UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re	:	Chapter 11
	:	Case No. 12-51502-659
PATRIOT COAL CORPORATION, *et al.*,	:	(Jointly Administered)
	:	
Debtors.	:	
	:	Adversary Proceeding
PATRIOT COAL CORPORATION, *et al.*,	:	Case No. 13-04204-659
	:	
Plaintiffs,	:	Objection Deadline:
	:	September 17, 2013 at 4:00 p.m.
-against-	:	(prevailing Central Time)
	:	
	:	Hearing Date:
PEABODY HOLDING COMPANY, LLC and	:	September 24, 2013 at 10:00 a.m.
PEABODY ENERGY CORPORATION,	:	(prevailing Central Time)
	:	
Defendants.	:	Hearing Location:
	:	Courtroom 7, North

OBJECTION OF PEABODY ENERGY CORPORATION AND PEABODY HOLDING COMPANY, LLC TO THE DEBTORS' MOTION FOR A PRELIMINARY INJUNCTION PURSUANT TO 11 U.S.C § 105(a)

Peabody Energy Corporation and Peabody Holding Company, LLC (together, "Peabody") hereby submit this objection (this "Objection") to the Motion for a Preliminary Injunction Pursuant to 11 U.S.C. § 105(a) (Docket No. 3) (the "Motion") filed by Patriot Coal Corporation ("Patriot") and its various subsidiaries and affiliates in the above-captioned bankruptcy cases (collectively, the "Debtors"). In support of this Objection, Peabody respectfully represents as follows:

I. PRELIMINARY STATEMENT[1]

1. The Debtors made no meaningful attempt to meet and confer with Peabody about how the requests set forth in the Subpoena might be narrowed, or suitable alternative production arrangements reached. Nor did they seek relief from the issuing court, the District Court for the Eastern District of Missouri. Instead, they chose to use section 105(a) of the Bankruptcy Code to seek an unprecedented extension of the automatic stay of section 362 of the Bankruptcy Code (the "Automatic Stay") to prevent Peabody from effectively obtaining from them *any* of the discovery Peabody needs.

2. The discovery Peabody seeks is critical to its defense of the claims in Lowe and the timeline proposed by the Debtors will, given the discovery schedule imposed in Lowe, irrevocably and irreparably harm Peabody. In contrast, the alleged harm to the Debtors is based on pure conjecture and speculation.[2] Further, the Debtors' Memorandum of Law is devoid of controlling precedent from the Eighth Circuit to support the extraordinary relief they seek and relies instead on a series of factually inapposite cases. The Motion must fail.

II. RELEVANT FACTS

A. General Background Regarding the Spin-Off

3. Certain Debtors were once affiliates of Peabody. In 2007, pursuant to a series of agreements (together, the "Spin-Off Agreements"), Patriot was spun off from Peabody.

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1 Capitalized terms not otherwise defined herein have the meanings given to them in the Motion or the accompanying Memorandum of Law (Docket No. 4) (the "Debtors' Memorandum of Law").

2 In fact, given that (i) Patriot is obligated to indemnify Peabody for any costs, expenses and losses incurred in connection with or arising out of Lowe and (ii) any such indemnification obligations would have to be paid in full, and honored going forward, in connection with the Debtors' assumption of the Spin-Off Agreements (as defined below), the relief sought by the Motion actually is counter to the best interests of the Debtors and their estates. See Separation Agreement, Plan of Reorganization and Distribution (the "Separation Agreement"), at § 6.01, attached as Ex. 1, Annex A to Peabody Energy Corporation's Proof of Claim (GCG No. 2390; E.D. Mo. No. 3867-2). Even if the Debtors decide not to assume the Spin-Off Agreements, thereby excusing Peabody from its future performance under those agreements, Peabody could still have substantial indemnity claims against the Debtors.

B. The Lowe Litigation

4. The UMWA and others have sued Peabody in a case commenced on October 23, 2012 in the United States District Court for the Southern District of West Virginia (the "West Virginia Court"), known for short as Lowe.[3] In that lawsuit, the UMWA alleges that Peabody conceived and executed a "corporate scheme" to spin-off or sell its largest liabilities, including retiree, pension and health and welfare benefits, to a new corporation, Patriot, that would "inevitably fail."[4]

5. On January 7, 2013, Peabody filed a motion to dismiss or stay the Lowe litigation.[5] The parties asked the West Virginia Court to stay discovery pending a decision on the motion to dismiss, but the court rejected the request.[6]

6. On February 26, 2013, the West Virginia Court entered an order governing discovery in Lowe. That order shortened the parties' jointly proposed schedule.[7] Under the court-issued schedule, expert reports are due November 18, 2013, with responding reports due December 16, 2013 and rebuttal reports due January 2, 2014. All discovery must be completed by January 15, 2014. In a status report filed on September 3, 2013, Peabody and the plaintiffs in Lowe made a second request to extend the discovery schedule, but to date the West Virginia Court has not responded to this request.[8]

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3 Hubert Lowe, et al. v. Peabody Holding Company, LLC et al., S.D. W. Va., No. 2:12-cv-06925.

4 Lowe, Second Amended Complaint (ECF No. 39), at ¶ 4 (attached as Ex. A, excluding exhibits).

5 See Lowe, Peabody's Motion to Dismiss or Stay (ECF No. 29) (attached as Ex. B). On February 20, 2013, Peabody filed a motion to dismiss or stay the Lowe plaintiffs' second amended complaint (ECF No. 46). That motion has been fully briefed since March 13, 2013, but the West Virginia Court has not yet ruled.

6 See Lowe, Plaintiffs' Unopposed Motion to Modify Briefing and Discovery Schedule (ECF No. 31) (attached as Ex. C); Lowe, Order (ECF No. 32) (attached as Ex. D).

7 Compare Lowe, Rule 26(f) Report of Planning Meeting (ECF No. 40) (attached as Ex. E), with Lowe, Scheduling Order (ECF No. 48) (attached as Ex. F).

8 See Lowe, Joint Status Report (ECF No. 83), at p. 3 (attached as Ex. G).

C. The Basis of the Subpoena

7. To counter effectively the designed-to-fail assertion, Peabody requires the discovery it has sought from the Debtors. Patriot's own statements in these very bankruptcy proceedings run directly in the face of the UMWA's allegation, and the Subpoena's discovery requests were drafted largely to obtain documentary evidence substantiating these critical statements. For example, the Debtors' pleadings identify a number of factors that precipitated Patriot's bankruptcy, including, among other things, (a) the global financial crisis, (b) decreased coal demand, (c) rising costs and regulatory burdens, (d) selenium liabilities that were acquired from Magnum Coal Company and (e) increased liabilities as a result of Patriot's entry into "Me Too" agreements incorporating the National Bituminous Coal Wage Agreement of 2011.[9] These statements demonstrate that the Debtors' failure was due to events occurring after the Spin-Off and substantially undermine, if not defeat in its entirety, the designed-to-fail allegation. Documents in the Debtors' exclusive possession from *after* the Spin-Off establishing these facts are therefore critical to Peabody's defense in Lowe.

8. Peabody understands the Debtors have assembled over 48,000 pages of information supporting factual assertions in their various bankruptcy court pleadings, most if not all of which is available in an electronic data room.[10] It seems clear that, given the overlap in subject matter, many of the documents in the data room would be responsive to the Subpoena, and that Peabody could be granted access to the room quickly and inexpensively. There are other pre-existing caches of documents that could also be delivered at the front end of the

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9 See Declaration of Mark N. Schroeder (Docket No. 4), at ¶¶ 21-39; see also Declaration of Bennett K. Hatfield (Docket No. 3222), at ¶¶ 40-81, 93-102; Declaration of Dale F. Lucha (Docket No. 3223), at ¶¶ 11, 32, 36-42.

10 See Memorandum of Law in Support of the Debtors' Motion to Reject Collective Bargaining Agreements (Docket No. 3219), at pp. 6-7; Omnibus Reply Memorandum of Law in Further Support of the Debtors' Motion to Reject Collective Bargaining Agreements (Docket No. 3797), at p. 21.

requested production with little inconvenience, including, for example, any materials provided to the UMWA or others about the Spin-Off and the causes of the bankruptcy, and minutes and associated materials from post-Spin-Off meetings of the board of directors and its committees.[11] The Debtors made no substantive effort to meet and confer with Peabody regarding providing these or similar materials as a first response to the Subpoena.[12] Peabody believes that with access to these items, it may be possible to narrow and refine the discovery requests, but without first seeing the items, Peabody cannot know their precise contents and, thus, cannot agree to withdraw the Subpoena. To be clear, Peabody continues to believe that all information sought by the Subpoena is necessary to Peabody's defense, but is suggesting that a preliminary production of materials could be made quickly and efficiently without prejudicing any party.

III. OBJECTION

A. The Relief the Debtors Request is Unprecedented

9. The Debtors' attempt to use an extension of the Automatic Stay effectively to quash the Subpoena is unprecedented. Make no mistake, if the relief they seek is granted, the effect will be not simply to delay, but to deny completely Peabody's access to documents necessary to its defense in Lowe. As noted above, the parties in Lowe have repeatedly and unsuccessfully asked for an extension of the discovery schedule from the West Virginia Court. There is absolutely no indication the West Virginia Court will entertain a delay.

10. Yet, the Debtors would seek to stay *any* compliance with the Subpoena until an as-yet-to-be-determined effective date of a plan of reorganization. Based on the

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[11] The UMWA repeatedly requested any information in the Debtors' possession regarding potential claims against Peabody. See, e.g., Amended Declaration of Arthur Traynor (Docket No. 3642), at ¶¶ 39, 43, 47, 50, 53, 72 and 77.

[12] On the afternoon of September 3, before filing the Motion, Patriot's counsel suggested, in response to inquiry, that Patriot might consider granting access to the data room, but only if Peabody would agree *in advance* to withdraw the Subpoena entirely and not seek further discovery from the Debtors.

schedule in the Debtors' recently filed Notice of Disclosure Statement Approval Hearing (Docket No. 4621) and the various timing requirements under the Bankruptcy Rules, Peabody *will* be denied the discovery it needs in advance of the expert report deadlines in Lowe, and the *earliest* any stay would be lifted likely would be only shortly before the close of discovery in Lowe on January 15, 2014. Amazingly, the Debtors also reserve the right to object under the Federal Rules of Civil Procedure (the "FRCP") after any stay expires.[13] That means, even if the Debtors were to meet their aggressive schedule and confirm a plan before the close of discovery in Lowe, Peabody will almost certainly face an additional attempt to quash the Subpoena. In sum, if the Motion is granted, Peabody will *never* obtain the discovery it needs from the Debtors in time to aid its defense. No court has ever authorized such an offensive use of the Automatic Stay.

B. The Circumstances Do Not Justify the Extraordinary Relief the Debtors Seek

11. Any extension of the Automatic Stay is appropriate only in "rare and unusual circumstances,"[14] and, in the Eighth Circuit, is limited to "truly extraordinary cases."[15] While courts in the Southern District of New York have occasionally bent the standard for authorizing an extension of the Automatic Stay, courts in the Eight Circuit, and specifically in the Eastern District of Missouri, have been vigilant in maintaining its integrity. In fact, in four of the five cases cited by the Debtors from the Eighth Circuit addressing the extension of the

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13 Debtors' Memorandum of Law, at p. 16, n. 1.

14 In re Panther Mountain Land Dev., LLC, 686 F.3d 916, 924 (8th Cir. 2012) (noting as well that "when presented with 'unusual,' 'rare,' or 'limited' circumstances … we have found these restrictive terms to have real meaning, and we have not lightly extended the stay").

15 C.H. Robinson Co. v. Paris & Sons, Inc., 180 F. Supp. 2d 1002, 1015 (N.D. Iowa 2001) ("Eighth Circuit caselaw ... is illustrative of a generalized reluctancy to expand the scope of the automatic stay provision of the Bankruptcy Code and to limit any expansion to truly extraordinary cases.").

Automatic Stay, courts — including the Eighth Circuit Court of Appeals and this Court *twice* — *denied* the requested extension.[16]

12. In the Debtors' remaining case from within the Eighth Circuit, In re Lahman Manufacturing Co., the court agreed to extend the Automatic Stay to litigation against a debtor's principle shareholders and officers only because (a) "the evidence [wa]s *undisputed* that culmination of the state court action would effectively eliminate the only available source of financing for the debtor's reorganization" and (b) the "future economic vitality" of an entire small town in South Dakota and its residents depended on the debtor's successful reorganization.[17] The kind of dire circumstances and undisputed evidence in Lahman are sharply at odds with the Debtors' unsupported claims about the *potential* burden of complying with the Subpoena. That "potential" is not sufficient to justify extending the Automatic Stay in this District.[18] Moreover, as discussed in greater detail in Section III.C.1.a below, the Debtors' claims about the potential burden and expense they might endure are both inflated and unsubstantiated.

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16 See Panther Mountain, 686 F.3d at 921-927 (declining to extend Automatic Stay to litigation against certain non-debtor entities); Steaks To Go, Inc. v. Steak-Out Franchising, Inc. (In re Steaks To Go, Inc.), 226 B.R. 32, 33-35 (Bankr. E.D. Mo. 1998) (declining to extend the Automatic Stay to litigation against the debtor's officers); Clark Oil & Refining Corp. v. Chicap Pipe Line Co. (In re Apex Oil Co.), 91 B.R. 865, 868-69 (Bankr. E.D. Mo. 1988) (declining to extend the Automatic Stay to prevent creditors from accelerating the debt of two companies that were partially owned by the debtor); In re Three Seas Realty II, L.L.C., No. 10-00948 S, 2010 WL 2857598, at *4-5 (Bankr. N.D. Iowa July 19, 2010) (declining to extend Automatic Stay to litigation against the debtor's sole member). Also, the Debtors fail to cite Veeco Inv. Co. v. Mercantile Nat'l Bank of St. Louis, N.A. (In re Veeco Inv. Co.), 157 B.R. 452, 454-56 (Bankr. E.D. Mo. 1993) where this Court declined to extend the Automatic Stay to prevent collection of a judgment against two guarantors of a debtor's obligations.

17 Lahman Mfg. Co. v. First Nat'l Bank of Aberdeen (In re Lahman Mfg. Co.), 33 B.R. 681, 683-85 (Bankr. D.S.D. 1983) (emphasis added).

18 See Aboussie Bros. Constr. Co. v. United Missouri Bank of Kirkwood (In re Aboussie Bros. Constr. Co.), 8 B.R. 302, 303 (E.D. Mo. 1981) (denying debtor's request to extend the Automatic Stay to litigation against debtor's partners where litigation would *potentially* impair the partners' ability to contribute funds to the reorganization of the debtor).

C. The Debtors' Arguments Fail Under Any Articulation of the Test for Extending the Automatic Stay

13. Given the unprecedented nature of the relief the Debtors request, there is no clear authority on the proper standard the Court should apply. After a review of relevant cases, Peabody believes that there are three potentially applicable standards: (a) the standard test for granting a preliminary injunction applied both in and out of bankruptcy in the Eighth Circuit that requires proof of success on the underlying merits of the litigation to be stayed (the "Eighth Circuit Standard"); (b) a six-factor balancing test largely drawn from the FRCP applied in the recent case In re Residential Capital, LLC, 480 B.R. 529 (Bankr. S.D.N.Y. 2012) (hereafter, "Res Cap"); and (c) a modified preliminary injunction standard applied mostly by courts in the Southern District of New York that includes an analysis of the likelihood of a debtor's successful reorganization (the "SDNY Standard"). However, each standard generally involves a balancing of the harms, and the Debtors' exaggerated claims about the harm they *might* endure when compared to the unquestionable harm Peabody will suffer if the Motion is granted are insufficient to justify the relief they seek no matter what standard applies.

1. The Eighth Circuit Standard

14. In the Eighth Circuit, an extension of the Automatic Stay pursuant to section 105(a) of the Bankruptcy Code requires proof (i) of the threat of irreparable harm to the debtor; (ii) that the balance of the harms caused by the grant, or failure to grant the injunction weighs in favor of the debtor; (iii) of a probability of succeeding on the merits in the proceeding to be enjoined; and (iv) that the grant of an injunction is in the public interest.[19] Analyzing each of these factors in connection with the relief the Debtors seek, the Motion must fail.

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[19] See Steaks To Go, 226 B.R. at 34; DataPhase Sys., Inc. v. C L Sys., Inc., 640 F.2d 109, 113 (8th Cir. 1981).

(a) The Threat of Irreparable Harm to the Debtors is Illusory

15. An alleged harm sufficient to justify an extension of the Automatic Stay must be "imminent, substantial and irreparable."[20] The burden and expense of complying with third-party discovery is not the type of "irreparable harm" that justifies an extension of the Automatic Stay.[21] Also, the Debtors make only vague and unsupported allegations that complying with the Subpoena will "potentially" cost millions of dollars, eat up substantial management time,[22] possibly cause a breach of covenants in their debtor-in-possession financing and derail the Debtors' reorganization efforts. This hypothetical parade of horrors is not "clear and convincing" evidence of irreparable harm required to extend the Automatic Stay.[23]

16. As outlined in paragraph 8 above, the Debtors have caches of materials responsive to the Subpoena that could be supplied to Peabody promptly, as a first delivery, with little burden or expense. Moreover, it is hard to believe the Debtors have now spent months investigating claims against Peabody, but have not collected any internal documentation that would be relevant to such claims, responsive to the Subpoena, and easily produced. The Debtors have offered no explanation as to why they cannot supply these groupings (or similar materials) to Peabody now, as a beginning compliance effort.

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20 In re Calpine Corp., 365 B.R. 401, 410 (S.D.N.Y. 2007) (quoting Haw. Structural Ironworkers Pension Trust Fund v. Calpine Corp., No. 06 Civ. 5358 (PKC), 2006 WL 3755175, at *4 (S.D.N.Y. Dec. 20, 2006)).

21 See E.E.O.C. v. Rath Packing Co., 787 F.2d 318, 325 (8th Cir. 1986) ("litigation expenses alone do not justify a stay of a proceeding" where the proceeding has been exempted from the provisions of the Automatic Stay by Congress).

22 Despite insisting that complying with the Subpoena will consume substantial management time, the Debtors concede that "the bulk of the work reviewing documents and preparing them for production will be done by outside counsel and vendors." Debtors' Memorandum of Law, at p. 14.

23 Panther Mountain, 686 F.3d at 926 (a debtor "must justify the stay 'by clear and convincing circumstances outweighing potential harm to the party against whom it is operative'") (quoting A.H. Robins Co. v. Piccinin, 788 F.2d 994, 1003 (4th Cir. 1986)).

(b) Peabody Would Suffer the Balance of Harm if the Debtors' Motion is Granted

17. As demonstrated above, the burden and cost for the Debtors of complying with the Subpoena are overblown and unsupported by evidence. On the other hand, as described in detail in Section III.A above, the effect of the relief the Debtors' request will be to deny Peabody *any* discovery from the Debtors — discovery that is central to Peabody's defense in Lowe. Peabody would clearly suffer the balance of harm if the Motion is granted.

(c) The Debtors Are Not Likely to Succeed in Quashing the Subpoena

18. The "success on the merits" at issue is whether a debtor would likely succeed in the litigation it is attempting to enjoin.[24] Here, where the Debtors are trying to use the Automatic Stay effectively to quash the Subpoena, they must prove that they would be likely to succeed in doing so under the FRCP. Such a requirement is consistent with the general rules for granting preliminary injunctions outside of bankruptcy.[25]

19. The Debtors argue that complying with the Subpoena poses an undue burden. Therefore, in determining whether the Debtors could successfully quash the Subpoena, the Court must balance (a) the relevance of the discovery sought, (b) the requesting party's need and (c) the potential hardship to the party subject to the subpoena.[26]

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24 Steaks To Go, 226 B.R. at 34 (considering whether the debtor or its officers were likely to succeed in defeating a suit to enjoin the officers from competing with another company under the terms of a non-competition agreement, and concluding that the likelihood that they would *not* succeed weighed against enjoining the litigation against the officers); see also Matter of Commonwealth Oil Ref. Co., Inc., 805 F.2d 1175, 1183-84, 1189-90 (5th Cir. 1986), cert. denied, 483 U.S. 1005 (1987) (the Fifth Circuit Court of Appeals concluded that where a debtor sought to stay a proceeding commenced by the EPA that was exempted from the Automatic Stay, the debtor had to prove it would likely succeed on the merits against the EPA).

25 DataPhase Sys., Inc. v. C L Sys., Inc., 640 F.2d at 113. In addition, as discussed in greater detail in Section III.C.2 below, requiring proof that the Debtors would be likely to succeed in quashing the Subpoena is also consistent with the standard articulated by the court in Res Cap.

26 Centrix Fin. Liquidating Trust v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA, No. 4:12-MC-624-JAR, 2013 WL 3225802, at *2 (E.D. Mo. June 25, 2013).

20. The discovery Peabody seeks is directly relevant to the issues in Lowe. The plaintiffs in Lowe have alleged that Peabody designed Patriot to fail. Therefore, a critical aspect of Peabody's defense is to show that Patriot's failure resulted from events after the Spin-Off and over which Peabody had no control.[27] Materials reflecting and justifying Patriot's own assessment of the post-Spin-Off causes of its failure are in the Debtors' exclusive possession and are not available from any other source. The Debtors' criticism that Peabody's requests are overly broad because certain of them draw upon items in the Rule 2004 Subpoena is hypocritical. The Debtors themselves have promoted the notion that the scope of their own requests is targeted and proper.[28] Given that Lowe arises out the same factual nexus as the claims against Peabody the Debtors are investigating (i.e., the propriety of the Spin-Off and the causes of the Debtors' bankruptcy), it is absurd for the Debtors to argue that the scope of the Subpoena is too broad where it mirrors the language of the very subpoena they served under Bankruptcy Rule 2004 after persuading this Court to allow it.

21. In addition, certain materials at or around the time of the Spin-Off are also necessary for Peabody's defense and not otherwise obtainable. The Spin-Off was negotiated between Peabody executives and a segregated Patriot management team. Those Patriot executives took a variety of materials with them after the Spin-Off.[29] The opinions of Patriot's

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27 The Debtors cherry pick sections from Peabody's pleadings to suggest that Peabody does not believe any post-Spin-Off facts are relevant in Lowe. This mischaracterizes Peabody's position. Peabody has only argued that information about ongoing relationships between Peabody and Patriot subsequent to the Spin-Off have no bearing on the Lowe plaintiffs' claim that Peabody set Patriot up to fail.

28 See Motion of Debtors and the Official Committee of Unsecured Creditors for Leave to Conduct Discovery of Peabody Energy Corporation Pursuant to Rule 2004 (Docket No. 3494), at ¶ 18; Order Granting in Part Motion of the Debtors and the Official Committee of Unsecured Creditors for Leave to Conduct Discovery of Peabody Energy Corporation Pursuant to Rule 2004 (Docket No. 4114).

29 In fact, the Spin-Off Agreements specifically contemplated that it might be necessary for Peabody and Patriot to continue to share information after the Spin-Off for litigation purposes. See Separation Agreement, at § 13.02.

own management team about the viability of the Spin-Off at the time it was consummated are directly relevant to whether Peabody designed Patriot to fail.

22. Finally, as discussed in detail in Section III.C.1.a above, because the Debtors could make an initial production in response to the Subpoena without substantial burden, any motion to quash the Subpoena would likely be denied.

(d) Enjoining Peabody's Requested Discovery is Not in the Public Interest

23. The Debtors argue the only public interest at stake is promoting the Debtors' successful reorganization.[30] However, there is a competing public interest at stake here. The Supreme Court has said that "[f]or more than three centuries it has now been recognized as a fundamental maxim that the public … has a right to every man's evidence."[31] The Supreme Court went on to state "[w]hen we come to examine the various claims of exemption, we start with the primary assumption that there is a general duty to give what testimony one is capable of giving, and that any exemptions which may exist are *distinctly exceptional*, being so many derogations from a positive general rule."[32]

24. Taken to its logical conclusion, the rule the Debtors propose — that the Automatic Stay should extend to third-party discovery because it "will promote a successful reorganization" — is so broad that virtually all third-party discovery from debtors could be precluded during bankruptcy proceedings. This is at odds with the overarching rule that the Automatic Stay does not protect a debtor from third-party discovery, and ignores both the extraordinary nature of the circumstances required to justify extending the Automatic Stay as

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30 Debtors' Memorandum of Law, at p. 19.

31 Jaffee v. Redmond, 518 U.S. 1, 9 (1996) (internal quotation marks and citations omitted).

32 Id. (emphasis added).

well as the public interest in preserving litigants' ability to seek discovery from debtors.[33] In this instance, the public interest in permitting third-party discovery of debtors substantially outweighs the exaggerated potential harm to the Debtors.

25. Finally, courts routinely go to great lengths to modify or limit the terms of any injunctions to alleviate the potential burden on non-debtor litigants.[34] Here, the blanket extension of the Automatic Stay sought by the Debtors — without giving any consideration at all to the several definable and confined sets of materials that have already been assembled or are readily collectible — is inconsistent with public policy.

2. The Motion Should be Denied Based on the Reasoning in Res Cap

26. Res Cap is the only case to grant relief even remotely similar to what the Debtors request. Res Cap, however, is not consistent with the test for granting a preliminary injunction in the Eighth Circuit and should not be applied in this case. In any event, a close look at Res Cap demonstrates precisely why the Motion should be denied.

27. In Res Cap, the debtor sought to have litigation against certain of its non-debtor affiliates enjoined by the district court, but that request was denied. The district court in Res Cap also directed the *plaintiff* to seek a ruling from the bankruptcy court regarding the proper scope of discovery.[35] In contrast, the Debtors here have made no effort to stay the

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33 See In re Mahurkar Double Lumen Hemodialysis Catheter Patent Litig., 140 B.R. 969, 977 (N.D. Ill. 1992) (the district court concluded that the Automatic Stay did not protect the debtor, which was a defendant in a multi-defendant patent infringement case, from responding as a non-party to discovery requests calculated to lead to admissible evidence against another defendant).

34 See In re Lyondell Chem. Co., 402 B.R. 571, 592 (Bankr. S.D.N.Y. 2009) (restricting the broad injunction sought by the debtors by, among other things, limiting the duration of the injunction to just 60 days and enjoining related actions to prevent the dissipation of any of the assets of the non-debtor against whom collection efforts were stayed); see also In re United Health Care Org., 210 B.R. 228, 235 (S.D.N.Y. 1997), appeal dismissed as moot, 147 F.3d 179 (2d Cir. 1998) (limiting requested indefinite injunction to one lasting only 90 days).

35 Res Cap, 480 B.R. at 533.

proceedings in Lowe or to obtain an order from the issuing court quashing the Subpoena.[36] Rather, they make an unabashed end-run around the relevant provisions of the FRCP and the district court by invoking the Automatic Stay. This is not consistent with Res Cap.[37]

28. In addition, the debtors in Res Cap "were faced with tens or hundreds or even thousands of lawsuits in which discovery from the [d]ebtors may [have been] relevant."[38] The Debtors have not argued that there is any risk of a flood of other discovery requests or additional lawsuits if Peabody's requested discovery is permitted to proceed. Moreover, in Res Cap, the debtor presented detailed and specific information about the burden of producing 43,000 loan files, including detailed pricing estimates from outside vendors. Here, the Debtors make only the most general assertions about the burden and expense of complying with the Subpoena.[39] These mystical "guesstimates" are a wholly inadequate basis to grant the extraordinary remedy of extending the Automatic Stay to prevent third-party discovery, particularly when compared to the evidence presented in Res Cap.

29. Finally, the six-factor test used in Res Cap was drawn from standards applied under the FRCP and, therefore, amounted to an analysis of the merits of modifying or quashing the plaintiff's discovery requests. As discussed in detail in Section III.C.1.c above, the Debtors cannot satisfy the relevant standards for quashing the Subpoena under the FRCP.[40] Accordingly, even if the Court were to apply the test from Res Cap, the Motion would fail.

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36 Should the Court deem it wise to stay the entire Lowe proceeding, Peabody would support such a ruling.

37 See id. at 543 ("Issues of scope, context and need for the discovery should ordinarily be the province of the trial court where the underlying action is pending.").

38 Id. at 539.

39 Compare id. at 548-49, with Lushefski Decl., at ¶¶ 23-27.

40 It is also far from clear that all discovery was precluded in Res Cap as the court, near the end of its ruling, directed the parties "to meet and confer on a targeted schedule for production of documents, consistent with the demands of the chapter 11 cases." Res Cap, 480 B.R. at 550.

3. The Motion Should Not be Granted Even Under the SDNY Standard

30. When considering whether to extend the Automatic Stay to enjoin litigation against non-debtors, courts in the Southern District of New York have modified the standard preliminary injunction test to replace the "success on the merits" element with a "likelihood of successful reorganization" element.[41] This makes sense in the context of staying entire third party proceedings where the debtor argues the distraction prompted by the separate lawsuit would hurt the debtor's reorganization effort.[42] But where, as here, the Debtors are attempting to use the Automatic Stay effectively to quash the Subpoena, a likelihood of a successful reorganization should not replace a success on the merits analysis.[43]

31. In any event, given that (a) the SDNY Standard involves a balance of factors and (b) the Debtors have failed adequately to prove irreparable harm, that the balance of harm is in their favor, or that an extension of the Automatic Stay is in the public interest, the Motion must fail even if the SDNY Standard were to be applied.

CONCLUSION

32. Peabody is ready to work with the Debtors to streamline discovery. To date, however, the Debtors have not offered a single constructive suggestion, opting instead to seek the unprecedented relief of a preliminary injunction to foreclose all discovery. With hypotheticals about potential costs and harm, a lack of hard evidence and the likely availability of means to substantially comply with the Subpoena with little effort or cost, the Debtors have utterly failed to demonstrate the type of extraordinary circumstances that would justify extending the Automatic Stay. The Motion must be denied.

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41 See In re Calpine Corp., 365 B.R. at 409.

42 Id. at 410-12.

43 See Steaks To Go, 226 B.R. at 34, supra note 24.

Respectfully submitted,

Dated: September 17, 2013

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re	:	Chapter 11
	:	Case No. 12-51502-659
PATRIOT COAL CORPORATION, *et al.*,	:	(Jointly Administered)
	:	
Debtors.	:	
	:	Adversary Proceeding
PATRIOT COAL CORPORATION, *et al.*,	:	Case No. 13-04204-659
	:	
Plaintiffs,	:	Objection Deadline:
	:	September 17, 2013 at 4:00 p.m.
-against-	:	(prevailing Central Time)
	:	
	:	Hearing Date:
PEABODY HOLDING COMPANY, LLC and	:	September 24, 2013 at 10:00 a.m.
PEABODY ENERGY CORPORATION,	:	(prevailing Central Time)
	:	
Defendants.	:	Hearing Location:
	:	Courtroom 7, North

SUMMARY OF EXHIBITS

The following exhibits (the "Exhibits") are referenced in support of the Objection of Peabody Energy Corporation and Peabody Holding Company, LLC to the Debtors' Motion for a Preliminary Injunction Pursuant to 11 U.S.C. § 105(a) (the "Objection"). Copies of these exhibits will be provided as required by the Local Rules.[1] Peabody reserves the right to supplement and amend this Exhibit Summary and submit additional exhibits in support of the Objection.

[1] The ECF numbers referred to in the following exhibit list refer to the relevant docket numbers from Hubert Lowe, et al. v. Peabody Holding Company, LLC et al., S.D. W. Va., No. 2:12-cv-06925, not from any pending action before the Bankruptcy Court.

Exhibit A	A true and accurate copy of the Lowe Second Amended Complaint for Declaratory Relief and Interference with Protected Rights Under Section 510 of ERISA (ECF No. 39) (excluding exhibits)
Exhibit B	A true and accurate copy of the Lowe Motion to Dismiss or Stay Under Federal Rule of Civil Procedure 19 of Peabody Holding Co., LLC and Peabody Energy Corp. (ECF No. 29)
Exhibit C	A true and accurate copy of the Lowe Plaintiffs' Unopposed Motion to Modify Briefing and Discovery Schedule (ECF No. 31)
Exhibit D	A true and accurate copy of the Lowe Order (ECF No. 32)
Exhibit E	A true and accurate copy of the Lowe Rule 26(f) Report of Planning Meeting (ECF No. 40)
Exhibit F	A true and accurate copy of the Lowe Scheduling Order (ECF No. 48)
Exhibit G	A true and accurate copy of the Lowe Joint Status Report (ECF No. 83)

Dated: September 17, 2013

Respectfully submitted,

/s/ Steven N. Cousins

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