IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re: **PATRIOT COAL CORPORATION, *et al*.,** **Debtors.**	**Chapter 11** **Case No. 12-51502-659** **(Jointly Administered)** Related to Docket No. 5153 Hearing Date: January 28, 2014 Hearing Time: 10:00 a.m. Central Location: Courtroom 7-N, St. Louis

REORGANIZED DEBTORS' RESPONSE IN OPPOSITION TO PETTRY CLAIMANTS' MOTION FOR RECONSIDERATION OF ORDER SUSTAINING SEVENTEENTH OMNIBUS OBJECTION TO CLAIMS
(Pettry Litigation Claims)

Patriot Coal Corporation and its affiliates (the "Reorganized Debtors") respectfully submit this Response in opposition to the Pettry Claimants' Motion for Reconsideration of Order Sustaining Debtors' Seventeenth Omnibus Objection to Claims [Dkt. No. 5153] (the "Motion"). For the following reasons, the Court should exercise its discretion, reject the Pettry Claimants' efforts to reargue matters litigated previously, and deny the Motion.

Preliminary Statement

The issues raised in the Motion by the Pettry Claimants were briefed in September and October, argued at length at a hearing on October 22, and resolved in an order entered by the Court on November 8 [Dkt. No. 4977]. Because the Pettry Claimants did not appeal, the Court's order is final, and the claims of the Pettry Claimants—totaling more than $10 million in face amount—have been disallowed.

The Pettry Claimants now seek reconsideration of the disallowance of their claims under Section 502(j) of the Bankruptcy Code, which requires a showing of "cause." But nothing has changed—not the facts, not the procedural circumstances, and not even the arguments of the Pettry Claimants. The Pettry Claimants simply reargue the points that they made, and the Court rejected, only a few months ago.

The Court's decision on a motion for reconsideration under Section 502(j) is discretionary. *See, e.g., In re Mathiason*, 16 F.3d 234, 239 (8th Cir. 1994); *In re Payless Cashways, Inc.*, 230 B.R. 120, 138 (B.A.P. 8th Cir. 1999). Because the Pettry Claimants have not identified any legitimate reason for the Court to reverse its recent decision to disallow their claims, the Court should exercise its discretion to deny the Motion.

No Hearing is Required

The Pettry Claimants argue that they are "entitled to a hearing" on their Motion (Motion at 3). That is not correct. Section 102(1) of the Bankruptcy Code provides that "after notice and a hearing," or a similar phrase (such as "after a hearing on notice" in Federal Rule of Bankruptcy Procedure 3008), means after "such opportunity for a hearing as is appropriate in the particular circumstances." 11 U.S.C. § 102(1)(A). A court is not required to hold another hearing to address issues that have already been heard and argued. *See, e.g., In re Behrens*, 501 B.R. 351, 356 (B.A.P. 8th Cir. 2013); *In re Kujawa*, 224 B.R. 104, 107-08 (E.D. Mo. 1998). As discussed below, the issues raised in the Motion are neither new nor substantial. The Court, therefore, may and should deny the Motion without a hearing.

The Court's Order Disallowing the Claims Is Not Void

The Pettry Claimants acknowledge that Federal Rule of Civil Procedure 60(b) "is a guide" for a Rule 502(j) motion (Motion at 3). In fact, Rule 60(b) is more than merely helpful in this context; it "helps to define the term 'cause' in § 502(j) and provides the applicable criteria for reconsidering claims." *Payless Cashways*, 230 B.R. at 137. In an apparent effort to invoke Rule 60(b)(4), the Pettry Claimants argue that the Court's order disallowing their claims is void (Motion at 4, 6). This argument is patently frivolous.

The Pettry Claimants identify only three bases for claiming that the order is void: first, that the Court "refus[ed] to acknowledge the West Virginia state court's violation of the automatic stay" (Motion at 4); second, that the Court's rulings were "conclusory" (Motion at 6); and third, that the Court's conclusions "stand in stark contrast to well-settled bankruptcy law" (*id.*). Even if all three of these contentions were accurate—and none of them is—that would demonstrate, at most, that the Court had erred. But a judgment is not void simply because it may be erroneous. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010). Relief under Rule 60(b)(4) is available "only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." *Id.* The Pettry Claimants do not contend that any such deficiency is present here. Accordingly, their request for reconsideration must be rejected to the extent that it relies on Rule 60(b)(4).

The Pettry Claimants May Not Obtain Relief by Rearguing the Merits

A Rule 60(b) motion "is not a vehicle for simple reargument on the merits." *Broadway v. Norris*, 193 F.3d 987, 990 (8th Cir. 1999). A motion under Rule 60(b)(4) or 60(b)(6) may not be

used "as a substitute for a timely appeal of a judgment." *Hunter v. Underwood*, 362 F.3d 468, 475 (8th Cir. 2004). Yet that is precisely what the Pettry Claimants attempt in the Motion.

Each of the "five conclusory rulings" about which the Pettry Claimants complain was addressed in the briefing, in oral argument, or in the Court's written decision disallowing the claims at issue. The Court need not consider the merits of the objection to the Pettry Claimants' claims again, because the Motion should be denied on the ground that it is merely repetitive. *See Broadway*, 193 F.3d at 990 (holding that mere reargument is a sufficient ground for a determination that lower court did not abuse its discretion in denying Rule 60(b) motion); *In re El Dorado Ice & Coal Co.*, 290 F. 180, 181 (8th Cir. 1923) (affirming denial of reconsideration where questions of law were considered previously in allowance proceedings and no appeal was taken).

The Court Correctly Disallowed the Claims

None of the five issues identified by the Pettry Claimants in the Motion has merit. Each is discussed briefly below.

1. The Pettry Claimants argue that this Court ignored an "intentional violation of its automatic stay order by the West Virginia state court that was in clear contravention of federal bankruptcy law" (Motion at 4). For the reasons discussed next, there was no violation of the automatic stay, and thus the Court did not ignore one.

2. The Pettry Claimants take issue with the Court's conclusion that the stay did not apply to the state court's dismissal of their claims (Motion at 4). But controlling Eighth Circuit authority—ignored by the Pettry Claimants—provides that a bankruptcy court "does not have the power to preclude another court from dismissing a case on its docket or to affect the handling of

a case in a manner not inconsistent with the purpose of the automatic stay." *Dennis v. A.H. Robins Co.*, 860 F.2d 871, 872 (8th Cir. 1988). *Vierkant*, which the Pettry Claimants have cited repeatedly in this dispute, involved very different facts. The state court in that case entered a default judgment *against* the debtor post-petition, and that action plainly is inconsistent with the purpose of the stay. *See In re Vierkant*, 240 B.R. 317, 319 (B.A.P. 8th Cir. 1999). The same distinction applies to *Farley v. Henson*, 2 F.3d 273 (8th Cir. 1993), also cited by the Pettry Claimants. Interpreting the automatic stay to apply to a debtor's appeal of an adverse pre-petition judgment is consistent with the "breathing spell" aspect of the stay, for it relieves the debtor of the burden of pursuing an appeal immediately. *See In re Hoffinger Industries, Inc.*, 329 F.3d 948, 952 (8th Cir. 2003); 11 U.S.C. § 108(c). But *Farley* has no bearing on a state court's dismissal of a creditor's claims on the merits. The Court correctly concluded that the automatic stay did not apply in the circumstances present here.

3. The Pettry Claimants also argue that the Court erroneously determined that a state court cannot determine "whether and to what extent the automatic stay applies" (Motion at 5). But they follow this assertion with a *non sequitur*, arguing that a state court cannot grant *relief* from the automatic stay (*id.*). These two issues are obviously distinct, and the state court did not purport to grant any party relief from the automatic stay.[1] Both the bankruptcy court and the non-bankruptcy court in which litigation is pending have jurisdiction to determine whether the stay is applicable. *See, e.g., In re Baldwin-United Corp. Litigation*, 765 F.2d 343, 347 (2d Cir. 1985); *Brock v. Morysville Body Works, Inc.*, 829 F.2d 383, 387 (3d Cir. 1987); *Hunt v. Bankers*

[1] The Pettry Claimants also complain that the automatic stay was implicated because "non-debtor defendants had alleged cross claims for indemnity and contribution against Debtor Eastern" (Motion at 5). This, quite simply, is not a matter about which the Pettry Claimants have standing to complain. In any event, because the state court dismissed the Pettry Claimants' claims against all defendants, the contingent cross-claims are now meaningless.

Trust Co., 799 F.2d 1060, 1069 (5th Cir. 1986). Indeed, state courts interpret and apply the automatic stay regularly in the course of handling civil, criminal, and family-law cases, just as they interpret other matters of federal constitutional and statutory law that apply to cases arising under state law.

4. Fourth, the Pettry Claimants complain that the Court "completely ignored the long-established exception" to the *Rooker-Feldman* doctrine that applies if the state court lacks jurisdiction (Motion at 5-6). But the Pettry Claimants have never identified any problem with the state court's subject-matter jurisdiction over the litigation that they filed more than 11 years ago. Their only jurisdictional argument is that the state court did not have jurisdiction to interpret the automatic stay. For the reasons discussed immediately above, they are incorrect on that point, and thus the Court did not ignore any relevant issue. The state court's dismissal is consistent with the automatic stay, as the Eighth Circuit ruled in *Dennis*, and both *res judicata* and the *Rooker-Feldman* doctrine bar this Court from resolving the merits of the litigation in a manner different than the state court did. *See In re Phillips*, 500 B.R. 570, 577 (B.A.P. 8th Cir. 2013) (holding that *Rooker-Feldman* doctrine precluded bankruptcy court from undermining state court's judgment against debtor's affiliates).

5. Finally, the Pettry Claimants repeat their procedural argument that the Reorganized Debtors were obligated to object to their claims individually, rather than in an omnibus objection, or perhaps to file an adversary proceeding (Motion at 6). For the reasons explained in the Reorganized Debtors' earlier papers, Rule 7001 does not require an adversary proceeding in this context, and the Court has previously authorized the Reorganized Debtors to file omnibus objections to claims that "seek recovery of amounts for which the Debtors are not liable" [Dkt. No. 3021].

The Equities of the Case Are Irrelevant

Section 502(j) permits a claim to be allowed or disallowed "according to the equities of the case." The equities do not, in fact, favor the Pettry Claimants, who have had a full and fair opportunity to address the Reorganized Debtors' objection to their claims and whose litigation in state court has been dismissed on the merits. But in any event, the Pettry Claimants must cross several thresholds before they may argue the equities. First they must establish that the Court should grant reconsideration "for cause," which they have not done. 11 U.S.C. § 502(j). In addition, as Judge Barta has held, the equitable reasons proffered in support of allowance or disallowance "should first be subjected to a review under the appropriate law." *In re FERCO Fabricators, Inc.*, 153 B.R. 40, 43 (Bankr. E.D. Mo. 1993). For all of the reasons discussed in this proceeding to date, the Pettry Claimants' claims are "unenforceable against the debtor and property of the debtor, under … applicable law." 11 U.S.C. § 502(b)(1); *see also* 28 U.S.C. § 1738 (requiring state court's decision to be given full faith and credit). The claims thus cannot be allowed.

Conclusion

For these reasons, the Motion is not meritorious, and it should be denied.

Dated: January 7, 2014
St. Louis, Missouri

Respectfully submitted,

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