UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re: **PATRIOT COAL CORPORATION, *et al.*,** **Debtors.**	**Chapter 11** **Case No. 12-51502-659** **(Jointly Administered)**
PATRIOT COAL CORPORATION and HERITAGE COAL COMPANY, **Plaintiffs,** **v.** **PEABODY HOLDING COMPANY, LLC and PEABODY ENERGY CORPORATION,** **Defendants.**	**Adversary Proceeding No. 13-04067-659** **Objection Deadline: April 22, 2013 at 4:00 p.m. (prevailing Central Time)** **Hearing Date: April 29, 2013 at 10:00 a.m. (prevailing Central Time)** **Hearing Location: Courtroom 7-North**

DEFENDANTS' MOTION TO DISMISS

Defendants Peabody Holding Company, LLC ("PHC") and Peabody Energy Corporation ("PEC" and, together with PHC, "Peabody") hereby move to dismiss the Complaint in this adversary proceeding [Docket No. 3217] (the "Complaint") for lack of subject matter jurisdiction, on the ground that the matters set forth in the Complaint do not present an "actual controversy" between the parties that is ripe for judicial resolution. This motion is made pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, which applies to this proceeding pursuant to Rule 7012(b) of the Federal Rules of Bankruptcy Procedure.

PRELIMINARY STATEMENT

1. The plaintiffs in this adversary proceeding are Patriot Coal Corporation ("Patriot") and one of its subsidiaries, Heritage Coal Company ("Heritage"), which was formerly known as Peabody Coal Company, LLC ("PCC"). Patriot and Heritage, along with numerous other affiliated companies (collectively, the "Debtors"), are debtors in the above-captioned jointly administered chapter 11 cases (the "Patriot Chapter 11 Cases"). In those cases, the Debtors recently filed a motion pursuant to sections 1113 and 1114 of the Bankruptcy Code (the "1113/1114 Motion") for an order authorizing them to reject their collective bargaining agreements ("CBAs") with the United Mine Workers of America (the "UMWA") and to terminate retiree healthcare benefits provided under those CBAs for their current union retirees, including Heritage's current union retirees.

2. The plaintiffs filed this adversary proceeding pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201(a), seeking a declaratory judgment from this Court that, ***if*** they were to be successful in obtaining the relief sought in the 1113/1114 Motion regarding retiree healthcare benefits (either by court order or by a settlement agreement with the UMWA), that relief would not affect Peabody's obligation under its prepetition contract with the plaintiffs to continue funding the retiree healthcare benefits that Heritage pays to certain union retirees who retired before 2007.

3. When Patriot and its then affiliated Debtors were spun off from PeEC in October 2007 (the "Spin-Off"), they were solvent, adequately capitalized and positioned for success. By late June 2008, Patriot's stock had nearly ***quadrupled*** in value from the time of the Spin-Off, trading above $80 per share on the New York Stock Exchange (as adjusted for the 2-for-1 stock split in August 2008) and reflecting a market capitalization for Patriot of over $4 billion. Likewise in mid-2008, Patriot acquired Magnum Coal Company ("Magnum") (a

company larger than Patriot itself), issuing $200 million of new debt and assuming $1.5 billion of additional liabilities.

4. The coal industry today is very different from what it was in 2007. In recent years, the United States in particular has seen an unprecedented and unforeseen upsurge in shale gas production. The resulting increase in natural gas supply has led to a precipitous drop in natural gas prices, leading many electrical generation facilities to switch from coal to natural gas. Under the current Administration, the U.S. Environmental Protection Agency (the "EPA") has engaged in a much publicized "war on coal." Through the rule-making process, the EPA has made it more difficult to use coal in power generation. It has also increased permitting and compliance burdens for coal companies, including making changes to selenium water treatment regulations which increased Patriot's liabilities acquired in the Magnum acquisition by $402.2 million.[1] And, of course, the global financial crisis significantly impacted the global economy, including the coal industry and its customers. The Debtors themselves have attributed their failure to these devastating changes in economic and market conditions.[2] This "perfect storm" of unforeseen, and unforeseeable, market and industry changes, combined with Patriot's own business decisions (especially with respect to the Magnum acquisition), led to Patriot's downfall. Nevertheless, although the problems that face Patriot today originated elsewhere, some are attempting to lay at Peabody's feet the consequences of Patriot's failure.

---

1 As of the date of the Magnum aquisition, Patriot estimated that its costs to treat selenium discharges had a fair value of $85.2 million. See Patriot Coal Corporation, 2009 Annual Report, Feb. 24, 2010, at pg. 35. By year-end 2012, Patriot estimated that such costs were approximately five times greater, with an estimated fair value of $443.0 million. See Patriot Coal Corporation, 2012 Annual Report, Feb. 22, 2013, at pg. 19.

2 See Declaration of Mark N. Schroeder Pursuant to Local Bankruptcy Rule 1007-2 (Docket No. 4), at ¶¶ 21-39.

5. The theme of shifting blame to Peabody continues in this action. Lost in the rhetoric, hyperbole and selective recitation of "facts" in the Complaint, however, is that the plaintiffs are requesting this Court to construe a provision of Heritage's agreement with Peabody in the context of a speculative scenario that may never come to pass. While Peabody disputes the plaintiffs' construction of the agreement in that scenario, it is neither permissible nor appropriate for the Court to render an advisory opinion on the issue.

6. The matters set forth in the Complaint do not constitute an existing, "actual controversy" between the parties as required by both Article III of the U.S. Constitution and the Declaratory Judgment Act. Instead, the Complaint hypothesizes a controversy that might become ripe for judicial resolution in the future, but only ***if*** the Debtors ultimately obtain the relief they seek regarding retiree healthcare benefits in the 1113/1114 Motion and even then, on plaintiffs' own theory, only ***if*** that relief is never embodied in a new collective bargaining agreement with the UMWA. Accordingly, the Complaint should be dismissed without prejudice.

FACTS

A. The Spin-Off and the NBCWA Liabilities Assumption Agreement

7. Patriot, Heritage and certain of the other Debtors were once affiliates of Peabody. In 2007, pursuant to a series of agreements, PEC distributed to its shareholders via a dividend all of Patriot's equity shares. From that point forward, PEC had no ownership interest in Patriot and Patriot was a independent company whose shares were publicly traded on the New York Stock Exchange.

8. At the time of the Spin-Off, Peabody entered into an agreement with Patriot, the NBCWA Individual Employer Plan Liabilities Assumption Agreement, dated October 22, 2007 (the "NBCWA Liabilities Assumption Agreement") (attached as Exhibit A to the Complaint). In that agreement, Peabody agreed that, to the extent Heritage (then known as

PCC) remained obligated, through a plan established pursuant to its UMWA collective bargaining agreement, to pay retiree healthcare benefits to specified former union employees of Heritage, Peabody would fund those payments, subject to the other terms and adjustments set forth in that agreement.[3] Heritage's total liability for these particular retiree healthcare benefits was estimated at that time to be roughly $217 million.

9. The parties contemplated that amounts Heritage would be required to pay to fund retiree healthcare benefits for its union retirees, and, thus, the amounts Peabody might be required to fund, could change over time. Accordingly, section 1(d) of the agreement provides that "[c]hanges to benefit levels . . . or other such modifications contained in [Heritage's] future UMWA labor agreements that are applicable to the retirees and eligible dependents subject to this Agreement" would commensurately alter the amounts Peabody was obligated to fund under that agreement.[4] Further, the parties agreed that, for future Heritage labor contracts, the amounts Peabody might be obligated to fund would be based on contractual retiree health benefit levels being paid by Eastern Associated Coal, LLC ("EACC"), a sister company of Heritage (the "Eastern Provision"). The Eastern Provision provides that, "for purposes of any successor [Heritage] labor contract," the retiree benefit liabilities of Heritage that Peabody was agreeing to fund "shall be based on benefits that are" provided in "any future UMWA labor agreement" that was either entered into by, or offered to, EACC.[5]

---

[3] In the NBCWA Liabilities Assumption Agreement, the liabilities that Peabody agreed "to pay and discharge when due" were defined as the "amounts PCC pays for benefits to those retirees of PCC identified in Attachment A" to the agreement, and such retirees' eligible dependents, under the terms of the individual employer plan "maintained by PCC pursuant to" its then-existing collective bargaining agreement with the UMWA, "provided that such retirees" had permanently retired from coal mine employment and had a vested right to receive the benefits as of December 31, 2006. NBCWA Liabilities Assumption Agreement, §§ 1(c), 1(d), and 2(a).

[4] Id. § 1(d).

[5] Id.

B. The Debtors' 1113/1114 Proposals and the 1113/1114 Motion

10. As detailed in the Debtors' legal memorandum and declarations submitted in support of the 1113/1114 Motion, in November 2012, the Debtors began the process of attempting to amend their CBAs with the UMWA and terminate the retiree healthcare benefits for their current union retirees when they submitted their original 1113 and 1114 proposals to the UMWA. Generally, the Debtors' proposed modifications to their CBAs are designed to make the unionized wages and benefits roughly similar to the wages and benefits of the Debtors' non-unionized employees, and the Debtors currently project that their proposed modifications to the CBAs for current employees will save them $75 million annually.

11. The Debtors' proposed CBA modifications contemplate the termination of retiree healthcare benefits paid by the Debtors and the transition of their union retirees and eligible dependents to a Voluntary Employee Beneficiary Association (the "VEBA"). The VEBA would be maintained by the UMWA and funded by a combination of (a) equity in the reorganized debtors, (b) a royalty charge based on each ton of coal mined by the Debtors, (c) recoveries, if any, from a litigation trust, and (d) possible additional contributions by the Debtors over time under a profit-sharing plan.[6] The Debtors project that terminating retiree healthcare benefits for their current union retirees and dependents and replacing them with the proposed VEBA would generate annual cost savings for the Debtors of $75 million.

12. With respect to the pre-2007 retirees of Heritage whose benefits are currently funded by Peabody pursuant to the NBCWA Liabilities Assumption Agreement, the Debtors' 1113 and 1114 proposals contemplate modifying Heritage's CBA with the UMWA to terminate the retiree healthcare benefits provided to those retirees and their eligible dependents,

---

[6] See Patriot's Fifth Section 1114 proposal, posted at www.patriotcaseinfo.com; Notice of Fourth 1113 Proposal and Fifth 1114 Proposal (Doc. No. 3583) (filed 04/11/2013).

and then including those persons as beneficiaries of the proposed VEBA. However, the Debtors' 1114 proposal also provides that ***if*** this Court were to rule that the termination of Heritage's or EACC's obligation under its CBA to pay retiree healthcare benefits does not relieve or otherwise affect Peabody's obligation to continue funding such benefits for the pre-2007 retirees under the NBCWA Liability Assumption Agreement, then the 1114 proposal would be automatically modified, *nunc pro tunc* to the date the 1113/1114 Motion was filed, to exclude those retirees from its 1114 proposal and the proposed VEBA.

13. The UMWA rejected the Debtors' 1113/1114 proposals. On March 14, 2013, the Debtors filed the 1113/1114 Motion, asserting that implementation of their proposals is necessary for their successful reorganization in chapter 11 and that the UMWA did not have good cause to reject them. On April 11, 2013, the Debtors filed modified 1113/1114 proposals with the Court indicating that the Debtors were continuing to negotiate with the UMWA regarding the relief sought by the 1113/1114 Motion.

C. The Declaratory Judgment Action

14. As contemplated in the Debtors' 1114 proposal, Patriot and Heritage filed the Complaint in this adversary proceeding on the same day the Debtors filed the 1113/1114 Motion. In it they seek from this Court a broad declaratory judgment that "[a] modification of the benefits of retirees of Heritage or EACC under Section 1114 does not relieve [PHC] of its obligation to pay for the healthcare benefits of the [pre-2007 Heritage retirees identified in Attachment A and their eligible dependents], as currently provided by Heritage's 2011 individual employer plan and the NBCWA Liabilities Assumption Agreement."[7]

[7] Complaint ¶ 31.

15. The plaintiffs claim that the declaratory judgment they seek necessarily follows from two premises they allege to be true: (a) that, based on the language in section 1(d) of the NBCWA Liabilities Assumption Agreement, "only a 'successor [Heritage] labor contract' with the UMWA can change the NBCWA Individual Employer Plan Liabilities that [PHC] is obligated to pay;" and (b) that the 1113/1114 Motion, "or any negotiated resolution of that motion, will not result in a 'successor [Heritage] labor contract' with the UMWA."[8]

16. Peabody disputes both premises, but for purposes of this motion to dismiss, the second premise is central. That premise makes clear that, even though the parties disagree as to the proper construction of the agreement, there is no existing, "actual controversy" that is ripe for judicial resolution by this Court. Even on plaintiffs' own disputed theory, their second premise requires at least two future contingencies that in fact may never occur: first, that the Debtors will obtain the relief they seek in the 1113/1114 Motion regarding retiree healthcare benefits provided by Heritage, and second, that such relief will never be embodied in a new or modified labor contract with the UMWA.[9]

ARGUMENT

A. Legal Standards for Determining Subject Matter Jurisdiction

17. When, as here, a defendant makes a Rule 12(b)(1) challenge to the factual existence of subject matter jurisdiction under the Declaratory Judgment Act, "the court's review is not confined to the pleadings, but may examine extraneous evidence submitted with the

---

[8] Id. ¶ 21.

[9] Peabody disputes the first premise of the plaintiffs' theory for a number of reasons, including the fact that under the NBCWA Liabilities Assumption Agreement, Peabody's obligation depends in the first instance on the existence of both a labor agreement between Heritage and the UMWA that incorporates the NBCWA, and an individual employer plan "maintained by [Heritage] pursuant to" that labor agreement. NBCWA Liabilities Assumption Agreement, §§ 1(c), 1(d), and 2(a). For the reasons detailed in this motion, however, it would be improper for this Court to render an advisory opinion with respect to this dispute now, as the dispute is not yet an "actual controversy" that confers subject matter jurisdiction on the Court, nor is it sufficiently ripe to warrant the exercise of jurisdiction by the Court.

motion and make any findings of fact necessary to determine the existence of subject matter jurisdiction." Dow Jones & Co. v. Harrods, Ltd., 237 F. Supp. 2d 394, 404 (S.D.N.Y. 2002) (citing Garcia v. Copenhaver, Bell & Assoc., M.D.'s P.A., 104 F.3d 1256, 1260-61 (11th Cir. 1997)).

18. Accordingly, in ruling on this motion, the Court "is not obligated to accord presumptive truthfulness to the allegations of the" Complaint and it "may weigh the evidence on the record accompanying the Rule 12(b)(1) motion, or hold an evidentiary hearing, and decide for itself the merits of the jurisdictional dispute." Id. In making that decision, "the burden of proving jurisdiction is on the party asserting it." Id. (citing Robinson v. Overseas Military Sales Corp., 21 F.3d 502, 507 (2d Cir. 1994)).

19. The Declaratory Judgment Act provides that in "a case of ***actual controversy*** within its jurisdiction," a federal court "***may*** declare the rights and other legal relations of any interested party seeking such declaration . . . ." 28 U.S.C. § 2201(a) (emphasis added). Accordingly, to defeat a Rule 12(b)(1) motion in an action brought under the Declaratory Judgment Act, a plaintiff must prove two propositions. First, it must show that there is an "actual controversy" between the parties. Second, it must show that the controversy is sufficiently ripe to warrant the exercise of the discretion afforded the court under section 2201(a) to decide on granting or denying declaratory relief at that time. Dow Jones, 237 F. Supp. 2d at 405-06. The plaintiffs are unable to make either showing here.

B. The Complaint Does Not Constitute an "Actual Controversy"

20. The "actual controversy" requirement of the Declaratory Judgment Act is coextensive with the "case or controversy" standard embodied in Article III of the United States Constitution, which limits the exercise of judicial power to "cases" and "controversies." See Public Serv. Comm'n of Utah v. Wycoff Co., 344 U.S. 237, 241-42 (1952); J.N.S., Inc. v. State

of Indiana, 712 F.2d 303, 305 (7th Cir, 1983) ("The case or controversy jurisdictional requirement applies to actions for declaratory judgments with equal force as it does to actions seeking traditional coercive relief."); Dow Jones, 237 F. Supp. 2d at 406 ("actual controversy" inquiry under Declaratory Judgment Act "is coextensive" with the case or controversy standard under Article III).

21. "Whether a plaintiff has presented a case or controversy within the meaning of Article III or simply an abstract legal question is not discernible by any precise test, but certain well-established principles provide guidance." J.N.S., 712 F.2d at 306 (citations omitted). One of these "well-established principles" is that it "is insufficient that an actual controversy may occur in the future; it must presently exist in fact." Id. See also Urantia Foundation v. Commissioner, 684 F.2d 521, 525 (7th Cir, 1982) ("It is settled law that an actual controversy, in the context of declaratory judgment actions, must be one which exists in fact and not one which may occur in the future.") (citations omitted).

22. This well-established requirement "circumscribes federal jurisdiction to real conflicts so as to preclude the courts from gratuitously rendering advisory opinions with regard to events that have not matured to a point sufficiently concrete to demand immediate adjudication and thus that may never materialize as actual controversies." Dow Jones, 237 F. Supp. 2d at 406. The requirement is "conceptually linked" to the doctrine of ripeness, which the Supreme Court has stressed must be considered when determining whether an "actual controversy" exists for purposes of the Declaratory Judgment Act and Article III. Id. at 406-07. See also Wycoff, 344 U.S. at 244 (the "disagreement must not be nebulous or contingent but must have taken a fixed and final shape").

23. Accordingly, a disagreement between parties regarding their respective legal rights does not constitute an "actual controversy" if it is based on contingencies that may never occur. See Thomas v. Union Carbide Agric. Prod. Co., 473 U.S. 568, 580-81 (1985) (central to ripeness requirement is that courts should not endeavor to resolve contingencies that may or may not occur as expected or may not happen at all); Dow Jones, 237 F. Supp. 2d at 406-07 ("a touchstone to guide the probe for sufficient immediacy and reality is whether the declaratory relief sought relates to a dispute where the alleged liability has already occurred or the threatened risk occurred, or rather whether the feared legal consequence remains a mere possibility, or even probability of some contingency that may or may not come to pass").

24. Here, the disagreement between the plaintiffs and Peabody regarding the proper construction of section 1(d) of the NBCWA Liabilities Assumption Agreement has not ripened into an "actual controversy" for purposes of Article III and the Declaratory Judgment Act because it is predicated on the occurrence of at least two events that are purely hypothetical and in fact may never occur, or may not occur in the manner currently theorized by the Debtors. First, the Debtors may not obtain the relief they seek in the 1113/1114 Motion regarding retiree healthcare benefits. Second, even if they were to obtain relief of some sort, it is by no means evident that the relief obtained would never be embodied in a successor labor contract with the UMWA. While the Debtors may express confidence about the prospect of prevailing on their 1113/1114 Motion, the UMWA and other parties have filed strenuous objections to the motion, and the ultimate outcome of that litigation is not certain under any reasonable standard. Moreover, it is common in large reorganization cases for an 1113/1114 motion to be resolved by a settlement with the affected union that requires ratification of a new or modified collective bargaining agreement as a condition of the settlement.

25. Courts have repeatedly held that a dispute between parties does not constitute an "actual controversy" for purposes of Article III and the Declaratory Judgment Act where the dispute concerned how the parties' legal rights would be affected if one of the parties prevailed in other, related but still ongoing litigation. In Dow Jones, for example, the plaintiff sought a declaratory judgment that any judgment obtained by the defendant in its defamation action against the plaintiff in the United Kingdom would not be enforceable against the plaintiff in the United States. The court held that the dispute over enforceability of any judgment the defendant might obtain in the United Kingdom defamation action was, in fact, "nothing more than . . . premature concerns about contingencies that may or may not come to pass" and therefore did not "constitute an actual controversy qualifying for" declaratory relief under Article III and the Declaratory Judgment Act. 237 F. Supp. 2d at 408-09.

26. A similar result occurred in Becker v. Country Mutual Ins. Co., No. 10-CV-286, 2011 WL 221773 (S.D. Ill. Jan. 24, 2011). In that case, the plaintiffs sued a manufacturer for damages suffered when riding on a lawn mower made by that defendant. In the same action, the plaintiffs also sued the insurer who issued their homeowners insurance policy, seeking a declaratory judgment that, if the plaintiffs ultimately recovered any damages from the manufacturer, a fund benefitting both the plaintiffs and their insurer would be established, and that the insurer would be required to bear its share of the plaintiffs' attorney's fees pursuant to the Common Fund Doctrine. The court dismissed the claim for declaratory relief against the insurer on the ground that no "actual controversy" existed between the parties:

> Regarding the Common Fund Doctrine, and the Beckers' pursuit of a declaration that Country must pay its share of attorney's fees, this alleged controversy is premature as no fund has been created and indeed, it may not ever be created. Essentially, the Beckers (or rather, their counsel) want an assurance that their efforts to recover their entire loss will be rewarded with proportionate attorney's fees

> from Country. In other words, they are seeking advice from the court regarding anticipated future difficulties, namely, whether or not they will be able to recover fees from Country if or when a common fund is ever obtained. Thus, because no fund has been created, this issue is premature, and no actual controversy exists.

Id. at *3.

27. The same result is required here. The plaintiffs have brought an action for declaratory relief based on a disagreement with Peabody over the construction of a prepetition contract that is, in fact, "nothing more than . . . premature concerns about contingencies that may or may not come to pass" and therefore do not "constitute an actual controversy qualifying for" declaratory relief under Article III and the Declaratory Judgment Act. Dow Jones, 237 F. Supp. 2d at 408-09.

C. The Court Should Not Exercise its Discretion to Grant Declaratory Relief Because the Dispute also is Not Sufficiently Ripe

28. Even if the disagreement between Peabody and the plaintiffs regarding the construction of their prepetition contract might on some twisted logic or athletic reasoning be seen as constituting an "actual controversy" for purposes of Article III and the Declaratory Judgment Act, the dispute, under any circumstances, clearly would not be sufficiently ripe to warrant the exercise of jurisdiction at this time. See Public Water Supply Dist. No. 10 v. City of Peculiar, Missouri, 345 F.3d 570, 572-73 (8th Cir. 2003); Dow Jones, 237 F. Supp. 2d at 431.

29. "The ripeness doctrine flows both from the Article III 'cases' and 'controversies' limitations and also from prudential considerations for refusing to exercise jurisdiction." Public Water Supply, 345 F.3d at 572 (quoting Nebraska Pub. Power Dist. v. MidAmerican Energy Co., 234 F.3d 1032, 1037 (8th Cir. 2000)). "It is well settled that the ripeness inquiry requires the examination of both 'the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.'" Public Water Supply, 345

F.3d at 572-73 (quoting Abbott Labs v. Gardner, 387 U.S. 136, 149 (1967)). The Eight Circuit has repeatedly required that "'[a] party seeking judicial relief must necessarily satisfy both prongs to at least a minimal degree.'" Public Water Supply, 345 F.3d at 573 (quoting Nebraska Pub. Power, 234 F.3d at 1039). The plaintiffs here cannot satisfy either prong.

30. "Whether a case is 'fit' depends on whether it would benefit from further factual development." Id. Further factual development here is required, particularly with respect to the form of relief, if any, that the Debtors may ultimately obtain on their 1113/1114 Motion and whether that relief is ultimately reflected in new collective bargaining agreements with the UMWA.

31. With respect to the hardship prong, the Eighth Circuit "has repeatedly stated that a case is not ripe if the plaintiff makes no showing that the injury is direct, immediate, or certain to occur." Public Water Supply, 345 F.3d at 573 (citing Paraquad Inc., v. St. Louis Hous. Auth., 259 F.3d 956, 959-60). Here, the Debtors have already acknowledged that they can modify their 1114 relief after the fact, on a *nunc pro tunc* basis, if the Court waits to exercise its discretion to award or deny declaratory relief until after the 1113/1114 Motion is resolved. That means there is no actual hardship that the Debtors can demonstrate to warrant relief at this time. Accordingly, the Court should exercise its discretion not to entertain this action until after the 1113/1114 Motion is resolved.

CONCLUSION

32. For the foregoing reasons, this Court should grant the motion and dismiss the Complaint without prejudice.

Dated: April 12, 2013

Respectfully submitted,

/s/ Steven N. Cousins
David G. Heiman
Carl E. Black
John M. Newman, Jr.
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
dgheiman@jonesday.com
ceblack@jonesday.com
jmnewman@jonesday.com

Steven N. Cousins (MO 30788)
David L. Going (MO 33435)
Susan K. Ehlers (MO 49855)
ARMSTRONG TEASDALE
7700 Forsyth Boulevard, Suite 1800
St. Louis, Missouri 63105
Telephone: 314-621-5070
Facsimile: 314-621-5065
scousins@armstrongteasdale.com
dgoing@armstrongteasdale.com
sehlers@armstrongteasdale.com

ATTORNEYS FOR DEFENDANTS
PEABODY HOLDING COMPANY, LLC
PEABODY ENERGY CORPORATION