinnacle Mine) that Seneca acquired from Cliffs and CLF under the UPA. If that audit also reveals that Cliffs or CLF failed to meet their contribution obligations to the UMWA Funds prior to

December 22, 2015, Seneca will be forced to incur additional legal liability risks and legal representation costs.

184. Seneca has also suffered other damages and costs because of Cliffs and CLF's negligent misrepresentation(s), and which have naturally and proximately resulted from Cliffs and CLF's negligent misrepresentation(s), in an amount which will be determined at trial.

185. In addition, Seneca is entitled to damages and attorneys' fees under the indemnification provisions in Section 8.2 of the UPA.

FOURTEENTH CAUSE OF ACTION
(Breach of Contract/Express Warranty – Failure to Disclose UMWA Audit and Contribute to UMWA Plans)
(Against Cliffs and CLF)

186. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 185 of its Complaint as if rewritten fully herein.

187. In Section 4.5(d) of the UPA, Cliffs and CLF represented and warranted that CNAC and its subsidiaries, including Oak Grove, had no liabilities of any nature as of November 30, 2015, other than those disclosed in the Interim Financial Statements dated November 30, 2015 and in Section 4.5(d) of the Disclosure Schedule:

> Except as set forth in Section 4.5(d) of the Disclosure Schedule or in the Interim Financial Statements [dated November 30, 2015], neither CNAC nor any of its Subsidiaries had at the date of the Interim Financial Statements, or since that date has incurred, any

> Liabilities of any nature, whether absolute, accrued, contingent or otherwise and whether due or to become due ….
>
> Section 1.1 "Liabilities" means, as to any [legal entity], all debts, liabilities and obligations, direct, indirect, absolute or contingent, of such [legal entity], whether accrued, vested or otherwise, whether in contract, tort, strict liability or otherwise.

188. Neither the Interim Financial Statements nor Section 4.5(d) of the Disclosure Schedule disclosed the UMWA Funds audit of Oak Grove, or Cliffs and CLF's failure to make required contributions to the UMWA plans from January 1, 2007 through September 30, 2015.

189. Section 4.13(a) of the UPA defines an "Employee Plan" as any "plan, program, policy, Contract or arrangement … providing for bonuses, pensions, deferred pay, stock or stock related awards, severance pay, salary continuation or similar benefits, hospitalization, medical, dental or disability benefits, life insurance or other employee benefits, or compensation, whether or not insured or funded, that is sponsored or maintained by or pursuant to which CNAC, any Subsidiary of CNAC or any ERISA Affiliate has any liability," and includes the UMWA plans in the listing of "Employee Plans" set forth in Section 4.13(a) of the Disclosure Schedule.

190. In Section 4.13(i) of the UPA, Cliffs and CLF represented and warranted that, except for employee grievances filed under certain wage agreements, "there are no Actions, suits, hearings, **audits**, arbitrations, inquiries,

investigations or other proceedings or any events for such (other than routine claims for benefits) pending or, to the Knowledge of Parent, threatened with respect to any Employee Plan."

191. In Section 4.13(k)(vi), Cliffs and CLF represented and warranted that, with "respect to each Employee Plan, [CLF] has provided or made available to [Seneca] true and complete copies, where applicable, of … all material correspondence received from any governmental agency with respect to an Employee Plan."

192. In Section 4.13(b) of the UPA, Cliffs and CLF represented and warranted that each "Employee Plan has been established, operated, funded and maintained in all material respects in accordance with its terms."

193. In Section 4.13(c) of the UPA, Cliffs and CLF represented and warranted that "[n]one of CNAC, any Subsidiary of CNAC or any ERISA Affiliate has any liability with respect to any Employee Plan, or any other benefit or compensation plan, program, policy, Contract or arrangement, other than for contributions, payments or benefits due in the ordinary course or other ordinary course expenses under the Employee Plans."

194. In Section 4.13(d) of the UPA, Cliffs and CLF represented and warranted that "CNAC, its Subsidiaries, and the ERISA Affiliates have timely made all contributions required under Law or Contract to" the UMWA plans.

195. After the UPA was executed on December 22, 2015, and previously unknown to Seneca, Seneca learned that UMWA Funds was conducting an audit of Oak Grove at Cliffs' offices prior to Seneca's December 22, 2015 acquisition of the entity. That audit revealed that Oak Grove had failed to pay hundreds of thousands of dollars in required contributions to the UMWA plans from 2007 until September 30, 2015.

196. Cliffs and CLF's failure to disclose the UMWA Funds' audit is a breach of their warranties and representations to Seneca in Sections 4.13(i) and 4.13(k)(vi) of the UPA.

197. Cliffs and CLF's failure to pay the required contributions to the UMWA plans is a breach of the warranties and representations Cliffs and CLF made to Seneca in Sections 4.13(b), (c), and (d) of the UPA.

198. Seneca relied on Cliffs and CLF's express warranties and representations in Section 4.13 of the UPA, and on their disclosures in the Disclosure Schedule to the UPA, in signing the UPA.

199. As a result of Cliffs and CLF's breach of the UPA and the express warranties and representations thereunder, Seneca has suffered, and continues to suffer, damages in an amount to be proven at trial.

200. Seneca has been informed that the UMWA Funds intends to conduct an audit of another mine asset (the Pinnacle Mine) that Seneca acquired from Cliffs

and CLF under the UPA. If that audit also reveals that Cliffs or CLF failed to meet their contribution obligations to the UMWA Funds prior to December 22, 2015, Seneca will be forced to incur additional legal liability risks and legal representation costs.

201. In addition, Seneca is entitled to damages and attorneys' fees under the indemnification provisions in Section 8.2 of the UPA.

FIFTEENTH CAUSE OF ACTION
(Declaratory Relief – Setoff, Recoupment, and Indemnification for Failure to Disclose UMWA Audit and Contribute to UMWA Plans)
(Against Cliffs and CLF)

202. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 201 of its Complaint as if rewritten fully herein.

203. Seneca seeks a declaration that any damages it is entitled to as a result of Cliffs and CLF's failure to disclose the UMWA Funds' audit or contribute to the UMWA plans may be used to setoff and/or recoup any amounts that Seneca allegedly owes to Cliffs or CLF in this litigation or under the UPA, Override Agreement, or Escrow Agreement, and that such amounts are not limited by the UPA, Override Agreement, or Escrow Agreement.

204. Seneca also seeks a declaration that it is entitled to indemnification under Section 8.2 of the UPA for damages and attorneys' fees caused by Cliffs and CLF's failure to disclose the UMWA Funds' audit or contribute to the UMWA plans.

205. Seneca seeks a declaration that, to the extent it is entitled to a recovery based on Cliffs and CLF's fraudulent failure to disclose the UMWA Funds' audit or contribute to the UMWA plans, its recovery is not limited to a setoff against amounts that Seneca purportedly owes under the UPA, Override Agreement, or Escrow Agreement.

206. Seneca also seeks a declaration that Cliffs and CLF are not entitled to indemnification under the UPA, Override Agreement, or Escrow Agreement because of their failure to disclose the UMWA Funds' audit or contribute to the UMWA plans.

207. Seneca seeks a declaration that it is entitled to indemnification under Section 8.2 of the UPA for damages and attorneys' fees caused by Cliffs and CLF's negligent misrepresentation(s) or breach of contract or express warranty in failing to disclose the UMWA Funds' audit or contribute to the UMWA plans.

208. This controversy is ripe for a judicial determination and involves Seneca's rights to damages it has incurred as a result of Cliffs and CLF's fraud, negligent misrepresentation, breach of contract, and breach of express warranty.

209. Cliffs and CLF have an interest in contesting this cause of action to, among other things, limit Seneca's fraud damages to a setoff against amounts that Seneca purportedly owes under the UPA, Override Agreement, or Escrow Agreement.

SIXTEENTH CAUSE OF ACTION
(Breach of Contract – Missing and Obsolete Equipment)
(Against Cliffs and CLF)

210. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 209 of its Complaint as if rewritten fully herein.

211. Under Section 4.10 of the UPA, Cliffs and CLF represented and agreed that Seneca would "have a valid leasehold interest in or have the legal right to use all of the tangible personal property necessary to carry on the Business as currently conducted, free and clear of all Liens (other than Permitted Liens) in all material respects. Except as set forth in Section 4.5(c) of the Disclosure Schedule and Section 4.10 of the Disclosure Schedule, all of the tangible personal property of CNAC and its Subsidiaries (other than Coal Inventories, which are addressed in Section 4.19) are in a good state of maintenance, operating condition and repair, ordinary wear and tear excepted, and, to the extent necessary, are being used or are useful in accordance with the current operating plan of the Business."

212. Under Section 7.1(j) of the UPA, Cliffs and CLF represented and agreed that "CNAC and its Subsidiaries have (i) at least $25,000,000 of supplies and other inventories (not including coal inventories)."

213. After the UPA transaction closed on December 22, 2015, Seneca discovered that a significant amount of supplies and inventory was obsolete or missing.

214. The supplies and inventory at the Oak Grove mine were missing, obsolete or otherwise not in the condition Cliffs and CLF represented in the UPA.

215. Seneca discovered obsolete supplies and materials at three distinct locations at the Oak Grove mine: (1) the Preparation Plant, (2) the North Portal, and (3) the South Portal.

216. As a result of the missing and obsolete equipment, in completing its audited accounting statement for the year ending December 2016, Seneca had to write down the combined value of such equipment by over $17 million.

217. In failing to provide usable inventory and at least $25 million of supplies and inventory under the UPA, Cliffs and CLF have breached the UPA.

218. As a result of Cliffs and CLF's breach of the UPA, Seneca has been damaged in an amount which will be determined at trial.

SEVENTEENTH CAUSE OF ACTION
(Declaratory Relief – Validity of Escrow Agreement)
(Against Cliffs and CLF)

219. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 218 of its Complaint as if rewritten fully herein.

220. Per the terms of the UPA the parties also executed an Override Agreement and an Escrow Agreement on December 22, 2015.

221. The Override Agreement required Seneca to make potential quarterly payments into the escrow fund, subject to the terms of the Escrow Agreement, for

coal sales above a certain threshold price per ton.

222. The Escrow Agreement allows Seneca to offset any payments to the escrow fund with the out-of-pocket costs of any claim Seneca may incur under the UPA ("**UPA Claim**"),[8] and "out-of-pocket costs (including legal costs and any costs of settlement or judgment) incurred … in respect of any and all litigation against [CNAC or its subsidiaries] in respect of events occurring on or prior" to December 22, 2015 ("**Litigation Claim**").[9]

223. Sections 8.2, 8.4, and 8.5 of the UPA allow Seneca to offset any payments to the escrow fund with "any and all losses, damages, **claims** and judgments, including attorney's fees (both those incurred in connection with the defense or prosecution of [an] indemnifiable claim and those incurred in connection with the enforcement of [the UPA's indemnification] provision), actually suffered … arising out of or resulting from: (a) the breach of any representation or warranty made by [Plaintiffs] contained in [the UPA], determined in each case without regard to qualification by Material Adverse Effect or materiality or similar exceptions or qualifications; [and] (b) the breach of any covenant or agreement of [Plaintiffs] contained in [the UPA]," by providing written notice.

224. Cliffs and CLF have taken the position that the Escrow Agreement

[8] Escrow Agreement § 4(b)(ii).
[9] Escrow Agreement § 4(b)(iii).

has terminated and that Seneca is not entitled to any setoffs that would have otherwise been allowed under the UPA and Escrow Agreement. Seneca disputes this position. Seneca seeks a judicial determination that the Escrow Agreement remains a valid, enforceable, and binding agreement between Seneca, Cliffs, and CLF, and that Seneca may offset an amount to be proven at trial in excess of $25 million of damages that Seneca has suffered under its Litigation Claims.

225. Pursuant to Section 4(c) of the Escrow Agreement, termination of the Escrow Agreement occurs:

> . . . on the date that is the earliest of (i) the first date on or after April 15, 2021 that there are no funds in the Escrow Account, (ii) any date on which all the parties hereto agree in writing to terminate this Escrow Agreement or (iii) the latest of (A) the date after which all Specified Matters have reached final settlement or final non-appealable judgment (the "Specified Matter Resolution Date"), (B) 18 months after the Effective Date (the "18 Month Date"), (C) the date that no amounts payable to Purchaser pursuant to all applicable UPA Notices, UPA Claims, UPA Counter Notices, UPA Final Orders, Litigation Notices, Litigation Claims, Litigation Counter Notices and Litigation Final Orders remain to be paid to Purchaser (the "Unpaid Claim Date") and (D) the date that no UPA Notices or Litigation Notices remain in dispute pursuant to this Section 4 (the "Remaining Claims Date") (the earliest of such clauses (i), (ii) and (iii) being the "**Termination Date**").

226. The Termination Date in the Escrow Agreement has not yet occurred.

227. The event in Subsection 4(c)(i) of the Escrow Agreement has not occurred because April 15, 2021 has not passed.

228. The event in Subsection 4(c)(ii) of the Escrow Agreement has not

occurred because the parties have not agreed in writing to terminate the Escrow Agreement.

229. The event in Subsection 4(c)(iii) has not occurred because several of the identified events have not occurred.

230. Seneca is entitled to a declaration that the Escrow Agreement remains a valid, enforceable, and binding agreement between Seneca, Cliffs, and CLF, and that Seneca may offset an amount to be proven at trial, currently in excess of $25 million of damages, that Seneca has suffered under its Litigation Claims.

EIGHTEENTH CAUSE OF ACTION
(Fraud in the Inducement – Undisclosed Threatened Bluestone Litigation, Accounts Payable, Letters of Credit, and UMWA Audit)
(Against Clifford Smith and Adam Munson)

231. Seneca reaffirms and realleges the allegations contained in paragraphs 1 through 230 of its Complaint as if rewritten fully herein.

232. Clifford Smith, Cliffs' Executive Vice President of Business Development and CLF's President, and Adam Munson, Cliffs' Director of Business Development and Group Counsel, were the executives at Cliffs responsible for the UPA transaction.

233. In Section 1.1(b) of the Disclosure Schedule to the UPA, Cliffs represented that Clifford Smith's knowledge constituted knowledge of Cliffs.

234. Clifford Smith and Adam Munson were responsible for working on and drafting the Disclosure Schedule to the UPA.

235. Adam Munson testified in deposition that he was involved in the negotiations for "all the agreements that were part of the [UPA] transaction, and assisted in any other matters relating to facilitating [the] transaction."

236. Clifford Smith testified in deposition that Seneca's due diligence questions regarding the UPA transaction went through him and Adam Munson. During the due diligence process, both Clifford Smith and Adam Munson responded to Seneca's requests for information. Adam Munson testified that he reviewed the materials that were sent in response to due diligence requests.

237. Seneca met with Clifford Smith and Adam Munson at Cliffs' offices the week prior to the closing. Clifford Smith testified that he personally reviewed multiple versions of the UPA and Disclosure Statement. He also signed both of the documents. Adam Munson also met with representatives of Seneca, including Charles Ebetino, in person during the period prior to the UPA closing to assist them in completing their due diligence.

238. On information and belief, Clifford Smith knew that Bluestone had threatened the Bluestone III Action (indeed, Bluestone had stated that the re-filing was a matter of time). On information and belief, Adam Munson knew about the threatened Bluestone III Action including because on or about September 30, 2015, he was in communication with Pinnacle's counsel regarding the ongoing issues at the Bluestone mine. He was thus aware of the circumstances surrounding that

dismissal and knew that Bluestone would re-file its action against Pinnacle in short order. In addition, Munson testified that, in familiarizing himself with Cliffs' business to represent it during the divestiture, he became familiar with the liabilities of the business, including Pinnacle, as best he could. Munson also communicated with the general managers of the Pinnacle and Oak Grove mines, and thus knew about the ongoing concerns at those mines before the UPA transaction was executed. Further, Adam Munson reported directly to Clifford Smith.

239. Both Clifford Smith and Adam Munson failed to disclose the threatened Bluestone III Action to Seneca. Instead, they represented to Seneca that there were no threatened actions against Pinnacle to their knowledge other than those listed in the Disclosure Schedule.

240. On information and belief, each of Smith and Munson falsely and fraudulently concealed the threatened Bluestone litigation from Seneca in order to induce Seneca to consummate the transaction. On information and belief, each of Smith and Munson were motivated to close the deal by personal financial gain which was not disclosed to Seneca.

241. Adam Munson also met in person with Seneca representatives in the days leading up to the closing of the UPA. He was involved in providing the accounts payable reports and updated reports to Seneca regarding CNAC and its

subsidiaries. Adam Munson testified that those accounts payable listings were one item that he knew were a focus of Seneca's due diligence requests during the period leading up to the UPA closing.

242. Munson was involved in providing to Seneca the latest accounts payable statement on the closing date of the UPA, which only partially disclosed CNAC and its subsidiaries' accounts payable and other accrued expenses.

243. Clifford Smith also testified that, during the due diligence period, Seneca specifically requested "[t]o understand the liabilities involved with workers' compensation." By email dated December 2, 2015, Mr. Ebetino sent Clifford Smith a due diligence request asking for, among other things, a list of all bonds and the collateral behind them. Clifford Smith testified that he did not discuss Cliffs' collateral with Mr. Ebetino because "our collateral is for our business, not someone else's business." He also testified that, even though it would become Seneca's obligation to replace that collateral after the UPA closing, the collateral was not discussed during the discussions with Seneca about the assets and liabilities of CNAC and its subsidiaries.

244. During the due diligence process, Mr. Ebetino also asked Adam Munson whether there were any financial assurances related to CNAC and its subsidiaries' workers' compensation policies. Mr. Ebetino was specifically told that there were none.

245. Clifford Smith also testified in deposition that he was aware of the UMWA Funds' ongoing audit of Oak Grove at the time of the UPA closing on December 22, 2015, but did not disclose the existence of the audit to anyone at Seneca before the closing. On December 2, 2015, Mr. Ebetino sent Clifford Smith a due diligence request for information related to CNAC and its subsidiaries' employee comp and benefit programs that were required to be continued after the UPA closing. In response, Cliffs provided its existing comp and benefit programs and UMWA plan contracts to Seneca. Despite knowing about the UMWA Funds' ongoing audit of Oak Grove, however, Clifford Smith did not disclose that audit in responding to Mr. Ebetino's request. Nor did he or Adam Munson disclose the UMWA Funds' audit in the UPA or Disclosure Statement.

246. Instead, Clifford Smith and Adam Munson falsely represented in the UPA that "there are no Actions, suits, hearings, **audits**, arbitrations, inquiries, investigations or other proceedings or any events for such (other than routine claims for benefits) pending or, to the Knowledge of Parent, threatened with respect to any Employee Plan." They also represented that "[n]one of CNAC, any Subsidiary of CNAC or any ERISA Affiliate has any liability with respect to any Employee Plan," and that "CNAC, its Subsidiaries, and the ERISA Affiliates have timely made all contributions required" to the UMWA plans.

247. Clifford Smith and Adam Munson made the above fraudulent

representations about the threatened Bluestone III Action, the accounts payable that would be transferred to Seneca at closing, the existence of cash-collaterized letters of credit related to workers' compensation policies at the acquired mines, and the ongoing UMWA audit at Oak Grove, and deliberately concealed material facts concerning these issues, in order to induce Seneca to execute the UPA. On information and belief, Smith and Munson were motivated by personal financial gain that was not disclosed to Seneca.

248. In reliance on Clifford Smith and Adam Munson's false and misleading representations about the status of CNAC and its subsidiaries' threatened actions, legal exposure, ongoing audits, accounts payable, financial condition, UMWA contribution payments, and financial assurances and collateral, Seneca executed the UPA.

249. The above matters were material to the UPA transaction because Seneca would not have executed the UPA in its existing form.

250. As a result of Seneca's reliance on Clifford Smith and Adam Munson's false representations and intentional concealment of the full facts, Seneca has suffered and continues to suffer ongoing damages in substantial costs, expenses, and attorneys' fees to defend against the Bluestone III Action; damages in excess of $1.5 million in vendor liabilities, accounts payable, and other accrued expenses that Smith and Munson failed to disclose; over $10 million for letters of

credit required to cover legacy workers' compensation claims at the acquired mines; hundreds of thousands of dollars in legal fees and costs related to the UMWA audit; and the amounts of unpaid contributions to the UMWA plans.

251. In addition, Seneca has been informed that the UMWA Funds intends to conduct an audit of another mine asset (the Pinnacle Mine) that Seneca acquired under the UPA. If that audit also reveals that Cliffs or CLF failed to meet their contribution obligations to the UMWA Funds prior to December 22, 2015, Seneca will be forced to incur additional legal liability risks and legal representation costs.

252. Seneca has also suffered other damages and costs proximately resulting from Clifford Smith and Adam Munson's fraudulent and dishonest conduct, in an amount to be determined at trial.

253. Clifford Smith and Adam Munson's false representations and intentional concealment of material facts to induce the closing of the UPA so that they could offload CNAC and its subsidiaries' liabilities onto Seneca "in as soon as possible time" constituted intentional, reckless, wanton, and grossly negligent conduct manifesting actual malice. As a result, Seneca is also entitled to punitive and exemplary damages in an amount to be determined at trial.

NINETEENTH CAUSE OF ACTION
(Negligent Misrepresentation – Undisclosed Threatened Bluestone Litigation, Accounts Payable, Letters of Credit, and UMWA Audit)
(Against Clifford Smith and Adam Munson)

254. Seneca reaffirms and realleges the allegations contained in paragraphs

1 through 253 of its Complaint as if rewritten fully herein.

255. Having provided certain information to Seneca regarding Bluestone II, accounts payable, and financial assurances, and UMWA obligations, Munson and Smith had a duty to disclose such information fully, accurately and completely.

256. They did not. Rather, Munson and Smith breached their obligation by failing to disclose the existence of the threatened Bluestone III Action, the full and accurate list of accounts payable and other accrued expenses that Seneca would be assuming at closing, the existence of the cash-collaterized letters of credit related to the workers' compensation policies, and the UMWA Funds' audit of Oak Grove prior to the closing of the UPA.

257. Clifford Smith and Adam Munson also failed to exercise reasonable care or competence in obtaining or communicating the full facts surrounding these matters to Seneca prior to the closing. On information and belief, Smith and Munson breached these obligations because they were motivated by personal financial gain that was not disclosed to Seneca.

258. In reliance on Clifford Smith and Adam Munson's negligent misrepresentations, Seneca executed the UPA.

259. As a result of Seneca's reliance on Clifford Smith and Adam Munson's negligent misrepresentations, Seneca has suffered and continues to

suffer millions of dollars in ongoing damages in an amount to be specifically proven at trial.

260. Seneca has also suffered other damages and costs because of Clifford Smith and Adam Munson's misrepresentations, and which have naturally and proximately resulted from them, in an amount which will be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Seneca respectfully requests that the Court enter judgment in its favor and against Defendants Cliffs, CLF, Smith, and Munson, as follows:

A. An award of money damages against Cliffs, CLF, Smith, and/or Munson, jointly and severally, for the tortious misconduct alleged above, in an amount to be determined at trial.

B. An award of money damages against Cliffs and CLF, jointly and severally, for the breaches of contract and warranties alleged above, in an amount to be determined at trial.

C. An Order declaring that:

(i) Any damages Seneca has incurred or may incur as a result of Cliffs and CLF's fraudulent conduct may be used to setoff and/or recoup any amounts that Seneca allegedly owes to Cliffs or CLF in this litigation or under the UPA, Override

Agreement, or Escrow Agreement, and that such amounts are not limited by the UPA, Override Agreement, or Escrow Agreement;

(ii) To the extent Seneca is entitled to a recovery based on Cliffs and CLF's fraudulent conduct, that recovery is not limited to a setoff against amounts that Seneca purportedly owes under the UPA, Override Agreement, or Escrow Agreement;

(iii) Seneca is entitled to indemnification from Cliffs and CLF under Section 8.2 of the UPA for damages, costs, and attorneys' fees resulting from Cliffs and CLF's negligent misrepresentations and/or breaches of contract or express warranty;

(iv) Cliffs and CLF are not entitled to indemnification under the UPA, Override Agreement, or Escrow Agreement related to: (a) the threatened Bluestone III Action; (b) CNAC and its subsidiaries' accounts payable and other accrued expenses; (c) the letters of credit related to CNAC and its subsidiaries' workers' compensation policies; (d) the BB&T Lease; (e) the Berwind Lease; (f) the UMWA Funds' audit; and/or (g) Cliffs and CLF's failure to contribute to the UMWA plans; and

(v) The Escrow Agreement has not been terminated and is a valid,

enforceable, and binding agreement between and among Seneca, Cliffs, and CLF and that Seneca may offset an amount to be proven at trial, currently in excess of $25 million of damages, that Seneca has suffered under its Litigation Claims.

D. In the alternative, reformation of the UPA, including striking the Bluestone III litigation as an assumed liability and requiring indemnification from Cliffs and CLF to account for the costs and expenses Seneca has incurred and/or may incur in defending against the Bluestone III Action;

E. As an alternative to money damages against Cliffs and CLF for their failure to disclose letters of credit related to CNAC and its subsidiaries' workers' compensation policies, reformation or equitable relief including an Order requiring Cliffs and CLF to maintain the existing cash collateralized letters of credit that they fraudulently failed to disclose to Seneca;

F. Punitive and exemplary damages against Cliffs, CLF, Smith, and Munson in an amount to be determined at trial for their intentional, malicious, and egregious misconduct;

G. Costs, interest, and attorneys' fees against Cliffs, CLF, Smith and/or Munson, including under the UPA, as applicable;

H. Prejudgment interest on any and all damages according to law;

I. Any other relief this Court may deem just and appropriate.

Respectfully submitted,

GIBBONS P.C.

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Dated: July 2, 2018