

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**IN RE PUDA COAL SECURITIES INC.  
et al. LITIGATION**

Case No: 1:11-CV-2598(BSJ)(HBP)

CLASS ACTION

**CONSOLIDATED COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS [CORRECTED]<sup>1</sup>**

**DEMAND FOR JURY TRIAL**

---

<sup>1</sup> Corrected only as to typographical and formatting errors, and to include an inadvertently omitted additional named plaintiff.

Lead Plaintiffs Salomon Querub, Howard Pritchard, and Hotel Ventures LLC (“Lead Plaintiffs”), and named plaintiffs Steven Weissmann, Thomas Rosenberger, and Sal LaDuca (collectively, “Plaintiffs”), allege the following complaint with personal knowledge as to their own acts, and upon information and belief as to all other allegations herein.

## **I. INTRODUCTION**

1. Plaintiffs bring this securities class action on behalf of themselves and all other persons or entities who purchased or otherwise acquired Puda Coal, Inc. (“Puda” or the “Company”) common stock and call options, or sold Puda put options between November 13, 2009 and October 3, 2011, inclusive (the “Class Period”), seeking to pursue remedies under the Securities Exchange Act of 1934 (the “Exchange Act”). This action is also brought on behalf of a subclass of all persons or entities who purchased or otherwise acquired Puda’s common stock pursuant and/or traceable to the Company’s public offering of common stock on or around December 8, 2010 (the “December Offering”), seeking to pursue remedies under the Securities Act of 1933 (the “Securities Act”).

2. Until recently, investors in Puda’s securities had every reason to believe that the Company, through its 90% ownership of its primary operating subsidiary, Shanxi Puda Coal Group Co., Ltd. (“Shanxi Coal”), was a profitable and growing supplier of “premium high grade metallurgical coking coal used to produce coke for steel manufacturing in China.”

3. In truth, Puda did not own Shanxi Coal. Puda did not have any operations or revenues because its Chairman and major shareholder, Defendant Ming Zhao (“Zhao”), had improperly transferred Puda’s 90% share of Shanxi Coal’s common stock to himself and then to an unrelated investment fund controlled by CITIC (defined below), for which Puda received no consideration.

4. This action arises from a brazen fraudulent scheme in which a Puda insider improperly transferred the Company's sole revenue producing operating subsidiary to third parties and then falsely portrayed to investors that Puda still possessed this operating subsidiary.

5. Puda represented to investors that it was a Delaware holding company, with substantially all of its operations conducted through its sole operating subsidiary, Shanxi Coal, which owned all of Puda's mining assets, coal washing plants, cash and receivables. Shanxi Coal's operations were the sole source of Puda's revenues and profits.

6. While Puda is a corporation organized under Delaware Law and its common stock is publicly traded in the United States, the Company's headquarters and operations (specifically those of Shanxi Coal) are located thousands of miles away in the Shanxi Province of the People's Republic of China ("PRC" or "China").

7. As such, the information regarding Puda's operations available to investors during the Class Period was largely limited to the Company's public statements in the U.S., including those in periodic filings with the SEC. For example, Puda warned investors that "[b]ecause our sole operating company, Shanxi Coal, is based in China, shareholders may have greater difficulty in obtaining information about Shanxi Coal on a timely basis than would shareholders of an entirely U.S.-based company" and "shareholders may have difficulty in obtaining information about Shanxi Coal from sources other than Shanxi Coal itself." Moreover, Puda warned that "[i]nformation available from newspapers, trade journals, or local, regional or national regulatory agencies such as issuance of construction permits and contract awards for development projects will not be readily available to shareholders" and specifically, "shareholders will be dependent upon Shanxi Coal's management for reports of Shanxi Coal's

progress, development, activities and expenditure of proceeds.”

8. Before and during the Class Period, Puda represented that it indirectly “own[ed] 90% of the equity interest” in Shanxi Coal.<sup>2</sup> The remaining 10% was owned by Defendant Zhao and his brother Yao Zhao (“Y. Zhao”). Defendant Zhao, also the Chairman of Puda’s Board of Directors and a major Puda shareholder, owned 8% of Shanxi Coal. Y. Zhao, the legal representative of Putai (the company through which Puda owned Shanxi Coal) under Chinese law and also a significant Puda shareholder, owned the remaining 2%.

9. Unbeknownst to investors, on or about September 3, 2009, just before the start of the Class Period, Defendant Zhao arranged for his brother Y. Zhao to improperly authorize and cause the transfer of Puda’s 90% interest in Shanxi Coal to Defendant Zhao, adding to the 8% interest Defendant Zhao already held. Additionally, Y. Zhao divided and transferred his 2% interest of Shanxi Coal to his brother Defendant Zhao (1.0%) and a Shanxi Coal employee named Wei Zhang (1.0%). As a result, as of around September 3, 2009, Defendant Zhao had increased his ownership of Shanxi Coal to 99%, thereby leaving Puda with zero ownership in Shanxi Coal.

10. Even though Y. Zhao’s actions effectively rendered Puda a shell company with no assets, no operations and no revenue, the Company nevertheless represented to investors during the Class Period in annual and quarterly filings with the SEC and other statements to the public that Puda continued to own 90% of Shanxi Coal. Similarly, Puda reported fraudulent financial results and continued to issue financial statements that incorporated its

---

<sup>2</sup> Puda’s indirect ownership interest in Shanxi Coal was held through Puda’s 100% ownership of a subsidiary named, Puda Investment Holding Limited (“BVI”), which possessed 100% ownership of a subsidiary named, Shanxi Putai Resources Limited (“Putai”), which possessed the 90% ownership of Shanxi Coal. Hence, Puda owned 100% of BVI, which owned 100% of Putai, which held 90% of Shanxi Coal.

false claim of ownership of 90% of Shanxi Coal – fraudulently consolidating Shanxi Coal’s operating results in its financial statements, despite the fact that Puda no longer maintained any ownership interest in Shanxi Coal.

11. Having obtained a 99% ownership interest in Shanxi Coal on September 3, 2009, on or around July 15, 2010, Defendant Zhao then transferred 49% of the shares of Shanxi Coal to CITIC Trust Co. (“CITIC”), in exchange for 100% of the ordinary shares in the CITIC Juxinhuijin Trust Fund I (the “CITIC Fund II”), whose ordinary shares were valued by CITIC at RMB 1.212 billion (\$179mm)<sup>3</sup>, according to CITIC Fund II’s offering documents and management reports. CITIC is the largest Chinese private equity fund and merchant bank, and is owned and controlled by the Chinese government.

12. CITIC had created the CITIC Fund I as an investment vehicle to hold and operate the business of Shanxi Coal. CITIC raised RMB 30 billion (\$443mm) in redeemable preferred stock from Chinese investors for the CITIC Fund I. According to offering documents and management reports, CITIC expected and eventually paid an annual return of 9.5% in the first two years and 11% from the third year to the Chinese investors.

13. Just days after Defendant Zhao transferred 49% of Shanxi Coal to CITIC Fund I, he pledged the other 51% of Shanxi Coal to CITIC as security to obtain a RMB 2.5 billion (\$369 million) 3-year loan to Shanxi Coal at a cost of 14.5% (annual interest plus fees). In November 2010, the loan was subsequently increased to RMB 3.5 billion (\$517 million). In January 2011, the loan was further increased to RMB 5 billion (\$738.55 million), bringing the combined investment to RMB 3.745 billion (\$567.4 million).

---

<sup>3</sup> All RMB amounts are reflected in dollars at an exchange rate of 1 USD = 6.77 RMB Yuan.

14. Plaintiffs confirmed the facts of the above Shanxi Coal equity transfers and pledge by obtaining and reviewing reports from the State Administration of Industry and Commerce (“SAIC”) office in Shanxi, China evidencing the equity transfers<sup>4</sup> and pledge<sup>5</sup> that Chinese law requires to be filed. The SAIC is the Chinese government agency that regulates corporations in China. The Shanxi Coal equity transfers and pledge are further confirmed by written statements that CITIC made to investors in CITIC Fund I in offering documents and its annual and quarterly reports.

15. As the legal representative of Shanxi Coal, Defendant Zhao signed and authorized the filing with the SAIC documents registering each equity transfer of Shanxi Coal to himself and then to CITIC, as well as the pledge to CITIC, described above.

16. Puda did not let the fact that the Company no longer possessed any ownership in Shanxi Coal – which had been Puda’s sole source of revenues – stand in the way of tapping the American equity markets and raising funds for Puda from unsuspecting public investors.

---

<sup>4</sup> According to China Company Law, a company which transfers its equity shall amend the names of the shareholders and their capital contributions in the bylaws accordingly. Source: Company Law of the People's Republic of China (中华人民共和国公司法(2005 修订) issued by Standing Committee of the National People's Congress on October 27, 2005, and became effective on January 1, 2006. According to China Administration of Company Registration, in the event of equity transfer or sale of shares of a limited liability company, the company or shareholder shall register the change in such ownership and capitalization with the SAIC by appropriate filing within 30 days immediately after such equity transfer. Source: Regulations of the People's Republic of China on the Administration of Company Registration (Revised 2005) 中华人民共和国公司登记管理条例(2005 修订) issued by State Council on December 18, 2005, and became effective on July 1, 1994.

<sup>5</sup> According to China Property Law, every pledge of equity shall be invalid until such pledge is registered with the SAIC. Source: Property Law of the People's Republic of China (中华人民共和国物权法) issued by National People's Congress on March 16, 2007, and became effective on October 1, 2007.

17. In its annual reports filed with the SEC and in investment prospectuses soliciting public investment, Puda misrepresented that it earned over \$200 million of revenue and more than \$5 million of profit for 2009 and more than \$300 million of revenue and over \$23 million of profit for 2010. In fact, Puda had no revenue and no profit for 2010 and materially less revenue and profit for 2009 because Zhao had transferred ownership of Puda's operation subsidiary, Shanxi Coal, away from Puda on September 3, 2009.

18. Puda conducted two separate public offerings in 2010 without disclosing these transfers or that it no longer had any operating business at all. As a result, Puda netted roughly \$14.5 million of illicit proceeds from the sale of approximately 2.9 million shares of Puda stock to the public in February 2010, and netted an additional \$108 million from the sale of another 9 million shares to public investors in December 2010. Essentially, Puda was able to raise more than \$100 million from public investors by selling shares in what was effectively an empty shell company.

19. Defendants concealed from investors that Puda no longer had any ownership interest in Shanxi Coal, and hence had no operating business or revenue, until April 2011. On or around April 8, 2011, Alfred Little published a research report on Puda Coal (the "Little Report") accusing Defendant Zhao of improperly transferring ownership of Shanxi Coal to himself in September 2009, selling 49% of Shanxi Coal to CITIC in July 2010, and pledging the remaining 51% interest in Shanxi Coal to CITIC as collateral for a loan.

20. Investors immediately reacted negatively to this news. The Company's stock price promptly declined \$3.10 per share, or 34.1%, to close on Friday April 8, 2011, at \$6.00 per share, on unusually heavy trading volume. The following Monday morning, before the market opened, NYSE Amex halted trading of the Company's shares and it remained halted for

more than four months, rendering the stock held by Puda's shareholders illiquid and effectively worthless.

21. In the wake of the Little Report, Puda's board of directors commenced an investigation into the allegations of fraud.

22. On April 11, 2011, Puda stated that "[a]lthough the investigation [was] in its preliminary stages, evidence support[ed] the allegation that there were transfers by [Defendant] Zhao in subsidiary ownership that were inconsistent with disclosure made by the Company in its public securities filings."

23. In the months that followed, the Company's long-standing accounting firm resigned and cautioned investors that Puda's financial results for the fiscal years ending 2009 and 2010 should no longer be relied upon.

24. It was not until August 18, 2011, after more than four months, that trading of Puda's stock finally resumed. Over the course of the next two days of trading, investors dumped their holdings en masse.

25. On August 18, 2011, Puda's shares declined \$1.90 per share, nearly 32% (from the April 8, 2011, closing price of \$6.00 per share), and then declined another \$0.87 per share, more than 21%, to close on Friday August 19, 2011, at \$3.23 per share. Over these two days, Puda's shares lost 46.17% of their value, on unusually heavy trading volume. The freefall of Puda's stock price was once again stopped when trading was halted prior to the start of trading on Monday August 22, 2011.

26. Days later, on September 2, 2011, Puda's shares again resumed trading and plummeted another \$1.21 per share, or 37.5%, after Puda's Audit Committee disclosed, among others, that the interim findings of its internal investigation effectively confirmed that the



rumors of Defendant Zhao's improper and undisclosed transfer of Puda's ownership of Shanxi Coal to CITIC were true.

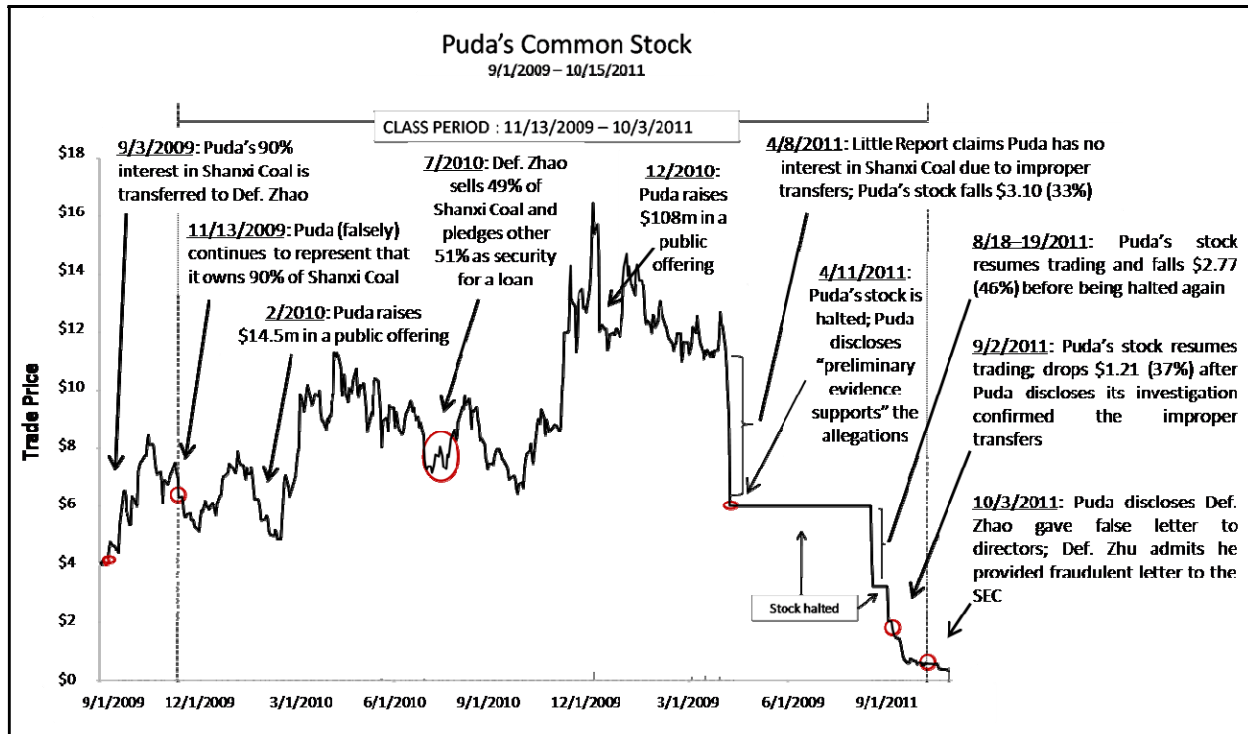
27. On September 26, 2011, Puda issued a press release entitled "Puda Coal Received a Resignation Letter from its CEO," admitting that Defendant Zhao had forged a letter purporting to be from CITIC and had provided the forged letter to Puda's Audit Committee and Defendant Liping Zhu ("Zhu") had provided the letter to the SEC in a failed effort to convince the SEC that Puda really did own Shanxi Coal:

On September 23, 2011, the Board of Directors of Puda Coal, Inc. (the "Company"; Other OTC: PUDA.PK) received a letter from the Company's Chief Executive Officer ("CEO"), Liping Zhu, dated September 22, 2011. The letter states that Mr. Zhu resigns from his positions as the Company's CEO and as a director on the Board. The letter also states that, on August 29, 2011, Mr. Zhu provided a false letter from CITIC Trust Co. Ltd. ("CITIC") to the U.S. Securities and Exchange Commission ("SEC") and to counsel for Ming Zhao, Chairman of Puda Coal.

On September 1, 2011, the Company filed a current report on Form 8-K with the SEC disclosing interim findings of the internal investigation by the Audit Committee, including that, on August 31, 2011, Ming Zhao, through his counsel, provided the Audit Committee with a letter purportedly from CITIC (the "CITIC Letter"), and that the Audit Committee was unable to verify the authenticity of, or the information contained in, the "CITIC Letter." The "CITIC Letter" appears to be the same letter that was referred to in the resignation letter from CEO Liping Zhu.

28. Finally, on October 3, 2011, the last day of the Class Period, the Company disclosed that Defendant Zhao had provided Puda's directors with a false letter purportedly from CITIC claiming that CITIC did not actually fund the loan. Further, Puda disclosed that Defendant Zhu admitted that he had provided this fraudulent letter to the SEC. Upon this news, Puda's stock dropped another 16.6%.

29. The following chart reflects the loss that Defendants' misconduct caused to the value of Puda's common stock as the public learned the truth about Puda:



30. The Company is now the subject of an investigation by the SEC, which has issued a Wells Notice informing Defendant Zhao that the SEC intends to file an action against him for violating the federal securities laws. The Company has similarly received a Wells Notice indicating that the staff of the SEC intends to recommend that the SEC authorize and institute administrative proceedings against Puda to determine whether the SEC should suspend or revoke the registration of each class of the Company's securities. Further, Puda's

- 1) Chief Executive Officer ("CEO"), President and Director, Defendant Zhu;
- 2) Chief Financial Officer ("CFO"), Defendant Qiong Wu ("Wu"); and
- 3) Defendant Jianfei Ni ("Ni")

have all resigned from the Company in the wake of this scandal.

31. Throughout the Class Period, Defendants made false and misleading statements, and failed to disclose material adverse facts about the Company's business, and operations. Specifically, Defendants made false and misleading statements and failed to disclose: (1) that

Defendant Zhao had transferred all of Puda's ownership and shares of Shanxi Coal to himself; (2) that Defendant Zhao had sold 49% of Shanxi Coal to CITIC; (3) that Defendant Zhao had pledged a 51% interest in Shanxi Coal as collateral to CITIC for a loan; (4) that, as a result, Puda did not own the 90% interest in Shanxi Coal that the Company claimed it owned and therefore Puda had no business, operations, assets or revenue; (5) that Puda's reported financial results and financial condition were materially misstated; (6) that the Company lacked adequate internal and financial controls; and (7) that the Company's financial statements were not presented in accordance with Generally Accepted Accounting Principles ("GAAP").

## **II. JURISDICTION AND VENUE**

32. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5), and under Sections 11, 12(a)(2), and 15 of the Securities Act (15 U.S.C. §§ 77k and 77o).

33. This Court has jurisdiction over the subject matter of this action pursuant to Section 22 of the Securities Act (15 U.S.C. §77v) and Section 27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1331.

34. Venue is proper in this Judicial District pursuant to Section 22 of the Securities Act (15 U.S.C. §77v) and Section 27 of the Exchange Act (15 U.S.C. §78aa(c)) and §28 U.S.C. §1391(b). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District. Additionally, Defendant Macquarie Capital (USA) Inc. maintains its principal executive offices within this Judicial District, and, at all relevant times, Puda's stock traded on the NYSE Amex exchange.

35. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

### **III. PARTIES**

#### **A. Plaintiffs**

36. Lead Plaintiffs Salomón Querub, Howard Pritchard, and Hotel Ventures LLC purchased Puda securities during the Class Period, as set forth in their certifications previously filed with the Court and incorporated by reference herein, and have suffered damages as a result of defendants' federal securities law violations.

37. Plaintiff Steven Weissmann purchased Puda securities, including options, during the Class Period, as set forth in his certification previously filed with the Court and incorporated by reference herein, and suffered damages as a result of defendants' federal securities law violations.

38. Plaintiff Thomas Rosenberger purchased or acquired Puda securities during the Class Period, including 1,000 shares of common stock at \$12.00 per share on December 8, 2010, pursuant and/or traceable to the December Offering, as set forth in his certification previously filed with the Court and incorporated by reference herein, and has suffered damages as a result of defendants' federal securities law violations.

39. Plaintiff Sal LaDuca purchased Puda securities during the Class Period, as set forth in his certification previously filed with the Court and incorporated by reference herein, and suffered damages as a result of defendants' federal securities law violations.

**B. Defendant Puda**

40. Defendant Puda is a Delaware corporation with its principle executive offices located at 426 Xuefu Street, Taiyuan, Shanxi Province, The People's Republic of China. Puda is a purported supplier of cleaned coking coal used to produce coke for steel manufacturing in China. The Company's operations are conducted exclusively through Shanxi Coal, which owns all of Puda's mining assets, coal washing plants, cash and receivables.

**C. Officer and Director Defendants**

41. Defendant Zhao was, at all relevant times, the Chairman of the Board of Puda and owned about 36% of Puda's outstanding common stock. Defendant Zhao was also, at all relevant times, Chairman of Shanxi Coal's Board. Defendant Zhao was previously Puda's President and CEO from July 2005 to June 2008 and Shanxi Coal's CEO from 1995 to June 2008. On April 11, 2011, Puda Coal announced that Defendant Zhao had agreed to a voluntary leave of absence until the Audit Committee's investigation was complete.

42. Defendant Zhao was, at all relevant times, also the legal representative of Shanxi Coal. As such, Defendant Zhao was responsible for signing all regulatory filings made with the SAIC on behalf of Shanxi Coal.<sup>6</sup>

43. Though not a defendant, Defendant Zhao's brother, Y. Zhao, played a prominent role in the fraud. Y. Zhao is and was a major shareholder of Puda (9%) and was the legal representative of Shanxi Putai Resources Limited, one of Puda's subsidiaries ("Putai").

44. Defendant Zhu was President, CEO and a director of Puda from June 2008 until September 22, 2011, when he resigned from his positions.

---

<sup>6</sup> Under Chinese law, the legal representative of a corporation is authorized to take actions and enter contracts that are fully binding on the corporation.

45. Defendant Wu was Puda's CFO from July 2008 and Puda's secretary from April 2010 until her resignation from both positions on September 27, 2011.

46. Defendant Ni was, at all relevant times, a director of the Company. Defendant Ni was a member of the Company's Audit, Nominating and Corporate Governance, and Compensation Committees until his resignation from the Board on December 20, 2011. Defendant Ni signed the Company's FY 2009 10-K, and its 2010 Registration Statement and FY 2010 10-K, which contained materially false and misleading statements.

47. Defendant C. Mark Tang ("Tang") was, at all relevant times, a director of the Company. Defendant Tang was a member of the Company's Audit, Nominating and Corporate Governance, and Compensation Committees. Defendant Tang signed the Company's FY 2009 10-K, and its 2010 Registration Statement and FY 2010 10-K, which contained materially false and misleading statements.

48. Defendant Lawrence Wizer ("Wizer") was, at all relevant times, Chairman of Puda's audit committee and a member of the Company's Nominating and Corporate Governance, and Compensation Committees. Prior to joining Puda's Board, Defendant Wizer worked at the accounting firm of Deloitte LLP for more than forty years. Defendant Wizer is also a Certified Public Accountant ("CPA"). Defendant Wizer signed the Company's FY 2009 10-K, and its 2010 Registration Statement and FY 2010 10-K, which contained materially false and misleading statements.

49. Defendants Zhao, Zhu, Wu, Ni, Tang, and Wizer (the "Officer and Director Defendants"), because of their positions with Puda, possessed the power and authority to control the contents of the Company's filings with the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.* the market.

Each Defendant was provided with copies of the Company's reports alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected.

**D. Underwriter Defendants**

50. Defendant Brean Murray, Carret & Co., LLC ("Brean") was an underwriter of the Company's December Offering and its February 2010 offering. Defendant Brean maintains an address for service of process care of CSC, at 80 State Street, Albany, New York.

51. Defendant Macquarie Capital (USA) Inc. ("Macquarie") was an underwriter of the Company's December Offering. Defendant Macquarie's principal executive offices are located at 125 West 55th Street, 22nd Floor, New York, New York.

52. Defendants Brean and Macquarie are collectively referred to hereinafter as the "Underwriter Defendants." The Underwriter Defendants served as financial advisors, and assisted in the preparation and dissemination of the offering materials for the December Offering. The Underwriter Defendants received more than \$5.5 million in underwriting discounts and commissions from their service as underwriters for the December Offering.

**E. Auditor Defendants**

53. Defendant Moore Stephens International Ltd. ("MSIL") is an accounting firm that at all relevant times served as Puda's independent auditor. MSIL is a global accountancy and advisory network with its headquarters in London. Today, the network comprises 638 offices in 97 countries throughout the world, incorporating 20,588 people, and is comprised of seven different regions.<sup>7</sup>

---

<sup>7</sup> These statistics are taken from MSIL's Website, stating that these numbers are Worldwide statistics for 2010 - published by the IAB in January 2011

54. Defendant Moore Stephens Hong Kong (“MSHK”) is a member firm of Defendant MSIL’s network, located in Hong Kong.

55. Defendant Moore Stephens, P.C. (“MSPC”) is a member firm of Defendant MSIL’s network. Defendant MSPC has two offices, one in New Jersey and one in New York.

56. Defendants MSIL, MSHK and MSPC are collectively referred to herein as “Moore Stephens” or the “Auditor Defendants.”

#### **IV. CLASS ACTION ALLEGATIONS**

57. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all persons or entities who purchased or otherwise acquired Puda securities, including common stock and options, between November 13, 2009, and October 3, 2011, inclusive (the “Class Period”), and who were damaged thereby (the “Class”), seeking to pursue remedies under the Exchange Act.

58. Plaintiffs also bring this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(c) on behalf of a subclass, consisting of all persons or entities who purchased or otherwise acquired Puda common stock pursuant and/or traceable to the December Offering, seeking to pursue remedies under the Securities Act. Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

59. The members of the Class are so numerous that joinder of all members is impracticable. During the Class Period, Puda securities were actively traded on the NYSE Amex Exchange (“NYSE Amex”). While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs



believe that there are hundreds or thousands of members in the proposed Class. Millions of Puda Coal shares were traded publicly during the Class Period on the NYSE Amex and as of March 7, 2011, the Company had 30,022,856 shares of common stock outstanding. There were approximately 9 million shares sold in the December Offering. Record owners and other members of the Class may be identified from records maintained by Puda or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

60. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

61. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

62. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are: (i) whether the federal securities laws were violated by Defendants' acts as alleged herein; (ii) whether Defendants omitted and/or misrepresented material facts about the Company and its business; and (iii) to what extent the members of the Class have sustained damages and the proper measure of damages.

63. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation makes it impossible for members of the Class to individually

redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

## **V. BACKGROUND**

64. In the past two years, widespread fraud involving Puda and other Chinese “Reverse Merger” stocks have become the latest trend of corporate wrongdoing and securities fraud in the United States.

65. The number of China-based companies with their principal place of business in the PRC listed on U.S. Exchanges has skyrocketed in the past decade. The Public Accounting Oversight Board (“PCAOB”) has identified 159 reverse mergers by companies primarily based in the PRC between January 1, 2007, and March 31, 2010.<sup>8</sup> Not every PRC company that began to trade on a U.S. stock exchange is a fraud, but a substantial number of them are. In fact, as disclosed in an April 27, 2011, letter from Mary Shapiro (Chairman of the SEC) to Congressman McHenry (Chairman of the Subcommittee on TARP, Financial Services, and Bailouts of Public and Private Programs), the SEC had identified no fewer than twenty-four PRC-based companies that had filed Forms 8-K disclosing auditor resignations, accounting problems or both – in just March and April 2011.

66. The Chairman of the PCAOB, James R. Doty, stated that there are “significant risks associated with audits of operations of U.S. [listed] companies in China. For example, we are finding through our oversight of U.S. firms that even simple audit maxims, such as maintaining the auditor’s control over bank confirmations, may not hold given the business

---

<sup>8</sup> Research Note 2011-P1, *Activity Summary and Audit Implications for Reverse Mergers Involving Companies from the China Region: January 1, 2007, through March 31, 2010*, Public Company Accounting Oversight Board (March 14, 2011).

culture in China.”<sup>9</sup> Therefore, Doty concluded that “[i]n light of these risks, the PCAOB’s inability to inspect the work of registered firms from China is a gaping hole in investor protection.”<sup>10</sup>

67. The reverse merger is the technique *du jour* for fraudulent Chinese companies to bypass the typical registration process that allows the SEC to examine a company prior to it selling shares on U.S. stock exchanges. In a typical registration process for an initial public offering of stock (“IPO”), a Company submits its registration statement to the SEC’s Division of Corporate Finance where it undergoes a rigorous examination process, which often includes detailed questions from SEC about the company’s disclosures. In a reverse merger, however, a private operating company based in the PRC is “acquired” by a previously registered U.S.-based publicly traded “shell company,” thereby bypassing the rigorous IPO registration process as described by the WALL STREET JOURNAL:

In reverse mergers, a foreign company is “bought” by a publicly traded U.S. shell company. But the foreign company assumes control and gets the shell’s U.S. listing without the level of scrutiny that an initial public offering entails. Though companies from other countries also engage in reverse mergers, such deals are especially common among the Chinese. The PCAOB says nearly three-quarters of the 215 Chinese companies listing in the U.S. from 2007 to early 2010 did so via reverse merger.<sup>11</sup>

---

<sup>9</sup>*Testimony Concerning the Role of the Accounting Profession In Preventing Another Financial Crisis: Hearing Before the Subcommittee on Securities, Insurance, and Investment of the Senate Committee on Banking, Housing and Urban Affairs, 112th Cong. (2011) (statement of James Doty, Chairman, Pub. Co. Accounting Oversight Bd.), available at <http://www.sec.gov/news/testimony/2011/ts040611jlk.htm>.*

<sup>10</sup> *Id.*

<sup>11</sup> Michael Rappaport, *SEC Probes China Auditors*, WALL STREET JOURNAL (June 3, 2011).

68. This loophole has allowed numerous unscrupulous foreign companies to avoid SEC scrutiny. A large number of shady stock promoters in recent years have come from the PRC. In May 2011, there were 19 stocks in which the NASDAQ Stock Market (“NASDAQ”) had halted trading. An astonishing 15 of these 19 companies were PRC-based. Reporters have blamed inadequate auditing procedures by both Chinese and U.S. auditing firms for this disturbing trend. The WALL STREET JOURNAL revealed in June that the SEC had begun examining accounting and disclosure issues regarding Chinese companies that had engaged in reverse mergers.<sup>12</sup> The investigation specifically targets the work of Chinese auditors:

People familiar with the matter say the investigation also includes auditors, which hadn’t previously been known. As part of its inquiry, the SEC has suspended trading on some Chinese companies, questioning their truthfulness about their finances and operations.

The Public Company Accounting Oversight Board, or PCAOB, the government’s accounting regulator, said it is investigating some audit firms over whether their audits of Chinese clients are stringent enough.

\* \* \*

“Right now, the auditing and regulation of U.S.-listed Chinese companies isn’t working very well,” said Paul Gillis, a visiting professor of accounting at Peking University’s Guanghua School of Management.

\* \* \*

Since February, about 40 Chinese companies have either acknowledged accounting problems or seen the SEC or U.S. exchanges halt trading in their stocks because of accounting questions.<sup>13</sup>

69. Additionally, according to the article, although some auditors say, in response, that they are “intensifying their efforts” and “doing everything they can to perform strong

---

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

audits,” that simply “may raise questions about whether their past efforts were strong enough.”<sup>14</sup>

70. SEC Commissioner Luis A. Aguilar has also spoken out on the subject. In a speech on April 4, 2011, he said that using reverse mergers as a form of “backdoor registration” was a “disturbing trend” in modern capital formation. He said, “a growing number of them are proving to have significant accounting deficiencies or being vessels of outright fraud.” The “billions in U.S. savings and investment dollars [that] have been entrusted with these companies” are, therefore, at risk.

71. A May 26, 2011, NEW YORK TIMES article<sup>15</sup> blamed auditors and inadequate audit procedures for this disturbing trend. This article revealed that another Chinese corporation also recently became “worthless” because of allegations of fraud purported cash balances in Chinese banks.

72. The May 26, 2011, NEW YORK TIMES article also noted that the major auditing firms in China are not subject to the same type of inspections required of other accounting firms that audit companies whose securities are traded in the U.S.:

The Chinese audit firms, while they are affiliated with major international audit networks, have never been inspected by the Public Company Accounting Oversight Board in the United States. The Sarbanes-Oxley Act requires those inspections for accounting firms that audit companies whose securities trade in the United States, but China has refused to allow inspections.

In a speech at a Baruch College conference earlier this month, James R. Doty, chairman of the accounting oversight board, called on the major firms to improve preventative global quality controls but said that actual inspections were needed.

---

<sup>14</sup> *Id.*

<sup>15</sup> Floyd Norris, *The Audacity of Chinese Frauds*, THE NEW YORK TIMES (May 26, 2011).

Two weeks ago, Chinese and American officials meeting in Washington said they would try to reach agreement on the oversight of accounting firms providing audit services for public companies in the two countries, so as to enhance mutual trust.

73. Although it appears that regulators may now be closing the reverse-merger loophole, it is too late for Plaintiffs and the members of the Class who suffered damages from their purchases of Puda stock, which gained listing on the NYSE Amex through a reverse merger.

**VI. PUDA’S CONSOLIDATION OF SHANXI COAL INTO THE COMPANY’S FINANCIAL STATEMENTS IS A VIOLATION OF GAAP RESULTING IN FALSE AND MISLEADING FINANCIAL STATEMENTS**

74. During the Class Period, Puda filed periodic reports with the SEC, including, Quarterly Reports on Form 10-Q and Annual Reports on Form 10-K, containing the Company’s reported financial statements. The following chart identifies the date, signatories, and period covered by each report:

<b>PUDA’S QUARTERLY REPORTS ON FORM 10-Q AND ANNUAL REPORTS ON FORM 10-K FILED WITH THE SEC DURING THE CLASS PERIOD</b>				
<i>FORM</i>	<i>PERIOD</i>	<i>DATE FILED</i>	<i>SIGNATORIES</i>	<i>REFERRED TO BELOW AS</i>
10-Q	2009 Fiscal 3 <sup>rd</sup> Quarter	11/13/2009	Defendant Zhu	Q3 2009 10-Q
10-K	2009 Fiscal Year	3/31/2010	Defendants Zhu, Wu, Zhao, Ni, Tang, and Wizel	FY 2009 10-K
10-Q	2010 Fiscal 1 <sup>st</sup> Quarter	5/17/2010	Defendant Zhu	Q1 2010 10-Q
10-Q	2010 Fiscal 2 <sup>nd</sup> Quarter	8/16/2010	Defendant Zhu	Q2 2010 10-Q
10-Q	2010 Fiscal 3 <sup>rd</sup> Quarter	11/15/2010	Defendant Zhu	Q3 2010 10-Q
10-K	2010 Fiscal Year	3/16/2011	Defendants Zhu, Wu, Zhao, Ni, Tang, Wizel	FY 2010 10-K

75. As reflected by the below chart, during the Class Period, Puda issued the following press releases announcing its financial and operating results, which were largely, if not completely, based on the operating results of Shanxi Coal:

<b>PRESS RELEASES ISSUED BY PUDA DURING THE CLASS PERIOD ANNOUNCING THE COMPANY’S FINANCIAL RESULTS</b>		
<i>PERIOD</i>	<i>DATE</i>	<i>REFERRED TO BELOW AS</i>
2009 Fiscal Year	3/24/2010	FY 2009 PR
2010 Fiscal 1 <sup>st</sup> Quarter	5/13/2010	Q1 2010 PR
2010 Fiscal 3 <sup>rd</sup> Quarter	11/15/2010	Q3 2010 PR
2010 Fiscal Year	3/14/2011	FY 2010 PR

76. All of Puda’s financial statements/results issued during the Class Period, including the Company’s financial statements contained in Puda’s Q3 2009 10-Q, FY 2009 10-K, Q1 2010 10-Q, Q2 2010 10-Q, Q3 2010 10-Q, and FY 2010 10-K, as well as the financial results that were derived from those financial statements, discussed in those SEC filings, and discussed in the Company’s press releases, including the FY 2009 PR, Q1 2010 PR, Q3 2010 PR, and FY 2010 PR, were materially false and/or misleading because, as set forth herein, the financial statements failed to comply with SEC rules and GAAP.

77. Federal regulations strictly govern what must be included in documents filed with the SEC. In particular, federal regulations required Puda to comply with GAAP, which are those principles recognized by the accounting profession as the conventions, rules and procedures necessary to define accepted accounting practice at a particular time. Specifically, SEC Regulation S-X requires that annual and interim financial statements as filed with the SEC to be prepared in accordance with GAAP. Filings that do not comply with GAAP are “presumed to be misleading or inaccurate.” 17 C.F.R. §210.4- 01(a)(1).

78. Throughout the Class Period, Puda's financial statements beginning with its 2009 fiscal fourth quarter through the 2010 full fiscal year violated GAAP – rendering them materially false and misleading – because the Company continued to consolidate the operating results of Shanxi Coal into Puda's financial statements.

79. GAAP, according to Statement of Financial Accounting Standards (“SFAS”) 94, requires consolidation in certain situations:

a) Similarly, the first sentence of paragraph 2 [of ARB 51] describes its general rule of consolidation policy. The usual condition for a controlling financial interest is ownership of a majority voting interest, and, therefore, as a general rule ownership by one company, directly or indirectly, of over fifty percent of the outstanding voting shares of another company is a condition pointing toward consolidation.

b) Paragraph 2 precludes consolidation of a majority-owned subsidiary where the control does not rest with the majority owners (as, for instance, where the subsidiary is in legal reorganization or in bankruptcy).

80. Defendant Zhao had transferred Puda's entire ownership of Shanxi Coal to himself in September 2009. As such, since as of September 2009, Puda did not have any interest in Shanxi Coal. Thus, Puda was not allowed under GAAP to consolidate Shanxi Coal's financial results during the Class Period because the Company's zero percent ownership of Shanxi Coal could not have been “a controlling financial interest” since it certainly does not ensure that Puda has “ownership of a majority voting interest.”

81. Therefore, all of the assets, liabilities, revenue, expense and net income figures reported by Puda in its financial statements filed during the class period set forth above were materially false and misleading.



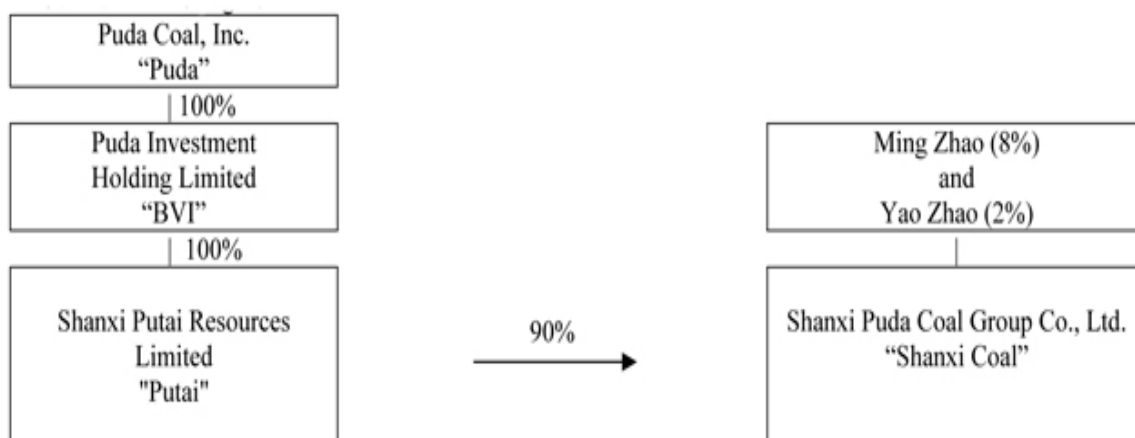
## VII. PUDA’S MATERIALLY FALSE AND MISLEADING STATEMENTS REGARDING OWNERSHIP OF SHANXI COAL

82. Even though Defendant Zhao had come to possess 99% ownership of Shanxi Coal and Puda’s ownership had been reduced to zero percent, the Company represented during the Class Period that Shanxi Coal was still 90% owned by Putai, and hence, that Puda indirectly owned 90% of Shanxi Coal. Specifically, the Company’s Q3 2009 10-Q, FY 2009 10-K, and Q1 2010 10-Q, each represented:

*The owners of Shanxi Coal were Putai (90%), Mr. Ming Zhao (8%) and Mr. Yao Zhao (2%).*

\* \* \*

... [T]he organizational structure of the Group is as follows:



(emphasis added.)<sup>16</sup>

83. The Company’s Q2 2010 10-Q and Q3 2010 10-Q, similarly represented that “[t]he owners of Shanxi Coal were Putai (90%), Mr. Ming Zhao (8%) and Mr. Yao Zhao (2%)” and that “[i]n May 2010, Mr. Yao Zhao transferred his 2% ownership to Mr. Ming Zhao.” The Company’s FY 2010 10-K also similarly represented that “Putai became a 90% owner of

---

<sup>16</sup> Unless otherwise noted, all emphasis is added.

Shanxi Coal, and Mr. Ming Zhao and Mr. Yao Zhao owned 8% and 2%, respectively” and that “[i]n May 2010, Mr. Yao Zhao transferred his 2% ownership to Mr. Ming Zhao.”

84. These statements regarding Putai/Puda’s ownership interest in Shanxi Coal in Puda’s Q3 2009 10-Q, FY 2009 10-K, Q1 2010 10-Q, Q2 2010 10-Q, Q3 2010 10-Q, and FY 2010 10-K filings with the SEC were materially false and misleading when made because, as of September 2009, Puda did not maintain any ownership interest in Shanxi Coal. On or around September 3, 2009, Y. Zhao improperly authorized and caused Putai to transfer 90% of Shanxi Coal to Defendant Zhao, adding to the 8% Defendant Zhao already held. Y. Zhao also divided the remaining 2% of Shanxi Coal that he owned between Defendant Zhao and a Shanxi Coal employee named Wei Zhang (“Zhang”). This transfer resulted in Defendant Zhao owning 99% of Shanxi Coal and Puda owning zero percent of Shanxi Coal.

85. Additionally, the Company’s FY 2009 10-K and FY 2010 10-K represented that “[t]he operations of Shanxi Coal are [Puda’s] sole source of revenues.” These statements were each materially false and misleading when made because Puda did not maintain any ownership interest in Shanxi Coal since Puda’s ownership interest in Shanxi Coal had been transferred to Defendant Zhao in September 2009.

#### **VIII. DEFENDANTS ZHU AND WU’S MATERIALLY FALSE AND MISLEADING SARBANES-OXLEY CERTIFICATIONS**

86. Each of Puda’s Q3 2009 10-Q, FY 2009 10-K, Q1 2010 10-Q, Q2 2010 10-Q, Q3 2010 10-Q, and FY 2010 10-K, contained Sarbanes-Oxley required certifications, signed by Defendants Zhu and Wu, who certified:

1. I have reviewed this Quarterly Report on Form 10-Q of Puda Coal, Inc.;
2. *Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such*

*statements were made, not misleading with respect to the period covered by this report;*

3. *Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;*

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, *to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;*

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, *to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external statements for external purposes in accordance with generally accepted accounting principles;*

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

5. *The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):*

- a) *All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and*
- b) *Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.*

87. Each of these statements was materially false and/or misleading when made because defendants failed to disclose or indicate the following: (1) that Defendant Zhao had transferred ownership/shares of Shanxi Coal to himself through a series of transactions; (2) that Defendant Zhao had sold 49% of Shanxi Coal; (3) that Defendant Zhao had pledged a 51% interest in Shanxi Coal to CITIC as collateral for a loan; (4) that, as a result, Puda did not possess the ownership interests in Shanxi Coal that the Company claimed to possess; (5) that the Company's internal controls were ineffective and fraught with material weaknesses; and (6) that the Company's financial statements were materially false and misleading and not presented in accordance with GAAP.

#### **IX. DEFENDANT MOORE STEPHENS'S FALSE AND MISLEADING AUDIT REPORTS**

88. During the Class Period, Defendant Moore Stephens performed audits of Puda's 2009 and 2010 consolidated financial statements and of Puda's internal control over financial reporting as of December 2009 and 2010. For each of these years, Moore Stephens issued Independent Auditors' Reports ("Auditors' Reports"), in which it opined that Puda's consolidated financial statements conformed to GAAP and that Puda maintained effective internal control over financial reporting.

89. The FY 2009 10-K contained a letter from Defendant Moore Stephens, which stated:

***We have audited the accompanying consolidated balance sheets of Puda Coal, Inc. and subsidiaries (the "Company") as of December 31, 2009 and 2008, and the related consolidated statements of operations, changes in stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2009. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.***

***We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States).*** Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

***In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Puda Coal, Inc. and subsidiaries as of December 31, 2009 and 2008 and the results of their operations and their cash flows for each of the three years' in the period ended December 31, 2009, in conformity with accounting principles generally accepted in the United States of America.***

***We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2009, based on the criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 31, 2010, expressed an unqualified opinion.***

90. The Company's FY 2010 10-K, also contained a letter from its independent auditor, Defendant Moore Stephens, which stated:

***We have audited the accompanying consolidated balance sheets of Puda Coal, Inc. and subsidiaries (the "Company") as of December 31, 2010 and 2009, and the related consolidated statements of operations, changes in equity, and cash flows for each of the three years in the period ended December 31, 2010. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.***

***We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States).*** Those standards require

that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall consolidated financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

*In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Puda Coal, Inc. and subsidiaries as of December 31, 2010 and 2009 and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2010, in conformity with accounting principles generally accepted in the United States of America.*

*We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2010, based on the criteria established in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organization of the Treadway Commission and our report dated March 16, 2011, expressed an unqualified opinion.*

91. The Auditors' Reports included in the FY 2009 10-K and FY 2009 10-K were false and misleading because Defendant Moore Stephens did not conduct its audit in accordance with standards of the PCAOB, and Puda's financial statements were not presented in accordance with GAAP, rendering Moore Stephens's report not in compliance with PCAOB standards. Additionally, the Auditor Reports were false and misleading because Puda's internal controls were not effective and plagued by significant material weaknesses.

**A. Defendant Moore Stephens's Recklessness**

92. Defendant Moore Stephens knew from its audits of Puda's financial statements, reviews of Puda's financial controls, and discussions with Puda's management and Puda's internal auditors, that Puda should not have consolidated Shanxi's financial results into Puda's results, and that such consolidation violated GAAP.

93. In so doing Moore Stephens failed to comply with the "Objectives" and

“Standards” which guide its work as auditors. For example, CON 1, *Objectives of Financial Reporting by Business Enterprises*, ¶16 states:

The function of financial reporting is to provide information that is useful to those who make economic decisions about business enterprises and about investments in or loans to business enterprises. Independent auditors commonly examine or review financial statements and perhaps other information, and both those who provide and those who use that information often view an independent auditor's opinion as enhancing the reliability or credibility of the information.

94. Defendant Moore Stephens's Auditors' Reports for the years ending 2009 and 2010, as well as its reports set forth in the Registration Statements for the December Offering, attesting to Defendant Moore Stephens's performance of its audits in accordance with the standards of the PCAOB and Puda's financial statements being prepared in accordance with GAAP were materially false and misleading when made, because:

- a. Puda's financial statements did not fairly present the financial position of and results of operations for Puda for fiscal years represented in the Auditors' Reports in conformity with GAAP; and
- b. Puda's internal controls over financial reporting were not effective but rather had serious material weaknesses that enabled Puda's employees to manipulate the Company's financial reporting to a significant extent.<sup>17</sup> Specifically, Puda's lack of adequate internal controls prevented it from taking the necessary corrective actions to stop the improper consolidation of Shanxi Coal's financials into Puda's financial statements.

---

<sup>17</sup> A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. PCAOB Auditing Standard No. 5, Par. A7.

95. By issuing unqualified Auditors' Reports for these years, Defendant Moore Stephens violated the standards of the PCAOB which state:

The auditor's standard report states that the financial statements present fairly, in all material respects, an entity's financial position, results of operations, and cash flow in conformity with generally accepted accounting principles. This conclusion may be expressed only when the auditor has formed such an opinion on the basis of an audit performed in accordance with generally accepted auditing standards. AU § 508.07.

96. This deception on investors happened with the knowledge and acquiescence of Defendant Moore Stephens. While Defendant Moore Stephens may have had basic knowledge of Puda's business, organization and operating characteristics through its experience with the Company, it either knowingly acquiesced in Puda's fraud or turned a blind eye and failed to obtain the knowledge necessary to gain an understanding of the accounting processes and internal controls used by Puda to prepare its financials. AU Section 311, entitled Planning and Supervision, states that "obtaining an understanding of the entity and its environment, including its internal control, is an essential part of planning and performing an audit in accordance with the generally accepted auditing standards." AU § 311.03. The PCAOB Auditing Standard No. 5, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements*, requires an auditor to "design his or her testing of controls to ... obtain sufficient evidence to support the auditor's opinion on internal control over financial reporting." AS 5 ¶ 7. Furthermore, in planning the audit, paragraph 9 of AS 5 requires the auditor to consider his or her knowledge of the company's internal control over financial reporting; matters affecting the industry in which the company operates, such as financial reporting practices, economic conditions, laws and regulations, and technological changes; and matters relating to the company's business, including its organization, operating characteristics, and capital structure. In connection with planning its audit, Moore Stephens



either was aware of the Company's methods which were used to commit fraud or recklessly failed to obtain sufficient knowledge to evaluate:

- (a) Puda's ownership of its sole operating subsidiary, Shanxi Coal; and
- (b) Puda's consolidated financial reports.

97. Defendant Moore Stephens's intentional or reckless lack of understanding is borne out by the fact that Puda's illegal transactions occurred prior to the start of the Class Period and continued to be true throughout the 2009 and 2010 financials. Defendant Moore Stephens was required to know its client's ownership structure and any material loans it would have entered into, including the fact that Puda no longer owned 49% of Shanxi, its sole operating subsidiary, and the fact that it received a loan from CITIC in exchange for pledging 51% of the Company.

98. Defendant Moore Stephens was required to base its reports on evidence obtained during the audit, not the conclusions of management. "Most of the independent auditor's work in forming his or her opinion on financial statements consists of obtaining and evaluating evidential matter concerning the assertions in such financial statements." AU § 326.02. "To the extent the auditor remains in substantial doubt about any assertion of material significance, he or she must refrain from forming an opinion until he or she has obtained sufficient competent evidential matter to remove such substantial doubt or the auditor must express qualified opinion or a disclaimer of opinion." AU § 326.25.

99. Defendant Moore Stephens's reckless disregard or willful violation of the PCAOB standards permitted the issuance of the false and misleading financial statements identified herein during the Class Period, and discouraged investors from questioning the accuracy of those statements.

## **B. The Auditor Defendants' Liability**

### **1. Defendant MSPC**

100. Defendant MSPC is an entity based in the United States, with offices in New York and New Jersey, and provides audit, accounting, and other financial services to its clients.

101. Defendant MSPC is registered with the PCAOB as “Moore Stephens, P.C.”

102. Defendant MSPC is a member of MSIL, a global accountancy and advisory network headquartered in London.

103. Defendant MSIL has, at all relevant times, served as Puda's independent auditor until its resignation in or around July 2011.

104. The signature certifying Puda's financial statements on both the 2009 and 2010 Form 10-Ks is simply “Moore Stephens.” Directly underneath Moore Stephens's signature is its description of itself: “Certified Public Accountants.” Directly underneath Moore Stephens's description of its firm is the location of the office in which Moore Stephens made its signature: “Hong Kong.”

105. The way Moore Stephens signed its certification of Puda's financial statements has caused the public to attribute Moore Stephens's certification to Defendant MSPC as much as to Defendant MSHK with the understanding that it was executed by Defendant MSPC in Hong Kong.

106. Defendant MSHK is another member firm in the MSIL network, based in Hong Kong.

107. Puda states that Defendants MSPC and MSHK are the Company's auditors.

108. Both Defendants MSPC and MSHK conducted the audits of Puda's financial statements for fiscal years 2009 and 2010.

109. Both Defendants MSPC and MSHK jointly prepared and issued the false and misleading audit opinions and certified Puda's false financial statements for fiscal years 2009 and 2010. However, Defendant MSPC was ultimately responsible for Puda's audits, as it gave final approval on U.S. compliance, ensuring that all U.S. GAAP requirements were followed.

## **2. Defendant MSIL**

110. Defendant MSIL's global network includes 314 member firms acting as its agents around the world. Defendants MSPC and MSHK are two of MSIL's member firms. The network comprises 638 offices in 97 countries around the world, and employs 20,588 people.

111. Defendant MSIL exercises substantial authority over the manner in which the member firms conduct their activities. For example, to ensure conformity with the Moore Stephens brand, Defendant MSIL established an "International Technical Committee" tasked with ensuring that audit standards are followed across all member offices.

112. Defendant MSIL also requires that all its member firms report their activities through internal forms. A MSIL Policy Committee Report sums up the requirement as follows: "It is necessary to ensure that member firms do operate to a *required standard* and there is a requirement for there to be a certain amount of information available at Moore Stephens International level on the *activities and substances of member firms*. In this connection member firms around the world have been completing the MSQ1 form and there will be a need to follow up with an MSQ2 and MSQ3 forms in the same way as new member firms are required to complete these."

113. Defendant MSIL is liable for the acts of MSPC and MSHK under the doctrine of *respondeat superior* and common law principles of agency as all of the wrongful acts complained of herein were carried out within the scope of Defendants MSIL's authorization.

**X. MATERIALLY FALSE AND MISLEADING STATEMENTS CONTAINED IN THE DECEMBER OFFERING DOCUMENTS**

114. On December 8, 2010, Puda issued a press release announcing that it intended to sell its common stock in an offering underwritten by Defendants Macquarie and Brean. In connection with the December Offering, Puda filed with the SEC a series of Registration Statements and Prospectuses (beginning with an initial prospectus on October 29, 2010) (collectively, the "December Offering Materials").

115. The Registration Statement and Prospectus filed with the SEC in connection with the December Offering were signed by the Officer and Director Defendants, and expressly incorporated Puda's false and misleading FY 2009 10-K, Q1 2010 10-Q, and Q2 2010 10-Q. As a result, the Registration Statement and Prospectus were materially false and misleading because they incorporated the materially false and misleading financial and other statements from those reports identified above.

116. The Company's Registration Statement and Prospectus for the December Offering were materially false and misleading because they represented that "[t]he owners of Shanxi Coal were Putai (90%), Mr. Ming Zhao (8%) and Mr. Yao Zhao (2%)." Moreover, the December Offering Materials were also false and misleading because they represented that Shanxi Coal was 90% owned by Puda/Putai.

117. Specifically, the Registration Statement and Prospectus were materially false and misleading because they failed to disclose: (1) that Defendant Zhao had transferred ownership/shares of Shanxi Coal to himself through a series of transactions; (2) that Defendant

Zhao had sold 49% of Shanxi Coal; (3) that Defendant Zhao had pledged a 51% interest in Shanxi Coal as collateral to CITIC for a loan; (4) that, as a result, Puda did not possess the ownership interests in Shanxi Coal that the Company claimed to possess; (5) that the Company lacked adequate internal and financial controls; and (6) that the Company's financial statements were materially false and misleading and not presented in accordance with GAAP.

118. In connection with the December Offering, Defendant Moore Stephens expressly consented to the incorporation of its prior audit report:

**INDEPENDENT AUDITORS' CONSENT**

***We consent to the incorporation in this Registration Statement of Puda Coal, Inc. on the Form S-3 submitted to you on or about August 17, 2010 of our Auditors' Report dated March 31, 2010 relating to the consolidated financial statements and supplementary consolidated financial statements of Puda Coal, Inc. and subsidiaries as of December 31, 2009 and 2008 and for each of the three years in the period ended December 31, 2009, which appears in the Annual Report on the Form 10-K for the fiscal year ended December 31, 2009.***

In addition, we consent to the reference to us under the heading "Experts" in the Registration Statement.

119. The Registration Statement incorporated Defendant Moore Stephens's Audit Report from Puda's FY 2009 10-K. This was also materially false and misleading because, as alleged above, Defendant Moore Stephens did not conduct its audit in accordance with standards of the PCAOB and Puda's financial statements were not presented in accordance with GAAP, rendering Defendant Moore Stephens's report not in compliance with PCAOB standards. Additionally, Defendant Moore Stephens's report was materially false and misleading because the Company's internal controls were not effective and suffered from undisclosed material weaknesses.

**A. The Underwriter Defendants Acted Negligently**

120. Plaintiffs have engaged the services of an investment banking expert<sup>18</sup> in determining the duties and responsibilities of underwriters in performing public offerings of securities. Mr. William Purcell has been an investment banker for more than 40 years. His experience includes performing due diligence investigations for well over 100 financings, both equity and debt financings. In addition, he has been an expert witness in over 100 cases, a number of which have involved due diligence issues. Mr. Purcell reviewed the offering materials from the December Offering and February 2010 offering, publicly available information concerning Puda, and the initial complaint in this action. He was also provided information concerning the requirements for corporations under Chinese law to register ownership, transfers and pledges of equity with the SAIC. He has the following opinions concerning Defendants Brean and Macquarie's role and conduct as the underwriters for the December Offering.

121. It is well understood in the investment banking industry and in the financial community generally, and confirmed by legal precedent, that an underwriter of securities has a **duty** to perform a reasonable due diligence investigation of the company for which it is selling securities.

---

<sup>18</sup> Mr. William Purcell has over 40 years of experience in the investment banking business. He started his career at Dillon, Read & Co. Inc. ("Dillon Read") after graduation from business school. He was elected a Managing Director at Dillon Read in 1982. During his approximately 25 years at Dillon Read, he worked in all areas of corporate finance, including most areas of corporate financing activities and the area of M&A. He also had various administrative responsibilities. He is currently a Senior Director of Seale & Associates, an investment banking firm in the Washington, D.C. area. Mr. Purcell graduated from Princeton University with a B.A. in economics in 1964, and from New York University Graduate School of Business with an MBA in 1966.

122. It is also well understood within the investment banking and financial communities that an underwriter's role and duty is to ensure that all material information is included in the offering documents (in this case the registration statement and prospectus, collectively the "Prospectus," for the December 2010 financing for Puda Coal) and that no material information is omitted that is needed to make the information provided therein not misleading.

123. As a result of Defendants Macquarie and Brean *not* performing a reasonable due diligence investigation and/or not performing any due diligence investigation, the Prospectus for the December 2010 common stock offering (for \$94.2 million at \$12.00 per share, increased to \$108 million given Defendants Macquarie's and Brean's over-allotment option) misrepresented material information and omitted material information so that the Prospectus was misleading.

124. The large December 2010 common stock financing of Puda Coal was completed at a per share price of \$12.00, 153% above the February 2010 financing price of \$4.75 per share. In fact, the last sale price of the stock prior to the December Offering was \$14.60 per share. The offering price discount was an inducement to potential investors to purchase Puda Coal shares.

125. When the true facts about the ownership of Puda Coal's primary subsidiary finally became evident on or about October 3, 2011, none of which was disclosed in the December 2010 prospectuses (*i.e.*, that Puda Coal's ownership in its primary subsidiary had been secretly transferred to its Chairman and control shareholder without any shareholder approval or knowledge), Puda Coal's share price dropped in dramatic fashion, and investors who had purchased shares in the above financing had suffered significant losses. The current

price of Puda Coal common stock is now trading at less than \$0.50 per share, approximately \$11.50 per share less than the \$12.00 dollar offering price.

126. An investment bank (such as Defendants Macquarie and Brean) that is underwriting securities clearly understands that investors expect the investment bank, whose name (or names) appears on the Prospectus, to perform a reasonable due diligence investigation of the issuing entity to ensure, to the best of its ability, that the Prospectus does not include any false or misleading statements of material information, nor omit any material information. The investment bank (or banks), by putting its name on the Prospectus, is communicating to investors that it has in fact undertaken a reasonable due diligence investigation and is making full disclosure of all material information in the Prospectus. Indeed, without having performed a reasonable due diligence investigation of the issuer, it would not be possible to make full disclosure.

127. In the area of selling securities and performing reasonable due diligence, underwriters are often referred to as “gatekeepers.” The underwriter (investment bank) controls what information is in the Prospectus and it controls the dissemination of that information to potential investors. There is much literature that supports the premise of underwriters being “gatekeepers.” Indeed, even the SEC has observed that in enacting Section 11 of the Securities Act: “Congress recognized that underwriters occupied a *unique position* that enabled them to discover and compel disclosure of essential facts about the offering. Congress believed that subjecting underwriters to the liability provisions [of the Act] would provide the necessary incentive to ensure their *careful investigation* of the offering.” Regulation of Securities Offerings, SEC Release No. 7606A, 63 Fed. Reg. 67174, 67230, Dec. 4, 1998. In other words, an underwriter such as Defendants Macquarie or Brean has ultimate



control over the contents and dissemination of the disclosure document, *i.e.* the Prospectus. It must make full disclosure **or** not underwrite the offering, if full disclosure is not provided. The role and duties of Defendants Macquarie and Brean, in underwriting the common stock of Puda Coal, were no less than the above.

128. In Puda's December Offering, as discussed above, Defendants Macquarie and Brean had ultimate control over the contents and dissemination of the Prospectus. The two managing underwriters would be expected by investors to have participated in the drafting of the respective Prospectus and to have provided appropriate disclosure of material information.

129. If an investment bank, based on its due diligence investigation of the issuer, believes that any of the information in the Prospectus is false or misleading, or omits material information, it has the authority to change the information, or if others refuse to change the information, then it should not underwrite the offering. But, if the investment bank allows its name (names) to appear on the cover of the Prospectus, then it is communicating to potential investors that it is satisfied, based on its reasonable due diligence investigation, that the Prospectus is accurate and not misleading.

130. It is well accepted and understood in the investment banking and financial communities that a reasonable due diligence investigation refers to an ***affirmative duty*** to verify the accuracy of disclosure concerning securities offerings; it also refers to the thorough investigation that is expected as part of virtually every issuance of securities. This view regarding what is expected from a reasonable due diligence investigation is confirmed by many texts, *e.g.*, (i) *Conducting Due Diligence 2002* and *Conducting Due Diligence 2005*, both published by the Practising Law Institute; (ii) *Due Diligence Periodic Reports and Securities Offerings*, annual editions each year 2004 through 2010, by Professor Robert J. Haft and

Arthur J. Haft; Thomson West; and (iii) *Corporate Finance and the Securities Laws*, by Charles J. Johnson, Jr. and Joseph McLaughlin; Aspen Publishers, 2004. The due diligence responsibility is the **primary** responsibility of investment banks. Also, as stated previously, the SEC has stated that: “Congress recognized that underwriters occupied a **unique** position that enabled them **to discover and compel disclosure** of essential facts about the offering.”

131. In summary, within the investment banking industry, the “duty to disclose” material information is an absolute requirement. Indeed, one of the foundations of the investment banking and securities business is the premise of full disclosure – and full disclosure means **both** not making any misleading statements in setting forth material facts and also making sure that there are no omissions of material facts.

132. The due diligence process by an investment bank is generally rigorous and thorough, with professional skepticism to be applied. The due diligence process is **not** just a “ho-hum” exercise of accepting a company’s/management’s views or their auditor’s opinion at face value. The due diligence process is in fact the opposite. The investment bank should act as a “devil’s advocate” by digging and probing within a company. The investment bank should cross examine participants by asking many questions; should obtain and analyze various information, including any business financial models and projections; and should follow-up with more work as appropriate, depending upon what is learned and what “red flags” surface, if any. As Professor Robert J. Haft<sup>19</sup> stated in his previously mentioned text: “The underwriter should look upon due diligence primarily as an attempt to find ‘red flags’ which indicate potential danger. To assist in this search, the underwriter should not hesitate to utilize

---

<sup>19</sup> Professor Haft, a Professor of Law at Georgetown University, has been actively engaged in the securities field for over forty years and was on the staff of the SEC as Special Counsel for four years.

experts [and attorneys] whenever it feels that neither the corporate finance department nor the firm at large has the expertise necessary to analyze a fundamentally important aspect of a company's business. The underwriter should be prepared to pay whatever is reasonably necessary for expert advice, recognizing that in the final analysis it may well save money.” (Page 13 of the 2004-2005 text).

133. In regards to Puda Coal's December Offering, neither of the underwriters performed a reasonable due diligence investigation or appear to have taken any action upon the numerous “red flags” obvious from any reasonable due diligence investigation - nor does it appear that they utilized any independent experts to help in the due diligence investigation (if in fact they actually performed any reasonable due diligence).

134. The above inaction as to a reasonable due diligence investigation is particularly surprising since the information Defendant Macquarie provided to the public emphasizes its purported high standards and generally assures potential investors about the quality of its work. For example, on its website, Macquarie states, among other things, that:

Macquarie aspires to be a pre-eminent provider of financial services over the long haul. We recognize that, however our achievements to date are judged, the quest for improvement is never ending. The Macquarie culture is represented by the way in which we act and work together. The values to which we aspire can be summarized in six principles - - integrity, client commitment, strive for profitability, fulfillment for our people, teamwork, [and] highest standards ... When acting for our clients, their interests come first absolutely .... Our people have the *deepest knowledge in key sectors such as resources [Puda was a coal mining company] and energy* ... Our achievements include over \$A120 billion of M&A and capital markets activity advised on during the 12 months to 30 September 2011 .... With \$A12.4 billion of capital [on our balance sheet] ... [we] have the ability to act as a cornerstone for underwritten syndicated financings .... with offices in London, New York, Chicago, Sydney and Singapore .... We combine entrepreneurial drive with deep industry and regional expertise and robust risk management. This gives our clients and investors confidence, and allows us to deliver innovative products and services and strong investment returns .... [we received an] award for the best private equity deal of the year in Southeast Asia ....

135. With an office in Singapore and much exposure to the Asian market, Defendant Macquarie's due diligence investigation of Puda Coal was unreasonable and negligent in not checking Puda Coal's filings with the SAIC, its provincial regulator in Shanxi, China, especially considering it involved the ownership of Puda Coal's primary operating subsidiary that was the sole source of all of Puda's revenues.

136. The information provided to the public by Defendant Brean on its website is, among others, as follows: Defendant Brean advertised the December 2010 Puda Coal financing as being the "joint lead manager & bookrunner." According to its website, Defendant Brean even has a Beijing office (Brean Murray China), and being very knowledgeable about China, it sponsors various conferences on "China Growth" companies. It held such conferences in May 2009, November 2009, May 2010, November 2010, and June 2011 (in Beijing). On its website, Defendant Brean states that there "are five sectors in which we have built significant knowledge through various corporate financing activities," one being "China Small/Mid Cap" companies. The website further states that our analysts "are focused on performing extensive bottoms up *due diligence* on companies under our coverage...." With a Beijing office and publicly committed to performing extensive bottoms up due diligence and "provid[ing] clients with excellent investment opportunities," Defendant Brean's due diligence investigation of Puda Coal was unreasonable and negligent as to not even check Puda Coal's filings with the SAIC, its provincial regulator in Shanxi, China, especially considering it involved the reporting subsidiary that was the sole source of Puda's revenues.

137. With respect to the importance of performing a reasonable due diligence investigation in regard to an issuer's financial condition, which investigation would clearly include verifying the appropriate ownership percentages of subsidiaries whether consolidated

or carried as investments, it is accepted practice within the investment banking community that the statements by the issuer about its own financial condition are not accepted by the investment bank at face value **without** adequately questioning the company's auditors and its accounting and financial officers. Within the investment banking industry, this due diligence procedure in regard to an issuer's financial condition is **very** important, as borne out by such precedents as the bankruptcies of Enron and Refco.

138. A thorough due diligence investigation into a company's financial statements, including confirming the percentage ownership of important subsidiaries, and especially its sole operating subsidiary from which it receives its sole source of income, would be particularly important if the company did not have a recent audit, as was the case with Puda Coal, whose December Offering Prospectus had nine months (75% of a year) of unaudited financial statements. Confirming this view about required investment bankers' due diligence in regard to financial statements, the text *Conducting Due Diligence 2005* states the following:

(a) "Though audited financial statements are "expertized" and underwriters receive accountant's comfort letters to cover unaudited financial information, an **important** part of underwriters' due diligence involves scrutinizing an issuer's financial disclosure." (Page 17 of text)

(b) "In performing due diligence and considering the adequacy of financial and other issuer disclosure, underwriters should consider the goal of transparency as well as specific initiatives. These initiatives require underwriters to increase their scrutiny of issuers' financial disclosure, and to consider additional procedures to **verify** that issuer disclosure is accurate and complies with applicable rules and guidance. These additional procedures may include interviews with members of audit committees, more thorough discussions with issuers' auditors regarding issuer accounts and auditor independence, expanded accountants' comfort letters, and other actions." (Page 19 of text).

"The bankers and lawyers should interview the company's principal accountants.... Bankers should try to have this discussion **without** the company being present..... Principal topics of discussion may include the company's accounting policies generally, the company's revenue recognition and capital expenditures policies, and potential disagreements with the company...., off-

balance sheet liabilities, if any, ....and significant write-offs, if any.” (Page 69 of text)

139. Mr. Purcell reviewed the initial complaint in this action, the offering materials for the December Offering and other publicly available information about Puda. Mr. Purcell identified the following “red flags” that Defendants Brean and Macquarie, as underwriters for the December Offering, should have, but apparently did not, investigate:

(a) Defendant Brean, by virtue of serving as an underwriter for Puda’s common stock offering months earlier in February 2010, actually had two bites at performing a reasonable due diligence investigation - but apparently performed very little due diligence that was inadequate in connection with the two offerings.

(b) Notably, the ownership of Puda involved both a complex structure and related parties. In terms of corporate structure, Puda Coal is a Delaware corporation, but with its headquarters in Shanxi Province of the People’s Republic of China (“China”). Puda Coal’s only operating assets (*i.e.*, coal mines) are in Shanxi Province, China, and these assets are not even directly owned by Puda Coal. Prior to the illegal transfers, Puda Coal owned 100% of a British Virgin Islands company named Puda Investment Holding Limited (“BVI”), which in turn owns 100% of a Chinese company, Shanxi Putai Resources (“Putai”). Even Putai, however, did not own the Chinese operating assets. Instead, Putai owned 90% (but not 100%) of the company which owned the coal mining operating assets, *i.e.*, Shanxi Puda Coal Group Co., Ltd. (“Shanxi Coal”). The other 10% of Shanxi Coal was directly owned by Ming Zhao (8%), Puda Coal’s Chairman of the Board and the co-founder, Chairman and CEO of Shanxi Coal since 1995, and Yao Zhao (2%), the brother of Ming Zhao.

(c) In addition to the above corporate ownership complexities, it was disclosed that Defendant Zhao and his brother (Yao Zhao) owned approximately 47% of Puda Coal’s common stock prior to the December 2010 financing (and about 32%-33% of Puda Coal’s common stock after the December 2010 financing). They were thus clearly control shareholders. Indeed, as a warning in regard to having control shareholders, the December 2010 Prospectus states as a “risk factor” that “Delaware corporate law provides that certain actions may be taken by consent action of stockholders holding a majority of the outstanding shares .... **without** any meeting of stockholders ....”

(d) Also, as described in the December 2010 Prospectus, Putai owed Defendant Zhao \$35.2 million (240 million Chinese Renminbi, or “RMB”, with \$1 being about 6.8 RMB) plus interest pursuant to a loan agreement dated May 7, 2010, which loan proceeds were used to increase Putai’s registered capital to the level required by the Shanxi provincial government to be allowed to be a “coal

mine consolidator” (*i.e.*, allowed to acquire other coal properties in Shanxi province). In addition, Puda Coal financed the \$13 million acquisition of two plants in China through Resources Group, an entity owned 80% by Defendant Zhao, and 20% by his relatives. Finally, as yet another possible conflict of interest described in the December 2010 Prospectus, all calling for extensive due diligence by the underwriters, on August 1, 2010 Shanxi Coal entered into an Investment Cooperation Agreement with Defendant Zhao and another individual unrelated to Puda Coal, pursuant to which the parties would purchase, consolidate and re-develop six additional coal mines in Shanxi Province. Shanxi Coal would contribute 40% of the total investment needed for the project, with Defendant Zhao contributing 30% and the other investor 30%. Shanxi Coal would be entitled to purchase Defendant Zhao’s equity interest (and the other investor’s interest) at its sole discretion at a price determined by an independent professional appraiser.

(e) It was clearly stated in the December 2010 Prospectus, and known to the underwriters, that all operating assets of Puda Coal were in Shanxi Province, China and that “in September 2009, the Shanxi provincial government approved Shanxi Coal to be an acquirer and consolidator of eight coal mines ...” In addition, throughout the Prospectus, it is made very clear that Puda Coal’s business in almost all respects will be subject to “central, provincial, local and municipal regulation and licensing in China” and that various and numerous approvals will always be required “from the Shanxi provincial government.”

(f) Given the above and the facts that all of Puda Coal’s operating assets were in China, that China’s regulatory and political systems generally imposed potential unique risks, that Puda Coal’s corporate structure was reasonably complex, that Puda Coal’s Chairman had numerous possible conflicts of interest, and that numerous analysts in the U.S. had generally expressed concerns about equity offerings by Chinese companies in the U.S. (refer to *The New York Times*, Friday, December 16, 2011 at B8, article by Ron Gluckman, a U.S. venture capitalist in China: “Still, the environment [in China] **remains** treacherous. The country lacks a strong regulatory framework, market data is limited, and financials can be unreliable... Accounting is a top concern in China, where audits can’t be trusted ... The diligence here [in China] is an entirely different animal than in the United States .... Here, diligence has a different intensity”), it was absolutely clear that a very thorough due diligence investigation needed to be performed by the managing underwriters before any Puda Coal securities were sold to the U.S. public. The fact that a reasonable due diligence was not undertaken by the underwriters of Puda Coal’s securities is almost inconceivable.

(g) Amongst the various due diligence items to be reviewed and verified, confirming **both** the corporate ownership structure of Puda Coal and its various subsidiaries and the financial performance of Shanxi Coal would be of paramount importance. If a reasonable due diligence investigation had been undertaken by the underwriters, it would most likely have been discovered that Puda Coal’s

indirect subsidiary, Putai, did **not** really own 90% of Shanxi Coal, *i.e.*, that the ownership had been illegally transferred to Ming Zhao in September 2009.

(h) Puda Coal in effect had the ownership of zero operating assets. If investors had known these facts, they most likely would have never purchased Puda Coal common shares. If Defendants Macquarie and Brean had known these facts, as they absolutely should have, they most likely would not have underwritten the common stock offering of Puda Coal.

(i) It is generally well known within the financial community which deals with China and Chinese companies that China has approximately 30 separate governmental provinces, and that each province has its own governmental regulatory authority - - to which companies in that province **must**, by law, file their annual financial statements and other information, such as any changes in equity ownership and/or capital structure. By law, changes in ownership must be filed within 30 days. Just as underwriters in the U.S. check **all** of a company's SEC filings as part of a reasonable due diligence investigation, so should an underwriter of a Chinese company check **all** of the filings made to its provincial governmental regulator.

(j) If Defendants Macquarie or Brean had done a reasonable due diligence investigation, they would have directly or indirectly (through investigating consulting experts, Chinese law firms, or Chinese investment bankers or financial advisors experienced in due diligence of Chinese companies) received and reviewed such filings and would have uncovered, at a minimum, a serious "red flag"- which would have required follow-up due diligence.

140. Given the "red flags" Mr. Purcell identified, he indicated that the Underwriter Defendants should have been "on notice" that a thorough due diligence investigation would be required in order to make full and appropriate disclosure in regard to selling the common stock of Puda Coal to the public. In addition, according to Mr. Purcell, it would seem obvious that any reasonable due diligence investigation would include, at a minimum, the review of all filings made by Shanxi Coal with its provincial government regulator, *i.e.*, the State Administration of Industry and Commerce in Shanxi, and a confirmation/review of all of Defendant Zhao's related party transactions.



## **XI. LOSS CAUSATION**

141. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic losses suffered by Plaintiffs and the Class.

142. On or about April 8, 2011, Alfred Little published a research report on the internet entitled, "Puda Coal Chairman Secretly Sold Half the Company and Pledged the Other Half to Chinese PE Investors." The report challenged Puda's representations about its 90% ownership of Shanxi Coal. The report stated, in relevant part:

Chinese RTO Puda Coal, Inc. (NYSE AMEX: PUDA) Chairman Ming Zhao transferred the ownership of PUDA's sole Chinese operating entity, Shanxi Puda Coal Group Co., Ltd ("Shanxi Coal"), to himself in 2009 without shareholder approval according to official government filings. Then, in 2010 Zhao sold 49% and pledged the other 51% of Shanxi Coal to CITIC Trust Co., Ltd ("CITIC"), a Chinese private equity fund, for RMB245 million (\$37.1 million). Zhao then recklessly leveraged Shanxi Coal by borrowing RMB3.5 billion (\$530.3 million) from CITIC at an incredibly high 14.5% annual interest rate (including fees) to finance the development of its coal mines. PUDA shareholders are completely unaware of these transactions that decimate the value of its U.S. listed shares.

\* \* \*

### **PUDA COAL Chairman Ming Zhao Takes Action, Stealing Shanxi Coal from U.S. Shareholder**

In order to raise money domestically, Zhao needed to sever the direct foreign shareholder ownership of Shanxi Coal, PUDA's sole Chinese operating subsidiary. On 9/3/09, Yao Zhao (Ming Zhao's brother and the legal representative of PUDA's WFOE, Shanxi Putai Resources Limited, "Putai") illegally authorized Putai to transfer 90% of Shanxi Coal to Ming Zhao, adding to the 8% Ming Zhao already held. Additionally, Yao Zhao divided his own 2% of Shanxi Coal between Ming Zhao and Wei Zhang. An official copy of the "Notification of Share Registry Change" can be downloaded [here](#), including a partial translation. **The transfers resulted in Ming Zhao owning 99% of Shanxi Coal, leaving U.S. investors with nothing. Incredibly, PUDA's auditor, Moore Stephens, failed to catch this theft of an entire company that is clearly documented in government ownership filings that any lawyer can obtain direct from the source.**

After stealing Shanxi Coal from U.S. investors, Ming Zhao began looking for domestic investors to fund his aggressive expansion plans. At the same time, Zhao

brazenly continued trying to raise money for PUDA in the U.S., despite the fact PUDA (without Shanxi Coal) was just a shell company. As U.S. capital markets recovered, on 2/18/10 PUDA sold 3.284 million shares in a public offering underwritten by Brean Murray and Newbridge Securities raising \$14.5 million (8-K [here](#)), without disclosing to the investors that PUDA no longer owned Shanxi Coal, its sole operating subsidiary in China. Why did Brean Murray fail to perform any basic legal due diligence on the real ownership of Shanxi Coal?

### **Chairman Zhao Sells Half of Shanxi Coal and Borrows \$530.3 Million at 14.5%**

In July 2010, Zhao recklessly accepted a highly leveraged RMB2.745 billion (\$416 million) equity and debt investment from the \$31.3 billion Chinese private equity arm of China International Trust and Investment Company (“CITIC”, website [here](#)). **On 7/15/10 Zhao sold 49% of Shanxi Coal to CITIC for RMB245 million (\$37.1 million) and pocketed the proceeds.** An official copy of the “Notification of Share Registry Change” can be downloaded [here](#), including a partial translation. **On 7/19/10 Zhao and Zhang pledged the other 51% of Shanxi Coal to CITIC as security so that the company could obtain a 3year loan for RMB2.5 billion (\$379 million) at a cost of 14.5% (annual interest plus fees) from CITIC.** (Note: Zhao pledged 50% and Wei Zhang pledged his 1% of Shanxi Coal to CITIC so that the entire remaining 51% of the company was thus pledged to CITIC). **The loan was subsequently increased to RMB3.5 billion (\$530.3 million), bringing the combined investment to RMB 3.745 billion (\$567.4 million). . . .**

\* \* \*

**Chairman Zhao Secretly Returns a Portion of the Shanxi Coal to the Rightful Owner** In a partial attempt to cover up his theft of the company, Chairman Zhao and Wei Zhang transferred their pledged 51% interest in Shanxi Coal to Shanxi Puda Mining Industry Ltd (“Puda Mining”), a former 100% owned **subsidiary** of Shanxi Coal that, through suspicious shareholder shuffling, Zhao maneuvered to make it the **51% parent** of Shanxi Coal. Puda Mining’s 51% interest in Shanxi Coal continues to be completely pledged to CITIC. **According to the government filing, Puda Mining shares are now 90% owned by Putai (the WFOE), 8% Ming Zhao and 2% Yao Zhao. Following these transfers, PUDA now owns only 45.9% (90% of 51%) of Shanxi Coal, about half of the 90% PUDA owned before Chairman Zhao began his shenanigans.**

### **PUDA’s 2009 and 2010 Audited Financials can No Longer be Relied Upon**

Since Ming Zhao stole 99% of Shanxi Coal in 2009, the operating company’s 2009 and 2010 financials should not have been consolidated into PUDA’s 2009 and 2010 audited financials. **PUDA’s audited 2009 and 2010 financials can thus no longer be relied upon.** For 2011, even though Zhao recently returned

45.9% of Shanxi Coal to PUDA through its 90% ownership of Puda Mining (the 51% owner of Shanxi Coal Puda Mining's 1% interest in Shanxi Coal is entirely pledged to CITIC.

(Emphasis in original).

143. On this adverse news, the Company's shares immediately declined \$3.10 per share, or 34.1%, to close on Friday April 8, 2011, at \$6.00 per share, on unusually heavy trading volume, wiping out more than \$161 million in Puda's market capitalization. Trading of the Company's shares was halted prior to the start of trading on Monday April 11, 2011, by the NYSE Amex at approximately 8:20 a.m.

144. On April 11, 2011, the Company issued a press release announcing that it was conducting an investigation into the allegations and that "[a]lthough the investigation is in its preliminary stages, evidence supports the allegation that there were transfers by Mr. Zhao in subsidiary ownership that were inconsistent with disclosure made by the Company in its public securities filings." The press release further disclosed that Defendant Zhao had agreed to a voluntarily leave of absence as Chairman of the Board of the Company until the investigation was complete.

145. In a last minute effort to avoid liability as a result of the fraudulent transfers, Defendant Zhao offered to buy the Company for \$12 per share, which was disclosed in a press release issued by the Company on April 29, 2011.<sup>20</sup> The press release further announced that Puda's Audit Committee intended to review and negotiate the terms of the sale and that the

---

<sup>20</sup> On May 3, 2011, Alfred Little published an additional article on the website, Seeking Alpha, lambasting Defendant Zhao's ability to obtain funding for a \$12 per share offer for the shares of Puda that he did not already own. In particular, the article stated "Shanxi Coal's 2011 cash flow is insufficient [to] cover the \$76.9 million interest and fees payable to CITIC in 2011.... Therefore adding \$246 million debt [the amount needed to purchase the outstanding shares at \$12 per share] to Shanxi Coal in 2011 is impossible and certainly would not be in the best interests of CITIC [which controls Shanxi Coal]."

Company was “continu[ing] to investigate the allegations raised in a recent article alleging various unauthorized transactions in the shares of a subsidiary company, Shanxi Coal, by Mr. Zhao” and that Puda intended “to provide further information when the investigation [was] complete.”

146. Zhao’s promised \$12.00/share buyout offer has never materialized and appears to have been nothing but his desperate effort to stave off a collapse of Puda’s share price as a result of his fraud.

147. On June 24, 2011, Puda disclosed that it had received a notice from the NYSE Amex indicating that the Company was not in compliance with its listing standards and that “[i]n order to maintain its listing, the Company must submit a plan of compliance by July 5, 2011 to demonstrate its ability to regain compliance with the applicable continued listing standards by no later than September 20, 2011.”

148. On July 12, 2011, the Company announced that it had received a resignation letter from Defendant Moore Stephens, its long-standing accountant firm, on July 7, 2011. In its resignation letter, Defendant Moore Stephens disclosed that Puda’s financial results for the fiscal years ending 2009 and 2010 should no longer be relied upon.

149. On July 25, 2011, the Company issued a press release stating its intent to regain compliance with NYSE Amex’s listing standards.

150. On August 10, 2011, the Company issued a press release announcing its receipt of the delisting notice from the NYSE Amex on August 4, 2011. Therein, the Company, in relevant part, stated:

On August 4, 2011, NYSE Amex (the “Exchange”) notified Puda Coal, Inc. (NYSE Amex: PUDA) (the “Company”) that the Exchange intends to delist the Company’s common stock from the Exchange by filing a delisting application with the SEC pursuant to Section 1009(d) of the NYSE Company Guide. ***The***

***Staff of the Exchange determined that it is necessary and appropriate for the protection of investors to initiate immediate delisting proceedings.*** The Staff based its decision on the reasons that (i) the Company is subject to delisting pursuant to Sections 134 and 1101 of the NYSE Company Guide in that the Company did not timely file its reports with the SEC; (ii) the Company is subject to delisting pursuant to Section 1003(f)(iii) of the NYSE Company Guide in that the Company or its management engaged in operations which, in the opinion of the Staff, are contrary to the public interest; ***(iii) the Company is subject to delisting pursuant to Section 132(e) of the NYSE Company Guide in that the Company's communications contained material misstatements or omitted material information necessary to make such communications to the Exchange not misleading;*** and (iv) the Company is subject to delisting pursuant to Section 1002(e) of the NYSE Company Guide in that the an event has occurred or a condition exists which makes further dealings of the Company's securities on the Exchange unwarranted.

151. Then, on August 18, 2011, just a few weeks after it issued a press release announcing to its shareholders its intent to regain compliance with the NYSE Amex listing standards, Puda issued a press release stating that it did not intend to comply with the listing standards and that it expected to be delisted from the NYSE Amex immediately. The Company also announced its continued review of Defendant Zhao's buy-out proposal, stating:

Neither the Company nor the Independent Committee can provide any assurances that a definitive agreement will be executed or approved or that a transaction will be consummated or the timing of such. In addition, the Company's audit committee is in the process of engaging a successor independent accounting firm.

Neither the Company nor the Independent Committee can provide any assurances that a definitive agreement will be executed or approved or that a transaction will be consummated or the timing of such. In addition, Company's audit committee is in the process of engaging a successor independent accounting firm.

152. Additionally, on August 18, 2011, after more than four months, the trading halt of Puda's shares was lifted and trading of the Company's shares resumed. Puda's shares declined \$1.90 per share, nearly 32%, from the April 8, 2011 closing price of \$6.00 per share, to close on August 18, 2011, at \$4.10 per share, on heavy trading volume, and the Company's

shares further declined \$0.87 per share, more than 21%, to close on Friday August 19, 2011, at \$3.23 per share, also on heavy trading volume. Over these two days, Puda's shares lost 46.17% of their value. Trading of the Company's shares was once again halted prior to the start of trading on Monday August 22, 2011.

153. On September 1, 2011, Puda's Audit Committee disclosed its interim findings of its internal investigation, which essentially confirmed the fraudulent transfers, while maintaining that it was unable to confirm or deny Defendant Zhao's representation that its 49% transfer was not actually funded by CITIC. Therein, the Company, in relevant part, stated:

**Item 8.01 Other Events**

As disclosed in the current Report on Form 8-K on April 12, 2011, on April 9, 2011 the Audit Committee of Puda Coal, Inc. (the "Company") was authorized by the Company's Board of Directors to investigate the allegations raised in an article published online by a short seller of the Company's stock, Alfred Little, on April 8, 2011. In the article, Alfred Little alleged that Ming Zhao, the Chairman of the Company's Board of Directors, engaged in a number of undisclosed transactions involving the ownership of Shanxi Puda Coal Group Co., Ltd. ("Shanxi Coal"), and the Company's operating subsidiary in China. On August 30, 2011, the Audit Committee presented its interim findings to the Company's Board of Directors.

The investigation has been constrained by certain limitations, including, among other things, the lack of cooperation by key individuals, limited access to individuals in China who have knowledge of the allegations, and restrictions on evidence gathering in China. Subject to these and other limitations, below is a summary of the findings of the Audit Committee to date. These findings are interim in nature, do not reflect all of the matters examined in the context of the investigation or all of the conflicting evidence obtained with respect to the matters under investigation, and are subject to revision if additional facts are uncovered.

- (1) Allegations Concerning the Transfer of 90% Ownership of Shanxi Coal to Ming Zhao in September 2009.

The Audit Committee has found that Ming Zhao arranged for Shanxi Putai Resources Limited ("Putai"), another subsidiary of the Company and the parent company of Shanxi Coal, to transfer its 90% ownership (and thereby the Company's indirect 90% ownership) of Shanxi Coal to himself in September 2009 (the "90% Transfer") and that Yao Zhao, Ming Zhao's brother and the

legal representative of Putai under Chinese law, authorized the transfer. *The Audit Committee has also found that Liping Zhu, the Company's CEO, President and director on the Board, was aware of the 90% Transfer but did not disclose it to any other director. Ming Zhao contends that this transfer was pursuant to a "Trusted Shareholding Agreement" that granted him merely nominal ownership of Putai's 90% equity interest in Shanxi Coal but reserved beneficial ownership for Putai,* and also states that he effectuated this transfer for a legitimate business purpose — to help Shanxi Coal obtain government approval to become a consolidator of coal mines.

(2) Allegations Concerning the Transfer of 49% of Shanxi Coal to CITIC Trust Co., Ltd. ("CITIC") for RMB245 Million in July 2010.

The Audit Committee has found that Ming Zhao signed various documents to further transfer 49% of the ownership of Shanxi Coal to CITIC in or around July 2010 (the "49% Transfer"), and that he did not disclose the 49% Transfer to the Audit Committee. Ming Zhao claims that the 49% Transfer was subject to the Trusted Shareholding Agreement discussed above and, as such, beneficial ownership of the 49% equity in Shanxi Coal remained with Putai. Ming Zhao stated, however, that he did not tell CITIC about the Trusted Shareholding Agreement or his "nominal" ownership of Shanxi Coal, nor is there any evidence that the Trusted Shareholding Agreement was filed in any government registry. The investigation did not find any evidence that Ming Zhao personally received any funds from CITIC in exchange for the 49% Transfer, but documents in connection with this transaction, among other things, state that he received consideration in the form of trust units in CITIC's trust plan.

(3) Allegations Concerning the 3-Year "Loan" from CITIC as Being Initially Funded for RMB2.5 Billion, and then Increased to RMB3.5 Billion.

The Audit Committee has found conflicting evidence with respect to these allegations. The Audit Committee found evidence that would support finding that CITIC loaned money to Shanxi Coal, including but not limited to the following: (a) Ming Zhao signed agreements with CITIC to obtain RMB2.5 billion in financing for Shanxi Coal in July 2010; (b) pursuant to the terms of these agreements, this financing appeared to be a functional equivalent of a "loan" that had to be repaid by Shanxi Coal within three years at a 12.5% annual interest and 2% annual fees; (c) documents reflect that this "loan" increased to RMB3.5 billion in November 2010; (d) CITIC stated in various publications, among other things, that it has funded the "loan" to Shanxi Coal, and Shanxi Coal used such funds to pay for its acquisition of coal mines and for technological upgrades to existing coal mines; and (e) various CITIC representatives orally confirmed the funding of such a "loan."

The Audit Committee, however, has also found evidence that is inconsistent with the CITIC reports stating that the CITIC "loan" had been funded, including

but not limited to: (a) Ming Zhao's repeated denial that CITIC has funded the "loan" to Shanxi Coal; (b) on August 31, 2011, Ming Zhao, through his counsel, provided the Audit Committee with a letter purportedly from CITIC stating (i) that CITIC has not advanced any funds to Shanxi Coal in connection with the credit facility that CITIC established for Shanxi Coal; and (ii) that none of CITIC Trust or any of its subsidiaries or any of its affiliates has ever brought or will bring any claim in respect of any pledge on or ownership interest in any shares in or assets of Shanxi Coal or any of its affiliates; (c) Ming Zhao's claims, made through his counsel, that numerous inaccuracies exist in reports issued by CITIC rendering the reports wholly unreliable; and (d) the lack of any documentary evidence demonstrating CITIC's lending of funds to Shanxi Coal. Ming Zhao, through his counsel, claims that the lack of funding makes the 49% Transfer and the 51% pledge (discussed below) ineffective, as the transfer and pledge were both part of the overall financing transaction with CITIC.

The investigation into these allegations has been complicated by the general limitations noted above and further by, among other things, claims by Ming Zhao's counsel that Chinese law does not allow Ming Zhao to authorize CITIC to respond to the Audit Committee's requests for interviews and documents, and CITIC's claim that Shanxi Coal will not authorize it to share information based on confidentiality provisions in the agreements between Shanxi Coal and CITIC. As a result, at this time, the Audit Committee cannot verify the authenticity of, or the information contained in, the above-mentioned letter from CITIC, and might not be able to do so unless Ming Zhao, CITIC and other third parties located in China provide verifiable evidence relating to these allegations.

- (4) Allegations Concerning Ming Zhao and Wei Zhang's Pledge of Shanxi Coal's Remaining 51% to CITIC as Security Interest for a 3-Year "Loan".

The Audit Committee has found that Ming Zhao and Wei Zhang, a Shanxi Coal employee and a 1% shareholder of Shanxi Coal, signed agreements pledging their 51% equity interest in Shanxi Coal to CITIC in July 2010. Similar to the other transactions with CITIC, the 51% pledge to CITIC was not disclosed to the Audit Committee prior to the Audit Committee's investigation.

- (5) Allegations Concerning the Creation of Shanxi Puda Mining Industry, Ltd. ("Puda Mining") as a New Parent Company of Shanxi Coal, the Transfer of 51% of Shanxi Coal to Puda Mining, and Puda Mining's Re-Pledge of 51% of Shanxi Coal to CITIC.

The Audit Committee has found that, in or around March 2010, Ming Zhao caused Puda Mining, which was initially a subsidiary of Shanxi Coal, to become a new parent company of Shanxi Coal without prior disclosure to or approval from the Audit Committee. ***Additionally, the Audit Committee has found that Ming Zhao and Wei Zhang transferred their 51% equity interest in Shanxi***



***Coal to Puda Mining in December 2010. The Audit Committee has further found that Puda Mining then re-pledged its 51% equity interest in Shanxi Coal to CITIC.*** Ming Zhao contends that the Puda Mining pledge of 51% of Shanxi Coal to CITIC is not effective because no funding of the “loan” has occurred.

(6) Additional Matters Identified during the Investigation.

(a) The Audit Committee has identified a number of instances throughout 2010 and early 2011 when Ming Zhao made affirmative statements (directly and indirectly) to the Company’s financial employees and to the Audit Committee that, among other things, Putai owned 90% of Shanxi Coal, without disclosing the 90% Transfer, the 49% Transfer, the purported Trusted Shareholding Agreement, or the transactions with CITIC.

(b) The Audit Committee has identified several additional instances of ownership changes relating to the Company’s Chinese subsidiaries that were also not disclosed to the Audit Committee at the time they were executed. For example, government registry documents show that Ming Zhao signed documents that permitted a company called Shanxi Longxin Coke Limited to temporarily become a majority shareholder of Shanxi Coal in March and April 2010. Government registry documents also demonstrate that, on or about April 26, 2011 the ownership of Puda Mining was transferred from Putai (99.55%) and Ming Zhao (0.45%) to Ming Zhao (99%) and Wei Zhang (1%), respectively, but Ming Zhao, through counsel, provided documents to the Audit Committee showing that, as of August 3, 2011, the ownership of Puda Mining had been transferred back to Putai (99.55%) and Ming Zhao (0.45%). Additionally, in June 2011, Ming Zhao signed “restructuring” agreements that purportedly transfer all assets from Shanxi Coal to Putai and Puda Mining. Ming Zhao states that he transferred these assets to alleviate concerns that CITIC has interest in Shanxi Coal’s assets. No disclosure of these agreements was made to the Audit Committee prior to their execution, nor has Ming Zhao provided any evidence that these asset transfer agreements have been filed in a government registry.

154. Following this adverse announcement, Puda’s shares resumed trading and promptly declined \$1.21 per share, or 37.46%, to close on September 2, 2011, at \$2.02 per share, on unusually heavy trading volume.

155. On September 7, 2011, the Company disclosed that the SEC had issued Defendant Zhao a Wells Notice indicating that the SEC intended to file an action against him

for violations of the federal securities laws.

156. On September 26, 2011, Puda Coal issued a press release entitled “Puda Coal Received a Resignation Letter from its CEO,” admitting that Defendant Zhu issued a fraudulent letter from CITIC to the SEC:

TAIYUAN, China, Sept. 26, 2011 /PRNewswire-Asia-FirstCall/ -- On September 23, 2011, the Board of Directors of Puda Coal, Inc. (the "Company"; Other OTC: PUDA .PK) received a letter from the Company's Chief Executive Officer ("CEO"), Liping Zhu, dated September 22, 2011. The letter states that Mr. Zhu resigns from his positions as the Company's CEO and as a director on the Board. The letter also states that, on August 29, 2011, Mr. Zhu provided a false letter from CITIC Trust Co. Ltd. ("CITIC") to the U.S. Securities and Exchange Commission ("SEC") and to counsel for Ming Zhao, Chairman of Puda Coal.

On September 1, 2011, the Company filed a current report on Form 8-K with the SEC disclosing interim findings of the internal investigation by the Audit Committee, including that, on August 31, 2011, Ming Zhao, through his counsel, provided the Audit Committee with a letter purportedly from CITIC (the "CITIC Letter"), and that the Audit Committee was unable to verify the authenticity of, or the information contained in, the "CITIC Letter." The "CITIC Letter" appears to be the same letter that was referred to in the resignation letter from CEO Liping Zhu.

157. On this news, the Company's shares declined \$0.07 per share, more than 9%, to close on September 26, 2011, at \$0.68 per share.

158. On October 3, 2011, the last day of the Class Period, the Company disclosed that it had received from CITIC definitive evidence that CITIC did not issue the “CITIC Letter” as referred to by Defendant Zhao and Defendant Zhu's resignation letter. The Company admitted this, stating:

NEW YORK, Oct. 3, 2011 /PRNewswire-Asia-FirstCall/ --On September 1, 2011, Puda Coal, Inc. (OTC BB: PUDA) (the "Company"; Other OTC: PUDA.PK) filed a current report on Form 8-K with the U.S. Securities and Exchange Commission ("SEC") disclosing interim findings of the internal investigation by the Company's Audit Committee, including that, on August 31, 2011, Chairman Ming Zhao, through his counsel, provided the Audit Committee with a letter purportedly from CITIC Trust Co. Ltd. (the "CITIC Letter"), and that

the Audit Committee was unable to verify the authenticity of or the information contained in the "CITIC Letter." As previously announced, on September 26, 2011, the Company's Board of Directors received a resignation letter from its then Chief Executive Officer, Liping Zhu, in which Mr. Zhu stated that he provided a false letter from CITIC to the SEC and to counsel for Ming Zhao. On September 29, 2011, the Audit Committee further received a letter from CITIC confirming that CITIC did not issue the "CITIC Letter." CITIC also stated that all of the information it had publicly disclosed regarding the CITIC Juxinhuijin Coal Industry Investment Fund No.1 Collective Trust Plan (the "Trust Plan"), including the information contained in each of its quarterly management reports and other documents posted on its website (<http://www.ecitic.com>), was true and valid, but CITIC did not provide any underlying documents related to the Trust Plan or any other purported transaction between CITIC and the Company's operating subsidiary, Shanxi Puda Coal Group Co., Ltd.

On September 26, 2011, Shearman Sterling LLP ("Shearman") resigned as counsel for Ming Zhao in all regards and stated that the Audit Committee should not rely on any of Shearman's prior statements regarding CITIC. The Audit Committee is not aware of whether Ming Zhao has retained successor counsel. Before its resignation, Shearman represented Ming Zhao in connection with the Audit Committee's internal investigation, the SEC's investigation relating to Mr. Zhao, and Mr. Zhao's buy-out proposal. The Independent Committee has not received any recent communication from Mr. Zhao regarding the proposed buy-out transaction, including whether or not he intends to proceed with such transaction.

The Audit Committee received a letter from CITIC on September 29, 2011, confirming that it did not issue the letter in question.

159. On this news, the Company's shares declined \$0.10 per share, almost 17%, to close on October 4, 2011, at \$0.50 per share.

160. In the wake of the Little Report and subsequent disclosures, Puda's market capitalization has lost more than \$325 million in value.

## **XII. APPLICABILITY OF PRESUMPTION OF RELIANCE (FRAUD-ON-THE-MARKET DOCTRINE)**

161. The trading market for Puda securities was open, well-developed and efficient at all relevant times for the following reasons, among others:

- (a) Puda stock met the requirements for listing, and was listed and actively traded on the NYSE Amex, a highly efficient and automated market;
- (b) During the class period, on average, 2.7 million shares of PUDA common stock were traded on a weekly basis. Approximately 17.3% of the public float, and 12.1% of all outstanding shares, were bought and sold on a weekly basis, demonstrating a very strong presumption of an efficient market;
- (c) As a regulated issuer, Puda filed periodic public reports with the SEC and the NYSE Amex and was eligible (and did file) S-3 registration statements with the SEC during the Class Period;
- (d) Puda regularly communicated with public investors *via* established market communication mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
- (e) Puda was followed by several securities analysts employed by major brokerage firms including Brean Murray and Liberty Analytics, (among others) who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.
- (f) There were active market-makers in Puda stock at all times during the Class Period; and
- (g) Unexpected material news about Puda was rapidly reflected in and incorporated into the Company's stock price during the Class Period.

162. As a result of the foregoing, the market for Puda securities promptly digested current information regarding Puda from all publicly available sources and reflected such information in Puda's stock price. Under these circumstances, Plaintiffs and the Class are permitted a presumption of reliance on the integrity of the market price for Puda securities.

### **XIII. CLAIMS**

#### **COUNT I VIOLATION OF SECTION 11 OF THE 1933 ACT Against All Defendants**

163. Plaintiffs repeat and incorporate each allegation contained above as if fully set forth herein.

164. This Count does not sound in fraud. Any proceeding allegations of fraud, fraudulent conduct, or improper motive are specifically excluded from this Count. Plaintiffs do not allege that Defendants had scienter or fraudulent intent, which are not elements of this claim.

165. This Count is brought by Mr. Rosenberger, pursuant to Section 11 of the 1933 Act on behalf of the Class who acquired shares of the Company's common stock pursuant to and/or traceable to the false offering materials issued in connection with the December Offering, against all Defendants.

166. The offering materials for this offering contained untrue statements of material facts, omitted to state other facts necessary to make the statement made not misleading, and/or omitted to state material facts required to be stated therein.

167. The Defendants named herein were responsible for the content of the December Offering Materials.

168. None of the Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statements were true and without omissions of any material facts and were not misleading.

169. By reasons of the conduct herein alleged, each Defendant violated and/or controlled a person who violated Section 11 of the 1933 Act.

170. Plaintiffs and the Class sustained damages in that the value of Puda shares declined substantially subsequent to and due to Defendants' wrongful conduct and violation of the law.

171. At the time of their purchases of the Puda's common stock, Plaintiffs and other members of the Class were without knowledge of the facts concerning the untrue statements or omissions herein and could not have reasonably discovered those facts until just prior to the date of the filing of this Complaint.

172. This claim is brought within one year after discovery of the untrue statements and omissions in the December Offering Materials and within three years of the effective date of the December Offering Materials.

173. By virtue of the foregoing, Plaintiffs and the other members of the Class are entitled to damages from these defendants and each of them, jointly and severally.

**COUNT II**  
**VIOLATIONS OF SECTION 12(a)(2) OF THE 1933 ACT**  
**Against Puda and the Underwriter Defendants**

174. Plaintiffs repeat and incorporate each and every allegation contained above as if fully set forth herein.

175. This Count does not sound in fraud. Any proceeding allegations of fraud, fraudulent conduct, or improper motive are specifically excluded from this Count. Plaintiffs

do not allege that Defendants had scienter or fraudulent intent, which are not elements of this claim.

176. This count is brought by Mr. Rosenberger, pursuant to Section 12 of the 1933 Act on behalf of the Class who purchased shares of the Company's common stock directly from one of the underwriters in the December Offering. Rosenberger bought Puda common stock directly from the underwriters in the December Offering.

177. Puda and the Underwriter Defendants offered, sold and/or solicited a security, namely shares of Puda's common stock, by means of the December Offering Materials identified above, and sold, or solicited the sale, of Puda's shares for their own financial benefit. The December Offering Materials contained untrue and/or misleading statements of material fact that the Defendants in the exercise of reasonable care should have known were false.

178. Puda and the Underwriter Defendants actively solicited the sale of Puda's shares to serve their own financial interests.

179. At the time of purchase of Puda's shares, Plaintiffs and other members of the Class did not know that the representations made to them by Puda and the Underwriter Defendants in connection with the distribution of shares and the matters described above were untrue, and did not know the above described omitted material facts, were not disclosed.

180. As a result, Plaintiffs and Class members are entitled to tender Puda shares they purchased and receive from Puda and the Underwriter Defendants the consideration paid for those shares with interest thereon, less the amount of any income received thereon, or damages resulting from Defendants' conduct.

181. Puda and the Underwriter Defendants are liable to Plaintiffs and Class members pursuant to Section 12 (a)(2) of the Securities Act, as seller of Puda shares in the December

Offering.

182. This Action is brought within three years from the time that the securities upon which this Count is brought were sold to the public, and within one year from the time when Plaintiff discovered or reasonably could have discovered the facts upon which this Count is based.

**COUNT III**  
**VIOLATIONS OF SECTION 15 OF THE 1933 ACT**  
**Against the Officer and Director Defendants**

183. Plaintiffs repeat and incorporate each allegation contained above as if fully set forth herein.

184. This Count does not sound in fraud. Any proceeding allegations of fraud, fraudulent conduct, or improper motive are specifically excluded from this Count. Plaintiffs do not allege for this Count that Defendants had scienter or fraudulent intent, which are not elements of this claim.

185. This Count is brought pursuant to Section 15 of the 1933 Act against the Officer and Director Defendants.

186. Each of the Officer and Director Defendants was a control person of Puda, by virtue of his or her position as a senior officer.

187. Each of the Officer and Director Defendants signed the Registration Statement for the December Offering.

188. Each of the Officer and Director Defendants was a culpable participant in the violations of Section 11 and 12 of the 1933 Act alleged above because they signed or authorized the signing of the registration statements issued pursuant to the December Offering, otherwise



participated in the process which allowed Puda's December Offering to be successfully completed, or participated in the offer or sale of the shares of Puda.

189. The Officer and Director Defendants named herein were responsible both for the content of the registration statements issued pursuant to the December Offering and for ensuring that registration statements were not false and misleading.

190. Plaintiffs and the Class have sustained damages as a result of these violations in that the value of Puda stock declined as a result of the Officer and Director Defendants' conduct, as alleged herein.

**COUNT IV**  
**Violation of Section 10(b) of The Exchange Act**  
**and Rule 10b-5 Promulgated Thereunder**  
**Against Puda, Defendants Wu, Zhu and Zhao, and the Auditor Defendants**

191. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

192. Puda and Defendants Wu, Zhu and Zhao, and Defendant Moore Stephens: (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Puda's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

193. Puda and Defendants Wu, Zhu and Zhao, and Defendant Moore Stephens, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of

conduct to misrepresent material facts and conceal adverse material information about Puda's financial well-being and prospects, as specified herein.

194. Each of Defendants Wu, Zhu and Zhao's primary liability, and controlling person liability, arises from the following facts: (i) Defendants Wu, Zhu and Zhao were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities as a senior officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of, and had access to, other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew and/or recklessly disregarded was materially false and misleading.

195. Defendants Wu, Zhu and Zhao had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them.

196. Because of their positions and access to material, non-public information available to them, Defendants Wu, Zhu and Zhao knew, or recklessly disregarded, that the Company's internal controls were inadequate, which was not disclosed to, and was being concealed from, the public, and that the interim reports for the quarters ending September 30,

2009, May 17, 2010, August 16, 2010, and November 15, 2010 on Forms 10-Q, as well as the Company's prospectuses and registration statements issued pursuant to the December Offering, and the Company's 2009 and 2010 annual reports, which were all filed with the SEC, were then materially false and misleading. Defendants Wu, Zhu and Zhao are liable for the false statements pleaded herein, as those statements were each "group-published" information, the result of their collective actions as officers and directors and Defendant Moore Stephens.

197. Additionally, Defendant Moore Stephens fraudulently certified the financial statements contained in each of the annual reports identified herein, without qualification, despite having actual knowledge of, or at least recklessly disregarding, the fact that the financial statements violated SFAS 48 and were materially false and misleading.

198. At the time of said misrepresentations and/or omissions, Plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiffs and the other members of the Class and the marketplace known the truth regarding the Company's improper accounting practices, which were not disclosed by these defendants, Plaintiffs and other members of the Class would not have purchased or otherwise acquired their Puda securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

199. By virtue of the foregoing, these defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

200. As a direct and proximate result of Puda's, the Officer and Director Defendants' and the Defendant Moore Stephens's wrongful conduct, Plaintiffs and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

**COUNT V**  
**Violation of Section 20(a) of The Exchange Act**  
**Against Puda, and the Officer and Director Defendants**

201. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

202. The Officer and Director Defendants were controlling persons of Puda within the meaning of Section 20(a) of the Exchange Act as alleged herein.

203. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Officer and Director Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiffs contend are false and misleading. The Officer and Director Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiffs to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

204. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

205. As set forth above, Puda violated Section 10(b) and Rule 10b-5, by their acts and/or omissions as alleged in this Complaint. By virtue of their positions as controlling

persons, the Officer and Director Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

#### **XIV. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- (b) Awarding compensatory damages in favor of Plaintiffs and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- (c) Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (d) Such other and further relief as the Court may deem just and proper.

#### **XV. JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury.

DATED: January 30, 2011

**THE ROSEN LAW FIRM, P.A.**

By: \_\_\_\_\_  
Laurence M. Rosen, Esq. (LR-5733)  
Phillip Kim, Esq. (PK-9384)  
275 Madison Avenue, 34<sup>th</sup> Floor  
New York, New York 10016  
Telephone: (212) 686-1060  
Facsimile: (212) 202-3827  
info@rosenlegal.com

**GLANCY BINKOW & GOLDBERG LLP**

Lionel Z. Glancy, Esq.  
Robert V. Prongay, Esq.  
Casey E. Sadler, Esq.  
1925 Century Park East, Suite 2100  
Los Angeles, California 90067  
Telephone: (310) 201-9150  
Facsimile: (310) 201-9160

*Co-Lead Counsel for Plaintiffs and the Proposed Class*

**POMERANTZ HAUDEK  
GROSSMAN & GROSS LLP**

Marc I. Gross, Esq.  
Jeremy A. Lieberman, Esq.  
Fei-Lu Qian, Esq.  
100 Park Avenue, 26th Floor  
New York, New York 10017  
Telephone: (212) 661-1100  
Facsimile: (212) 661-8665

-and-

Patrick V. Dahlstrom, Esq.  
Leigh Handelman Smollar, Esq.  
10 South LaSalle Street, Suite 3505  
Chicago, IL 60603  
Telephone: (312) 377-1181  
Facsimile: (312) 377-1184

**KAPLAN FOX & KILSHEIMER LLP**

Frederic S. Fox, Esq.  
Jeffrey P. Campisi, Esq.  
Pamela A. Mayer, Esq.  
850 Third Avenue  
New York, NY 10022  
Telephone: (212) 687-1980  
Facsimile: (212) 687-7714

**KIRBY MCINERNEY LLP**

Daniel Hume, Esq.

David E. Kovel, Esq.

825 Third Avenue

New York, NY 10022

Telephone: (212) 371-6600

Facsimile: (212) 751-2540

*Additional Attorneys for Plaintiffs*