

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

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

Hearing Date:
May 21, 2013 at 10:00 a.m. (prevailing
Central Time)

Hearing Location:
Courtroom 7 North

Re: ECF No. 3545

**DEBTORS' OBJECTION TO THE MOTION OF SHANNON MCGHEE AND
BRITTANY MCGHEE FOR RELIEF FROM AUTOMATIC STAY**

Debtors Patriot Coal Corporation (“**Patriot**”) and Midland Trail Energy LLC (“**Midland Trail**,” together with Patriot, the “**Applicable Debtors**”) respectfully submit this objection in opposition to the Motion of Shannon McGhee and Brittany McGhee (collectively, the “**Movants**”) for relief from the Automatic Stay pursuant to 11 U.S.C. § 362(d) [ECF No. 3545] (the “**Motion**” or “**Mot.**”). In support hereof, the Applicable Debtors respectfully represent:

PRELIMINARY STATEMENT

1. The Motion should be denied because the Movants do not, and cannot, meet their burden under Section 362 of the Bankruptcy Code to show cause to modify the stay. The Movants request that the Court modify the automatic stay to permit them to file a complaint

¹ The Debtors are the entities listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

against the Applicable Debtors for injuries allegedly suffered by Shannon McGhee in April 2011 while working at a Midland Trail mine as an employee of a third-party contractor.

2. The Movants have not even attempted to meet their burden of demonstrating that there is cause to lift the automatic stay. The Motion does not address any of the relevant factors that courts in this Circuit consider when deciding whether to lift the automatic stay. Instead, the Motion simply asserts that “[c]ause exists” to lift the stay. (Mot. ¶ 7.)

3. Nor could the Movants demonstrate cause for lifting the stay. The relevant factors considered by courts in this Circuit strongly favor keeping the stay in place. Most significantly, the Movants have not even filed a complaint against Patriot or Midland Trail. As a result, the “trial readiness” factor strongly favors leaving the stay in place. Courts routinely refuse to lift the automatic stay where the litigation has not yet reached the discovery stage. Here, the Movants have not even filed a complaint; accordingly, lifting the automatic stay would not promote judicial economy and would simply impose unnecessary defense costs on the Applicable Debtors’ estates. In short, none of the relevant factors favor lifting the stay.

4. The Movants’ suggestion that they would seek monetary damages exclusively from the Debtors’ insurance carrier overlooks the fact that the Debtors’ insurance policy for claims of this nature contains a \$500,000 deductible, for which the Applicable Debtors would likely be responsible.

5. Because the Movants have not met their burden of demonstrating cause to lift the automatic stay, and because the relevant factors strongly favor leaving the stay in place, this Court should deny the Motion.

BACKGROUND

6. On April 5, 2013, the Movants filed a motion in this Court for relief from the automatic stay. [ECF No. 3545] The Movants assert that they are prepared to file a complaint against the Applicable Debtors alleging that Movant Shannon McGhee was injured while working as an employee for a third-party mine labor contractor, Newhall Construction, at Midland Trail's BC No. 1 deep mine located in or near Campbell's Creek, Kanawha County, West Virginia. (Mot. ¶ 4; Ex. A ¶ 5.) The Movants further allege that Patriot "retains the right of control over Midland Trail's mining operations." (Mot., Ex. A ¶ 6.) Based on these factual allegations, the Movants claim that they plan to pursue claims against the Applicable Debtors for negligence, respondeat superior, and loss of consortium. (Mot. ¶ 3.) The Movants have attached a copy of the proposed complaint to their Motion. (Mot., Ex. A.)

7. The Movants assert in their Motion that, "[i]n the event that any monetary damages are awarded to Movants, Movants shall seek to collect only the proceeds of any applicable insurance policy and will not collect said monetary judgment from the assets of the bankruptcy estate without first filing a claim and applying to this Court." (Mot. ¶ 8.)

8. The Debtors' insurance policy for claims of this nature contains a \$500,000 deductible, which, under most circumstances, must be paid by the Debtors before the insurance will cover any monetary damages awarded against the Debtors, or defense costs incurred by the Debtors to defend themselves in a legal action. As a result, the Applicable Debtors' estates would be liable to cover up to \$500,000 before the Movants would be able to recover damages from the Debtors' insurance carrier.

ARGUMENT

A. Cause Does Not Exist to Lift the Stay

9. The automatic stay is a fundamental protection provided to debtors under the Bankruptcy Code. In re Montgomery, 262 B.R. 772, 774 (B.A.P. 8th Cir. 2001). The automatic stay is “designed to afford a debtor a breathing spell free from actions by creditors against the petitioner’s estate.” In re Briggs Transp. Co., 780 F.2d 1339, 1343 (8th Cir. 1985).

10. In order for a party to obtain relief from the automatic stay, it must first demonstrate that cause exists for the stay to be lifted. 11 U.S.C. § 362(d)(1); In re Blan, 237 B.R. 737, 739 (B.A.P. 8th Cir. 1999). Only after the movant makes such a showing does a party opposing the lifting of the automatic stay need to present support for keeping the stay in place. 11 U.S.C. §§ 362(d)(1), 362(g); In re Timmer, 423 B.R. 870, 875 (N.D. Iowa 2010); see also In re Boqdanovich, 292 F.3d 104, 110 (2d Cir. 2002); In re Busch, 294 B.R. 137, 140-41 (B.A.P. 10th Cir. 2003).

11. In determining whether there is “cause” to grant stay relief, the Court must balance the potential prejudice to the debtor and the debtor’s estate against the hardship to the moving party if it is not allowed to proceed in state court. Blan, 237 B.R. at 739; IRS v. Robinson (In re Robinson), 169 B.R. 356, 359 (E.D. Va. 1994); In re United Imports, Inc., 203 B.R. 162, 166 (Bankr. D. Neb. 1996); In re Marvin Johnson’s Auto Service, Inc., 192 B.R. 1008, 1014 (Bankr. N.D. Ala. 1996). Courts in this Circuit use several factors to balance the hardships, which include: (1) judicial economy; (2) trial readiness; (3) the resolution of preliminary bankruptcy issues; (4) the creditor’s chance of success on the merits; and (5) the cost of defense or other potential burden to the bankruptcy estate and the impact of the litigation on other creditors. Blan, 237 B.R. at 739; United Imports, 203 B.R. at 167; see also Sonnax Indus., Inc.

v. Tri Component Prods. Corp. (In re Sonnax Indus., Inc.), 907 F.2d 1280, 1286 (2d Cir. 1990) (listing twelve non-exclusive factors for courts to consider).

12. The Movants have not even attempted to meet their burden of demonstrating that cause exists to lift the automatic stay. Their Motion is devoid of any discussion of the relevant factors that courts consider to determine whether cause exists to lift the stay. Because the Movants have not even attempted to meet their burden of proving cause, the burden does not shift to the Debtors to justify maintaining the stay.

13. In any event, all of the relevant factors demonstrate conclusively that the stay should remain in place. Most significantly, the trial readiness factor weighs heavily in favor of keeping the stay in place. The Movants have not yet even filed a complaint against the Applicable Debtors. The Motion merely states that they are “prepared to file their Complaint against Debtor and Midland Trail Energy, LLC, in the Circuit Court of Kanawha, County, West Virginia.” (Mot. ¶ 4.) As a result, no discovery or pre-trial activities have taken place. Courts routinely refuse to lift the automatic stay at such a preliminary stage in the litigation. See In re Sonnax Indus., Inc., 907 F.2d at 1287 (declining to lift stay in part because “the litigation in state court has not progressed even to the discovery stage”); In re R.J. Groover Const., LLC, 411 B.R. 473, 478 (Bankr. S.D. Ga. 2008) (declining to lift stay where movants had not yet filed a complaint); Arnold Dev., Inc. v. Collins (In re Collins), 118 B.R. 35, 38 (Bankr. D. Md. 1990) (declining to lift stay where parties in state court proceeding had not yet begun discovery).

14. In addition, the factor concerning the cost of defense and effect on other creditors also weighs heavily in favor of leaving the stay in place. Given that this litigation is not yet underway, the Applicable Debtors would likely incur significant costs in defending against this

action. These costs would have a direct impact on other creditors by reducing the value of the Applicable Debtors' estates.

15. The Movants' suggestion that this action will not affect the bankruptcy estate is simply incorrect as a factual matter. The Movants state in the Motion that they shall "seek to collect only the proceeds of any applicable insurance policy and will not collect said monetary judgment from the assets of the bankruptcy estate without first filing a claim and applying to this Court." (Mot. ¶ 8.) However, the Movants are unlikely to be able to recover any damages from the Debtors' insurance carrier without decreasing the value of the Applicable Debtors' estates. The Debtors' insurance policy contains a \$500,000 deductible, which the Applicable Debtors would likely be required to satisfy before the Movants could pursue a claim for monetary damages against the insurer. As a result, the Movants are unlikely to be able to recover any monetary damages from Debtors' insurance carrier without reducing the value of the estates.

16. Nor do any of the other factors weigh in favor of lifting the stay. Lifting the stay would in no way promote judicial economy. Resolution of preliminary bankruptcy issues will have no bearing on the resolution of the Movants' putative claim. And the Movants have not even attempted to demonstrate a likelihood of success – a futile task precisely because the record here is limited to bare allegations in a threatened complaint.

CONCLUSION

For the foregoing reasons, the Motion should be denied.

Dated: May 14, 2013
New York, New York

Respectfully submitted,

/s/ Jonathan D. Martin

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SCHEDULE 1
(Debtor Entities)

1. Affinity Mining Company
2. Apogee Coal Company, LLC
3. Appalachia Mine Services, LLC
4. Beaver Dam Coal Company, LLC
5. Big Eagle, LLC
6. Big Eagle Rail, LLC
7. Black Stallion Coal Company, LLC
8. Black Walnut Coal Company
9. Bluegrass Mine Services, LLC
10. Brook Trout Coal, LLC
11. Catenary Coal Company, LLC
12. Central States Coal Reserves of Kentucky, LLC
13. Charles Coal Company, LLC
14. Cleaton Coal Company
15. Coal Clean LLC
16. Coal Properties, LLC
17. Coal Reserve Holding Limited Liability Company No. 2
18. Colony Bay Coal Company
19. Cook Mountain Coal Company, LLC
20. Corydon Resources LLC
21. Coventry Mining Services, LLC
22. Coyote Coal Company LLC
23. Cub Branch Coal Company LLC
24. Dakota LLC
25. Day LLC
26. Dixon Mining Company, LLC
27. Dodge Hill Holding JV, LLC
28. Dodge Hill Mining Company, LLC
29. Dodge Hill of Kentucky, LLC
30. EACC Camps, Inc.
31. Eastern Associated Coal, LLC
32. Eastern Coal Company, LLC
33. Eastern Royalty, LLC
34. Emerald Processing, L.L.C.
35. Gateway Eagle Coal Company, LLC
36. Grand Eagle Mining, LLC
37. Heritage Coal Company LLC
38. Highland Mining Company, LLC
39. Hillside Mining Company
40. Hobet Mining, LLC
41. Indian Hill Company LLC
42. Infinity Coal Sales, LLC
43. Interior Holdings, LLC
44. IO Coal LLC
45. Jarrell's Branch Coal Company
46. Jupiter Holdings LLC
47. Kanawha Eagle Coal, LLC
48. Kanawha River Ventures I, LLC
49. Kanawha River Ventures II, LLC
50. Kanawha River Ventures III, LLC
51. KE Ventures, LLC
52. Little Creek LLC
53. Logan Fork Coal Company
54. Magnum Coal Company LLC
55. Magnum Coal Sales LLC
56. Martinka Coal Company, LLC
57. Midland Trail Energy LLC
58. Midwest Coal Resources II, LLC
59. Mountain View Coal Company, LLC
60. New Trout Coal Holdings II, LLC
61. Newtown Energy, Inc.
62. North Page Coal Corp.
63. Ohio County Coal Company, LLC
64. Panther LLC
65. Patriot Beaver Dam Holdings, LLC
66. Patriot Coal Company, L.P.
67. Patriot Coal Corporation
68. Patriot Coal Sales LLC
69. Patriot Coal Services LLC
70. Patriot Leasing Company LLC
71. Patriot Midwest Holdings, LLC
72. Patriot Reserve Holdings, LLC
73. Patriot Trading LLC
74. PCX Enterprises, Inc.
75. Pine Ridge Coal Company, LLC
76. Pond Creek Land Resources, LLC
77. Pond Fork Processing LLC
78. Remington Holdings LLC
79. Remington II LLC
80. Remington LLC
81. Rivers Edge Mining, Inc.
82. Robin Land Company, LLC
83. Sentry Mining, LLC
84. Snowberry Land Company
85. Speed Mining LLC
86. Sterling Smokeless Coal Company, LLC
87. TC Sales Company, LLC
88. The Presidents Energy Company LLC
89. Thunderhill Coal LLC
90. Trout Coal Holdings, LLC
91. Union County Coal Co., LLC
92. Viper LLC
93. Weatherby Processing LLC
94. Wildcat Energy LLC
95. Wildcat, LLC
96. Will Scarlet Properties LLC
97. Winchester LLC
98. Winifrede Dock Limited Liability Company
99. Yankeetown Dock, LLC