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,** **-against-** **PEABODY HOLDING COMPANY, LLC and PEABODY ENERGY CORPORATION,** **Defendants.**	**Adversary Proceeding** **No. 13-04067-659** **Hearing Date:** **April 29, 2013 at 10:00 a.m.** **(prevailing Central Time)** **Hearing Location:** **Courtroom 7 North** **Re: ECF No. 6**

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs Patriot and Heritage,[1] pursuant to Federal Rule of Civil Procedure 56, respectfully submit this reply memorandum in further support of their motion for summary judgment on their claim for a declaratory judgment (the "**Motion**").

[1] Capitalized terms not defined herein have the meaning ascribed to them in the Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment (the "**Summary Judgment Memorandum**"). All citations to exhibits are to the exhibits accompanying the Summary Judgment Memorandum.

PRELIMINARY STATEMENT

Peabody is so eager to escape its responsibility for the healthcare of thousands of individuals that it accuses Plaintiffs of attempting to "impose on Peabody an independent obligation to provide healthcare benefits" to the Assumed Retirees. (Defs.' Opp'n to Pls.' Mot. for Summ. J. ("**Opp'n**") 13.) But Plaintiffs are doing no such thing. Plaintiffs seek only to hold Peabody to the obligations it took upon itself when it became the primary obligor of the Assumed Liabilities pursuant to the NBCWA Liabilities Assumption Agreement. Under that agreement, the Assumed Liabilities are the responsibility of Peabody, and Peabody alone. The Debtors have not proposed that the Assumed Liabilities be altered, and nothing about the Debtors' proceedings under Section 1114 will change that fact or diminish the scope of the obligations Peabody assumed by its own hand.[2]

When Peabody became the primary obligor of the Assumed Retirees' healthcare, it took on an obligation that cannot be discarded simply because Patriot and Heritage have entered bankruptcy. The NBCWA Liabilities Assumption Agreement does provide that changes may be made to the liabilities Peabody assumed, but those changes can only manifest in a "successor labor contract" duly negotiated with the UMWA in connection with the NBCWA. Only under a strained view of the Debtors' 1114 Motion can the outcome of that process constitute such a contract.

Plaintiffs' objective through this action is not the creation or imposition of new obligations, but rather the maintenance of the status quo with respect to the Assumed Retirees. While Patriot does seek relief through the 1114 Motion, because it must in order to survive, the

[2] It is particularly surprising that Peabody is dissatisfied with the agreement because the obligations are of its own devising. Contrary to Peabody's statements (Opp'n 19), because the NBCWA Liabilities Assumption Agreement was created prior to the Spinoff—before Patriot even existed as an entity separate from Peabody—it is quite impossible for it to have been "carefully negotiated" in anything resembling an arms-length transaction.

Assumed Retirees are one group that need not and will not have their benefits modified if Peabody is made to do no more than keep its word.

ARGUMENT

POINT I

PEABODY IS PRIMARILY OBLIGATED FOR THE ASSUMED LIABILITIES

Peabody is the primary obligor of the Assumed Liabilities. That fact cannot be stated more plainly than it is in the Acknowledgement and Assent and the NBCWA Liabilities Assumption Agreement. The Acknowledgement and Assent is unequivocal: "At the completion of the [Spinoff], [Peabody Holding] will enter into an agreement ('NBCWA Liability Assumption Agreement') with [Heritage] and/or Patriot pursuant to which [Peabody Holding] will agree to be primarily obligated to pay for benefits of [the Assumed Retirees]." (Ex. B ¶ A.2.)[3] The NBCWA Liabilities Assumption Agreement effectuates Peabody's promise: "[Peabody Holding] assumes, and agrees to pay and discharge when due in accordance herewith, the [Assumed Liabilities]." (Ex. A § 2(a).) Having assumed those obligations, Peabody cannot now run away from them. See Prof'l Staff Leasing Corp. v. Dir. of Revenue, No. 04A-09-008 SCD, 2005 Del. Super. LEXIS 449, at *1-2, 10 (Del. Super. Ct. July 7, 2005) (when a party to a

[3] Peabody does not dispute that the Acknowledgement and Assent is related to the NBCWA Liabilities Assumption Agreement or that the Court may consider it when reading the NBCWA Liabilities Assumption Agreement without violating the parol evidence rule. The only argument Peabody does advance on this front—that the Acknowledgement and Assent does not create a labor law relationship between Peabody Holding and the UMWA and therefore cannot inform the meaning of the NBCWA Liabilities Assumption Agreement (Opp'n 12-13)—is founded in neither law nor fact. Agreements pertaining to the same transaction should be read together and harmonized. See Martin Marietta Materials, Inc. v. Vulcan Materials Co., 56 A.3d 1072, 1120 (Del. Ch. 2012); Demetree v. Commonwealth Trust Co., No. 14354, 1996 Del. Ch. LEXIS 112, at *15 (Del. Ch. Aug. 27, 1996) (granting summary judgment without considering extrinsic evidence where reading two related contracts together, only one of which defendant was a party to, resulted in "one clear, unambiguous meaning"). Particularly in this case, where the Acknowledgement and Assent was entered into prior to the NBCWA Liabilities Assumption Agreement and the UMWA was given rights to sue under that agreement (Ex. B. ¶ B.2.c), the former should provide context for the latter.

contract "agree[d] to assume certain . . . liabilities," it had "obligated itself to pay" for those liabilities and was not merely paying them on behalf of another party (emphasis in original)).

But Peabody is running from its obligations to the Assumed Retirees, ignoring the plain language of the agreements in an attempt to foist its liabilities onto the Debtors. It cannot be permitted to do so. The Assumed Liabilities are the primary obligation of Peabody, not of Patriot, and not of Heritage. If Peabody could use the financial distress of the Debtors to rid itself of obligations for which it is the primary obligor, its promise to pay those benefits would be worth nothing at all. (Cf. Ex. B ¶ B (the UMWA agreed to the entry of the NBCWA Liabilities Assumption Agreement "[i]n recognition of the benefits to UMWA retirees and their eligible dependents" that agreement would provide).) That fact makes plain that the very premise on which Peabody has based its opposition to this Motion—that the bankruptcy of Patriot and Heritage provides Peabody with a mechanism by which to evade its obligations—is false.[4]

POINT II

PATRIOT'S SECTION 1114 RELIEF WILL NOT REDUCE THE ASSUMED LIABILITIES

The parties agree that, aside from a direct reduction of the Assumed Retirees' benefits, the NBCWA Liabilities Assumption Agreement contemplates only a single mechanism by which to reduce the Assumed Liabilities: a "successor labor contract."[5] (Opp'n 14-17; Ex. A § 1(d).)

[4] It is well established that, when Bankruptcy Code provisions limit claims against a debtor, the liability of non-debtor obligors for such claims is not affected. See, e.g., Kopolow v. P.M. Holding Corp. (In re Modern Textile, Inc.), 900 F.2d 1184, 1191 (8th Cir. 1990) (holding that, although rejection claims against a debtor were limited by the Bankruptcy Code, "the liability of a guarantor for a debtor's . . . obligations is not altered" by the bankruptcy).

[5] As Plaintiffs previously noted (Summ. J. Mem. 13 n.4) and Peabody has not contested, the NBCWA Liabilities Assumption Agreement contemplates the most-favored-nation provision of Section 1(d) being triggered only when there has been a modification of the Assumed Retirees' benefits. (Ex. A § 1(d) ("Changes to benefit levels . . . contained in [Heritage's] future UMWA labor agreements that are applicable to the retirees and eligible dependents subject to this Agreement shall be included for the purposes of the [Assumed Liabilities] . . . . (emphasis
(….continued)

Having used the language of the NBCWA Liabilities Assumption Agreement to get that far, Peabody then deviates wildly from the text to assert that any resolution of the Section 1114 process will be a "successor labor contract." It is, however, quite simply impossible that Plaintiffs' bankruptcy will trigger that mechanism because there is no way in which the Section 1114 process will result in a "successor labor contract." See Nw. Nat'l Ins. Co. v. Esmark, Inc., 672 A.2d 41, 43 (Del. 1996) (contracts must be construed "to give effect to the intentions of the parties," which are "ascertained by giving the language its ordinary and usual meaning").[6]

The agreements contemplate only one type of "successor labor contract": an NBCWA "me too" contract negotiated between the UMWA and Heritage. The Acknowledgement and Assent makes clear that Heritage is "a signatory to a 'me too' labor contract ('[Heritage] Labor Contract') that incorporates by reference Article XX of the [2007 NBCWA]." (Ex. B ¶ A.1.) It also makes clear that Peabody promised "to be primarily obligated to pay" for the benefits thereunder. (Id. ¶ A.2.) And that, as Peabody itself explains (Opp'n 5-6), is precisely what the NBCWA Liabilities Assumption Agreement obligated it to pay for—"amounts [Heritage] pays for benefits to the [Assumed Retirees] under the terms of the NBCWA Individual Employer Plan" (Ex. A § 1(d)), which term is defined as "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" (id. § 1(c) (emphasis added)). Accordingly, the NBCWA Liabilities

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added)).) Should the Court rule in favor of Plaintiffs, the Assumed Retirees' benefits will not be modified, and this threshold requirement will not have been met.

[6] Peabody's suggestion that discovery is necessary to determine the parties' intent (Opp'n 17-19) is wrong. The parties' objective intent is manifest in the agreement and, therefore, consideration of extrinsic evidence obtained through discovery is wholly inappropriate. See Nw. Int'l Ins., 672 A.2d at 43 ("Where the contract language is clear and unambiguous, the parties' intent is ascertained by giving the language its ordinary and usual meaning. Courts consider extrinsic evidence to interpret the agreement only if there is an ambiguity in the contract." (citation omitted)); Demetree, 1996 Del. Ch. LEXIS at *15 (declining to consider extrinsic evidence where reading two related contracts in conjunction with one another resulted in "one clear, unambiguous meaning").

Assumption Agreement—which describes only "me too" labor contracts—can be referring to nothing else by the term "successor labor contract."[7] Changes in benefit levels that are wholly divorced from the NBCWA and "me too" agreement negotiation process are simply not addressed by the NBCWA Liabilities Assumption Agreement.[8]

This very issue—whether the 1114 Motion can possibly result in a change to Peabody's obligations to the Assumed Retirees given the plain meaning of the NBCWA Liabilities Assumption Agreement—is at the very center of Patriot's 1114 Proposal.[9] Yet Peabody refuses to acknowledge the degree to which the 1114 Motion and this action are obviously intertwined. The outcome of the 1114 Motion simply cannot be settled until this action has been resolved. The 1114 Proposal provides:

> Since the Obligor Companies cannot afford to pay for the healthcare of the [Assumed Retirees] if Peabody's obligations are relieved or reduced, the 1114 Proposal shall apply to all non-Coal Act retirees of the Obligor Companies, including the [Assumed Retirees], unless the Bankruptcy Court rules in Patriot's favor [in this declaratory judgment action], in which case (a) if such ruling is issued before the Court rules on the [1114 Motion], the 1114 Proposal shall not

[7] Hence the Assumed Liabilities are linked to the benefit levels contained in "future UMWA labor agreement[s]" with Eastern Associated and "future NBCWA labor agreement[s]" (Ex. A § 1(d)): all of these documents are negotiated on a similar time frame in connection with the periodic renegotiation of the NBCWA. See Fletcher Int'l, Ltd. v. ION Geophysical Corp., No. 5109-VCP, 2010 Del. Ch. LEXIS 125, at *11 (Del. Ch. May 28, 2010) (contract language is read "as it would be understood by an objective, reasonable third party" (internal quotation marks omitted)).

[8] Peabody's assertion that Plaintiffs are asking this Court to read language into the NBCWA Liabilities Assumption Agreement (Opp'n 16-17) mischaracterizes the issue. Plaintiffs agree that words in a contract must be construed according to their plain meaning. See Demetree, 1996 Del. Ch. LEXIS 112, at *18 (noting that it is inappropriate for a court to read a material term into a contract when it can be interpreted by giving effect to its plain meaning). The plain meaning of the disputed provision of the NBCWA Liabilities Assumption Agreement is circumscribed to the narrow context in which a successor NBCWA "me too" contract has been negotiated. It is Peabody that is attempting to have the Court impute new language to the effect that the outcome of the Debtors' Section 1114 proceeding may constitute such a contract.

[9] The Debtors filed the 1114 Motion on March 14, 2013, affixing their fourth proposal to modify retiree healthcare benefits thereto. (See Decl. of Gregory B. Robertson in Supp. of the Debtors' Mot. to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 [ECF No. 3284], Ex. 2.) On April 10, 2013, the Debtors submitted a fifth revised Section 1114 proposal to the UMWA. (Notice of Fourth 1113 Proposal and Fifth 1114 Proposal [ECF No. 3583].) In all respects material to this Motion, it is identical to the preceding proposal. For convenience, the proposals are together referred to as the "1114 Proposal."

> apply to the [Assumed Retirees]; and (b) if such ruling is issued after the Court rules on the [1114 Motion], the 1114 Proposal shall be modified nunc pro tunc to the date of the [1114 Motion] and shall not apply to the [Assumed Retirees].

(1114 Proposal ¶ 6.) In light of the clear language of the 1114 Proposal, Peabody's assertion that "Heritage's obligations under its CBA to the [Assumed Retirees] will be terminated in their entirety" if "the Debtors succeed in obtaining the relief they seek in the 1113/1114 Motion" (Opp'n 13) is plainly wrong. According to the 1114 Proposal's terms, Plaintiffs will seek to modify the CBA as it relates to the Assumed Retirees only if this Court adopts Peabody's errant view that the term "labor contract" encompasses Section 1114 relief.[10]

Peabody's attempt to demonstrate that the 1114 Motion could result in a "future UMWA labor agreement" displays a fundamental misunderstanding of the mechanics underlying the NBCWA Liabilities Assumption Agreement. The NBCWA Liabilities Assumption Agreement's reference to a "successor [Heritage] labor contract" does not refer to just any future labor contract: it refers to the labor contracts specifically referenced therein—i.e., the periodically negotiated NBCWA and the "me too" labor contracts that Heritage has consistently used to incorporate that agreement. Peabody's contention that resolution of the 1114 Motion will modify its obligations to the Assumed Retirees therefore misses the mark. Nothing this Court can do—be it entering an order modifying Heritage's obligation to pay benefits (Opp'n 14), confirming a plan of reorganization after doing so (id. at 15), or entering an order following "[a] consensual resolution . . . that modifies healthcare benefits" (id.)—can possibly qualify as a "successor labor contract" as that term is plainly defined in the NBCWA Liabilities Assumption

[10] Because Heritage's obligations to the Assumed Retirees can only be adjusted through the process prescribed by Section 1114, see 11 U.S.C. § 1114(e)(1) ("Notwithstanding any other provision of this title, the debtor in possession . . . shall timely pay and shall not modify any retiree benefits, except" as provided in Section 1114 (emphasis added)), the Debtors' proposal under Section 1113 has no bearing on Heritage's obligation to pay for the Assumed Retirees' healthcare. Peabody's suggestion that the Section 1113 proposal might somehow be relevant to this action (Opp'n 7-8, 11) is therefore mistaken.

Agreement.[11] Peabody does, however, pick out the sole event that does so qualify, "a new collective bargaining agreement between Heritage and the UMWA." (Id. at 16.) Peabody describes none of the other possible resolutions of the 1114 Motion in the same way because none of them is such an agreement.

POINT III

THE COURT HAS JURISDICTION TO ENTER THE DECLARATORY JUDGMENT

Peabody refuses to acknowledge the degree to which the 1114 Motion and this action are obviously intertwined. As explained more fully in Plaintiffs' Opposition to Defendants' Motion to Dismiss (which is fully incorporated herein by reference), the outcome of the 1114 Motion simply cannot be settled until this action has been resolved. (Pls.' Opp'n to Defs.' Mot. to Dismiss [ECF No. 24] 2.) Peabody utterly ignores the provision in the 1114 Proposal that creates this interaction, and its contention that this dispute does not present a justiciable actual controversy is thus unavailing.

Flowing from that very same failure is Peabody's assertion that this adversary proceeding is a non-core proceeding over which this Court may not enter a final judgment (Opp'n 20)—that it does not, in the language of the statute, "aris[e] in a case under title 11."[12] 28 U.S.C.

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[11] In any event, as Plaintiffs noted in their opening brief, a court order simply cannot amount to a labor contract. (See Summ. J. Mem. 15 n.8 (collecting authority).) In fact, the cases Peabody cites also recognize the validity of this foundational principle of law. 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) (concluding, in a non-labor context, that a Chapter 11 plan is akin to a contract); City of Covington v. Covington Landing, Ltd. P'ship, 71 F.3d 1221, 1227 (6th Cir. 1995) ("An agreed order . . . is in the nature of a contract." (emphasis added)); In re D.O. & W. Coal Co., 93 B.R. 454, 456 (Bankr. W.D. Va. 1988) (noting, in the context of a motion to enforce an order issued under Section 1113, that the court's orders should be treated "in effect" as "part of the collective bargaining agreement" because the "original terms of the collective bargaining agreement" that the court had allowed the debtor to modify would otherwise "be applicable").

[12] Although Peabody has contested this Court's authority to enter a final judgment in this case, there is no question that this adversary proceeding is properly before this Court. Indeed, even were this dispute outside the core of the Court's jurisdiction, the Court would still have the authority to "submit proposed findings of fact and conclusions of law to the district court," 28 U.S.C. § 157(c)(1), because the "outcome of [the] proceeding [might] conceivably have [an] effect on" Patriot's bankruptcy estate, GAF Holdings, LLC v. Rinaldi (In re Farmland Indus.,
(….continued)

§ 157(b)(1); see Stern v. Marshall, 131 S. Ct. 2594, 2605 (2011) ("[C]ore proceedings are those that arise in a bankruptcy case or under Title 11."). But Peabody cannot possibly contest that the Debtors' 1114 Motion falls within the core of this Court's jurisdiction to "directly affect [the] administration of the estate and [the] adjustment of the debtor-creditor relationship," In re SAI Holdings Ltd., No. 06-33227, 2007 Bankr. LEXIS 1051, at *2 (Bankr. N.D. Ohio Mar. 26, 2007), and with that power comes the authority to decide this essential extension of that motion, Fire Eagle L.L.C. v. Bischoff (In re Spillman Dev. Grp., Ltd.), 710 F.3d 299, 306 (5th Cir. 2013) (concluding that the bankruptcy court properly entered judgment on a contract claim because it was "inextricably intertwined with the interpretation of a right created by federal bankruptcy law"); see Stern, 131 S. Ct. at 2616 (a bankruptcy trustee's voidable preference claim against an estate creditor who had filed a proof of claim did not need to be resolved by an Article III court "because it was not possible for the [bankruptcy court] to rule on the creditor's proof of claim without first resolving the voidable preference issue"); Pearson Educ., Inc. v. Almgren, 685 F.3d 691, 695 (8th Cir. 2012).[13]

The posture in which this case arose proves the point: if not for the Debtors' 1114 Motion, there would be no need for the Court to issue the declaration for which Plaintiffs have asked. See In re Farmland Indus., Inc., 567 F.3d at 1018 (proceedings "arising in" bankruptcy

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Inc.), 567 F.3d 1010, 1019 (8th Cir. 2009) (citation omitted); see Stern v. Marshall, 131 S. Ct. 2594, 2602 (2011) ("In non-core proceedings, the bankruptcy courts . . . submit proposed findings of fact and conclusions of law to the district court . . . .").

[13] See also In re Salander O'Reilly Galleries, 453 B.R. 106, 117 (Bankr. S.D.N.Y. 2011) ("Nowhere in . . . Stern does the Supreme Court rule that the bankruptcy court may not rule with respect to state law . . . when deciding a matter directly and conclusively related to the bankruptcy."), aff'd sub nom. Kraken Invs. Ltd. v. Jacobs (In re Salander-O'Reilly Galleries, LLC), 475 B.R. 9 (S.D.N.Y. 2012); Dicola v. Am. Steamship Owners Mut. Prot. & Indem. Ass'n, Inc. (In re Prudential Lines, Inc.), 170 B.R. 222, 229 (S.D.N.Y. 1994) (debtor's declaratory judgment action concerning the scope of insurance coverage was core to the bankruptcy court's administration of the estate because "over seven thousand claims potentially covered under [the] policies" had been filed against the estate).

are "those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy" (internal quotation marks omitted)); accord Weinberg v. Boyle, 153 B.R. 286, 294 (Bankr. D.S.D. 1993). In the end, nothing about this action remotely resembles a garden-variety contract action that must be tried by an Article III court because the ultimate issue here is whether the 1114 Motion allows Peabody to wash its hands of the 3,100 retirees whose healthcare benefits it promised to pay.[14]

CONCLUSION

For all of these reasons and for the reasons stated in the Summary Judgment Memorandum, Plaintiffs respectfully request that the Court grant their motion for summary judgment and enter a Judgment:

(1) declaring that Peabody Holding's obligations with respect to the healthcare benefits owed to the Assumed Retirees will not be affected by modification of the benefits of retirees of Heritage or Eastern Associated under Section 1114; and

(2) awarding Patriot and Heritage such other and further relief that this Court deems just and proper.

[14] Courts, including one of the very cases Peabody cites in its opposition, have exercised core jurisdiction over state-law claims that were far less critical to the debtor's reorganization than this one. See Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Titan Energy, Inc. (In re Titan Energy, Inc.), 837 F.2d 325, 328-29 (8th Cir. 1988) (action by insurer contesting whether the debtor's prepetition insurance policies belonged to the bankruptcy estate was a core proceeding because "the estate [would be] worth more" if the policies were property of the estate); see also St. Clare's Hosp. & Health Ctr. v. Ins. Co. of N. Am. (In re St. Clare's Hosp. & Health Ctr.), 934 F.2d 15, 16-18 (2d Cir. 1991) (action by debtor to determine whether a $500,000 per claim prepetition insurance policy covered the debtor against a pending malpractice suit was a core proceeding).

Dated: New York, New York
April 26, 2013

Respectfully Submitted,

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