IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

STATE of MISSOURI, STATE OF ARKANSAS, STATE OF KANSAS, STATE OF ILLINOIS, STATE OF IOWA, and STATE OF TEXAS, Plaintiffs, v. ARCH COAL, INC., 1 CityPlace Drive, Suite 300 St. Louis, Missouri 63141 and NEW VULCAN COAL HOLDINGS, LLC, 141 Market Place Drive, Suite 100 Fairview Heights, IL 62208 and TRITON COAL COMPANY, LLC, 113 South Gillette Ave, Suite 203 Gillette, WY 82716 Defendants.	)	CASE NUMBER 1:04CV00535 C JUDGE: John D. Bates DECK TYPE: Antitrust I DATE STAMP: 04/01/2004 Civ. No.

COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION

SUMMARY

The States of Missouri, Arkansas, Kansas, Illinois, Iowa, and Texas, acting under the direction of their respective Attorneys General ("Plaintiff States"), bring this civil action for a preliminary and permanent injunction enjoining defendant Arch Coal, Inc. ("Arch"), including its domestic and foreign agents, divisions, parents, subsidiaries, affiliates, partnerships, or joint ventures, from acquiring through a merger or otherwise any stock, assets, or other interest, either directly or indirectly, of or from defendants New Vulcan Coal Holdings, LLC ("New Vulcan") or Triton Coal Company, LLC ("Triton"), or their domestic and foreign agents, divisions, parents, subsidiaries, affiliates, partnerships, or joint ventures pursuant to Sections 7 and 16 of the Clayton Act, 15 U.S.C. §§ 18 and 26, and pursuant to FED. R. CIV. P. 65(a). Plaintiffs are also seeking costs of suit, including reasonable attorneys' fees, in accordance with §16 of the Clayton Act (as amended) 15 U.S.C. § 26 against Defendants named herein. Plaintiffs allege as follows:

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted by the plaintiffs, the States of Missouri, Arkansas, Kansas, Illinois, Iowa, and Texas (the "Plaintiff States"), as sovereigns under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain the violation by the Defendants, as herein alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Plaintiff States bring this action under Section 16 of the

Clayton Act, 15 U.S.C. § 26, to prevent and restrain the violation by the Defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18.

2. The Plaintiff States, by and through their respective Attorneys General, bring this action in their sovereign capacities and pursuant to their statutory, equitable and/or common law *parens patriae* authority on behalf of natural persons residing in their respective states and their quasi-sovereign interests in fair competition and their states' general economy. The proposed acquisition threatens loss or damage to the general welfare and economies of each of the Plaintiff States, and to the citizens of the respective Plaintiff States. Plaintiff States, and their citizens, will be subject to a continuing and substantial threat of irreparable injury to their general welfare and economies, and to competition, unless the Defendants are enjoined from carrying out this proposed acquisition.

3. Each of the defendants is engaged in interstate commerce, activities substantially affecting interstate commerce, and activities substantially affecting commerce with and within each of the Plaintiff States. Accordingly, this Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to Sections 12 and 16 of the Clayton Act, 15 U.S.C. §§ 22 and 26, and 28 U.S.C. §§ 1331 and 1337(a) and 1345.

4. Each of the defendants has consented to personal jurisdiction and to venue in the District of Columbia. Based upon this consent, venue is proper in the District

Court for the District of Columbia pursuant to Section 12 of the Clayton Act, as amended, 15 U.S.C. § 22 and under 28 U.S.C. § 1391(c).

5. The Plaintiffs, as their States' Attorneys General, have authority to seek relief on behalf of their respective States and obtain reasonable attorneys fees pursuant to 15 U.S.C. § 26.

6. Entry of this Judgment is in the public interest.

THE PARTIES

7. Plaintiffs States of Missouri, Arkansas, Kansas, Illinois, Iowa, and Texas, bring this action through their respective attorneys general in their official capacities as state law enforcement officers of their respective States. Plaintiffs are vested with authority and responsibility for enforcing, *inter alia*, Section 7 of the Clayton Act, 15 U.S.C. § 18.

8. Defendant Arch Coal, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at One CityPlace Drive, Suite 300, St. Louis, Missouri 63141.

9. Defendant New Vulcan Coal Holdings, LLC. is a limited liability company, wholly owned by Vulcan Partners, an investment partnership. New Vulcan is organized and existing under the laws of the State of Delaware, with its principal place of business at 141 Market Place Drive, Suite 100, Fairview Heights, Illinois 62208. Defendant New

Vulcan Coal Holdings, LLC owns all of the outstanding limited liability interests of Triton Coal Company, LLC.

10. Defendant Triton Coal Company, LLC is a limited liability company, wholly owned by New Vulcan and organized and existing under the laws of the State of Delaware, with its principal place of business at 113 South Gillette Ave, Suite 203 Gillette, WY 82716.

11. Defendants are each engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, 15 U.S.C. § 12.

THE PROPOSED ACQUISITION

12. Pursuant to a Merger and Purchase Agreement dated May 29, 2003, Arch proposes to acquire all the assets of Triton, principally Triton's Tier 1 North Rochelle mine, from New Vulcan for approximately $364 million in cash (the "Acquisition").

13. Arch also has entered into an executory contract to transfer another mine that it is acquiring from Triton, Triton's Tier 3 Buckskin mine assets (valued at approximately $80 million, or approximately 22% of the value of the Acquisition), to Peter Kiewit Sons', Inc. ("Kiewit"). This executory contract does not materially change the Acquisition or its likely effect on competition. Defendants have not amended their filings with the FTC under the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a ("HSR Act"). Absent a preliminary injunction, therefore, defendants would be free to consummate the acquisition they reported under the HSR Act (*i.e.*, the acquisition of all

of the assets and business of Triton, including Triton's North Rochelle and Buckskin mines), and thereafter to mutually agree to terminate or change the terms of their agreement with Kiewit regarding the transfer of Triton's Buckskin mine to Kiewit.

14. Defendants Arch and Triton have assured the States that they will not consummate the Acquisition until at least two business days after the Court has ruled on Plaintiff's request for a preliminary injunction.

LINE OF COMMERCE: COAL FROM THE SPRB

15. Coal is a leading energy source in the United States. Coal-fired generating plants account for about 92% of all coal consumption and about 50% of all electric power produced in the United States. Of the approximately 1.1 billion tons of coal produced annually in the United States, about one-third is produced in the SPRB, which is located in Wyoming. SPRB coal is burned by electric generators in at least 26 states, including generators extending from Oregon to Arizona in the west, to Lake Michigan, Georgia and Alabama in the east including electric generators within and serving the residents of the States of Missouri, Arkansas, Kansas, Illinois, Iowa, and Texas. Electric generators account for virtually all consumption of SPRB coal. In 2003, mines in the SPRB produced about 363 million tons of coal with an approximate value in excess of two billion dollars.

16. The Plaintiff States account for nearly half the tonnage of all SPRB coal used for electricity generation nationwide. Texas, Missouri, and Illinois are the three

greatest users of SPRB coal, and Plaintiff States are 6 of the 8 greatest users (outside Wyoming). Within the Plaintiff States, from 53% (Texas) to over 95% (Missouri, Arkansas, Iowa, and Kansas) of all coal used for electricity generation is SPRB coal.

17. The SPRB is a source of low sulfur coal that has a moderately high energy content of between approximately 8300 and 8800 British Thermal Units ("Btus"). SPRB coal is lower in sulfur than most coals mined in the United States and is one of the few coals that comply with the current sulfur emission limits imposed on coal-fired generators by the 1990 Clean Air Act. SPRB coal is also low in ash and sodium content. These properties, combined with exceptionally low mining costs, give SPRB coal a strong economic advantage in supplying many electric generators compared to coal produced in other regions of the United States.

The Three Tiers in the SPRB

18. SPRB coal suppliers and customers have established two distinct price points for SPRB coal based on the heat content of the coal – 8800 Btu and 8400 Btu. Coal contracts specify sulfur content and the Btu range of the coal and provide price adjustment for actual sulfur content and Btu content of the coal transferred from the mine.

19. The most highly valued SPRB coal is 8800 Btu coal, which is produced in the southern portion of the SPRB, known as "Tier 1" or as the "Wright Area." This 8800 Btu coal commands a substantial price premium over 8400 Btu coal, which comes from mines in Tiers 2 and 3, the adjacent areas to the north in the SPRB. The price premium

for 8800 Btu SPRB coal reflects its lower sulfur content, higher energy content, and easy access to competing rail transport service.

20. The mines that produce 8400 Btu coal are divided between Tiers 2 and 3. Tier 2 mines are located just south of Gillette, Wyoming. These mines typically produce coal that not only has a lower heat content but also generally a higher sulfur content than coal from Tier 1. Tier 3 mines include those mines located immediately north and east of Gillette, Wyoming. These mines also produce coal with approximately 8400 Btu/lb., but with higher sulfur content than the Tier 2 mines to the south.

21. Coal mines in Tier 1 and Tier 2 of the SPRB have a transportation advantage because they have access to the joint line of the Burlington Northern Santa Fe ("BNSF") and Union Pacific ("UP") railroads. Consequently, shippers of coal from mines in Tier 1 and Tier 2 of the SPRB are able to contract with either BNSF or UP to transport the coal to the customer's generating plant. Tier 3 mines have access only to the BNSF railroad. Tier 3 producers are competitively disadvantaged relative to producers in Tiers 1 and 2 of the SPRB, because they produce a lower Btu coal with a higher sulfur content than mines in other regions of the SPRB, and have access to only the BNSF railroad.

22. The four leading producers in the SPRB – Arch, Peabody, Kennecott, and Triton – all operate mines in the Tier 1 Region. Arch's Black Thunder mine and Triton's North Rochelle mine are located in the Tier 1 region and produce 8800 Btu coal. Each of these producers also conducts one or more coal mining operations in Tiers 2 and 3 of the

SPRB. Arch's Coal Creek mine, which Arch has kept idle since 2000, is located in the Tier 2 region. Triton's Buckskin mine is located in the Tier 3 region. Another SPRB producer, R.A.G., is a significant producer of 8400 Btu SPRB coal, but produces coal only in Tiers 2 and 3.

Use of SPRB Coal

23. Coal-fired generating plants are optimized to use coal from a certain source, or a specific mixture of coals. Switching to, or away from, SPRB coal often entails significant costs. Most generating plants burning SPRB coal that were brought on line in the last twenty years are designed specifically to burn SPRB coal and cannot economically burn other coal. Prior to the development of the SPRB coal mines, coal-fired generating plants were designed to burn the highest Btu coal, generally bituminous coal with a heat content up to 12,000 Btu/lb., from the closest mines to the plants without regard to sulfur content. Following passage of the Clean Air Act of 1990, many of these older plants converted their facilities to burn SPRB coal in order to comply with stricter sulfur emissions limitations. Converting a coal-fired electric generating facility from high-Btu bituminous coal to SPRB coal is costly – in the tens of millions of dollars -- and takes a significant amount of time. Plant modifications to burn SPRB coal include upgrading the coal conveying and handling systems to deliver the higher volume of SPRB coal needed by the electric generating units at the plant, and modifying the plants' boiler and heat absorption and cleaning systems. Many older plants that currently

burn SPRB coal would require installation of scrubbers to reduce emission of sulfur compounds before they could switch to non-SPRB (e.g., Appalachian) coal in any significant volume. Installing a scrubber is an expensive procedure, which can cost hundreds of millions of dollars and take several years.

24. Montana coals from the Northern Powder River Basin ("NPRB") are not competitive with Wyoming coals from the SPRB. NPRB coals have high sodium content, which can lead to operational problems at the generating plant. The high sodium content associated with NPRB coals tends to create excessive slagging in the boilers that adversely affects the boilers' efficiency. In addition, Montana imposes a significantly higher severance tax on its coal than does Wyoming. The higher tax puts Montana NPRB coal at a competitive disadvantage to SPRB coal, which is produced in Wyoming. Transportation from the NPRB mines is also limited to one rail line. NPRB coal production is small relative to that in the SPRB, and shipments of NPRB coal have declined since 1998.

25. Even if coal from outside the SPRB possessed physical characteristics that would allow its use, in lieu of SPRB coal, coals from other regions are too costly on a delivered cost basis to be an economic substitute for SPRB coal for most generators that use SPRB coal. Colorado and Uinta Basin coals, for many generators that burn SPRB coal, are much more expensive, on a delivered cost per Btu, sulfur-adjusted basis, than

SPRB coals. Appalachian coal is significantly more expensive on a delivered cost per Btu basis than SPRB coal, and moreover most Appalachian coal has high sulfur content.

26. SPRB coal is sold exclusively at the mine-mouth in the SPRB. Customers ship the coal on one of the two rail lines serving the SPRB and negotiate a freight rate with the railroad. Coal from the SPRB travels to at least 26 states extending from Oregon to Arizona in the west, to Lake Michigan, Georgia, and Alabama in the east, and including each of Plaintiff States.

27. 8800 Btu SPRB coal produced in Tier 1 of the SPRB is functionally and economically distinct from the 8400 Btu SPRB coal produced in Tier 2 and Tier 3 of the SPRB. More 8400 Btu coal must be transported and burned in order to generate the same heat output as would be generated from a given quantity of 8800 Btu coal. Because more 8400 Btu coal is required to generate the same heat value as a given amount of 8800 Btu coal, in general the greater the distance from the SPRB to a customer's generating facility, the more uneconomical it is for a customer with a given type of generator that is burning 8800 Btu SPRB coal to switch to 8400 Btu SPRB coal in response to an increase in the mine price of 8800 Btu SPRB coal.

28. Performance problems associated with burning 8400 Btu SPRB coal make use of this coal uneconomic for some 8800 Btu SPRB coal customers. When low-Btu coal is used to fuel a boiler designed to burn higher Btu coal, more coal must be moved through the boiler to generate the same quantity of heat. It is often not possible, however,

to move a sufficient volume of coal through the boiler unit to achieve the boiler's full rated steam output level, causing the rated maximum electric generating capacity of the generating facility to be reduced, a consequence referred to in the electricity industry as a "derate." For some 8800 Btu coal customers, use of 8400 Btu coal causes a derate. Growth in demand for electricity has increased, and is likely to continue to increase, the demand for 8800 Btu SPRB coal relative to the demand for 8400 Btu SPRB coal.

<u>Arch and Triton Each Control Significant Excess Capacity for Production of SPRB Coal</u>

29. Arch idled its 8400 Btu SPRB coal mining operations at Coal Creek in or about July 2000 because of what Arch regarded as unfavorable conditions existing in the market environment.

30. Arch has much of the infrastructure in place to support coal production of 18 million tons per year at its Coal Creek mine. Through its idle Coal Creek mine, Arch controls the principal excess capacity for production of 8400 Btu SPRB coal.

31. Through its North Rochelle mine, Triton controls the principal excess capacity for production of 8800 Btu SPRB coal.

<u>The SPRB Coal Market Is Susceptible to Coordination</u>

32. The SPRB coal market (and any narrower market therein) possesses several structural features that make coordination more likely, including a small number of competitors, high barriers to entry, homogeneity of the relevant product, relatively

inelastic demand, availability of substantial market and competitor information, and close geographic proximity of competitors.

33. Defendants and others, including Kiewit, recognized that consolidation in the SPRB has led and will lead to producer restraint and higher SPRB prices.

34. Detailed information regarding SPRB coal market and competitor output, sales, prices, capacity, forecasts and plans is readily available to mine owners through the trade press and through other public and private sources of information.

35. Behavior by the major SPRB producers facilitates coordination. The major SPRB producers regularly signal their intent with respect to coal production, and competitors keenly follow these signals and ascertain whether production announcements are actually implemented. This signaling includes open communications by coal companies and coal company executives at investor conferences and trade association meetings and through press releases and statements in the trade press.

36. Arch has been a leading proponent of limiting SPRB coal production. With the acquisition of Triton, Arch will have greater incentive and ability to limit supply of SPRB coal from the mines it already owns and those it would acquire. Arch has publicly encouraged SPRB competitors to restrict output to stabilize or increase prices for SPRB coal. Arch's output restriction and signals concerning output and prices facilitate coordination by reducing uncertainty among Arch's SPRB competitors. For example:

(a) On May 18, 2000, Arch announced its plans to reduce production at Coal Creek in a press release in which Arch President and CEO Steven Leer states, "We are committed to earning an adequate return for our shareholders, and we will not resume higher levels of production at Coal Creek until such a return is possible." Speaking at the Western Coal Council's Spring Forum on May 23, 2000, before an audience that included Arch's competitors, Mr. Leer noted that overproduction had eroded coal prices. Mr. Leer urged coal suppliers to "Produce Less Coal" in response to the problem of oversupply. Advocating cutbacks in coal production, Mr. Leer said that coal companies will benefit from matching supply and demand and that Arch, Kennecott, and Peabody are all currently moving to reduce production. He stressed to his audience that "Arch has been conscientious" in reducing capacity, including idling Coal Creek (removing 10 million tons per year of output and idling 18 million tons per year of capacity) and limiting expansion at Black Thunder to about 60 million tons per year (the original plan had called for about 80 million tons per year).

(b) A year later, at an April 17, 2001, Western Coal Transportation Association meeting, Mr. Leer delivered the keynote address to the group, which included his competitors and customers. In that speech, Mr. Leer explained that the reason for the price increase in the SPRB was the "supply/demand balance," due, in part, to the fact that in the "Southern PRB, fewer producers, so greater potential for discipline." Even though coal prices had more than doubled from the previous year, Mr. Leer defended his and his competitors' decisions to constrain supply – "We've had offers to open up Coal Creek Mine for one year at extremely attractive pricing. And the answer is no. I think other producers are in the same boat." Arch's message got through to Triton, and indeed was discussed within a few days internally among Triton's management.

c) On March 18, 2002, PRNewswire-FirstCall reported that Arch announced production cuts during a period of increasing prices and even though such cuts would adversely impact Arch's earnings. Quoting Mr. Leer, the report stated:

> "While we are seeing the initial signs of an economic recovery, and forward pricing for 2003 has begun to increase, we believe that the best course for Arch is to act aggressively to bring production in line with demand."
>
> *　　　*　　　*
>
> "We are committed to being a market-driven producer," Leer said. We believe it would be a mistake to sell coal into an oversupplied market, at prices that will not provide an adequate return."
>
> "We have not taken these steps lightly," he added. "The reductions will have an adverse impact on earnings, particularly in the first and second quarters, given the relatively fixed nature of our cost structure in the near term."

According to Mr. Leer, being "market driven" means exercising production discipline, *i.e.*, when demand is less than supply at Arch's desired price, Arch reduces its output rather than its price. Mr. Leer's statements were not merely posturing for public consumption. Privately Mr. Leer urged that Arch should continue to restrict output even in light of rising prices, because output increases would cause the price rebound to stall.

(d) Four months after Arch announced its decision to restrict production, the July 18, 2002, edition of Coal & Energy reported that Arch had, in fact, reduced its coal shipments. The article further reported Arch's most recent pricing for SPRB coal. The report quotes Mr. Leer as saying:

> "Although we are continuing to restrict production, we are seeing signs that the market is progressing towards a healthier balance between supply and demand. . . . In the West, we have committed in recent weeks approximately 3 million tons of Powder River Basin coal for delivery in 2003 or 2004, at an average price of approximately $7 per ton. . . . We are very comfortable with our position and feel no sense of urgency to sign contracts at current pricing levels. . . . We continue to believe that the current market has far more upside potential than downside."

(e) Throughout 2002 and into 2003, Mr. Leer continued to tout the benefits of restricting production. On April 21, 2003, one month before Arch announced it was acquiring Triton, Mr. Leer stated in a release announcing Arch's First Quarter 2003 results that "we continue to believe that our strategic decision to leave uncommitted tons in the ground, rather than sell them at a price that does not provide an adequate return, is sound." At the same time, Mr. Leer reaffirmed privately that Arch has been doing the right thing by restricting production and cautioned that Arch's ability to continue to lead the charge would depend on gaining market support. However, Mr. Leer warned that if prices did not improve soon, Arch would ramp up the mines to full production. Such a ramp up would send Arch's competitors a strong signal that Arch was prepared to punish other producers if they failed to support Arch's output curtailment initiative.

37. Arch's SPRB competitors also understand the importance of limiting production to tighten the supply/demand balance in the market and have signaled their own production intentions. For example:

(a) Privately, an executive of a major SPRB producer observed, in May 2000, that while the company could not enter into express or implied understandings with its competitors as to market matters influencing or affecting price, it can set a rational, independent example for the PRB industry. The company examined the message it would send to the PRB industry by curtailing expansion and expressed hope that competitors would consider these factors in their own market behavior, in light of preclusion, under antitrust law, of express or implied understandings or communications on these topics.

(b) Irl Engelhardt, Chairman and CEO of Peabody Coal, made the following statement in his April 25, 2000, speech to the Western Coal Transportation Association:

> The growing demand for Powder River Basin coals should point to robust market conditions. The opposite is true;

> conditions are soft at present. Why? Our "firm" believes that too many producers relied upon those optimistic market projections discussed earlier, and some made investments that resulted in oversupply situations.

Mr. Engelhardt then described the steps Peabody had taken to reduce "oversupply," including:

- In early 1999, Peabody suspended the 10-million-ton-per-year Rawhide Mine, "one of the most productive mines in the United States;"

- Also in 1999, Peabody delayed a 30-million-ton-per-year capacity expansion at North Antelope/Rochelle "until margins will generate the proper returns;" and

- In April 2000, Peabody idled a truck/shovel fleet at Caballo, reducing output by 8 million tons per year, "until market conditions improve."

(c) In an internal evaluation of its own SPRB coal supply strategy, another major SPRB producer noted with interest Mr. Engelhardt's speech, including his statements regarding the damage oversupply has wreaked and Peabody's output reductions until market conditions improve.

(d) On May 8, 2000, a few days after the Engelhardt speech, Kennecott issued a press release announcing its intent to "temporarily curtail production" at its mines. A week later, on May 15, 2000, Coal Outlook reported that "these reductions would come from the Cordero Rojo complex, 5.5 million tons; Jacobs Ranch, 2 million tons; and Colowyo, 500,000 tons." The article quotes

Kennecott's president Gary Goldberg, as stating that Kennecott elected to curtail output "'rather than accept prices that do not provide a return on its investment.'"

(e) Communications among the major SPRB producers are not limited to speeches, but include direct conversations concerning expansion plans and mine operations. Competitors also discuss with one another supply contracts with individual customers. In considering how to respond to a customer's expressed interest in purchasing coal, a major SPRB producer drew on its discussions with Arch personnel regarding the customer's future purchase commitments with Arch. Discussions between competitors also involve SPRB price projections and the SPRB supply and demand balance.

(f) Triton, well aware of the cutbacks by the three largest of the five SPRB producers, ordered the development of plans for the public announcement, at a May 15, 2000, speech to a Coaltrans conference, of its own plan to reduce production at North Rochelle until pricing improved. But Triton ultimately decided to expand output at the North Rochelle mine rather than cut back its production. Triton continued to operate the North Rochelle mine at close to full practical capacity until after entering into the acquisition agreement with Arch, entering into a joint defense agreement with Arch, and engaging in due diligence discussions with Arch. More recently, Triton also has indicated that it has plans to reduce production at the North Rochelle mine.

Prior to the Proposed Acquisition, Triton's North Rochelle Mine Has Been the Principal Source of Output Expansion in the SPRB During the Past Five Years

38. Shipments of SPRB coal increased by 70 million tons over the five-year period 1998 through 2003. While other SPRB producers exercised production discipline, Triton rapidly expanded production at its North Rochelle mine, the newest mine in the SPRB. Triton's North Rochelle mine has been the largest source of increased supply of SPRB coal over the five-year period 1998 through 2003. The increase in coal shipments from the North Rochelle mine accounted for 34.1% of the total increase in coal shipments from the SPRB over the five-year period 1998 through 2003. The expansion at North Rochelle has been the largest expansion of supply of SPRB coal over the five-year period 1998 through 2003.

39. Output expansion has been profitable for Triton. Triton's EBITDA was over fifty million dollars in 2002, and Triton has continued to have a strong operating income and EBITDA. The vast majority of Triton's operating income and EBITDA, in 2002 and 2003, came from Triton's North Rochelle mine.

40. Arch management recognized that an acquisition of Triton will provide an insurance policy for Arch in the SPRB by eliminating an undisciplined producer and enabling Arch more effectively to scale production to match demand.

LIKELIHOOD OF SUCCESS ON THE MERITS AND NEED FOR RELIEF

41. Arch's acquisition of Triton, both as originally agreed among defendants and as further agreed between Arch and a competing bidder for Triton assets, is an

acquisition of "all or any part of the stock" and "all or any part of the assets" of Triton, within the meaning of Clayton Act § 7, 15 U.S.C. § 18.

42. The Plaintiff States are ultimately likely to succeed in demonstrating that the Acquisition would violate Section 7 of the Clayton Act. In particular, the Plaintiff States are ultimately likely to succeed in proving, *inter alia*, that:

(a) The relevant product markets in which the competitive effects of the proposed Acquisition may be assessed are SPRB coal (and any narrower markets therein).

(b) The relevant geographic markets within which to assess the competitive effects of the proposed Acquisition are the SPRB (and any narrower markets therein). The SPRB is the only area with mines to which customers can turn for supply of SPRB coal, and Tier 1 of the SPRB is the only area with mines to which customers can turn for supply of 8800 SPRB coal. The Acquisition will adversely affect electricity customers throughout the United States.

(c) The Acquisition may result in some or all of the following effects:

(i) The Acquisition would combine two of the four leading producers of SPRB coal, substantially increasing concentration in the SPRB market, would result in a highly concentrated SPRB market, would eliminate the existing substantial competition between Arch and Triton, and would substantially reduce competition in the SPRB market.

(ii) The Acquisition would combine the two firms that hold the principal sources of excess capacity in the SPRB and would bring under Arch's control the principal source of excess capacity for production of 8800 Btu SPRB coal.

(iii) The Acquisition would combine two among only four producers in Tier 1 of the SPRB, substantially increasing concentration in 8800 Btu SPRB coal, would result in high concentration among 8800 coal producers, would eliminate the existing substantial competition between Arch and Triton, and would substantially reduce competition in 8800 Btu SPRB coal.

(iv) The Acquisition increases the likelihood of coordination in the market for SPRB coal (and narrower markets therein), a market that is already susceptible to coordination. Following the Acquisition, Arch could more easily coordinate profitably with either or both of the other two remaining major producers to restrict output, limit capacity expansion, or raise price as demand for SPRB coal continues to grow. The Acquisition would make coordination among SPRB producers, and among producers of 8800 Btu SPRB coal, easier, more likely, more successful, and more durable.

(d) Entry and expansion by fringe competitors in the relevant markets would not be timely, likely, and sufficient in its magnitude, character, and scope to deter or counteract the competitive effects of the Acquisition.

43. The transfer by Arch of Triton's Tier 3 Buckskin mine to Kiewit does not remedy the potential anticompetitive effects of the Acquisition in the SPRB or in 8800 coal. Buckskin and R.A.G. would be unable to constrain a coordinated price increase in the SPRB.

44. The reestablishment of Triton as an independent, viable competitor in the relevant markets if the Acquisition were consummated would be difficult, and there is a substantial likelihood that it would be difficult or impossible to restore Triton's business as it originally existed. If the agreement between Arch and Kiewit were consummated, the assets of Triton would be divided between Arch and Kiewit, and the reestablishment of Triton as a viable and major competitor in the SPRB would be impaired. Further, it is likely that substantial interim harm to competition, and harm to one or both of the acquired mines, would occur even if suitable divestiture remedies could be devised. For example:

(a) Arch could preempt economic expansion of the North Rochelle mine by preventing the North Rochelle mine from acquiring the West Roundup Lease, for which Triton applied to the Bureau of Land Management on July 28, 2000, and which would add approximately 185 million tons of coal reserves, and approximately 1,868 acres, to the North Rochelle mine.

(b) Arch could preempt economic expansion of the Buckskin mine by preventing the Buckskin mine from acquiring the West Hay Creek Lease, for which Triton applied to the Bureau of Land Management on August 31, 2000, and which would add approximately 130 million tons of coal reserves, and approximately 840 acres, to the Buckskin mine.

c) Arch could shift production of 8800 Btu SPRB coal from Arch's Black Thunder mine to the North Rochelle mine, causing coal reserves at the North Rochelle mine to be depleted.

(d) Arch could continue to hold out of production Arch's Coal Creek mine and produce 8400 Btu SPRB coal only at the Buckskin mine, causing coal reserves at the Buckskin mine to be depleted.

(e) Arch plans to consolidate operations at the North Rochelle mine with Arch's adjoining Black Thunder mine, resulting in a disruption of independent and economic operation of the North Rochelle mine and impairing the restoration of independent and economic operation of the North Rochelle mine following divestiture.

45. For the reasons stated above, the granting of the injunctive relief sought is in the public interest.

VIOLATION OF SECTION 7 OF THE CLAYTON ACT, AS AMENDED, 15 U.S.C. § 18

46. The effect of the proposed acquisition, if consummated, may be substantially to lessen competition in the sale of Southern Powder River Basin coal in the relevant geographic market, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 in the following ways, among others:

(a) combining two of the four leading producers of SPRB coal, substantially increasing concentration in the SPRB market, resulting in a highly concentrated SPRB market, elimination of the existing substantial competition between Arch and Triton, thus substantially reducing competition in the SPRB market.

(b) combining the two firms that hold the principal sources of excess capacity in the SPRB by bringing under Arch's control the principal source of excess capacity for production of 8800 Btu SPRB coal.

c) substantially increasing concentration in 8800 Btu SPRB coal resulting in high concentration among 8800 coal producers, elimination of the existing substantial competition between Arch and Triton, thus substantially reducing in 8800 Btu SPRB coal.

(d) increasing the likelihood of coordination in the market for SPRB coal (and narrower markets therein), a market that is already susceptible to coordination. The Acquisition would make coordination among SPRB producers, and among producers of 8800 Btu SPRB coal, easier, more likely, more successful, and more durable.

each of which increases the likelihood that the price of SPRB coal will increase in the relevant geographic market.

47. In the absence of additional judicial action, the merger would substantially lessen competition for SPRB coal.

<u>BASIS FOR PRELIMINARY INJUNCTIVE RELIEF</u>

48. Plaintiffs are ultimately likely to succeed in demonstrating that the proposed merger would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, in the relevant product and geographic markets alleged above.

49. The reestablishment of Arch and Vulcan as independent, viable competitive entities if they were to merge prior to a trial on the merits in this action would be difficult, and there is a substantial likelihood that it would be impossible to restore the businesses as they originally existed. Furthermore, it is likely that substantial interim harm to competition would occur even if suitable divestiture remedies could be devised.

50. The granting of the injunctive relief sought is in the public interest.

PRAYER FOR RELIEF

The Plaintiffs request that the Court:

51. Preliminarily enjoin and restrain Defendant Arch, and all its affiliates, from taking any further steps to consummate, directly or indirectly the acquisition of Triton or any other acquisition of stock, assets, or other interest, either directly or indirectly, of Triton from New Vulcan and enter its order maintaining the status quo pending a trial on the merits of the States' action; and

52. Following a trial on the merits, enter judgment:

   A. Finding that the proposed acquisition violates Section 7 of the Clayton Act, 15 U.S.C. §18;

   B. Permanently enjoining and restraining Defendants from carrying out the Merger and Purchase Agreement dated May 29, 2003, or from entering into or carrying out any agreement, understanding, or plan by which Arch would acquire the outstanding shares of Triton from Vulcan so as to have a management, ownership, or other controlling interest in the Buckskin Mine or North Rochelle Mine, or any agreement, understanding or plan by which another would acquire such interests in the mines; and

   C. Awarding to Plaintiffs their costs and fees of this action; and

D. Awarding to Plaintiffs such other relief as the Court may deem just and proper.

DATED: March 31, 2004.

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

Anne E. Schneider

Anne E. Schneider, MOBar #35479
Antitrust Counsel
P. O. Box 899
Jefferson City, MO 65102
(573) 751-3321
(573) 751-7948 (facsimile)
Anne.Schneider@ago.mo.gov

FOR PLAINTIFF STATE OF ARKANSAS

MIKE BEEBE
Attorney General of Arkansas

TERESA MARKS
Deputy Attorney General for Public Protection

Bradford Phelps by JM

Bradford Phelps
Assistant Attorney General
Arkansas Bar No. 2001245

Office of the Attorney General
323 Center St.
Little Rock, AR 72201
501/682-3625 (Phone)
501/682-8118 (Facsimile)
Bradford.phelps@ag.state.ar.us

Signature for the State of Arkansas on Complaint filed in
State of Missouri, et al., v. Arch Coal, Inc., et al.

FOR PLAINTIFF STATE OF KANSAS:

PHILL KLINE
Attorney General of Kansas

KARL R. HANSEN
Assistant Attorney General
Kansas State Bar No. 18232

Office of the Attorney General
120 S.W. 10th Street, 2nd Floor
Topeka, Kansas 66612
785/368-8447 (Phone)
785/291-3699 (Facsimile)
hansenk@ksag.org

Signature for the State of Kansas on Complaint filed in
State of Missouri, et al., v. Arch Coal, Inc., et al.

FOR PLAINTIFF STATE OF ILLINOIS

LISA MADIGAN
Attorney General of Illinois

ROBERT W. PRATT
Chief, Antitrust Bureau
Illinois State Bar No. 99000

Office of the Attorney General
100 W. Randolph Street
Chicago, Illinois 60601
312-814-3722 (Phone)
312-814-1154 (Facsimile)
rpratt@atg.state.il.us

Signature for the State of Illinois on Complaint filed in
State of Missouri, et al., v. Arch Coal, Inc., et al.

FOR PLAINTIFF STATE OF IOWA

THOMAS J. MILLER
Attorney General of Iowa

Tam Ormiston
Deputy Attorney General

Layne Lindebak
Assistant Attorney General

John F. Dwyer
Attorney

THOMAS J. MILLER
Attorney General

Iowa Department of Justice
1305 East Walnut Street
Des Moines, Iowa 50319
(515) 281-7054 (Telephone)
(515) 281-4902 (Facsimile)
llindeb@ag.state.ia.us

Signature for the State of Iowa on Complaint filed in
State of Missouri, et al., v. Arch Coal, Inc., et al.

FOR PLAINTIFF STATE OF TEXAS

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

MARK TOBEY
Assistant Attorney General
Chief, Antitrust and Civil Medicaid Fraud Division

Rebecca Fisher

REBECCA FISHER
Assistant Attorney General
Texas State Bar No. 07057800

Office of the Attorney General
P. O. Box 12548
Austin, Texas 78711-2548
512/463-2185 (Phone)
512/320-0975 (Facsimile)
Rebecca.Fisher@oag.state.tx.us

Signature for the State of Texas on Complaint filed in
State of Missouri, et al., v. Arch Coal, Inc., et al.