

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Re:)
)
PATRIOT COAL CORPORATION,) Case No. 12-51502-659
) Chapter 11
)
Debtor.)

ORDER DENYING APPOINTMENT OF A CHAPTER 11 TRUSTEE

The matter before the Court is the Motion of Aurelius Capital Management, LP, and Knighthead Capital Management, LLC, for Entry of an Order, Pursuant to 11 U.S.C. §§ 105(a) and 1104(a), Directing the Appointment of a Chapter 11 Trustee; Joinder of Wilmington Trust Company, as Indenture Trustee, to Motion of Aurelius Capital Management, LP, and Knighthead Capital Management, LLC, for Entry of an Order, Pursuant to 11 U.S.C. §§ 105(a) and 1104(a), Directing the Appointment of a Chapter 11 Trustee for “Non-Obligor Debtors”; Debtors’ Objection to the Motion of Aurelius Capital Management, LP, and Knighthead Capital Management, LLC, for Entry of an Order, Pursuant to 11 U.S.C. §§ 105(a) and 1104(a), Directing the Appointment of a Chapter 11 Trustee; Joinder of Citibank, N.A., as First Out DIP Agent in Debtors’ Objection to the Motion of Aurelius Capital Management, LP, and Knighthead Capital Management, LLC, for Entry of an Order, Pursuant to 11 U.S.C. §§ 105(a) and 1104(a), Directing the Appointment of a Chapter 11 Trustee; Joinder of Bank of America, N.A., as Second Out DIP Agent, to Debtors’ Objection to Motion of Aurelius Capital Management, LP, and Knighthead Capital Management, LLC, for Entry of an Order, Pursuant to 11 U.S.C. §§ 105(a) and 1104(a), Directing the Appointment of a Chapter 11 Trustee; the United Mine Workers’ Objection to Motion for Appointment of a Chapter 11 Trustee; Objection of the Official Committee of Unsecured Creditors to the Motion for the Appointment of a Chapter 11 Trustee; Response of the United Mine Workers of America 1974 Pension Trust to the Motion of Aurelius Capital Management, LP, and Knighthead Capital Management, LLC, for Entry

of an Order Directing the Appointment of a Chapter 11 Trustee; and the Limited Objection of U.S. Bank National Association, as Indenture Trustee, to (I) Motion for the Appointment of a Chapter 11 Trustee. A hearing was held on April 23, 2013 at which counsel appeared as noted on the record and argument was presented. Upon consideration of the record as a whole, for the foregoing reasons, the Motion of Aurelius Capital Management, LP, and Knighthead Capital Management, LLC, for Entry of an Order, Pursuant to 11 U.S.C. §§ 105(a) and 1104(a), Directing the Appointment of a Chapter 11 Trustee (hereinafter “ Trustee Motion”) will be denied.

Debtor Patriot Coal Corporation and its subsidiaries (hereinafter collectively “Debtors”) are the Debtors and Debtors In Possession in these jointly administered cases. On March 14, 2013, Debtors filed their Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 of the Bankruptcy Code (hereinafter “1113/1114 Motion”). Both prior to and since the 1113/1114 Motion was filed, Debtors have been engaged in extensive negotiations with the United Mine Workers of America (hereinafter the “UMWA”) concerning the 1113/1114 Motion. Several proposals have been made in attempts to reach a consensus. In response to the fourth proposal, which is no longer the most recent proposal, the Noteholders Aurelius Capital Management, LP, and Knighthead Capital Management, LLC (hereinafter collectively the “Noteholders”) filed the Trustee Motion and asserted that it was necessary to appoint a Chapter 11 Trustee to control the estates of those Debtors that are not signatories to certain collective-bargaining and retiree-healthcare agreements with the UMWA because the proposals made pursuant to the 1113/1114 Motion involve the use of assets of non-signatory Debtors to satisfy the obligations of signatory Debtors. The Trustee Motion states first that cause exists under Section 1104(a)(1) and that appointment of a trustee is in the best interest of creditors, equity security holders and other interests of the estate pursuant to Section 1104(a)(2). There is no dispute that all Debtors are jointly and severally liable for certain liabilities that are

implicated in the 1113/1114 Motion.

Section 1104(a)(1) states that prior to confirmation of a plan, after notice and a hearing, a court may appoint a trustee “for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor...” 11 U.S.C. § 1104(a)(1) (2012). Here, there is no evidence of fraud, dishonesty, incompetence or gross mismanagement of the affairs of Debtors by current management or counsel for Debtors. Interdebtor conflicts are present in most large multi-debtor cases and such disputes do not by themselves evidence or establish fraud or mismanagement or misconduct of the type that constitutes cause under Section 1104(a)(1). Moreover, Debtors are currently inextricably intertwined between unionized and non-unionized operations in that certain mining complexes involve certain Debtors that are signatories to agreements with the UMWA as well as other Debtors that are not signatories to agreements with the UMWA. Further, some non-union operations are either completely dependent on other operations that involves unionized labor or operate with both union and non-union labor. Moreover, Debtors share certain administrative operations such as accounting, sales, legal, operational oversight, safety, training and resource management. Debtors also operate under a single cash management system and use certain blanket purchase agreements, export contracts, transloading agreements and certain coal supply agreements that require blending of coal mined from unionized and non-unionized mines. In sum, Debtors are more efficiently operated together and in effect, Debtors’ shepherding of these extremely complicated and complex cases has been honest, competent and efficiently managed. This Court cannot fathom, and no party has presented this Court with any potential structure for, the creation of two pools of Debtors. Cause does not exist for appointment of a Chapter 11 Trustee under Section 1104(a)(1).

Section 1104(a)(2) states that a Chapter 11 Trustee may be appointed “if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.” 11 U.S.C. § 1104(a)(2) (2012). Courts typically consider the following factors to determine whether appointment of a Chapter 11 trustee is appropriate:

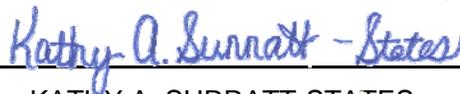
- (i) the trustworthiness of the debtor;
- (ii) the debtor in possession's past and present performance and prospects for the debtor's rehabilitation;
- (iii) the confidence—or lack thereof—of the business community and of creditors in present management; and
- (iv) the benefits derived by the appointment of a trustee, balanced against the cost of the appointment.

In re Adelpia Commc'ns Corp., 336 B.R. 610, 658 (Bankr. S.D.N.Y. 2006) (citing *In re Ionosphere Clubs, Inc.*, 113 B.R. 164, 168 (Bankr. S.D.N.Y. 1990)).

First, there is no dispute that there is joint and several liability of all Debtors with respect to certain liabilities that are implicated in the 1113/1114 Motion. Second, there is no dispute that pursuant to Section 9.01(n) of the Debtor In Possession Facility, through which Debtors received their post-petition financing, appointment of a Chapter 11 Trustee is an event of default and would therefore trigger the immediate acceleration of the DIP loans. The DIP financiers would therefore have no obligation to continue to finance Debtors upon the appointment of a Chapter 11 Trustee. Third, this Court is yet to determine that there are indeed non-obligor Debtors pursuant to certain agreements entered into with the UMWA. Debtors have demonstrated themselves to be primarily interested in crafting solutions that are in the best interest of these estates. Numerous accomplishments, negotiations and settlements of various matters have been reached which are due in part to Debtors' commitment to a successful Chapter 11 process. The business community and some creditors have confidence in Debtors as is demonstrated in part by the various objections to the Trustee Motion that were filed. The record is devoid of any proof required for the

extraordinary relief requested in the Trustee Motion to be granted. On these bases therefore, this Court does not conclude that appointment of a Chapter 11 Trustee is in the interest of all creditors or the estates pursuant to Section 1104(a)(2). Therefore,

IT IS ORDERED THAT the Motion of Aurelius Capital Management, LP, and Knighthead Capital Management, LLC, for Entry of an Order, Pursuant to 11 U.S.C. §§ 105(a) and 1104(a), Directing the Appointment of a Chapter 11 Trustee is **DENIED**.



KATHY A. SURRATT-STATES
Chief United States Bankruptcy Judge

DATED: May 10, 2013
St. Louis, Missouri

Copies to:

All Creditors and Parties in Interest.