

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

IN RE:	Patriot Coal Corporation, et al.	Case No.: 12-51502
	Debtors,	Chapter 11
		Judge Kathy A. Surratt-States

**MOTION FOR RELIEF FROM AUTOMATIC STAY,
PURSUANT TO SECTION 362 OF THE BANKRUPTCY CODE,
TO LIQUIDATE CIVIL LITIGATION MATTER**

Comes now Kenneth Bevins and Victoria Bevins by and through counsel, J. Michael Ranson and Ranson Law Offices, PLLC, and respectfully moves this Honorable Court to enter an Order in the form enclosed herewith lifting the automatic stay imposed by 11 U.S.C. § 362 for the purpose of permitting Kenneth Bevins and Victoria Bevins to liquidate their civil claims pending against the debtor, Apogee Coal Company, LLC (Case No. 12-12903) , in the matter currently pending before the Honorable Carrier Webster in the Circuit Court of Kanawha County, styled Kenneth Bevins and Victoria Bevins v. Apogee Coal Company, LLC, Civil Action No. 13-C-708. In support thereof, Kenneth Bevins and Victoria Bevins state the following:

Background

1. On July 9, 2012, the Debtor filed a voluntary petition for Chapter 11 bankruptcy.
2. Kenneth Bevins is an employee of Apogee Coal Company, LLC.
3. On April 12, 2013, Kenneth Bevins and his wife, Victoria Bevins instituted legal action against Apogee Coal Company, LLC for serious injuries sustained on October 8, 2012 during the course of his employment as a Rock Truck driver with Apogee Coal Company, LLC.
4. Kenneth Bevins filed a claim for workers compensation benefits arising from the October 8, 2012 injury. All workers compensation benefits have been paid by AIG as the insurer of Apogee Coal Company under the West Virginia Worker's compensation laws.
5. Kenneth Bevins and Victoria Bevins claims against Apogee Coal Company are based on West Virginia Code 23-4-2(d)(2)(ii). Kenneth Bevins and Victoria Bevins aver that Apogee Coal Company deliberately exposed him to an unsafe work condition which resulted in serious injuries suffered on October 8, 2012.
6. West Virginia law expressly provides that any jury award in a deliberate intent action shall only be for damages in excess of any benefits awarded under worker's compensation. *Mooney v. Eastern Associated Coal Corp.*, 174 WV 350,

326 S.E.2d 427 (W.Va. 1984)

7. Likewise, the West Virginia Supreme Court has held that employers are entitled to an offset for Workers' Compensation benefits that are received or receivable by an injured employee. See, *Powroznik v. C. & W. Coal Co.*, 191 W.Va. 293, 445 S.E.2d 234 (1994). Assuming Kenneth and Victoria Bevins obtain a verdict against Apogee Coal Company, under West Virginia state law, Apogee Coal Company is entitled to a set off for certain monetary benefits paid to Kenneth Bevins against any verdict in favor of Kenneth and/or Victoria Bevins.
8. AIG and/or National Union Insurance Company are the liability insurance carriers for Apogee Coal Company, LLC.
9. Presuming that Kenneth Bevins and Victoria Bevins obtain a verdict against Apogee Coal Company in this matter, AIG and/or National Union Insurance Company will be responsible to pay any such verdict in an amount including and up to the liability insurance coverage limits available under the aforementioned liability policy.

Relief Requested

Kenneth Bevins and Victoria Bevins respectfully request this Honorable Court to grant them relief from the automatic stay imposed by 11 U.S.C. § 362, to enable them to pursue their civil action against Apogee Coal Company, LLC. in the Circuit Court of

Kanawha County, West Virginia and to recover any potential settlement and/or judgment from the liability insurance proceeds available for Apogee Coal Company from AIG and/or National Union Insurance Company.

Argument

Section 362(d) of the Bankruptcy Code provides, in pertinent part, that:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—(1) for cause, including the lack of adequate protection of an interest in property of such party in interest.

11 U.S.C. § 362(d)(1).

“Cause” is not defined by the Bankruptcy Code. Consequently, a bankruptcy court must decide what constitutes “cause” to lift the automatic stay on a case by case basis. Indeed, “cause” under § 362(d)(1) is an intentionally broad and flexible concept which must, of necessity, be determined on a case by case analysis. Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990); Pursifull v. Eakin, 814 F.2d 1501, 1506 (10th Cir.1987); Mac Donald v. Mac Donald (In re Mac Donald), 755 F.2d 715, 717 (9th Cir.1985); Kerns, 111 B.R. at 781-82 n. 2; In re Kelly, 12,5 B.R. 301 (Bankr.D.Kan.1991); Murray Indus., Inc. v. Aristech Chem. Corp., (In re Murray Indus., Inc.), 121 B.R. 635, 636 (Bankr. M.D.Fla.1990); In re Sentry Park, Ltd., 87 B.R. 427, 430 (Bankr.W.D.Tex.1988).

Kenneth and Victoria Bevins are the parties in interest as well as AIG and/or National Union Insurance Company. Kenneth and Victoria Bevins cannot exercise their rights to pursue the deliberate intent case against Apogee Coal Company while the automatic stay is in effect. Lifting the automatic stay would permit the parties to litigate Kenneth and Victoria Bevins claims against Apogee Coal Company and would also allow Apogee Coal Company to exercise its legal right to set-off against a verdict, if any in favor of Kenneth and Victoria Bevins.

Furthermore, Apogee is a party in interest and cannot exercise its right to set off the amount it has already paid to Kenneth Bevins while the automatic stay is in effect. Lifting the automatic stay will also allow Apogee Coal Company to exercise its right and protect its interest in amounts previously paid to Kenneth Bevins under the West Virginia Workers' Compensation system.

WHEREFORE, and based on the foregoing, Kenneth Bevins and Victoria Bevins respectfully request pursuant to 11 U.S.C. 362 9d)(2), that this Court:

- (1) Lift the automatic stay in the Patriot Coal Corporation, et al. Chapter 11, bankruptcy proceedings to permit Kenneth Bevins and Victoria Bevins to pursue their deliberate intent claim against Apogee Coal Corporation in Kenneth Bevins and Victoria Bevins v. Apogee Coal Corporation, Civil Action No. 13-C-708, pending in the Circuit Court of Kanawha

County, West Virginia, Judge Carrier Webster, presiding;

- (2) And, grant Kenneth Bevins and Victoria Bevins any further relief as this Court may deem just and proper

**KENNETH BEVINS and
VICTORIA BEVINS**
By Counsel

s/ J. Michael Ranson

J. Michael Ranson, Esquire (WVSB #3017)
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IN RE: Patriot Coal Corporation, et al. Case No.: 12-51502
Debtors, Chapter 11
Judge: Kathy A. Surratt-States

CERTIFICATE OF SERVICE

I, J. Michael Ranson, counsel for Kenneth Bevins and Victoria Bevins hereby certify that we have served a true and exact copy of the foregoing *Motion for Relief from Automatic Stay, Pursuant to Section 362 of the Bankruptcy Code, to Liquidate Civil Litigation Matter and Proposed Order* via the ECF system and to the following via U.S. Mail, postage paid, this **4 June 2013** as follows:

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s/ J. Michael Ranson

J. Michael Ranson

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FOR THE EASTERN DISTRICT OF MISSOURI**

IN RE: Patriot Coal Corporation, et al. Case No.: 12-51502
Debtors, Chapter 11
Judge: Kathy A. Surratt-States

**ORDER GRANTING
KENNETH BEVINS AND VICTORIA BEVINS
MOTION FOR RELIEF
FROM AUTOMATIC STAY, PURSUANT TO SECTION 362 OF THE
BANKRUPTCY CODE, TO LIQUIDATE CIVIL LITIGATION MATTER**

Upon the motion of Kenneth Bevins and Victoria Bevins, by and through their counsel, J. Michael Ranson and Ranson Law Offices, PLLC, pursuant to 11 U.S.C § 362 and Rule 4001 of the Federal Rules of Bankruptcy Procedure, seeking entry of an order granting Kenneth Bevins and Victoria Bevins relief from the automatic stay for the purpose of permitting Kenneth Bevins and Victoria Bevins to liquidate their civil cause of action against Apogee Coal Company, LLC ,an affiliated Patriot Coal Corporation Company in the Circuit Court of Kanawha County, West Virginia; the Court having reviewed the motion; good and sufficient notice of the motion having been given; and good and sufficient cause appearing therefor; and the relief sought appearing reasonable and proper, and no further notice being required, it is

ORDERED that the motion is **GRANTED**, and it is further

ORDERED that the automatic stay is lifted, with respect to Kenneth Bevins and Victoria Bevin's civil action against Apogee Coal Company, LLC pending in the Circuit Court of Kanawha County, West Virginia, Civil Action No. 13-C-708; and it is further

ORDERED that Kenneth Bevins and Victoria Bevins are allowed relief from the automatic stay for the purpose of liquidating their civil action pending state court against Apogee Coal Company, LLC.

DATED this _____ day of _____, 2013.

JUDGE KATHY A. Surratt-States
United States Bankruptcy Judge
For the Eastern District of Missouri

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ORDERED that Kenneth Bevins and Victoria Bevins are allowed relief from the automatic stay for the purpose of liquidating their civil action pending state court against Apogee Coal Company, LLC.

DATED this _____ day of _____, 2013.

JUDGE KATHY A. Surratt-States
United States Bankruptcy Judge
For the Eastern District of Missouri