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**

DEFENDANTS' OPPOSITION
TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Defendants Peabody Holding Company, LLC ("PHC") and Peabody Energy Corporation ("PEC" and, together with PHC, "Peabody"), respectfully submit this opposition to Plaintiffs' Motion for Summary Judgment [Doc. No. 6 in Adv. Proc. No. 13-04067] (the "Summary Judgment Motion").

PRELIMINARY STATEMENT

The plaintiffs 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 (together, the "Plaintiffs"), along with numerous other affiliated companies (collectively, the "Debtors"), are debtors in the above-captioned jointly administered chapter 11 cases.

When Patriot and its then-affiliated Debtors were spun off from PEC 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, reflecting a market capitalization for Patriot of over $4 billion. Likewise in mid-2008, Patriot acquired Magnum Coal Company (a company larger than Patriot itself), issuing $200 million of new debt and assuming $1.5 billion of additional liabilities. Later, however, a "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.[1] Notwithstanding the foregoing, some are attempting to lay at Peabody's feet the consequences of Patriot's failure.

[1] Additional details regarding Patriot's failure are discussed in (a) PEC's objection [Doc. No. 3674 in Case 12-51502] to the motion filed by the Debtors and the official committee of unsecured creditors appointed in the Debtors' bankruptcy cases for leave to conduct discovery of PEC pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure [Docket No. 3494 in Case 12-51502] and (b) Defendants' Motion to Dismiss this adversary proceeding [Docket No. 11 in Adv. Proc. No. 13-04067] ("Peabody's Motion To Dismiss").

The Debtors filed their chapter 11 cases on July 9, 2012. 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 (the "CBAs") with the United Mine Workers of America (the "UMWA") and to terminate the healthcare benefits they provide under the CBAs to their current union retirees, including the current union retirees of Heritage and one if its sister companies, Eastern Associated Coal, LLC ("EACC").

The Plaintiffs filed this adversary proceeding to obtain a 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 " certain Heritage retirees who are the subject of a prepetition contract between Peabody and the Plaintiffs.[2] According to the Plaintiffs, the Court should construe the contract in their favor to prevent Peabody from "escaping its obligations to" those retirees and "realiz[ing] a windfall worth hundreds of millions of dollars . . . ."[3] And less than three weeks after filing their Complaint, before Peabody had even filed a responsive pleading, the Plaintiffs filed their Summary Judgment Motion, claiming that Peabody should not "be permitted to use its strained interpretation of the plain language of" that contract "at the expense of a bankrupt company fighting for survival . . . ."[4]

Neither the hyperbole of the Plaintiffs' rhetoric nor their rush to obtain a final judgment at the very beginning of the case can mask the three fundamental flaws of their arguments:

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2 Complaint [Docket No. 3217 in Case 12-51502] (the "Complaint") ¶ 31.

3 Id. ¶ 28.

4 Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment [Docket. No. 7 in Adv. Proc. No. 13-04067] ("Plaintiffs' Mem.") at 16.

- First, as explained more fully in Peabody's recently filed Motion to Dismiss, this Court does not have subject matter jurisdiction to render an opinion on the contractual dispute at issue because, even on the Plaintiffs' own theory, that dispute assumes two future contingencies that might not actually occur: a) that Heritage will obtain relief under section 1114 to terminate its obligation to provide healthcare benefits to its current union retirees; and b) that such relief will not be embodied in a new collective bargaining agreement with the UMWA.
- Second, the actual contract provisions at issue are unambiguous: Peabody is obligated under those provisions to fund the healthcare benefits Heritage is obligated to pay under its CBA to the current union retirees that are covered by the contract. If Heritage's obligation under its CBA to provide healthcare benefits to those retirees were terminated, either by a court order granting its 1113/1114 Motion or otherwise, there no longer would be any Heritage obligation for Peabody to fund, and Peabody's obligations under the contract would end.
- Third, even if one were to ignore the contract's actual (and carefully negotiated) language and instead construed it to impose on Peabody an independent obligation to provide healthcare benefits to the retirees covered by the contract (rather than an obligation to fund only Heritage's liabilities), the Plaintiffs still would not be entitled to summary judgment. As the Plaintiffs themselves must concede, if Heritage were to enter into a new or modified "labor agreement" with the UMWA that changes the healthcare benefits for its current union retirees, that new labor agreement would commensurately alter the benefits that Peabody was obligated to fund under the contract. But, contrary to the Plaintiffs' arguments,

> any relief that Heritage might obtain under section 1114 to reduce or terminate its obligation to provide healthcare benefits to its union retirees, either by court decree or by a consensual resolution with the UMWA, ***would*** constitute or result in such a future labor agreement with the UMWA, and thereby affect Peabody's commensurate funding obligations with respect to the retirees covered by the contract.

The contract terms at issue were carefully negotiated by sophisticated parties represented by sophisticated counsel on both sides. The deal the parties reached did not impose on Peabody an independent obligation to provide healthcare benefits to certain current retirees of Heritage; instead, it obligated Peabody to fund ***Heritage's liability*** for the healthcare benefits ***that Heritage is obligated by its CBA to provide*** to those retirees. Enforcing the terms of the deal that the parties negotiated does not create an unjust "windfall" for Peabody; it preserves for each party to this prepetition contract the benefit of their bargain. For all of these reasons, as detailed more fully below, the Summary Judgment Motion should be denied.

FACTS

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

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 its equity in Patriot. Afterward, Peabody had no ownership interest in Patriot and its various subsidiaries (collectively, the "Patriot Companies") and Patriot was an independent company whose shares were publicly traded on the New York Stock Exchange.

In connection with the Spin-Off, Peabody entered into certain carefully negotiated agreements with the Patriot Companies to fund, in the aggregate, approximately $617 million of retiree benefit liabilities that were the sole or primary responsibility of the Patriot Companies, in

order to help position them for long-term viability. These liabilities that Peabody agreed to fund represented about 50% of the total estimated retiree benefit liabilities of the Patriot Companies at the time of the Spin-Off.

Included in the liabilities of the Patriot Companies that Peabody agreed to fund were the obligations of Heritage (then known as PCC) under its then-existing CBA with the UMWA to pay healthcare benefits to a certain specified group of former union employees of Heritage. That agreement was set forth in the NBCWA Individual Employer Plan Liabilities Assumption Agreement, dated October 22, 2007, entered into by Patriot, Heritage, and Peabody (the "NBCWA Liabilities Assumption Agreement") (attached as Exhibit A to the Summary Judgment Motion). In that agreement, Peabody agreed that, to the extent Heritage remained obligated by its CBA to pay healthcare benefits to a specified group of former union employees who had retired prior to 2007 and their eligible dependents (the "Attachment A Retirees"), Peabody would fund those payments, subject to the other terms and adjustments set forth in that agreement.[5] At the time of the Spin-Off, Heritage's liabilities for healthcare benefits for the Attachment A Retirees under its CBA with the UMWA were estimated to be roughly $217 million

Specifically, section 2(a) of the NBCWA Liabilities Assumption Agreement states, in full: "PHC assumes, and agrees to pay and discharge when due in accordance herewith, the NBCWA Individual Employer Plan Liabilities."[6] Thus, the liabilities that Peabody agreed to

[5] The Attachment A Retirees are defined as " those retirees of [Heritage] identified on Attachment A hereto, and such retirees' eligible dependents, . . . 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(d). Peabody was not a party to Heritage's CBA or any other collective bargaining agreement with the UMWA and, prior to entering into the NBCWA Liabilities Assumption Agreement, it had no obligation to fund healthcare benefits for any of the Attachment A Retirees.

[6] NBCWA Liabilities Assumption Agreement § 2(a).

fund are "the NBCWA Individual Employer Plan Liabilities," which term is defined in section 1(d) of the agreement.

Section 1(d) of the agreement contains two sentences. The first sentence states: "The term 'NBCWA Individual Employer Plan Liabilities' shall mean ***amounts [Heritage] pays*** for benefits to [the Attachment A Retirees] ***under the terms of the NBCWA Individual Employer Plan*** . . . ."[7] The term "NBCWA Individual Employer Plan" is defined in section 1(c) of the agreement as meaning "a plan for the provision of healthcare benefits to retirees of [Heritage] and their eligible dependents maintained by [Heritage] pursuant to Article XX of the NBCWA."[8] Thus, the first sentence of section 1(d) of the agreement defines the liabilities that Peabody agreed to fund as "the amounts [Heritage] pays for benefits to" the Attachment A Retirees "under the terms of" its CBA with the UMWA.[9]

The parties contemplated that future changes to Heritage's CBA with the UMWA might alter the amounts Heritage pays for benefits to its union retirees under that CBA. After detailed negotiations, the parties agreed that such changes would result in commensurate changes to Peabody's obligation to fund Heritage's liabilities for healthcare benefits provided to the

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[7] Id. § 1(d) (emphasis added).

[8] Id. § 1(c). The term "NBCWA" is defined in section 1(b) of the agreement as meaning "the National Bituminous Coal Wage Agreement of 2007, as may be amended, supplemented or replaced from time to time . . . ." Id. § 1(b). The NBCWA is the master labor agreement between the UMWA and the entities for which the National Bituminous Coal Operators Association ("BCOA") is given authority to negotiate, as well as other companies that agree to be bound by its terms pursuant to a "me too" agreement. Article XX of the NBCWA sets forth specific healthcare benefits that signatories to the NBCWA are obligated to provide to their union retirees. At the time of the Spin-Off, neither Patriot nor Heritage was a member of the BCOA. However, the individual CBA that Heritage had with the UMWA was a "me too" agreement that incorporated by reference Article XX of the NBCWA. Thus, in the recitals of the NBCWA Liabilities Assumption Agreement, the parties acknowledged that Heritage "has an obligation to provide retiree healthcare pursuant to its 'me too' labor contract which incorporates by reference Article XX if the NBCWA" and "the parties desire that [Heritage] continue to provide the retiree healthcare required by Article XX of the NBCWA (or any successor [Heritage] labor contract)[.]" NBCWA Liabilities Assumption Agreement at 1.

[9] NBCWA Liabilities Assumption Agreement § 1(d).

Attachment A Retirees. Accordingly, the second sentence of 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 [Attachment A Retirees] shall be included for the purposes of the definition of 'NBCWA Individual Employer Plan Liabilities,' . . . ."[10] This second sentence is subject to a most-favored-nations proviso, which limits the amounts Peabody might be obligated to fund as a result of changes to Heritage's CBA to the benefit levels paid by Heritage's sister company, EACC (the "Eastern Proviso").[11]

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

In November 2012, the Debtors began the process of attempting to amend their CBAs with the UMWA, and to terminate their obligations to provide healthcare benefits to union retirees, when they submitted their original 1113 and 1114 proposals to the UMWA.[12] Those proposals were revised over the course of the ensuing negotiations, and at the time the Plaintiffs filed this action, the Debtors had submitted to the UMWA their "Third Section 1113 Proposal" and their "Fourth Section 1114 Proposal."[13]

With respect to the CBAs of Heritage and EACC, the Debtors' Third Section 1113 Proposal proposes to "delete" Article XX of the NBCWA "in its entirety," including "the obligation to provide retiree health benefits to any former, current, or future employee," and to

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[10] Id.

[11] Id. The Eastern Proviso states that, "for purposes of any successor [Heritage] labor contract, 'NBCWA Individual Employer Plan Liabilities' shall be based on benefits that" are provided in any "successor labor agreement" that is either entered into by, or offered to, EACC. Id.

[12] See generally Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 of the Bankruptcy Code [Doc. No. 3214 in Case 12-51502] and Memorandum of Law in Support [Doc. No. 3219 in Case 12-51502].

[13] See Exhibits 1 and 2 to Revised Summary of Exhibits to the Declaration of Gregory B. Robertson in Support of the Debtors' Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 of the Bankruptcy Code [Doc. No. 3284 in Case 12-51502].

"***[e]liminate the requirement that the Company maintain a retiree health care plan*** and ***eliminate the requirement that the Company provide health care benefits*** for current or future retirees."[14] The Debtors' Fourth Section 1114 Proposal contemplates the same termination of healthcare benefits paid by the Debtors to their non-Coal Act UMWA Retirees and their eligible dependents (collectively, the "UMWA Retirees") and the transition of those persons to a Voluntary Employee Beneficiary Association (the "VEBA"), which would be maintained and operated by the UMWA: "The NBCWA Plan shall be amended . . . ***to delete the existing provisions related to health benefit programs for the UMWA Retirees*** . . . ."[15] Going forward, all UMWA Retirees' healthcare benefits would be paid and administered by the VEBA, which "would be the exclusive vehicle to fund all healthcare costs incurred by the UMWA Retirees," and "[t]he Debtors ***shall have no liabilities*** with respect to the UMWA Retirees and/or the [VEBA], including, but not limited to, liabilities associated with the Peabody-Assumed Group . . . ."[16]

The Debtors proposed to fund the VEBA by a combination of (a) $15 million paid by the Debtors, (b) an allowed unsecured claim, (c) possible contributions by the Debtors over time under a profit-sharing plan, and (d) recoveries, if any, from any litigation trust that is established. The Debtors project that terminating retiree healthcare benefits for their current union retirees would generate annual cost savings for the Debtors of $75 million.[17]

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14 Third Section 1113 Proposal at Tab A, Art. XX at ¶¶ 1 and 5 (emphasis added).

15 Fourth Section 1114 Proposal ¶ 2 (emphasis added).

16 Id. ¶ 4 (emphasis added).

17 See Memorandum of Law in Support of the Debtors' Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 of the Bankruptcy Code [Doc. No. 3219 in Case 12-51502] at 50.

With respect to the Attachment A Retirees of Heritage, the Debtors' 1113 and 1114 proposals contemplate modifying Heritage's CBA to terminate the retiree healthcare benefits provided to those persons and then including them as beneficiaries of the proposed VEBA.[18] However, the Debtors' 1114 proposal also provides that ***if*** this Court were to rule that the termination of Heritage'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 Attachment A 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, so that the 1114 proposal "shall not apply" to the Attachment A Retirees, who would then be excluded from the proposed VEBA.[19]

The UMWA rejected the Debtors' 1113/1114 proposals.[20] 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.[21]

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[18] See Fourth Section 1114 Proposal ¶ 6.

[19] Id. After filing the Complaint, the Debtors submitted their Fourth Section 1113 Proposal and their Fifth Section 1114 Proposal. See Notice of Fourth 1113 Proposal and Fifth 1114 Proposal [Doc. No. 3583] (filed 04/11/2013). The latest proposals still propose to terminate all of Heritage's and EACC's liabilities for retiree healthcare benefits, the transition of Heritage's and EACC's union retirees and eligible dependents to the VEBA, and the same treatment of the Attachment A Retirees. The primary changes to the Fifth 1114 Proposal are delaying the VEBA's implementation for six months and changing the mechanisms for funding the VEBA. The VEBA now would be 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. See Patriot's Fifth Section 1114 proposal, posted at www.patriotcaseinfo.com.

[20] Declaration of Bennett K. Hatfield in Support of Debtors' Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 [Doc. No. 3222 in Case 12-51502] ¶¶ 4-7.

[21] See generally Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 [Doc. No. 3214 in Case 12-51502] and Memorandum of Law in Support [Doc. No. 3219 in Case 12-51502].

C. The Declaratory Judgment Action

As contemplated in the Debtors' Fourth Section 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 very broad declaratory judgment that Peabody's obligations under the NBCWA Liabilities Assumption Agreement to fund Heritage's liabilities for the benefits provided to the Attachment A Retirees "will not be affected by modification of the benefits of retirees of Heritage or [EACC] under Section 1114[.]"[22] The Plaintiffs are now seeking summary judgment on this claim for declaratory relief.

ARGUMENT

The Plaintiffs claim that the broad declaratory judgment they seek follows from two premises they claim to be true: (i) that only a "successor [Heritage] labor contract" with the UMWA can change the liabilities that Peabody is obligated to fund under the NBCWA Liabilities Assumption Agreement, and (ii) that any resolution of the 1113/1114 Motion will not result in a "successor [Heritage] labor contract" with the UMWA.[23] As detailed below, neither premise is true, and the Plaintiffs' reliance on them underscores why this action is not ripe.

A. The Summary Judgment Motion Should Be Denied Because this Action Is Premature

First, as explained more fully in Peabody's Motion to Dismiss, which is hereby fully incorporated by reference, this Court does not have subject matter jurisdiction to render an opinion on the contractual dispute at issue because that dispute assumes future contingencies that might not actually occur. As a result, the dispute does not constitute an "actual controversy," which is required by both Article III of the U.S. Constitution and the Declaratory Judgment Act,

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22 Complaint at 9 (Conclusion, ¶ 1).

23 Complaint ¶ 21. See also Plaintiffs' Mem. at 13, 15.

28 U.S.C. § 2201(a), nor is it sufficiently ripe to warrant the exercise of this Court's jurisdiction. Accordingly, the Summary Judgment Motion should be denied and this action should be dismissed without prejudice.

B. The Summary Judgment Motion Should Be Denied Because the Relief Sought by the Debtors in their 1113/1114 Motion Would Result in No Heritage Liabilities for Peabody To Fund

The first premise of Plaintiffs' theory is their contention that, under 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."[24] That contention is erroneous because it ignores the first sentence of section 1(d). That sentence ***defines*** the liabilities that Peabody is obligated to fund as the "amounts [Heritage] pays for benefits to" the Attachment A Retirees "under the terms of the NBCWA Individual Employer Plan" maintained by Heritage pursuant to its CBA with the UMWA incorporating Article XX of the NBCWA.[25] But if the Debtors ultimately obtain the relief they seek in their 1113/1114 Motion, Heritage will no longer have a CBA with the UMWA that incorporates Article XX of the NBCWA, nor will it maintain any healthcare benefit plan for its union retirees under any other labor contract, nor will it have any liabilities with respect to those retirees, including the Attachment A Retirees.[26] In short, Heritage would no longer pay ***any*** "amounts . . . for benefits to" the Attachment A Retirees "under the terms of the NBCWA Individual Employer Plan," which means there would be ***no liabilities*** that Peabody is obligated to fund pursuant to section 2(a) of the NBCWA Liabilities Assumption Agreement.

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24 Complaint ¶ 21 (emphasis added).

25 NBCWA Liabilities Assumption Agreement § 1(d). See id. §§ 1(c), 2(a).

26 See *supra* notes 14-16 and accompanying text.

To be sure, the second sentence in section 1(d) of the agreement contemplates that changes in benefit levels set forth in Heritage's future UMWA labor agreements would, in certain circumstances, alter the liabilities that Peabody is obligated to fund under the agreement. But there is nothing in the second sentence of section 1(d) that purports to impose an independent obligation on Peabody to provide healthcare benefits to the Attachment A Retirees if, as the Debtors 1113/1114 Motion proposes, Heritage's CBA is simply terminated (rather than replaced by a successor labor agreement) and Heritage's obligation to pay healthcare benefits to retirees under that CBA is completely eliminated.

Rather than address the unambiguous meaning of the first sentence of section 1(d) of the agreement, the Plaintiffs instead refer to random phrases in the agreement's recitals and in another related agreement to support their contention that Peabody somehow assumed an obligation to the Attachment A Retirees to provide them with healthcare benefits independent of Heritage's obligation under Article XX of the NBCWA. Those references have no merit. For example, the Plaintiffs quote the fifth Recital in the NBCWA Liabilities Assumption Agreement to suggest that Peabody "'has agreed to assume the liabilities of [Heritage] for provision of healthcare pursuant to Article XX of the NBCWA (or any successor [Heritage] labor contract),'"[27] but they improperly omit from that quotation the remainder of the recital, which limits the referenced assumption of liabilities "***to the extent expressly set forth in this Agreement***; . . . ."[28] The agreement sets forth no such independent obligation.

The Plaintiff's reliance on the earlier Acknowledgement and Assent agreement between Peabody and the UMWA (see Plaintiffs' Mem. at 13-14) is similarly misplaced. That

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[27] Plaintiffs' Mem. at 14, quoting NBCWA Liabilities Assumption Agreement at Recital 5.

[28] NBCWA Liabilities Assumption Agreement at Recital 5 (emphasis added).

agreement, which anticipated the NBCWA Liabilities Assumption Agreement, expressly states the UMWA's agreement that PHC's then-anticipated entry into the NBCWA Liabilities Assumption Agreement "will not . . . make PHC a party to any collective bargaining agreement with the UMWA" or "create any right of action by the UMWA or its members or retirees against PHC for benefits under any provision of the [Heritage] Labor Contract or any other labor agreement, including but not limited to Article XX of the 2007 NBCWA, except that" such persons and entities could file an action to enforce Peabody's specific obligations set forth in the NBCWA Liabilities Assumption Agreement.[29] In short, the document that establishes the scope of Peabody's funding obligation is not the Acknowledgement and Assent; it is the NBCWA Liabilities Assumption Agreement.

Accordingly, a fundamental flaw of the Plaintiffs' request for declaratory relief is that the prepetition contract at issue does not impose on Peabody an independent obligation to provide healthcare benefits to the Attachment A Retirees; instead, it obligates Peabody to fund ***Heritage's liability*** for the healthcare benefits ***that Heritage is obligated by its CBA to provide*** to those retirees. If the Debtors succeed in obtaining the relief they seek in the 1113/1114 Motion, Heritage's obligations under its CBA to the Attachment A Retirees will be terminated in their entirety, which will bring Peabody's obligations to fund those liabilities to an end. While this result is not Peabody's preferred outcome, it is the outcome that would occur as a matter of law if the Debtors succeed in their all or nothing approach to Heritage's obligations to provide healthcare benefits to its retirees.

[29] Acknowledgement and Assent (attached as Exhibit B to the Summary Judgment Motion) § B.2.

C. The Summary Judgment Motion Should Be Denied Because any Section 1114 Relief that Heritage Obtains Will Be Contained in a Future UMWA Labor Agreement

Even if one were to ignore the unambiguous definition of the liabilities Peabody agreed to fund in the first sentence of section 1(d) and instead construed it as somehow imposing on Peabody an independent obligation to the Attachment A Retirees to provide them with healthcare benefits, the Plaintiffs must still concede that Peabody's obligation is subject to modification as a result of changes in Heritage's "future UMWA labor agreements," pursuant to the second sentence of section 1(d) of the agreement. Thus, the second premise of Plaintiffs' claim for declaratory relief is their contention that the 1113/1114 Motion, "or any negotiated resolution of that motion, ***will not result*** in a 'successor [Heritage] labor contract' with the UMWA."[30] That contention is erroneous for a number of reasons.

First, were this Court simply to grant the Debtors' request for relief under section 1114(g), but ***not*** authorize the rejection of the Debtors' CBAs pursuant to section 1113, the effect of the section 1114(g) order would be to modify the terms of the underlying CBA obligating Heritage to provide healthcare benefits to its current union retirees, rendering the modified CBA a "future UMWA labor agreement" for purposes of section 1(d) of the NBCWA Liabilities Assumption Agreement. See In re D.O. & W. Coal Co., 93 B.R. 454, 456 (Bankr. W.D. Va. 1988) (ruling in UMWA's favor that court's 1113(e) order "became, in effect, part of the collective bargaining agreement" when it "modified the terms of the agreement").[31]

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[30] Complaint ¶ 21 (emphasis added). See also Plaintiffs' Mem. at 13, 15.

[31] This scenario is one in which Peabody's contractual obligation to fund Heritage's liabilities (if any) for the benefits provided to the Attachment A Retirees under Heritage's modified labor agreement with the UMWA would be governed by the Eastern Proviso. See *supra* note 11 and accompanying text. Because the 1114(g) Order would have eliminated the benefits provided by EACC to its retirees under its modified CBA, there would no longer be any benefits that Peabody would be contractually obligated to fund, based on the application of the Eastern Proviso. See NBCWA Liabilities Assumption Agreement §§ 1(b) and 1(d).

Second, if this Court were to grant ***both*** the Debtors' request for a section 1114(g) order eliminating Heritage's obligation to provide healthcare benefits to its current union retirees ***and*** the Debtors' request to reject Heritage's CBA with the UMWA under section 1113, the section 1114 relief would still become incorporated into a contract between Heritage and the UMWA upon confirmation of a chapter 11 plan of reorganization for Heritage. The section 1114(g) order would have to be incorporated into Heritage's confirmed plan. See 11 U.S.C. § 1129(a)(13) (A plan cannot be confirmed unless it "provides for the continuation after its effective date of payment of all retiree benefits . . . at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114."). Because a confirmed chapter 11 plan is a contract, see, e.g., Consumers Realty & Dev. Co. v. Goetze (In re Consumers Realty & Dev. Co.), 238 B.R. 418, 425 (8th Cir. B.A.P. 1999), to the extent it addresses healthcare benefits for Heritage's union retirees, it would be a future "labor agreement" between Heritage and the UMWA as the representative of those retirees.

Third, were the Debtors to reach a consensual resolution with the UMWA that modifies healthcare benefits for Heritage's current union retirees under section 1114(e)(1)(B), that resolution itself would be an agreement that constitutes a "future UMWA labor agreement" under section 1(d) of the NBCWA Liabilities Assumption Agreement. See In re Dana Corp., Case No. 06-10354, Order [Doc. No. 5879] ¶¶ 4-5 (Bankr. S.D.N.Y. Aug. 1, 2007) (approving settlement after 1113/1114 trial as "a valid and binding amendment to the CBAs . . . [and] to existing retiree health and welfare benefits, as permitted by section 1114"); N. Am. Royalties, 276 B.R. 860, 868-69 (Bankr. E.D. Tenn. 2002) (approving "agreement" between debtor and union that resolved section 1114 motion). Moreover, any order approving that agreement would be enforceable by Heritage as a contract with its union. See City of Covington v. Covington

Landing LP, 71 F.3d 1221, 1227 (6th Cir. 1995) ("An agreed order, like a consent decree, is in the nature of a contract").

Fourth, 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 as a condition of the settlement. A new collective bargaining agreement between Heritage and the UMWA that is ratified by the UMWA represented employees also would constitute a "future UMWA labor agreement" under section 1(d) of the NBCWA Liabilities Assumption Agreement.

Indeed, if any relief Heritage ultimately obtains under section 1114 is accompanied by an order under section 1113 authorizing it to reject its existing CBA with the UMWA, it is certainly conceivable, and in fact probable, that—eventually—Heritage would negotiate a new collective bargaining agreement with the UMWA, and that new collective bargaining agreement would incorporate the elimination of Heritage's obligation to provide healthcare benefits to union retirees and address Heritage's obligation to fund the VEBA to replace those benefits. That new collective bargaining agreement might be ratified during Heritage's chapter 11 case (which might be required for the Debtors to obtain the financing they need to emerge from chapter 11) or even after Heritage emerges from chapter 11. In either event, it would constitute a "future UMWA labor agreement" for purposes of section 1(d) of the NBCWA Liabilities Assumption Agreement.

The Plaintiffs essentially urge this Court to ignore all these scenarios because they assert the parties did not intend for Peabody's obligations under the agreement to be changed within a bankruptcy proceeding.[32] However, while the possibility of future labor agreements arising during a bankruptcy case is not expressly mentioned in section 1(d), that fact is irrelevant

[32] Plaintiffs' Mem. at 15.

when the general terms—"future UMWA labor agreements" and "any successor labor agreement"—encompass such agreements. See Waste Mgmt., Inc. v. Aerospace Am., Inc., 1998 WL 416019, at *4-5 (6th Cir. 1998) (general provision requiring indemnity applied to CERCLA liability despite no specific reference to CERCLA in the provision). In essence, the Plaintiffs ask the Court to graft to section 1(d) a proviso that reads: "Any labor agreements reached during or after a bankruptcy case are not labor agreements for purposes of this section." But no such proviso exists, and the Plaintiffs cannot add it now.

D. The Plaintiffs' Extra Contractual-based Arguments Are Immaterial

The Plaintiffs spend much of their time arguing about the parties' "intention" and "intent," ignoring the unambiguous meaning of the governing provisions of the contract.[33] The Plaintiffs cite to other agreements, claiming for example that Peabody "promised" the UMWA in the Acknowledgement and Assent that Peabody would "be liable for the healthcare provided in Heritage's existing 'me too' labor contract or any successor labor contract," and that "the absence of any analogous provision in the Salaried Employee Liabilities Assumption Agreement" confirms the Eastern Proviso has no application once a bankruptcy is filed.[34] But the Plaintiffs' dubious speculation as to the parties' subjective intent is not material, when, as here, the contract is not ambiguous. See Pellaton v. Bank of N.Y., 592 A.2d 473, 478 (Del. 1991).

The unambiguous language of the NBCWA Liabilities Assumption Agreement compels denial of the Plaintiffs' Summary Judgment Motion because (1) Peabody only has to fund if Heritage has to pay under its labor agreement and (2) any modification to Heritage's obligations would be included in a future UMWA labor agreement. However, to the extent the

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[33] Id. at 14.

[34] Id. at 5-6, 15 n.15.

Court concludes the language of the contract does not unambiguously require denial of summary judgment, then a trial is necessary, after due opportunity for the parties to complete discovery, to determine the parties' understanding of the NBCWA Liabilities Assumption Agreement and how they expressed those understandings during the course of the negotiations.

The parties, who were represented by sophisticated counsel, carefully negotiated the terms of the NBCWA Liabilities Assumption Agreement.[35] The Plaintiffs' current counsel in this action represented them in negotiating with Peabody and its counsel the terms of the Spin-Off.[36] After comments and edits were made by the Plaintiffs on earlier drafts of the NBCWA Liabilities Assumption Agreement, changes were made to section 1(d), the provision defining the Heritage liabilities that Peabody was agreeing to fund.[37] Indeed, an earlier draft of the contract contemplated only downward adjustments in Peabody's funding obligations, but the final version provides that Peabody's funding obligation is also subject to upward adjustments as a result of future UMWA labor agreements.[38]

The parties' understanding of the NBCWA Liabilities Assumption Agreement's provisions at the time they entered into the contract, and how and whether they expressed those understandings to each other during the contract's negotiation, are now apparently matters in dispute. These factual disputes constitute an independent basis for denying summary judgment now if the Court determines that the contract is ambiguous, particularly since Peabody has not

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[35] See Exhibits A-C of Declaration of Matthew C. Corcoran in Support of Defendants' Opposition to Plaintiffs' Motion for Summary Judgment, filed contemporaneously herewith ("Corcoran Dec.").

[36] See Corcoran Dec. Exhibit C.

[37] See Id. Exhibits A-B.

[38] See Id. Exhibit B. See also Complaint ¶ 2 (alleging that Peabody is required to fund "any increases in benefit levels in future labor agreements" between Heritage and the UMWA).

yet even answered the Complaint and no discovery with respect to the parties' understandings and expressions of intent has occurred. See Fed. R. Civ. P. 56(d).

Moreover, any doubts about the meaning of the contractual provisions at issue must be resolved in Peabody's favor for purposes of the Summary Judgment Motion. In re Unterreiner, 699 F.3d 1022, 1025 (8th Cir. 2012) (when assessing a motion for summary judgment, the court "views the record in the light most favorable to the nonmoving party"). The Plaintiffs attempt to invoke, through their repeated but unsubstantiated claim that Peabody drafted the contract, *contra proferentum*—the doctrine that a contract should be construed against the drafter.[39] But that doctrine has no applicability here because the contract is not ambiguous. See Graham v. State Farm Mut. Aut. Ins. Co., 565 A.2d 908, 912 (Del. 1989). And regardless of any ambiguity in the contract, the doctrine does not apply here because the contract was carefully negotiated by the parties. The justification for construing a provision against the drafter "pales in a situation, like the instant one, where the terms of an agreement resulted from a series of negotiations between experienced drafters. Where all parties to a contract are knowledgeable, there is no reason for imposing sanctions against the party who drafted the final provision." E.I. De Pont de Nemours and Co., Inc. v. Shell Oil Co., 498 A.2d 1108, 1114 (Del. 1985) (citation omitted); Tenneco Auto. Inc. v. El Paso Corp., No. Civ. A. 18810-NC, 2004 WL 3217795, at *8 (Del. Ch. Aug. 26, 2004) (refusing to construe against drafter a spin-off related contract negotiated "between sophisticated parties advised by sophisticated counsel").

Thus, the Plaintiffs are not entitled to have any ambiguities in the NBCWA Liabilities Assumption Agreement construed in their favor simply because they allege that Peabody drafted the final version of the agreement. See E.I. De Pont, 498 A.2d at 1114.

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[39] Plaintiffs' Mem. at 3, 6.

THIS IS A NON-CORE PROCEEDING

Finally, this action is a non-core proceeding under section 157(b) of title 28 of the United States Code. The matter is a contract dispute arising under state law that requires an adjudication of the Plaintiffs' and Peabody's private rights under a prepetition contract, should certain events occur in the future during the course of (or after) the Plaintiffs' chapter 11 cases. See Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Titan Energy, Inc. (In re Titan Energy, Inc.), 837 F.2d 325, 329-30 (8th Cir. 1988) (declaratory action about the scope of debtors' insurance policy non-core); Matter of U.S. Brass Corp., 110 F.3d 1261, 1268-69 (7th Cir. 1997) (debtors' declaratory action about insurance policy's scope non-core).

Courts that Congress establishes under Article III of the Constitution are the only courts that may exercise the "judicial power" of the United States. See Stern v. Marshall, 131 S. Ct. 2594, 2620 (2011); Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 60 (1982). As a result, in Northern Pipeline, the Supreme Court held that only Article III courts may enter final orders on simple state law contract disputes such as the one before this Court. Northern Pipeline, 458 U.S. at 71-72. As the Supreme Court further stated in Stern, Northern Pipeline provides that "Congress may not vest in a non-Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law . . . ." Stern, 131 S. Ct. at 2615 (citations and internal quotation marks omitted).

For all of the reasons set forth above, entry of summary judgment by this Court is not appropriate, especially at this time, but also ultimately as a matter of law. Any order granting, in whole or in part, the Summary Judgment Motion would be a final order that the District Court would need to enter after de novo review of this Court's proposed findings of fact and conclusions of law. This Court may enter an order denying the Summary Judgment Motion, however, because such a ruling would not be a final order.

CONCLUSION

For the foregoing reasons, the Summary Judgment Motion should be denied.

Dated: April 22, 2013

Respectfully submitted,

/s/ Steven N. Cousins
David G. Heiman
John M. Newman, Jr.
Carl E. Black
Robert W. Hamilton
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: 216-586-3939
Facsimile: 216-579-0212
dgheiman@jonesday.com
jmnewman@jonesday.com
ceblack@jonesday.com
rwhamilton@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 ENERGY CORPORATION and
PEABODY HOLDING COMPANY, LLC