

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	§	Chapter 11
	§	
WESTMORELAND COAL COMPANY, <i>et al.</i> ,	§	Case No. 18-35672 (DRJ)
	§	
Debtors.	§	(Jointly Administered)
	§	

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY  
OF DONNA RAMSEY AS PERSONAL REPRESENTATIVE  
AND ON BEHALF OF THE HEIRS OF MICHAEL RAMSEY, DECEASED**

**THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. IF IT IS GRANTED, THE MOVANTS MAY ACT OUTSIDE OF THE BANKRUPTCY PROCESS. IF YOU DO NOT WANT THE STAY LIFTED, IMMEDIATELY CONTACT THE MOVING PARTY TO SETTLE. IF YOU CANNOT SETTLE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY AT LEAST 7 DAYS BEFORE THE HEARING. IF YOU CANNOT SETTLE, YOU MUST ATTEND THE HEARING. EVIDENCE MAY BE OFFERED AT THE HEARING AND THE COURT MAY RULE.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON FEB.19, 2019, AT 2:30 P.M. IN COURTROOM 400, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, 515 RUSK AVENUE, HOUSTON, TEXAS.**

Donna Ramsey, as personal representative and on behalf of the heirs of Michael A. Ramsey, by and through her undersigned counsel, hereby files this motion for relief from the automatic stay, to the extent applicable (the "Motion"), and in support thereof respectfully state as follows:

## INTRODUCTION

1. Donna Ramsey seeks relief from the automatic stay, to the extent applicable, authorizing a certain State Court Action related to the wrongful death of her husband Michael Ramsey against Westmoreland Coal Company (“Westmoreland Coal”), Westmoreland Mining, LLC (“Westmoreland Mining”) and Western Energy Company (“Western Energy”), (collectively “Debtors”) to be completed and paid solely through available insurance proceeds and to file the remaining balance of the liquidated claim with this Court as an unsecured creditor.

## BACKGROUND

### **I. The Bankruptcy Case**

2. On October 9, 2018, (the “Petition Date”), Westmoreland Coal Company and certain of its affiliates filed a voluntary petition for bankruptcy relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas, Houston, Division. On October 9, 2018, Debtors also filed a Notice of Designation as Complex Chapter 11 Bankruptcy Case. An order for Joint Administration was signed on October 9, 2018.

3. On December 6, 2018, a Proof of Claim was filed by Donna Ramsey, as personal representative of the Estate of Michael Ramsey and on behalf of the heirs of Michael A. Ramsey.

### **II. Wrongful Death Claim**

4. Donna Ramsey was appointed the personal representative of the Estate of Michael Ramsey by the Honorable Nickolas Murnion on September 22, 2017, following her husband’s death. On March 18, 2018, and before the filing of the petition in this matter, Donna Ramsey, acting in her capacity as a representative of the Estate and Heirs of Michael Ramsey, Deceased, filed a wrongful death action claim against Westmoreland Coal Company (“Westmoreland Coal”), Westmoreland Mining, LLC (“Westmoreland Mining”) and Western Energy Company (“Western

Energy”) in the Thirteenth Judicial District Court Yellowstone County, Montana. Ex. A, a copy of the Petition filed in *Ramsey v. Western Energy Co.*; Cause No. DV18-0375; Montana Thirteenth Judicial District Court Yellowstone County (“State Action”). Movant requested a jury trial, as she is entitled under the laws and constitution of the state of Montana.

5. Michael Ramsey, Deceased, was a miner for Debtors at the Rosebud Mine & Crusher/Conveyor surface nonmetal mine in Rosebud County, Montana (“Rosebud Mine”). Mr. Ramsey drove and operated large Caterpillar mining dump trucks to carry large amounts of earth and material at the Rosebud Mine.

6. Michael Ramsey was employed as a miner by Western Energy, which is the operator entity of the Rosebud Mine. Western Energy is owned and/or controlled by Westmoreland Coal and Westmoreland Mining. Personnel from Westmoreland Coal Company and Westmoreland Coal Mining, LLC coordinated, and controlled the safety of employees at the Rosebud Mine, and developed, implemented and monitored the safety programs and policies for Western Energy’s operations.

7. On May 6, 2017, Michael Ramsey, along with two other haul truck drivers, were instructed to haul overburden from the Cat 993 Loader Number LD11 and dump it over the edge of the highwall into the pit between ramps C-1 and B-9.

8. Debtors instructed Michael Ramsey to dump the material directly over the edge, a practice contrary to Federal Mine and Safety Regulations and Debtors’ own safety policies and procedures in which trucks are required to dump their loads 25 or more feet from the edge of the highwall, and the overburden is pushed over the edge and into the pit with a bulldozer.

9. Mr. Ramsey’s truck was loaded with 98 tons of overburden and he proceeded to the dump point at the crest of the highwall. After backing his truck up to the unstable berm, the

ground failed to support the weight of the loaded truck and gave way, creating an opening at the edge of the highwall and causing the truck to fall backwards approximately 150 feet down and landing upside down in the bottom of the pit containing the dumped overburden.

10. Michael Ramsey was pronounced dead approximately three hours after his overturned truck was discovered at the bottom of the pit.

11. Debtors are required by state and federal mining safety laws to establish and follow a ground control plan to ensure the safety of all highwalls, pits and spoil banks, and construct berms of adequate height to provide sufficient resistance to alert haulage truck drivers when they are approaching the edge of the embankment at dump areas and serve as means of preventing haulage equipment from traveling over the embankments.

12. Debtors failed to provide such protections, and instead of having their haulage operator dump 25 feet from the edge, as called for not only by law, but its own safety manual or another safe distance from the edge, as the ground within 25 feet of the edge is unstable and inherently dangerous, Debtors instructed their miners, such as Michael Ramsey, to dump their loads off the edge of the dump pit between ramps C1 and B9, with no adequate berms or protections in place.

13. The accident was investigated by the Mine Safety and Health Administration, which found Debtors had been warned of the unsafe conditions prior to the accident at issue, and they still failed to take any corrective actions regarding the berms, visual warning barriers, dumping practices, and failed to assign any bulldozers to push overburden over the edge of the highwall. The MSHA issued a citation to Debtors for their aggravated conduct and intentional and deliberate failure to comply with mandatory mine safety standards and regulations.

**RELIEF REQUESTED**

14. Donna Ramsey, as representative of Michael Ramsey’s estate, respectfully requests that the Court enter an order granting relief from the automatic stay, to the extent applicable, to permit the State Court Action to proceed and liquidate Ramsey’s claims against Debtors.

15. To the extent applicable, relief from the stay is appropriate here because the continuation of the State Court Action will not have a negative impact on the Debtors’ estate or property.

**ARGUMENT AND AUTHORITIES**

**I. Donna Ramsey, as personal representative of the Estate of Michael Ramsey, is Entitled to Relief from the Automatic Stay for “Cause” to Proceed with the State Court Action.**

16. To the extent the Court determines that the automatic stay is applicable to the State Court Action, Donna Ramsey asserts that “cause” exists to lift the automatic stay with respect to the State Court Action.

17. Section 362(d)(1) of the Bankruptcy Code provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest.

11 U.S.C. § 362(d)(1).

18. The term “cause” is not defined in the Bankruptcy Code, and the Fifth Circuit explains that “this lack of definition affords ‘flexibility to the bankruptcy courts.’” *In re Mirant Corp.*, 440 F.3d 238, 253 (5th Cir. 2006) (quoting *Little Creek Dev. Co. v. Commonwealth Mortgage Corp. (In re Little Creek Dev. Co.)*, 779 F.2d 1068, 1072 (5th Cir. 1986)). The Fifth Circuit has specifically noted that “[b]ecause § 362 does not offer guidance as to what constitutes

‘cause,’ reviewing courts must determine whether cause existed on a case-by-case basis.” *Reitnauer v. Texas Exotic Feline Found., Inc. (In re Reitnauer)*, 152 F.3d 341, 343 n. 4 (5th Cir. 1998) (citation omitted).

19. Courts in this district may apply one of two tests when determining whether cause exists to lift the stay to allow litigation to proceed in another jurisdiction. The first test considers whether (i) lifting the stay will result in any great prejudice to the debtor of the bankruptcy estate; (ii) any hardship to a non-debtor of continuation of the stay outweighs any hardship to the debtor; and (iii) the movant has a probability of prevailing on the merits of the case. *See In re Kao*, Case No. 15-31193-H3-13, 2015 WL 9412744 at \*2 (Bankr. S.D. Tex. Dec. 21, 2015).

20. The second test considers what are referred to as the “*Sonnax* factors.” *See In re Xenon Anesthesia of Texas, PLLC*, 510 B.R. 106, 112 (Bankr. S.D. Tex. 2014) (citation omitted) (applying *Sonnax* factors in determining whether to lift the stay to allow litigation against a debtor to proceed in another forum).

21. In determining whether to grant a motion for relief from the automatic stay under this test, courts will analyze the following *Sonnax* factors:

- 1) whether relief would result in a partial or complete resolution of the issues;
- 2) lack of any connection with or interference with the bankruptcy case;
- 3) whether the other proceeding involves the debtor as a fiduciary;
- 4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;
- 5) whether the debtor’s insurer has assumed full responsibility for defending it;
- 6) whether the action primarily involves third parties;
- 7) whether litigation in another forum would prejudice the interests of other creditors;
- 8) whether the judgment claim arising from the other action is subject to equitable subordination;
- 9) whether the moving party’s success in the other proceeding would result in a judicial lien avoidable by the debtor;
- 10) the interests of judicial economy and the expeditious and economical resolution of litigation;
- 11) whether the parties are ready for trial in the other proceeding; and
- 12) impact of the stay on the parties and the balance of the harms.

*In re Sonnax Indus., Inc. v. Tri Component Prods. Corp.*, 907 F.2d 1280, 1287 (2d Cir. 1990).

22. Depending on the facts and circumstances of the case, certain of these factors will be irrelevant or will be less relevant than other factors, and it is not necessary that all factors weigh in favor of lifting the stay. *In re New York Medical Group, P.C.*, 265 B.R. 408, 413 (Bankr. S.D.N.Y. 2001).

**A. Donna Ramsey Satisfies the Three Factor Test**

**i. Lifting the Stay will Not Prejudice the Debtors.**

23. Lifting the stay to allow the State Court Action to proceed at this juncture would cause no prejudice to the Debtors or their estates. Debtors are insured which should defend the State Action and not take up significant time and attention of Debtors or their personnel. *Id.* To the extent that the liquidated amount exceeds the insurance coverage, Donna Ramsey will file an unsecured claim with this Court for that amount.

24. The State Court Action will simply allow the liquidation of the claim of the Estate of Michael Ramsey. *In re Fowler*, 259 B.R. 856, 861 (Bankr. E.D. Tex. 2001).

25. Thus, lifting the stay to allow the State Court Action to proceed will not prejudice the Debtors or their estates.

**ii. Continuation of the Stay would Unduly Burden Donna Ramsey.**

26. In contrast to the lack of prejudice facing the Debtors if the Motion is granted, Donna Ramsey will suffer harm which outweighs that of the Debtors if the Motion is denied.

27. A failure to lift the stay would prejudice the Estate of Michael Ramsey by failing to allow him to liquidate his claim against the Debtors.

28. Ms. Ramsey is a citizen of Montana and lives there. She lacks the resources to travel to Houston, Texas for resolution of her claim.

29. Each witness needed for a fair and proper adjudication of the claim is located in Montana, none are located in Houston, Texas.

30. Ms. Ramsey has requested, before this filing, that her claims of liability be resolved by a jury of her peers which cannot be provided in this forum.

31. Accordingly, lifting the stay to allow the State Court Action to proceed will avoid any hardships suffered by Donna Ramsey, which significantly outweigh any suffered by the Debtors, as there are none.

**iii. Donna Ramsey is likely to prevail on the Merits of the State Court Action.**

32. Donna Ramsey is likely to prevail on the merits of the State Court Action. The accident has been previously investigated and fines and findings issued against the Debtors.

**B. Donna Ramsey Satisfies the *Sonnax* Test**

33. Certain of the *Sonnax* factors will be irrelevant or less relevant than others and it is not necessary that all factors weigh in favor of lifting the stay. *In re New York Medical Group, P.C.*, 265 B.R. at 414.

34. The first, second, fifth, sixth, seventh, tenth, and twelfth *Sonnax* factors are relevant here. Specifically:

35. First Factor: Resolution of the Issue: If the State Court Action is permitted to proceed, all claims against the Debtors for the facts asserted will be finally resolved and liquidated in a manner compatible with the bankruptcy proceeding. This matter is a personal injury and wrongful death claim, which cannot be tried in the bankruptcy court. 28 U.S.C §157; *In re Fowler*, 259 B.R. at 861.

36. Second Factor: Lack of Interference in Bankruptcy Case: The State Court Action and adjudication thereof will have no impact or interference in the instant bankruptcy proceedings, as the Debtors' have insurer and have invoked it in defending the State Court Action, and Debtors



will not be burdened by participation of the State Court Action any further than they would liquidation of the claim here.

37. Fifth Factor: Insurance Has Assumed a Full Defense: Debtors assert they have insurance coverage for the State Court Action. The Montana State Fund (“MSF”) is a Workers Compensation and Employers Liability Policy that has been invoked by Debtors. MSF has assumed coverage of the claims in this wrongful death action under a reservation of rights and claw back assertion. MSF has filed a declaratory judgment action seeking to deny coverage. However, Debtors have plead in the Montana First Judicial District Court that they do in fact have insurance through the Montana State Fund to cover the claims in the State Action. Debtors also have additional insurance policies. One through Zurich USA that has a \$250,000 self-retention. Zurich will not make a coverage determination until the retention is exhausted, which it has not. Furthermore, Debtors have an umbrella policy by ACE which is an excess policy to the Zurich policy at issue. Debtors’ have insurance coverage for the wrongful death action.

38. Sixth Factor: Whether the State Court Action Primarily Involves Third Parties: The State Court Action does not involve third-parties—only the claimant and the Debtors.

39. Seventh Factor: The State Court Action Will Not Prejudice the Interests of Other Creditors: Should movant be successful, the relief granted to her will permit her to be paid from insurance proceeds and to have her remaining unsecured claim, properly liquidated, to be inserted in line for payment. “There is no reason to believe that the burden on Debtor would be any more onerous to liquidate this action in state court than to have the reference withdrawn and litigate in Federal District Court.” *In re Fowler*, 259 B.R. at 861. Furthermore, Donna Ramsey has the right to her pro rata distribution based on the allowed amount of her claim, the same as every other creditor. *In re New York Medical Group, P.C.*, 265 B.R. at 414.

40. Tenth Factor: Interests of Judicial Economy: To permit the automatic stay to continue to suspend the final resolution of the State Court Action will only decrease judicial economy. Because the final resolution of the State Court Action will not negatively impact the bankruptcy proceeding, permitting the State Court Action to move forward is the most logical and efficient resolution of the State Court Action. *In re New York Medical Group, P.C.*, 265 B.R. at 413. Further, this Court simply cannot conduct the jury trial required by the State Court Action and, as a result unless relief is granted from the automatic stay a duplication of actions will be required.

41. Twelfth Factor: Balance of the Harms and Impact of the Stay: Lifting the stay will pose no hardship or negative impact to the Debtors and their estates, while the maintenance thereof will only burden the Estate of Michael Ramsey and prohibit it from recovering any amount due to it, based on the actions of Debtors.

42. For the foregoing reasons, cause exists for granting relief from the automatic stay to allow the State Court Action to proceed.

#### **RESERVATION OF RIGHTS**

43. Donna Ramsey reserves all rights to supplement or add to the legal and factual arguments raised in this Motion on any bases whatsoever at a future date.

#### **NO PRIOR REQUEST**

44. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, Donna Ramsey respectfully requests that this Court (i) enter an order, granting Donna Ramsey relief from the automatic stay to allow the State Court Action to proceed, and (ii) grant such other relief as the Court deems appropriate under the circumstances.

Dated: January 23, 2019

Respectfully submitted,

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**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies, pursuant to Local Rule 4001-1(a)(1), that counsel for Donna Ramsey, as personal representative and on behalf of the heirs of Michael A. Ramsey, conferred with counsel to the Debtors on the issues contained in *Donna Ramsey's Motion for Relief from the Automatic Stay, to the Extent Applicable*, on or about December 7, 2018 and Debtors do not agree to the Motion to the extent the liquidated amount my not my covered by insurance.

/s/ Gavin Uttecht  
Gavin K. Uttecht

**CERTIFICATE OF SERVICE**

I hereby certify that I have placed a copy of the above Motion for Relief from the Automatic Stay of Donna Ramsey as Personal Representative and on Behalf of the Heirs of Michael Ramsey, Deceased to the following parties by electronic filing and to those parties listed on the Court's Notice of Electronic Filing on January 23, 2019, by Electronic Notification.

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