

**DENIED**

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

**Apr 22, 2013**

*Kathy A. Surratt - States*  
**KATHY A. SURRATT-STATES  
Chief United States Bankruptcy Judge**

In re:  
  
PATRIOT COAL CORPORATION,  
  
Debtor.

Case No. 12-51502-659  
  
Chapter 11  
  
Division 18

**MOTION OF NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN OPPOSITION TO THE MOTION OF DEBTOR TO (A) REJECT COLLECTIVE BARGAINING AGREEMENTS AND (B) TO MODIFY RETIREE BENEFIT OBLIGATIONS PURSUANT TO 11 U.S.C. §§ 1113, 1114 OF THE BANKRUPTCY CODE**

The National Coordinating Committee for Multiemployer Plans (“NCCMP”) respectfully moves for leave to file a brief *amicus curiae* in the above-captioned bankruptcy case in opposition to the Motion of the Debtor to reject Collective Bargaining Agreements and to modify retiree benefit obligations pursuant to 11 U.S.C. §§ 1113, 1114 of the Bankruptcy Code (Docket No. 3214). A copy of the proposed *amicus* filing is attached hereto as Exhibit A.

The NCCMP is a nonprofit, tax-exempt organization that has historically participated in the development of the law applicable to employee benefit plans. Some 240 multiemployer defined benefit pension plans and related international unions are affiliated with the NCCMP. The NCCMP is the only national organization devoted exclusively to protecting the interests of multiemployer plans by advocating on behalf of these plans in Congress, in the courts, and in the regulatory process.<sup>1</sup>

<sup>1</sup> Notably, Congress has recognized the significant impact the NCCMP had in shaping the law applicable to multiemployer employee benefit plans, including the Multiemployer Pension Plan

Multiemployer plans provide pension, medical, and other benefits for millions of American workers. Significantly, multiemployer pension plans alone cover over ten million workers. In adopting the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), PUB. L. NO. 96-364, 94 STAT. 1208, Congress recognized that the continued well-being and financial security of these workers, retirees, and their dependents are directly impacted by the continued existence and financial soundness of multiemployer pension plans. Consequently, Congress determined that employer withdrawals from such plans without concomitant liability are contrary to the national public interest. 29 U.S.C. § 1001(a)(1), (3) and (c)(2). As further discussed in the attached brief, MPPAA amended the Employee Retirement Income Security Act of 1974 (ERISA), 88 STAT. 829, 29 U.S.C. § 1001, et seq., to create a mechanism to protect the pensions of multiemployer pension plan participants. The statutorily created mechanism – called “withdrawal liability” – discourages employer withdrawals and prevents the burden of a plan’s underfunding from unduly falling upon the employers remaining in the plan.

The instant case involves an effort by a large employer to terminate its obligation to contribute to a multiemployer pension plan with the employer’s resulting withdrawal liability erased by action of this bankruptcy proceeding. Such action, if sanctioned by this Court, will defeat congressional intent in creating withdrawal liability to protect plan participants’ pensions.

It is well established that a district court has broad inherent authority to grant or deny an appearance as *amicus curiae* in a given case. Pete's Brewing Co. v. Whitehead, 1998 WL 537399, \*1 (8th Cir. 1998) (district court permitted Anheuser–Busch, Inc. to appear *amicus curiae* after denying motion to intervene). A court may grant leave to appear as *amicus* if the

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Amendments Act of 1980, PUB. L. NO. 96-364, 94 STAT. 1208. See 126 CONG. REC. S9835 (daily ed., July 21, 1980) and S10100 (daily ed., July 29, 1980).

information proffered is “timely, useful, or otherwise.” United Fire & Cas. Co. v. Titan Contractors Serv., Inc., 2012 WL 3065517 (E.D. Mo. 2012). Where there is a special interest in the subject matter of the litigation, courts - including bankruptcy courts in this circuit - have granted leave for parties to appear as *amicus curiae*. Pettet v. May, (W.D. Mo. 2011) (explaining that allowing a party to participate as *amicus curiae* is appropriate when the party demonstrates a special interest); Waste Management of Pa., Inc. v. City of York, 162 F.R.D. 34 (M.D. Penn. 1995) (EPA granted leave to participate as *amicus curiae* in light of its special interest in CERCLA litigation); In re First Cont'l Communications, Inc., 1992 WL 12626480 (Bankr. S.D. Iowa Dec. 7, 1992) (Iowa Bankers Association appeared as *amicus curiae* to respond to a bankruptcy party’s summary judgment motion); Matter of Schake, 154 B.R. 270, 272 (Bankr. D. Neb. 1993) (The Legal Aid Society appeared as *amicus curiae* to contest the county district attorney's office request to prosecute dishonored checks in violation of the automatic stay).

Applied to the instant case, the NCCMP and its constituent groups have a strong interest in the outcome of the Debtor’s instant motion to ensure that multiemployer plans continue to have an effective remedy against employers who seek to end their obligation to contribute to multiemployer pension plans. The NCCMP’s interest is magnified where, as here, the employer is attempting to improperly shield themselves from the withdrawal liability Congress sought to impose through the MPPAA to protect the pensions of workers. Additionally, the Court will benefit from the NCCMP’s expertise with multiemployer pension plans and withdrawal liability issues that may arise from the proposed modification of the Debtors’ collective bargaining agreements. Accordingly, the NCCMP respectfully requests that the Court grant it leave to appear as *amicus curiae*.

Respectfully submitted,

Date: April 12, 2013

By:

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**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 upon all counsel of record with an e-mail address in the CM/ECF system by operation of that system.

/s/ James I. Singer

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