

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 12-51502-659

(Jointly Administered)

Hearing Date: April 2, 2013

Hearing Time: 1:30 p.m.

Hearing Location: Courtroom 7 North

**JOINDER OF THE OHIO VALLEY COAL COMPANY AND THE OHIO VALLEY
TRANSLOADING COMPANY TO THE MOTION TO INTERVENE BY THE UNITED
MINE WORKERS OF AMERICA 1974 PENSION TRUST AND THE UNITED MINE
WORKERS OF AMERICA 1993 BENEFIT PLAN**

The Ohio Valley Coal Company¹ and The Ohio Valley Transloading Company (collectively, “Ohio Valley Coal”) file this joinder (“Joinder”) to the Motion to Intervene (the “Motion”) by 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 “Plans”) and Motion for Emergency Hearing Thereon, and in support hereof respectfully state as follows:

I. BACKGROUND

1. On March 14, 2013, Patriot Coal Corporation and its debtor in possession subsidiaries (collectively, “Patriot” or the “Debtors”) filed the Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 [Docket No. 3214] (the “Rejection Motion”). Pursuant to the Rejection Motion, the Debtors seek, *inter alia*, to (i) reject certain collective bargaining agreements, (ii) terminate retiree

¹ On March 19, 2013, The Ohio Valley Coal Company acquired Claim No. 3578 from Top Notch Custodial Care, Inc. [Docket No. 3325].

benefits for certain retirees, and (iii) withdraw from certain multi-employer pension plans, including the 1974 Plan.

2. The 1974 Plan was established by the National Bituminous Coal Wage Agreement of 1974. It is a multi-employer pension plan that provides pension benefits to over 93,000 participants and beneficiaries. Certain Debtors in these bankruptcy cases are participants in the 1974 Plan with current collective annual contributions of approximately \$22 million. *See* Decl. of Mark N. Schroeder at 14-15, ¶ 34 [Docket No. 4].

3. Ohio Valley Coal is also a participating employer in the 1974 Plan and, therefore, makes significant contributions to the 1974 Plan as well. Ohio Valley Coal's contributions to the 1974 Plan not only fund pension benefits for its own retirees, but they also help to satisfy the unfunded vested pension benefits of companies that have withdrawn from the 1974 Plan without fulfilling their contribution and withdrawal liability obligations.

4. Any time a participant withdraws from the 1974 Plan, it adversely affects the other members due to funding losses from the withdrawing member. As set forth in the Motion, if the Debtors were permitted to withdraw from the 1974 Plan, they would be liable for approximately \$959 million in withdrawal liability, which represents the Debtors' proportionate share of the unfunded vested pension liabilities. *See* Motion at 8-9, ¶ 16. Through the Rejection Motion, the Debtors propose to treat this withdrawal liability as an unsecured claim, meaning it would likely provide a fraction of Patriot's total withdrawal liability to the 1974 Plan. This diminished recovery will fall drastically short of fulfilling Patriot's withdrawal liability, thus shifting the substantial burden to the remaining participants in the 1974 Plan, including Ohio Valley Coal.

5. Recognizing the harm that will occur if Patriot is allowed to withdraw from the 1974 Plan, Ohio Valley Coal filed an Objection (the “Objection”) to the Rejection Motion on March 19, 2013 [Docket No. 3326]. In the Objection, Ohio Valley Coal asserts that it is patently unfair for the Debtors to cease contributions to the 1974 Plan without paying the full amount of their withdrawal liability. Anything less than payment in full imposes a significant pecuniary burden on Ohio Valley Coal and the other remaining participants in the 1974 Plan. Accordingly, Ohio Valley Coal asked the Court to deny the Rejection Motion for failing to satisfy the section 1113 and 1114 requirement that all affected parties be treated fairly and equally.

6. On March 28, 2013, counsel to the Debtors transmitted a letter (the “Letter”) to this Court wherein the Debtors assert that the sole litigants at the hearing on the Rejection Motion should be the Debtors and the “authorized representative” of the United Mine Workers of America. The Letter argues that the participation of other parties in the pre-hearing discovery or at the hearing will only serve to delay and distract from the proceeding. In response to the Letter, the Plans filed the Motion seeking authority to intervene and participate in the pre-hearing discovery and the hearing on the Rejection Motion. Because Ohio Valley Coal also believes that it meets the requisite standards to appear and be heard on the Rejection Motion, it files this Joinder.

II. OHIO VALLEY COAL’S JOINDER

7. As set forth above and in the Objection, Ohio Valley Coal will suffer massive financial harm in the form of significantly increased contributions to the 1974 Plan if the relief requested in the Rejection Motion is granted. Any such increased liability to the 1974 Plan represents an important property right of Ohio Valley Coal for which it is entitled to all constitutional due process protections, including an opportunity to be heard on the Rejection

Motion. On this fundamental basis alone, Ohio Valley Coal's right to intervene must be recognized.

8. In addition, under section 1109(b) of the Bankruptcy Code, a "party in interest" "may raise and may appear and be heard on any issue in a case under this chapter." 11 U.S.C. § 1109(b). Section 1109(b) has been construed broadly such that "a person who holds a pecuniary interest that could be adversely affected by the outcome of the proceeding" qualifies as a "party in interest." In re U.S. Fidelis, Inc., 481 B.R. 503, 515 (Bankr. E.D. Mo. 2012) (citing Jeffries v. Browning (In re Reserves Dev. Corp. and RDC Monongah, Inc.), 78 B.R. 951, 957 (Bankr. W.D. Mo. 1986)).

9. Ohio Valley Coal is clearly a "party in interest," as it will be forced to contribute significantly more money to the 1974 Plan to make up for Patriot's inability to pay the full amount of its \$959 million withdrawal liability. Both the Motion and the accompanying Declaration of Dale Stover (the "Stover Declaration") in Support of the Motion recognize this fact by stating that the Debtors' withdrawal "would also adversely affect the pecuniary interests of the other contributing employers to the Plan, whose share of the Plan's liabilities would be proportionally increased in the event that Debtors fail to pay their liability in its entirety." *See* Motion at 13, ¶ 32; Stover Decl. at 5, ¶ 17. Thus, Ohio Valley Coal satisfies the standard required under section 1109(b) of the Bankruptcy Code to appear and be heard on the Rejection Motion.

10. In addition to having a constitutional right to contest the taking of its property and standing under section 1109(b) of the Bankruptcy Code to appear and be heard on the Rejection Motion, Ohio Valley Coal has standing under section 1113(d) of the Bankruptcy Code as an "interested party." *See* 11 U.S.C. § 1109(b). Under this provision, "[a]ll interested parties may

appear and be heard at [a section 1113] hearing.” 11 U.S.C. § 1113(d)(1). While the term “interested parties” is not defined in the Bankruptcy Code, the Motion notes that at least one court has said that it “is a shorthand reference to entities bearing characteristics similar to ‘parties in interest’ as that phrase is employed in [section] 1109 of the Bankruptcy Code.” See In re Sandhurst Secs., Inc., 96 B.R. 451, 455 (Bankr. S.D.N.Y. 1989); Motion at 14, ¶ 36.

11. For the additional reasons set forth in the Motion, Ohio Valley Coal joins the Plans in asserting that it is an “interested party” under section 1113(d)(1) of the Bankruptcy Code and, thus, has standing to appear and be heard at the hearing on the Rejection Motion.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

WHEREFORE, for the reasons set forth herein, Ohio Valley Coal respectfully requests that the Court enter an Order (i) approving the Motion and (ii) permitting Ohio Valley Coal to intervene, participate, and be heard at the hearing on the Rejection Motion.

Date: April 1, 2013

Respectfully submitted:

/s/ Bonnie L. Clair
Bonnie L. Clair, #41496MO
Summers Compton Wells PC
8909 Ladue Road
St. Louis, MO 63124
Telephone: (314) 991-4999
Facsimile: (314) 991-2413
blcattymo@summerscomptonwells.com

and

McGuireWoods LLP
Leonard J. Marsico
Pa. I.D. No. 33206
Mark E. Freedlander
Pa. I.D. No. 70593
625 Liberty Avenue, 23rd Floor
Pittsburgh, PA 15222
Telephone: (412) 667-6000
Facsimile: (412) 667-6050
lmarsico@mcguirewoods.com
mfreedlander@mcguirewoods.com

*Counsel to The Ohio Valley Coal Company
and The Ohio Valley Transloading
Company*

\46928548.2