

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

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

**PATRIOT COAL CORPORATION and
HERITAGE COAL COMPANY,**

Plaintiffs,

-against-

**PEABODY HOLDING COMPANY, LLC and
PEABODY ENERGY CORPORATION,**

Defendants.

**Chapter 11
Case No. 12-51502-659
(Jointly Administered)**

**Adversary Proceeding
No. 13-04067-659**

Re: ECF No. 6

**Objection Deadline:
April 22, 2013 at 4:00 p.m.
(prevailing Central Time)**

**Hearing Date (if necessary):
April 29, 2013 at 10:00 a.m.
(prevailing Central Time)**

**Hearing Location:
Courtroom 7 North**

STATEMENT OF UNDISPUTED MATERIAL FACTS

Pursuant to Local Rule of Bankruptcy Procedure 7056(A), Plaintiffs Patriot and Heritage respectfully submit this statement of undisputed material facts in support of their motion for summary judgment against Peabody Holding and Peabody Energy.¹

A. Peabody Enters into the Acknowledgement and Assent with the UMWA

1. For decades prior to 2007, Peabody owned a number of Appalachian and Illinois Basin mining operations. Unlike the majority of Peabody's assets in the western United States and abroad, these eastern operations were heavily staffed with miners represented by the UMWA. (Ex. D at 1-3; Ex. E at 18, 35.)

2. Thousands of unionized miners have retired from these operations. Peabody was obliged to provide substantial healthcare and pension benefits to its UMWA retirees. (Hatfield Decl. ¶ 28.)

3. The benefits received by UMWA retirees are determined by individual employer plans in accordance with UMWA labor agreements. (Schroeder Decl. ¶ 35.)

4. The NBCWA is the labor agreement between the UMWA and the BCOA. The NBCWA is periodically renegotiated. (Schroeder Decl. ¶ 34.)

5. Typically, all coal employers with UMWA-represented operations other than the BCOA are signatory to "me too" agreements that bind them to the terms of the NBCWA or to individually negotiated variants thereof. (Schroeder Decl. ¶ 34.)

6. The NBCWA and Heritage's and Eastern Associated's "me too" agreements were last renegotiated in 2011. They are not due to be renegotiated again until 2016. (Ex. F at 19.)

¹ Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment filed contemporaneously herewith.

7. On August 13 and 14, 2007, Peabody Holding, the UMWA, and, for limited purposes, Heritage, entered into the Acknowledgement and Assent. The Acknowledgement and Assent memorializes Peabody's obligations to the Assumed Retirees following the Spinoff. (Ex. B.)

8. The Acknowledgment and Assent states that "[Heritage], a signatory to a 'me too' labor contract ('[Heritage] Labor Contract') that incorporates by reference Article XX of the National Bituminous Coal Wage Agreement of 2007 ('2007 NBCWA')," would be transferred to Patriot in connection with the Spinoff. (Ex. B ¶ A.1.)

9. The Acknowledgement and Assent states, "At the completion of the spin-off of Patriot, [Peabody Holding] will enter into an agreement ('NBCWA Liability Assumption Agreement') with [Heritage] and/or Patriot pursuant to which [Peabody Holding] will agree to be primarily obligated to pay for benefits of retirees of [Heritage] and such retirees' eligible dependents under the terms of an employee welfare plan maintained by [Heritage] pursuant to Article XX of the [Heritage] Labor Contract . . . or any [Heritage] successor labor agreement" (Ex. B ¶ A.2.)

10. The Acknowledgement and Assent states that, "[i]n recognition of the benefits to UMWA retirees and their eligible dependents from an agreement between [Peabody Holding] and [Heritage] through which [Peabody Holding] would undertake the assumption of the liabilities as described above," the UMWA "[a]ssents to the entry of such an agreement," referring to the NBCWA Liabilities Assumption Agreement. (Ex. B ¶ B.)

11. The Acknowledgment and Assent is an agreement between Peabody and the UMWA for Peabody to be liable for the healthcare provided in Heritage's existing "me too" labor contract or any successor labor contract. (Ex. B.)

B. Peabody Spins Off Patriot

12. On October 31, 2007, Peabody completed the Spinoff contemplated by the Acknowledgment and Assent. (Ex. E at 3.)

13. Peabody consolidated, among other assets, its operations in the Appalachia and Illinois Basin regions with UMWA-represented labor within Patriot, then a subsidiary of Peabody. Peabody then distributed the common shares of Patriot to Peabody Energy's stockholders. (Ex. D at 1-3; Ex. E at 3.)

14. A number of companies included in the Spinoff, including Patriot's current subsidiaries Heritage and Eastern Associated, carried substantial liabilities attributable to their retiree healthcare obligations under the NBCWA. (Hatfield Decl. ¶¶ 28, 30.)

C. Peabody Enters into the NBCWA Liabilities Assumption Agreement

15. To reduce the liabilities of the newly formed Patriot enterprise, Peabody and Patriot entered into several agreements effective as of the date of the Spinoff, each drafted by Peabody counsel, including the NBCWA Liabilities Assumption Agreement. (Exs. A, G, H.)

16. Peabody and Patriot entered into the Section 9711 Coal Act Liabilities Assumption Agreement. Under that agreement, Peabody Holding assumed liabilities associated with retiree healthcare benefits under the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. § 9711. (Ex. G.)

17. Peabody, Patriot, and Heritage entered into the Salaried Employee Liabilities Assumption Agreement. Under that agreement, Peabody Holding assumed the retiree healthcare liabilities of certain former salaried employees of Heritage. (Ex. H.)

18. Neither the Section 9711 Coal Act Liabilities Assumption Agreement nor the Salaried Employee Liabilities Assumption Agreement contains a provision analogous to the one at issue in this action. (Exs. G, H.)

19. The NBCWA Liabilities Assumption Agreement states that Heritage “has an obligation to provide retiree healthcare pursuant to its ‘me too’ labor contract which incorporates by references Article XX of the NBCWA.” (Ex. A, Recital 3.)

20. The NBCWA Liabilities Assumption Agreement states that “the parties desire that [Heritage] continue to provide the retiree healthcare required by Article XX of the NBCWA (or any successor [Heritage] labor contract).” (Ex. A, Recital 4.)

21. The NBCWA Liabilities Assumption Agreement states that Peabody Holding “has agreed to assume the liabilities of [Heritage] for provision of healthcare pursuant to Article XX of the NBCWA (or any successor [Heritage] labor contract) to [the Assumed Retirees] to the extent expressly set forth in this Agreement.” (Ex. A, Recital 5.)

22. Peabody Holding “assum[ed], and agree[d] to pay and discharge when due in accordance [with the NBCWA Liabilities Assumption Agreement], the [Assumed Liabilities].” (Ex. A § 2(a).)

23. The NBCWA Liabilities Assumption Agreement defines the term “NBCWA Individual Employer Plan” as “a plan for the provision of healthcare benefits to retirees of [Heritage] and their eligible dependents maintained by [Heritage] pursuant to Article XX of the NBCWA.” (Ex. A § 1(c).)

24. The NBCWA Liabilities Assumption Agreement defines the Assumed Liabilities by reference to the benefits owed to the Assumed Retirees under the NBCWA Individual Employer Plan. (Ex. A § 1(d).)

25. The NBCWA Liabilities Assumption Agreement provides that Peabody Holding has assumed liability for different levels of benefits provided by future NBCWA and “me too” agreements by providing that “[c]hanges to benefit levels, cost containment programs, plan design or other such modifications contained in [Heritage’s] future UMWA labor agreements that are applicable to the retirees and eligible dependents subject to this Agreement shall be included for the purposes of the definition of [the Assumed Liabilities].” (Ex. A § 1(d).)

26. Modifications contained in Heritage’s future UMWA labor agreements will be reflected in the Assumed Liabilities “*provided that, for purposes of any successor [Heritage] labor contract, [the Assumed Liabilities] shall be based on benefits that are the lesser of (i) benefits provided in any future UMWA labor agreement with [Eastern Associated] and (ii) benefits provided in any future NBCWA labor agreement or any successor labor agreement and offered to [Eastern Associated], or which [Eastern Associated] had the opportunity to sign.*” (Ex. A § 1(d).)

27. Under the NBCWA Liabilities Assumption Agreement, the Assumed Liabilities are to be determined by reference to the lesser benefits of the UMWA labor contract negotiated with either Heritage or Eastern Associated. (Ex. A.)

28. The NBCWA Liabilities Assumption Agreement is governed by Delaware law. (Ex. A § 19.)

29. Peabody is the primary obligor of the Assumed Liabilities. (Ex. A § 2(a); Ex. B ¶ A.2.)

D. Patriot and Heritage File for Bankruptcy Protection

30. The Debtors have sought to modify healthcare benefits of union-represented retirees pursuant to 11 U.S.C. § 1114. (1114 Proposal.)

31. If Peabody is permitted to reduce or eliminate its Assumed Liabilities, those obligations would be the responsibility of Heritage. (Hatfield Decl. ¶ 33.)

32. If the Court rules in favor of Patriot and Heritage in this action, the 1114 Motion would not apply to the Assumed Retirees, their benefits will not be modified, and their retiree healthcare would continue to be paid for by Peabody. (1114 Proposal ¶ 6.)

33. Hours after the Debtors filed the 1114 Motion and the complaint in this action, Peabody issued a press release proclaiming that, should the bankrupt Obligor Companies obtain relief pursuant to the 1114 Motion, Peabody would seek to reduce or eliminate benefits for the Assumed Retirees. (Ex. C.)

34. Certain salaried retirees who were not assumed by Peabody may have their benefits reduced as part of the Patriot bankruptcy. Peabody must continue paying for the benefits of the salaried retirees for whom it assumed responsibility. (Debtors' Mot. for an Order Authorizing the Modification and Termination of Certain Non-Vested Benefits for Non-Union Retiree Benefit Participants Pursuant to 11 U.S.C. §§ 105(a) and 363(b) [ECF No. 3503] ¶¶ 2, 22.)

Dated: New York, New York
April 5, 2013

Respectfully Submitted,

DAVIS POLK & WARDWELL LLP

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