

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:)
ARMSTRONG ENERGY, INC., *et al.*,) Case No. 17-47541-659
) CHAPTER 11
)
) (Jointly Administered)
)
 Debtors.) **Hearing Date:** February 14, 2018
) **Hearing Time:** 11:00 a.m. (CT)
) **Objection Deadline:** February 7, 2018
) at 4:00 p.m. (CT)
) **Hearing Location:** Courtroom 7 North

**DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) EXTENDING THEIR EXCLUSIVITY PERIOD TO FILE A CHAPTER 11
PLAN AND (II) EXTENDING THE SOLICITING EXCLUSIVITY PERIOD**

Armstrong Energy, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"),¹ respectfully state the following in support of this motion:

Relief Requested

1. The Debtors seek entry of an order (the "Proposed Order")² extending by 120 days the periods during which the Debtors have the exclusive right to (a) file a chapter 11 plan, through and including June 29, 2018 (the "Filing Exclusivity Period") and (b) solicit votes accepting or rejecting a plan, through and including August 28, 2018 (the "Soliciting Exclusivity").

¹ A detailed description of the Debtors' businesses and the reasons for commencing the chapter 11 cases is set forth in the *Declaration of Alan Boyko of Armstrong Energy, Inc., in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 5] (the "First Day Declaration").

² A copy of the Proposed Order will be provided to the Notice Parties (as defined below) and made available on the Debtors' case information website at <https://www.donlinrecano.com/armstrong>.

Period,” and together with the Filing Exclusivity Period, the “Exclusivity Periods”), without prejudice to the Debtors’ right to seek further extensions.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Eastern District of Missouri (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 81-9.01(B)(1) of the Local Rules of the United States District Court for the Eastern District of Missouri. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are section 1121 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rule 9006, and rule 9006 of the Local Rules of Bankruptcy Procedure for the Eastern District of Missouri (the “Local Bankruptcy Rules”).

Background

5. The Debtors produce low-chlorine, high-sulfur thermal coal from the Illinois Basin, with both surface and underground mines. The Debtors market their coal primarily to proximate and investment grade electric utility companies as fuel for their steam-powered generators. Based on 2016 production, the Debtors are the sixth largest producer in the Illinois Basin and the second largest in Western Kentucky.

6. On November 1, 2017 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their

businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 86]. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases. On November 8, 2017, the Office of the United States Trustee for the Eastern District of Missouri (the “U.S. Trustee”) formed the official committee of unsecured creditors (the “Committee”) pursuant to section 1102 of the Bankruptcy Code [Docket No. 145].

Introduction

7. The Debtors are only weeks away from the hearing to confirm their plan of reorganization [Docket No. 453] (as amended, supplemented, or modified, from time to time, the “Plan”), which is supported by the vast majority of the Debtors’ stakeholders, including Committee and more than 75 percent of the Debtors’ senior secured noteholders. The Plan provides for, among other things, the full and final resolution of all funded debt obligations, wind down of the Debtors’ businesses and affairs, substantial recoveries for their creditors, and consummation of a sale transaction. As intended from the outset of these cases, the Debtors have moved expeditiously to effectuate a sale of substantially all of their assets and reach a consensual deal with stakeholders that eases the path to confirmation and emergence. The Plan is the capstone of the Debtors’ efforts and the foundation for an emergence contemplated since the beginning of these cases. The confirmation timeline contemplates a confirmation hearing beginning on February 2, 2018 and an anticipated effective date approximately two weeks thereafter, mirroring the milestones contemplated by the Debtors’ cash collateral order and plan support agreement. Although the Debtors hope to have their Plan confirmed at the confirmation hearing, they file this motion out of an abundance of caution.

8. The Debtors' progress to date has been achieved in no small part due to the breathing room provided by chapter 11. In the midst of the marketing and sale process, the Debtors believe that maintaining the exclusive right to file and solicit votes on a chapter 11 plan is critical to consummating their chapter 11 strategy. Extending the Exclusivity Periods will afford the Debtors and their stakeholders time to finish their marketing and sale process, negotiate and confirm a chapter 11 plan, and proceed toward consummation of these chapter 11 cases in an efficient, organized fashion. Therefore, the Debtors request a 120-day extension of the Exclusivity Periods to allow the Debtors to focus on continuing to advance the process and to preclude the costly disruption and instability that would occur if competing plans were to be proposed.

9. Between now and the confirmation hearing, the Debtors will continue to work with all parties to ensure that the Plan is confirmed and that the Debtors will reach the effective date as contemplated. But should such efforts fail, extended exclusivity will ensure that the Debtors' restructuring process continues to move forward without unnecessary disruption such that the Debtors can maximize value for all stakeholders and emerge from chapter 11 efficiently.

Basis for Relief

10. Section 1121(b) of the Bankruptcy Code establishes an initial period of 120 days after the commencement of a chapter 11 case during which only a debtor may file a plan and an additional 60-day period during which only the debtor may solicit votes for a plan, both of which are subject to extension through motion practice. Currently, the Filing Exclusivity Period for will expire on March 1, 2018, and the Soliciting Exclusivity Period will expire on April 30, 2018. As discussed above, the Debtors believe it is prudent to seek an extension of the Exclusivity Periods out of an abundance of caution at this critical stage of the Debtors' chapter

11 cases and in light of the Plan proposed by the Debtors and the confirmation hearing scheduled to begin on February 2, 2018.

11. Section 1121(d)(1) of the Bankruptcy Code permits a court to extend a debtor's exclusivity "for cause." Although the Bankruptcy Code does not define "cause," bankruptcy courts have discretion to extend exclusivity to promote the orderly, consensual, and successful reorganization of a debtor's affairs based upon the facts and circumstances of a particular case. *See Bunch v. Hoffinger Indus., Inc. (In re Hoffinger Indus., Inc.)*, 292 B.R. 639, 644 (B.A.P. 8th Cir. 2003); *In re Wisc. Barge Line, Inc.*, 78 B.R. 946, 948 (Bankr. E.D. Mo. 1987); *In re Texaco, Inc.*, 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987).

12. Courts often use the following factors in determining whether "cause" exists to extend (or to terminate) a debtor's exclusive plan filing period: (a) the size and complexity of the case; (b) the need for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information; (c) whether the debtor has made progress in negotiations with its creditors; (d) the existence of good faith progress toward reorganization; (e) whether the debtor is seeking to extend exclusivity to pressure creditors to accede to the debtor's reorganization demands; (f) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (g) the fact that the debtor is paying its bills as they become due; (h) the amount of time which has elapsed in the case; and/or (i) whether an unresolved contingency exists. *See, e.g., In re Hoffinger*, 292 B.R. at 643-44; *In re Acceptance Ins. Cos.*, No. 05-80059, 2008 WL 3992799, at *2 (Bankr. Neb. Aug. 20, 2008); *Matter of Interco Inc.*, 137 B.R. 999, 1001 (Bankr. E.D. Mo. 1992).

13. Not all factors are relevant to every case, and the existence of even one of the above-listed factors may be sufficient to extend a debtor's exclusivity periods. *See, e.g., In re*

Hoffinger, 292 B.R. at 644 (“As always, we emphasize that these are only factors, not all of which are relevant in every case. . . . It is within the discretion of the bankruptcy court to decide which factors are relevant and give the appropriate weight to each.”). Moreover, courts routinely grant a debtor’s first request for an extension of the debtor’s exclusive period to file a chapter 11 plan. *See In re Mirant Corp.*, 2004 WL 2250986, at *2 (N.D. Texas 2004) (“The debtor’s burden gets heavier with each extension it seeks as well as the longer the period of exclusivity lasts.”); *see also In re Apex Pharm., Inc.*, 203 B.R. 432, 441 (N.D. Ind. 1996) (“It is true that during the initial 120-day period in which debtors have an exclusive right to file a plan of reorganization . . . the bankruptcy courts apply a lesser standard in determining whether the burden of showing ‘a reasonable possibility of a successful reorganization within a reasonable time’ has been satisfied.”).

14. The Debtors respectfully submit that sufficient cause exists here to extend the Exclusivity Periods as provided herein.

A. The Debtors’ Cases Are Large and Complex.

15. These chapter 11 cases involve the restructuring of more than \$200 million in prepetition funded debt obligations, a multitude of stakeholders, and a number of complex operational intricacies. Further, the Debtors’ businesses are operating in a very uncertain environment. Due to the macroeconomic pressures from a historic decline in commodity prices remain, the markets in which the Debtors’ businesses operate continue to evolve, making the Debtors’ restructuring even more complicated and challenging. There can be no question, then, that the size and complexity of these chapter 11 cases (as exacerbated by the volatile commodities pricing environment) weigh in favor of extending the Exclusivity Period.

16. Courts have regularly extended the exclusive periods under section 1121(d) of the Bankruptcy Code in large, complex chapter 11 cases and have also acknowledged that the size

and complexity of a debtor's case alone may provide cause for extending a debtor's exclusivity periods. *See, e.g., In re Wisc. Barge Line, Inc.*, 78 B.R. 946, 948 (Bankr. E.D. Mo. 1987) (stating that, if extensions of exclusivity were denied, "it would be virtually impossible for major corporations that are faced with extensive and time consuming litigation . . . to ever enjoy the exclusive benefits provided by 11 U.S.C. § 1121"); *In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (approving debtor's third exclusivity extension and noting that the "traditional ground for cause is the large size of the debtor and the concomitant difficulty in formulating a plan of reorganization"); *In re Crescent Mfg. Co.*, 122 B.R. 979, 982 (Bankr. N.D. Ohio 1990) (stating that "cause" can include an "unusually large case"); *In re Texaco*, 76 B.R. 322, 325–27 (Bankr. S.D.N.Y. 1987) (cause existed to warrant extension of exclusivity based on the size and complexity of the case alone). Thus, the size and complexity of these chapter 11 cases alone provide sufficient cause for the Court to extend the Exclusivity Period.

B. The Debtors Have Made Significant, Good Faith Progress and Have Solicited Votes on Their Plan.

17. A number of the factors courts typically consider in evaluating a request to extend exclusivity revolve around the debtor's good faith progress toward confirmation and consummation of a consensual plan. Of course, the Debtors commenced these chapter 11 cases with a chapter 11 plan supported by holders of more than 75 percent of their senior secured notes claims. The Debtors filed a plan on the Petition Date and a disclosure statement approximately one week into these cases and, slightly less than two months into these chapter 11 cases, the Debtors began solicitation on a chapter 11 plan that has extensive committed support and the Debtors have a confirmation hearing scheduled for February 2, 2018. This expedient progress toward consummation of a plan is the epitome of fulfillment of the objectives of the chapter 11 process and supports extending the Exclusivity Period.

C. The Debtors Have Support for Their Plan From All Major Creditor Groups.

18. Prior to the Petition Date, the Debtors engaged in extensive, good-faith negotiations with certain of their senior secured noteholders and other key stakeholders to develop a comprehensive plan to be implemented through these chapter 11 cases. During these chapter 11 cases, the Committee ultimately came to support the Plan, as it has been amended. Accordingly, the Plan reflects the agreement reached among the Debtors, the Committee, the Debtors' prepetition lenders, and other key stakeholders to maximize the value of the Debtors' estates and provide the best recovery to holders of claims. All of the Debtors' major stakeholder groups currently support the Plan and are working collaboratively towards the February 2 confirmation hearing and subsequent effective date.

19. In addition, the Plan already incorporates comments from many of the Debtors' creditors, and other parties, addressing specific issues raised by these stakeholders. To the extent other creditors raise questions or concerns with the proposed restructuring, the Debtors will continue to endeavor in good faith to address them. Thus, far from using exclusivity to pressure creditors, the Debtors are using the Exclusivity Periods to attempt to foster additional support for the Plan.

20. The relief requested in this motion is consistent with similar relief granted by Courts in this and other districts. *See, e.g., In re Payless Holdings LLC*, No. 17-42267-659 (Bankr. E.D. Mo. Aug. 2, 2017) (order granting initial extension of 60 days to file plan); *In re Arch Coal, Inc.*, No. 16-40120-705 (Bankr. E.D. Mo. July 5, 2016) (order granting initial extensions of 120 days); *In re Noranda Aluminum, Inc.*, No. 16-10083-399 (Bankr. E.D. Mo. July 20, 2016) (same); *In re Abengoa Bioenergy US Holding, LLC*, No. 16-41161 (KSS) (Bankr. E.D. Mo. June 16, 2016) (same); *In re Patriot Coal Corp.*, No. 12-51502 (KSS) (Bankr. E.D. Mo. April 26, 2013) (same).

D. These Cases Are Less Than 100 Days Old.

21. Although the Debtors have made much progress in less than three months, their accomplishments should not diminish the fact that little time has passed in these chapter 11 cases. Additional exclusivity will benefit all stakeholders by facilitating the Debtors' efforts to confirm and consummate a value-maximizing plan, which will inure to the benefit of all stakeholders in the most expeditious manner available.

Conclusion

22. In light of the foregoing, the Debtors request an extension of the Filing Exclusivity Period through and including June 29, 2018, and an extension of the Soliciting Exclusivity Period through and including August 28, 2018.

Reservation of Rights

23. Nothing contained in this motion or any actions taken by the Debtors pursuant to relief granted in the order is intended or should be construed as: (a) an admission as to the validity of any particular claim against a Debtor entity; (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

24. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

25. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the Eastern District of Missouri; (b) counsel to the indenture trustee under the Debtors' 11.75% senior secured notes due 2019; (c) counsel to the ad hoc group of holders of the Debtors' 11.75% senior secured notes due 2019; (d) counsel to Murray Kentucky Energy, Inc.; (e) counsel to the official committee of unsecured creditors; (f) the United States Attorney's Office for the Eastern District of Missouri; (g) the Internal Revenue Service; (h) the Environmental Protection Agency; (i) the office of the attorneys general for the states in which the Debtors operate; (j) the Securities and Exchange Commission; (k) Brandeis; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

26. No prior request for the relief sought in this motion has been made to this or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

St. Louis, Missouri
Dated: January 24, 2018

/s/ Richard W. Engel, Jr.

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