

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

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 12-51502-659

(Jointly Administered)

Hearing Date: June 24, 2014

Hearing Time: 10:00 a.m. Central

Location: Courtroom 7-N, St. Louis

**REORGANIZED DEBTORS' OBJECTION TO CLAIM
FILED BY JASON BLANKENSHIP**

Patriot Coal Corporation and its affiliates (the "Debtors" or the "Reorganized Debtors"), pursuant to 11 U.S.C. § 502 and Fed. R. Bankr. P. 3007, respectfully file this Objection to Claim filed by Jason Blankenship ("Blankenship") (the "Objection"). In support of this Objection, the Reorganized Debtors show the Court as follows:

Relief Requested

1. By this Objection, the Reorganized Debtors object to a claim, numbered 2-1 on this Court's register against Debtor Brody Mining, LLC (GCG Claim No. 4039) (the "Claim") because it purports to assert a claim on behalf of other individuals. The Reorganized Debtors seek to disallow the claim to the extent that it asserts amounts beyond those to which the claimant himself is entitled and to fix the amount of the claim. The Reorganized Debtors request entry of an order, pursuant to Section 502 of the Bankruptcy Code and Fed. R. Bankr. P. 3007, modifying the Claim.

2. Any response to this Objection should include, among other things, (i) an appropriate caption, including the title and date of this Objection; (ii) the name of the claimant,

both the EDMO and GCG claim numbers of the claim that the Reorganized Debtors are seeking to disallow, and a description of the basis for the amount claimed; (iii) a concise statement setting forth the reasons why the Court should not sustain this Objection, including, but not limited to, the specific factual and legal bases upon which the claimant relies in opposing this Objection; (iv) copies of any documentation and other evidence which the claimant will rely upon in opposing this Objection at a hearing; and (v) the name, address, telephone number and facsimile number of a person authorized to reconcile, settle or otherwise resolve the claim on the claimant's behalf. A claimant that cannot timely provide such documentation and other evidence should provide a detailed explanation as to why it is not possible to timely provide such documentation and other evidence.

Jurisdiction

3. This Court has jurisdiction over this Objection under 28 U.S.C. § 1334. Venue of this proceeding is proper pursuant to 28 U.S.C. § 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

5. Ninety-nine of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on July 9, 2012 in the United States Bankruptcy Court for the Southern District of New York.

6. On December 19, 2012, these Debtors' cases were transferred to the United States Bankruptcy Court for the Eastern District of Missouri [Dkt. No. 1789].

7. The bar date for filing proofs of claim against these Debtors was December 14, 2012 [Dkt. No. 1388].

8. On March 1, 2013, the Court entered its Order Establishing Procedures for Claims Objections [Dkt. No. 3021].

9. Debtors Brody Mining, LLC and Patriot Ventures LLC filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on September 23, 2013 in this Court. The bar date for filing proofs of claim against these Debtors was October 24, 2013.

10. On December 17, 2013, the Court confirmed the Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Dkt. No. 5169] (the “Plan”). The Effective Date occurred on December 18, 2013.

Objection and Argument

11. The Reorganized Debtors object to Blankenship’s Claim because it purports to assert a claim on “individually and on behalf of” other claimants.

12. Specifically, the Claim lists as the creditor “Jason Blankenship, individually and on behalf of” [sic], and attaches a Complaint filed in the Circuit Court of Boone County, West Virginia on July 11, 2012 (the “Complaint”), for alleged violations of the West Virginia Wage Payment and Collection Act (“WPCA”) by Debtor Brody Mining, LLC. Such alleged violations occurred before Brody Mining was acquired by a subsidiary of Patriot Coal Corporation. *See* Declaration of Colin D. Milam, Jr., attached hereto as Exhibit A.

13. The Complaint seeks relief on behalf of a proposed class consisting of “[a]ll persons formerly employed by the Defendant in West Virginia five years prior to the filing of

this Complaint through class certification who were discharged and not paid all wages within 72 hours.” Complaint ¶12.

14. No class has been certified in the litigation. *See* Declaration of Colin Milam, Exhibit A. In addition, no employee wages are owed by Brody Mining except for accruals inherent in its normal payroll cycle. *Id.*

15. The Claim is unliquidated, disputed, and contingent. It does not specify an amount at issue. The Reorganized Debtors have calculated that, in the event that Blankenship were to prevail in his action under the WPCA, he would be entitled to approximately \$7,700.00.¹ *See* Declaration of Colin Milam, Exhibit A.

16. The Reorganized Debtors object to the Claim to the extent that it attempts to present a claim for other former employees of Brody Mining. Although class proofs of claim may be permitted in a bankruptcy case, “they are not a matter of right.” *In re Computer Learning Centers, Inc.*, 344 B.R. 79, 86 (Bankr. E.D. Va. 2013).

17. Allowing a class proof of claim is wholly discretionary. *In re American Reserve Corp.*, 840 F.2d 487, 494 (7th Cir. 1988). In considering whether to allow a class proof of claim, a court may examine the costs and benefits of class litigation and whether a class proof of claim would unnecessarily delay or unduly complicate a bankruptcy case. For example, “[s]uits for very small stakes may hold out little prospect of either compensation or deterrence.” *Id.* at 492.

18. In addition, courts may consider the timeliness of a motion to make Federal Rule of Bankruptcy Procedure 7023 applicable to the proof of claim. *Id.* A class proponent must

¹ The Reorganized Debtors do not concede the validity of Blankenship’s Claim, nor that other, unnamed members of the purported class have or had valid claims against Brody Mining. In light of the small amount potentially owed to Blankenship and the modes amounts payable to general unsecured creditors, the Reorganized Debtors propose to allow Blankenship’s individual claim solely as a matter of administrative convenience.

timely obtain an order making Rule 7023 applicable to the claim, and failure to do so may result in disallowance of the class claim. *See Reid v. White Motor Corp.*, 886 F.2d 1462, 1470-71 (6th Cir. 1989).

19. Here, despite filing his Complaint approximately two years ago, Blankenship never moved to certify the class in West Virginia state court, nor has he ever moved to do so in this Court under Rule 7023. Blankenship's cursory completion of the proof of claim form, without more, does not meet the requirements for class proofs of claim under Rule 7023 or applicable case law. Now, almost six months after the Confirmation Order, a Rule 7023 motion would unduly delay the administration of the Reorganized Debtors' bankruptcy cases. In addition, given the small recovery for general unsecured creditors in these cases, such an unnecessary delay would be unduly prejudicial to the Reorganized Debtors, their estates, and other creditors. The Claim should therefore be disallowed to the extent it purports to preserve a claim for any individual other than Blankenship.

20. In the alternative, the Reorganized Debtors request that the Court estimate the Claim for purposes of allowance and distributions. For the reasons specified above, estimation is appropriate under Section 502(c) of the Bankruptcy Code.

WHEREFORE, the Reorganized Debtors respectfully request that this Court:

- (a) modify the Claim to a general unsecured claim in the amount of \$7,700.00 on behalf of Blankenship only;
- (b) in the alternative, estimate the Claim for purposes of allowance and distributions;
and
- (c) grant such other and further relief as is just and proper.

Dated: May 29, 2014
St. Louis, Missouri

Respectfully submitted,
BRYAN CAVE LLP

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-and-

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EXHIBIT A

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In re:

PATRIOT COAL CORPORATION, *et al.*,

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Chapter 11

Case No. 12-51502-659

(Jointly Administered)

**DECLARATION OF COLIN D. MILAM, JR. IN SUPPORT OF REORGANIZED
DEBTORS' OBJECTION TO CLAIM FILED BY JASON BLANKENSHIP**

Colin D. Milam, Jr. declares, pursuant to 28 U.S.C. § 1746, to the best of his knowledge and based upon the documents available to him, as follows:

1. I am currently the Manager of Human Resources for Appalachia Mine Services, LLC, which, among other things, serves as the administrative management of Brody Mining, LLC. I have held this position from January 1, 2013 to the present. I have served as manager for human resources for other Patriot Coal entities since December 1, 2009.
2. A subsidiary of Patriot Coal Corporation, Black Stallion Coal Company LLC, acquired Brody Mining, LLC on December 31, 2012.
3. At the time of the acquisition, Jason Blankenship had filed a Complaint in the Circuit Court of Boone County, West Virginia, alleging certain violations of the West Virginia Wage Payment and Collection Act ("WPCA") by Brody Mining, LLC.
4. The case initiated by the Complaint remains pending. No class has been certified.

5. According to records regularly kept in the ordinary course of business of Brody Mining, LLC, I have calculated that the total amount to which Blankenship could be entitled were he to prevail in his Complaint is \$7,603.57, based on Blankenship's gross pay of \$2,213.75.

6. Records that I have referred to in connection with the preparation of this Declaration were made at or near the time of the matters set forth in such records, by or from information transmitted by a person with knowledge of those matters, and were made and kept in the course of the regularly conducted business activities of Brody Mining, LLC. It is the regular practice of the company to make such records. I am the custodian of such records.

7. I declare under penalty of perjury that the foregoing is true and correct. Executed on May 27, 2014.

/s/ Colin D. Milam, Jr.
Colin D. Milam, Jr.