

MISSOURI CIRCUIT COURT
TWENTY-FIRST JUDICIAL CIRCUIT
ST. LOUIS COUNTY

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PATRICIA WILLITS,)
WILLIAM G. PARROTT, JR.,)
and)
DONALD PETRIE, AS TRUSTEE OF)
THE PPW ROYALTY TRUST,)
Plaintiffs)
v.)
PEABODY COAL COMPANY, LLC,)
PEABODY DEVELOPMENT COMPANY, LLC,)
PEABODY HOLDING COMPANY, LLC,)
PEABODY ENERGY CORPORATION,)
CENTRAL STATES COAL RESERVES OF)
KENTUCKY, LLC,)
GRAND EAGLE MINING COMPANY,)
OHIO COUNTY COAL COMPANY, LLC,)
BEAVER DAM COAL COMPANY, LLC,)
CYPRUS CREEK LAND RESOURCES, LLC,)
CYPRUS CREEK LAND COMPANY,)
WESTERN DIAMOND, LLC,)
WESTERN LAND COMPANY, LLC,)
CERALVO HOLDINGS, LLC,)
CERALVO RESOURCES, LLC,)
ARMSTRONG COAL RESERVES, INC.,)
ARMSTRONG COAL COMPANY, INC.,)
ARMSTRONG LAND COMPANY, LLC, and)
STATE OF MISSOURI,)
Defendants.)

FIRST AMENDED PETITION FOR DECLARATORY RELIEF

Plaintiffs, for their First Amended Petition against the Defendants, allege:

PARTIES

The Plaintiffs

1. Plaintiff Patricia Willits is a citizen and resident of California, currently residing at 16350 Ventura Boulevard, Encino, California 91436.
2. Plaintiff William G. Parrott, Jr. is a citizen and resident of the state of Florida, currently residing at One Island Road, Stuart, Florida 34996.
3. Plaintiff Donald Petrie is the Trustee of the PPW Royalty Trust ("the Trust"), a trust established under the laws of the State of Missouri. Mr. Petrie is a citizen and resident of the state of California, currently residing at 15532 Del Gado Drive, Sherman Oaks, California 91403.

The Peabody Companies

4. Defendant Peabody Coal Company, LLC, also known as Heritage Coal Company, LLC, is a limited liability company organized under the laws of the state of Delaware, with its principal place of business located at 701 Market Street, Suite 765, St. Louis, Missouri 63101. Peabody Coal Company, LLC, for all intents and purposes, is the same entity referred to herein as Peabody Coal Company of Delaware, Inc. ("Peabody").
5. Defendant Peabody Development Company, LLC ("Peabody Development") is a limited liability company organized under the laws of the state of Delaware, with its principal place of business located at 301 North Memorial Drive, St. Louis, Missouri 63102, and is an affiliate of Peabody.
6. Defendant Central States Coal Reserves of Kentucky, LLC ("Central States") is a limited liability company organized under the laws of the state of Delaware,

with its principal place of business located at 12312 Olive Boulevard, Suite 413, St. Louis, Missouri 63141, and is an affiliate of Peabody.

7. Defendant Cyprus Creek Land Resources, LLC ("Cyprus Creek") is a limited liability company organized under the laws of the state of Delaware, with its principal place of business located at 701 Market Street, Suite 775, St. Louis, Missouri 63101, and is an affiliate of Peabody.

8. Defendant Grand Eagle Mining Company ("Grand Eagle") is a corporation incorporated under the laws of the state of Delaware, with its principal place of business located at 19070 Highway 1078 South, Henderson, Kentucky 42420, and is an affiliate of Peabody.

9. Defendant Ohio County Coal Company, LLC ("Ohio County Coal") is a limited liability company organized under the laws of the state of Delaware, with its principal place of business located at 12312 Olive Boulevard, Suite 432, St. Louis, Missouri 63141, and is an affiliate of Peabody.

10. Defendant Cyprus Creek Land Company ("Cyprus Creek Land") is a corporation incorporated under the laws of the state of Delaware, with its principal place of business located at 701 Market Street, Suite 772, St. Louis, Missouri 63101, and is an affiliate of Peabody.

11. Defendant Beaver Dam Coal Company, LLC ("Beaver Dam") is a limited liability company organized under the laws of the state of Delaware, with its principal place of business located at 12312 Olive Boulevard, Suite 405, St. Louis, Missouri 63141, and is an affiliate of Peabody.

12. Defendant Peabody Holding Company, LLC ("Peabody Holding") is a limited liability company organized under the laws of the state of Delaware, with its principal place of business located at 701 Market Street, Suite 741, St. Louis, Missouri 63101, and is an affiliate of Peabody.

13. Defendant Peabody Energy Corporation ("Peabody Energy") is a corporation incorporated under the laws of the state of Delaware, with its principal place of business located at 701 Market Street, Suite 760, St. Louis, Missouri 63101. Peabody Energy is or at times material to this Petition has been the parent company of Peabody, Peabody Development, Central States, Cyprus Creek, Grand Eagle, Ohio County Coal, Cyprus Creek Land, Beaver Dam, and Peabody Holding, and operated and controlled the Peabody Companies' assets and obligations, including the coal mining rights and contractual obligations described herein. Peabody Energy, Peabody, Peabody Development, Central States, Cyprus Creek, Grand Eagle, Ohio County Coal, Cyprus Creek Land, Beaver Dam, and Peabody Holding are sometimes collectively referred to herein as "the Peabody Companies".

The Armstrong Companies

14. Defendant Armstrong Coal Company, Inc. ("Armstrong Coal") is a corporation incorporated under the laws of the state of Delaware, with its principal place of business located at 7733 Forsyth Boulevard, Suite 1625, Clayton, Missouri 63105.

15. Defendant Western Diamond, LLC ("Western Diamond") is a limited liability company organized under the laws of the state of Nevada, with a principal place of business located at 407 Brown Road, Madisonville, Kentucky 42431, and is an affiliate

of Armstrong Coal and the other Armstrong Companies who are named as defendants in this Petition.

16. Defendant Western Land Company, LLC ("Western Land") is a limited liability company organized under the laws of the state of Kentucky, with a principal place of business located at 300 East Main Street, Suite 360, Lexington, Kentucky 40507, and is an affiliate of Armstrong Coal and the other Armstrong Companies who are named as defendants in this Petition.

17. Defendant Ceralvo Holdings, LLC ("Ceralvo") is a limited liability company organized under the laws of the state of Delaware, with its principal place of business located at 407 Brown Road, Madisonville, Kentucky 42431, and is an affiliate of Armstrong Coal and the other Armstrong Companies who are named as defendants in this Petition.

18. Defendant Armstrong Coal Reserves, Inc. ("Armstrong Coal Reserves") is a corporation incorporated under the laws of the state of Delaware, with its principal place of business located at 7733 Forsyth Boulevard, Suite 1625, Clayton, Missouri 63105, and is an affiliate of Armstrong Coal and the other Armstrong Companies who are named as defendants in this Petition.

19. Defendant Ceralvo Resources, LLC ("Ceralvo Resources") is a limited liability company organized under the laws of the state of Delaware, with its principal place of business located at 407 Brown Road, Madisonville, Kentucky 42431, and is an affiliate of Armstrong Coal and the other Armstrong Companies who are named as defendants in this Petition.

20. Defendant Armstrong Land Company, LLC ("Armstrong Land") is a limited liability company organized under the laws of the state of Delaware, with its principal place of business located at 7733 Forsyth Boulevard, Suite 1625, Clayton, Missouri 63105. Armstrong Land is the parent company of Armstrong Coal, Western Diamond, Western Land, Ceralvo, Armstrong Coal Reserves, and Ceralvo Resources, and operates and controls the Armstrong affiliated entities' assets and obligations, including the coal mining rights and contractual obligations described in this petition herein. Armstrong Land, Armstrong Coal, Western Diamond, Western Land, Ceralvo, Armstrong Coal Reserves, and Ceralvo Resources are sometimes collectively referred to herein as "the Armstrong Companies".

21. The Peabody Defendants and the Armstrong Defendants have been joined as proper party Defendants in this case, pursuant to R.S.Mo. § 527.110, because they have an interest which would be affected by the declaratory relief against the State of Missouri which the Plaintiffs are requesting in this lawsuit.

The State of Missouri

22. The Defendant State of Missouri is named as a proper party Defendant in this lawsuit because Plaintiffs allege that the State of Missouri, acting through its judicial branch, including the Circuit Court for the City of St. Louis, Missouri and the Missouri Court of Appeals Eastern District, has violated the Plaintiffs' rights under various provisions of the Missouri Constitution and the United States Constitution referenced herein, and Plaintiffs seek declaratory relief declaring that the judgment entered by the Circuit Court for the City of St. Louis on March 29, 2010, and the decision entered by the Missouri of Appeals Eastern District on December 28, 2010, violated Plaintiffs' rights

under various provisions of the Missouri Constitution and the United States Constitution, thus requiring that the March 29, 2010 judgment of the Circuit Court for the City of St. Louis and the December 28, 2010 decision of the Missouri Court of Appeals Eastern District be vacated.

JURISDICTION AND VENUE

23. This Court has subject matter jurisdiction because the acts and conduct giving rise to the claims asserted in this lawsuit occurred, in substantial part, in the state of Missouri, and involve claims arising under the Missouri Constitution and the United States Constitution.

24. Pursuant to Rev. Mo. Stat. §508.010, venue is proper in this Court, because at least one of the Defendants has a registered agent located in St. Louis County, Missouri.

FACTS GIVING RISE TO THIS DISPUTE

25. On November 17, 1954, Alston Coal Company ("Alston") entered into a written agreement with W.G. and Pauline Parrott ("the Parrotts"), in which Alston agreed to pay the Parrotts a royalty in the aggregate amount of 2 1/2 percent of the average gross realization on coal mined by the strip-mining method only, and a royalty in the aggregate amount of 1 percent of the average gross realization on all coal mined by any underground mining methods, and sold on and after December 1, 1954 by Alston, its successors and assigns, from "any of the lands" situated in Ohio County, Kentucky and lying within two defined boundaries, referred to as the "First Boundary" and the "Third Boundary".

26. On the same date, November 17, 1954, Alston also entered into a second written agreement with Pauline Parrott and her two children, Patricia Willits and William G. Parrott, Jr., in which Alston agreed to pay them the same percentage of gross realization royalties on coal mined and sold on and after December 1, 1954 by Alston, its successors and assigns, from "any of the lands" situated in Ohio County, Kentucky and lying within a defined boundary referred to as the "Fourth Boundary".

27. Both of these royalty agreements (collectively, "the 1954 Royalty Agreements") further provide that such Agreements "shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, legal representatives, successors or assigns."

28. On June 29, 1959, the Parrots assigned their rights under the 1954 Royalty Agreements to their two children, Patricia Willits and William G. Parrott, Jr. In September 1989, and again in May 2008, Patricia Willits assigned a percentage of her rights under the 1954 Royalty Agreements to Donald Petrie, as trustee of the PPW Royalty Trust. As a result of such assignments, since September 1989, William G. Parrott, Jr., Patricia Willits and Donald Petrie, as trustee of the PPW Royalty Trust (collectively "the Plaintiffs") have held all of the royalty interests under the 1954 Royalty Agreements.

29. Peabody Coal Company of Illinois acquired Alston in 1956, and assumed Alston's obligations under the 1954 Royalty Agreements to pay royalties to the Parrots (and to the Plaintiffs) on coal mined and sold by Peabody, its successors and assigns from the three Boundaries ("the Boundaries").

30. When Alston entered into the 1954 Royalty Agreements on November 17, 1954, Alston did not have an ownership interest or leasehold interest in all of the lands or coal lying within the Boundaries. Alston instead had either an ownership interest or a leasehold interest in 14,300 acres of land in the Boundaries, which constituted approximately twenty-seven percent of the 53,000 acres of lands lying within the Boundaries. The lands and coal in the Boundaries in which Alston had an ownership interest or a leasehold interest on the date of the execution of the 1954 Royalty Agreements are hereinafter referred to as "the 1954 Properties".

31. In December 1956, in connection with Peabody Coal Company of Illinois' acquisition of Alston, Alston conveyed its fifty percent interest in certain surface tracts and coal in the Boundaries, which it held as a tenant in common with Beaver Dam Coal Company ("Beaver Dam"), to Sentry Royalty Company ("Sentry"), a Peabody Coal Company of Illinois subsidiary. Alston also assigned its lessee's interest under a lease agreement with Beaver Dam ("the Beaver Dam Lease") to Peabody Coal Company of Illinois, and its lessee's interest under two other leases ("the Bennett Leases") to Sentry.

32. Alston's fifty percent interest in certain surface tracts and coal in the Boundaries had been obtained from Rough River Coal Company ("Rough River"), which had obtained its fifty percent interest in such lands from W.G. Parrott in 1946. W.G. Parrott had owned such tracts – consisting of approximately 7,100 acres – in fee simple prior to December 1946. Alston had acquired its lessee's interest in the Beaver Dam Lease and the Bennett Leases by assignment from Rough River, which had obtained its lessee's interest in those leases from W.G. Parrott in 1946. In connection with such conveyances and assignments, Alston had assumed Rough River's obligation to pay

W.G. Parrott a royalty on coal mined from the First and Third Boundaries by Rough River, its successors and assigns, pursuant to a royalty agreement executed in 1946. W.G. Parrott agreed to release Alston from that obligation as part of the consideration which he provided to Alston for its execution of the 1954 Royalty Agreements.

33. In February 1968, Sentry merged into Peabody Coal Company of Illinois, at which time Sentry was dissolved. As part of this transaction, Peabody Coal Company of Illinois acquired Sentry's fifty percent interest in certain surface tracts and coal mining rights in the Boundaries.

34. In March 1968, Peabody Coal Company of Illinois executed a deed in which it conveyed and assigned to Peabody Coal Company of Delaware ("Peabody") its interests in the coal and surface tracts in the Boundaries. This conveyance and assignment included, *inter alia*: (1) the lands in the Boundaries which were conveyed by Alston to Sentry on December 1, 1956; (2) the lands in the Boundaries which were conveyed in fee simple by the Homestead Coal Company to Sentry on September 30, 1957; and (3) the Beaver Dam Lease. This conveyance specifically states that all of these lands and the Beaver Dam Lease are "subject to" the 1954 Royalty Agreements.

35. After the March 1968 deed was executed, Peabody paid the Plaintiffs royalties on the coal which Peabody mined and sold from lands within the Boundaries from March 1968 through the end of 1986.

36. Between November 17, 1954 and June 1, 1990, Peabody [or its predecessors] acquired substantial lands and coal within the Boundaries which Alston did not own or lease on November 17, 1954. Peabody owned some lands and coal in the Boundaries acquired after November 17, 1954 in fee simple, and also acquired other

lands and coal in the Boundaries after November 17, 1954 which were thereafter owned by Peabody as a tenant in common with Beaver Dam. Peabody also entered into lease agreements with other third parties after November 17, 1954 which permitted Peabody to mine coal located within the Boundaries. Such lands, coal, or mining interests in the Boundaries which Peabody acquired or leased after November 17, 1954 are hereinafter referred to as "the after-acquired Properties". By June 1, 1990, Peabody had acquired or leased after-acquired Properties which consisted of approximately 19,000 acres, so that the after-acquired Properties constituted more than thirty-five percent of the 53,000 acres in the Boundaries.

37. At various times after November 17, 1954 and up until June 1, 1990, Peabody mined coal from the 1954 Properties and from the after-acquired Properties, and paid royalties to the Plaintiffs on such coal. Such royalties were paid to the Plaintiffs regardless of whether the coal was mined from lands which Peabody owned in fee simple, or from lands which Peabody owned as a tenant in common with Beaver Dam, or from lands which Peabody had leased from Beaver Dam or other third parties.

38. In 1990, the Plaintiffs filed a lawsuit against Peabody in the United States District Court for the Western District of Kentucky ("the Kentucky litigation"), asserting various claims against Peabody for royalty underpayments under the 1954 Royalty Agreements. On June 1, 1990, Peabody filed an answer and counterclaim to the Plaintiffs' complaint in the Kentucky litigation. As of June 1, 1990, Peabody owned more than 8300 acres of surface tracts in the Boundaries in fee simple, and also owned, as a tenant in common with Beaver Dam, more than 12,900 acres of surface tracts in the

Boundaries. In addition, as of June 1, 1990, Peabody owned substantial quantities of coal in the Boundaries, both in fee simple and as a tenant in common with Beaver Dam.

39. In its counterclaim in the Kentucky litigation, Peabody alleged the following:

- (A) The 1954 Royalty Agreements were conveyances of real property, and therefore such Agreements could convey to the Parrots only interests in the 1954 Properties, i.e., the real property in which the grantor, Alston, itself had an ownership interest at the time of conveyance, November 17, 1954;
- (B) The 1954 Royalty Agreements, because they were conveyances of real property, were ineffective to convey any royalty interest in any property in the Boundaries other than the 1954 Properties;
- (C) To the extent the 1954 Royalty Agreements purport to convey royalty interests in coal mined from the after-acquired Properties which Alston or Peabody acquired after November 17, 1954, any royalty interests in such after-acquired Properties would not vest within the time required by the rule against perpetuities in effect when the 1954 Royalty Agreements were executed, and therefore the 1954 Royalty Agreements were not valid with respect to any after-acquired Properties;
- (D) Peabody had for many years prior to June 1, 1990 consistently paid royalties to the Plaintiffs on coal mined from the after-acquired Properties – which consisted of more than 18,800 acres in the Boundaries - under a mistake of fact, resulting in a seven million dollar overpayment of the

royalties owed by Peabody to the Plaintiffs under the 1954 Royalty Agreements; and

(E) The Parrotts and the Plaintiffs had unlawfully received, at a minimum, the sum of seven million dollars in royalty overpayments from Peabody, in the absence of any written contractual provision entitling the Parrotts or the Plaintiffs to such payments, entitling Peabody to recover from the Plaintiffs a minimum of seven million dollars pursuant to the various counts of Peabody's counterclaim, including counterclaims for money had and received, mistake of fact, and quasi contract.

40. On July 19, 1990, the Plaintiffs filed a Fed.R.Civ.P. 12(b)(6) motion to dismiss Peabody's counterclaim based on the alleged partial invalidity of the 1954 Royalty Agreements. On July 3, 1991, after full briefing by the parties, the District Court in the Kentucky litigation entered its Order granting the Plaintiffs' motion to dismiss Peabody's counterclaim based on the alleged partial invalidity of the 1954 Royalty Agreements regarding Peabody's obligation to pay the Plaintiffs royalties on coal mined from the after-acquired Properties. In its Order, the District Court held that: (1) Peabody, by virtue of its acquisition of Alston, had assumed the obligations of the 1954 Royalty Agreements, and had the right to mine coal from the Boundaries; (2) if Peabody elected to exercise its right to mine coal within the Boundaries, then Peabody has a contractual obligation to pay royalties to the Plaintiffs; (3) Peabody is free to assign to some other entity its rights to mine the coal, but nothing in the 1954 Royalty Agreements make that assignee liable for payment of royalties; (4) the 1954 Royalty Agreements simply represent contractual obligations created by Peabody's predecessor corporation, Alston,

and for which Peabody has become liable by virtue of its acquisition of Alston; (5) if Peabody assigns its rights to mine coal to others, Peabody remains obligated to pay the Plaintiffs royalties under the terms of the 1954 Royalty Agreements; (6) the 1954 Royalty Agreements are not subject to, and do not violate, the rule against perpetuities, whether they cover “after-acquired” property or not; and (7) to the extent that the various counts of Peabody’s counterclaims depend on the invalidity of the Royalty Agreements under an alleged violation of the rule against perpetuities, those counts fail to state a claim upon which relief can be granted.

41. After the District Court entered a final judgment in the Kentucky litigation, Peabody appealed the District Court’s Order dismissing Peabody’s counterclaim based on the alleged invalidity of the 1954 Royalty Agreements to the United States Court of Appeals for the Sixth Circuit. The Sixth Circuit affirmed the District Court’s Order dismissing Peabody’s counterclaim based on the alleged invalidity of the 1954 Royalty Agreements. *Willits v. Peabody Coal Co.*, 1999 WL 701916 (6th Cir.), *19-20. In affirming, the Sixth Circuit adopted the reasoning of the Missouri Court of Appeals in a parallel case, *Commerce Bank v. Peabody Coal Co.*, 869 S.W.2d 561 (Mo. App. W.D. 1993). The Sixth Circuit held that the Plaintiffs’ royalty interests vested when they were created on November 17, 1954, even though they were uncertain in the enjoyment, with respect to coal mined and sold from all of the lands within the boundaries, and that the Plaintiffs own “a fee simple interest in Peabody’s contingency.” The Sixth Circuit therefore affirmed the District Court’s decision that the 1954 Royalty Agreements are valid Agreements, and that Peabody’s royalty obligations extend both to the 1954 Properties and to the after-acquired Properties.

42. On September 12, 1989, Peabody conveyed all of its rights and interests in the lands and coal in the Boundaries to Peabody Development, an affiliate of Peabody. Peabody Development then assumed the obligations to pay the royalties owed to the Plaintiffs under the 1954 Royalty Agreements, and thereafter made royalty payments to Plaintiffs on coal mined and sold in the Boundaries by Peabody and its affiliates after September 12, 1989. Several years later, in 1996, Peabody Development entered into a lease agreement with its subsidiary, Grand Eagle, in which Grand Eagle leased the mining rights in the Big Run Surface Mine located within the Boundaries. When Grand Eagle thereafter mined and sold coal from the Big Run Surface Mine between January 1, 1996 and January 31, 2007, Peabody Development paid royalties to the Plaintiffs on that coal.

43. On December 20, 2005, Peabody Development conveyed its interest in coal and surface tracts in the Boundaries to Central States, its subsidiary and also a Peabody affiliate. In 2006, Central States and its subsidiary, Ohio County Coal, entered into a lease agreement under which Ohio County Coal leased the mining rights to the Big Run Underground Mine located in the Boundaries. Ohio County Coal mined coal from the Big Run Underground Mine between May 1, 2006 and December 31, 2006, and Central States paid the Plaintiffs royalties on that coal.

44. Between 1956 and January 31, 2007, Peabody and its affiliates paid Plaintiffs more than twelve million dollars in royalties on coal mined and sold from the 1954 Properties and the after-acquired Properties by Peabody and its affiliates.

45. Between 1989 and 2007, Peabody Development, Central States, Grand Eagle, Ohio County Coal, Cypress Creek, and Cypress Creek Land Company acquired

surface tracts and coal in the Boundaries through various intra-company transfers, and therefore each of these Peabody affiliates is a successor and assign of Peabody. Between 1954 and 2007, Beaver Dam also acquired certain surface tracts and coal rights in the after-acquired Properties from Peabody, and therefore Beaver Dam is a successor and assign of Peabody. In addition, all of the Peabody Companies operated as a single corporate enterprise which: (1) owned and leased the surface tracts and coal in the Boundaries; (2) mined and sold coal from tracts within the Boundaries; (3) assumed the rights and obligations under the 1954 Royalty Agreements; (4) made royalty payments to the Plaintiffs on coal which was mined by various Peabody corporate affiliates; and (5) sold and assigned the coal and surface tracts in the Boundaries to the Armstrong Companies. The Plaintiffs have not released any of the Peabody Companies from their obligations to pay royalties under the terms of the 1954 Royalty Agreements, and therefore each of these Peabody Companies is a necessary party defendant in this lawsuit.

46. In 2006, Peabody Energy, the parent company of Peabody, decided to sell substantial surface and coal mining rights located in the Boundaries to the Armstrong Companies. This sale by Peabody and its affiliates to the Armstrong Companies was accomplished through five sales transactions which were completed between September 2006 and March 2008, for a purchase price of approximately \$151,000,000.

47. In the first of these transactions, on September 19, 2006, Western Diamond purchased from Beaver Dam certain surface and coal mining rights in the Boundaries for approximately eight million dollars. As of this date, Beaver Dam was a wholly owned subsidiary of Peabody Holding, which had acquired Beaver Dam through a purchase of its stock in November 2001. Subsequently, a second transaction occurred

on November 20, 2006, in which Central States and Beaver Dam sold all of their "right title and interest" in certain surface and coal mining rights in the Boundaries to Western Land, an affiliate of the other Armstrong Companies, for approximately thirty-four million dollars. This sale included Central States' assignment of its lessee's interest in certain coal and surface tracts in the Boundaries, commonly referred to as the Barnard Lease, to Western Land.

48. After these first two sale transactions were completed, a mutual termination and release of lease of coal lands was executed on January 18, 2007 by James Sevem, both as President on behalf of Beaver Dam, and as Vice-President on behalf of Beaver Dam's affiliated entity, Central States, which reflected Central States' release of its lessee's interest in the Beaver Dam Lease. The termination of the Beaver Dam Lease, however, did not affect Central States' ownership of the lands and coal mining rights in the Boundaries, nor did it affect the other Peabody affiliates' ownership of the lands and coal mining rights in the Boundaries.

49. On April 17, 2007, a third transaction was completed, in which Central States, Grand Eagle, Ohio County Coal, and Beaver Dam agreed to sell all their right, title and interest in certain surface and coal mining rights in the Boundaries to Western Land for approximately twenty-two million dollars. On May 31, 2007, a fourth sales transaction was completed, in which Central States, Beaver Dam, Ohio County Coal, and Grand Eagle agreed to "sell, assign and transfer" to Western Diamond all of their "right, title and interest" in certain surface and coal mining rights in the Boundaries for approximately 6.5 million dollars. On March 31, 2008, in the fifth and final transaction, two other Peabody affiliates, Cypress Creek and Cypress Creek Land agreed to "sell,

assign and transfer" to Ceralvo, one of the Armstrong Companies, certain surface and coal mining rights in the Boundaries for approximately seventy-seven million dollars. In addition, Cypress Creek and Cypress Creek Land also assigned to Ceralvo their lessees' interests under two other lease agreements, referred to as the Danks-Ray Lease and the Carter-Harrell Lease, for approximately 3.2 million dollars. Cypress Creek and Cypress Creek Land had previously acquired their surface and coal mining rights from Beaver Dam and Central States.

50. As a result of various intra-affiliate transactions, the lands and coal reserves which the Armstrong Companies purchased from Peabody in the Boundaries were thereafter assigned to Armstrong Coal Reserves and Ceralvo Resources, which then assigned the lands and coal reserves to another Armstrong subsidiary that now operates under the name Armstrong Coal Company ("Armstrong Coal").

51. As a result of the Armstrong Defendants acquiring the surface tracts and coal in the Boundaries through the five sale transactions, which included the various intra-affiliate transfers of the surface tracts and coal between the various Armstrong Companies, including Western Diamond, Western Land, Ceralvo, Ceralvo Resources, Armstrong Coal Reserves, and Armstrong Coal, the Armstrong Companies are the successors and assigns of Peabody. Moreover, in each of the five sale transactions, the Armstrong Companies agreed to assume Peabody's obligations to the Plaintiffs under the 1954 Royalty Agreements. In addition, all of the Armstrong Companies operated as a single corporate enterprise which: (1) acquired and owned or leased the surface tracts and coal in the Boundaries; (2) mined and sold coal from tracts within the Boundaries; (3) continue to mine and sell coal from tracts within the Boundaries; and (4) assumed

Peabody's obligations under the 1954 Royalty Agreements. For these reasons, the Armstrong Companies are liable for the payment of royalties to the Plaintiffs for all coal mined and sold by the Armstrong Defendants, in accordance with the terms of the 1954 Royalty Agreements, and are necessary parties in this litigation.

52. The Armstrong Companies, through their operating subsidiary, Armstrong Coal, began mining coal in the Boundaries in April 2008. Since that time, Armstrong Coal has continuously mined and sold substantial quantities of coal from lands located in the Boundaries, and is currently mining coal in the Boundaries. No royalties have been paid to the Plaintiffs on any of the coal which Armstrong Coal has mined and sold from lands located in the Boundaries since April 2008. On information and belief, the approximate amount of royalties that would be owed to the Plaintiffs on the coal mined and sold from the Boundaries by Armstrong Coal to date, in accordance with the terms of the 1954 Royalty Agreements, is approximately \$11,000,000.

53. In May 2008, the Plaintiffs filed suit in the Circuit Court for the City of St. Louis, Missouri ("the Circuit Court") against Peabody and various Peabody affiliated entities ("the Peabody Defendants"), and against Western Diamond and Armstrong Coal, ("the Armstrong Defendants"), seeking damages for breach of the 1954 Royalty Agreements, as well as declaratory relief, based upon the Peabody Defendants' and the Armstrong Defendants' failure to pay them royalties on coal mined and sold from the Boundaries by the Armstrong Defendants since April 2008.

54. The Peabody Defendants and the Armstrong Defendants thereafter filed separate motions for partial summary judgment on the Plaintiffs' claims, and the Plaintiffs filed separate cross-motions for partial summary judgment on the issue of

liability. On March 29, 2010, the Circuit Court entered an order granting summary judgment in favor of the Peabody Defendants and the Armstrong Defendants, and denying Plaintiffs' motions for partial summary judgment.

55. In reaching this result, the Circuit Court determined, in direct contradiction to the District Court judgment and Sixth Circuit opinion in the Kentucky litigation, that the royalty obligations under the 1954 Royalty Agreements "cannot encumber anything greater than the estate held by Alston Coal Company at the time the agreement [the 1954 Royalty Agreements] was entered into and may only obligate future assignees to the extent the Alston interests continue to exist." The Circuit Court therefore rejected Plaintiffs' argument that the 1954 Royalty Agreements must be enforced in accordance with their clear and unambiguous terms, and instead found that the 1954 Royalty Agreements are dependent upon the continued existence of the Beaver Dam Lease, and that Peabody's termination of the Beaver Dam Lease therefore terminated the Plaintiffs' rights under the 1954 Royalty Agreements. This finding directly contradicts the unambiguous terms of the 1954 Royalty Agreements, which makes no reference at all to the Beaver Dam Lease. The Circuit Court further determined that Peabody's "merger" of the ownership of certain lands in the Boundaries, which Peabody subsidiaries Central States and Beaver Dam had owned as tenants in common, into a single fee simple ownership by another Peabody affiliate, also caused the 1954 Royalty Agreements to terminate, even though the unambiguous 1954 Royalty Agreements contain no such condition or limitation.

56. The Plaintiffs then appealed the Circuit Court's summary judgment order to the Missouri Court of Appeals Eastern District ("the Court of Appeals"). In their brief

on appeal, the Plaintiffs emphasized that the Circuit Court's finding that the 1954 Royalty Agreements are partially invalid, and its finding that as a lessee and tenant in common, rather than a fee simple owner, Alston could only encumber the subservient estate which it held at the time the 1954 Royalty Agreements were executed, directly contradicted the holdings of the District Court and the Sixth Circuit in the Kentucky litigation, and that the Circuit Court's erroneous conclusion concerning the limitations on Plaintiffs' royalty rights had been conclusively rejected in the Kentucky litigation. In addition, the Plaintiffs argued that because the terms of the 1954 Royalty Agreements are clear and unambiguous, such terms must be enforced as written.

57. In an opinion issued on December 28, 2010, the Missouri Court of Appeals affirmed the Circuit Court's summary judgment order. In affirming, the Court of Appeals ignored the decisions of the District Court and the Sixth Circuit in the Kentucky litigation, and instead held, in direct contradiction to those decisions, that "Alston could not grant greater rights in mineral interests than it held as less than a fee owner," and therefore the termination of the Beaver Dam Lease and the "dissolution" of the tenancy in common form of ownership for certain lands in the Boundaries resulted in a termination of the 1954 Royalty Agreements. The Court of Appeals therefore refused to enforce the 1954 Royalty Agreements in accordance with their clear and unambiguous terms, in contradiction to the long established law of Missouri and Kentucky.

58. The Plaintiffs thereafter filed a motion for rehearing/transfer in the Court of Appeals, in which they stated that the Court of Appeals' decision is in direct conflict with the clear and unambiguous language of the 1954 Royalty Agreements, and in direct conflict with the judgment confirming the extent of Plaintiffs' royalty rights in the

Kentucky litigation. The Court of Appeals denied the Plaintiffs' motion for rehearing/transfer on March 1, 2011.

59. The Plaintiffs thereafter filed an application for transfer in the Missouri Supreme Court, in which the Plaintiffs included the same arguments as referenced above, including the fact that the Court of Appeals' decision is in direct conflict with the District Court and Sixth Circuit decisions in the Kentucky litigation. The Missouri Supreme Court denied Plaintiffs' application for transfer on March 29, 2011.

COUNT I – DECLARATORY JUDGMENT
Violation of the Full Faith and Credit Clause of the
United States Constitution

60. Plaintiffs incorporate by reference herein as if fully set forth all preceding paragraphs of this Petition.

61. Article IV, § 1, of the United States Constitution, which is commonly referred to as the "Full Faith and Credit Clause", states, in pertinent part, that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." Thus, pursuant to the Full Faith and Credit Clause, a final judgment in one state, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for judicial recognition throughout the United States, and for claim and issue preclusion purposes, such judgment gains nationwide force.

62. The District Court decision and Sixth Circuit opinion ("the Kentucky litigation judgment") constitute a final judgment, rendered by courts with adjudicatory authority over the subject matter and persons governed by the judgment, including the Plaintiffs and Peabody. Those decisions conclusively determined that the Plaintiffs,

pursuant to the terms of the 1954 Royalty Agreements, have an established property right to be paid royalties on coal mined and sold by Peabody, its successors and assigns from any of the lands within the Boundaries, regardless of whether the coal is mined from the 1954 properties or the after-acquired Properties. Pursuant to the applicable Kentucky law regarding claim preclusion and issue preclusion, the Kentucky litigation judgment is binding on Peabody and its affiliates, and on the Armstrong Companies, who are in privity with Peabody and its affiliates.

63. Pursuant to the Full Faith and Credit Clause, the Circuit Court and the Court of Appeals were required to adhere to the Kentucky litigation judgment that the 1954 Royalty Agreements are valid Agreements, and that Peabody's obligations to pay royalties under those Agreements extend to coal mined and sold from any of the lands in the Boundaries, regardless of whether such lands are 1954 Properties or after-acquired Properties.

64. The Circuit Court and the Court of Appeals, however, violated the Full Faith and Credit Clause by refusing to adhere to the Kentucky litigation judgment that the Plaintiffs' royalty rights are not limited to the 1954 Properties, but instead extend to all of the lands in the Boundaries, in accordance with the 1954 Royalty Agreements' express terms. Instead, the Circuit Court and the Court of Appeals, in direct contradiction to the Kentucky litigation judgment, held that Alston could not grant to the Plaintiffs [or their predecessors] greater rights in mineral interests than Alston held as less than a fee owner, a determination which was the justification for their conclusion that the termination of the Beaver Dam Lease and the merger of certain tenancies in common in the Boundaries caused a termination of the 1954 Royalty Agreements.

65. Because the decisions of the Circuit Court and the Court of Appeals directly contradict the Kentucky litigation judgment, the state of Missouri, through its judicial branch, has violated the Full Faith and Credit Clause, and a declaratory judgment vacating the decisions of the Circuit Court and the Court of Appeals is therefore warranted.

WHEREFORE, Plaintiffs request that the Court enter its Order granting a declaratory judgment in favor of the Plaintiffs which declares and adjudicates that:

- (1) The State of Missouri, through the March 29, 2010 judgment of the Circuit Court and the December 28, 2010 decision of the Court of Appeals, has violated the Full Faith and Credit Clause of the United States Constitution; and
- (2) The March 29, 2010 judgment of the Circuit Court and the December 28, 2010 decision of the Court of Appeals should therefore be vacated; and
- (3) For such further relief as the Court deems just.

COUNT II – DECLARATORY JUDGMENT
Judicial Taking in Violation of the Fifth Amendment
of the United States Constitution

66. Plaintiffs incorporate by reference herein as if fully set forth all preceding paragraphs of this Petition.

67. The Fifth Amendment of the United States Constitution ("the Fifth Amendment") prohibits the Government, including the judicial branch, from taking private property for a private use. The Fifth Amendment's prohibition against taking private property for a private use is made applicable to the state of Missouri through the Fourteenth Amendment of the United States Constitution. The Fifth Amendment

therefore prohibits the state of Missouri, including its judiciary, from taking private property for a private use.

68. As set forth herein, Plaintiffs have an established property and contractual right to be paid royalties on coal mined and sold by Peabody, its successors and assigns, from any of the lands within the Boundaries, in accordance with the unambiguous terms of the 1954 Royalty Agreements. Plaintiffs' established property right to be paid such royalties vested at the time the Royalty Agreements were executed on November 17, 1954, and Plaintiffs have a vested right to be paid royalties on coal mined and sold from any of the lands in the Boundaries by Peabody, its successors and assigns, regardless of whether the coal is mined from the 1954 Properties or from the after-acquired Properties, as the Kentucky litigation judgment confirmed.

69. The decisions by the Circuit Court and the Court of Appeals terminated and eliminated the Plaintiffs' property rights under the 1954 Royalty Agreements, and constitute an unlawful "judicial taking" of Plaintiffs' established property rights, in violation of the Fifth Amendment.

70. Neither the Circuit Court nor the Court of Appeals had a fair or substantial basis to eliminate or terminate Plaintiffs' established property rights as described above, because the clear and unambiguous language of the 1954 Royalty Agreements expressly provides that the Plaintiffs' royalty rights extend to coal mined and sold from "any of the lands" in the Boundaries by Alston, its successors and assigns. The 1954 Royalty Agreements should therefore be enforced in accordance with their unambiguous terms, in accordance with the established substantive law of both Kentucky and Missouri. The decisions of the Circuit Court and Court of Appeals directly contradict the unambiguous

terms of the 1954 Royalty Agreements, and are not supported by any applicable legal authority. In addition, the Circuit Court's and the Court of Appeals' decisions directly contradict the Kentucky litigation judgment, which conclusively confirmed the Plaintiffs' rights to be paid royalties on all coal mined and sold by Peabody, its successors and assigns, from any of the lands in the Boundaries, including those lands in the Boundaries which were not owned or leased by Alston on November 17, 1954.

71. Because the Circuit Court's and the Court of Appeals' decisions terminated the Plaintiffs' established property rights, with no legal basis to justify such decisions, and terminated the Peabody Companies' and the Armstrong Companies' obligations to pay Plaintiffs royalties on coal mined and sold by Armstrong Coal from the Boundaries, the Circuit Court's and the Court of Appeals' decisions constitute an unlawful "judicial taking" of Plaintiffs' property for a private use, in violation of the Plaintiffs' rights under the Fifth Amendment.

WHEREFORE, Plaintiffs request that the Court enter its Order granting a declaratory judgment in favor of the Plaintiffs which declares and adjudicates that:

- (1) The State of Missouri, through the March 29, 2010 judgment of the Circuit Court and the December 28, 2010 decision of the Court of Appeals, has unconstitutionally "taken" the Plaintiffs' established property rights for a private use in violation of the Plaintiffs' rights under Article 1, § 28 of the Missouri Constitution;
- (2) The March 29, 2010 judgment of the Circuit Court and the December 28, 2010 decision of the Court of Appeals should therefore be vacated; and
- (3) For such further relief as the Court deems just.

COUNT III – DECLARATORY JUDGMENT
Judicial Taking in Violation of Article I, Section 28, of the Missouri Constitution

72. Plaintiffs incorporate by reference herein as if fully set forth all preceding paragraphs of this Petition.

73. Article I, § 28 of the Missouri Constitution prohibits the state of Missouri from taking private property for a private use with or without compensation. This prohibition extends to the judicial branch of the state of Missouri.

74. As set forth herein, Plaintiffs have an established property and contractual right to be paid royalties on coal mined and sold by Peabody, its successors and assigns, from any of the lands within the Boundaries, in accordance with the unambiguous terms of the 1954 Royalty Agreements. Plaintiffs' property right to be paid royalties vested at the time the Royalty Agreements were executed on November 17, 1954, and Plaintiffs have an established right to be paid royalties on coal mined and sold from any of the lands in the Boundaries by Peabody, its successors and assigns, regardless of whether the coal is mined from the 1954 Properties, or from the after-acquired Properties, as the Kentucky litigation judgment confirmed.

75. Neither the Circuit Court nor the Court of Appeals had a fair or substantial basis to terminate Plaintiffs' established property rights, because their rulings contradict the clear and unambiguous language of the 1954 Royalty Agreements, which expressly provide that the Plaintiffs' royalty rights extend to coal mined and sold from "any of the lands" in the Boundaries by Alston, its successors and assigns. Those unambiguous terms should be enforced as written, pursuant to the established substantive law of both Kentucky and Missouri. In addition, the Circuit Court's and the Court of Appeals' decisions directly contradict the Kentucky litigation judgment, which conclusively

adjudicated and confirmed the Plaintiffs' right to be paid royalties on all coal mined and sold by Peabody, its successors and assigns, from any of the lands in the Boundaries, including those lands in the Boundaries which were not owned or leased by Alston on November 17, 1954.

76. Because the Circuit Court and the Court of Appeals' decisions eliminated and terminated the Plaintiffs' established property rights, with no substantial or lawful basis to justify such decisions, and terminated the Peabody Companies' and Armstrong Companies' obligations to pay Plaintiffs royalties on coal mined and sold by Armstrong Coal from the Boundaries, the Circuit Court's and the Court of Appeals' decisions constitute an unlawful "judicial taking" of Plaintiffs' property for a private use, in violation of the Plaintiffs' rights under Article I, § 28 of the Missouri Constitution.

WHEREFORE, Plaintiffs request that the Court enter its Order granting a declaratory judgment in favor of the Plaintiffs which declares and adjudicates that:

- (1) The State of Missouri, through the March 29, 2010 judgment of the Circuit Court and the December 28, 2010 decision of the Court of Appeals, has unconstitutionally "taken" the Plaintiffs' established property rights for a private use, in violation of the Plaintiffs' rights under Article I, § 28 of the Missouri Constitution;
- (2) The March 29, 2010 judgment of the Circuit Court and the December 28, 2010 decision of the Court of Appeals should therefore be vacated; and
- (3) For such further relief as the Court deems just.

COUNT IV – DECLARATORY JUDGMENT
Denial of Substantive Due Process in Violation of Article I, Section 10,
of the Missouri Constitution

77. Plaintiffs incorporate by reference herein as if fully set forth all preceding paragraphs of this Petition.

78. Article I, § 10 of the Missouri Constitution provides that the state of Missouri cannot deprive a person of his property without due process of law. This constitutional prohibition extends to the judicial branch of the state of Missouri.

79. As set forth herein, Plaintiffs have an established property and contractual right to be paid royalties on coal mined and sold by Peabody, its successors and assigns, from any of the lands within the Boundaries. Plaintiffs' property right to be paid such royalties vested at the time the Royalty Agreements were executed on November 17, 1954, and Plaintiffs have a vested right to be paid royalties on coal mined and sold from any of the lands in the Boundaries by Peabody, its successors and assigns, regardless of whether the coal is mined from the 1954 Properties or from the after-acquired properties, as the Kentucky litigation confirmed.

80. The decisions by the Circuit Court and the Court of Appeals deprived the Plaintiffs of their valid and established property rights under the 1954 Royalty Agreements in violation of the Plaintiffs' substantive due process rights under Article I, § 10 of the Missouri Constitution.

81. Neither the Circuit Court nor the Court of Appeals had any legal basis to deprive Plaintiffs of their established property rights as described above, and their decisions were truly irrational because their rulings contradict the clear and unambiguous language of the 1954 Royalty Agreements, which expressly provide that the Plaintiffs'

royalty rights extend to coal mined and sold from "any of the lands" in the Boundaries by Alston, its successors and assigns. The 1954 Royalty Agreements should be enforced in accordance with their express terms, pursuant to the established substantive law of both Missouri and Kentucky, and the Circuit Court's and the Court of Appeals' decisions are therefore in contradiction to the established substantive law of Missouri and Kentucky. In addition, the Circuit Court's and the Court of Appeals' decisions directly contradict the Kentucky litigation judgment, which conclusively adjudicated and confirmed the Plaintiffs' right to be paid royalties on all coal mined and sold by Peabody, its successors and assigns, from any of the lands in the Boundaries, including those lands in the Boundaries which were not owned by Alston on November 17, 1954.

82. Because the Circuit Court's and the Court of Appeals' decisions to deprive the Plaintiffs of their valid and established property rights were truly irrational, with no legal basis to justify such decisions, and terminated the Peabody Companies' and the Armstrong Companies' obligations to pay Plaintiffs royalties on coal mined and sold by Armstrong Coal from the Boundaries, the Circuit Court's and the Court of Appeals' decisions have violated the substantive due process rights of the Plaintiffs under Article I, § 10 of the Missouri Constitution.

WHEREFORE, Plaintiffs request that the Court enter its Order granting a declaratory judgment in favor of the Plaintiffs which declares and adjudicates that:

(1) The State of Missouri, through the issuance of the March 29, 2010 judgment of the Circuit Court and the December 28, 2010 judgment of the Court of Appeals, have violated the Plaintiffs' substantive due process rights under Article I, § 10 of the Missouri Constitution;

- (2) The March 29, 2010 judgment of the Circuit Court and the December 28, 2010 decision of the Court of Appeals' decisions should therefore be vacated; and
- (3) For such further relief as the Court deems just.

COUNT V – DECLARATORY JUDGMENT

Denial of Substantive Due Process in Violation of the Fourteenth Amendment of the United States Constitution

83. Plaintiffs incorporate by reference herein as if fully set forth all preceding paragraphs of this Petition.

84. The Fourteenth Amendment of the United States Constitution prohibits the State of Missouri from depriving "any person of life, liberty or property, without due process.

85. As set forth herein, Plaintiffs have an established property and contractual right to be paid royalties on coal mined and sold by Peabody, its successors and assigns, from any of the lands within the Boundaries. Plaintiffs' property right to be paid such royalties were established and vested when the 1954 Royalty Agreements were executed on November 17, 1954, and Plaintiffs have an established right to be paid royalties on coal mined and sold from any of the lands in the Boundaries by Peabody, its successors and assigns, regardless of whether the coal is mined from the 1954 Properties or from the after-acquired Properties, as the Kentucky litigation confirmed.

86. The decisions by the Circuit Court and the Court of Appeals deprived the Plaintiffs of their established property rights under the 1954 Royalty Agreements, in violation of the Plaintiffs' substantive due process rights under the Fourteenth Amendment.

87. Neither the Circuit Court nor the Court of Appeals had any legal basis to deprive the Plaintiffs of their established property rights as described above, and their decisions were arbitrary and clearly irrational, because their rulings contradict the clear and unambiguous language of the 1954 Royalty Agreements, which unambiguously provide that the Plaintiffs' royalty rights extend to coal mined and sold from "any of the lands" in the Boundaries by Alston, its successors and assigns. Those Agreements should be enforced in accordance with their express terms, pursuant to the established substantive law of both Kentucky and Missouri. In addition, the Circuit Court's and the Court of Appeals' decisions directly contradict the Kentucky litigation judgment, which conclusively adjudicated and confirmed that the Plaintiffs' right to be paid royalties on all coal mined and sold by Peabody, its successors and assigns, from any of the lands in the Boundaries, including those lands which were not owned by Alston on November 17, 1954.

88. Because the Circuit Court's and the Court of Appeals' decisions to deprive the Plaintiffs of their valid and established property rights were arbitrary and irrational, with no legal basis to justify such decisions, and terminated the Peabody Companies' and the Armstrong Companies' obligations to pay Plaintiffs royalties on coal mined by Armstrong Coal from the Boundaries, the Circuit Court's and the Court of Appeals' decisions violated the substantive due process rights of the Plaintiffs under the Fourteenth Amendment of the United States Constitution.

WHEREFORE, Plaintiffs request that the Court enter its Order granting a declaratory judgment in favor of the Plaintiffs which declares and adjudicates that:

(1) The State of Missouri acting through the March 29, 2010 judgment of the Circuit Court and the December 28, 2010 decision the Court of Appeals, has violated the Plaintiffs' substantive due process rights under the Fourteenth Amendment of the United Constitution; (2) The March 29, 2010 judgment of Circuit Court and the December 28, 2010 decision of the Court of Appeals' decisions should therefore be vacated; and

(3) For such further relief as the Court deems just.


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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was sent by United States mail, postage pre-paid, and emailed this 20th day of January, 2012, to the following counsel of record:

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A handwritten signature in black ink, appearing to read "Jeffrey J. Lowe", is written over a horizontal line. The signature is fluid and cursive, with a large loop on the left and a smaller loop on the right.