

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

<p>In re:</p> <p>Hopedale Mining, LLC, <i>et al.</i>,¹</p> <p style="text-align: right;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 1:20-bk-12043 (GRH)</p> <p>(Jointly Administered)</p>
<p>The Liquidating Trustee of the Hopedale Creditors' Trust of Hopedale Mining, LLC, Plaintiff,</p> <p>v.</p> <p>Country Boy Seed, Inc,</p> <p style="text-align: right;">Defendant.</p>	<p>Honorable Guy R. Humphrey</p> <p>Adv. No. _____</p>

**COMPLAINT TO AVOID TRANSFERS
PURSUANT TO 11 U.S.C. §§ 547, 548, 549 AND 502 AND TO RECOVER
PROPERTY TRANSFERRED PURSUANT TO 11 U.S.C. § 550**

GlassRatner Advisory & Capital Group, LLC d/b/a B. Riley Advisory Services (the “Trustee” or the “Plaintiff”) solely in its capacity as Liquidating Trustee of the Hopedale Liquidating Trust (the “Trust”), by and through its undersigned counsel, files this complaint (the “Complaint”) to avoid and recover transfers against Country Boy Seed, Inc. (the “Defendant”), and in support thereof alleges upon information and belief that:

NATURE OF THE CASE

1. Plaintiff seeks to avoid and recover from Defendant, or from any other person or entity for whose benefit the transfers were made, all preferential transfers of property that

¹ The above-captioned debtors (collectively, the “Debtors”) in these Chapter 11 cases are (with the last four digits of their federal tax identification numbers in parentheses): Rhino GP LLC (8619), Rhino Resource Partners LP (7517), Rhino Energy LLC (6320), Rhino Trucking LLC (8773), Rhino Exploration LLC (8863), Triad Roof Support Systems LLC (1183), Springdale Land LLC (9816), McClane Canyon Mining LLC (3783), Rhino Northern Holdings LLC (1858), CAM-Ohio Real Estate LLC (1859), CAM-Colorado LLC (4269), Taylorville Mining LLC (5106), CAM Coal Trading LLC (4143), Castle Valley Mining LLC (9495), Jewell Valley Mining LLC (0270), Rhino Services LLC (3356), Rhino Oilfield Services LLC (8938), Rhino Technologies LLC (0994), CAM Mining LLC (2498), Rhino Coalfield Services LLC (3924), Hopedale Mining LLC (9060), CAM-Kentucky Real Estate LLC (9089), CAM-BB LLC (9097), Leesville Land LLC (7794), CAM Aircraft LLC (5467), Pennyrile Energy LLC (6095), Rhino Eastern LLC (1457), Rockhouse Land LLC (7702).

occurred during the ninety (90) day period prior to the commencement of the Debtors' bankruptcy proceedings pursuant to 11 U.S.C. §§ 547 and 550. Subject to proof, Plaintiff also seeks to avoid and recover pursuant to 11 U.S.C. § 548 any transfers that may have been fraudulent conveyances and pursuant to 11 U.S.C. § 549 any unauthorized transfers that cleared post-petition. To the extent that Defendant has filed a proof of claim or has a claim listed on the Debtors' schedules as undisputed, liquidated, and not contingent, or has otherwise requested payment from the Debtors or the Debtors' chapter 11 estate (collectively, the "Claims"), this Complaint is not intended to be, nor should it be construed as, a waiver of Plaintiff's right to object to such Claims for any reason including, but not limited to, 11 U.S.C. § 502 (a) through (j) ("Section 502"), and such rights are expressly reserved. Notwithstanding this reservation of rights, certain relief pursuant to Section 502 is sought by Plaintiff herein as further stated below.

JURISDICTION AND VENUE

2. This court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b) because this adversary proceeding arises under title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and arises in and relates to a case under the Bankruptcy Code.

3. The statutory and legal predicates for the relief sought herein are sections 502, 547, 548, 549 and 550 of the Bankruptcy Code and Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

4. This adversary proceeding is a "core" proceeding to be heard and determined by the Court pursuant to 28 U.S.C. § 157(b)(2). The Court may enter final orders for the matters contained herein.

5. Pursuant to Fed. R. Bankr. P. 7008, Plaintiff consents to this Court's entry of final orders or judgments in this proceeding.

6. Venue is proper in the Southern District of Ohio pursuant to 28 U.S.C. §§ 1408 and 1409.

7. Upon information and belief, this Complaint relates to the Debtor, Rhino Services LLC, Case No. 20-12063.

PROCEDURAL BACKGROUND

8. On July 22, 2020 (the "Petition Date"), the Debtors commenced these chapter 11 cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

9. On January 15, 2021, the Court entered its *Findings of Fact, Conclusions of Law, and Order (I) Approving the Disclosure Statement on a Final Basis, (II) Confirming the Joint Plan of Orderly Liquidation* [Docket No. 580] (the "Confirmation Order") confirming the *First Amended Joint Plan of Orderly Liquidation of Hopedale Mining LLC and its Affiliated Debtors under Chapter 11 of the Bankruptcy Code* [Docket No. 529] (the "Plan").

10. In the Confirmation Order, the Court approved the appointment of GlassRatner Advisory & Capital Group LLC d/b/a B. Riley Advisory Services as the Trustee of the Liquidating Trust.

11. The Effective Date of the Plan was February 1, 2021. [Docket No. 588].

12. On February 1, 2021, the Debtors and the Trustee executed the Creditors Trust Agreement.

13. The Trustee was appointed as the Liquidating Trustee of the Liquidating Trust pursuant to the Confirmation Order, Plan, and Creditors Trust Agreement. On the Effective Date, the Debtors transferred to the Trust assets, including the causes of action pursued herein. Pursuant

to the Plan and Creditors Trust Agreement, the Trustee is authorized, among other things, to prosecute, settle, dismiss, abandon, or otherwise dispose of causes of action of the Liquidating Trust arising under sections 510, 542 through 551 and 553 of the Bankruptcy Code

14. Pursuant to the Plan, creditors of the Debtors are impaired and will not be paid in full.

THE PARTIES

15. The Plaintiff is the duly appointed Trustee of the Liquidating Trust established by the Confirmation Order, Plan, and Creditors Trust Agreement.

16. Upon information and belief, Defendant is a Stock Corporation organized under the laws of Virginia and doing business at 21061 Lime Hill Rd., Bristol, VA, 24202. Defendant's agent for service of process is Nancy Jo Denton, 21061 Lime Hill Rd., Bristol, VA, 24202.

FACTUAL BACKGROUND

17. The Debtors are comprised of Hopedale Mining LLC (Case No. 20-12043) and each of its affiliated debtors and debtors-in-possession, Rhino GP LLC (20-12044), Rhino Resource Partners LP (20-12045), Rhino Energy LLC (20-12046), Rhino Trucking LLC (20-12051), Rhino Exploration LLC (20-12057), Triad Roof Support Systems LLC (20-12060), Springdale Land LLC (20-12062), McClane Canyon Mining LLC (20-12047), Rhino Northern Holdings LLC (20-12048), CAM-Ohio Real Estate LLC (20-12052), CAM-Colorado LLC (20-12053), Taylorville Mining LLC (20-12056), CAM Coal Trading LLC (20-12059), Castle Valley Mining LLC (20-12050), Jewell Valley Mining LLC (20-12055), Rhino Services LLC (20-12063), Rhino Oilfield Services LLC (20-12066), Rhino Technologies LLC (20-12068), CAM Mining LLC (20-12069), Rhino Coalfield Services LLC (20-12070), CAM-Kentucky Real Estate LLC (20-12049), CAM-BB LLC (20-12054), Leesville Land LLC (20-12058), CAM Aircraft

LLC (20-12061), Pennyrile Energy LLC (20-12064), Rhino Eastern LLC (20-12065), and Rockhouse Land LLC (20-12067).

18. Rhino GP LLC (“Rhino GP”) is the ultimate parent of the Debtors. Rhino GP, in turn, wholly owns Rhino Resource Partners LP, which was a publicly traded entity. Rhino Resource Partners LP, in turn, wholly owns Rhino Energy LLC (“Rhino Energy”). Rhino Energy, in turn, wholly owns each of the other Debtors listed in the preceding paragraph.

19. Prior to the Petition Date, the Debtors’ were diversified coal producers focused on coal and energy related assets and activities. The Debtors produced, processed and sold high quality coal of various steam and metallurgical grades from multiple coal producing basins in the United States. The Debtors marketed steam coal primarily to electric utility companies as fuel for their steam powered generators. Customers for metallurgical coal were primarily steel and coke producers who used the Debtors’ coal to produce coke, which is used as a raw material in the steel manufacturing process.

20. The Debtors operated underground and surface mines located in Kentucky, Ohio, Virginia, West Virginia, and Utah. The number of mines that the Debtors operated varied from time to time depending on a number of factors, including the existing demand for and price of coal, depletion of economically recoverable reserves and available of experienced labor.

21. Prior to the Petition Date, in the ordinary course of business, the Debtors, as coal mining operators, maintained business relationships with various business entities, through which the Debtors regularly purchased goods and services.

22. As coal mining operators, the Debtors regularly purchased goods from various entities including vendors, creditors, suppliers, and distributors. The Debtors, as coal mining operators, also regularly paid for services used to facilitate their coal mining operations.

23. The Debtors experienced declines in coal production, coal sales, and coal revenues of the three years preceding the Petition Date. For example, in 2017, the Debtors produced 4.25 million tons of coal and sold 4.18 million tons of coal, resulting in coal revenue of \$216 million. By 2019, the Debtors produced 4.0 million tons of coal and sold 3.87 million tons of coal, resulting in coal revenues of \$213.9 million. During that time, the Debtors divested their Sands Hill thermal coal surface mine operation in Ohio and their Pennyrile mining complex in the Illinois Basin.

24. The North American coal industry is intensely competitive and over the past several years, market forces in the industry affected a number of coal companies, many of which have filed for chapter 11. General distress affecting the domestic U.S. thermal coal industry has produced a sustained low-price environment. In addition, coal mining requires a high level of capital expenditure to sustain production and to maintain safety requirements.

25. For the year ended December 31, 2018, the Debtors recorded a net loss of \$16 million, and for the year ended December 31, 2019, the Debtors recorded a net loss of \$99 million.

26. The Debtors' adjusted EBITDA for the year ended December 31, 2019 was negative \$5.7 million.

27. The Debtors' financial condition only worsened from late 2019 into 2020. In the Debtors' May 22, 2022 10-Q the Debtors' disclosed that their external auditors issued a "going concern" finding and the Debtors doubted their ability to continue operations as a going concern. Further, the Debtors were unable to pay their vendors as their debts became due and many creditors instituted cash on delivery requirements before they would provide further goods or services to the Debtors. Additionally, the value of the Debtors assets diminished and the amount of the Debtors'

liabilities substantially exceeded the value of their assets, both collectively and on a Debtor-by-Debtor basis.

28. With production and related costs significantly higher than expected and coal prices significantly lower than expected leading to a liquidity crunch, the Debtors triggered financial covenant and other defaults under their financing documents.

29. The Debtors were unable to service their financial obligations as of the Petition Date and beforehand.

30. As of the Petition Date, the Debtors maintained two bank accounts (collectively, the “Bank Accounts”) at PNC Bank, and Truist Bank f/k/a Branch Banking and Trust Company. The Debtors operated a cash management system to coordinate the flow of funds through the Debtors’ accounts. The flow of cash begins with cash generated as a result of the Debtors’ coal mining operations in Ohio, Kentucky, Virginia, and Utah. These funds were primarily generated by four debtor entities: CAM Mining LLC, Hopedale Mining LLC, Jewell Valley Mining LLC, and Castle Valley Mining LLC (these four entities together are the “Operating Entities”). The Operating Entities mined, sold, and collected revenue on coal mined from various Debtors’ mining locations. These funds were deposited into the Operating Entities’ general checking account, where the funds were then used to pay operational expenses to sustain the Debtors’ operational needs, including, but not limited to, the payment of operating expenses, payroll, administrative expenses, utilities, and royalties.

31. Certain of the Debtors held real estate interests, including leases and fee estates and related assets, including CAM-Ohio Real Estate LLC, CAM-Kentucky Real Estate LLC, Leesville Land LLC, and Springdale Land LLC (“Land Holding Entities”). The Land Holding Entities did not operate or generate any revenue. Since the Operating Entities may have mined on

the various leasehold interests held by the Land Holding Entities, the funds generated by the Operating Entities pay royalties, property taxes, and other related expenses for the Land Holding Entities.

32. Rhino Energy LLC (“General Admin Entity”) handled the general administrative functions for all Debtors. The General Admin Entity handles payment of administrative costs, such as insurance, office staff payroll, etc. and those expenses are then allocated to the appropriate Debtor and funded by the Operating Entities.

33. During the ninety (90) days before the Petition Date, that is between April 22, 2022 and July 22, 2022 (the “Preference Period”), the Debtors continued to operate their business affairs, including the transfer of property, either by checks, cashier checks, wire transfers, ACH transfer, direct deposits, or otherwise to certain entities.

34. Plaintiff has completed an analysis of all readily available information of the Debtors and is seeking to avoid all of the transfers of an interest of the Debtors’ property made by the Debtors to Defendant within the Preference Period and subsequent to the Petition Date without Bankruptcy Code or Court authority therefor.

35. Plaintiff has determined that Rhino Energy, LLC, on behalf of Rhino Services LLC, made transfer(s) of an interest of Rhino Services LLC’s property to or for the benefit of Defendant during the Preference Period, and/or subsequent to the Petition Date without Bankruptcy Code or Court authority, through payments aggregating an amount not less than \$13,075.90 (the “Transfer” and/or “Transfers”).

36. During the course of their relationship, the Debtors and Defendant conducted business with one another up to and through the Petition Date.

37. The details of each of the Transfers are set forth on the attached **Exhibit A**, which is incorporated herein by reference.. Such details include “Check Number,” “Payment Amount” and “Payment Date.” During the course of this proceeding, Plaintiff may learn (through discovery or otherwise) of additional transfers made to Defendant during the Preference Period and/or subsequent to the Petition Date without Bankruptcy Code or Court authority therefor. It is Plaintiff’s intention to avoid and recover all transfers made by the Debtors of an interest of the Debtors in property and to or for the benefit of Defendant or any other transferee. Plaintiff reserves its right to amend this original Complaint to include: (i) further information regarding the Transfers, (ii) additional transfers, (iii) modifications of and/or revision to Defendant’s name, (iv) additional defendants, and/or (v) additional causes of action (*e.g.*, but not exclusively, claims arising under 11 U.S.C. §§ 542, 544 and/or 545 (collectively, the “Amendments”), that may become known to Plaintiff at any time during this adversary proceeding, through formal discovery or otherwise, and for the Amendments to relate back to this original Complaint.

38. Plaintiff acknowledges that some of the Transfers might be subject to defenses under Bankruptcy Code section 547(c), for which Defendant bears the burden of proof under Section 547(g).

39. Pursuant to Bankruptcy Code section 547(b), Plaintiff states that it has conducted reasonable due diligence into the Defendant’s known or reasonably known affirmative defenses. The Plaintiff has reviewed the Debtors’ bank records and has also reviewed certain invoices, if available, and has determined that the Transferee has received avoidance transfer(s). As of the filing of this Complaint, Plaintiff may not be in possession of all records necessary to perform a reasonable analysis of Defendants’ potential defenses under the circumstances. Plaintiff will continue to assess information relevant to Defendants’ possible defenses as this action proceeds.

CLAIMS FOR RELIEF

COUNT I

(Avoidance of Preference Period Transfers – 11 U.S.C. § 547)

40. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

41. Each Transfer was made to Defendant by the Rhino Energy, LLC on behalf of Debtor, Rhino Services LLC.

42. Each Transfer was paid from one or more of the Bank Accounts associated with the Debtors as described *supra*.

43. Each Transfer constituted a transfer of an interest in property of the Debtor, Rhino Services LLC.

44. During the Preference Period, Defendant was a creditor at the time of each Transfer by virtue of supplying goods and/or services to the Debtors for which the Debtors were obligated to pay.

45. Each Transfer was to or for the benefit of a creditor within the meaning of 11 U.S.C. § 547(b)(1) because each Transfer either reduced or fully satisfied a debt or debts then owed by the Debtors to Defendant.

46. Each Transfer was made for, or on account of, an antecedent debt or debts owed by the Debtors to Defendant before such Transfers were made, each of which constituted a “debt” or “claim” (as those terms are defined in the Bankruptcy Code) of Defendant prior to being paid by the Debtors.

47. Each Transfer was made while the Debtors were insolvent. Plaintiff is entitled to the presumption of insolvency for each Transfer made during the Preference Period pursuant to 11 U.S.C. § 547(f).

48. Each Transfer was made during the Preference Period.

49. As a result of each Transfer, Defendant received more than Defendant would have received if: (i) the Debtors' cases were under chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Defendant received payments of its debts under the provisions of the Bankruptcy Code. As evidenced by the Debtors' schedules filed in the underlying Bankruptcy Case, as well as the proofs of claim that have been received to date, the Debtors' liabilities exceed its assets to the point that unsecured creditors will not receive a full payout of their claims from the Debtors' bankruptcy estate.

50. In accordance with the foregoing, each Transfer is avoidable pursuant to 11 U.S.C. § 547(b).

COUNT II

(Avoidance of Fraudulent Conveyances – 11 U.S.C. § 548(a)(1)(B))

51. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

52. Subject to proof, Plaintiff pleads in the alternative that to the extent one or more of the Transfers as identified on **Exhibit A** were not on account of an antecedent debt or were a prepayment for goods and/or services subsequently received, the Debtors did not receive reasonably equivalent value in exchange for such transfer(s) (the "Potentially Fraudulent Transfers"); and

A. The Debtors were insolvent on the date that the Transfer(s) were made or became insolvent as a result of the Transfer(s); or

B. The Debtors were engaged in business or a transaction, or were about to engage in business or a transaction, for which any property remaining with

the Debtors who made or for whose benefit the Transfer(s) were made was an unreasonably small capital; or

- C. The Debtors intended to incur, or believed that the Debtors would incur, debts that would be beyond the Debtors' ability to pay as such debts matured.

53. In accordance with the foregoing, the Potentially Fraudulent Transfers are avoidable pursuant to 11 U.S.C. § 548(a)(1)(B).

COUNT III

(Avoidance of Unauthorized Post-Petition Transfers – 11 U.S.C. § 549)

54. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

55. Subject to proof, Plaintiff pleads that to the extent any of the Transfer(s) made by the Debtors to Defendant as identified in Exhibit A attached hereto and incorporated herein by reference were transfer(s) of an interest of the Debtors' property that cleared the Debtors' Bank Account(s) after the Petition Date (the "Post-Petition Transfers"), the Post-Petition Transfer(s) were never authorized by the Court or under the Bankruptcy Code and, thus in accordance with the foregoing, the Post-Petition Transfers are avoidable pursuant to 11 U.S.C. § 549.

COUNT IV

(Recovery of Avoided Transfers – 11 U.S.C. § 550)

56. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

57. Plaintiff is entitled to avoid the Transfer(s) pursuant to 11 U.S.C. § 547(b), any Potentially Fraudulent Transfers pursuant to 11 U.S.C. § 548, and any Post-Petition Transfers pursuant to 11 U.S.C. § 549. The Transfers, any Potentially Fraudulent Transfers, and any Post-Petition Transfers are collectively referred to herein as "All Avoided Transfers."

58. Defendant was the initial transferee of All Avoided Transfers or the immediate or mediate transferee of such initial transferee or the person for whose benefit All Avoided Transfers were made.

59. Pursuant to 11 U.S.C. § 550(a), Plaintiff is entitled to recover from Defendant All Avoided Transfers, plus interest thereon to the date of payment and the costs of this action.

COUNT V

(Disallowance of all Claims – 11 U.S.C. § 502(d) and (j))

60. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

61. Defendant is an entity from which property is recoverable under 11 U.S.C. § 550.

62. Defendant is a transferee of All Avoided Transfers avoidable under 11 U.S.C. §§ 547, 548 and/or 549.

63. Defendant has not paid the amount of All Avoided Transfers, or turned over such property, for which Defendant is liable under 11 U.S.C. § 550.

64. Pursuant to 11 U.S.C. § 502(d), any and all Claims of Defendant and/or its assignee, against the Debtors' chapter 11 estate or Plaintiff must be disallowed until such time as Defendant pays to Plaintiff an amount equal to the aggregate amount of All Avoided Transfers, plus interest thereon and costs.

65. Pursuant to 11 U.S.C. § 502(j), any and all Claims of Defendant, and/or its assignee, against the Debtors' chapter 11 estate or Plaintiff previously allowed by the Debtors or Plaintiff, must be reconsidered and disallowed until such time as Defendant pays to Plaintiff an amount equal to the aggregate amount of All Avoided Transfers.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court grant it the following relief against Defendant:

As to Counts I through V, that the Court enter a judgment against Defendant:

- A. That All Avoided Transfers avoidable under 11 U.S.C. §§ 547, 548 and/or 549 in the total aggregate amount of not less than \$13,075.90 be avoided;
- B. That All Avoided Transfers, to the extent that they are avoided pursuant to 11 U.S.C. § 547, 548 and/or 549, be recovered by Plaintiff pursuant to 11 U.S.C. § 550;
- C. Disallowing, in accordance with 11 U.S.C. § 502(d), any Claims held by Defendant and/or its assignee until Defendant satisfies the judgment;
- D. Disallowing, in accordance with 11 U.S.C. § 502(j), any Claims held by Defendant and/or its assignee until Defendant satisfies the judgment;
- E. Awarding pre-judgment interest at the maximum legal rate running from the date of the Complaint to the date of judgment herein;
- F. Awarding post-judgment interest at the maximum legal rate running from the date of judgment herein until the date the judgment is paid in full, plus costs;
- G. Requiring Defendant to pay forthwith the judgment amount awarded in favor of Plaintiff; and

H. Granting Plaintiff such other and further relief as the Court deems just and proper.

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LLC d/b/a B. Riley Advisory Services solely in its
capacity as Liquidating Trustee of the Hopedale
Liquidating Trust*

Exhibit A

Case Number	Debtor Name	Defendant	Check #/Wire	Payment Date	Payment Amount
20-12063	Rhino Services LLC	COUNTRY BOY SEED, INC	100087944	5/27/2020	\$13,075.90
				Total:	\$13,075.90