

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:
June 18, 2013 at 10:00 a.m. (prevailing
Central Time)

Hearing Location:
Courtroom 7 North

Re: ECF No. 4051

**DEBTORS' OBJECTION TO THE MOTION OF MARY BOWLES AND CERTAIN
OTHER PLAINTIFFS FOR RELIEF FROM AUTOMATIC STAY**

Debtors Patriot Coal Corporation (“**Patriot**”), Pine Ridge Coal Company, LLC (“**Pine Ridge**”) and Heritage Coal Company, LLC (“**Heritage**,” and together with Patriot and Pine Ridge, the “**Applicable Debtors**”) respectfully submit this objection to the Motion of Mary Bowles and all of the other plaintiffs (collectively, the “**Movants**”) in the matter of *Mary Bowles, individually, and as Parent and Guardian of D.W.C., a minor, et al. v. Massey Energy Co., et al.*, Civil Action No. 09-C-212, that was filed in the Circuit Court of Boone County, West Virginia (the “**State Court Action**”) for relief from the Automatic Stay pursuant to 11 U.S.C. § 362(d) [ECF No. 4051] (the “**Motion**” or “**Mot.**”). In support hereof, the Applicable Debtors respectfully represent:

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.

PRELIMINARY STATEMENT

1. The Motion should be denied because Movants do not, and cannot, meet their burden under Section 362 of the Bankruptcy Code to show cause to modify the stay. Movants request that this Court modify the automatic stay to permit them to file a complaint against the Applicable Debtors' insurance providers to enforce a settlement agreement that Movants and the Applicable Debtors signed on June 25, 2010 to resolve the State Court Action (the "**Settlement Agreement**").

2. The factors that courts in this Circuit consider when deciding whether to lift the automatic stay strongly favor keeping the stay in place.

3. First, the proposed action is far from being trial-ready because Movants have not even filed an action against the Applicable Debtors' insurers. Second, Movants are unlikely to succeed on the merits of their proposed action because they seek to enforce the Settlement Agreement—which was an agreement between Movants and the Applicable Debtors—against the Applicable Debtors' insurers, which were not parties to the Settlement Agreement and did not agree to its terms. Third, any action against the Applicable Debtors' insurers would result in even greater claims against the Applicable Debtors' estates because the Applicable Debtors have agreed to defend and indemnify the insurance providers in connection with claims that may arise out of or relate to the State Court Action. Any action brought by Movants to enforce the Settlement Agreement against the Applicable Debtors' insurers would create claims against the Applicable Debtors' estates for the insurers' defense costs.

4. Because 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

5. In 2009, Movants filed the State Court Action alleging, *inter alia*, that the Applicable Debtors and their predecessors caused personal injuries and property damage by exposing Movants to various toxic substances.

6. On June 25, 2010, Movants entered into the Settlement Agreement with the Applicable Debtors and third-party defendant AK Steel Corporation (“**AKS**”) whereby Movants agreed to release the Applicable Debtors and AKS from all liability for all claims in exchange for a confidential monetary payment. (Ex. A.)

7. As part of the Settlement Agreement, Movants retained Garretson Firm Resolution Group Inc. to obtain releases from the Centers for Medicare and Medicaid Services for all expenses paid by them as a result of Movants’ alleged medical or psychological injuries arising from the allegations in the State Court Action (the “**Medicare Payments**”), and the Applicable Debtors and AKS agreed to pay Movants an additional sum of Forty Thousand Dollars (\$40,000.00) for use in obtaining such releases.²

8. None of the Applicable Debtors’ insurers are signatories to the Settlement Agreement. Nor are they listed as being among the parties that have agreed to the terms of the Settlement Agreement. The Settlement Agreement clearly states that it is “the Plaintiffs, the Patriot Defendants and AKS, in consideration of their mutual representations and promises” that agreed to the terms set forth in the agreement.

9. On November 17, 2011, the state court entered a final order approving the settlement between Movants and the Applicable Debtors.

² The Settlement Agreement limited AKS’s contribution for the Medicare Payments to \$2,720.00.

10. The Applicable Debtors have entered into certain settlement agreements (the “**Insurance Settlement Agreements**”) with the following insurance providers: Commerce and Industry Insurance Company, Chartis Specialty Insurance Company f/k/a American International Specialty Lines Insurance Company, New Hampshire Insurance Company, Lexington Insurance Company, and National Union Fire Insurance Company of Pittsburgh, PA (collectively, the “**Chartis-related Insurers**”) (Ex. B); Arkwright-Boston Manufacturers Mutual Insurance (“**Arkwright**”) (Ex. C); Continental Insurance Company (“**Continental**”) (Ex. D); and Old Republic Insurance Company (“**Old Republic**,” and collectively, the “**Settling Insurers**”) (Ex. E).

11. As part of each Insurance Settlement Agreement, the Applicable Debtors agreed to release the applicable Settling Insurer from any and all past, present or future claims, duties, causes of action, demands, obligations, liabilities, rights, and damages of any kind that arise out of or relate to the Applicable Debtors’ claims for defense and indemnification in connection with the State Court Action. The Applicable Debtors further agreed to defend, indemnify and hold harmless the Settling Insurers with respect to any and all claims relating to or arising from the State Court Action.

12. As a result of the settlement agreements between the Applicable Debtors and the Settling Insurers, the state court so ordered stipulations for dismissal for each of the Settling Insurers, which had been joined in the State Court Action as third-party defendants, from the State Court Action.

ARGUMENT

A. Cause Does Not Exist to Lift the Stay

13. 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).

14. 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).

15. 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 nonexclusive factors for courts to consider).

16. Movants have failed to demonstrate cause for lifting the stay because they do not, and cannot, show that the relevant factors favor lifting the stay.

17. First, the trial-readiness and judicial-economy factors weigh heavily in favor of keeping the stay in place. Movants have not yet filed a complaint against the Applicable Debtors' insurers. 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).

18. Second, the likelihood-of-success factor strongly favors keeping the stay in place. Movants are unlikely to succeed on their claims, which seek to enforce the Settlement Agreement against insurance companies that were not parties to the Settlement Agreement. See EEOC v. Waffle House, Inc., 534 U.S. 279, 294 (2002) ("It goes without saying that a contract cannot bind a nonparty."); Retro Television Network, Inc. v. Luken Commc'ns, LLC, 696 F.3d 766, 769 (8th Cir. 2012) ("As a general rule, a contract's obligations do not extend to nonparties to the contract."); Rockney v. Blohorn, 877 F.2d 637, 644 (8th Cir. 1989) ("[R]equiring these defendants to make payments would be contrary to well established contract law principles" because defendants were not party to the contract and never accepted personal responsibility).

19. Furthermore, because the Applicable Debtors have agreed to defend and indemnify the Settling Insurers in connection with claims that arise out of the State Court Action, any attempt by Movants to pursue their claims against the Applicable Debtors' insurers would just create additional claims against the Applicable Debtors' estates for the insurers' cost of defense. As a result, the impact of the litigation on other creditors favors leaving the stay in place.

CONCLUSION

For the foregoing reasons, the Motion should be denied.

Dated: June 11, 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

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SUMMARY OF EXHIBITS

The following exhibits (the “**Exhibits**”) referenced in the Debtors’ Objection to the Motion of Mary Bowles and Certain Other Plaintiffs for Relief From Automatic Stay (the “**Objection**”) ¹ will be served on the Court, the office of the U.S. Trustee, counsel to the official committee of unsecured creditors, counsel to the administrative agents for the Debtors’ postpetition lenders, and counsel to Mary Bowles and all of the other plaintiffs in the State Court Action: ²

- Exhibit A: A true and correct copy of a June 25, 2010 confidential settlement agreement between the plaintiffs in the consolidated action *Mary Bowles, individually, and as Parent and Guardian of D.W.C., a minor, et al. v. Massey Energy Co., et al.*, Civil Action No. 09-C-212, filed in the Circuit Court of Boone County, the Applicable Debtors, and third-party defendant AK Steel Corporation.
- Exhibit B: A redacted true and correct copy of a January 4, 2011 settlement agreement and release between the Chartis-related Insurers and the Applicable Debtors.

¹ Capitalized terms not defined herein have the meaning ascribed to them in the Objection.

² The Exhibits have been redacted to protect the Debtors’ confidential information and pursuant to the confidentiality provisions in the Exhibits concerning the dissemination of the Exhibits.

Exhibit C: A redacted true and correct copy of a November 18, 2011 confidential settlement agreement and release between Arkwright and the Applicable Debtors.

Exhibit D: A redacted true and correct copy of a February 7, 2012 confidential settlement agreement and release between Continental and the Applicable Debtors.

Exhibit E: A redacted true and correct copy of a January 4, 2011 confidential settlement agreement and release between Old Republic and the Applicable Debtors.

Dated: June 11, 2013
New York, New York

Respectfully submitted,

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