

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

PATRIOT COAL CORPORATION, et al.,

Debtors¹

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

**OBJECTION TO DEBTORS' MOTION TO REJECT
COLLECTIVE BARGAINING AGREEMENTS AND TO MODIFY
RETIREE BENEFIT PURSUANT TO SECTIONS 1113 AND 1114
OF THE BANKRUPTCY CODE**

Cliffs Natural Resources Inc. ("CNR"), Oak Grove Resources, LLC ("Oak Grove") and Pinnacle Mining Company, LLC ("Pinnacle," and together with CNR and Oak Grove, "Cliffs"), by and through their undersigned attorneys, hereby object ("Objection") to *Debtors' Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefit Pursuant to Sections 1113 and 1114 of the Bankruptcy Code* [Docket No. 3214] ("Motion") and hereby joins in and responds in support of Drummond Company, Inc's ("Drummond") *Objection to Debtors' Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefit Pursuant to Sections 1113 and 1114 of the Bankruptcy Code* [Docket No. 3585] and Energy West Mining Company's ("Energy West") *Objection to Debtors' Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefit Pursuant to Sections 1113 and 1114 of the Bankruptcy Code* [Docket No. 3586] (collectively, the "Competitors' Objections").² In support of this Objection, Cliffs hereby states the following:

¹ The Debtors are the entities listed on Schedule 1 attached to the Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§113, 1114 of the Bankruptcy Code.

² Capitalized terms used herein not otherwise defined shall have the meanings ascribed thereto in the Competitors' Objections.

STATEMENT OF POSITION

The Court should deny the Motion because Debtors seek to cease contributing to (and withdraw from without meeting their withdrawal liability) the multiemployer pension plan known as the United Mine Workers of America (“UMWA”) 1974 Pension Plan (“1974 Plan” or “Plan”); Debtors have failed to show that rejection of their accrued and ongoing 1974 Plan obligations is necessary to their reorganization; and Debtors fail to treat all affected parties fairly and equitably as required by the Bankruptcy Code. If Debtors are permitted to evade their financial obligations pursuant to the 1974 Plan, the remaining contributing employers, including Cliffs, will be left to absorb the Debtors’ obligations (in Cliffs’ case the amount of additional new liability is estimated to exceed \$100 million), creating a substantial financial burden on all of these employers. The potential for domino effect is unmistakable.

Moreover, the other employers who contribute to the 1974 Plan are Debtors’ competitors who possess not only 1974 Plan obligations, but also other pension and health contribution obligations pursuant to applicable collective bargaining agreements. Indeed, if Debtors’ Motion is granted, they would reduce their operating costs while at the same time increase their competitors’ costs. Debtors should not be permitted to utilize sections 1113 and 1114 to avoid their 1974 Plan obligations to the detriment of all affected parties and effectuate a commercial windfall at the expense of their vigorous competitors. Other avenues exist through which Debtors may reorganize without harming affected parties or placing the 1974 Plan in jeopardy. The Court should deny the Motion.

FACTS SPECIFIC TO CLIFFS

Cliffs generally joins in the facts expressed in the Competitors’ Objections as an accurate and correct statement of the salient facts relevant to the Motion, rejection of the 1974 Plan and the Debtors’ workforce obligations.

However, Cliffs feels compelled to notify the Court that the Debtors' proposed plan flies in the face of fairness and equity as the 1974 Plan is already underfunded, in large part to the Debtors' underfunding (as the second largest participant in the 1974 Plan), and the liability falling back on Cliffs and its affiliates is projected to exceed \$100 million if the Motion is granted. This is liability Cliffs does not take lightly or give charitably.

Moreover, Cliffs has identified that the Debtors' plan in the Motion has the potential to also push material retiree medical costs to Cliffs and other competitors.

It is undeniable that this action is being used by the Debtors as a sword to damage its competitors rather than engaging in good faith negotiations with the UMWA and other affected parties to find a way to effectively reorganize while preserving the 1974 Plan.

STANDING UNDER SECTION 1113(d)(1)

Pursuant to Section 1109(b), Cliffs has standing to be heard on this matter under Section 1113(d)(1) of the Bankruptcy Code. Section 1113(d)(1) permits all "interested parties" to "appear and be heard" at a hearing of a debtor's motion to reject a collective bargaining agreement. *See* 11 U.S.C. §1113(d)(1). Although not defined by the Bankruptcy Code, the Seventh Circuit in *In re UAL Corp.*, held that an "interested party" under Section 1113(d)(1) is a "party to a collective bargaining agreement or a *guarantor of that contract.*" 408 F.3d 847, 851 (7th Cir. 2005) (emphasis added).

When a debtor is permitted to withdraw from a multiemployer pension plan ("MEPP") without satisfying its obligation to pay its share of unfunded liability, the remaining contributing employers are left with the financial responsibility of the debtors' unpaid withdrawal liability. In effect, the remaining employers are the guarantors of the withdrawing debtors' obligations pursuant to the applicable collective bargaining agreement.

If Debtors exit the 1974 Plan without assuming responsibility for their proportionate share of unfunded vested benefits, Cliffs and the other contributing employers must take on Debtors' obligations to ensure continuation of the Plan. As such, Cliffs is a guarantor of the 1974 Plan and thus, is an affected party and has a right to appear and be heard under Section 1113(d)(1) on Debtors' Motion to reject their collective bargaining agreements.

ARGUMENT AND JOINDER TO COMPETITORS OBJECTIONS

Cliffs again acknowledges the factual recitations and arguments expressed by Drummond and Energy West in the Competitors' Objections, and joins in their statements and arguments entirely (with the exception that Cliffs is an affected party and not additionally a creditor at the time of the filing of this Objection).

In addition to the arguments in the Competitors' Objections, Cliffs believes that the requirements of Section 1113(c) for this Court to approve the Motion over the objections of affected parties cannot be met by the Debtors. Specifically,

1. the obvious negative response to the Motion demonstrates that the proposal submitted by the Debtors is not considered fair and equitable to affected parties, including Cliffs;
2. no consent of the employees has been given; and
3. as stated above, and in the other objections, including the Competitors' Objections, a balance of the equities does not support granting the Motion, rejection of the collective bargaining agreements with the UMWA or the Debtors' withdrawal from the 1974 Plan.

Before a Chapter 11 debtor may reject its collective bargaining agreement, it must satisfy several requirements, including demonstrating that its proposed rejections and modifications are "necessary to permit the reorganization." *See* 11 U.S.C. 1113(b)(1)(A); *see, generally, United Food & Commercial Workers Union v. Family Snacks, Inc. (In re Family Snacks)*, 257 B.R. 884, 892 (B.A.P. 8th Cir. 2001). As stated more robustly in the Competitors' Objections, the Motion

should be denied due to the fact that the withdrawal from the 1974 Plan fails to treat all affected parties fairly and equitably makes it unlikely needed to permit reorganization. The balance of the equities fails to be met, and denial of the Motion is needed.

The brevity of this Objection should not be construed as any lack of conviction. The denial of Debtors' Motion is critical because Debtors have failed to show that rejection of 1974 Plan obligations is necessary to their reorganization and other avenues exist through which Debtors may reorganize without harming their competitors or placing the 1974 Plan in jeopardy. Therefore, Debtors' Motion should be denied.

RESERVATION OF RIGHTS

Cliffs reserves the right to amend, supplement, and/or otherwise modify this Objection as it deems necessary and/or proper.

WHEREFORE, for the reasons set forth herein, Cliffs respectfully requests that this Court (1) deny Debtors' Motion; and (2) grant such other and further relief as the Court deems appropriate.

Dated: April 12, 2013

Respectfully submitted,

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Pro Hac Vices Pending

*Attorneys for Cliffs Natural Resources Inc.,
Oak Grove Resources, LLC, and Pinnacle
Mining Company, LLC.*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed with the Clerk of Court this 12th day of April, 2013, and was served electronically by operation of the Court's CM/ECF system upon the parties receiving electronic service.

/s/ Bryan D. LeMoine_____