

**United States Bankruptcy Court
Southern District of Texas
Houston Division**

In re

WESTMORELAND COAL CO., *et al.*

Debtors

Bankr. Case No.
18-35672-DRJ
(Jointly Administered)

RESPONSE OF THE COAL ACT RETIREES' COMMITTEE TO DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105, 1113 AND 1114 FOR AN ORDER AUTHORIZING (BUT NOT DIRECTING) THE DEBTORS TO (A) REJECT CERTAIN COLLECTIVE BARGAINING AGREEMENTS, (B) IMPLEMENT THE DEBTORS' PROPOSAL, AND (C) MODIFY CERTAIN RETIREE BENEFITS, AND 2) ESTABLISHING RESPONSE DEADLINE

TO THE HON. DAVID R. JONES, U.S. BANKRUPTCY JUDGE:

COME NOW the Coal Act Retirees' Committee and file this their response and objection to the Debtor's motion [Doc. # 1091] seeking to modify certain retiree benefits, as pertains to the Coal Act Retirees,¹ and say as follows:

BACKGROUND FACTS AND PROCEDURAL POSTURE

1. Westmoreland Coal Co., together with 36 affiliates and related companies in the United States, sought protection under chapter 11 of title 11 on October 9, 2018.
2. On January 10, 2019, the Court entered an order appointing Hon. Leif M. Clark (ret.), Allison Byman, and Sylvia Mayer as the Coal Act Retiree Representatives "to represent the interests of Coal Act Retirees. The Coal Act Retiree Representatives will have the rights, duties and powers of a committee appointed pursuant to 11 U.S.C. § 1114." *See* Order, Doc. #

¹ Westmoreland Coal Company and its subsidiary Basin Resources, Inc. (collectively, "**WCC**") provide retiree medical benefits to employees (or their eligible dependents) previously affiliated with the United Mine Workers of America ("**UMWA**") with respect to WCC's former "Heritage" operations in North Carolina and Virginia (collectively, "**Heritage Retirees**"), including benefits articulated in the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. § 9701, *et seq.* ("**Coal Act**"). Under the Coal Act, the WLB Debtors are obligated to pay premiums to the UMWA 1992 Benefit Plan ("**1992 Plan**") and the UMWA Combined Benefit Fund ("**Combined Fund**" and, collectively with the 1992 Plan, "**Coal Act Funds**"). In addition, under the Coal Act, the WLB Debtors are obligated to provide health benefits coverage to certain Heritage Retirees. Of the Heritage Retirees, those who are protected by the Coal Act are referred to herein as "**Coal Act Retirees.**"

1023, at ¶ 4. For purposes of these proceedings, these three persons are together referred to herein as the “**CAR Committee.**”

3. On January 16, 2019, the Debtors filed their motion to, *inter alia*, “modify the Debtors’ obligations to make payments on account of all retiree benefits (as that term is defined in 11 U.S.C. § 1114), including Coal Act benefits, relating to any retired employees (and their spouses and dependents) affiliated with or represented by the UMWA.” Motion, at 1.²

4. The relief sought by the Debtors affects the rights and interests of approximately 1000 Coal Act Retirees. Some are Coal Act Retirees whose health benefits are currently provided by the Debtor(s) pursuant to an individual employee program (“**IEP**”), who would no longer be covered by such IEP. The Debtors’ motion states that this IEP will be terminated.³ Some are persons already receiving their health benefits under the Combined Fund, for which the Debtor(s) are currently paying premiums. The Debtor(s) propose to reject their future obligations to pay these premiums. A small number are persons covered under the 1992 Plan. The Debtor(s) propose to terminate their obligation to pay premiums to that fund with respect to both those now covered and those who will become covered under the 1992 Plan as a result of the termination of the IEP.

5. If the IEP is terminated, then there is likely to be an administrative process, that will have to be managed and coordinated by the Debtor(s) to effectuate a transfer of these beneficiaries to the 1992 Plan in a proper and coordinated fashion. Many of these beneficiaries are quite old at this time and are likely to need assistance in navigating the transition. In addition, the timing of any termination of the IEP should be coordinated to match up with that coordination process.

² The motion represents that the Debtor(s) fulfilled their statutory obligation under section 1114(f)(1)(A) by making their proposal to the CAR Committee to terminate their obligations to the Coal Act Retirees prior to the CAR Committee’s initial meeting with Debtors’ counsel. *See* Ex. 8 to the Debtor’s Motion, Declaration of Greg Ossi. *See also* 11 U.S.C. § 1114(f)(1)(A). The CAR Committee respectfully disagrees with this assertion. The fact that the Debtors had “made clear” their intentions in pleadings filed with the Court prior to the appointment of the CAR Committee does not, in the CAR Committee’s view, comply with the statute’s requirement that the Debtors “make a proposal to the authorized representative of the retirees” as required by section 1114(f)(1)(A). Nonetheless, given the circumstances of the case, the CAR Committee has had sufficient opportunity to review relevant materials and to proceed with negotiations.

³ We note that the obligation to maintain the IEP would terminate in any event upon the sale of substantially all of the operating assets of the Debtor(s), as is noted by the Coal Act Funds in their response and objection.

RESPONSE AND OBJECTION

6. The CAR Committee joins in the Coal Act Funds' objections to (a) the necessity of the relief sought by the Debtors (*see* Objection, Doc. 1213, ¶¶ 1-9, 12-14), (b) the lack of fairness and equity of the relief sought by the Debtors (*see* Objection, Doc. 1213, ¶¶ 10-11, 12-14), and (c) the request for retroactive application sought by the Debtors (*see* Objection, Doc. 1213, ¶¶ 15-16).

7. The CAR Committee also joins the Coal Act Funds' in acknowledging that the 1992 Plan is entitled to draw on the surety bonds posted to secure premium obligations to the 1992 Plan (*see* Objection, Doc. 1213, ¶¶ 17-18) and notes for the record that the modifications proposed by the Debtor(s) do not purport to affect this right in any way). Thus, the CAR Committee requests that the Court incorporate in its ruling on this matter that those rights to draw on the surety bonds posted to secure premium obligations to the 1992 Plan are, in fact and in law, unaffected by whatever relief is granted in these proceedings.⁴

8. The CAR Committee believes that, in all events, the Debtors must remain obligated to facilitate the transition of Coal Act Retirees from the IEP to the 1992 Plan so as to assure that there is no gap in benefit coverage and a smooth process. To this end, the CAR Committee proposes that these steps include, at a minimum, the following:

- a. Within 10 business days following entry of an order authorizing termination of the Coal Act Retirees' benefits ("Order"), the Debtors should transmit to the Coal Act Funds the requisite information to facilitate an orderly transition;⁵
- b. The 1992 Plan would select an effective date for its coverage of the transferred beneficiaries to begin, to be within 90 days of the Order.

⁴ The CAR Committee has concerns regarding the future continued solvency of both the Combined Benefit Fund and the 1992 Fund. Notwithstanding the existing funding structure for the Funds, the fiscal demands on them are increasing dramatically, as more coal companies cease operations.

⁵ We understand this information to likely include a) a roster of all beneficiaries with date of birth, social security number and current contact information; b) a copy of its benefit plan(s); and c) designated liaisons from WCC's internal benefits staff, pharmacy benefits manager, and claims administrator/carrier, together with authorization to immediately begin coordination with the 1992 Plan and to provide data as requested.

- c. WCC and its carrier and pharmacy benefits manager would send the required Medicare written notice to the beneficiaries and to Medicare, to the effect that WCC is terminating coverage and the 1992 Plan is enrolling the beneficiaries for coverage to transition on the Effective Date. The Debtor(s) would coordinate this effort with the 1992 Plan.
- d. The 1992 Plan will send enrollment/information packets and insurance cards to the beneficiaries, and enroll the eligible beneficiaries so that their coverage begins at 12:01 am on the Effective Date. WCC will terminate its coverage of the beneficiaries effective midnight of the night before the Effective Date.
- e. Claims for covered benefits received after the Effective Date for dates of service prior to the Effective Date will be sent to the 1992 Plan to be processed and paid in accordance with the 1992 Plan's procedures. In return for the 1992 Plan assuming this responsibility, WCC should, within 30 business days following entry of the Order, deposit into an escrow account, accessible by the 1992 Plan, sufficient monies for the 1992 Plan to pay these claims.

9. The CAR Committee has negotiated and continues to negotiate in good faith with the Debtors in this case. The CAR Committee will continue such efforts through and including the date set for hearing on these matters.

For all of the foregoing reasons, the CAR Committee prays that the Court deny the relief requested by the Debtors in their Motion, to the extent such relief affects in any way the interests of the Coal Act Retirees. In the alternative, the CAR Committee requests the Court grant the limited alternative relief requested herein, regarding obligating the Debtors to effectuate a smooth transition for Coal Act Retirees from the IEP to the 1992 Plan, and ratifying the enforceability of the surety bond currently held by the Funds, as requested in this Response and Objection.

RESPECTFULLY SUBMITTED this 31st day of January, 2019.

The Court Appointed Coal Act Retirees' Representatives

/s/ Leif Clark

Hon. Leif M. Clark (ret.)
Leif M Clark Consulting PLLC
P O Box 2676
San Antonio, TX 78299
(210) 663-5183
lmclark@leifmclark.com

/s/ Allison Byman

Ms. Allison Byman, Esq.
Byman & Associates PLLC
7924 Broadway, Suite 104
Pearland TX 77581
(281) 884-9269
adb@bymanlaw.com

/s/ Sylvia Mayer

Ms. Sylvia Mayer, Esq.
S. Mayer Law
P.O. Box 6542
Houston, TX 77265
(713) 893-0339
smayer@smayerlaw.com

CERTIFICATE OF SERVICE

I hereby certify that, on January 31, 2019, a true and correct copy of the foregoing was served electronically through the Court's ECF System on all parties receiving notice through the ECF System.

/s/ Sylvia Mayer

Sylvia Mayer