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IT IS SO ORDERED.

John E. Hoffman, Jr.
United States Bankruptcy Judge

Dated: May 13, 2020

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re:	:	Chapter 11
	:	
MURRAY ENERGY HOLDINGS CO., *et al.*,	:	Case No. 19-56885
	:	
	:	Judge John E. Hoffman, Jr.
Debtors.	:	
	:	(Jointly Administered)

OPINION ON THE DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE SETTLEMENT BETWEEN THE DEBTORS, THE RETIREE COMMITTEE, AND UNITED MINE WORKERS OF AMERICA 1992 BENEFIT PLAN AND (II) GRANTING RELATED RELIEF (DOC. 1265)

I. Introduction

Before the Court is the motion (the "Motion") (Doc. 1265) of Murray Energy Holdings Co. and its affiliated debtors and debtors in possession (collectively, the "Debtors") for an order approving a settlement (the "Settlement") under Rule 9019(a) of the Federal Rules of Bankruptcy Procedure between the Debtors, the Official Committee of Retirees (the "Retiree Committee"), and the United Mine Workers of America 1992 Benefit Plan (the "1992 Plan"). The Settlement relieves the Debtors of their ongoing obligations under the Coal Industry Retiree Health Benefit

Act of 1992 (the "Coal Act") to pay healthcare and retiree benefits (the "Statutory Obligations") to retired employees and their spouses and dependents (the "Statutory Retirees"). The Settlement accomplishes this by providing for the transfer of the Statutory Retirees to the 1992 Plan on May 1, 2020, a date chosen to protect the interests of the Statutory Retirees—who will experience no lapse in coverage—as well as the interests of the 1992 Plan and the Debtors. In addition, the benefits of the Settlement include the avoidance of costly litigation with the 1992 Plan, the elimination of the significant expenses that the Debtors' bankruptcy estates were incurring on account of the Statutory Obligations, and the return of about $10.5 million to the estates from a letter of credit and related escrow account. Further, the Settlement facilitates an asset sale that is currently the only viable alternative to the liquidation of the Debtors' businesses, preserving jobs for several thousand people and a business partner for a number of entities that currently do business with the Debtors. Not surprisingly, key stakeholders, including the Official Committee of Unsecured Creditors (the "Creditors' Committee"), support the Settlement. And there is no reason why any creditor—acting in its capacity as a creditor—would oppose it.

The only objection to the Motion (the "Objection") (Doc. 1338) was filed by CONSOL Energy, Inc. ("CONSOL"), which several years ago sold certain companies to the Debtors. CONSOL may have claims against the Debtors' bankruptcy estates. As the Creditors' Committee points out, however, CONSOL is "acting not as a concerned creditor of the chapter 11 estates, but as a party who will potentially be held liable for retiree benefits" at some point in the future. Doc. 1379 (Creditors' Committee's Joinder) at 3. Notwithstanding CONSOL's protestations to the contrary, it is clear that the substantial benefits that the Settlement will confer on multiple constituencies in these cases far outweigh any harm to CONSOL arising from its potential future liability for the Statutory Obligations.

CONSOL also argues that § 1114 of the Bankruptcy Code somehow prohibits the Debtors from transferring the Statutory Obligations to the 1992 Plan even though both the 1992 Plan and the Retiree Committee, which is the Statutory Retirees' authorized representative under § 1114(d), have agreed that the Debtors may do so. As explained below, § 1114 does not apply here, and even if it did, CONSOL's arguments regarding § 1114 would not provide a basis for disapproving the Settlement. In the end, it is clear that the Settlement is fair and equitable and in the best interests of the Debtors' bankruptcy estates. The law governing the evaluation of proposed settlements under Bankruptcy Rule 9019(a) therefore overwhelmingly supports the Settlement's approval.

II. Jurisdiction and Constitutional Authority

The Court has jurisdiction to hear and determine this matter under 28 U.S.C. § 1334(b) and the general order of reference entered in this district in accordance with 28 U.S.C. § 157(a). This is a core proceeding. 28 U.S.C. § 157(b)(2)(A) & (O). The Court also has the constitutional authority after *Stern v. Marshall*, 564 U.S. 462 (2011), to enter final orders approving settlements under Bankruptcy Rule 9019(a). *See Realan Inv. Partners, LLLP v. Meininger (In re Land Res., LLC)*, 505 B.R. 571, 580–82 (M.D. Fla. 2014); *In re Ambac Fin. Grp., Inc.*, 457 B.R. 299, 308 (Bankr. S.D.N.Y. 2011), *aff'd sub nom. Police & Fire Ret. Sys. of Detroit v. Ambac Fin. Grp., Inc. (In re Ambac Fin. Grp., Inc.)*, 2011 WL 6844533 (S.D.N.Y. Dec. 29, 2011), *aff'd*, 487 Fed. App'x 663 (2d Cir. 2012).

III. Procedural History

On October 29, 2019 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. A few weeks later, the Debtors filed a motion (Doc. 249) seeking an order directing the United States Trustee (the "UST") to appoint a committee of retired employees or, in the alternative, a guardian ad litem. The 1992 Plan objected to that motion on the grounds that the Debtors "may not modify or terminate their statutory Coal Act obligations through the procedures of section 1114 or otherwise." Doc. 299 at 1. But negotiations between the Debtors, the 1992 Plan, and the UST led to the entry of an agreed order (Doc. 396) directing the UST to appoint a committee of retired employees under § 1114 of the Bankruptcy Code. Ex. VV. On December 31, 2019, the UST filed a notice of the appointment (Doc. 695) of three persons to serve on the Retiree Committee.

Following negotiations with the Retiree Committee that began in February 2020—negotiations that eventually included the 1992 Plan—the Debtors filed the Motion on April 14, 2020. In addition to the Creditors' Committee's joinder in support of the Motion (Doc. 1379), replies in support of it were filed by the Debtors (Doc. 1366), the Ad Hoc Group of Superpriority Lenders (the "Ad Hoc Group") (Doc. 1367), the 1992 Plan (Doc. 1368) and the Retiree Committee (Doc. 1372). The Court entered an order setting an expedited hearing on the Motion (the "Hearing") for April 30, 2020 (Doc. 1267). In light of the emergency caused by COVID-19, the Court also entered an agreed order (Doc. 1374) establishing procedures under which the Hearing would be conducted virtually.

Attached to the Motion as Exhibit B was the declaration of Robert D. Moore (the "Moore Declaration"), the president, chief executive officer and chief financial officer of Debtor Murray Energy Corporation ("Murray Energy"). Moore Decl. at 1. And attached to the Motion as Exhibit C was the declaration of Dale F. Lucha (the "Lucha Declaration"), whose company was retained by Murray Energy to "provide labor relations services and consultation and representation to the [Debtors] in regard to union negotiations and collective bargaining and general human resources matters." Lucha Decl. ¶ 2.

On April 23, 2020, CONSOL filed the Objection along with the declarations of Adam Rosen, Joseph Pegnia, John Weiss, Jessica Kachur and Kurt Salvatori (collectively with Pegnia's supplemental declaration (Doc. 1385), the "CONSOL Declarations"). A few days before the Hearing, CONSOL filed two letter briefs asking the Court to resolve certain discovery disputes (Docs. 1361 & 1362), and the Debtors filed a motion in limine (Doc. 1363) seeking to strike the CONSOL Declarations and exclude the declarants from testifying during the Hearing. The Debtors filed a response to CONSOL's letter briefs (Doc. 1383), and CONSOL filed an objection to the Debtors' motion in limine (Doc. 1384).

In its first letter brief, CONSOL sought to compel the Debtors to provide it with documents relating to the feasibility and ongoing viability of certain of the Debtors' businesses after the closing of the sale of the Debtors' assets. CONSOL argued that the documents were relevant to the issue of whether the Debtors "can satisfy the test for § 1114 relief and demonstrate that modification of retiree benefits is necessary to permit reorganization." Doc. 1361 (First Letter Br.) at 1. In the second letter brief, CONSOL requested that the Court order the Debtors to produce documents that it described as "necessary to properly analyze the Debtors' financials to determine whether [the] relief [requested in the Motion] is necessary." Doc. 1362 (Second Letter Br.) at 3. Similarly, CONSOL made clear in its objection to the Debtors' motion in limine that it intended to use the CONSOL Declarations and the live testimony of the five declarants to attempt to show that "termination of the Statutory Obligations is not necessary or essential." Doc. 1384 at 3 (footnote omitted). The Court heard the motion in limine and the issues raised by CONSOL's letter briefs during an expedited hearing held on April 29, 2020, the day before the Hearing.

During that Hearing, the Court ruled that the fair-and-equitable standard governing the approval of settlements in bankruptcy, rather than § 1114 of the Bankruptcy Code, applied to the

Motion.[1] Further, the Court concluded that the statements in the CONSOL Declarations had no bearing on the fair-and-equitable analysis used to assess settlements under Bankruptcy Rule 9019 and that those statements were also irrelevant to the factors that would be considered under § 1114 if that section applied. As the Court noted, CONSOL intended to use the CONSOL Declarations to establish the financial wherewithal of both the Debtors and the successful bidder for the Debtors' assets (the "Stalking Horse Bidder") to pay the Statutory Obligations. The Court found that the financial ability of the Debtors was irrelevant because there were no circumstances under which they would be paying the Statutory Obligations except in the very near-term. And it found the financial ability of the Stalking Horse Bidder to be irrelevant because a condition to the effectiveness of the Debtors' purchase agreement with the Stalking Horse Bidder (the "Asset Purchase Agreement") is that the Stalking Horse Bidder will not be liable for the Statutory Obligations. Tr. I at 53–58.

In addition, the Court determined that nothing in the CONSOL Declarations was relevant to the issue of whether the numerous benefits of the Settlement made it fair and equitable or whether CONSOL's potential liability under the Coal Act could tip the balance of the equities in favor of CONSOL. For all those reasons, the Court concluded that neither the CONSOL Declarations nor the testimony its witnesses would have provided consistent with those declarations could possibly be relevant to the Court's consideration of the Motion. The Court accordingly granted the Debtors' motion seeking to strike the CONSOL Declarations and exclude the declarants from testifying during the Hearing. *Id.* at 55. For the same reasons, the Court found irrelevant any documents sought by CONSOL that the Debtors had not already provided. *Id.* at

[1] A transcript of the hearing on the motion in limine and letter briefs ("Transcript I") is located at Doc. 1461.

82–83. In connection with the Hearing, however, the Court permitted CONSOL to make an offer of proof that the excluded witnesses would have testified as set forth in the CONSOL Declarations.[2] Tr. II at 19.

During the Hearing, the Court received into evidence, with the agreement of the Debtors and CONSOL, Debtors' Exhibit 2 (the Moore Declaration), 3 (the Lucha Declaration), 14–16, 27–42, 60, 63–70 and 76, as well as CONSOL's Exhibits NN, OO, TT, UU, VV, EEE, FFF and HHH. Tr. II at 6–7. The Debtors asked the Court to take judicial notice under Federal Rule of Evidence 201(b)(2) of certain information drawn from Debtors' Exhibits 50–56:

- **Exhibit 50:** The November 2015 filing in the Chapter 11 cases of Walter Energy, Inc. and its affiliated debtors and debtors in possession, Case No. 15-02741 (Bankr. N.D. Ala. 2015), of the Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 1113(c) and 1114(g) for an Order (I) Authorizing the Debtors to (A) Reject Collective Bargaining Agreements, (B) Implement Final Labor Proposals, and (C) Terminate Retiree Benefits; and (II) Granting Related Relief (the "Walter Energy Motion").

- **Exhibit 51:** The entry on or about December 28, 2015 of the opinion and order granting the Walter Energy Motion (the "Walter Energy Order").

- **Exhibit 52:** The issuance on or about December 27, 2018 of the decision of the Eleventh Circuit affirming the district court's order that affirmed the Walter Energy Order.

- **Exhibit 53:** The denial on or about June 24, 2019 of a petition for a writ of certiorari filed with the Supreme Court in an appeal of the Eleventh Circuit's decision.

- **Exhibit 54:** The filing on or about February 21, 2018 of a complaint by the Chapter 7 trustee of the New WEI Estates against the 1992 Plan, commencing *Toffel v. Trustees of the UMWA 1992 Benefit Plan*, Case No. 18-00066 (Bankr. N.D. Ala. 2018) (the "Toffel Adversary Proceeding"), in which the Chapter 7 trustee sought to recover amounts drawn on a letter of credit posted as security for Coal Act obligations.

- **Exhibit 55:** The issuance on or about February 7, 2019 of an order denying the 1992 Plan's motion to dismiss the Toffel Adversary Proceeding.

[2] A transcript of the Hearing ("Transcript II") is located at Doc. 1484.

- **Exhibit 56:** The docket in the Toffel Adversary Proceeding.

Tr. II at 9–11. With no objection from CONSOL, the Court took judicial notice of this information. *Id.* at 12. The Court, however, sustained CONSOL's objection—on relevance grounds—to the admission of Debtors' Exhibits 23, 24 and 25, which were Form 10-Ks filed by CONSOL with the SEC from 2017 through 2019. *Id.* at 93–103

In addition to submitting a declaration, Lucha provided testimony during the Hearing, *id.* at 23–62, as did Moore, *id.* at 68–92. The primary subject of Lucha's testimony was the negotiations with the Retiree Committee and the 1992 Plan. Moore's testimony covered, among other things, the benefit to the Debtors' estates of relieving the Debtors of the Statutory Obligations as soon as possible and their desire to avoid the costs of litigation over the Statutory Obligations and the allocation of the Letter of Credit.

At the conclusion of the Hearing, the Court ruled from the bench, finding the Settlement to be fair and equitable and in the best interests of the Debtors' bankruptcy estates. The Court also stated that it would enter an order approving the Motion, with a written opinion explaining the rationale for its decision to follow.[3]

IV. Background

The Statutory Retirees are approximately 2,200 retired coal miners and their spouses and eligible dependents. Moore Decl. at 2. As of the Petition Date, the Statutory Obligations that the Debtors owed to the Statutory Retirees were satisfied through the Debtors' individualized employer plan (the "Murray IEP"). *Id.* The Debtors estimate that, as of the date of the Hearing, they were incurring expenses of between $60,000 and $65,000 per day as a result of the Statutory

[3] The Court entered an order granting the Motion later that day (Doc. 1417) and the next day entered an amended order granting the Motion that attached the term sheet for the Settlement (the "Settlement Approval Order") (Doc. 1423).

Obligations. Tr. II at 69–70. Under federal law, the 1992 Plan assumes responsibility for the Statutory Obligations once Murray stops paying them. Tr. II at 58; Ex. 29 at 6. Given this, and as required by the Coal Act, several of the Debtors provided security to the 1992 Plan through the issuance of a letter of credit in the approximate amount of $22.5 million (the "Letter of Credit") and through a cash escrow account in the approximate amount of $530,000 (the "Escrow Account"). Moore Decl. at 2–3; Ex. 32 at 3; Exs. 41–42.

The Debtors first proposed to transfer the Statutory Retirees from the Murray IEP to the 1992 Plan during negotiations with the Retiree Committee. Lucha Decl. ¶ 7. The Debtors then negotiated with both the Retiree Committee and the 1992 Plan over the date on which the Statutory Employees would be transitioned to the 1992 Plan. As Lucha explained in his declaration, they also negotiated with the 1992 Plan over the allocation of the Letter of Credit and the Escrow Account:

> The Debtors and their advisors have been engaged in negotiations with the Retiree Committee regarding the Statutory Obligations since February. The Debtors' initial proposal to the Retiree Committee sought to transfer the Statutory Retirees to the [1992 Plan]. In response, the Retiree Committee focused on the logistics of how such a transfer would occur. To resolve these concerns, the Debtors and the Retiree Committee brought the 1992 Plan into their negotiations.
>
> During the last month, the three parties had numerous calls and exchanged multiple term sheets and letters aimed at reaching a consensual three-party agreement. The focus of the negotiations was a smooth transition of the Statutory Retirees to the 1992 Plan and the division of [the Letter of Credit and the Escrow Account] between the Debtors and the 1992 Plan. All three parties made meaningful concessions and engaged in good-faith negotiations. For example, the Retiree Committee agreed to transfer the Statutory Retirees to the 1992 Plan prior [to] the Effective Date of the Debtors' chapter 11 plan, the 1992 Plan agreed to [a] drawdown [of] less than 100% of the Letter of Credit and Escrow Account, and the Debtors agreed to cooperate with the Retiree Committee's and 1992 Plan's efforts to hold CONSOL . . . responsible for the applicable

> Statutory Retirees, and agreed to the 1992 Plan's drawdown on part of the Letter of Credit and Escrow Account.
>
> After weeks of hard-fought, good-faith negotiations, on April 12, 2020, the Debtors, the Retiree Committee, and the 1992 Plan reached [an] agreement on the final terms of the Settlement and agreed to the language set forth in [a] [t]erm [s]heet.

Lucha Decl. ¶¶ 7–9 (footnotes omitted).

During the Hearing, Lucha provided further details regarding the negotiations. Tr. II at 25–42. In connection with the first meeting between representatives of the Debtors and the Retiree Committee,[4] the Debtors provided the Retiree Committee with a presentation relevant to the request to transfer the Statutory Obligations to the 1992 Plan. *Id.* at 25–26; *see also* Ex. 29. Following that initial meeting, a back-and-forth exchange between the Debtors and the Retiree Committee took place, and the 1992 Plan was brought into the negotiations in connection with the second proposal that the Debtors sent to the Retiree Committee. Tr. II at 26–32; *see also* Ex. 34. From February 2020 to April 2020, the Debtors met with the Retiree Committee four times, responded to every diligence request made by the Retiree Committee, and ultimately submitted several proposals. *See* Tr. II at 44; Lucha Decl. ¶¶ 7–9. The issues over which the parties negotiated were (a) the date of the transfer of the Statutory Retirees to the 1992 Plan and (b) the appropriate percentages of the Letter of Credit and Escrow Account to be divided between the Debtors and the 1992 Plan. Tr. II at 38–41. Ultimately, the final terms of the compromise reflected the Debtors' movement from an initial transition date of April 9, 2020, Ex. 33, to a May 1, 2020 transition date, Ex. 76.

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[4] Due to the health and location of the residence of certain of the members of the Retiree Committee, the meetings with the Retiree Committee occurred telephonically, Tr. II at 43–44, which was a reasonable accommodation, especially in light of the emergency caused by COVID-19.

In connection with the Debtors' negotiations with the 1992 Plan, Moore directed Lucha to see to it that the Debtors received some return from the Letter of Credit. Tr. II at 77–78.[5] Although the Debtors initially proposed that they would retain around half of the proceeds of the Letter of Credit and Escrow Account, Ex. 34, the negotiations ultimately resulted in a division under which the 1992 Plan would be entitled to draw down on the Letter of Credit and Escrow Account in the amount of $12.5 million, while the remaining amount of approximately $10.5 million would be returned to the Debtors, Ex. 76.

As a result of these negotiations, the Debtors, the Retiree Committee and the 1992 Plan reached a settlement that is summarized in the term sheet attached as Exhibit 1 to the Settlement Approval Order. As the term sheet sets forth, the Debtors agreed to continue providing the Statutory Retirees with retiree benefits through the Murray IEP until May 1, 2020 (the "Enrollment Date"). Ex. 1 to Doc. 1423 (Term Sheet) at 2. In addition, the Debtors agreed to provide certain transition services so that there would be a smooth transition to the 1992 Plan and no gap in coverage for the Statutory Employees. *Id.* at 1–2. The Settlement resolved "the potential for litigation among the Debtors and the 1992 Plan regarding the treatment of the Letter of Credit and the Escrow Account," as well as litigation over the issue of whether § 1114 applies to obligations under the Coal Act. *Id.* at 1–2 & n.1. Rather than face the risk that the 1992 Plan would draw down on the entire Letter of Credit and Escrow Account, the Debtors consented to the allocation described above. *Id.* at 3. The Debtors also agreed that CONSOL "is the last signatory operator, as defined in the Coal Act, with respect to the applicable Coal Act Retirees acquired from CONSOL in 2013" and agreed to "make all reasonable best efforts to cooperate and assist with the

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[5] The Debtors have appointed three trustees to the funds that administer the 1992 Plan. *Id.* at 89–90. Of those three trustees, one is general counsel of the Debtors, who recused himself from any involvement in the negotiations with the 1992 Plan. *Id.* at 91–92.

Retiree Committee's and the 1992 Plan's efforts to hold CONSOL financially responsible for the applicable Coal Act Retirees . . . ." *Id.* at 2–3.

The Settlement facilitates a sale of the Debtors' assets to the Stalking Horse Bidder, an entity formed at the direction of the Ad Hoc Group. The sale will permit the assets to be used in the operation of the Debtors' business as a going concern. Ex. 16 ¶ B. The Stalking Horse Bidder ultimately was deemed the successful bidder after no other qualified bids were received. *See* Doc. 1076 (Notice of Cancellation of Auction and Designation of Successful Bidder) at 1–2. In its joinder to the Debtors' reply in support of the Motion, the Ad Hoc Group stated that the

> consummation of [the Asset Purchase Agreement] is contingent on the Stalking Horse Bidder *not* assuming the Statutory Obligations. The Stalking Horse Bidder's conditions precedent to closing include requirements that (i) the retiree benefits be terminated or modified and (ii) the order confirming the Debtors' plan of reorganization provide that the Stalking Horse Bidder is not assuming and is not liable for any of the Debtors' retiree benefits. Moreover, the Excluded Liabilities set forth in the [Asset Purchase Agreement] specifically include liabilities with respect to the Coal Act, and the [Asset Purchase Agreement] makes clear that the Stalking Horse Bidder would not be the successor to any obligations under the Coal Act.

Doc. 1367 (Ad Hoc Grp. Joinder) at 2 (footnotes omitted). The Asset Purchase Agreement indeed includes these requirements and conditions. *See* Ex. 15 §§ 2.4(o), 8.10, & 10.10.

V. Legal Analysis

A. Bankruptcy Rule 9019(a) Applies to the Motion.

The Supreme Court has recognized the importance of settlements as "a normal part of the process of reorganization," noting that "[i]n administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims as to which there are substantial and reasonable doubts." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). Similarly, the Sixth Circuit has stated that the "very purpose of . . . a compromise agreement is to allow the [debtor in possession] and the creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims" and that "[t]he law favors compromise and not litigation for its own sake[.]" *Hindelang v. Mid-State Aftermarket Body Parts Inc. (In re MQVP, Inc.)*, 477 F. App'x 310, 312–13 (6th Cir. 2012) (alteration in original) (internal quotation marks omitted) (first quoting *Bard v. Sicherman (In re Bard)*, 49 F. App'x 528, 530 (6th Cir. 2002); then quoting *Fishell v. Soltow (In re Fishell)*, No. 94-1109, 1995 WL 66622, at *2 (6th Cir. Feb. 16, 1995)). Consistent with those principles, Bankruptcy Rule 9019(a) provides that "[o]n motion by the [debtor in possession] and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a).

Like any other dispute, a dispute over retiree benefits may be the subject of a settlement under Bankruptcy Rule 9019(a). *See Official Comm. of Unsecured Creditors of Tower Auto. v. Debtors & Debtors in Possession (In re Tower Auto. Inc.)*, 241 F.R.D. 162 (S.D.N.Y. 2006) (affirming the bankruptcy court's approval under Bankruptcy Rule 9019(a) of a settlement between the debtor and the authorized representative of the debtors' retirees); *In re Delphi Corp.*, No. 05-44481 (RDD), 2009 WL 973130 (Bankr. S.D.N.Y. Apr. 2, 2009) (approving a settlement between the debtors in possession and the retiree committee under Bankruptcy Rule 9019(a)); *In re GF Corp.*, 120 B.R. 421 (Bankr. N.D. Ohio 1990) (approving the settlement of a dispute over retiree benefits under Bankruptcy Rule 9019(a)). If a "'mutually satisfactory' modification of benefits has been agreed to, a § 1114(g) court order, based on a determination that the settlement is necessary to permit reorganization and is fair and equitable to all parties, is not required." *Tower Auto.*, 241 F.R.D. at 168. Instead, the bankruptcy court "must review the settlement under Bankruptcy Rule 9019." *Id.*

These decisions make clear that CONSOL is simply wrong in arguing that "the only way to modify or terminate retiree benefits is through § 1114." Obj. at 3. The two decisions on which CONSOL relies for its position—*In re SAI Holdings Ltd.*, No. 06-33227, 2007 WL 927936, 2007 Bankr. LEXIS 1051 (Bankr. N.D. Ohio Mar. 26, 2007), and *In re Cedar Rapids Meats, Inc.*, 117 B.R. 448 (Bankr. N.D. Iowa 1990)—are inapposite because those decisions did not involve settlements. The *Cedar Rapids Meats* court merely held that the debtors could not use § 105(a) as a source of interim relief that was unavailable under § 1114 over the objection of the authorized representative of the retirees, while the *SAI Holdings* court also issued its ruling under circumstances in which the retirees' authorized representative opposed the relief requested by the debtor. CONSOL cites no case in which a court held that Bankruptcy Rule 9019(a) does not apply to the approval of a settlement of a dispute regarding the payment of retiree benefits, and the Court's independent research has uncovered no authority for that proposition.

CONSOL's other argument for the inapplicability of Bankruptcy Rule 9019 fares no better. According to CONSOL, the Debtors have "fail[ed] to show that there is any consideration on either side of the settlement equation" because the 1992 Plan and the Retiree Committee "get exactly what they have been entitled to since the Coal Act Legislation in 1992, i.e., continued medical coverage sponsored by the U.S. Treasury and the Debtors have to fund a portion of their letter of credit . . . equal to the amount of the underfunding in their plan." Obj. at 3–4. To the contrary, there clearly was consideration for the Settlement on all sides. The parties entered into the Settlement in part to avoid litigation between the Debtors and the 1992 Plan regarding the treatment of the Letter of Credit and the Escrow Account as well as litigation over the issue of whether § 1114 applies to obligations under the Coal Act—an issue the 1992 Plan raised earlier in these cases when it objected to the appointment of the Retiree Committee. There has been several years of litigation over both of those issues in *Walter Energy, see* Exs. 50–56, and litigation over the applicability of § 1114 in other cases as well, *Trs. of the United Mine Workers of Am. 1992 Benefit Plan v. Westmoreland Coal Co. (In re Westmoreland Coal Co.)*, No. 18-3300, 2018 WL 6920227 (Bankr. S.D. Tex. Dec. 29, 2018); *In re Alpha Nat. Res., Inc.*, 552 B.R. 314 (Bankr. E.D. Va. 2016); *In re Horizon Nat. Res. Co.*, 316 B.R. 268 (Bankr. E.D. Ky. 2004). By contrast, after the consumption of relatively little time and expense, the Settlement resolved both of those potential disputes. In addition, it placed a limit on the 1992 Plan's drawdown on the Letter of Credit and Escrow Account, ensuring that the Debtors' estates receive a refund of approximately $10.5 million that they might have received, if at all, only through litigation.

The Settlement also reflects give and take on the Enrollment Date. It is certainly true that, in the absence of a settlement, federal law would have required the 1992 Plan to cover any Statutory Obligations not paid by the Debtors. To be sure, the 1992 Plan was "not going to do anything that might cause the slightest danger of discontinuation of health benefits to retirees," Ex. EEE, and there apparently has never been a gap in coverage in other cases, Tr. II at 60. But none of that changes the fact that material issues, including the Enrollment Date, had to be resolved in connection with a consensual transition of the Statutory Retirees to the 1992 Plan. Absent an agreement, the Retiree Committee and the 1992 Plan potentially could have forced a later Enrollment Date, including up to as late as the date of the Debtors' exit from Chapter 11, which could have cost the Debtors tens of thousands of dollars per day between the Enrollment Date and the date of emergence from bankruptcy. The Enrollment Date was not established by operation of law. Rather, it was the product of negotiations and was selected by the parties as a date that would protect the interests of the Debtors, the 1992 Plan and the Retiree Committee.

CONSOL also contends that approval of the Settlement would constitute an advisory opinion because of the Debtors' agreement to cooperate to hold CONSOL financially responsible for the Statutory Obligations, Obj. at 12–15. But this argument also misses the mark—because the Court's approval of the Settlement in no way constitutes a finding that CONSOL is the last signatory operator. To emphasize this, the Court's order approving the Settlement made clear that the Court was not making any such finding. *See* Settlement Approval Order ¶ 9 ("Nothing herein, or in the Court's subsequent memorandum opinion, shall be construed as a finding that CONSOL is the last signatory operator as that term is used in the Coal Act. CONSOL, the 1992 Plan, and all other parties in interest reserve any and all rights, remedies, and defenses that they may have."). Neither this decision nor the Settlement Approval Order constitutes an advisory opinion.

For all these reasons, the Court concludes that the Settlement is in fact a settlement to which Bankruptcy Rule 9019(a) applies.

B. The Settlement Meets the Standard for Approval Under Bankruptcy Rule 9019(a).

Bankruptcy courts have "significant discretion to approve" settlements, and they may do so if a settlement is "fair and equitable," *Rankin v. Brian Lavan & Assocs., P.C. (In re Rankin)*, 438 F. App'x 420, 426 (6th Cir. 2011), and in the best interests of the bankruptcy estate, *Gold v. Gen. Motors Corp. (In re Signet Indus., Inc.)*, No. 96-2534, 1998 WL 639168, at *3 (6th Cir. Sept. 10, 1998). In making the assessment of whether a proposed settlement is fair and equitable, bankruptcy courts must consider:

> (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Bard v. Sicherman (In re Bard), 49 F. App'x 528, 530 (6th Cir. 2002) (quoting *Drexel v. Loomis*, 35 F.2d 800, 806 (8th Cir. 1929)). When evaluating a proposed settlement, the Court "need not hold a mini-trial" but instead "need only [be apprised] of the relevant facts and law" so that it can reach "an informed and intelligent decision" regarding whether the settlement is fair and equitable. *Fishell*, 1995 WL 66622, at *3 (quoting *In re Am. Corp.*, 841 F.2d 159, 163 (7th Cir. 1987)). For the reasons explained below, the Court concludes that the Settlement meets the fair-and-equitable standard and is in the best interests of the Debtors' bankruptcy estates.

1. Probability of Success in Litigation

The first issue that would have been litigated if a settlement had not been reached is whether § 1114 permits the modification of obligations under the Coal Act. And assuming § 1114 permits such relief, the Debtors would also need to litigate the extent to which they should be permitted to modify their obligations to the Statutory Retirees under the circumstances of this case. CONSOL itself takes the position that the Debtors would be unlikely to succeed in modifying the Statutory Obligations. Obj. at 14. But if the Court assumes for the sake of argument that CONSOL is correct, a low chance of success only strengthens the conclusion that the Settlement should be approved. *Rankin*, 438 F. App'x at 426 (holding that the "bankruptcy court carried out the appropriate Rule 9019 inquiry, making an independent judgment on whether the [t]rustee's proposed compromise was fair and equitable," including by "observ[ing] that the prospects for success . . . were exceedingly slim"). The first factor thus weighs heavily in favor of approving the Settlement.

2. Collection Difficulties

The second factor is not particularly germane here, but to the extent it is relevant it supports approval of the Settlement. The only amount the Debtors might attempt to collect if the Settlement were not approved is a portion of the Letter of Credit and Escrow Account. Upon entry of a non-consensual order relieving the Debtors of the Statutory Obligations, the 1992 Plan potentially could draw down the entire $22.5 million from the Letter of Credit and the Escrow Account. This would deprive the Debtors' estates of the approximately $10.5 million from the Letter of Credit and Escrow Account bargained for under the Settlement. Absent an agreement the 1992 Plan could have drawn down the entire amount of the Letter of Credit and Escrow Account. And the Debtors then would have been required to pursue an action against the 1992 Plan seeking to claw back a portion of the Letter of Credit and Escrow Account. Similar litigation in the Toffel Adversary Proceeding has been pending for over two years. Here, by contrast, the Settlement brings around $10.5 million into the estates without delay and the need for costly litigation.

3. Complexity, Expense, Inconvenience and Delay of Litigation

Under the third factor, courts consider the complexity of the potential litigation, as well as the expense, inconvenience and delay that the parties would face. Courts also consider whether there is a likelihood of appeal that the estate could not afford to litigate. *MQVP*, 477 F. App'x at 314. As it has in the Debtors' cases, the 1992 Plan has argued in several other cases that § 1114 may not be used to modify Statutory Obligations under the Coal Act. That issue has been litigated through the appellate level and has taken several years. Furthermore, any litigation under § 1114 would be highly fact-intensive and thus would give rise to further delay. *See Fishell*, 1995 WL 66622, at *4 ("The fact-intensive nature of the dispute also means that any litigation would be time-consuming and expensive."). Litigation over the Letter of Credit also would cause expense and delay that the Settlement avoids. Because declining to approve the Settlement would lead to complex litigation at a substantial cost to the Debtors' estates, consideration of the third factor counsels in favor of approving the Settlement.

4. Interests of Creditors

The Settlement satisfies the paramount interests of creditors, and the Debtors gave proper deference to their views. Litigation almost certainly would have produced less net gain to the bankruptcy estate that that provided by the Settlement, because the Debtors could hardly have obtained a better deal for the bankruptcy estates than they did here, as CONSOL itself essentially concedes. In fact, CONSOL suggests that the terms of the Settlement are too favorable to the Debtors' bankruptcy estates—hardly a valid basis for objecting to a settlement under the fair and equitable standard. *See In re United Shipping Co.*, No. 4-88-533, 1989 WL 12723, at *4 (Bankr. D. Minn. Feb. 17, 1989) (rejecting the argument that "one of the criteria a court must consider in approving a settlement . . . is whether the debtor has made too good a deal," and approving the settlement as being in the best interests of the estate).

"The near unanimity among creditors here . . . weighs in favor of approval" of the Settlement. *MQVP*, 477 F. App'x at 317. There are numerous reasons why the Creditors' Committee and other parties in interest support the Settlement. Importantly, the Settlement provides for a smooth transition of the Statutory Retirees to the 1992 Plan while establishing a transition date that protects the interests of all the parties. The Settlement also, as noted above, avoids potentially costly litigation with the 1992 Plan over the issue of whether § 1114 applies to statutory obligations under the Coal Act as well as the litigation that could have arisen if the 1992 Plan had drawn on the entire Letter of Credit and forced the estate to commence a lawsuit in order to seek a refund. Because of the Settlement, litigation with the 1992 Plan over the allocation of the Letter of Credit has been avoided, and approximately $10.5 million will be returned to the Debtors' estates after the 1992 Plan draws on the Letter of Credit to satisfy a portion of its liability for the Statutory Obligations. In addition, the Settlement will save the estates the substantial costs of the Statutory Obligations going forward. The Settlement also satisfies the conditions of the Asset Purchase Agreement, the consummation of which is the only viable option for a sale of the Debtors' assets that will preserve jobs for thousands of employees and commercial relationships for numerous parties that do business with the Debtors.[6] For all those reasons, key stakeholders, including the Creditors' Committee, support the Motion.

On the other side is CONSOL. Its interests, of course, "cannot be permitted to predominate over the best interests of the estate as a whole." *Key3Media Grp., Inc. v. Pulver.com, Inc. (In re Key3Media Grp., Inc.)*, 336 B.R. 87, 97 (Bankr. D. Del. 2005), *aff'd*, No. 03-10323(MFW), 2006 WL 2842462 (D. Del. Oct. 2, 2006). After weighing CONSOL's interests in the balance, it is clear that the Settlement is fair and equitable and should be approved. CONSOL's concern is about its potential future liability for the Statutory Obligations as the "last signatory operator." But CONSOL does not even concede here that it is liable for the Statutory Obligations, saying only that it may "potentially be obligated to cover the liabilities." Obj. at 11. And, as already noted, the Settlement Approval Order expressly states that it does not constitute a finding that CONSOL is the last signatory operator. If CONSOL is ever held liable for the Statutory Obligations, it will be only because another court finds that CONSOL is the last signatory operator as defined in the Coal Act. Furthermore, even if it were certain that CONSOL would be the last signatory operator, its interests in protecting itself from potential statutorily imposed liability would not come close to outweighing the substantial benefits that the Settlement provides to so many other parties in interest.

CONSOL attempted to demonstrate through the CONSOL Declarations that the amount of the Statutory Obligations was less than the amount the Debtors estimated and that the Debtors had the ability to satisfy the obligation after reducing certain expenses, including compensation of their

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[6] The conditions imposed by the Stalking Purchase Agreement do not apply on a mine-by-mine basis. Further, the Debtors' operations must be viewed in their entirety, not as separate mines. *See Alpha Nat. Res. Inc.*, 552 B.R. at 334 (holding that because the debtors did "not operate as a confederation of individual mines" but as "a single, fully integrated enterprise," no "mine-by-mine analysis is appropriate"). Thus, the evidence CONSOL attempted to introduce of the financial viability of the Debtors' businesses going forward on a mine-by-mine basis is irrelevant.

directors and officers. Assuming for the sake of argument that everything that was said in the CONSOL Declarations is true, there is still no reason why the Debtors' estates should bear the costs of the Statutory Obligations going forward when the Settlement will relieve them of that financial burden. Thus, the evidence CONSOL attempted to introduce regarding the amount of the Statutory Obligations and the Debtors' ability to further reduce costs, including by reducing the compensation of certain directors and officers, Obj. at 3, is simply not relevant. Also beside the point is the evidence that CONSOL attempted to introduce regarding the Stalking Horse Bidder's financial wherewithal to fulfill the obligations. As already discussed, it is a condition to the effectiveness of the Asset Purchase Agreement that the Stalking Horse Bidder would not be liable for the Statutory Obligations. And there would be no basis for the Court to force the Stalking Horse Bidder to assume them. Moreover, CONSOL never attempted to provide any evidence that taking on the Statutory Obligations would impose an undue financial burden that it could not withstand. And CONSOL did not offer a shred of evidence to establish that the financial detriment it would suffer if it were required to shoulder the Statutory Obligations would outweigh the benefit to the Debtors' bankruptcy estates resulting from approval of the Settlement. In fact, the only evidence that might have gone to that issue—CONSOL's 10-Ks—were excluded from the record at CONSOL's insistence.

CONSOL contends that "the purpose of the settlement is to collude to impose the liability on to CONSOL." Obj. at 10. "Collusion" means "secret cooperation for a fraudulent or deceitful purpose." *Lone Star Indus. v. Compania Naviera Perez Companc, S.A.C.F.I.M.F.A. (In re N.Y. Trap Rock Corp.)*, 42 F.3d 747, 752 (2d Cir. 1994) (quoting *Webster's Third New Int'l Dictionary* 446 (G. & C. Merriam Co. 1976 ed.)). The cooperation between the Debtors, the Retiree Committee and the 1992 Plan was not for a fraudulent or deceitful purpose, but instead was undertaken to meet a condition in the Asset Purchase Agreement and thus preserve the Debtors' only viable path for emergence from Chapter 11. There was most certainly no collusion here—nor was there any other misconduct on the part of the Debtors, the Retiree Committee and the 1992 Plan that would counsel in favor of disapproving the Settlement. The evidence reflects a robust negotiation process involving give-and-take on the Enrollment Date and the allocation of the Letter of Credit and Escrow Account. The efforts by the Debtors, the Retiree Committee and the 1992 Plan all demonstrate a good faith attempt to obtain a consensual resolution of the Debtors' liability for the Statutory Obligations. The Settlement is the result of arms' length negotiations and has the support of key stakeholders. And for numerous reasons, the Court finds that the Settlement is fair and equitable and in the best interests of the Debtors' bankruptcy estates.

C. CONSOL's Arguments Regarding § 1114 Are Unavailing.

Under § 1114(e) of the Bankruptcy Code, a debtor in possession "shall timely pay and shall not modify any retiree benefits, except that—

> (A) the court, on motion of the [debtor in possession] or authorized representative, and after notice and a hearing, may order modification of such payments, pursuant to the provisions of subsections (g) and (h) of this section, or
>
> (B) the [debtor in possession] and the authorized representative of the recipients of those benefits may agree to modification of such payments, after which such benefits as modified shall continue to be paid by the [debtor in possession].

11 U.S.C. § 1114(e)(1). "Section 1114's statutory scheme and Congress' expressed intent indicate[] that the statute was enacted to achieve the very specific and focused objective of protecting retiree benefits from unilateral termination." *Nelson v. Stewart*, 422 F.3d 463, 474 (7th Cir. 2005). Given § 1114's purpose and the fact that the Retiree Committee has agreed to the transfer of the Statutory Obligations to the 1992 Plan, it would be surprising if § 1114 were an

impediment to the approval of the Settlement. Indeed, for the reasons explained below, § 1114 provides no basis to disapprove the Settlement.

1. Section 1114(e)(1)(B)

In arguing against the Settlement, CONSOL relies on § 1114(e)(1)(B)'s requirement that retiree benefits as modified "shall continue to be paid by the [debtor in possession]." 11 U.S.C. § 1114(e)(1)(B). This phrase, CONSOL contends, affirmatively requires the Debtors to continue making some payments on the Statutory Obligations going forward. And because "there will be no continued payment by the Debtors," CONSOL argues that § 1114(e)(1)(B) could not possibly apply. Obj. at 6. In *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012), the Supreme Court cautioned against interpretations of the Bankruptcy Code that are "hyperliteral and contrary to common sense." CONSOL's reading of § 1114(e)(1)(B) falls into that category. All § 1114(e)(1)(B) requires is that the debtor in possession continue to pay whatever it has agreed with the authorized representative that it will pay. But if the authorized representative has consented to the debtor in possession's paying nothing, then nothing is all § 1114(e)(1)(B) requires the debtor in possession to pay. Further, CONSOL's reliance on *In re General Motors Corp.*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009), is misplaced. That decision rightly noted that § 1114 imposes duties on the debtor in possession and "not anyone else" and then pointed out the lack of any "authority holding or suggesting that a purchaser of assets from an entity with section 1114 obligations must assume the debtor seller's duty to comply with section 1114's provisions." *Id.* at 510–11. *General Motors*, however, does not stand for the proposition that the debtor in possession must continue paying if a third party such as the 1992 Plan consents to the transfer of the obligations and the authorized representative agrees that the debtor in possession may terminate its obligations.

What's more, although neither "termination" nor its cognates appear in § 1114, courts have approved the termination of retiree benefits under that section. *See, e.g.*, *In re Walter Energy, Inc.*, 542 B.R. 859, 884 (Bankr. N.D. Ala. 2015). Given that a termination of benefits is permitted by § 1114 under the right circumstances, it defies reason to deny relief under § 1114(e)(1)(B) merely because the Settlement dictates that the 1992 Plan, rather than the Debtors, will continue paying the Statutory Obligations. And if CONSOL were right that § 1114 does not apply to termination, that would be all more reason to approve the Settlement. After all, as discussed above, a low likelihood of success supports the approval of a proposed settlement. Of course, the parties wanted to ensure a smooth transition of the Statutory Obligations to the 1992 Plan through negotiations over the Enrollment Date, and the Debtors and the 1992 Plan desired to resolve issues related to the allocation of the Letter of Credit and the Escrow Account. It was because those issues would not necessarily be addressed by § 1114(e) that the parties entered into the Settlement. That said, none of the evidence that CONSOL introduced or attempted to introduce suggests that the termination of the Statutory Obligations would have been inappropriate under § 1114(e).

2. Section 1114(g)

The parties' entry into the Settlement renders § 1114(g) wholly inapplicable here. *See Tower Auto.*, 241 F.R.D. at 168 (holding that if a "'mutually satisfactory' modification of benefits has been agreed to, a § 1114(g) court order . . . is not required"); *Argeras v. GF Corp.*, 140 B.R. 884, 886 (N.D. Ohio 1992) ("When the debtor in possession and the authorized representatives of the recipients of retiree benefits agree to modification of such payments, subsections (g) and (h) § 1114 *do not apply*"). And even if § 1114(g) did apply, nothing CONSOL argues supports the notion that the Debtors would have failed to satisfy the requirements of that section.

a. CONSOL's Proposed Evidence Would Have No Bearing on the Requirement that the Modification Be Necessary to Permit the Reorganization of the Debtors.

Section 1114(g) requires that any proposed modification be "necessary to permit the reorganization of the debtor." 11 U.S.C. § 1114(g)(3). According to CONSOL, the termination of the Debtors' liability for the Statutory Obligations was not necessary because the amount of the Statutory Obligations is several million dollars less than the amount estimated by the Debtors, other bidders were willing to assume the Statutory Obligations, and the Stalking Horse Bidder could afford to pay the Statutory Obligations out of the income of the business going forward. Obj. at 8–10. As an initial matter, nothing in the CONSOL Declarations that CONSOL attempted to introduce into evidence suggested that another bidder—let alone a *qualified* bidder for the Debtors' assets—was willing to assume the Statutory Obligations, and CONSOL did not contend during the Hearing that there was any such bidder. Nor did CONSOL attempt to introduce any evidence suggesting that the Stalking Horse Bidder was not the successful bidder. And even if everything else that CONSOL alleged in the CONSOL Declarations was true, it would not change this salient fact: Several provisions of the Asset Purchase Agreement make it clear that the Stalking Horse Bidder will not agree to assume liability for the Statutory Obligations.

CONSOL sought to introduce documents and put on testimony that it contends will show that the Stalking Horse Bidder would not walk away but instead would take on the Statutory Obligations if forced to do so. The Court, however, has no authority to compel the Debtors and the Stalking Horse Bidder to strike a deal that they have not reached, and the "'wisdom' of [a] [p]roposed [b]uyer's position regarding which of the Debtors' liabilities it is willing to assume or pay is irrelevant." *Walter Energy*, 542 B.R. at 891. The Debtors need not put on any more evidence than what is already in the record. The only evidence required here is evidence demonstrating that the Asset Purchase Agreement provides that the Stalking Horse Bidder will not agree to undertake the Statutory Obligations, and, as the Court already found, that is the case here. The Debtors need show no more, and nothing more produced by CONSOL would alter the Court's conclusion that settlement is "necessary to permit the reorganization" of the Debtors within the meaning of § 1114(g). *See Alpha Nat. Res.*, 552 B.R. at 322 & n.21 (holding that the rejection of a collective bargaining agreement was necessary to an effective reorganization because the asset purchase agreement with the stalking horse bidder set forth the condition to closing that either the CBA was to be rejected or the CBA's provision making successors liable for the obligations was to be terminated); *Walter Energy*, 542 B.R. at 891 (holding that modification of collective bargaining agreement that imposed liability on a successor to the debtors was necessary to the debtors' reorganization because the proposed purchaser of the debtors' assets refused to agree to a sale transaction without the elimination of the provision); *In re Karykeion Inc.*, 435 B.R. 663, 678–79 (Bankr. C.D. Cal. 2010) (holding that the rejection of a collective bargaining agreement was necessary to the debtor's reorganization because the buyer made the sale contingent on rejection of the collective bargaining agreement).

A debtor's proposed treatment of retiree benefits is "necessary to permit the reorganization of the debtor" within the meaning of § 1114(g)(3) if it is necessary to obtain confirmation of a Chapter 11 plan through a going-concern sale. *Walter Energy*, 542 B.R. at 888–89. For the reasons explained above, that is clearly the case here.

b. The Balance of the Equities

Section 1114(g) also requires that any proposed modification "assures that all creditors, the debtor, and all affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities." 11 U.S.C. § 1114(g)(3). As previously explained in connection with the evaluation of the interests-of-creditors prong of the fair-and-equitable standard under Bankruptcy Rule 9019, CONSOL's interest in avoiding potential future liability for the Statutory Obligations does not outweigh the numerous benefits of the Settlement for other creditors of the Debtors' estates. Thus, there is no doubt that all parties are being treated fairly and equitably and that the balance of the equities favors approval of the Settlement.

VI. Conclusion

For all these reasons, the Court determines that the Settlement is fair and equitable and in the best interests of the Debtors' bankruptcy estates and must be approved.

IT IS SO ORDERED.

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Default List