

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

In Re:) Chapter 11
) Case No. 12-51502-659
PATRIOT COAL CORPORATION,) Jointly Administered
et al.,) Honorable Kathy Surratt-States
 Debtors.)
) Hearing Date: June 18, 2013
) Hearing Time: 10:00 a.m.

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

COME NOW Mary Bowles and all of the other plaintiffs (collectively the “Movants”) in the consolidated lawsuit styled, 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”)¹ and for their Motion for Relief from the Automatic Stay (“Motion”) state to the Court as follows:

1. On or about, July 9, 2012, Debtor Patriot Coal Corporation and numerous affiliated entities filed petitions in bankruptcy under Chapter 11 in the United States Bankruptcy Court for the Southern District of New York. These cases, all administratively consolidated, were recently transferred to the United States Bankruptcy Court for the Eastern District of Missouri.
2. Movants bring this Motion to terminate, annul, or modify the automatic stay pursuant to 11 U.S.C. § 362(d), over which this Court has jurisdiction as a core matter pursuant to 28 U.S.C. §157(b)(2)(G).
3. In 2009, Movants filed the State Court Action claiming, in part, that the defendants, which included Patriot Coal Company, Pine Ridge Coal Company, LLC and Heritage

¹ There are approximately 350 plaintiffs in the State Court Action

Coal Company, LLC² and their predecessors (collectively the “Debtor Defendants”), caused personal injuries and property damage by exposing Movants to various toxic substances.

4. In June of 2010, the State Court Action was settled.³ As part of the settlement, the Debtor Defendants and their insurers are required to fund certain payments, which total less than the sum of \$40,000 (the “Medicare Payments”) to a third party entity, which was employed by Movants to adjust, resolve and pay any required Medicare liens or reimbursements. All components of the settlement were resolved prior to the filing of these bankruptcy cases, except for the funding of the Medicare Payments and possibly other miscellaneous loose ends relating thereto.
5. In order to complete the settlement, Movants wish to pursue their claims to recover the Medicare Payments and, in connection therewith, to pursue payment which is to be funded by Debtor Defendants’ insurance company or companies. Movants have no intention to pursue collection action against any of the Debtors in these cases, except that Movants seek to assert an unsecured claim against Debtor Defendants to the extent any Medicare Payments are not covered by insurance (although Movants believe insurance will cover the entire sum) which would be paid or payable along with other unsecured claims in these cases.⁴

² These three entities are among the many entities that are debtors in these administratively consolidated cases.

³ A confidentiality agreement restricts the disclosure of the specific terms of the settlement and the documents related thereto. As a result, if Movants are requested or required to produce such documents, Movants might be required to file them under seal; and any disclosure of any terms of the settlement would have to be restricted in accordance with the terms of the confidentiality agreement and court order.

⁴ Consistent with the procedures established by the Debtors for stay relief, Movants requested that Debtors enter into the form Stipulation for Relief from the Automatic Stay whereby Movants would seek recovery only against insurance, but Debtors refused. Consequently, as Movants have to go through the task of litigating stay relief, Movants now seek an unsecured claim to the extent that insurance does not pay the entire Medicare reimbursement.

6. Section 362(d) of the United States Bankruptcy Code, 11 U.S.C. §§101 *et seq.* requires relief from the automatic stay for cause by terminating, annulling, modifying or conditioning such stay. See 11 U.S.C. §362(d)(1).
7. Whether relief from the automatic stay should be granted to allow Movants to proceed with the State Court Action or the settlement arising therefrom requires a balancing of “the potential prejudice to the debtor, to the bankruptcy estate, and to the other creditors against the hardship to the moving party if it is not allowed to proceed in state court.” *In re Wiley*, 288 B.R. 818, 822 (8th Cir. BAP 2003).
8. The factors pertinent to this Court’s inquiry are: “(1) judicial economy; (2) trial readiness; (3) the resolution of preliminary bankruptcy issues; (4) the creditor’s chance of success on the merits; (5) the cost of defense or other potential burden to the bankruptcy estate and the impact of the litigation on other creditors.” *Id.*
9. All factors in the present matter favor granting relief for Movants to proceed with the State Court Action and the collection, resolution and distribution of the Medicare Payments. Movants are prepared to proceed forward with finalizing this settlement. Trial readiness is not an issue as the remaining issues are essentially “loose ends” to deal with the few remaining tasks. There are little or no bankruptcy issues involved. Movants have a strong likelihood of prevailing on enforcing the settlement for the Medicare Payments. The cost or expense to Debtors is nominal, as the insurance company or companies are believed to be the entities funding the Medicare Payments and the associated fees and expenses relating thereto. In fact, the fees and costs that Debtors will incur in defending this Motion could be almost as much as the

cost of the nominal Medicare liens.⁵ Personal injury actions are not subject to this Court's jurisdiction. To the extent that matters are not fully resolved voluntarily, the state court, if called upon, is better suited to resolve any issues. Lastly, considerable hardship and prejudice will be sustained by Movants if they cannot resolve any Medicare liens and reimbursable payments.

10. Relief from the automatic stay will promote judicial economy and efficiency in that a decision, to the extent one is required, by the state court, which already has familiarity with the parties and the facts regarding the State Court Action, will allow the Movants to avoid relitigating issues in the present bankruptcy cases.
11. For the reasons set forth above, cause exists for granting relief from the automatic stay pursuant to §362(d)(1) of the United States Bankruptcy Code.
12. Movants also request that the order granting relief herein waive the requirement for finality of orders for relief from stay of Federal Rule of Bankruptcy 4001 and be final upon its entry upon this Court's docket so that it can proceed with the pursuit of the Medicare Payments without delay.
13. Movants have requested that Debtors voluntarily agree to a Stipulated Order so that Movants can proceed forward.
14. WHEREFORE, the Movants pray this Honorable Court enter an order (a) lifting the automatic stay with respect to the pursuit of the Medicare Payments, as described hereinabove; (b) authorizing Movants to litigate to final judgment or settlement all of

⁵ Debtors have advised Movants that the reason for the refusal of a Stipulation is that Debtors are allegedly obligated to indemnify the insurance company for the Medicare liens and possibly some fees. Irrespective of whether this is true, it is irrelevant. Movants have the right to obtain recovery through the third party insurers. If Debtors incur any costs through any indemnification agreement, they are likely pre-petition claims. Even if they are post-petition expenses, these costs will have to be incurred at some point in time. Movants have requested production of the indemnity agreement and other related insurance documents; however, these documents have not been produced to date as Debtors claim there are additional confidentiality agreements. There is no reason to delay this miniscule expense (in comparison to the massive amount of administrative professional fees being incurred) when Movants are entitled to this relief and the prejudice of delay outweighs any nominal cost.

their claims for payment of Medicare liens or reimbursement; (c) authorizing Movants to pursue, collect and obtain payment from and under Debtors' insurance policy or policies providing coverage for Debtors' losses; (d) allowing Movants a general, unsecured claim against the Defendant Debtors and their bankruptcy estates for any amount of a judgment or settlement not covered by the insurance policy or policies or paid by any other defendants in the State Court Action; (e) making such order final upon its entry upon this Court's docket by expressly finding any fourteen day stay as being inapplicable, and (f) granting such other and further relief this Court deems just and proper.

SUMMERS COMPTON WELLS PC

Date: May 23, 2013

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