ALPHA, ARCH, PEABODY ENERGY: BAD BUSINESS DECISIONS ARE THE TRUE WAR ON COAL

Over the past year, three of the United States' major coal companies filed for bankruptcy: Alpha Natural Resources in August 2015;[1] Arch Coal in January 2016;[2] and Peabody Energy in April 2016.[3] Although these companies and their trade association allies have often blamed environmental regulations for their precarious financial state, the truth is that debt-fueled acquisitions hobbled their finances at a time when market conditions were rapidly souring. Namely, Alpha Natural Resources, Peabody Energy, and Arch Coal bet big on future Chinese coal demand growth in 2011, going into debt to finance major expansions into metallurgical coal production during the year it was at peak price, only to see markets decline soon after the transactions were complete. At the same time, top executives were awarded record financial compensation, while slashing employee benefits and laying off workers.

- **Alpha Natural Resources** debt-financed the acquisition of Massey Energy for $7.1 billion in 2011 to secure what it saw as "a big opportunity to advance Alpha's position as a premier supplier of metallurgical coal."[4]
- **Arch Coal** debt-financed the acquisition of metallurgical coal producer International Coal Group for $3.4 billion in 2011.[5]
- **Peabody Energy** debt-financed their acquisition of McArthur Coal for $5.1 billion in 2011 to expand metallurgical coal production in Australia.[6]

These acquisitions happened at a time when the price metallurgical coal was at a three-year high, and right before its precipitous decline to two-thirds of its 2011-price in 2014.

Metallurgical Coal export price to China ($/short ton)						
Year	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
Metallurgical	$111.32	$122.59	$160.39	$151.70	$119.98	$100.85
United State Energy Information Administration, Export price to China of All Coal						

Decreased Chinese demand for steel led to a slump in demand for metallurgical coal at the same time that an upsurge in fracked natural gas production undercut coal's use in power generation, leaving the companies heavily in debt after coal prices fell.[7] Despite declining prices, these companies continued to produce coal, leading to overcapacity and further price declines; and coal executives were rewarded with million and multimillion dollar compensation packages in the years after these acquisitions. Alpha Natural Resources Chairman and CEO Kevin Crutchfield's total annual compensation increased by more than $1.5 million between 2012 and 2014.[8] Arch Coal President and CEO John W. Eaves saw his total compensation increase from about $3.9 million in

[1] www.kcclc.net/alpharestructuring
[2] Arch Coal Restructuring Information, www.archcoal.com/restructuring/
[3] www.reuters.com/article/us-peabody-energy-bankruptcy-idUSKCN0XA0E7
[4] Rhodium Group, http://rhg.com/notes/the-hidden-cause-of-americas-coal-collapse
[5] Rhodium Group, http://rhg.com/notes/the-hidden-cause-of-americas-coal-collapse
[6] St. Louis Business Journal, www.bizjournals.com/stlouis/news/2011/12/20/peabody-completes-macarthur-coal.html
[7] Rhodium Group, http://rhg.com/notes/the-hidden-cause-of-americas-coal-collapse
[8] Page 45, www.sec.gov/Archives/edgar/data/1301063/000119312515124338/d885726ddef14a.htm

2012 to more than $7.3 million in 2014. Peabody Energy, Chairman and Chief Executive Officer Gregory Boyce's salary jumped from about $9.4 million in 2012 to $10.7 million in 2013 to almost $11 million in 2014.[9] These massive compensation packages were delivered after the companies committed themselves to producing more metallurgical coal even as its price slumped from $160.39 per short ton in 2011 to $100.85 in 2014.

In November 2015, the consultancy McKinsey and Co. reported that "the United States has plenty of coal, but the world does not need it." According to McKinsey, coal companies faced "crippling liabilities that will outlive mine closures" in response to overcapacity. McKinsey analyzed financial statements of major coal companies and concluded that coal producers would not be able to service the industry's total debt of $70 billion even if supply and demand reached a balance. According to McKinsey, the single largest liability faced by major coal companies was long-term debt, not contractual obligations or pension obligations, and the companies' current debt levels were not serviceable even at peak-coal prices. The report concluded that the "the crisis the coal industry faces comprises a number of interlinked parts: Overcapacity and continuing demand shrinkage, chronic indebtedness and environmental liabilities, and in sufficient profitability, which together limit its freedom of maneuver."[10] These factors drove Alpha, Arch, and Peabody into bankruptcy. Along the way- and after filing for protection- the companies cut jobs and employment benefits and attempted to evade reclamation responsibilities in order to protect their bottom-lines. In one particularly egregious example, Alpha asked the bankruptcy court for approval of a $7.4 million incentive compensation plan (KEIP) in December 2015. The play was to pay bonuses to staff and differed from its retention plan aimed at executives. The KEIP was designed to offer $7.4 million to 17 executives contingent on meeting performance goals through 2016.[11]

Instead of taking responsibility for their decisions, coal industry representatives lay the blame for their financial woes on mine workers, unions, environmental regulations, and the federal government in an effort to shirk their contractual obligations. In 2015, West Virginia Coal Association President Billy Raney blamed the federal government for the coal industry's economic problems. Raney said "for seven years the federal government has had its boot on our throat… They have absolutely influenced the market, they influenced the permits, they've created an absolute sphere of uncertainty that drives everyone into a real challenged environment."[12] Likewise, Alpha, Arch, and Peabody have repeatedly warned that public initiatives to stem the effects of global climate change could hurt their bottom lines by further reducing demand for coal.

ALPHA NATURAL RESOURCES

Alpha Natural Resources Went Bankrupt In August 2015; Moved To Cut Worker Benefits; Increased Spending On Lobbying; Blamed Environmental Regulation. Alpha Natural Resources filed for Chapter 11 bankruptcy protection on August 3, 2015. SNL Power Policy Week attributed the bankruptcy to "decline in utility coal demand and significant debt levels weighted

[9] Page 53, www.sec.gov/Archives/edgar/data/1064728/000119312515103287/d868404ddef14a.htm
[10] McKinsey and Co, *Downsizing the US coal industry: Can a slow-motion train wreck be avoided?* www.mckinsey.com/industries/metals-and-mining/our-insights/downsizing-the-us-coal-industry
[11] Casper Star Tribune, http://trib.com/business/energy/alpha-natural-resources-seeks-to-pay-executive-bonuses-while-cutting/article_3ce26720-48c1-5b1a-b7c6-7764524395a1.html
[12] SNL Daily Coal Report, 1/14/16

against a weak metallurgical coal market…"[13] In September 2015, Alpha secured a $692 million bankruptcy loan to fund operations that did not require it to cut benefits its unionized membership.[14] However, six weeks later, Alpha filed a motion to terminate unvested non-pension worker benefits.[15] Alpha told the court that the benefits represented a $125 million liability to 4,500 non-union employees.[16] The plan was decried by former Alpha chairman and CEO Mike Quillen who said "to suddenly try to eliminate retiree health benefits of thousands of families goes against the values the company was built on."[17] SNL Daily Coal Report noted that Alpha increased lobbying spending by 190 percent during the fourth quarter of 2015- the same time that it was trying to eliminate healthcare benefits.[18] Since, Alpha has petitioned the court to break contracts with the United Mine Workers to modify retiree healthcare benefits,[19] and paid a total of $28.4 million in bankruptcy advisory fees.[20] It has also repeatedly warned that public initiatives to stem the effects of global climate change could hurt its bottom line by "reduc[ing] the value of our coal and gas assets."[21]

Alpha Natural Resources – Alpha And Wyoming Negotiated Bonding Agreement That Secured Only 15 Percent Of Estimated Reclamation Cost; Reorganization Plan Omitted Reclamation Liabilities In Wyoming. Alpha's bankruptcy petition came after the Wyoming Department of Environmental Quality determined that Alpha was not qualified for self-bonding, and set a 90-day deadline for it to cover $411 million in estimated reclamation costs. These costs were not addressed in Alpha's restructuring plan.[22] Wyoming and Alpha worked out a deal in September 2015 so that the state would have a "superpriority claim" of just $61 million should Alpha stop operating.[23] In exchange, Wyoming did not revoke Alpha's permits.[24] The Office of Surface Mining and Reclamation sent notices to Wyoming state regulators questioning whether the regulators' handling to self-bonded companies in bankruptcy, such as Alpha and Arch, complied with state and federal requirements.[25]

In 2014, after attempting to cut worker benefits and having to go into bankruptcy, Alpha Natural Resource rewarded four top executives with more than $14 million in total compensation.

Alpha Natural Resources Total Compensation To Top Executives		
Officer	**Year**	**Total Compensation**
Kevin Crutchfield	2014	$7,775,349

[13] SNL Power Policy Week, 11/11/15
[14] Register-Herald, 9/21/15
[15] In re: Alpha Natural Resources, LLC, motion filed 11/3/15
[16] WCYB.com, 11/11/15
[17] WCYB.com, 11/11/15
[18] SNL Daily Coal Report, 2/24/16
[19] Charleston Gazette-Mail, 3/30/16
[20] SNL Daily Coal Report, 4/29/16
[21] Alpha Natural Resources Form 10-K for periods ending 2010, 2011, 2012, 2013, 2014.
[22] Casper Star Tribune, 3/8/16
[23] Casper Star Tribune, 9/8/15
[24] Casper Star-Tribune, 4/30/16
[25] Platts Coal Trader, 2/23/16

Chairman And Chief Executive Officer	2013	$7,955,008
	2012	$6,193,368
Frank J. Wood Executive Vice President And Chief Financial Officer	2014	$2,162,315
	2013	$2,049,137
	2012	$2,302,020
Philip Cavatoni Executive Vice President and Chief Financial and Strategy Officer	2014	$1,976,111
	2013	$1,811,660
	2012	$2,544,626
Vaughn R. Groves Former Executive Vice President, General Counsel, and Corporate Secretary	2014	$2,757,693
	2013	$1,588,928
	2012	$1,683,694
Brian D. Sullivan Executive Vice President and Chief Financial Officer	2014	$1,600,090
	2013	-
	2012	-
Total	**-**	**$42,399,999**
Alpha Natural Resources Form DEF 14A, filed April 9, 2015		

ARCH COAL

Arch Coal's 2016 Bankruptcy "Primarily Triggered Because Of Debt Incurred By Their Acquiring Operations In Central Appalachia" To Expand Metallurgical Mining Operations. According to an article in Platts Coal Trader, "A bulk of Arch's debt came from its $3.4 billion deal in 2011 to acquire International Coal Group."[26] Securities brokerage Clarksons Platou Managing Director Jeremy Sussman concluded that Arch failed because of the debt it assumed to expand metallurgical coal operations.[27] Unlike Alpha and Peabody, Arch did not have a unionized workforce when it went into bankruptcy.[28] Like Alpha, Arch Coal stated in its annual reports to investors that efforts to curb global climate change could impact its business by reducing demand for coal.[29] This year, Arch laid off 230 employees from its Black Thunder Mine including Sean Natchke who told Black Hills Fox that "Times are tough, and it almost seems like it's cutting out your legs from under you before the wheelchair was invented. So it makes it really tough." Arch's president countered that "We have made every effort to preserve as many positions as possible, and this decision was made only after a number of other cost-cutting measures were exhausted." Natchke told Black Hills Fox that "A normal company might just give you the boot to the curve and say 'good luck, have fun.' But Arch did a really good job at making the transition as easy as possible for us."[30]

Arch's efforts to make the transition to unemployment as easy as possible did not include cutting executive compensation. During the year ahead of its bankruptcy, Arch Coal paid executives five executives almost $20 million dollars, and paid more $18.5 million to bankruptcy advisors.[31]

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[26] Platts Coal Trader, 1/11/16
[27] SNL Daily Coal Report, 2/1/16
[28] The Wall Street Journal, 10/27/15
[29] Arch Coal Inc Form 10-K for periods ending 2010, 2011, 2012, 2013, and 2014.
[30] Black Hills Fox, 4/3/16
[31] SNL Daily Coal Report, 4/29/16

Arch Coal, Inc. Total Compensation To Top Executives		
Officer	**Year**	**Total Compensation**
John W. Eaves Chief Executive Officer	2014	$7,345,397
	2013	$4,348,086
	2012	$3,950,465
John T. Drexler Chief Financial Officer	2014	$3,285,040
	2013	$2,034,571
	2012	$1,892,470
Paul A. Lang Chief Operating Officer	2014	$4,581,284
	2013	$2,837,362
	2012	$2,603,060
Kenneth D. Cochran Senior Vice President Operations	2014	$2,305,015
	2013	$1,368,410
	2012	-
Robert G. Jones Senior Vice President Law, General Counsel, and Secretary	2014	$2,415,564
	2013	$1,510,896
	2012	$1,514,766
Total	**-**	**$41,992,386**
Arch Coal Form DEF 14A, filed March 20, 2015		

Arch Coal – Interim Financing Package Covers Less Than 20 Percent of $468 Million in Reclamation Expenses. A federal bankruptcy judge approved Arch Coal's request for a $275 million bankruptcy loan. The Billings Gazette reported that "The interim financing package included $75 million to cover reclamation, which can be applied toward Arch's cleanup costs. Environmentalists had opposed the proposal, noting it guarantees roughly 16 percent of the company's $468 million in estimated reclamation.[32]" The Office of Surface Mining and Reclamation sent notices to Wyoming state regulators questioning whether the regulators' handling of self-bonded companies in bankruptcy, such as Alpha and Arch, complied with state and federal requirements.[33]

PEABODY ENERGY

Peabody Energy Filed For Bankruptcy In March 2016 After Deal To Sell Assets In New Mexico And Colorado To Bowie Resource Partners Failed; Bankruptcy Seen "exclamation point on the industry's struggles and their ripple effect." Peabody's failed $358 million deal with Bowie Resources to sell its New Mexico and Colorado assets put the company at risk of defaulting on loans and lenders pressured the company to enter bankruptcy.[34][35] SNL Daily Coal Report noted that "global headwinds against coal" forced Peabody into bankruptcy.[36] Fox Business News reported that "The bankruptcy of Peabody Energy (BTU), the world's largest private coal

[32] Billings Gazette, 2/29/16
[33] Platts Coal Trader, 2/23/16
[34] Dow Jones Institutional News, 11/20/15
[35] Inside Energy, 3/5/16
[36] SNL Daily Coal Report, 4/15/16

producer, puts an exclamation point on the industry's struggles and their ripple effect."[37] Peabody Energy paid bankruptcy advisors a total of $27.5 million through April 2016 and some were paid as much as $1,075 per hour.[38]

- 2007: Peabody Energy Lumped Employee Benefits Obligations And Underperforming Mines On The Newly Created Patriot Coal Corporation; Patriot Went Bankruptcy Twice. Peabody Energy spun-off certain mines and liabilities when it created Patriot Energy as a separate company in 2007.[39] Patriot filed for bankruptcy in 2012 and, in 2013, sought to slash healthcare coverage for retired union workers and do away with its collective bargaining agreement with the United Mine Workers of America.[40] UWMA said Patriot's request would "put thousands of retired coal miners, their dependents or their widows on the path to financial ruin, worsening health conditions or even death."[41] In 2013, Patriot sued Peabody to block it from using Patriot's bankruptcy to cut its own obligations to retirees.[42] When Peabody argued that it no longer had to pay future benefits, Secretary of State Hillary Clinton said "I hope Peabody does the right thing, reverses course and honors the commitments it's made."[43] Patriot and its Creditors also asked the bankruptcy court for permission to probe whether Peabody's decision to transfer to Patriot certain mines and certain environmental and healthcare liabilities was proper under the law.[44] Patriot also sought permission from the bankruptcy court to annul its union contracts.[45] The court approved the request, after which Patriot and the Union settled to mitigate the effect of a cut to wages and benefits.[46]

Peabody Energy – Potentially operating outside the law by extracting coal "while failing to meet criteria for self-bonding;" obligations totaled more than $1 billion. Federal officials warned state regulators in Wyoming, Colorado, and New Mexico that Peabody Energy was potentially operating outside of the law by continuing to "extract coal while failing to meet criteria for self-bonding."[47] As Environmental Law and Policy Center Executive Director Howard Learner said, "The risk is that Peabody's responsibility to clean up from its mining operations will be washed away in a bankruptcy proceeding, and Illinois taxpayers will be left holding the financial bag." Midwestern Energy News reported that "The federal regulations on self-bonding, developed in 1983, make clear that companies with a chance of bankruptcy should not be eligible."[48]

Peabody Energy rewarded its executives with multimillion dollar compensation packages ahead of its decision to enter bankruptcy.

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37 Fox Business News, 4/13/16
38 SNL Daily Coal Report, 4/29/16
39 St. Louis Business Journal, 11/9/15
40 St. Louis Post-Dispatch, 3/15/13
41 St. Louis Post-Dispatch, 3/15/13
42 St. Louis Post-Dispatch, 3/15/13
43 Register-Herald, 12/6/15
44 Bloomberg, 4/2/13
45 Coal Age, 6/13
46 US Official News, 8/12/13
47 Casper Star Tribune, 2/17/16
48 Midwestern Energy News, 2/23/16

Peabody Energy Total Compensation To Top Executives		
Officer	**Year**	**Total Compensation**
Gregory H. Boyce Chairman and Chief Executive Officer	2014	$10,994,083
	2013	$10,789,389
	2012	$9,491,405
Glenn L. Kellow Chief Operating Officer	2014	$5,579,516
	2013	$3,978,864
	2012	-
Michael C. Crews Chief Financial Officer	2014	$2,899,077
	2013	$3,018,233
	2012	$3,840,069
	2011	$2,515,172
Charles G. Meintjes President – Peabody Australia	2014	$2,937,597
	2013	$3,286,010
	2012	$2,299,042
Kemal Williamson President – Peabody Americas	2014	$2,403,824
	2013	-
	2012	-
Total	**-**	**$64,032,281**
Peabody Energy Corp. Form DEF 14A Filed: March 24, 2015 (Period: May 4, 2015)		

CLOUD PEAK ENERGY

Cloud Peak Energy Only Mines Thermal Coal. As of February 2016, Cloud Peak Energy had $491 million in debt and more than half of that is not due until 2019. Debt-wise, Cloud Peak Energy is in a comfortable place compared to Alpha, Arch Coal, and Peabody Energy, and the company is actively managing for a future defined by low coal prices and significantly reduced demand.[49] However, Cloud Peak Energy actively blames environmental regulation and the federal government for coal's market woes, just like Alpha, Arch, and Peabody Energy.

Cloud Peak Energy's Stable Financial Position and Operations Partly Stems from the Fact That It Took Advantage of a Royalty Valuation Loop-Hole. In 2011, 19 percent of Cloud Peak Energy's revenue came from selling just five percent of its coal in Asian markets. A Reuters investigation found that the practice of valuing coal at low domestic prices for royalty purposes then re-selling it abroad for higher international prices may "pad the bottom line for the mining sector" if Asian exports surge. When asked about it, Cloud Peak Energy spokeswoman Karla Kimrey said "If you look at the regulations, we are not required to do a net-back." Cloud Peak Energy claimed that it paid all that the regulations required.[50]

Cloud Peak Energy Blamed Public Concern About Climate Change For Weak Market; Lashed Out At Proposed Change To Royalty Regulation. Cloud Peak Energy Chief Executive Office Colin Marshall told investors that the Obama Administration, "with the active NGO

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[49] Fair Disclosure Wire, 2/17/16
[50] Reuters, 12/4/12

assistance," deliberately makes it difficult for the company to mine coal. He added that "the outcome of the next election could have an impact on" the outcome of the federal coal leasing moratorium and review process.[51] Cloud Peak Energy has warned that climate change could impact its ability to transport coal, which would hurt its operations. Although Cloud Peak Energy does not expect the moratorium to impact its operations in the near term, it disclosed that a change to ONRR's coal royalty valuation regulations "could adversely impact its vertically integrated logistics business." In fact, the proposed rule already influenced its decision not to export coal this year. According to Cloud Peak Energy, "The potential regulatory cost increases from this ONRR proposal, combined with already depressed international prices, influenced our decision not to make 2016 export sales."[52]

Cloud Peak Energy Total Compensation To Top Executives		
Officer		**Total Compensation**
Colin Marshall Chief Executive Officer	2015	$4,190,832
	2014	$4,078,258
	2013	$4,098,089
	2012	$3,709,436
Gary Rivenes Chief Operations Officer	2015	$1,929,931
	2014	$1,873,423
	2013	$1,866,930
	2012	$1,699,345
Heath Hill Chief Financial Officer	2015	$1,303,353
	2014	-
	2013	-
	2012	-
James Orchard Senior Vice President, Marketing and Government Affairs	2015	$1,226,316
	2014	$1,196,660
	2013	$1,221,928
	2012	$1,124,975
Bryan Pecherskey Executive Vice President, General Counsel, and Corporate Secretary	2015	$1,219,051
	2014	$1,033,982
	2013	$1,029,053
	2012	$921,182
Michael Barrett Former Executive Vice President and Chief Financial Officer	2015	$147,084
	2014	$1,667,939
	2013	$1,686,695
	2012	$1,533,324
Total	**-**	**$38,757,786**
Cloud Peak Energy Form Def A Filed March 28, 2016		

[51] Fair Disclosure Wire, 2/17/16
[52] Cloud Peak Energy Form 10-k filed February 18, 2016 for period ending December 31, 2015