

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:)
)
) **Chapter 11**
PATRIOT COAL CORPORATION, et al.,) **Case No. 12-51502-659**
) **(Jointly Administered)**
)
Debtors.) **Objection Deadline:**
) **To Be Determined by the Court**
)
) **Hearing Date (if necessary):**
) **To Be Determined by the Court¹**
)
) **Hearing Location:**
) **Courtroom 7 North**

**EMERGENCY MOTION OF THE UNITED MINE WORKERS OF AMERICA 1974
PENSION TRUST AND THE UNITED MINE WORKERS OF AMERICA 1993
BENEFIT PLAN TO EXTEND THE TIME TO RESPOND TO THE DEBTORS'
MOTION FOR AUTHORITY TO IMPLEMENT COMPENSATION PLANS**

The United Mine Workers of America 1974 Pension Trust (the “1974 Plan”) and the United Mine Workers of America 1993 Benefit Plan (the “1993 Plan”, and together with the 1974 Plan, the “UMWA Plans”), by and through their undersigned attorneys, respectfully represent:

RELIEF REQUESTED

1. Pursuant to Rule 9006(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and L.R. 9006-B of the Local Rules of the United States Bankruptcy Court for the Eastern District of Missouri, the UMWA Plans hereby seek entry of an order, in a form to be agreed among the parties, extending the period to respond to the *Debtors’ Motion for Authority to Implement Compensation Plans* (the “AIP/CERP Motion”) filed with this Court on

¹ Upon consultation with the Deputy Clerk of the Court, counsel for the UMWA Plans were directed to file this motion, with the Court to determine the scheduling of any hearing to be held on the motion as well as the deadline for the filing of objections to the same.

February 12, 2013 [ECF No. 2819], and setting deadlines for conducting discovery, filing responses to the AIP/CERP Motion, and setting a date for a hearing thereon.

BACKGROUND AND JURISDICTION

2. On July 9, 2012, each of the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). Pursuant to an order of the Bankruptcy Court for the Southern District of New York (the “SDNY Bankruptcy Court”) dated July 10, 2012, the cases are being administered jointly. The Debtors’ cases were transferred to this Court pursuant to an order of the SDNY Bankruptcy Court dated December 19, 2012. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

3. The UMWA Plans are comprised of health and retirement benefit plans to which the Debtors have historically contributed and to which they currently contribute. One of the UMWA Plans, the 1974 Plan, and is a member of the Official Committee of Unsecured Creditors (the “UCC”). In connection with this Motion, the 1974 Plan is acting on its own behalf and not as a representative of the UCC.

4. This Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BASIS FOR RELIEF REQUESTED

5. The Debtors characterize their Proposed Compensation Plans² as transactions occurring within the ordinary course of business that do not require the approval of this Court. See Motion at 16-21. But the filing of the AIP/CERP Motion acknowledges that the opposite is

² Capitalized terms used herein without definition have the meanings assigned to them in the Motion.

true: Bankruptcy Code Section 363 requires Court approval for transactions outside the ordinary course of business, and the implementation of new management compensation plans by a bankrupt company is universally understood to be outside the ordinary course of the bankrupt company's business. The Debtors know that, and have therefore filed the AIP/CERP Motion.

6. In this District, motions of this kind must be filed on 21 days' notice, but instead the Debtors filed the AIP/CERP Motion late in the evening on February 12, set an objection deadline of February 19, and noticed the AIP/CERP Motion for hearing on February 26.³ The UMWA Plans object to the procedural tactics of the Debtors, and request that the objection deadline and hearing date be continued to provide the UMWA Plans and other parties in interest with a reasonable opportunity to develop and present to this Court their views on the matter. The UMWA Plans intend to take discovery regarding the assertions set forth in the AIP/CERP Motion and to offer an objection to the substance of the AIP/CERP Motion at a later date. The current schedule simply does not provide an adequate period of time to do so.

7. Parties in interest are entitled to 21 days' notice of a hearing on the AIP/CERP Motion. While the AIP/CERP Motion strenuously argues that payments contemplated under the Proposed Compensation Plans are ordinary, the Debtors acknowledge – as they must – that the Bankruptcy Court may take a different view, and may consider the Proposed Compensation

³ The UMWA Plans are aware of the Orders Establishing Certain Notice, Case Management and Administrative Procedures, dated July 16, 2012 and October 18, 2012, respectively, entered by the SDNY Bankruptcy Court prior to the transfer of the Debtors' chapter 11 cases (the "SDNY Case Management Orders"), which the Debtors may cite as a basis for seeking the relief on 14 days' notice. See Motion at 1, fn 2 (asserting applicability of previously entered orders, notwithstanding the transfer of venue). The UMWA Plans dispute any assertion that the SDNY Case Management Orders were intended to short circuit the rights of other parties in interest. Furthermore, at the hearing before this Court on January 29, 2013, the Court expressly stated that the Case Management Orders were being amended to reflect the procedures of this Court. See Transcript of Hearing (Jan. 29, 2013), at 51. Therefore, the SDNY Case Management Orders are no longer applicable and the presumptive period should be not less than the standard 21 days' notice provided for by the Standing Order Establishing Notice and Motion Procedures in Chapter 11 cases for this District. See Standing Order No. 1 (Establishing Notice and Motion Procedures) of the United States Bankruptcy Court for the Eastern District of Missouri ("Standing Order No. 1") at 15.

Plans under Bankruptcy Code Sections 363(b)(1) and 503(c)(3).⁴ Motion at 20-24. Pursuant to the Procedures Manual for the Bankruptcy Court for the Eastern District of Missouri (the “Procedures Manual”), deadlines for filing are governed by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Rules governing this Court. See Procedures Manual at 7. Accordingly, motions seeking authority to use, sell or lease property of the estate outside the ordinary course of business must be heard on 21 days’ notice, unless the court for cause shown shortens that time period. Fed. R. Bankr. P. 2002(a)(2); see also Standing Order No. 1 at 15.

8. The UMWA Plans believe that even 21 days is too short a period to fully digest all of the information necessary to develop a fully informed view of the Proposed Compensation Plans. Notwithstanding the Debtors’ assertions to the contrary, the AIP/CERP Motion raises significant questions of fact that require further investigation. The Debtors’ proposed compressed schedule leaves no time to conduct meaningful discovery, which the UMWA Plans need in order to determine their position as to both (i) the statutory thresholds applicable to the Proposed Compensation Plans under the Bankruptcy Code and (ii) whether or not the AIP/CERP Motion demonstrates that the Proposed Compensation Plans have satisfied those statutory burdens. Accordingly, pursuant to Fed. R. Bankr. P. 9006(b)(1) and L.R. 9006B, the UMWA Plans request that this Court extend the deadline for responding to the AIP/CERP Motion, and instead enter a scheduling order setting reasonable deadlines for conducting discovery, filing responses to the AIP/CERP Motion, and setting a date for a hearing on the AIP/CERP Motion.⁵

⁴ The UMWA Plans do not concede that Bankruptcy Code Sections 363(b)(1) and 503(c)(3) are applicable to the Proposed Compensation Plans. The UMWA Plans reserve all rights to object to the AIP/CERP Motion on its merits, including with respect to applicable statutory thresholds.

⁵ Fed. R. Bankr. P. 9006(b)(1) provides, in relevant part:

9. No prior extension of the response deadline has been granted, and the Debtors have not consented to the extension requested herein. By e-mail dated February 14, 2013, the UMWA Plans requested that the Debtors continue the AIP/CERP Motion and agree to confer with the UMWA Plans regarding a scheduling order. By reply email dated February 15, 2013, the Debtors refused the UMWA Plans' request.⁶

10. Notwithstanding the Debtors' refusal, entry of a scheduling order will satisfy the interests of both efficiency and fairness. Parties in interest in these cases will be entitled to discovery should they file an objection to the AIP/CERP Motion. See Fed. R. Bankr. P. 9014(c) (making Fed. R. Bankr. P. 7026 and 7028-37 applicable to contested matters). A scheduling order would eliminate the necessity that parties in interest must consider filing protective objections before engaging in discovery. The AIP/CERP Motion reflects that the Debtors and their consultants, Towers Watson Delaware Inc., spent several months researching and preparing the Proposed Compensation Programs. The short window between the filing of the AIP/CERP

[W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion . . . with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed . . .

L.R. 9006B provides:

All requests for extension of time shall be filed prior to expiration of the time permitted to complete the act for which additional time is sought. The request shall be made by written motion and shall be served as required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and these Rules. The movant shall:

1. indicate in the motion if the request is by consent of the other parties;
2. indicate in the motion whether prior extensions have been granted;
3. indicate in the motion the reason for the request for additional time;
4. provide in the motion a date certain for the extended deadline; and
5. submit a proposed order via the Judge's e-mail address as required by L.R. 9050.

The UMWA Plans believe the parties should confer and agree upon the form of scheduling order described herein. Therefore, the UMWA Plans have not suggested a date certain as a deadline to respond to the Motion, nor submitted a proposed order in connection with this Motion.

⁶ The UMWA Plans were informed late morning on Friday, February 15 that depositions in connection with the AIP/CERP Motion are scheduled for Monday, February 18, in St. Louis. Due to timing constraints, and to protect their rights, the UMWA Plans intend to participate.

Motion and the proposed February 26 hearing date simply does not provide other parties in interest with enough time to obtain and review applicable documentation, conduct appropriate depositions, process and synthesize all of the information resulting from the discovery process, and prepare for a contested hearing.

11. The Debtors have not moved for expedited treatment of the AIP/CERP Motion; nor have they offered evidence of imminent harm that would justify an accelerated schedule for consideration thereof. Accordingly, the Debtors' proposed timeline is not justified here, and an order setting a more realistic schedule is appropriate.

CONCLUSION

12. Despite their assertion that the Proposed Compensation Programs do not require Court approval, the Debtors were uncertain enough about the nature of Programs that they thought it necessary to file a 30-page motion, buttressed by two sworn statements, in support thereof. The very fact of these substantial pleadings demonstrates that discovery is warranted here, and that parties in interest are entitled to additional time before being required to respond to the AIP/CERP Motion. Accordingly, the UMWA Plans request that this Court enter a scheduling order, in a form to be agreed among the parties, which insures that the interests of efficiency and fairness are protected.

[Remainder of page intentionally left blank.]

WHEREFORE, for the foregoing reasons, the UMWA Plan respectfully request that the Court (i) enter a scheduling order providing a reasonable period for parties in interest to conduct discovery, setting a deadline for filing responses to the AIP/CERP Motion and for hearing on the AIP/CERP Motion, and (ii) provide such other and further relief as the Court deems just and appropriate.

Dated: February 15, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was filed on February 15, 2013 using the Court's CM/ECF system and that service will be accomplished upon all counsel of record by operation of that system.

/s/ Edward L. Dowd, Jr.