

DISTRICT COURT OF THE UNITED STATES SOUTHERN
DISTRICT OF NEW YORK.

In Equity No. 11—129.

THE UNITED STATES OF AMERICA, PETITIONER,

VS.

LEHIGH VALLEY RAILROAD COMPANY, ET AL., DEFENDANTS.

SUPPLEMENTAL ORDER APPROVING UNIFICATION OF
BUSINESS OF THE LEHIGH VALLEY COAL COMPANY
AND LEHIGH VALLEY COAL SALES COMPANY.

Upon the Petition of The Lehigh Valley Coal Company and Lehigh Valley Coal Sales Company, defendants, herein, verified November 2 and 3, 1928, and upon the Answer of the United States, dated November 28, 1928, and upon all the proceedings heretofore had herein, and upon the notice of motion herein, dated November 16, 1928, with proof of due timely service thereof upon Hon. Charles H. Tuttle, U. S. Attorney for the Southern District of New York, Solicitor for the United States of America, and proof of due and timely service thereof upon Hon. William J. Donovan, Assistant to the Attorney General, and said motion having duly come on to be heard, and after hearing Gilbert H. Montague, Solicitor for The Lehigh Valley Coal Company and Lehigh Valley Coal Sales Company, defendants and petitioners above mentioned, in support of said motion, and Hon. Elmer B. Collins, Special Assistant to the Attorney General appearing for the United States of America, and not opposing,

Now, therefore, it is Ordered, Adjudged and Decreed as follows:

FIRST: That from the above Petition and the above Answer, it appears that, since the rendition of the Supreme Court's opinion and the interlocutory decree and the final decree herein, circumstances and conditions as regards the above petitioners and the defendant Lehigh Valley Railroad Company have now changed as described in said Petition, with the re-

sult that said petitioners no longer are controlled by but are divorced from said defendant Lehigh Valley Railroad Company, and that the unification of said petitioners' businesses as outlined in said Petition is now necessary in order to maintain economical, efficient and effective competition with other anthracite companies, and that said unification will involve no violation of the anti-trust laws or the Commodities Clause of the Interstate Commerce Act.

SECOND: That because of said change of circumstances and conditions, and because no violation of the Commodities Clause of the Interstate Commerce Act enjoined by the final decree herein or otherwise will be reestablished by the unification of said petitioners' businesses as outlined in said Petition, and because said petitioners have never been and are not now in competition with one another, and because no monopoly or restraint of trade in interstate commerce enjoined by said final decree or otherwise will be reestablished by said unification, the final decree herein is hereby modified by adding the following provisions at the foot thereof:

"Nothing in the provisions of this final decree shall be taken or deemed to prohibit or enjoin the unification of the businesses of The Lehigh Valley Coal Company and Lehigh Valley Coal Sales Company as outlined in the petition of The Lehigh Valley Coal Company and Lehigh Valley Coal Sales Company, verified November 2, and 3, 1928, by which as appears from the Plan and Agreement therein mentioned dated July 28, 1928, a copy of which Plan and Agreement is set forth in 'Schedule A' hereto annexed, it is contemplated

"(a) that all certificates of interest and all stock of your petitioners deposited under said Plan and Agreement shall be transferred to a New Corporation; and

"(b) that in respect of your petitioners said New Corporation thereafter shall possess and exercise all the rights pertaining to its holdings of certificates of interest and stock of your petitioners; and

"(c) that said New Corporation, among its rights above mentioned, shall be entitled to do or cause to be done, to the extent and in the manner permitted by its said rights, such acts by said New Corporation, your petitioners, or any of them, as shall in said New Corporation's opinion be necessary or convenient to accomplish the unification of your petitioners' businesses.

"For greater accuracy, reference is made to said Plan and Agreement set forth in 'Schedule A' hereto annexed.

"Provided, however, that no officer or director of The Lehigh Valley Coal Company or Lehigh Valley Coal Sales Company, or of a New Corporation organized to carry on the combined businesses of The Lehigh Valley Coal Company and Lehigh Valley Coal Sales Company, shall be an officer or director of Lehigh Valley Railroad Company; and

"Provided, further, that The Lehigh Valley Coal Company and Lehigh Valley Coal Sales Company, and any New Corporation organized to carry on the combined businesses of The Lehigh Valley Coal Company and Lehigh Valley Coal Sales Company, shall do no act to bring about any new relation between Lehigh Valley Railroad Company and any of the aforesaid companies that is in violation of the anti-trust laws or the Commodities Clause of the Interstate Commerce Act."

Dated, December 12th, 1928.

Per Curiam

(Signed) WM. BONDY,
U. S. District Judge.

"Schedule A"

THE LEHIGH VALLEY COAL COMPANY
and
LEHIGH VALLEY COAL SALES COMPANY

PLAN AND AGREEMENT.

Dated, July 28, 1928

THOMAS W. LAMONT
THEODORE S. BARBER
RICHARD F. GRANT

Committee

GILBERT H. MONTAGUE
40 Wall Street
New York, N. Y.

J. M. YOUNG
Secretary

23 Wall Street
New York, N. Y.

Counsel

DEPOSITARIES
J. P. MORGAN & Co.
New York, N. Y.

GIRARD TRUST COMPANY
Philadelphia, Pa.

MINERS BANK OF WILKES-BARRE
Wilkes-Barre, Pa.

PLAN.

It is proposed that all certificates of interest in the capital stock of The Lehigh Valley Coal Company deposited under this Plan and the accompanying Agreement, and all stock of the Lehigh Valley Coal Sales Company deposited under this Plan and said Agreement, shall be transferred to and acquired by a corporation now existing or to be organized (in this Plan and in said Agreement called "New Corporation"), and that holders of the Certificates of Deposit representing such deposited certificates of interest in the capital stock of The Lehigh Valley Coal Company and representing such deposited

stock of the Lehigh Valley Coal Sales Company, upon surrendering said Certificates of Deposit as provided in said Agreement, shall receive, subject to the provisions of this Plan and said Agreement, stock of the New Corporation on the following basis:

For each deposited share of interest in the capital stock of The Lehigh Valley Coal Company, one share of Stock Without Par Value of New Corporation;

For each deposited share of the capital stock of the Lehigh Valley Coal Sales Company, one and one-fifth shares of Preferred Stock (par value \$50 per share) of New Corporation as below described.

In lieu of any fraction of a share of stock of New Corporation to be delivered to the holder of any Certificate of Deposit, there will be issued non-voting and non-dividend-bearing scrip which, in amounts calling for one or more full shares, shall be exchangeable for a certificate of such share or shares of stock of New Corporation.

Provisions substantially to the following effect, relative to the Preferred Stock above mentioned of New Corporation, shall be included in the certificate of incorporation or the amended certificate of incorporation of New Corporation:

"Dividends on the preferred stock, as and when declared by the Board of Directors, shall be payable quarterly at the rate of six per cent per annum and no more. Such dividends on the preferred stock shall be set apart for payment before any dividend shall be paid or set apart for payment upon the stock without par value. Such dividends on the preferred stock shall be cumulative, so that if any such quarter-yearly dividend shall not have been fully paid or set apart for payment, such deficiency shall be fully paid or set apart for payment, but without interest, before any dividend shall be paid or set apart for payment on the stock without par value.

"Except as otherwise required by statute, holders of the preferred stock shall have no voting power for the election of directors or for any other purpose, and holders of record of stock without par value shall exclusively possess voting power for the election of directors and for

all other purposes; provided, however, that in case the corporation shall be in default in respect of paying or setting apart for payment full, regular quarter-yearly dividends on the preferred stock for four successive quarter-yearly periods, then and in any such case the holders of record of the preferred stock, until such default shall have been cured, shall be entitled to vote at all meetings of stockholders of the corporation for the election of directors and for all other purposes; but if such default shall at any time be cured, then and thereupon all voting power of the holders of the preferred stock shall cease, subject, however, to being again revived upon any subsequent default of the corporation as above provided. Holders of the preferred stock shall not be entitled to notice of any meeting of stockholders of the corporation except when they have the right to vote thereat as herein provided.

"At any time except when the stock transfer books of the corporation are closed, any of said preferred stock outstanding shall be convertible, share for share, into stock without par value of the corporation, as the same shall be constituted at the time of conversion, upon surrender to the corporation of certificates of such preferred stock, which certificates, if the corporation shall so require, shall be duly endorsed in blank for transfer or accompanied by duly executed stock powers. Such conversion shall be made with adjustment for dividends on such preferred stock and such stock without par value, according as shall be provided in the by-laws of the corporation or by resolution of its Board of Directors. For conversion of such preferred stock into stock without par value, the corporation shall from time to time reserve shares of stock without par value to the extent and for the time necessary for such conversion. Preferred stock received by the corporation upon any such conversion shall not be reissued, nor shall any preferred stock be issued in lieu thereof or in exchange therefor.

"Any time after July 1, 1938, at the option of the Board of Directors of the corporation, the preferred stock shall be subject to redemption in whole or in part at Fifty-five

Dollars (\$55) per share plus all dividends thereon accrued and unpaid, provided that at least sixty (60) days prior to the date of redemption written notice thereof shall have been mailed to the holders of record of the preferred stock. Notice of redemption may be waived by any holder of the preferred stock. On or prior to the tenth day preceding the date set for redemption, any holder of any of the preferred stock called for redemption may convert it into stock without par value of the corporation as above provided. In every case of redemption of less than all the preferred stock then outstanding, the shares so to be redeemed shall be selected in such manner as shall be prescribed by the Board of Directors of the corporation. If, prior to the date of redemption, written notice thereof shall have been duly given or waived, and if, on or before the date of redemption, the funds necessary for the payment of the redemption price of the preferred stock so to be redeemed shall have been set apart for payment, and if, on and after the date of redemption, funds necessary for the payment of the redemption price of the preferred stock so to be redeemed shall continue available for redemption, then, on and after such date of redemption, notwithstanding that a certificate or certificates representing any of the preferred stock so to be redeemed shall not have been surrendered to the corporation for cancellation, all dividends on the shares of the preferred stock so to be redeemed shall cease to accrue, and such shares shall no longer be transferable on the books of the corporation except to the corporation, and the holder or holders of such shares shall have no right therein or in respect of the corporation by reason of the ownership of such shares, other than the right to receive the redemption price upon the surrender of the certificate or certificates representing such shares.

"In event of liquidation, dissolution or winding up of the corporation, before any assets of the corporation shall be distributed among or paid over to the holders of stock without par value, holders of the preferred stock not theretofore converted or called for redemption shall

be paid in full the par value of the preferred stock together with all dividends thereon accrued and unpaid. After such payment to the holders of the preferred stock, the holders of stock without par value shall, to the exclusion of the holders of the preferred stock, share ratably in all the remaining assets of the corporation."

The method of carrying into effect this Plan, and the legal procedure incident thereto, shall be arranged and carried out by the Committee constituted by the accompanying Agreement.

AGREEMENT.

AGREEMENT, Dated July 28, 1928, by and between Thomas W. Lamont, Theodore S. Barber and Richard F. Grant (hereinafter called the "Committee"), parties of the first part, and such holders of certificates of interest in the capital stock of The Lehigh Valley Coal Company (a Pennsylvania corporation) (hereinafter called "Coal certificates") and such holders of stock of the Lehigh Valley Coal Sales Company (a New Jersey corporation) (hereinafter called "Sales stock") as shall become parties hereto in the manner hereinafter provided and their successors in interest (herein called the "Depositors"), parties of the second part:

IN CONSIDERATION of the consent and undertaking of the Committee to act as such in behalf of the Depositors as hereinafter set forth, and of the mutual agreements herein contained, and for other good and valuable considerations, the parties hereto agree, each Depositor agreeing with each of the other Depositors and with the Committee, as follows:

1. The Depositors hereby constitute and appoint Thomas W. Lamont, Theodore S. Barber and Richard F. Grant, a Committee, with all of the powers, rights and privileges by this Agreement conferred upon the Committee.

2. The accompanying Plan is and shall be taken to be a part of this Agreement, with the same effect as though each and every provision thereof had been embodied herein, and said Plan and this Agreement shall be read as parts of one and the same instrument.

3. Holders of Coal certificates and holders of Sales stock may become parties hereto by depositing hereunder the certificates representing their respective Coal certificates and Sales stock with one of the Depositaries hereinafter in paragraph 4 designated, on or before the close of business on September 10, 1928, or such later date as the Committee from time to time may fix as hereinafter provided. Each stock certificate so deposited must be duly endorsed in blank for transfer or accompanied by a duly executed stock power in form approved by the Committee, and the signatures must be guaranteed by a bank or trust company having a New York correspondent or by a New York Stock Exchange firm. Transfer tax stamps need not be attached, the cost of any such stamps which may be required to be affixed being part of the expenses of the Committee under the Plan and this Agreement. Every holder of Coal certificates and every holder of Sales stock who shall so deposit his certificate or certificates therefor shall be held to have assented to and shall be bound by the provisions of the Plan and this Agreement in the same manner and with the same effect as if he had executed the same.

The Committee shall have full power in its discretion from time to time, in general or in particular instances, and upon such general or special terms and conditions as it may see fit, to extend the time for the making of deposits under the Plan and this Agreement, and to accept the deposit under the Plan and this Agreement of Coal certificates or Sales stock after the period at any time limited for such deposit shall have elapsed.

4. Upon depositing as aforesaid his Coal certificates or his Sales stock each Depositor will receive a Certificate or Certificates of Deposit in the name of the Depositor, specifying the Coal certificates or the Sales stock so deposited, and reciting that such Coal certificates or Sales stock have been deposited hereunder, and otherwise in such form as shall be prescribed by the Committee, signed by one of the Depositaries hereinafter designated and registered by the appropriate Registrar. Separate classes

of such Certificates of Deposit shall be created for such Coal certificates and such Sales stock respectively.

For the convenience of Depositors, the Committee hereby appoints each of the following a Depositary of the Committee and hereby appoints the firm, bank or trust company, whose name appears opposite the name of each such Depositary, Registrar to register Certificates of Deposit signed by such Depositary:

<i>Cities</i>	<i>Depositaries</i>	<i>Registrars</i>
New York, N. Y.	J. P. Morgan & Co.	Bankers Trust Company.
Philadelphia, Pa.	Girard Trust Company.	Drexel & Co.
Wilkes-Barre, Pa.	Miners Bank of Wilkes-Barre.	The Wyoming National Bank of Wilkes-Barre, Pa.

For the convenience of Depositors, the Committee may appoint additional Depositaries and Registrars.

Each of said Depositaries shall keep at its office books (which shall be deemed books of the Committee) and shall record in such books the names and addresses (as furnished) of all persons to whom Certificates of Deposit are issued by such Depositary and shall likewise record in such books all transfers of Certificates of Deposit made by such Depositary. The Committee may take steps to have the Certificates of Deposit listed on one or more exchanges. The Committee may from time to time cause the books for the registration or transfer of Certificates of Deposit or of any class thereof to be closed for such period or periods as it may deem necessary or desirable.

The interests represented by the respective Certificates of Deposit issued hereunder shall be transferable, subject to the terms and conditions of the Plan and this Agreement, on the books of the Committee by the holders thereof in person or by duly authorized attorney upon surrender of such Certificates of Deposit, properly endorsed, accompanied with any transfer tax stamps required by law. Thereupon a new Certificate or Certificates of Deposit, registered in the name of the transferee, shall be issued. Any Certificate of Deposit may be so transferred either at the office of the Depositary which issued the same or at the office of any of the Depositaries. Each

Depository shall forward daily, at the end of each day, to each of the other Depositaries, a statement, in such detail as may be requested, of all Certificates of Deposit issued, and of all transfers of Certificates of Deposit made by it during such day; and the Depositaries shall not be responsible or under liability, either to the Committee or to any Depositor, for failing or declining to transfer any Certificate of Deposit issued by another Depository, of the issue of which it shall not have been advised. No Depository shall be under any duty or responsibility in connection with the names in which Certificates of Deposit are issued by any other Depository or the correctness of any transfer made by any other Depository. Each transferee of any Certificate of Deposit shall be deemed to be a Depositor and shall be a party to this Agreement, and, as such, entitled to the same rights and privileges, and in every way as fully bound by and subject to the Plan and this Agreement, as the original Depositor.

Title to the Certificates of Deposit, when duly endorsed, shall be transferable, to the extent permitted by law, with the same effect as in the case of negotiable instruments. Each holder of a Certificate of Deposit by acceptance thereof shall be deemed to consent and agree that delivery by any bearer of such Certificate of Deposit, duly endorsed in blank, shall vest the title thereto and all rights and interests represented thereby in the transferee to the same extent, for all purposes, as would delivery under like circumstances of a negotiable instrument payable to bearer; provided, however, that each Depository and the Committee may treat the record holder of any Certificate of Deposit (or, when presented duly endorsed in blank, the bearer thereof) as the absolute owner thereof for all purposes, and shall not be affected by any notice to the contrary.

The Committee may make provision for the replacement of any Certificates of Deposit which shall be lost, stolen or destroyed or which shall become mutilated.

5. The Committee is hereby authorized and empowered to construe the Plan and this Agreement, and the Committee's construction of the same, made in good faith,

shall be final, conclusive and binding. The Committee may correct any defect or supply any omission in the Plan and this Agreement and reconcile any inconsistency therein.

6. Each and every Depositor hereby authorizes and requests the Committee, as the Depositor's agent and attorney-in-fact, to endeavor to carry the Plan into practical operation, in such form and in such manner and by such steps as the Committee in its uncontrolled discretion shall deem best, and for this purpose the Committee is empowered hereby to exercise all the rights of the Depositors with respect to the Coal certificates and the Sales stock deposited hereunder. The methods to be adopted in carrying out the Plan and this Agreement shall be entirely discretionary with the Committee and the Plan and this Agreement are in all respects to be liberally construed so as to enable the Committee to carry into effect the purposes of the Plan.

The deposit of Coal certificates or Sales stock in accordance with the provisions of the Plan and this Agreement shall not constitute an assignment thereof, but the title thereto, and all beneficial interest therein, shall remain in the Depositors thereof unless and until the Committee, acting as the Depositors' agent and attorney-in-fact, shall have elected that title thereto shall vest as below described, and shall have filed with the Depositaries a certified copy of its resolution so electing, whereupon title thereto shall, according as shall be specified in such resolution, vest in the New Corporation, or in the Committee as joint tenants and not as tenants in common and in the survivor or survivors of the Committee and their successors, or in the Committee's nominee or nominees. The Committee, acting as the Depositors' agent and attorney-in-fact, may from time to time require the Depositaries to remove to and keep at any place or places specified by the Committee all or any Coal certificates and Sales stock deposited hereunder. The Depositors severally agree that, at any time when the Committee, acting as the Depositors' agent and attorney-in-fact, shall have elected that title to the Coal certificates and Sales stock deposited hereunder shall

vest as above described, they will execute and deliver any and all further transfers and assignments or other writings requested by the Committee in order more effectively to vest title thereto as above described. Unless and until the Committee, acting as the Depositors' agent and attorney-in-fact, shall have elected that title thereto shall vest as above described, and shall have filed with the Depositaries a certified copy of its resolution so electing, title thereto and all beneficial interest therein shall remain in the Depositors thereof, and shall not vest in the New Corporation, or in the Committee, or in the Committee's nominee or nominees, and any and all directions to any Depositary respecting any Coal certificates and Sales stock deposited hereunder, and any and all disposition by the Committee of any Coal certificates and Sales stock deposited hereunder, and any and all action of the Committee with respect to any Coal certificates and Sales stock deposited hereunder, shall be as the agent and attorney-in-fact for the Depositors.

7. The Committee may take any and all steps and proceedings, and do any and all acts and things, and execute and deliver any and all documents, which it shall deem necessary, expedient or desirable for the purpose of carrying out the Plan and this Agreement, or for the purpose of asserting, protecting or enforcing the rights or interests of the Depositors, or for any other purpose thereof.

Without prejudice to the general powers herein granted, the Committee, for the purpose of carrying out the Plan and this Agreement, may procure the organization of one or more new corporations or may adopt or use any existing or future corporations, and, with respect to The Lehigh Valley Coal Company, the Lehigh Valley Coal Sales Company, or their respective assets and businesses, may make or cause to be made such consolidations, purchases, sales, leases, contracts or other arrangements, and may take such other steps, as the Committee may deem advisable; and may form or procure the formation of any syndicate or syndicates, of which the Committee, or any member or members there-

of, acting alone or in association with others, may be the manager or managers. The Committee, in its discretion, may leave undisturbed the rights of holders of Coal certificates or Sales stock who do not deposit their Coal certificates or Sales stock under the Plan and this Agreement, or may make or approve such provision for such holders as the Committee may deem expedient.

Without prejudice as aforesaid, the Depositors hereby severally irrevocably authorize and empower the Committee (as the holder of the Coal certificates and the Sales stock deposited hereunder, provided the Committee shall have taken title thereto as hereinabove permitted, or otherwise as the attorney and proxy of the Depositors) to call or waive notice of, and to attend in person or by proxy or substitute proxy, any and all meetings of holders of Coal certificates or Sales stock and to vote or cause to be voted, or to consent with respect to, any or all of the Coal certificates and the Sales stock deposited hereunder, in any manner and for any purpose deemed by the Committee to be advisable for the carrying out of the Plan and this Agreement, expressly including among such purposes the amendment of the charter of The Lehigh Valley Coal Company or the certificate of incorporation of the Lehigh Valley Coal Sales Company in any manner which the Committee, being advised by counsel, shall deem advisable to facilitate the consummation of the Plan, and any transfer, lease, contract or conveyance of stock, interests in stock, securities, property or assets contemplated thereby; and the Depositors hereby severally irrevocably authorize and empower the Committee, with respect to any stock of the New Corporation received by the Committee (until the same shall have been transferred or distributed, as contemplated by the Plan, to the Depositors entitled ultimately to receive the same), to call or waive notice of and to attend in person or by proxy any and all meetings of stockholders of the New Corporation and to vote or cause to be voted, or to consent with respect to, any or all of such stock in any manner and for any purpose deemed by the Committee to be advisable for the carrying out of the Plan.

Without prejudice as aforesaid, the Depositors hereby severally, irrevocably and specifically authorize and empower the Committee to effectuate the transfer to and acquisition by the New Corporation of all or any Coal certificates and Sales stock deposited hereunder, and to use, transfer, deliver or surrender all or any Coal certificates or Sales stock deposited hereunder, and to receive or cause to be delivered in exchange therefor stock of the New Corporation in accordance with the Plan.

No expense incurred by, or compensation of, the Committee or any other expenses shall be charged against the Depositors or against any of the deposited stock, The Lehigh Valley Coal Company and the Lehigh Valley Coal Sales Company having agreed to pay the same.

8. The Depositors hereby severally irrevocably authorize and empower the Committee to receive and irrevocably authorize and direct The Lehigh Valley Coal Company and the Lehigh Valley Coal Sales Company to pay to or on the order of the Committee all dividends payable on the Coal certificates and the Sales stock deposited hereunder so long as they shall remain on deposit hereunder. When and as any such dividends shall be payable, the amount thereof so payable shall be paid to the persons who on the books of the Committee to be kept by the Depositaries shall be the record holders of Certificates of Deposit representing such Coal certificates and Sales stock at the close of business on the date as of which said companies determine the holders of such Coal certificates and Sales stock entitled to receive such dividends; such payments to be made to the holders of such Certificates of Deposit ratably according to the number of such deposited shares of Coal certificates and the number of such deposited shares of Sales stock specified in such Certificates of Deposit respectively.

9. Upon compliance with all the terms and conditions of the Plan and this Agreement, Depositors will be entitled to receive, upon the consummation of the Plan, and upon surrender of their Certificates of Deposit, the stock, and scrip for fractions of shares of stock, of the New Corporation (but only as and when issued and

ready for delivery) to which they shall be entitled pursuant to the terms and provisions of the Plan and this Agreement.

The Committee, subject to the provisions of this Agreement, is authorized and empowered to prescribe terms and conditions as to the surrender of Certificates of Deposit with which holders of Certificates of Deposit must comply in order to receive the stock, and scrip for fractions of shares of stock, of the New Corporation receivable by the Depositors under the plan, and for the purpose of facilitating the delivery thereof the Committee may order the books of the Committee for the transfer of Certificates of Deposit to be permanently closed against the making of transfers upon a date not less than ten days after mailing notice of such closing of the books to the Depositors in accordance with provisions of Section 13 hereof.

The Depositors hereby severally irrevocably authorize and empower the Committee, upon and after the surrender to the Committee of any Certificates of Deposit, to take such action or initiate or participate in such proceedings by way of disposing of, extinguishing or otherwise dealing with such surrendered Certificates of Deposit according as the Committee in its discretion shall determine.

10. The Committee may abandon the Plan at any time if in its discretion the Committee shall deem it impracticable to carry the same into execution. Such abandonment shall be effected by resolution of the Committee, and notice thereof shall be lodged with the Depositaries and mailed to the Depositors in accordance with the provisions of Section 13 hereof. Thereafter any Depositor may withdraw the Coal certificates and the Sales stock represented by his Certificate of Deposit. In the absence of such notice of abandonment no Depositor may withdraw Coal certificates or Sales stock represented by his Certificate of Deposit or withdraw from this Agreement prior to July 31, 1930. If the Plan shall not have been carried into execution by that date, any Depositor may

thereafter withdraw the Coal certificates and the Sales stock represented by his Certificate of Deposit.

The committee, subject to the provisions of this Agreement, is authorized and empowered to make reasonable regulations as to the procedure to be followed by holders of Certificates of Deposit in withdrawing, in either of the events aforesaid, the Coal certificates and the Sales stock represented by their Certificates of Deposit, and for the purpose of facilitating delivery of such stock the Committee may order the books for the transfer of Certificates of Deposit to be permanently closed against the making of transfers upon a date not less than ten days after mailing notice of such closing of the books to the Depositors in accordance with the provisions of Section 13 hereof.

11. Every holder of a Certificate of Deposit, by the surrender thereof to the Committee and the receipt of certificates representing Coal certificates and Sales stock deposited hereunder, or the stock, and scrip for fractions of shares of stock, of the New Corporation, deliverable to him hereunder, shall be deemed to have released and discharged the Committee, the Depositaries and all other persons from all liability and accountability of and every kind hereunder.

After the books for the transfer of Certificates of Deposit shall have been closed against the making of transfers (whether upon the consummation of the Plan or upon its abandonment),

(a) whenever there shall be lodged with any of the Depositaries, in case the Plan shall have been consummated, the stock, and scrip for fractions of shares of stock, of the New Corporation which Depositors holding Certificates of Deposit signed by any of the Depositaries shall be entitled to receive under the Plan and this Agreement, or

(b) whenever there shall be lodged with each Depositary, in case the Plan shall have been abandoned, the Coal certificates and the Sales stock represented by the outstanding Certificates of Deposit signed by such Depositary,

the Committee may instruct such Depositary to hold the stock, and scrip for fractions of shares of stock, of the New Corporation, or the Coal certificates and the Sales stock, as the case may be, so lodged with it for the holders of such outstanding Certificates of Deposit and to distribute the same to such holders upon surrender to it of their Certificates of Deposit; and, such stock or Coal certificates or Sales stock having been so lodged and such instructions so given, the Committee shall be under no responsibility to the Depositors, and the rights of the Depositors shall be limited to receiving from such Depositary the stock, and scrip for fractions of shares of stock, of the New Corporation, or the Coal certificates and the Sales stock, as the case may be, so held by such Depositary.

12. Neither the Committee nor any Depositary is to be under any obligation, legal or equitable, express or implied, to any holder of Coal certificates or Sales stock who shall not deposit the same hereunder, or to any person whomsoever, other than the holders of Certificates of Deposit issued in accordance with the terms hereof. With respect to the holders of such Certificates of Deposit, the Committee undertakes to endeavor in good faith to carry out the Plan and this Agreement, but neither the Committee nor any member thereof nor any Depositary assumes any responsibility for the carrying out of the Plan and this Agreement or for the result of any steps taken or acts done for the purpose thereof. Neither the Committee nor any member thereof nor any Depositary shall be liable for any act or omission of any attorney, agent or employee, or for anything except for his or its own willful misconduct. No Depositary, by the delivery of any Certificate of Deposit hereunder, makes any representation or warranty of any sort whatsoever other than that it agrees to use its best judgment and good faith in the performance of its duties hereunder, and by the acceptance of any such Certificate of Deposit every holder expressly relieves each and every Depositary of any liability except as aforesaid. Neither the Committee nor any member thereof nor any Depositary assumes

any responsibility or liability as to the genuineness, validity or regularity of any of the stock, or scrip for fractions of shares of stock, of the New Corporation created or issued in connection herewith, or as to the validity or sufficiency of any corporate proceedings or acts of The Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Company or the New Corporation.

Any member of the Committee or any corporation, association or partnership of which any member of the Committee may be an officer, director, member or partner, or any Depositary or Registrar or any officer or director of or any partner in any Depositary or Registrar, may be or become pecuniarily interested in any certificates of interest, stock, Certificates of Deposit, subscription rights, contracts, property or matters which the Plan or this Agreement concerns, and may participate in any underwriting syndicate as syndicate manager, syndicate subscriber, or otherwise, and may be an officer or director of The Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Company or the New Corporation. Any Depositary or Registrar may be trustee under any agreement created or entered into in connection with the Plan, or otherwise act in any manner for The Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Company or the New Corporation or for the holders of any of the stock of any corporation.

13. Any notice or other communication required or permitted by the provisions hereof to be sent to any Depositor shall be conclusively deemed to have been duly communicated if and when deposited in the United States mail, postpaid, addressed to such Depositor at his address appearing upon the books of the Committee kept by the Depositaries.

An affidavit made before a notary public by the Secretary of the Committee, or by an officer or employee of any Depositary, with respect to the mailing of notices herein provided for shall be conclusive evidence of the giving of such notices.

14. The Committee, as from time to time constituted

and notwithstanding any vacancy, shall have all the powers, rights and interests of the Committee as named in this Agreement. The Committee may elect a Chairman, and may appoint a Secretary (who may, but need not, be a member of the Committee) who shall keep a record of its acts and proceedings. From time to time the Committee may choose such other officers and designate or cause to be designated such committees or sub-committees (whose members may, but need not, be members of the Committee) as it may see fit, and may confer upon any of its officers, committees or sub-committees such powers as it may deem advisable. The Committee from time to time may add to its number by electing, by a majority vote of its then members, an additional member or members, and the member or members so elected shall have all the powers, rights and interests of the members of the Committee under the Plan and this Agreement and, together with those herein named or their successors, shall constitute the Committee under the Plan and this Agreement with like force and effect as though they were specifically named herein. Any member of the Committee may resign by filing written notice of his resignation with the Chairman or Secretary of the Committee. In case at any time a vacancy shall occur in the Committee by death or resignation, or from any other cause, such vacancy may, but need not, be filled by a majority of the then members of the Committee. Notices of changes in the membership of the Committee filed with the Depositaries shall bind all parties hereto.

A majority of the members of the Committee (without taking into account any vacancy in the membership) shall constitute a quorum for all purposes, and all the powers of the Committee may be exercised by a majority of its then members either at a meeting, or in writing or by telegraph, wireless or cable without a meeting. A member of the Committee by written proxy may authorize any person (who may, but need not, be another member of the Committee) to act in his place for any and all purposes. The certificate of the Chairman or Secretary as to any action by the Committee shall be conclusive

upon and full protection to the Depositaries and all other persons, and conclusive upon all Depositors, as to all acts and things so certified to have been done by the Committee. The Committee from time to time may make, alter and rescind such rules and regulations for the transaction of its business as it may deem advisable.

The Committee may employ such counsel, agents and employees as in its opinion shall be necessary or useful, and may delegate any power or authority as well as discretion.

15. The Coal certificates and the Sales stock deposited hereunder shall be held by the respective Depositaries subject to the orders of the Committee, and the Depositaries shall incur no liability for anything done or permitted to be done at the request or direction of the Committee. The Depositaries shall be bound to exercise only reasonable care in the safe keeping of the Coal certificates and the Sales stock deposited hereunder and of any other securities or cash which may be deposited with or held by them hereunder respectively, and to deal therewith in accordance with the directions of the Committee. The Depositaries in all things hereunder shall be subject to the directions of the Committee alone and in all respects shall be and be deemed to be the agents and employees of the Committee solely. All directions or instructions given by the Committee to, or powers conferred upon, or acts done by, the Depositaries hereunder shall be binding upon Depositors notwithstanding the termination of this Agreement or the amendment or supplementing hereof or the return of any or all of the deposited Coal certificates or the deposited Sales stock.

Any Depositary or Registrar may resign upon thirty days' notice in writing to the Committee, and the Committee shall have power to remove any Depositary or Registrar and from time to time in its discretion to fill any vacancy however arising in the office of any Depositary or Registrar. In the event of the resignation or removal of any Depositary or Registrar, such Depositary or Registrar shall deliver all cash, securities, property

and records held by it hereunder as directed by the Committee.

16. The enumeration of specific powers herein conferred upon the Committee shall not be construed to limit or to restrict general powers herein conferred or intended so to be, and it is hereby declared that it is intended to confer upon the Committee in respect of all Coal certificates and Sales stock deposited hereunder and in all other respects any and all powers which the Committee may deem expedient for carrying out or promoting the purposes of the Plan and this Agreement in any respect, even though any such power be apparently of a character not now contemplated; and the Committee may exercise any and every such power as fully effectively as if the same were herein distinctly specified and as often as for any reason it may deem expedient.

17. No statement contained in the Plan or in this Agreement, or in any document, circular letter, notice or communication, at any time issued or published by the Committee, by any Depositary, by any Registrar, by The Lehigh Valley Coal Company, the Lehigh Valley Coal Sales Company, the New Corporation, or by any officer or attorney of either of said corporations or by any other person, is intended to be, or is to be accepted as, a representation or warranty or a condition of the Plan or this Agreement; and no error, defect or irregularity herein or therein, or in any such document, circular letter, notice or communication, shall release any Depositor, or affect or release any deposit hereunder, except by written consent of the Committee.

18. The Plan and this Agreement shall bind and benefit the several parties hereto, and each and all the survivors, successors, heirs, executors, administrators and assigns of said parties, and of each of them. The rights of the Depositors shall be such only as are conferred by the Plan and this Agreement and shall be subject to compliance by the Depositors with the terms and conditions set forth therein and herein.

19. This Agreement shall be executed in several coun-

terparts and all such counterparts shall be taken together as forming one agreement. Upon the execution of this Agreement by the members of the Committee or a majority of them, an executed counterpart shall be deposited with each Depositary.

IN WITNESS WHEREOF, the members of the Committee have executed this Agreement and the Depositors have become parties hereto by depositing hereunder as above set forth their certificates representing Coal certificates and their certificates representing Sales stock, all as of the date first above recited.

THOMAS W. LAMONT,
THEODORE S. BARBER,
RICHARD F. GRANT,
Committee