**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)** **Re: Docket No. 3423** **Hearing Date:** **April 23, 2013 at 10:00 a.m. (CT)**

**UNITED MINE WORKERS' OBJECTION TO MOTION
FOR APPOINTMENT OF A CHAPTER 11 TRUSTEE**

The United Mine Workers of America (UMWA) objects to the motion for an order directing the appointment of a Chapter 11 trustee (ECF No. 3423) filed by Aurelius Capital Management, LP and Knighthead Capital Management, LLC for the following reasons:

1. **Joinder in the Committee and UMWA 1974 Pension Fund Objection and Response.** The UMWA is a member of the Official Committee of Unsecured Creditors herein. The UMWA generally joins in the Objection of the Committee and incorporates its arguments here, in particular the Committee's observation that the triggering of an immediate default in the Debtors' obligations under the DIP facility. The UMWA also adopts the arguments made by the UMWA 1974 Pension Trust in its responsive pleading.

2. **Reason for Separate Objection.** The UMWA objects separately because it disagrees with the Committee and the Noteholders in their apparent presumption that the so-called Non-Obligor Debtors have no retiree healthcare liability to the retirees who are subject to the §1114 motion pending before the Court. While the Noteholders refer to this "fact" as "indisputable,"

and the Committee apparently accepts this presumption at least for purposes of argument, it is far from settled whether the retiree healthcare liabilities are corporate-wide responsibilities, as the UMWA and the retirees contend, or are limited only to certain obligor companies, as apparently the Noteholders contend.

3. **Retiree Obligations Are Held Corporate-Wide.** The UMWA believes that the retiree liabilities were always historically held at the corporate level prior to the spin-off transactions which led to the creation of Patriot and Magnum, later acquired by Patriot, and were not assigned to specific "obligor" subsidiaries until the spin-offs. Earlier in this case, former CEO Engelhardt made admissions to this effect in presentations to creditor constituencies. During bargaining over the Debtors' §1113 and §1114 proposals, this matter was the subject of numerous information requests, to which Patriot negotiators gave no clear responses. See Declaration of Arthur Traynor, ¶70 (ECF No. 3612). Even assuming that the question which Debtor entities are liable for retiree healthcare expenses is fairly debatable, it is clear that no legally binding determination of which entities owe those liabilities has yet been made by this Court or any other court.

4. **The Motion for appointment of a trustee thus assumes its own conclusion,** taking as given the highly debatable proposition that there even *are* "Non-Obligor" companies and leaping from that *at least* unproven premise that the Debtors are violating separate fiduciary duties owed to the "Non-Obligors" precisely for the (again presumed-without-proof) reason that they are indeed Non-Obligors. No party has given the Court any basis to make this assumption. From the state of the record, it may very well be that all 99 Debtor entities equally are obligated to every retiree for all of the healthcare liabilities. This Motion may be completely unnecessary and baseless if the liabilities are corporate-wide. The Movants in effect seek in a speaking

motion, without supporting affidavits or any other proof of any kind, to achieve summary judgment on a hotly contested issue, and thus to cement this determination of which entities owe retiree liabilities as a *fait accompli* in all future proceedings in this matter.

5. **There is no provable fiduciary breach.** It follows that the charge leveled against the Debtors that they are breaching fiduciary obligations is at least unproven and un-provable on the state of the record of this Motion for appointment of a trustee.

6. **Pre-judging the issue of substantive consolidation.** The current Motion, like many purported "objections" to the §1113 and §1114 motion filed by non-parties on April 12, 2013, expresses anxiety whether the estates have been substantively consolidated. Denial of a motion to appoint a trustee cannot have the effect of mandating substantive consolidation. A motion under §1113 and §1114 likewise cannot have such a result, as the Court is there confined to either rejecting the contract or modifying the benefits on the one hand, or denying the motion on the other. There is no occasion for the Court to rule whether Debtor actions have caused a consolidation of estates. If the UMWA and the Debtors achieve a labor settlement and if Court approval is required, at such time every party will have standing to be heard on the issue whether such settlement is a *sub rosa* plan or an improper attempt to force the outcome of a hypothetical future motion for substantive consolidation, as some have recently suggested. All of these anxieties are premature. There is no settlement and no need to appoint a trustee over the non-union debtors now. The Court will not endorse a settlement that implicitly breaches fiduciary responsibilities. When and if the time comes to determine the issue of consolidation, the Court is well capable of distinguishing the effects of a §1114 settlement from the several factors indicating that these estates are already fully integrated and operating as a single enterprise.

7. **The Real Purpose of the Trustee Motion.** It is time therefore to see the motion for appointment of a trustee for what it really is, that is, an attempt by anxious creditors to insulate themselves from an undesired outcome to a future motion, which may never be filed, that determines the issue of substantive consolidation, or the apportionment of the retiree healthcare liabilities. The Noteholders have no cause for appointment of a trustee.

8. **Granting the Motion will cause all Debtors harm.** The Debtors recently observed that because of the integration of some of the Debtors' operations, appointment of a trustee over only some of them would cause "institutional chaos." The mine complexes which form the operational units of Patriot are not split along the "obligor" and "non-obligor" fault imagined by the Noteholders in their motion; the coal mined separately in union and non-union mines at these Debtors is combined for purposes of washing and marketing, so chaos is a genuine risk if these already-integrated operations are pulled apart. Even accounting for the self-interested nature of this statement by management, it seems unwise to risk causing chaos at this juncture of the case for what are entirely speculative reasons.

9. **The Motion Should Be Denied.** For the foregoing reasons, the Court should deny the motion.

Dated this 16th day of April, 2013.

s/ Frederick Perillo
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was filed on April 16, 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/ Frederick Perillo