

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:
)	April 16, 2013 at 4 p.m. CST
)	
)	Hearing Date:
)	April 23, 2013 at 10 a.m. CST
)	
)	Hearing Location:
)	Courtroom 7 North

RESPONSE OF THE OF THE UNITED MINE WORKERS OF AMERICA 1974 PENSION TRUST TO THE MOTION OF AURELIUS CAPITAL MANAGEMENT, LP AND KNIGHTHEAD CAPITAL MANAGEMENT, LLC FOR ENTRY OF AN ORDER DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE

The United Mine Workers of America 1974 Pension Trust (“1974 Plan” or “Plan”)¹ by and through its undersigned counsel, submits this Response to Aurelius Capital Management, LP (“Aurelius”) and Knighthead Capital Management, LLC’s (“Knighthead”) *Motion for Entry of an Order, Pursuant to 11 U.S.C. §§ 105(a) and 1104(a), Directing the Appointment of a Chapter 11 Trustee* (the “Motion”) [ECF No. 3423], filed on March 28, 2013. For its Response, the Plan states as follows:

RESPONSE

1. Aurelius’s and Knighthead’s Motion relies on the assertion that, because 86 so-called Non-Obligor Debtors² do not currently or historically have legacy relationships with the

¹ The 1974 Pension Plan is a member of the Official Committee of Unsecured Creditors (“UCC”). In connection with this Motion, the 1974 Pension Plan is acting on its own behalf and not as a representative of the UCC.

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

UMWA or its retirees, their estates should be administered separately from the estates of the 13 Obligor Debtors. Aurelius and Knighthead have all but ignored the nature of the 1974 Plan's potential withdrawal liability claim.

A. The Debtors' Withdrawal Liability is Joint and Several as to All Debtors

2. As further set forth in the *Objection of the 1974 and 1993 Plans to 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* (the "1113/1114 Objection"), filed contemporaneously herewith, the 1974 Plan is a multiemployer pension plan that provides pension benefits to approximately 93,000 eligible participants and beneficiaries who are retired or disabled former hourly coal production employees and their eligible surviving spouses. Five debtor-in-possession entities, all of which are wholly-owned subsidiaries of Patriot Coal Corporation, are currently operating and are parties to collective bargaining agreements ("CBAs") that require contributions to the 1974 Plan: Heritage Coal Co.; Eastern Associated Coal, LLC; Apogee Coal Co., LLC; Hobet Mining, LLC; and Highland Mining Co., LLC.

3. The Motion fails to address the significant, joint and several claim against all of the Debtors – Obligor Debtors and Non-Obligor Debtors alike – that would be triggered in the event that the Debtors withdraw from the 1974 Plan.

4. Pursuant to ERISA, "all employees of trades or businesses . . . which are under common control shall be treated as employed by a single employer and all such trades and businesses as a single employer." 29 U.S.C. § 1301(b)(1). For purposes of the definition of multiemployer plan, "all trades or businesses (whether or not incorporated) which are under common control within the meaning of section 1301(b)(1) of this title are considered a single employer." 29 U.S.C. § 1002(37)(B); *see also* 29 C.F.R. §4001.3. Furthermore:

If an employer withdraws from a multiemployer plan in a complete withdrawal or a partial withdrawal, then the employer is liable to the plan in the amount determined under this part to be the withdrawal liability.

29 U.S.C. § 1381(a).

5. In other words, “[l]iability for withdrawal assessments is joint and several among all trades and businesses under common control.” *Vaughn v. Sexton*, 975 F.2d 498, 504 (8th Cir. 1992) (emphasis added). The Debtors, as wholly-owned subsidiaries of Patriot Coal Corporation, are trades or businesses under common control within the meaning of the statute, and are jointly and severally liable for the withdrawal liability that would be incurred upon the Debtors’ withdrawal from the 1974 Plan.

6. Based on the foregoing, upon the applicable Obligor Debtors’ withdrawal from the 1974 Plan, the Plan will have a claim in excess of \$959 million against each and every Debtor. *See Declaration of Dale Stover in Support of the 1113/1114 Objection* (attached as Exhibit A to the 1113/1114 Objection) (the “Stover Decl.,” at ¶¶ 10, 20).

B. The Debtors’ Withdrawal Liability is Immediately Due and Owing

7. Moreover, any amount payable to the 1974 Plan with respect to the Debtors’ withdrawal liability obligations is immediately due in a lump sum with respect to all Debtors, and cannot be paid in installments, nor reduced to reflect the discounted present value of such installments. *See* 29 U.S.C. § 1399(c)(5) (ERISA Section 4219(c)(5)) (“In the event of a default, a plan sponsor may require immediate payment of the outstanding amount of an employer’s withdrawal liability, plus accrued interest...” (emphasis added)).

8. Here, the Debtors meet the definition of “default,” and therefore, by the terms of the 1974 Plan, are unable to discount or pay in installments their withdrawal liability claim. The Trustees of the 1974 Plan have defined “default” as, among other things, “the employer’s insolvency”; any “assignment, pledge, mortgage or hypothecation by the employer of property to

an extent which the Trustees determine to be material . . .”; “bankruptcy” and “the employer’s engaging in a transaction which has a principal purpose the avoidance or evasion of withdrawal liability” Additional Definitions of Default, UMWA 1974 Pension Plan (attached to the Stover Decl. as Exhibit 3). The UMWA Plans believe that the fact of the bankruptcy does not preclude the maturing of the obligation. *See* Letter dated March 4, 2013 from D. Allen to T. Mayer (provided to the Debtors via e-mail on March 15, 2013) (attached to the 1113/1114 Objection as Exhibit B).

9. Thus, the Debtors do not “have the option of satisfying [their] withdrawal obligations through an annual annuity payment well within Patriot’s means.” Motion at 6 n.5. The withdrawal liability is a fully matured obligation of each Debtor, due and payable at the moment it is triggered.

Dated: April 12, 2013

Respectfully submitted,

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1974 Pension Trust*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was filed on April 12, 2013 using the Court's CM/ECF system and that service will be accomplished by operation of that system upon all counsel of record, which includes counsel for all core parties.

/s/ Edward L. Dowd, Jr.